

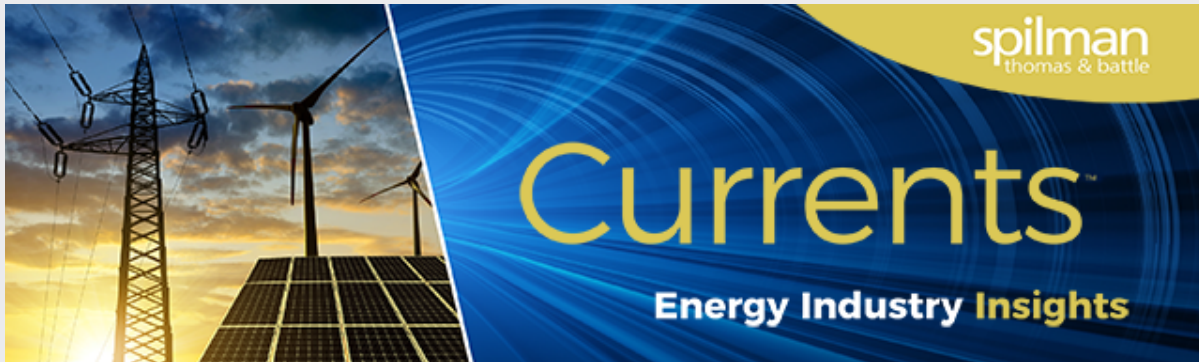
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Volume 5, Issue 18

● [Welcome](#)



Welcome to Volume 5, Issue 18 of *Currents*. As always, we cover the gamut of hot topics in the energy industry. In this edition, we provide insights on issues at the local, state and federal levels, as well as international topics. We hope you find this week's newsletter interesting and informative.

As always, thank you for reading.

[Nicholas S. Preservati](#)

Co-Chair, Energy Practice Group

● [Supreme Court Sides with Oil Companies in Baltimore Case](#)

"The justices ruled 7-1 that the 4th Circuit Court of Appeals erred in its decision that it lacked jurisdiction to consider certain grounds from the companies for bringing the case into federal court."

Why this is important: Last month, the Second Circuit Court of Appeals held that state climate nuisance claims are preempted by the federal Clean Air Act ("CAA"), which means that municipalities cannot sue oil companies under state law for alleged damages caused by global warming. The U.S. Supreme Court granted oil companies a procedural win by requiring the Fourth Circuit Court of Appeals to reexamine whether it has jurisdiction to hear the climate nuisance claims. Although the Supreme Court did not reach the substantive issues of preemption, this decision will lead to more of these claims being heard in federal courts and likely will result in the claims being preempted by the CAA. --- [Joseph C. Unger](#)

● [Inventory of Unreclaimed Mine Land Grows More Dangerous and Expensive](#)

"A new study shows that the cost of abandoned mine cleanup might be as much as double the old estimation, reaching close to \$26 billion."

Why this is important: A new study believes the cost to clean up abandoned mine lands could exceed \$26 billion, double the current government estimate of \$11 billion. Mining in the U.S. began around 1870 and Congress in 1977 created the Abandoned Mine Lands fund with a tax on coal production to reclaim old, pre-law mining sites across the U.S. About \$11.49 billion in AML fees have been collected to date to clean up abandoned sites and there is \$2.23 billion left. Originally, 1.2 million acres were listed as abandoned mine lands that needed cleaned up. Today, 850,000 acres remain. Almost 83 percent of the sites left to clean up are in West Virginia, Pennsylvania, Ohio, Kentucky, Tennessee, Virginia and Alabama. President Biden's American Jobs Plan proposes to spend \$16 billion to clean up abandoned coal sites and plug oil and gas wells in the U.S. The new study notes there 2.3 million uncapped wells throughout the country. Some believe the cost to plug just the 538,000 abandoned wells in the Ohio River Valley could exceed \$34 billion. For these reasons, it is likely the AML fees on coal production, set to expire in September 2021, will be extended. --- [Mark E. Heath](#)

● [Transmission Tax Credit Could Unlock 30 GW of Renewables, Spur Over \\$15B in Private Capital](#)

"At least 22 high-voltage transmission projects could begin construction in the near term if given a path to cost recovery, according to the report, a potential total investment of \$33.3 billion."

Why this is important: One of the impediments to the spread of renewable energy is the inability to transport the power they generate from the places it is most abundant to the places it is wanted. Wind production in the Great Plains and solar in the southwest are needed in far-away population centers. This study by a renewable energy advocacy group reports that there are long distance electricity transmission projects ready to be funded by the Biden infrastructure plan that can resolve this problem, and, given the 10 years or more to plan and complete, work needs to be started on them now. --- [David L. Yaussy](#)

● [AEP Issues RFP for Coal to Supply Power Plants Over Three Years](#)

"The Ohio-based AEP issued a request for proposal for coal supply to one or more of its generating stations in multiple regions."

Why this is important: Issuance of an RFP for coal through 2024 is consistent with AEP's previously announced plans vis-à-vis its generation portfolio. AEP already announced it was closing a number of its coal plants, including at least one of the plants mentioned in this article (the Cardinal plant is slated to close in 2030). While AEP will continue to operate some of its coal plants, with statutory mandates like Virginia's Clean Economy Act enacted in 2020 (requiring AEP-Virginia to be carbon free by 2050) and the unknown potential of environmental compliance costs, the future of AEP's coal generating fleet will remain somewhat uncertain, particularly given the influences in the differing regulatory and political climates in Kentucky, West Virginia, and Virginia where AEP's coal plants are reflected in the regulated rates that their customers pay for electricity. --- [Carrie H. Grundmann](#)

● [EPA Revokes Trump-Era Policy that Loosened Clean-Air Rules](#)

"EPA said it reviewed a rule issued by the Trump administration last year and found that it imposed procedural restrictions and other requirements that would have limited EPA's ability to use the best available science in developing regulations under the Clean Air Act."

