Beveridge & Diamond

Outlook for Trump Administration Environment, Energy, and Natural Resource Regulation, Enforcement & Litigation

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Beveridge & Diamond

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Overview

Following our post-election Alert outlining major anticipated themes for environmental and natural resource law and policy in the second Trump administration, leaders from a number of our practices – many of whom served in U.S. and state government roles in Democratic and Republican administrations – have been monitoring developments during the transition and first days of the Trump administration.

Informed by the "Week One" Executive Orders and Presidential memoranda, and the broad and deep multi-disciplinary experience of our 150 lawyers located around the U.S, we present this compilation of what we expect in the early phases of the second Trump administration with respect to regulation, enforcement, and litigation.

Key Takeaways

- **Amidst a general deregulatory push, closely monitor the status of regulations of most impact to your company and be prepared to intervene to shape regulatory objectives. In parallel, anticipate pushback from certain states and NGOs – including citizen suit litigation.** We anticipate the Trump administration will seek to de-regulate industry at the federal level through executive orders, Agency staffing changes, redirection of government spending, and congressional action in virtually all areas of environmental law and related areas. The regulated community should seek opportunities to use this moment to accomplish regulatory goals, but also prepare for a vigorous counter-campaign – including litigation - from "blue state" attorneys general and agencies, and environmental and other NGOs. This is particularly so in the case of environmental citizen suits, which can be brought under the Clean Air Act, Clean Water Act, or Resource Conservation and Recovery Act any time a citizen perceives insufficient enforcement by regulators.

- **Seek opportunities to frame and connect corporate projects and priorities with administration efforts to bolster U.S.-based energy, infrastructure, technology and mining sectors.** To have greatest success with the Biden administration, companies needed to demonstrate commitments to action on climate change, renewable energy, and environmental justice. In the Trump administration, the focus is on rapid deployment of US-based energy resources (with less emphasis on wind or solar), infrastructure improvements, and production of critical minerals and other inputs for the U.S. tech sector. While companies should be aware of this dynamic, bear in mind, too, that in some areas or issues there may be little substantive or practical difference from the Biden administration.

- **Retain focus on fundamental compliance with core environmental statutes.** Deregulation or reduced federal enforcement are not a license for bad behavior, and companies must always guard their reputations and demonstrate responsible environmental stewardship. Stay out of the crosshairs of enforcement (and ever-watchful plaintiffs whose activities do not hinge on federal action) by continuing to execute well on the "basics" - demonstrate enterprise-wide compliance with federal and state air, water, waste, chemical, and health regulations.

- **Be ready to litigate on multiple fronts, including administrative rulemakings and defense of citizen suits, mass and class actions.** As deregulatory efforts face administrative litigation challenges, be ready to intervene as a company or with your industry sector to protect your priorities and ensure agencies have adequate analysis on hand to allow their decisions to hold up in court. Simultaneously, ensure you are prepared to address the unique challenges of environmental

NGO citizen suits and other creative efforts by the plaintiffs' bar to test novel theories or seek expansive discovery in litigation (this includes keeping an eye on data submissions to agencies that may one day be visible to plaintiffs' groups).

- **Navigate personnel changes.** Daily press reports are covering developments such as appointment, hiring and reassignment of personnel at certain agencies, including EPA and U.S. Department of Justice (DOJ) Environment and Natural Resources Division (ENRD). Anticipate the potential for these changes to impact morale among career employees at some federal agencies amidst significant policy shifts and reorganizations. At the same time, we observe a focus on appointing seasoned lawyers for support roles at EPA who will be well-versed in the various regulatory and administrative law aspects of most issues and can be a receptive ear for industry. Ensure you have advisors who, like Beveridge & Diamond, can help you understand what and who are behind the announcements and can help you get access when needed to the appropriate personnel.

- **Be prepared for the unexpected, including both delays/pauses and sudden accelerations.** Every Presidential administration experiences an early phase where the new administration reviews ongoing projects and priorities – including enforcement actions and litigation of environmental issues – to ensure alignment with its policies and that its officials are ready to implement any new directives. Early pronouncements from various Trump administration offices, including the Office of Management and Budget signal that these pauses may take on more than the typical significance – *but this is not yet clear.* For example, President Trump issued an Executive Order seeking to freeze awards under the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA) but that order is being challenged in the courts, and one court issued a preliminary injunction temporarily barring enforcement of freeze. Prepare to be patient and live with some degree of uncertainty – including the potential rapid reacceleration of some initiatives and priorities (discussed further in this Alert).

As we have for 50 years through Democratic and Republican administrations, Beveridge & Diamond stands ready to help our clients respond to these shifts in law and policy, to counsel them in state and federal government enforcement matters and internal investigations (including criminal matters), and to defend them in all types of litigation – including toxic torts, class actions, and the anticipated new wave of citizen/NGO, plaintiffs' bar and "blue state" attorney general lawsuits.

