

# CHANGES IN THE LAW UNDER THE TRUMP ADMINISTRATION

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Climate



# Road Map

- Paris Agreement
- Clean Air Act
- State, Local and NGO Action

# Paris Agreement

PARIS AGREEMENT



UNITED NATIONS  
2015

- Article 2: Attempt to hold increase in global average temperature to below 2°C above pre-industrial levels; try to keep increase below 1.5°C
- Also addresses adaptation, mitigation, technology, finance
- Effective Nov. 4, 2016

# Paris Agreement

## Withdrawal

### Article 28

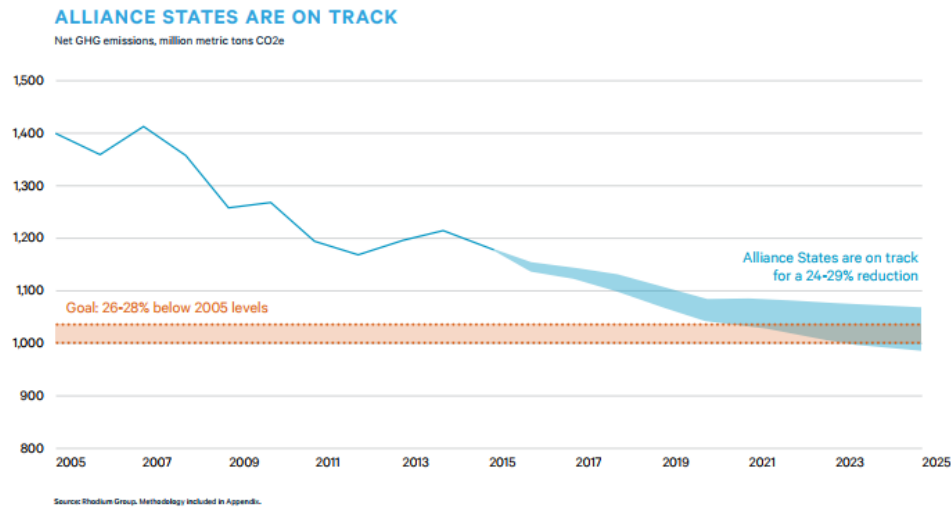
1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

# Paris Agreement

- Aug. 4, 2017: U.S. intends “to withdraw . . . as soon as it is eligible to do so, consistent with the terms of the Agreement.”
- No indication U.S. plans to withdraw from UNFCCC

# Paris Agreement

- Implications for Oregon
  - Greenhouse gases don't observe borders
  - US Climate Alliance: 14 U.S. States (including Oregon) and Puerto Rico upholding Paris Agreement commitments:



# Clean Air Act

## SUPREME COURT OF THE UNITED STATES

Syllabus

MASSACHUSETTS ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.

66496 Federal Register / Vol. 74, No. 239 / Tuesday, December 15, 2009 / Rules and Regulations

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ENVIRONMENTAL PROTECTION  
AGENCY

40 CFR Chapter I

[EPA-HQ-OAR-2009-0171; FRL-9091-8]

RIN 2060-ZA14

Endangerment and Cause or  
Contribute Findings for Greenhouse  
Gases Under Section 202(a) of the  
Clean Air Act

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Final rule.

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**SUMMARY:** The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations. The

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# Clean Air Act

## Clean Power Plan

64662 Federal Register / Vol. 80, No. 205 / Friday, October 23, 2015 / Rules and Regulations

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**ENVIRONMENTAL PROTECTION  
AGENCY**

40 CFR Part 60

[EPA-HQ-OAR-2013-0602; FRL-9930-65-  
OAR]

RIN 2060-AR33

**Carbon Pollution Emission Guidelines  
for Existing Stationary Sources:  
Electric Utility Generating Units**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Final rule.

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**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is establishing final emission guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs).

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# Clean Power Plan

- Authority: CAA § 111(d)
  - Existing sources
  - With EPA guidance, states develop implementation plans
  - EPA approval required
- CPP overview:
  - Applies to existing fossil fuel-fired electric generating units
  - Establishes state-by-state targets for carbon emissions reductions
  - Would reduce emissions 32% below 2005 levels by 2030

# Clean Power Plan

Still on the books, but stayed pending litigation

No. 16-\_\_\_\_

TUESDAY, FEBRUARY 9, 2016

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IN THE SUPREME COURT OF THE UNITED STATES

ORDER IN PENDING CASE

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STATE OF WEST VIRGINIA,  
STATE OF TEXAS, *et al.*,

15A773

WEST VIRGINIA, ET AL. V EPA, ET AL.

*Applicants,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an  
REGINA A. MCCARTHY, Administrator,  
United States Environmental Protection Agency

*Respondents.*

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**APPLICATION BY 29 STATES AND STATE AGENCIES FOR  
IMMEDIATE STAY OF FINAL AGENCY ACTION DURING  
PENDENCY OF PETITIONS FOR REVIEW**

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The application for a stay submitted to The Chief Justice and by him referred to the Court is granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,662 (October 23, 2015), is stayed pending disposition of the applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of the applicants' petition for a writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for a writ of

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# Clean Power Plan

- Sept. 2016: D.C. Circuit oral argument
- March 28, 2017: Executive Order on Promoting Energy Independence and Economic Growth
  - EPA to review Clean Power Plan “and, if appropriate, [EPA] shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding” the CPP
- March 28, 2017: Motion to hold cases in abeyance
- April 28, 2017: Cases held in abeyance

# Clean Power Plan

- Repeal, or Repeal and Replace?
  - Endangerment finding
  - Industry input
- [Trump Administration announcement before October status report to D.C. Circuit?]
- In any case, don't expect resolution soon

# Clean Power Plan

- Impact on Oregon
  - DEQ process to implement Clean Power Plan on hold...
  - ... But Oregon still on track
    - Union of Concerned Scientists: Oregon among 21 states set to surpass 2022 benchmarks; 16 states set to surpass 2030 benchmarks

# State, Local, NGO Action

- State climate change action:
  - SB 1547
  - Clean Fuels Program
  - Cap and Invest?
- Local climate change action:
  - Portland Fossil Fuel Terminal Zoning Amendments (overturned by LUBA)
  - San Francisco, Oakland nuisance cases. *California v. BP*, San Francisco Superior Court Case No. CGC 17-561370; *California v. BP*, Alameda County Superior Court Case No. RG17875889.

# State, Local, NGO Action

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA,  
et al.,

Case No. 6:15-cv-01517-TC  
OPINION AND ORDER

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al,

Defendants.

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AIKEN, Judge:<sup>1</sup>

Plaintiffs in this civil rights action are a group of young people between the ages of eight and nineteen (“youth plaintiffs”); Earth Guardians, an association of young environmental activists; and



# State, Local, NGO Action

- *Juliana v. United States*
  - November 10, 2016: U.S. motion to dismiss denied
  - June 8, 2017: U.S. motion to certify for immediate appeal denied
  - June 9, 2017: U.S. files petition for writ of mandamus in 9<sup>th</sup> Circuit
  - Trial set for February 5, 2018
  - Issues:
    - Standing
    - Political question doctrine
    - Due process right to stable climate?
    - Public trust cause of action against federal government?