Why this is important: The Trump-era cost-benefit rule required EPA, when implementing a new rule, to identify the problem a proposed rule is meant to address, explain why industry cannot address the problem, and explain the alternatives to the proposed rule. The Biden administration claims that the rule is unnecessary to carry out the Clean Air Act because EPA already conducts cost-benefit analyses for proposed rules. The rescission of the rule will make it easier for EPA to promulgate regulations and limits on emissions. --- [Joseph C. Unger](#)

● [Merkel Nixes Bringing Forward Germany's Exit From Coal](#)

"The German coal phase-out law was agreed in July 2020 – 18 months after the country's coal exit commission recommended that coal-fired power generation should be ended by 2038 at the latest."

Why this is important: Last July, Germany reached an agreement and passed a law to close its coal-fired electrical generation plants by 2038. Pressure is now growing to move up those dates under the 2020 law to meet the Paris Climate Accords. Chancellor Angela Merkel is not in favor of starting the process over again, even though most of the European Union plans to close coal plants by 2030. Experts are arguing the coal-fired plants are not economical and the EU is investigating the German exit plan that includes payments of 4.35 billion Euros to the owners of plants set to close in 2038. The EU is questioning whether the payments are impermissible state aid. Germany likely will be one of the last EU countries to continue to use coal for electrical generation. --- [Mark E. Heath](#)

● [Funding is a Key Barrier to Cities' Climate Plan Progress](#)

"Funding is one key obstacle, with 25% of reporting cities saying budgetary constraints are a main barrier to their making progress on climate adaptation measures."

Why this is important: While climate change mitigation strategies can be implemented on a national scale by the federal government, adaptation strategies typically are enacted at the local level by county or municipal governments. This is because adaptation strategies have to be specifically tailored to the climate threats facing each city. For example, a flood wall may help Miami adapt to rising sea levels, but the same flood wall would not help Phoenix adapt to drought conditions resulting from increased temperatures. Thus, each city must spend significant time and resources developing its own climate adaptation response plan to address its own unique climate threats. One key to overcoming the lack of funds for such plans is to connect the plan to economic development initiatives so that it works in tandem for the benefit of the municipality. --- [Nicholas S. Preservati](#)

● [California's Next Climate Challenge: Replacing Its Last Nuclear Power Plant](#)

"The plant is California's largest power source, generating nearly 6% of the state's electricity in 2019."

Why this is important: At a time when California is trying to reduce greenhouse gas emissions from its electricity-generating base, it will be closing a carbon-free nuclear plant that produces about 6 percent of

the electricity in that huge state. The likely replacement? Natural gas-fired turbines. Pro-nuclear advocates point out the irony, while supporters of intermittent renewables, like wind and solar, urge ramping up their development. Without the steady supply of baseline energy from the nukes that will be shuttered, it may be increasingly hard to stop utility rates from climbing, and to avoid brownouts again this year if temperatures rise. --- [David L. Yaussy](#)

● [New Deloitte Report Highlights the Pitfalls in Energy Transition Decision-Making](#)

"The folks who lead the oil, gas and chemicals practice inside Deloitte released a new report titled 'Portfolio Transformation in Oil and Gas' which analyzes the various decision points that company executives must make as they attempt to guide their organizations through this looming transition."

Why this is important: This article highlights one important component of ESG protocols that are being increasingly adopted by companies across the globe. ESG stands for "Environmental, Social & Governance," and the protocols are being adopted as clients, financial institutions and insurance companies are starting to inquire of how responsible various corporations are in relation to these three areas. As this article highlights, companies face many challenges when attempting to develop these protocols on their own, and prudence dictates that such companies engage the assistance of consultants with the requisite expertise when developing their own ESG protocols. --- [Nicholas S. Preservati](#)

● [The Dam has Broken and West Virginia has Awoken to Solar Power](#)

"Indeed, national developers are buying up reclaimed coal mining sites intending to put large-scale solar farms in their place."

Why this is important: West Virginia is open for solar business, with new solar home installation enterprises and legislation that encourages utility-scale solar generation. Federal grants and tax credits subsidize the costs, which these entrepreneurs believe will lead to a rush of new solar installation in the Mountain State. --- [David L. Yaussy](#)

● [Energy Question of the Week](#)

Last Issue's Question and Results

Did you have difficulty getting gasoline after the Colonial Pipeline hack?

Significantly affected - 16.9%
Moderately affected - 19.5%
Slightly affected - 18.2%
Not affected at all - 28.6%
Other/do not know - 16.9%

Has your employer enacted ESG Protocols (Environmental, Social & Governance)?

Yes

Select

No, but plans to do so

Select

No, and no plans to do so

Select

Do not know

Select

Other

Select

● EIA Energy Statistics

Here is a round-up of the latest statistics concerning the energy industry.

PETROLEUM

This Week in Petroleum

Weekly Petroleum Status Report

NATURAL GAS

Short-Term Energy Outlook - Natural Gas

Natural Gas Weekly Update

Natural Gas Futures Prices

COAL

Short-Term Energy Outlook - Coal

Coal Markets

Weekly Coal Production

RENEWABLES

Short-Term Energy Outlook

Monthly Biodiesel Production Report

Monthly Densified Biomass Fuel Report

What are your areas of interest? If there are particular industries or issues that you would like to hear about, [email us!](#) We have a large number of attorneys willing to weigh in on the issues that impact you and your business.

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Responsible Attorney: Michael J. Basile, 800-967-8251