Please visit our Trump administration resource page to find additional materials that may be helpful to you. Also, please do not hesitate to contact the authors of any section below, key members of our Trump administration tracking team (John Cruden, Allyn Stern, Amber Ahmed, Justin Smith, and Stephen Smith), or your usual B&D contact with any questions.

Join Amber Ahmed and Justin Smith on February 6 for a webinar exploring the key figures and priorities shaping environmental and natural resource policies under the Trump administration.

Air, Climate Change, and Mobile Sources

Authors: Maddie Boyer, Eric Christensen, David Friedland, Tim J. Sullivan

Considering the many Biden administration promulgated under the Clean Air Act focused on emissions from power plants, industrial sources, and mobile sources, and the resulting litigation, stakeholders can expect a continued flurry of regulatory and litigation activity surrounding these regulations from the Trump administration.

The new administration paused ongoing rulemakings and will likely seek to pause ongoing litigation regarding many Biden administration air regulations as directed by the day one executive order, Unleashing American Energy. For example, the Acting Solicitor General requested the Supreme Court to stay *Environmental Protection Agency v. Calumet Shreveport Refining*, in which EPA petitioned the Court after the U.S. Court of Appeals for the Fifth Circuit rejected the agency's bid to transfer a challenge under the Clean Air Act to the U.S. Court of Appeals for the D.C. Circuit. The Trump administration will likely seek to reconsider significant portions (or the entirety) of such air regulations. Regulated entities and red states will likely have a greater ability to influence the regulatory development process.

In addition, we expect the new administration's approach to air enforcement to generally reflect the first Trump administration, which focused on promoting compliance, cooperative federalism that was generally deferential to states and state-led enforcement efforts, and federal enforcement as a last resort. Trump administration action—or inaction—on air issues will likely see significant resistance from, and litigation initiated by, environmental advocacy organizations and blue states.

Stationary Sources – Power Plants and Industrial Sectors

Regulations

The Trump administration will likely seek to reverse the Biden administration's positions on many marquee air regulations affecting power plant and industrial facility emissions.

Rules Affecting Power Plants:

1. The Power Plant Greenhouse Gas (GHG) rule—which was finalized in April 2024 and repealed the first Trump administration's 2019 Affordable Clean Energy rule—contains aggressive carbon emission limits relying on carbon capture and sequestration technology;
2. The Mercury and Air Toxics Standards (MATS) rule—which was finalized in May 2024—which, among other things tightened limits on hazardous air pollutants from existing coal-fired power plants; and
3. EPA's Good Neighbor Plan—which regulates ozone-forming power plant and industrial facility emissions in certain upwind states—was stayed by the Supreme Court in June 2024.

These rules are currently being litigated in the U.S. Court of Appeals for the D.C. Circuit.

Rules Affecting Industrial Facilities

We expect the Trump administration to address several high-profile regulations focused on industrial emissions that faced significant resistance from industry and certain states. The National Emission Standards for Hazardous Air Pollutants (NESHAP) rule applicable to the synthetic organic chemicals manufacturing industry—often referred to as the Hazardous Organic NESHAP or HON—is another

regulation that the Trump administration may seek to reexamine given the rule's far-reaching regulatory requirements, challenging compliance deadlines, and ongoing litigation. The new administration will also likely reexamine other air rules the Biden administration proposed, including:

- Proposed revisions to the New Source Review program's project emissions accounting process;
- New Source Performance Standards (NSPS) and emission guidelines for large municipal waste combustors;
- The September 2024 rule regarding the "once-in-always-in" policy for hazardous air pollutants;
- Chemical Manufacturing Area Source NESHAP; and
- Rule removing NSPS and NESHAP affirmative defense provisions.

The Trump administration may also consider the lawfulness of EPA's Integrated Risk Information System (IRIS) Program and how EPA previously used IRIS for setting hazardous air pollutant regulations for pollutants such as ethylene oxide and formaldehyde.

Enforcement

We expect the second Trump EPA enforcement approach to generally align with the first term and focus on promoting compliance and cooperative federalism, with federal enforcement as a last resort. To that end, EPA's enforcement office will presumably rebrand and refocus its National Enforcement and Compliance Initiatives as compliance initiatives consistent with the first Trump administration. In addition, the current Initiatives' focus on climate change and environmental justice issues will likely cease and the focus will return to addressing—in concert with states—clear and established risks to human health.

