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Ending With a Few Wins – Congress Passes Water Infrastructure Bill, Codifies Coal Ash Rule and Keeps Government Open

Motivated by the desire to leave Washington for the holidays and optimism about working with a new Republican administration, the GOP-led Congress wrapped up its work for the year after passing a water resources infrastructure investment bill and a continuing resolution to keep the government funded into next spring.

Congressional approval of the [Water Infrastructure Improvements for the Nation \(WIIN\) Act](#) was a top priority for ACPPA. Similar to the Water Resources Development Act (WRDA), it authorizes dozens of Army Corps of Engineers' projects, such as building, maintaining and improving harbors, dams, locks and navigation channels. The WIIN Act also approves \$170 million to upgrade drinking water infrastructure in communities impacted by lead contamination and investments to address the continuing drought in California, including projects to promote water storage and supply, flood control, desalination and water recycling.

Additionally, the WIIN Act included a provision codifying a 2015 Environmental Protection Agency [rule](#) establishing federal requirements for the management of coal combustion residuals, or "coal ash," as a non-hazardous waste and giving states clear enforcement authority. The language was strongly supported by industry, including the electric utility sector.

Before adjourning, Congress also approved a continuing resolution to fund the federal government until April 28. Unfortunately, by freezing spending at fiscal year 2016 levels, the measure delays more than \$1 billion in Fixing America's Surface Transportation (FAST) Act-authorized highway and public transportation investment well into next year. ACPPA was among many groups celebrating the FAST Act's passage and will continue to fight for full implementation of the law's investments.

With the 114th Congress in the rearview mirror, ACPPA is now setting its sights on 2017. On Jan. 3, the new Congress will be sworn-in, while Donald Trump will assume the presidency on Jan. 20. Immediately, lawmakers will focus on confirming Trump's cabinet selections and a Supreme Court justice while tax and regulatory reform, infrastructure investment and border security issues are expected to top the legislative agenda. Stay tuned throughout the year as the association works to make the pressure pipe industry's priorities central in the new year.

Outside Viewpoint:
Ten Things the Trump Administration Can Do to Ease Small Business Regulatory Burdens, Create Jobs and Grow the U.S. Economy

By [Andrew M. Langer](#), President, Institute for Liberty, Andrew.Langer@InstituteForLiberty.org



Though we've discussed it for many years, only in the last decade have regulatory impacts been seen by the mainstream political establishment as a driving factor in the health of the U.S. economy—impacting our jobs, our competitiveness and a host of other societal concerns (including the vitality of the middle class). These are some of the Institute for Liberty's recommendations on the issue, and we offer them with one important caveat:

There are no silver bullets when it comes to reducing regulatory costs!

Regulatory costs have grown steadily since 1970 (though they have accelerated since 2007), and while many focus on so-called “major rules” (those costing the economy \$100 million or more annually), the bulk of regulatory burdens come from the cumulative effect of much-smaller mandates. Evidence shows that by even modest regulatory changes can produce massive economic gains. Regardless of what the changes are, regulatory reform will have to be an essential element of the incoming administration's economic policies if they want to jump-start the economy and put Americans back to work.

These recommendations cover a wide range of tools that the incoming administration can utilize to have a fundamental impact on the regulatory state.

(1) Make the Small Business Administration's Office of Advocacy's regulatory analysis operations the centerpiece of their efforts once again.

The Office of Advocacy is the only agency charged by statute to independently review and challenge regulatory decisions of the federal government. Under President Obama, the regulatory review process took a back-stage to the administration's goal of using the office to do general research on small business and entrepreneurship. By returning the framework of Advocacy to how it was originally envisioned, America's small businesses will again have a powerful voice speaking for it.

(2) Assess the Comprehensive Impact of Major Rules, Revise and reinvest in OIRA's reviews of regulatory cost.

Every year, the OMB's Office of Information and Regulatory Affairs produces a 10-year lookback on the costs and benefits of regulation—one which is wholly different from the SBA study, and essential in its own way. While the SBA study is conducted by economists outside of the government, the OMB report is conducted “in-house,” utilizing the notice-and-comment processes of the Administrative Procedures Act to solicit for public input.

