Yes EPA Rollback Internals

#### EPA has discretion – doesn’t require congress

**Institute for 21st Century Energy, 9** (Institute for 21st Century Energy, US Chamber of Commerce, 4/21, <http://energyxxi.org/sites/default/files/ClimateChange101.pdf>)

Massachusetts vs. EPA: Supreme Court decision that held that the Environmental Protection Agency (EPA) has the authority to regulate CO2 under the Clean Air Act from new automobile tailpipes if the agency finds that CO2 emissions endangers public health or welfare. However, the Court did not require EPA to regulate.

Post EPA v mass decisions prove executive has discretion

Fozard, ’08 (Colette Fozard, attorneys of Bracewell & Giuliani, Energy Legal Blog, 11/21/08 (<http://www.energylegalblog.com/archives/2008/11/21/1316>)

In a noteworthy Clean Air Act decision in the wake of Massachusetts v. EPA, 549 U.S. 497 (2007), the Environmental Appeals Board (EAB) avoided the key question of whether carbon dioxide (CO2) is currently “subject to regulation” under the Clean Air Act (Act). In the Matter of Deseret Power Electric Cooperative, EAB App. No. PSD 07-03. (November 13, 2008). It appears that the decision is carefully designed to leave open for the next Administration the question of whether CO2 will be regulated under a key EPA permitting program. On the one hand, EAB sided with the Environmental Protection Agency (EPA), agreeing that EPA is not required to treat CO2 as “subject to regulation” for purposes of the Prevention of Significant Deterioration (PSD) permitting program. On the other hand, EAB found that EPA could exercise its discretion to treat CO2 as “subject to regulation,” and thus require permit limits for CO2 based on the “best available control technology” (BACT). Under the Bush Administration, EPA has made it clear that, for both legal and policy reasons, it does not want to treat CO2 as “subject to regulation” under the Act. The EAB found, however, that the Deseret permitting record was not adequate to support this position. It then remanded the permit back to the Agency with instructions that will make it very hard for EPA to respond to the remand until the new Administration takes office. In doing so, the EAB has created significant uncertainty for anyone planning to construct virtually any type of commercial building or industrial facility.

If Romney wins, republican congress wouldn’t block-

Drum 1/17 (Kevin Drum, Blogger, Mother Jones,1-17-2012 <http://motherjones.com/kevin-drum/2012/01/president-romney-vs-president-obama-cage-match>)

Karl Smith doesn't care if Mitt Romney is a liar, a cad, or a prick. He just wants to know what concrete things would be different under a Romney presidency compared to an Obama Presidency. My list is so conventional that I'm afraid it's pretty boring, but here goes. All of this is based on the assumption that if the electorate is pro-Republican enough to elect Romney, it will also be pro-Republican enough to give Republicans control of the Senate. Obamacare gets repealed via reconciliation. And even if that turns out not to be possible, it will be gutted enough to make it all but dead in practice. The judicial system gets packed with a lot more conservative, business-friendly judges. The Bush tax cuts are made permanent. Corporate tax rates are cut substantially. There's a slim chance that this would be done via a 1986-style tax reform bill that's a net positive, but since Republicans wouldn't need any Democratic help to pass it, probably not. The estate tax might very well be eliminated. Overall, for reasons of basic arithmetic, spending cuts will be much smaller than Romney and the GOP are promising, and the deficit will be substantially higher than it would be under Obama. We might stay in Afghanistan significantly longer than we would otherwise — though I'm not sure about this. Tightening of environmental regs would come to a halt. (Though it's unclear how much of the existing regulatory infrastructure would get rolled back. Probably not that much.) If another financial crisis hits, Romney would be very constrained in how he could deal with it. (So would Obama, but probably somewhat less so.) Although congressional Republicans will be less successful than they'd like at slashing social welfare programs, they'll still make some cuts. Life will get tougher for the poor. The NLRB would become toothless once again.

Even if rollback can’t occur – executive expansion to *future* harsh regulations are the real issue

Walsh,’11 (Bryan, senior writer for TIME magazine, covering energy and the environment,Time Magazine, 1/3, <http://www.time.com/time/health/article/0,8599,2040485,00.html>)

But the Obama Administration has a Plan B — and its already putting it into place. On Jan. 2, the Environmental Protection Agency (EPA) enacted what are the first regulations of major stationary sources of greenhouse gases. (While auto fuel-efficiency standards of the sort strengthened by President Barack Obama in 2009 essentially regulate mobile sources of greenhouse gases, the EPA has never tried to regulate major stationary sources such as power plants, refineries and factories.) The new rules will be modest at first, affecting only new plants or existing facilities that are undergoing major upgrades — perhaps 400 facilities will be affected initially. But eventually the EPA will be issuing regulations for nearly all sources of greenhouse gases — providing the only federal action to control U.S. carbon emissions. "We are following through on our commitment to proceed in a measured and careful way to reduce GHG pollution that threatens the health and welfare of Americans, and contributes to climate change," EPA Administrator Lisa Jackson said in a statement late last month.