Furthermore, EPA could potentially relax its current positions on or even eliminate certain "industry-wide" enforcement efforts under its National Enforcement and Compliance Initiatives. For example, EPA's benzene enforcement efforts, including Benzene Waste Operations NESHAP and New Source Performance Standards QQQ noncompliance, under the *Reducing Air Toxics in Overburdened Communities* initiative could potentially be relaxed or even eliminated. In addition, EPA's Risk Management Program enforcement under the *Chemical Accident and Risk Reduction* initiative could be pared back.

Environmental Advocacy Organizations

These organizations will closely monitor EPA's stationary source activity and we can expect them to act when they perceive EPA is not regulating and enforcing as these organizations think the Agency should, especially regarding climate, air toxics, and environmental justice issues. Environmental advocacy organizations have extensive enforcement powers under environmental statutes' citizens suit provisions and can stand in place of EPA. Information and reports that EPA has prepared as part of its enforcement investigations are publicly available (and some even posted on EPA websites, such as inspection reports) and may become the basis for citizen suits. Multiple organizations have already made clear their intention to purse vigorous enforcement to counter the Trump administration's predicted policy priority changes.

Climate Change

President Trump announced that the U.S. will again withdraw from the 2015 Paris Climate Agreement. In addition, the Unleashing American Energy Executive Order directs the EPA Administrator, in collaboration with the heads of relevant agencies, to submit joint recommendations to the Director of the Office of Management and Budget on the "legality and continuing applicability" of EPA's December 2009 GHG endangerment finding. Given President Trump's consistent criticism of the cost of climate regulations,

other EPA regulatory programs, such as the GHG Reporting Program, will likely face significant scrutiny. Furthermore, the IRA's methane waste emissions charge for the oil and natural gas sector is a candidate for repeal via the Congressional Review Act (CRA). In addition, EPA's American Innovation and Manufacturing Act of 2020 (AIM Act) hydrofluorocarbon (HFC) regulations could potentially be reviewed by the Trump EPA. Further, a Congressional Review Act resolution rescinding the HFC Emissions Reduction and Reclamation Program regulations finalized in October 2024 has been introduced in the House of Representatives.

Under the Biden administration, the IRA and, to a lesser extent, the IIJA, represented the most serious federal effort to date to address climate change, primarily through tax credits and federal financial support for renewable energy, electric vehicles, industry decarbonization, carbon capture and sequestration, hydrogen hubs, and a variety of other programs. Section 7 of the *Unleashing American Energy* Executive Order temporarily freezes all IRA and IIJA programs, even though many IIJA programs provide traditional infrastructure funding unrelated to efforts to address climate change. This section has already been challenged in the courts and a temporary restraining order was issued suspending the freeze until February 3, with additional litigation to follow focused on whether the President has authority to impound or otherwise suspend expenditure of funds that have been appropriated by Congress. We anticipate that the IRA's tax credits encouraging renewable energy, industrial decarbonization, energy conservation, electric vehicles, and similar efforts to address climate change will be a major topic of discussion when Congress attempts to pass a tax and reconciliation package to extend tax cuts from the first Trump administration in the next few months.

Section 6 of that Executive Order eliminates the Social Cost of Carbon from federal decision-making and eliminates the Executive Branch scientific bodies and task forces that developed the Social Cost of Carbon metric under the Obama and Biden administrations. The Social Cost of Carbon had been used in previous Democratic administrations as a method for systematically incorporating climate change considerations into federal decision-making processes.

Finally, on January 20, the President issued an Executive Order temporarily suspending and requiring review of wind leases on both the outer continental shelf and on federal lands. The Executive Order also withdraws the Record of Decision approving the Lava Ridge Wind Farm, which faces criticism because of its impact on the Minidoka National Historic Site, where Japanese-American citizens were detained during World War II. President Biden's aggressive goals for expansion of wind energy, especially offshore wind energy, were a major element in his administration's government-wide effort to address climate change. We anticipate this action will soon be challenged in the courts, especially if it ripens into a permanent halt or slowdown in federal wind leasing.

Mobile Sources

We expect the Trump administration to undertake actions to roll back vehicle and engine emission standards established during the Biden administration, especially electric vehicle mandates. The new administration began this work on day one by issuing several executive orders, including the Unleashing American Energy Executive Order, which includes a provision specifically targeting electric vehicle mandates and state emission waivers.

At the federal level, we expect the Trump administration to review emission and corporate average fuel economy (CAFE) standards for light and medium duty vehicles for model years 2027 and later and the Phase 3 heavy-duty vehicle GHG emission. However, any efforts to relax those standards would require rulemaking, which could present timing and planning challenges for vehicle manufacturers.