(3) Have the Office of Information and Regulatory Affairs conduct a comprehensive survey of agency utilization of guidance and interpretation letters as a means of bypassing the mandatory procedures of the Administrative Procedures Act.

The burden of collecting and heeding public input as prescribed by the Administrative Procedures Act has driven many agencies to the practice of creating guidance documents and regulatory interpretation letters. These can have the same force and effect of regulations without subjecting to the rigorous “notice and comment” process of a traditional regulatory rulemaking. The scope and impact of this practice has been hidden from the public, and should be immediately assessed by the administration under the supervision of OIRA.



(4) Have either OIRA or the Office of Advocacy study the lost “opportunity costs” of regulatory burdens.

Currently, we assess direct regulatory impacts (and some indirect impacts), but this only explores the immediate burden on regulated businesses and loses the overall picture. By assessing overall opportunity costs, the administration can underscore the total cost of the American regulatory regime and illustrate reasons for current economic stagnation. In 2013, Dawson and Seater, economists from North Carolina State and Appalachian State Universities, reported the current regulatory state represents roughly **\$38 TRILLION** in lost opportunity costs—more than a 19 dollar multiplier on every dollar of direct regulatory cost.¹

(5) Implement an effort to express regulatory burden in the context of “time” (supplementing or substituting such burdens that are currently measured in dollars). Set a regulatory baseline for time burdens, and implement a “no net loss of time” policy for agencies.

“Time” is a finite resource. A business cannot make more of it, and every workers’ time is inherently valuable. The measurement of a “full time equivalent” worker is 2000 hours per year—so every ten hours of time that a worker spends dealing with a federal mandate is half of 1% of that worker’s time per year. Since federal agencies are legitimately criticized for poorly assessing the non-monetary impacts of regulations (e.g., paperwork burdens) they are currently mandated to consider, agencies must assess the cumulative amount of time an “average regulated entity” (ARE) spends on basic compliance activities. This baseline should be used as a basis for a “no net loss of time” initiative. For every 15 minutes of added burden for an agency ARE, 15 minutes must be subtracted elsewhere.

(6) Assess regulatory costs (both time and dollars) for prospective regulatory action for the next 5 years. Using current time and dollar costs as a baseline, announce “regulatory cap”, and assess the difference between current costs and that being saved by not adding these additional burdens to the cumulative regulatory costs.

¹ “Federal Regulation and Aggregate Economic Growth,” John W. Dawson & John J. Seater, January 2013, <http://www4.ncsu.edu/~jjseater/regulationandgrowth.pdf>

Once we have determined current annual regulatory costs, including indirect costs, guidance costs, lost opportunity costs, etc, the administration ought to announce that these costs are a “regulatory cap” for the United States. In other words, this is the highest cost the American economy is willing to bear. Using that cap, and pledging that such costs are not going to grow, the Administration can use this cost savings to start determining economic growth.

(7) Establish a commission on implementing comparative risk assessment as a regulatory determination tool.

The primary tool that regulatory experts use to assess regulatory impacts is “cost-benefit analysis” (CBA). The problem with CBA is that it only tells you if something is the fiscally-prudent thing to do (i.e., do the benefits outweigh the costs?). CBA doesn’t assess potential unintended consequences, nor does it allow you to compare and contrast decisions against alternatives. Comparative risk assessment (CRA) is a tool that can help policymakers prioritize regulatory decisions by painting a more accurate and multi-dimensional picture of how such decisions are implemented in the real world, and what follows from that implementation. CRA is a tool to prioritize regulatory decisions in consideration of options rather than forcing agencies to assess each possible implementation in a vacuum.

(8) Give more resources to the Office of the National Ombudsman for Small Business, and the Ombudsman’s office. Use the Ombudsman and the Regulatory Fairness Board process to highlight stories of agency abuses, and as a tool in pushing the need for regulatory reform. Use the ONO as the centerpiece for getting agencies to change their regulatory approaches from adversarial to cooperative.

