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Meet the potential deputy. 'Moderate' or a hand of 'evil'?

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Jeff Holmstead is said to be under consideration for the No. 2 job at U.S. EPA. ScienceDemocrats/Flickr

An air chief from the George W. Bush administration could become second in command at U.S. EPA, raising objections from conservatives who find him too moderate and worrying environmentalists about the presence of a skilled navigator who could advance a weak climate agenda.

Jeff Holmstead, a partner at the firm Bracewell LLP, has represented the coal industry and fought the Obama administration's power-sector climate standards.

If chosen as deputy administrator, Holmstead could help EPA rescind the Clean Power Plan, and he may have a say in whether the agency replaces it with a far less stringent rule.

In the past, he has said EPA would be on safer legal ground if it had focused the rule on coal plant efficiency, rather than trying to achieve much more ambitious shifts away from coal to natural gas and renewable power. Holmstead has also suggested that he accepts the endangerment finding requiring the agency to regulate greenhouse gas emissions. That has drawn sharp rebukes from conservative groups.

While Holmstead was viewed as a pariah by many on the left during the Bush administration, some conservatives now see him as too moderate and have mounted an effort to keep him out of any job at EPA.

Republicans on the far right have called him "part of the swamp" and too centrist on environmental issues to fulfill the Trump agenda. One source called Holmstead a "very unpopular choice among hardcore conservatives."

That's in part because of his stance that remaining in the Paris climate agreement is "important as a political statement." In an [interview](#) with the *Washington Examiner* last year, he advised against a Republican president pulling out of the accord, because "you would be using up a lot of political capital on something that doesn't matter very much."

He has expressed support for a Republican pathway toward climate action that focuses on technology, innovation and basic research, "instead of spending billions and billions of dollars on subsidizing things that aren't competitive yet."

Green groups disagree with the idea that Holmstead is a centrist.

Frank O'Donnell, president of environmental advocacy group Clean Air Watch, said, "It is a sign of how far to the extreme right the Trump administration has gone on environment that Jeff Holmstead would be considered a moderating force.

"Jeff is not somebody I would characterize as a crazy," O'Donnell added. "I think if he would come in here, his job is going to be to execute what the policies of the administration are. It's not like he's a white knight by any means."

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Others on the left say a potential return by Holmstead to EPA is troubling because the former air chief understands the law and the agency so well.

Joanne Spalding, a lawyer for the Sierra Club, said Holmstead is "pretty knowledgeable about the Clean Air Act and how to manipulate the statute in ways that can minimize the obligations of polluters to reduce their pollution."

John Walke of the Natural Resources Defense Council said there's "no reason" to think Holmstead would be a moderating force.

"In the Bush EPA, Mr. Holmstead loyally executed that administration's anti-environmental agenda — and was overturned in court more than any prior or subsequent head of EPA's air program," Walke said.

Another longtime environmental lawyer said Holmstead would be "the most effective person to implement the Trump regulatory rollback. The Trump people could not hope for a better person to effectuate their dreams of massive regulatory rollbacks on industry."

Axios first reported yesterday that Holmstead is at the top of the list to fill the No. 2 spot at EPA. Scott Segal, who works with Holmstead at Bracewell, has said the news seemed "highly premature." Holmstead is traveling and was not available to comment, although he frequently makes himself available to the media in his role at Bracewell.

Paul Noe, vice president for public policy at the American Forest & Paper Association, is also on the list of potential EPA deputy administrators, according to one source close to EPA.

Legal arguments, not ideology

Holmstead has decades of experience working in the private sector and federal government.

He was executive counsel for President George H.W. Bush from 1989 to 1993 and later worked under President George W. Bush from 2001 to 2005, leading EPA's Office of Air and Radiation, where he helped write mercury standards for coal plants.

He has lobbied for coal and energy industry clients while at Latham & Watkins LLP and Bracewell.

Most recently, he has worked with opponents of the Clean Power Plan.

EPA is still figuring out how to move forward on the rule. The agency earlier this month sent a rulemaking to rescind the Clean Power Plan to the White House Office of Management and Budget for review. But EPA Administrator Scott Pruitt yesterday met with power company CEOs to discuss "possible next steps for regulating greenhouse gas emissions from power plants under the Clean Air Act," according to utility trade group the Edison Electric Institute.

Holmstead has repeatedly argued that EPA stepped outside its authority in setting state carbon standards by looking at how much companies could rely on natural gas and renewables. Pruitt agrees, although it's unclear whether he wants to replace the regulation or just rescind it and await lawsuits from environmental groups.

"EPA is trying to change the statute," Holmstead **said** to *Science* in 2015. "But what the statute has meant, and the way EPA has interpreted it for 40 years, is as the best system for controlling emissions from an individual power plant."

In February, he **told** Reuters that EPA used a section of the Clean Air Act that is normally meant for pollution standards at individual sources and said, "We don't think we are limited to that. ... We can order that billions of dollars of business be taken away from coal plants.

"That's a pretty remarkable assertion of authority," he said.

Killing time?

Holmstead's stance was a core argument in court for opponents of the rule in September, and other industry lawyers have said Trump's EPA should not just rescind but replace the regulation.

"I have said that I think a replacement rule is the smart way to go, for multiple reasons," said Bill Bumpers, an environmental partner who focuses on clean air law at Baker Botts LLP. He added that Holmstead is "a very smart guy with good experience at EPA."

Replacing the regulation might make it harder to fight in court. Judges typically give agencies leeway in setting standards.

Howard Fox, a lawyer with Earthjustice, argues that the emissions reductions in a replacement would have to be meaningful.

"They have to point to what this means for reducing emissions," Fox said.

Christi Tezak, an analyst with ClearView Energy Partners, noted that Holmstead "has firsthand experience managing a rulemaking based on a strict interpretation of the statute's wording in the past — a direction this administration seems to prefer — experience that may be very helpful to Administrator Pruitt in the deputy administrator's seat when working through this and other rulemakings under reconsideration."

She explained that while Holmstead was air administrator under George W. Bush, EPA delisted mercury under Section 112 of the Clean Air Act and then promulgated a trading program under Section 110 in 2005.

The D.C. Circuit vacated that approach, and a replacement program, the Mercury and Air Toxics Standards, wasn't finalized until December 2011. Compliance was delayed until 2015 and 2016, following more lawsuits.

Something similar could happen with the Clean Power Plan.

If EPA writes a limited rule and the courts disagree with it, the judicial review process might continue for years. In the meantime, the power sector could see a more lenient standard than the Clean Power Plan.

Reporter Rod Krucko contributed.

<https://www.eenews.net/climatewire/2017/06/20/stories/1060056276>