The second Trump EPA will have significant consequences for California's mobile source program. Under Section 209 of the Clean Air Act, California can request that EPA waive the Act's provision that prohibits states from setting and enforcing their own emission standards for new vehicles. In the final days of the Biden administration, EPA granted waivers for six California mobile source rules, including the Advanced Clean Cars II regulation (which requires all new passenger vehicles sold in California to be zero emissions by 2035) and the Advanced Clean Trucks Regulation (which requires manufacturers to sell an increasing percentage of zero-emission medium- and heavy-duty vehicles or trucks). Waivers for California rules such as these are subject to withdrawal by the Trump administration and litigation surrounding any withdrawal is virtually guaranteed.

The Trump administration's anticipated attempts to roll back EPA's mobile source requirements and withdraw some or all of the recent Clean Air Act Section 209 waivers for California will affect vehicle and engine manufacturers, especially regarding electric vehicles, with respect to electric and zero-emission vehicle production mandates. In addition, the Trump administration may work with Congress to roll back or eliminate the consumer electric vehicle tax credit. We also note that the Acting Solicitor General requested the Supreme Court to stay a case, *Diamond Alternative Energy v. Environmental Protection Agency*, where industry has asked the Court to invalidate California's Clean Air Act waiver.

Water

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Waters of the United States and Wetlands

The Supreme Court's 2023 decision in *Sackett v. EPA* has not ended the fight over the definition of one of the Clean Water Act's central jurisdictional terms: "waters of the United States" (WOTUS). Prior to the Court's ruling, Presidents Obama and Trump issued rules intended to expand (under the Obama administration) and contract (under the Trump administration) the range of waterbodies and geographical features that qualify as WOTUS. The Biden administration also entered the fray, issuing a rule that sought to find middle ground between the approaches taken by President Biden's two predecessors. States and various groups responded to all three rules by challenging them, leaving behind vacatur orders and a patchwork of injunctions that has made the definition of WOTUS vary from state to state.

Sackett clarified that Clean Water Act jurisdiction extends only to those wetlands that have a "continuous surface connection" to bodies of water that are WOTUS in their own right, and the Biden administration issued a "conforming" rule in 2023 ostensibly intended to implement the Court's ruling. States and various groups also challenged this rule, contending that it was, among other things, unfaithful to the text of the Clean Water Act and the *Sackett* decision. The reviewing court preliminarily enjoined the conforming rule from applying in the 26 states that are plaintiffs to that litigation, while the conforming rule applies everywhere else. As a result, anyone proposing to build a project or otherwise impact a feature that might be WOTUS still needs to consult a map to know what definition of WOTUS applies.

Expect the new Trump administration to issue yet another rule redefining WOTUS, but no one should count on it being the final word on Clean Water Act jurisdiction. Such a rule will no doubt be narrower than the Biden administration's 2023 rule purporting to implement *Sackett*, pulling the definition back closer to traditional navigable waters and their tributaries. As has been the case for the last decade, litigation will surely follow, and there is a strong chance that the definition of WOTUS will vary from state to state based on whether an injunction is in effect.

Section 401 Water Quality Certifications

WOTUS is not the only Clean Water Act issue on which we can expect yet another round of rulemaking and litigation. If the Project 2025 EPA chapter is any indication, we can expect the Trump administration to address the scope and timing of water quality certifications issued under Section 401 of the Act—state certificates that are required for the issuance of federal permits (including Clean Water Act section 404 and many FERC permits) for activities that discharge into navigable waters. Under both Presidents Trump and Biden, EPA issued rules that addressed both the timing of state action on these certifications (a frequent cause of delay in project permitting) and states' authority to consider and impose requirements on non-discharging aspects of a project. Litigation followed both sets of rulemakings.

Under President Trump, EPA will likely rescind and replace the Biden rulemaking. The replacement will almost certainly attempt to limit the scope of Section 401 certifications to point source discharges from projects. Litigation will again follow, and we would not be surprised if these cases lead to reconsideration of whether *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, which held that states could impose conditions on non-discharging aspects of permitted activities, remains good law.

Guidance for Discharges through Groundwater

Plan for EPA to make a third attempt at issuing guidance on how to implement the Supreme Court's "functional equivalent" test for when discharges to groundwater require National Pollutant Discharge Elimination System (NPDES) permits. The Supreme Court's 2020 decision in *County of Maui v. Hawaii Wildlife Fund* held that releases of pollutants that reach surface waters through groundwater require NPDES permits when they are the "functional equivalent of a direct discharge." The Court announced an open-ended test for determining functional equivalence in an opinion that explicitly called for EPA to provide further guidance.

EPA has now twice failed to finalize any such guidance, and it will fall to Lee Zeldin's EPA to try again. EPA released a guidance memorandum during the final days of the first Trump administration, which the agency rescinded in 2021. Near the end of 2023, EPA published a draft version of a new guidance document that staked out an expansive reading of the *Maui* decision. A final version of this guidance has been sitting at the Office of Management and Budget since May 2024. After President Trump takes office, EPA will almost certainly take another run at issue guidance implementing *Maui* but take a more modest approach than EPA's most recent attempt.