The Office of the National Ombudsman for Small Business (ONO) is an unsung hero for American small businesses, with tremendous potential as a tool for regulatory reform. Currently, the ONO acts as sort-of “inspector general” writ-large. If you are a small business, and you believe an agency is being abusive towards you, you can complain to the ONO and they will help investigate your complaint and find an equitable solution for you. The problem, of course, is that few Americans are aware of this resource, and as a result it goes underutilized. The new administration must highlight the work of the ONO, and make it a centerpiece of efforts to change the tone and tenor of the relationship between regulated entities and their regulators.

Since *compliance* should be the ultimate goal of agencies (not enforcement actions or prosecutions, as has been the case for the last 8 years), and there have been successful attempts by agencies (e.g., the OSHA Consultation Program), the ONO would be a perfect office to spearhead a broader effort to shift focus from enforcement to cooperation.

(9) Make a legislative push for the regulatory impact determinations of the Office of Advocacy to be given statutory deference in legal challenges to agency rules, on a par with the “Chevron Deference” standard created by the courts.

As the only office within the federal government with statutory authority to *independently* voice concerns with the regulatory decisions of other agencies, Advocacy provides an immensely important independent voice within the federal government. Unfortunately, there is no obligation for an agency to listen to

Advocacy and no legal mechanism for the office to challenge rules in court.² Under the current standard known as “Chevron Deference,” weight is given to a particular agency in how they interpret the law in crafting regulations. So, if an agency says that a sandy ditch is a “navigable waterway” for the purposes of regulation under the Clean Water Act, a court gives that interpretation deference.

In order to protect small business, Congress ought to pass legislation directing the courts to give weight and deference to the analyses of the Office of Advocacy in challenges to new rules.

(10) Make passage of the REINS act a White House Legislative Priority.

While the bulk of regulatory impacts come from the cumulative effect of thousands of pages of small rules, federal agencies can and do tackle what are called “major rules” (rules with an impact of \$100 million or more). Obviously, such major rules have a tremendous impact on regulatory costs—and given that these agencies are supposed to be interpreting the laws passed by Congress, Congress has an essential role to play. The REINS act would make congressional approval of all major rules automatic, without the need for someone to bring an official challenge as is currently required by the Congressional Review Act. This would re-engage Congress in the process, and help restore the balance between the executive and legislative branches of government.

(BONUS) Creation of the Business Compliance One-Stop (BCOS)

One of the thorniest issues facing small business owners is determining what their obligations are under the law—what laws apply to them, how they comply with them, how they file paperwork, and so on. During the George W. Bush administration, as the executive branch was working on Regulations.gov (a website dedicated to invigorating public participation in the regulatory process), there was some talk about creating a comprehensive compliance website.

There is no reason why, in 2016, an American small business cannot visit a centralized federal website, enter in a few key pieces of information, and receive a comprehensive list of rules it must be in compliance with, simple guidance as to how to comply, online access to all associated paperwork (with assistance in how to fill that paperwork out), and the ability to file that paperwork online. While many agencies have similar resources already, business waste valuable time matching requirements across different parts of the government.

The Trump Administration has a great opportunity to reform the way we regulate American businesses. The ten steps outlined here will help to ensure the right information is available for both the government and the people as they work to simplify the rules by which we live and work.

Editor’s note: ACPPA periodically invites policy leaders to provide commentary in Actionline. The views expressed are those of commentators, not necessarily ACPPA. For more information on the ideas described in this editorial, contact Andrew Langer at Andrew.Langer@InstituteForLiberty.org or by phone at 703-980-8989.

² Under the Administrative Procedures Act, agencies are obliged to respond to all substantive comments raised in a rulemaking process—either demonstrating how they adopted these changes into the final rule or adequately answering why such concerns were ignored. If this doesn’t happen, then such commenters have grounds to challenge the rule in federal court. In order to have “standing” to challenge these rules, a party *must* have submitted comments during the rulemaking process.