Congress can’t block – Post EPA Mass challenges to EPA discretion have failed

Fozard, ’08 Colette Fozard, attorneys of Bracewell & Giuliani, Energy Legal Blog, 11/21/08 (http://www.energylegalblog.com/archives/2008/11/21/1316)

Highlights from EAB’s Decision EPA Region 8 issued a PSD permit to Deseret Power Electric Cooperative (Deseret) for a proposed waste-coal-fired electric generating unit planned at the existing Bonanza Power Plant in Utah. Deseret’s permit was subsequently challenged by the Sierra Club, which claimed that, in light of the Supreme Court’s decision in Massachusetts v. EPA, the permit was invalid because it did not include a CO2 emissions limit. In making its decision, the EAB parsed through a variety of arguments regarding textual and historical interpretations of the Act. Sierra Club’s challenge relied on sections 164 and 169 of the Act, provisions that prohibit the issuance of a PSD permit unless it includes a BACT emissions limit for “each pollutant subject to regulation under this Act.” With sections 164 and 169 in mind, Sierra Club pieced together its argument using (1) the Supreme Court’s ruling in Massachusetts v. EPA that CO2 is a “pollutant” as defined under the Clean Air Act; and (2) an argument that the CO2 “monitoring and reporting” requirements under section 821 of the Act constitute “regulation.” Thus, Sierra Club argued that CO2 should be considered a “pollutant” that is subject to “regulation.” On the other hand, EPA argued that “monitoring and reporting” requirements are not considered “regulation” and that deference should be given to its historical interpretations of the relevant provisions of the Act. In the end, the EAB found no Congressional intent in the Act that would require EPA to apply BACT to “pollutants” that are merely subject to “monitoring and reporting” requirements. The EAB also noted that in reconsidering its conclusions regarding CO2 BACT requirements, the EPA should be allowed to exercise discretion in interpreting what constitutes a “pollutant subject to regulation” under the Act. However, because the record did not support EPA’s current reasoning for failing to include a BACT limit for CO2 in the permit, the EAB remanded Deseret’s permit. In issuing the remand, the EAB noted that EPA has discretion to interpret the term “subject to regulation under the Act,” an interpretation that will determine whether BACT is required to limit CO2 emissions. The EAB noted in the closing paragraphs of its decision that it recognized the national implications this decision may have, and called for the EPA to consider whether “an action of nationwide scope” is required to address the issue.

EPA rollback efforts are close now – election will determine outcome

McAuliff,’11 Michael McAuliff was a Washington correspondent for the New York Daily News, where he covered Sen. Hillary Clinton, the 2008 presidential campaign, and the fight over the 9/11 health and compensation law. Before coming to the paper in 2003 as a national and metro desk editor, he was the national editor of ABCNews.com, Huffington Post, 10/9, <http://www.huffingtonpost.com/2011/10/09/epa-republican-war-defund_n_1000664.html>

For the moment, it will be difficult for many of the House's bills to get through the Senate, where Boxer plans to stop them. The White House also has promised vetoes of the measures. Still, once anti-EPA legislation is written, it can wind up attached must-pass bills, or at least used to try and embarrass Democrats. Thursday night, Senate Minority Leader Mitch McConnell (R-Ky.) tried to attach a measure to a bill on Chinese currency manipulation that ostensibly aimed to stop the EPA from regulating farm dust. But the measure's language doesn't actually mention "farm dust" after its title. Instead, it targets soot regulation. Democrats successfully blocked it. More troubling to environmental advocates is that they see the attempts to roll back regulations as a sustained effort that will not go away, and likely could pick up steam -- especially if Republicans take back the Senate in 2012. "I think it certainly will continue through the 2012 election," said Goldston. "I think it's partly an attack on Obama but I think much is a broader part of a Tea Party effort to question the role of government in providing public health protections across the board and funding that." And he predicted the range of attacks would only get broader. "This can play out in spending; this can play out in the series of efforts to block any additional protections, not only in the clean air area, but more broadly, there are bills that have been pending in the house and the senate ... that would change the entire structure necessary to create protections," Goldston said. The anti-EPA campaign has born some fruit already for the GOP, with President Obama delaying planned new regulations of ozone and citing economic reasons. The political climate has left Democrats wary -- and concerned they could lose some battles -- but they also think the GOP could pay a price. Sen. Ben Cardin (D-Md.), chairman of the Water and Wildlife Subcommittee, expressed relief that so far lawmakers had successfully blocked EPA-targeted legislation in the Senate. But, he added, environmental protections remain vulnerable.

Dems will crossover and accept congressional restrictions on EPA

Murray’ 11 (James, Editor, Business Green, 4/7, <http://www.businessgreen.com/bg/news/2041506/senate-rejects-attempt-scupper-epa-greenhouse-gas-rules>)

The Senate also rejected three Democrat amendments that would have watered down or delayed the EPA's new climate change rules, after Republicans refused to support proposals that they dismissed as "cover votes" that did not go far enough to limit the watchdog's power. However, GOP officials were quick to note that, with several Democrats from energy states voting for one or more of the amendments, in total 64 Senators voted for amendments calling for the scrapping or diluting of the EPA's emissions rules, suggesting that there is an appetite within Congress for a rethink on the administration's strategy.