Climate Change Adaptation in Permits and Enforcement Resolutions

EPA's use of NPDES permits and Clean Water Act settlements to promote adaptation to climate change will likely sunset—or lie dormant—over the next four years. During the Biden administration, EPA's Region 1 office—the NDPES permitting authority in New England—rolled out draft NPDES permits that would have required municipal permittees to develop plans to adapt their wastewater treatment plants and collection systems to threats posed by major storms and sea level rise. In June 2024, the agency also issued a memorandum directing enforcement teams handling Clean Water Act and Safe Drinking Water Act cases to identify climate vulnerabilities in defendants' operations and impose injunctive relief to address them in consent decrees.

Under President Trump, EPA will not likely promote climate adaptation in permits or consent decrees, but do not expect to see adaptation disappear from NPDES permitting altogether. Multiple states authorized to issue NPDES permits have included adaptation requirements in their permits, and more may follow their example. States that choose to increase enforcement in response to changes at EPA may also pick up the baton and pursue adaptation-oriented relief to resolve enforcement cases.

Safe Drinking Water Act

PFAS Drinking Water Regulation

The Biden EPA's April 2024 National Primary Drinking Water Regulation for Certain per- and polyfluoroalkyl substances (PFAS), which sets Maximum Contaminant Levels (MCL) in drinking water for five PFAS compounds, a Hazard Index MCL for a mixture of four PFAS, and establishes health-based and non-enforceable Maximum Contaminant Level Goals (MCLG) for the regulated PFAS compounds, was final before Trump took office earlier this month. Therefore it is not subject to the administration's Regulatory Freeze Pending Review Executive Order.

The Biden EPA's PFAS Drinking Water Regulation is also the subject of multiple petitions for review filed in the U.S. Court of Appeals for the D.C. Circuit against EPA by water utility associations (Association of Metropolitan Water Agencies and the American Water Works Association), chemical manufacturing trade groups (American Chemistry Council and National Association of Manufacturers), and Chemours. The matters were consolidated into the lead case of *American Water Works Association et al. v. United States*

Environmental Protection Agency, No. 24-1118 (D.C. Cir. Dec. 23, 2024), and are currently in the briefing stage. The U.S. Chamber filed an amicus brief urging the court to invalidate the regulation. A coalition of 18 attorneys general filed an amicus brief calling on the court to uphold the regulation.

Lead and Copper Rule Improvement Regulation

The Trump administration may also seek to roll back the Biden EPA's 2024 Lead and Copper Rule Improvements (LCRI) regulation, which replaced the first Trump administration's Lead and Copper Rule Revisions (LCRR) and mandates full replacement of all lead service lines across the country within 10 years, with some limited exceptions, among other significant requirements. The LCRI took effect at the end of December 2024.

As with the Biden EPA's PFAS Drinking Water Regulation, the LCRI is not subject to the Trump administration's Regulatory Freeze Pending Review Executive Order, but the Trump EPA could seek to rescind or amend the regulation. Congress also has the option of exercising its authority under the Congressional Review Act (CRA) to roll back the LCRI and block the development of a substantially similar rule.[1] The CRA authorizes a majority of each chamber of Congress, with the signature of the president, to repeal recently issued regulations. On January 13, 2025, Representative Gary Palmer submitted House Joint Resolution 18 calling for the repeal of the LCRI and effective re-instatement of the first Trump administration's LCRR.

The American Water Works Association is challenging the LCRI in the U.S. Court of Appeals for the D.C. Circuit in *American Water Works Association v. United States Environmental Protection Agency*, No. *24-1376* (D.C. Cir. Dec. 13, 2024). Earlier this month, eleven states moved to intervene in the matter in defense of the Biden EPA's LCRI. Similar to the PFAS Drinking Water Regulation litigation, the Trump EPA may ask the court to vacate and remand the regulation back to the agency.

Waste and Contaminated Properties/Superfund

Authors: Dan Krainin, John Paul, Taylor Ferrell

Regulation/Regulatory Oversight

In general, the goals of the new administration will be to use executive orders and possibly regulatory action to deregulate, streamline environmental compliance requirements, and reduce costs for regulated entities.

The new administration's goals for EPA include rescinding or revising policies that are not dictated by legislation. For example, the new administration will likely pause and reassess EPA investigations and enforcement actions aimed at cutting greenhouse gas (GHG) emissions from waste management operations. The Mandate for Leadership (aka Project 2025) calls for a review of sources required to report emissions under the Greenhouse Gas Reporting Rule, with the goal of eliminating GHG reporting requirements for source categories that are not otherwise regulated. Similarly, EPA's efforts to gather information to support new rulemakings to reduce GHG emissions may be curtailed or abandoned. Such efforts could include the non-regulatory docket for emissions from municipal solid waste landfills.