Pressure Pipe Post

ACPPA's Monthly Source for Industry News

December 2016

To keep members aware of the activities of government and standards organizations, we regularly sweep public databases and publications for the industry-specific terms indicated below. We then provide our members with links to documents identified in the search. Please note that in some cases the URLs may link to subscription-only databases. The purpose of this service is to identify emerging threats and trends as well as opportunities for collective action by ACPPA.

NEWS RESULTS

Coal Ash/Fly Ash

Fly Ash Plant Going Up Near Cavendish Farms in N.D.

12/27/2016 <http://www.agweek.com/news/north-dakota/4187614-fly-ash-plant-going-near-cavendish-farms-nd>

Olaf Anderson Construction employees work on building a \$2.5 million fly ash storage facility east of Cavendish Farms. The facility will be leased to Headwaters Corporation, to store excess fly ash from the Coal Creek Station power plant in Underwood, N.D.

Recovery Clear Eight Years After TVA Ash Spill

12/22/2016 <http://www.wbir.com/news/local/recovery-clear-eight-years-after-tva-ash-spill/376604066>

Eight years ago, an avalanche of ash collapsed into rivers and neighborhoods in one of the largest environmental disasters in U.S. history. The recovery since then has been slow, but dramatic.

Now, Fly Ash to Be Used as Pesticide

12/20/2016 <http://world.einnews.com/article/358778204/live>

NTPC, Farakka has taken up an initiative to utilize fly ash as pesticides in paddy production.

Coal Ash Cleanup News in North Carolina and Georgia

12/14/2016 <http://beforeitsnews.com/outdoors/2016/12/coal-ash-cleanup-news-in-north-carolina-and-georgia-2473292.html>

A report issued by the federal Commission on Civil Rights in September examines whether the Environmental Protection Agency is complying with its environmental justice obligations.

TVA Coal Ash Plan Challenged: 'We Want to Make Sure Something like Kingston Doesn't Happen Again'

12/06/2016 <http://www.oakridger.com/news/20161206/tva-coal-ash-plan-challenged-we-want-to-make-sure-something-like-kingston-doesnt-happen-again>

The Tennessee Valley Authority recently stated it was spending more than \$2 billion to convert the wet storage of ash and other residuals to dry storage across the system, including at the nearby Bull Run Fossil Plant in the Claxton community of Anderson County.

Environmental Impact**In a City of Big Water Projects, Is Chicago's Little Green Infrastructure Working?**

12/27/2016 <http://www.chicagomag.com/city-life/December-2016/How-Big-Data-Can-Help-Little-Green-Infrastructure-in-Chicago/>

Chicago's wastewater management infrastructure represents some of the most ambitious engineering in the history of civilization...

Resolve to Reduce Polluted Runoff in the New Year

12/23/2016 <http://abc27.com/2016/12/23/resolve-to-reduce-polluted-runoff-in-the-new-year/>

The Chesapeake Bay Foundation ([CBF](#)) suggests you 'go green.' The foundation, which has an office in Harrisburg, has issued a list of ways people can combat the high amounts of polluted runoff that enters waterways like the Susquehanna River.

Exposure to Asbestos May Be Deadly: What You Need to Know

12/19/2016 <https://topclassactions.com/lawsuit-settlements/lawsuit-news/350028-exposure-asbestos-may-deadly-need-know/>

Left undisturbed, asbestos is mostly an inert material. However, when it is airborne, the tiny particles of asbestos can be inhaled into the body, where they can later cause physical harm.

Taunton Appealing Costly EPA-Mandated Sewer Improvements

12/17/2016 <http://www.tauntongazette.com/news/20161217/taunton-appealing-costly-epa-mandated-sewer-improvements>

The installation of a new drain pipe across the intersection is tied to Taunton's ongoing 10-plus-year, multi-million-dollar effort to eliminate all infiltration and inflow from the city's sanitary sewer system.

Government of Canada to Ban Asbestos

12/15/2016 <http://www.newson6.com/story/34058953/government-of-canada-to-ban-asbestos>

The Government of Canada will move forward with a whole-of-government approach to fulfill its commitment to ban asbestos and asbestos-containing products by 2018.

