

Environmental Policy During the Trump Presidency

February 7, 2017

Environmental

Barely two weeks after taking the oath of office, President Trump is already moving quickly to implement his campaign agenda. This alert addresses the actions Donald Trump has already taken with respect to environmental policy, and what can be expected going forward.

At least one aspect of President Trump's environmental policy seems clear: environmental regulations perceived to stand in the way of the administration's efforts to increase domestic energy production, including fossil fuels, will be rescinded or modified. Nowhere is this more true than in the area of climate change. President Trump's [America First Energy Plan](#) promises to eliminate "burdensome regulations on our energy industry," chief among them "harmful and unnecessary" climate policies. President Trump's nomination of Scott Pruitt—one of the State attorneys general [challenging EPA's Clean Power Plan](#)—strongly suggests that the new Administration will rescind or modify that ambitious attempt by the Obama Administration to use EPA's statutory authority to encourage more renewables development by regulating emissions to existing fossil fuel-fired power plants to encourage more renewables development, particularly wind and solar. We do expect, however, that many renewables development efforts will continue at the state level, particularly as the costs of utility-scale solar [are reported to have achieved "grid parity" with fossil fuels](#) in some areas.

Another key feature of President Trump's environmental agenda are his ambitious regulatory reform initiatives. Following a trend established by President Reagan and followed by every chief executive since, President Trump has already begun to assert control over the policymaking of administrative agencies. Unlike his predecessors, however, Mr. Trump's preferred tools have been executive orders and memoranda. Some have had direct environmental impacts. For example, President Trump recently issued memoranda on the [Keystone](#) and [Dakota Access](#) pipelines, directing the State Department, Army Corps of Engineers, and other agencies to expedite their review of the permit applications necessary to complete construction. Other proclamations do not reference EPA or environmental matters directly, but nonetheless will have a major impact on environmental policy. For example, President Trump recently directed agencies to [freeze regulations that had not yet taken effect and withdraw regulations that had not yet been published in the Federal Register](#), in order to allow the president to review, and possibly modify or eliminate, regulations he finds problematic. This freeze [delayed 30 final EPA regulations](#).

President Trump also issued a far-reaching and innovative Executive Order authorizing the Office of Management and Budget [to impose a "regulatory budget"](#) on each agency—i.e., a cap on the amount of private expenditure an agency may force as a result of its regulations. If fully implemented, a regulatory budget could have dramatic effects on EPA, an agency that has historically accounted for about half of the total cost of federal regulation on the economy. The

same Executive Order also required two existing regulations to be “identified” for cancellation to compensate for every new one promulgated, and stipulated that the costs of the regulations to be eliminated had to fully compensate for the costs of the ones.

OMB recently issued [technical guidance implementing the so-called “two for one” Executive Order](#), which was signed by a career official, Acting OIRA Administrator Dominic Mancini, because President Trump’s nominee for the so-called “regulatory czar” position has not yet been named. Avoiding [a possible constitutional issue](#), the guidance clarified that the Executive Order does not apply to the “independent” agencies, such as FERC or the FTC, but OMB “encouraged” them nonetheless to identify existing regulations that, if repealed or revised, would achieve cost savings that would fully offset the costs of any new significant regulatory actions. Most independent agencies are expected to make at least some efforts in that direction. The guidance also provides that in some circumstances, cost savings by one agency can be “transferred” to another with OMB approval, but that “sunk costs” (money already spent to comply) cannot be counted. One of the more cryptic aspects of the guidance states that agencies should “confirm that they will continue to achieve their regulatory objectives after the deregulatory action is undertaken.” The draft guidance is subject to comment, but only until February 10.

It is less clear what to make of President Trump’s [repeated promises](#) to [downsize EPA](#) during the campaign, however. The President’s decision to institute a [short-lived freeze on EPA’s grants to states](#) certainly suggests that he may still believe a reduced profile for the agency is appropriate. And there are reports that the administration has been presented with an options paper describing how it might downsize the agency by eliminating staff in the regional offices responsible for enforcing the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) and the Resource Conservation and Recovery Act who duplicate the state authority to enforce these laws.

But in most other areas, we expect to see business continue as usual at EPA. There is no reason to expect that EPA enforcement actions will decrease under President Trump. Indeed, historically, such actions have increased under Republican presidents. EPA will also retain a primary role in regulating chemical substances thanks to the new [Lautenberg Chemical Safety Act](#), which requires that EPA review new and existing chemicals to determine whether they pose an unreasonable risk of injury to human health or the environment.

Finally, it remains to be seen how Congress, as opposed to President Trump, will affect environmental policy in the coming years. Major new environmental legislation seems unlikely in light of increasing partisanship. But congressional Republicans [will use the Congressional Review Act](#) to eliminate some of the “midnight” rules promulgated at the tail end of the Obama Administration. The Act permits majorities in both the House and Senate to revoke an agency rule that they disapprove of before the rule takes effect, but has to this point remained largely unused because the president is allowed to veto the congressional revocation. But Congress and the Executive Branch may find common ground opposing the outgoing President’s environmental policies, including, potentially, the controversial [waters of the United States rule](#). Indeed, the House and Senate have already voted to eliminate a rule concerning [stream protection](#), and the Senate is expected to join the House in voting to eliminate a rule regulating [methane emissions](#) early this week.

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Our environmental team will continue to monitor these issues and more as they develop. If you have any questions concerning the material discussed in this client alert, please contact the following members of our environmental practice:

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