EPA will also likely scrutinize regulations governing recyclable materials and hazardous waste, starting with the definitions of waste and exemptions from those definitions. By seeking to define certain recyclables and potentially hazardous substances out of the scope of regulation, EPA may seek to both reduce regulatory burdens and to facilitate the return of such materials to use.

Superfund Enforcement and Cleanup Priorities

The Biden EPA designated PFOS and PFOA as CERCLA hazardous substances in 2024. That listing is under challenge at the U.S. Court of Appeals for the D.C. Circuit. In the final days of the Biden administration, DOJ filed its opposition brief defending the rule.

Litigation Outlook

To the extent the Trump administration's environmental policy involves deregulation and a decline in enforcement, expect state-level enforcement (especially in blue states) and private litigation to fill at least some of the void left at the federal level. States such as California and New York may take a lead role in setting aggressive environmental policy agendas and to lead multistate coalitions in challenging environmental actions taken by the Trump administration, as they will continue to undertake efforts to review and revisit federal spending on various programs.

Once new leadership is in place at DOJ, expect pending enforcement matters to settle more quickly, and on terms more favorable to defendants, than under the Biden administration. Environmental NGOs are likely to look for opportunities to act as private attorneys general through statutes such as the Resource Conservation and Recovery Act and the Clean Water Act. The Trump administration could seek to curb such citizens' suits through regulatory changes, statutory interpretations, and strategic litigation that could make it harder for citizens to satisfy the standing requirements necessary to bring suit.

Chemicals

Authors: Mark Duvall, Elizabeth Nugent Morrow, Emily Schwartz

EPA's implementation of the Toxic Substances Control Act (TSCA) will likely see a significant shift during a second Trump administration, including the following:

Risk Evaluations

EPA is currently working on risk evaluations for some 20 high-priority or manufacturer-requested substances. Early in the Biden administration, EPA announced that it planned to reconsider the Trump EPA's risk evaluations of the initial ten chemical substances. The same thing may happen with respect to the Biden EPA's risk evaluations.

However, EPA is now subject to a November 22, 2024 consent decree obligating it to complete three risk evaluations for high-priority substances in 2024 (TCEP (already final), formaldehyde (already final), and 1,1-dichloroethane); seven additional ones in 2025 (including 1,3-butadiene); and the other ten by the end of 2026. Under a related consent decree, EPA must complete risk evaluations for two manufacturer-requested substances (DIDP) and DINP) by January 2025.

The Biden EPA completed supplemental risk evaluations for most of the initial ten substances and risk evaluation for legacy uses of asbestos; for two of the 20 high-priority substances (TCEP and formaldehyde); and for two substances requested by manufacturers (DIDP and DINP). It also issued proposed risk evaluations for three of the 20 high-priority substances (1,3-butadiene, 1,1-dichloroethane, and DCHP). These risk evaluations incorporate the "whole chemical" approach and do not assume that workers wear Occupational Safety and Health Administration (OSHA)-required personal protective equipment. Both the *Project 2025* EPA chapter and the House Appropriations Committee report call for the abandonment of those policies.

Risk Management Rules

Proposed TSCA risk management rules for 1-bromopropane, Pigment Violet 29, and n-methylpyrrolidone, will be reconsidered. In December 2024, EPA published final rules, with effective dates before the inauguration, for perchloroethylene and carbon tetrachloride, as well as amendments to the new chemical regulations. These rules are not subject to the January 20 freeze order, but they may be considered under the CRA. Also in December, EPA published a final rule for trichloroethylene with an original effective date before the Inauguration, but due to a court stay of the rule, it did not take effect before the change of administration. In November, EPA published final amendments to the rules on decabromodiphenyl ether and PIP (3:1), with an effective date after January 20. Those rules are covered by the regulatory freeze.

TSCA Litigation

Multiple final rules are being challenged in court (those for asbestos, methylene chloride, trichloroethylene, carbon tetrachloride, decabromodiphenyl ether, and the risk evaluation framework rule amendments). The Trump DOJ will likely move for voluntary remand so the Trump EPA can reconsider those rules. The courts are likely to grant the motions.

On January 14, the U.S. Court of Appeals for the Third Circuit consolidated the multi-district trichloroethylene challenges. That court, on January 16, continued a stay of that rule issued earlier by the U.S. Court of Appeals for the Fifth Circuit. EPA asked the court to extend by 60 days all deadlines in the case while EPA reviews its position in light of the 60-day regulatory freeze announced January 20.