63 Ways to Cut the Global Warming Impact of Cement

12/13/2016 <http://www.theenergycollective.com/david-k-thorpe/2394801/how-companies-set-internal-prices-on-carbon?>

New techniques and substitutes are now available or up-and-coming to reduce the environmental impact of cement production – the third-most polluting industry in terms of greenhouse gas emissions behind chemicals/petrochemicals and iron and steel.

Infrastructure Policy**Beyond Highways: An Infrastructure Agenda for the Future**

12/22/2016 <http://trueviralnews.com/beyond-highways-an-infrastructure-agenda-for-the-future/>

What kind of infrastructure is necessary to support a pivot to the knowledge economy and high-tech enabled jobs?

Open the Floodgates? WRDA Shows Congress Ready to Act on Water Policy, Infrastructure Projects

12/14/2016 <http://www.idsupra.com/legalnews/open-the-floodgates-wrda-shows-congress-98435/>

Despite a small dustup over language added to the bill at the last minute, Congress overwhelmingly passed the WRDA, which has now been rolled into the larger Water Infrastructure Improvements for the Nation Act (WIIN).

Water Infrastructure Needs Getting Sidelined at Statehouse

12/07/2016 <http://indianapublicmedia.org/news/water-infrastructure-sidelined-statehouse-110227/>

Two recent reports put the cost of maintaining Indiana's water and sewer infrastructure at anywhere between about \$300 million and \$800 million every year, with more than \$2 billion needed immediately to upgrade the system.

Underground Infrastructure**Geospatial Corporation Positioned to Capitalize on Growing Demand to Accurately Map Outdated Underground Infrastructure**

12/13/2016 <http://spatialnews.geocomm.com/dailynews/2016/dec/13/news3.html>

Geospatial Corporation is positioned to capitalize on the growing demand to locate, map and manage the millions of miles of buried energy, water, telecom and electrical pipelines and conduits across the USA.

Pipe Rehabilitation and Trenchless Pipe Repairs for Urban Environments

12/09/2016 <http://foresternetwork.com/daily/water/water-pipe-repair/trenchless-pipe-repairs-for-urban-environments/>

The need for effective, non-obtrusive pipeline rehabilitation occurs more often in urban environments than in rural areas. While pipes can fail or get damaged in the country, their density-per-area is much less than in high-population cities, and the effects of traffic, equipment vibrations, construction, and other impacts is minimal by comparison.

Aging Infrastructure In Mobile Beginning To Fail

12/08/2016 <http://wkrg.com/2016/12/08/aging-infrastructure-in-mobile-beginning-to-fail/>

Recent water main breaks and sewer overflows are indicators of age when it comes to Mobile's underground infrastructure.

Water & Wastewater

A Drought, a Missing Water Plan and Questions for Chris Christie

12/22/2016 <http://www.wnyc.org/story/new-jersey-middle-drought-environmentalists-and-legislators-pressure-christie-release-overdue-water-supply-plan/>

New Jersey's plan for managing its drinking water supply is 20 years old and perilously out of date, say clean water advocates and planners.

Renewing Aged Water Infrastructure in New Jersey, One Street at a Time

12/21/2016 <http://www.njspotlight.com/stories/16/12/20/renewing-new-jersey-s-aged-water-infrastructure-one-street-at-a-time/>

Antiquated leak-prone systems are being upgraded in some parts of the state, but water industry advocates argue that much more needs to be done.

Mayor Tom Barrett Signs Lead Pipe Removal Ordinance

12/20/2016 <http://www.jsonline.com/story/news/local/milwaukee/2016/12/20/mayor-tom-barrett-signs-lead-pipe-removal-ordinance/95656832/>

Under the new ordinance, the Milwaukee Water Works will begin replacing full lengths of lead pipes delivering water from street mains to homes to reduce residents' possible exposure to the toxic metal.

