



The Environmental Impacts of a Trump Administration

As a follow up to our February 7, 2017 Green & the New Regime event, below is an update of activity from the Trump Administration as it affects the environmental and energy law realm.

The EPA Science Advisory Board Reform Act

This bill, which passed the House on March 30, 2017, seeks to amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to change the process for selecting members of the EPA Science Advisory Board by excluding registered lobbyists and persons who have obtained current grants or contracts from EPA. The bill further proposes barring Advisory Board members from applying for any EPA grant for three years after the end of their Advisory Board term. The stated intent of this bill is to ensure that Advisory Board members do not evaluate grants or decisions that could affect their own research projects. However, environmental groups argue that the effect of the bill would be to exclude notable academic scientists from participating in the Advisory Board, while at the same time promoting industry membership.

The HONEST Act

On March 29, the House passed the Honest and Open New EPA Science Treatment Act of 2017, or the “HONEST” Act, which, if enacted, would prohibit the EPA from making any scientific analysis citing research that is not “publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of research results.” If this legislation passes in the Senate, the EPA would be required to publish on its website all the data and documentation it utilizes in its scientific analyses. The Act seeks to promote transparency and make EPA’s scientific analyses easier to replicate; however, critics fear the Act will substantially increase costs for EPA, which is already facing significant budget cuts. Critics of the Act are also concerned that the term “reproducible” is ambiguous, and may further limit the data EPA may rely on.

Executive Order on Promoting Energy Independence and Economic Growth

On March 28, President Trump signed an Executive Order that aims to nullify climate change related policies from the Obama administration. The Executive Order requires that all “executive departments and

agencies . . . immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.” The Executive Order also lifts the moratorium on leasing of federal lands for the coal industry, rescinds the White House Council on Environmental Quality guidance for federal agencies to consider greenhouse gases in National Environmental Policy Act (NEPA) reviews, and withdraws certain technical documents related to federal agencies’ requirements to consider the social cost of carbon. Notwithstanding the intent of the Order, however, the proposed rollbacks of the Obama administration’s climate change policies may take years to carry out, as withdrawing and revising existing climate change regulations, among them the Clean Power Plan, will require lengthy processes, and legal challenges from environmental advocacy groups are expected.

Pruitt Memo on Final Action Review

On March 2, EPA Administrator Scott Pruitt issued a memorandum instructing agency employees to send all proposed agency decisions to Pruitt’s office for review prior to finalization. This policy, now expired after a 30 day period, required that any agency activity that “would limit the flexibility of the states, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions” be pre-screened directly by Pruitt’s office.

Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule

On February 28, President Trump signed an Executive Order aiming to roll back the Clean Water Act’s “Waters of the United States” (WOTUS) Rule. The 2015 Rule, which has been suspended by court order shortly after it was adopted, ostensibly expanded the jurisdiction of the EPA and the Army Corps of Engineers to waters that were not previously thought to be subject to the Clean Water Act. The Executive Order directs EPA and the Army Corps of Engineers to review the WOTUS Rule for consistency with the stated policy that “navigable waters [be] kept free from pollution, while at the same time promoting economic growth, [and] minimizing regulatory uncertainty.” More specifically, the Executive Order also directs the agencies to define “navigable waters” to be consistent with Justice Scalia’s interpretation of “relatively permanent waters” in his plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006), as opposed to Justice Kennedy’s “significant nexus to waters that are or could be navigable” interpretation in his concurring opinion, which has been widely followed by the agencies to date.

Notably, on April 3, the U.S. Supreme Court refused to delay the briefing scheduled in the appeal of *National Association of Manufacturers v. U.S. Department of Defense, et al.*, the Sixth Circuit case that had stayed implementation of the WOTUS Rule, denying the Trump administration’s motion to put the litigation on hold in light of the Executive Order. The *National Association of Manufacturers* appeal centers on whether the Sixth Circuit has jurisdiction over challenges to the WOTUS Rule.

Regulatory Reform Executive Order

On February 24, President Trump signed an Executive Order directing all federal agencies to establish a “Regulatory Reform Task Force” whose focus will be to eliminate “costly and unnecessary regulations.” The stated goal of the Task Force is to reduce the overall regulatory burden placed on industry. On April 13,

EPA published a Notice in the Federal Register seeking input on implementation of this Executive Order. For more specifics on EPA's action, see MGKF's April 17 [Special Alert](#).

Stream Protection Rule Stricken

On February 16, President Trump signed House Joint Resolution 38, which repealed the Department of the Interior's Stream Protection Rule that sought to address the impacts of coal mining on surface water and groundwater. House Joint Resolution 38 was passed under the seldom-used Congressional Review Act, which allows Congress to repeal rules enacted during the remaining days of a prior administration through an expedited process that only requires a simple majority of votes in the Senate.

Resource Extraction Disclosures Law Eliminated

In keeping with his stated mission to reduce "regulatory overreach" and scale back Dodd-Frank rules, on February 14, President Trump signed a law eliminating an SEC regulation that would require energy companies to publicly disclose their payments to governments for mineral extraction rights by 2018. Congress used the Congressional Review Act (discussed above) to fast-track the process to eliminate this regulation. Advocates argue that the rule's financial transparency requirement addresses the "resource curse," in which resource-rich developing nations see wealth generated from mineral extraction flowing only to government officials and upper classes, rather than the poor. Industry argued that compliance with the rule would be costly and would therefore erode global competitiveness, as other nations would not have the same requirements. While President Trump's signature effectively kills this SEC rule, the SEC is still required by law to promulgate a rule requiring public disclosures of payments for mineral extraction rights, although under the Congressional Review Act, any new rule cannot be "substantially" similar as the rule Congress eliminated.