Those cases include challenges to the "whole chemical" approach and the PPE assumptions of the Biden EPA risk evaluations. Rather than allow courts to decide the legality of those issues, the second Trump EPA is likely to prefer to have the opportunity to revise the rules to follow the approaches and assumptions of the first Trump EPA. Look for each of them to be reconsidered starting in 2025.

State Regulatory Activity

We expect the Trump administration to significantly reduce EPA's regulations and resources, including substantial budget cuts, staff reductions, and a shift towards deregulation to promote economic growth. In response, we expect states like California, New York, and Washington to take the lead in enforcing stricter environmental standards and regulations to fill the gap left by federal rollbacks.

Pesticides

Authors: Alan Sachs, Jack Zietman

Pesticide Registration Program

Potential cuts to EPA staff and budgets may significantly impact the pesticide registration program, which must review and approve each application for a new or amended pesticide product before it may be distributed or sold. EPA's ability to meet Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-mandated application review timelines – already straining under perennial backlogs and delays – will likely face even greater stresses if the Trump administration slashes EPA resources as anticipated. At the same time, any funding increases specifically earmarked by Congress for the pesticide registration program – frequently supported by pesticide manufacturers who need timely EPA actions on their products – may be subject to additional guardrails and scrutiny as the administration seeks to streamline government functions and downsize the federal workforce.

Data Transparency

The Trump administration may seek to revive earlier policy initiatives that were abandoned by the incoming Biden administration in 2021. For example, the first Trump administration's "Strengthening Transparency in Pivotal Science" rule -- which required EPA to give greater consideration to studies where the underlying data were available in a manner sufficient for independent validation – was vacated by the U.S. District Court for the District of Montana in February 2021 and then quickly disavowed by the Biden administration. Look for the new Trump EPA to once again prioritize some of these efforts, potentially with rollout improvements designed to more successfully withstand future court challenges.

Pesticide Enforcement

The first Trump administration oversaw a marked increase in FIFRA enforcement associated with pesticide imports relative to domestic production, reflecting improved EPA integration with the digital system used by U.S. Customs and Border Patrol, and also consistent with President Trump's broader protectionist trade agenda. The COVID-19 pandemic supercharged some of these efforts, as EPA concerns over companies making fraudulent anti-coronavirus claims brought unprecedented levels of scrutiny to shipments of antimicrobial pesticides and devices and the marketing claims made for those products. Similarly, the Food and Drug Administration increased its scrutiny of antimicrobial pesticides and devices used in medical settings, which may be subject to regulation under the Federal Food, Drug, and Cosmetic Act (FFDCA) in addition to EPA's oversight under FIFRA. While pandemic-era concerns have diminished, we expect pesticide enforcement to remain an area of focus under the new administration, particularly around pesticide imports at ports of entry.

OSHA

Authors: Mark Duvall, Heidi Knight, Jayni Lanham

OSHA rulemaking and enforcement activity at the federal level will likely decline under the new Trump administration, while certain states may be poised to continue forward with a variety of state or regional rulemaking and enforcement initiatives.

Rulemaking

Under the second Trump administration, we expect recent OSHA rulemaking efforts to be in danger and an overall slowdown in new rulemaking initiatives.

Two rulemaking efforts that are likely to be under immediate scrutiny are the Worker Walkaround rule and the Heat Illness and Injury Prevention rulemaking.

- The Worker Walkaround rule, which was finalized in March 2024 and went into effect on May 31, 2024, expanded the scope of "employee representatives" that can accompany OSHA compliance officers during workplace inspections. According to OSHA, this rule clarified that workers may authorize another employee to serve as their representative or select a non-employee. This rulemaking is currently the subject of a legal challenge by the U.S. Chamber of Commerce and a coalition of business groups in the federal district court for the Western District of Texas. If the rule is upheld, we expect that OSHA may take action to withdraw or modify the rule.
- The Heat Illness and Injury Prevention rulemaking was often touted as one of the highest OSHA priorities during the Biden administration. OSHA issued a proposed rule in August 2024 that would apply broadly to outdoor and indoor workplaces and require employers whose workers might be exposed to high heat conditions to develop and implement a worksite Heat Injury and Illness Prevention Plan with various measures to protect employees from high heat conditions. The comment period on the proposed rule closed on January 14, 2025. With the change in administration, we anticipate the Trump administration to further delay progress on the rule or abandon it altogether.

With respect to OSHA rulemaking more broadly, we expect a slowdown across the board for both existing and new rulemaking efforts.

Enforcement

A key area of emphasis during the Biden administration was to increase the number of OSHA investigators and enforcement activity. Over the last four years, OSHA devoted significant resources to hiring inspectors and steadily increased the number of federal inspections from 24,333 inspections in FY 2021 to 34,696 in FY 2024. During the second Trump administration, we expect inspector numbers to remain steady or decline, particularly as a significant number of the inspectors are new hires who may still be in their probationary period. In his first day in office, President Trump ordered a hiring freeze of federal civilian employees. We likewise expect the number of federal inspections to drop and for OSHA to shift to a more industry-friendly approach.

