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# Biden Administration: Aggressive Reduction of US Coal Production; Commitment to Job Retraining

**By Jack Murray and Lou Cisz**

Shortly after taking office, President Biden signed an Executive Order that provided the first look at the new administration's policy goals on climate change. Unsurprisingly, the January 27, 2021, Executive Order "Tackling the Climate Crisis at Home and Abroad," (the "Executive Order") stands in sharp contrast to the Trump administration's aversion to climate issues. In late April, the new administration released its initial report highlighting the existing resources available for immediate deployment to address issues related to climate change and energy production. And although the new administration has yet to put forth a comprehensive legislative agenda for the next four years, coal industry professionals should be attuned to the Biden administration's policy shifts, and the administration's plan to move toward a "carbon pollution-free electricity sector no later than 2035."[1]

Notwithstanding the Trump administration's rhetoric that promised to bring back the coal industry, according to the U.S. Energy Information Administration, from 2016 to 2020, coal consumption for electricity production, which consistently accounts for approximately 90% of all coal consumed in the United States, declined approximately 36%, from 678.6 million short tons, to 436.5 million short tons. And although coal consumption for electricity production is projected to rise to 513.7 million short tons in 2022, that slight rise still represents a 40% decline since 2012.

While market forces, in the form of cheap natural gas and the natural attrition of coal power plants reaching the end of their lifespan, have depressed demand for coal used in electricity production, state legislatures in traditional coal-producing states have passed bills attempting to arrest that decline. In West Virginia, the state legislature passed Senate Bill 542, which requires every coal power plant in the state to maintain a 30-day supply of coal on site. In Wyoming, the state legislature passed several bills that appropriated $1.2 million to a new legal defense fund specifically created to file and prosecute lawsuits to challenge regulatory actions by other states that seek to limit Wyoming's ability to export coal, and that make it more difficult for utilities to retire coal plants in Wyoming, creating a rebuttable presumption against such a shutdown in proceedings before the state's public utility commission.

[1] Exec. Order 14008, 86 Fed. Reg. 7619 (February 1, 2021) (Tackling the Climate Crisis at Home and Abroad).

Notwithstanding the efforts of West Virginia, Wyoming, and others, the Biden administration's policy goals outlined in the Executive Order are likely to further accelerate the decline in coal production and consumption. Section 205 of the Executive Order articulates the most aggressive goals of the Executive Order, charging the National Climate Task Force to develop a comprehensive plan to move the United States toward a "carbon pollution-free electricity sector no later than 2035." While the Executive Order does not define a "carbon pollution-free electricity sector," it is all but certain that the National Climate Task Force's plan to achieve that goal will result in a further decline of coal used in electricity production.

Perhaps foreseeing the decline in demand for coal as a result of these new policy goals, and recognizing the real impact on employment in communities where coal mines and coal power plants are located, the Executive Order formed the "Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization" (the "Working Group"). The Working Group has been tasked with developing strategies to "support and revitalize the economies of coal and power plant communities," and ensure that those workers affected by the closure of coal mines and coal power plants have access to well-paying jobs in what will likely be a largely post-coal economy.

On April 23, 2021, the Working Group published its initial report (the "Initial Report") that identifies the 25 "Priority Energy Communities" that have been most impacted by the decline in coal-related jobs and highlighted resources immediately available to those communities, and noted long-term priorities to address what the administration forecasts will be continued declines in coal production and employment. The Initial Report identifies $37.9 billion in existing federal funding, including:

- $8.5 billion in funding through the Department of Energy's Loan Program's Office, for various initiatives including decarbonizing power plants and industrial facilities
- $152.2 million in grants for the Abandoned Mine Lands grants through the Office of Surface Mining Reclamation Enforcement for coal mine reclamation projects
- $1.3 billion in loans, grants, and technical assistance through the Rural Utilities Surface Water and Environmental Programs to address issues related to mine runoff or mine-impacted water

While the Initial Report articulates a "government wide" strategy to address declines in employment through loans, grants, and job training, the Initial Report also highlights other noteworthy avenues. Specifically, the Initial Report notes that "[c]hanges to bankruptcy rules, for example, could help ensure coal companies make good on their commitments to workers and environmental remediation." This is likely in response to recent rulings from the Fifth and the Eleventh Circuit Courts of Appeal that have held that Section 1114 of the Bankruptcy Code, which governs the modification or termination of retirement plans, can be used to modify or terminate retiree benefits governed under the Coal Act.[2] Although the Initial Report's discussion of reforms to the Bankruptcy Code is brief, such discussion does signal that the new administration is committed to a worker-focused, government-wide approach to addressing job losses as a result of changes in coal production.

While the Biden administration has yet to fully articulate its ambitious policy goals, issuing the Executive Order, establishing the Working Group, and the Working Group's Interim Report make clear that the new administration intends to take an aggressive approach toward reducing the

2 On May 24, 2021, the Supreme Court declined to review the Fifth Circuit's decision in *Holland v. Westmoreland Coal Co. See Holland v. Westmoreland Coal Co.*, 968 F.3d 526 (5th Cir. 2020), *cert. denied* May 24, 2021; *In re Walter Energy*, 911 F.3d 1121 (11th Cir. 2018).

amount of carbon—and by extension coal—used in electricity production in the United States. The Biden administration's goal to move toward a carbon pollution-free electricity sector no later than 2035 is likely to accelerate the market trends that have caused significant decline in the use of coal in electricity production over the past ten years. Owners and operators of coal mines and power plants should closely monitor the new administration's policies as they are rolled out to ensure they remain competitive in a rapidly shifting energy market.

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