VA: Virginia Beach Considers Using Light Rail Money for \$464M in Needed Stormwater Projects

12/15/2016 <http://www.masstransitmag.com/news/12287804/virginia-beach-considers-using-light-rail-money-for-464-million-in-needed-stormwater-projects>

By 2023, Windsor Woods could have a new pump station and tidal gates to alleviate the kind of flooding that damaged hundreds of homes in the neighborhood in October.

City of Ukiah Exploring all Options for Purple Pipe Funding

12/08/2016 <http://www.ukiahdailyjournal.com/general-news/20161208/city-of-ukiah-exploring-all-options-for-purple-pipe-funding>

The Ukiah City Council Wednesday approved staff taking steps to keep plans for a recycled water system alive by separating any necessary funding sources from the lawsuit filed by the Ukiah Valley Sanitation District.

REGULATORY RESULTS

Pressure Pipe

Department of Commerce | Sunset Reviews Final Results | Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan

12/21/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-21/pdf/2016-30732.pdf>

Department determines that revocation of the order on large diameter pipe from Japan and the orders on small diameter pipe from Japan and Romania would be likely to lead to continuation or recurrence of dumping up to the country's weighted-average margin percentages.

Pipeline and Hazardous Materials Safety Administration | Interim Final Rule | Pipeline Safety: Safety of Underground Natural Gas Storage Facilities

12/19/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30045.pdf>

This interim final rule (IFR) revises the Federal pipeline safety regulations to address critical safety issues related to downhole facilities, including wells, wellbore tubing, and casing, at underground natural gas storage facilities.

Coal/Fly Ash

Office of Surface Mining Reclamation and Enforcement | Final Rule | Stream Protection Rule

12/20/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29958.pdf>

We, the Office of Surface Mining Reclamation and Enforcement (OSMRE or OSM), are revising our regulations, based on, among other things, advances in science, to improve the balance between environmental protection and the Nation's need for coal as a source of energy.

Environmental Protection Agency | Final Rule; Notice of Final Action on Reconsideration | 2015 Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule

12/09/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-28564.pdf>

The Environmental Protection Agency (EPA) is amending specific provisions in the Greenhouse Gas Reporting Rule to streamline and improve implementation, improve the quality and consistency of the data collected under the rule, and to clarify or provide minor updates to certain provisions that have been the subject of questions from reporting entities.

Water and Wastewater Infrastructure

Environmental Protection Agency | Interim Final Rule | Credit Assistance for Water Infrastructure

Projects

12/19/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30194.pdf>

The Environmental Protection Agency (EPA) is issuing an interim final rule to implement a new program authorized under Subtitle C of the Water Resources Reform and Development Act of 2014 to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects.

Water Supply**Department of Energy | Final Rule | Energy Conservation Program: Test Procedure for Commercial Packaged Boilers**

12/09/2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-29081.pdf>

This final rule incorporates amendments that clarify the coverage for field-constructed commercial packaged boilers, the applicability of DOE's test procedure and standards for this category of commercial packaged boilers, and will be mandatory for representations related to energy efficiency or energy use starting December 4, 2017.

LEGISLATIVE RESULTS**Water Infrastructure****H.J.Res.107 | Introduced by Rep. Jenkins, Evan H. [R-W.V.-3] | Disapproving the rule submitted by the Department of the Interior known as the Steam Protection Rule**

12/20/2016 <https://www.congress.gov/bill/114th-congress/house-joint-resolution/107?q=%7B%22search%22%3A%5B%22water+infrastructure%22%5D%7D&r=7>

Nullifies the Stream Protection Rule submitted by the Department of the Interior's Office of Surface Mining Reclamation and Enforcement. The rule addresses the impacts of surface coal mining operations on surface water, groundwater, and the productivity of mining operation sites.

H.R.6524 | Introduced by Rep. Tonko, Paul [D-N.Y.-20] | Hudson-Mohawk River Basin Act

12/19/2016 <https://www.congress.gov/bill/114th-congress/house-bill/6524?q=%7B%22search%22%3A%5B%22water+infrastructure%22%5D%7D&r=14>

To direct the Secretary of the Interior to establish a non-regulatory program to support restoration and protection efforts in the Hudson-Mohawk River Basin region, and for other purposes.

