Gina McCarthy has 18 months left as EPA administrator before the next president is sworn in. Not the retiring sort, she is clearly planning to tackle some of the agency's most important unfinished business during that interval. And, it is no less clear that much of that time will be spent in court.

In a five-month span this year, McCarthy will have taken on three major issues that have plagued the agency for decades. The disposal of coal ash under the Resource Conservation and Recovery Act. The meaning of “navigable waters” in the Clean Water Act. And, the emissions of greenhouse gases from existing coal-fired power plants under the Clean Air Act. Each tougher than the next and all headed for litigation.

McCarthy’s ash regulations, published in April, are the agency’s first comprehensive set of requirements ever regulating disposal of the solid waste. The regulations target the leaking of contaminants into groundwater, the blowing of toxic chemicals into dust, and the catastrophic failure of surface impoundments.

McCarthy’s next rule, promulgated in May, defining the meaning of “navigable waters” for the purposes of determining the scope of the Clean Water Act, has been almost ten years in the making. In 2006, Justice Anthony Kennedy cast the decisive vote against the federal government in Rapanos v. United States, but also provided the government with a roadmap for a new set of regulations that could allow for an expansive view of the Water Act’s reach.

As controversial as each of these new sets of regulations will be, and as much litigation as each will invariably generate, they both pale in comparison to what McCarthy is planning for this August. That is when she is expected to publish EPA’s final Clean Power Plan, regulating greenhouse gas emissions from existing coal-fired power plants — the country’s largest source of global warming gases. The CPP may well be the most ambitious and far-reaching rule that EPA has ever promulgated under any environmental law. The final rule is expected to enlist the assistance of the states to do no less than to transform the way electricity is produced and used throughout the nation’s power grid.

As envisioned by EPA, the country can achieve dramatic reductions in greenhouse gas emissions by not just making coal-fired power plants more efficient in their combustion processes, but by significantly decreasing the demand for their product. EPA describes specific “building blocks” that can be used to reach its goal of reducing the need for electricity from existing coal plants.

They include greater utilization of current and new facilities that produce lower greenhouse gas emissions, such as hydro power, natural gas, nuclear, solar, and wind. They also include greater efficiency in buildings, homes, and appliances that offer the potential for reductions in demand. What makes the CPP simultaneously ambitious as a matter of climate policy and controversial as a matter of law is its heavy reliance on reducing the need for a particular type of facility as a method for controlling that plant’s emissions.

The rule’s opponents did not even wait for it to become final to challenge its lawfulness. They filed a petition for a writ of mandamus with the D.C. Circuit arguing that EPA’s plans are so clearly harmful and unlawful that the courts should take the extraordinary step of halting the proposed rulemaking midstream. Fortunately for EPA, the court is expected to deny the petition. During oral argument in April, two of the three judges hearing the case, Brett Kavanaugh and Thomas Griffith, seemed wholly unpersuaded of the propriety of such a judicial intervention, notwithstanding one industry counsel’s gamely suggesting that the courts should not have to “wait to see whether the guillotine is going to drop, or which part of the neck it’ll cut off.” Only Judge Karen Henderson felt differently. (Disclosure: A brief was filed on my behalf in the D.C. Circuit in opposition to the mandamus petition).

Unfortunately for EPA, a denial of the mandamus petition does not necessarily presage a win on the merits in any later challenge to the final rule. Although the constitutional challenges to the rule border on the frivolous, the statutory issues are far from a slam-dunk for the agency. Making matters worse, the D.C. Circuit internal court rules suggest the possibility that the same three judges who heard the mandamus case might hear the merits, and let’s just say that the mandamus panel falls far short of EPA’s dream team of D.C. Circuit judges.

Unlike prior administrators, Gina McCarthy is not relying on midnight regulations published in a presidential term’s final days to make her mark. She is wisely acting early enough to be able to defend them in court as well. Her environmental litigator, the Department of Justice’s John Cruden (until recently ELI’s president), has some work to do.

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