Executive Order on Reducing Regulation and Controlling Regulatory Costs

On January 30, President Trump signed an Executive Order requiring that for every new promulgated regulation –not otherwise required by law– two prior regulations must be eliminated. The Executive Order further requires that "the cost of planned regulations be prudently managed and controlled through a budgeting process," mandating that for fiscal year 2017, "the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero."

Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects

President Trump issued an Executive order on January 24 directing agencies that are evaluating environmental impacts of high priority infrastructure projects to complete assessments in an "expedited fashion." This Executive Order is intended to reduce delays in governmental administrative processes for infrastructure projects, and promote the "full benefits of increased infrastructure investments, which are important to allowing Americans to compete and win on the world economic stage."

Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing

This Presidential Memorandum, also published on January 24, directs federal agencies to support U.S. manufacturers by expediting reviews of and approvals for proposals to construct or expand manufacturing

facilities. Within 60 days after completion of a stakeholder outreach process, the Secretary of Commerce must submit a report setting forth a plan to streamline federal permitting processes for domestic manufacturing projects, including recommendations for any changes to existing regulations or statutes.

Midnight Rule Relief Act

On January 4, the House passed the Midnight Rule Relief Act, which amends the Congressional Review Act to allow Congress to repeal in a single vote any rule finalized in the last 60 legislative days of the Obama administration. If passed by the Senate and signed by the President, the amendment would allow lawmakers to bundle multiple rules and disapprove them, instead of the current procedure of considering one regulation at a time. The House, led by Majority Leader Kevin McCarthy (R., Calif.), is reviewing approximately 200 regulations that were promulgated in the final 60-days of the Obama administration for potential repeal, and this proposed Act could streamline that process.

Pipelines

As a result of the President's January 24 [Memorandum](#) directing the U.S. Army Corps of Engineers (USACE) to expedite review and approval for the remaining unbuilt portion of the Dakota Access pipeline, USACE granted the necessary easement to build under Lake Oahe on February 7. Also on January 24, the President issued a second [Memorandum](#) to streamline permitting for the Keystone XL pipeline, where the President invited TransCanada, the pipeline owner, to resubmit an application for a permit. On March 23, Secretary of State Rex Tillerson issued a Presidential permit to allow TransCanada to operate Keystone XL pipeline facilities near the Canadian border. The Keystone XL pipeline still requires several state and local permits before it can be constructed.

NOMINATIONS

On April 7, former Tenth Circuit Judge **Neil Gorsuch** was confirmed to the U.S. Supreme Court. Of most relevance to environmental law, in his prior opinions Gorsuch has expressed condescension over Chevron deference, where deference is given to agencies' interpretation of statutes. For further discussion of how Gorsuch's addition to the Supreme Court may impact the environmental field, see James M. McClammer's article, [Facing the Behemoth: Gorsuch's Implications for Environmental Law](#).

Scott Pruitt, former Oklahoma Attorney General and self-described "leading advocate against the EPA's activist agenda," was confirmed by the Senate and became EPA Administrator on Friday, February 17. During his tenure as Oklahoma Attorney General, Pruitt sued the EPA a total of 13 times.

Former Alabama Senator **Jeff Sessions** was sworn in as the U.S. Attorney General on February 8. Sessions has been called a "climate change denier," and has opposed environmentally friendly legislation throughout his career as U.S. Senator. The League of Conservation Voters gave Sessions a [6% score](#) on the National Environmental Scorecard.

On February 1, **Rex Tillerson**, former chairman and chief executive officer of Exxon Mobil, was confirmed as Secretary of State. Tillerson has recognized climate change as an issue, but has downplayed human responsibility for the phenomenon.

IN THE NEWS

President Trump's proposed budget cuts include slashing [EPA's budget by 31 percent](#). During a press conference at the White House, Mick Mulvaney, Director of the Office of Management and Budget, stated climate change related programs are "a waste of your money." The proposed EPA budget would cut \$2.6 billion from the agency and result in 3,200 fewer EPA jobs according to the published [America First Budget Blueprint](#). Funding for the Clean Power Plan was discontinued, and would also be cut for international climate change programs. The proposed budget further aims to reduce EPA's compliance enforcement budget by \$129 million, and eliminate funding for regional efforts such as the Great Lakes Restoration Initiative, by \$427 million. President Trump's proposed budget for EPA, and other federal agencies, must still be approved by Congress, and changes are expected, when the full budget is released in May. In a [letter to EPA Administrator Scott Pruitt](#), acting PA DEP Secretary Patrick McDonnell stated strong opposition to EPA's proposed budget cuts. Secretary McDonnell illustrated how Trump's proposal would directly affect Pennsylvania's ability to monitor water quality, and criticized Pruitt's stance on human contribution to climate change. Secretary McDonnell claimed the proposed cuts demonstrated "the Trump administration's disregard for its responsibility to protect the health and safety of American citizens."

For more information on developing environmental updates and impacts, please contact MGKF's [Claudia Colon](#) at (484) 430-2337 or [Suzanne Ilene \(Shoshana\) Schiller](#) at (484) 430-2354.

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