State Initiatives

Twenty-two states have State Plans in place that cover both private sector and state and local government workers while an additional seven states have State Plans that cover only state and local government workers. In addition, consistent with section 18(a) of the OSH Act, states are not precluded from adopting

laws and regulations on specific occupational safety and health topics where federal OSHA has not adopted a standard. In light of the anticipated slowdown in federal OSHA rulemaking and enforcement, we expect several states (both those with State Plans and those under federal OSHA jurisdiction seeking to address topics not addressed by OSHA) to move forward on a number of rulemaking and enforcement initiatives.

For instance, while the federal rulemaking for heat illness and injury prevention is likely to stall, we expect to see enforcement of the state measures for heat injury and illness prevention that are already in place in California, Colorado, Maryland, Minnesota, Oregon, and Washington. We also anticipate that other states may adopt heat illness and injury prevention standards of their own.

We further expect to see action on ergonomics and musculoskeletal disorders at the state level. Washington's Department of Labor & Industries is in the process of adopting its first industry/risk class-specific ergonomics rulemaking (targeted at scheduled airline ground crew operations) and New York recently enacted a law that requires certain ergonomic and musculoskeletal safety procedures in warehouse settings.

Finally, we expect inspection activity to remain steady or even increase in several states. For example, Cal/OSHA announced in August 2024 that it had increased staffing for its Bureau of Investigations unit, which is tasked with investigating employee fatality and serious injury cases and preparing and referring cases to local and state prosecutors for criminal prosecution.

Natural Resources and Project Development

Authors: Parker Moore, Jesse Miles, Megan Unger

National Environmental Policy Act

The National Environmental Policy Act (NEPA) faces enormous uncertainty as the Trump administration enters office for a second term. President Trump wasted no time issuing an executive order that directs the Chairman of the White House Council on Environmental Quality (CEQ)—the entity under the Executive Office of the President that has long overseen NEPA policy and implementation—to provide guidance on implementing NEPA and propose rescinding CEQ's NEPA regulations. The order further directs the National Economic Council and Office of Legislative Affairs to provide recommendations to Congress to provide greater certainty in the Federal permitting process, including streamlining the judicial review of NEPA applications.

This order appears to go even further than the first administration's 2020 rule that the Biden administration quickly rolled back in favor of more traditional NEPA rules emphasizing its policy objectives. Like the 2020 rule, any regulations promulgated or rescinded by the Trump administration are almost certain to be challenged by environmental groups and blue state coalitions.

President Trump has also publicly criticized NEPA and the costs and delays he perceives it to cause. A favorite refrain in the run-up to Inauguration Day was that he would implement changes under which any individual or company investing one billion dollars or more in the U.S. would receive fully expedited approvals and permits or even be exempt from such requirements altogether. But it is doubtful any President could make such changes absent Congressional action.

Major pending judicial decisions further fuel the NEPA uncertainty and will significantly shape its path the next four years. During 2025, we expect the U.S. Supreme Court to issue its decision in *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, addressing whether NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority. Broader yet, in late 2024, a panel of the U.S. Court of Appeals for the D.C. Circuit sua sponte held that the CEQ lacks authority under the statute to impose binding NEPA regulations on other federal agencies, a decision that could support President Trump's direction to CEQ to rescind NEPA regulations. A petition for rehearing *en banc* is pending, and the matter could find its way to the Supreme Court in 2026.

Endangered Species

Major movement under the Endangered Species Act (ESA) has already begun during the second Trump administration, which signaled changes to ESA implementation in an executive order and presidential memorandum. In the "Declaring a National Energy Emergency" Executive Order, the administration directed the heads of all agencies to identify planned or potential actions to facilitate the Nation's energy supply that may be subject to the ESA's emergency provision, a provision that allows pausing ESA Section 7 interagency consultation for emergencies.

More surprisingly, the order further requires the Secretary of the Interior to convene the Endangered Species Act Committee, referred to as the "God Squad" due to its authority to loosen legal requirements on proposed activities that could put a listed species at risk of extinction, not less than quarterly. The Committee will convene to determine if energy projects should be exempt from ESA requirements. The God Squad has only been invoked a handful of times in ESA history, and it remains highly uncertain whether the enhanced role of the Committee can be squared with the text of the ESA.

President Trump signaled additional hostility towards the ESA in his memorandum Putting People over Fish: Stopping Radical Environmentalism to Provide Water to Southern California." This memorandum falls in line with the President's rhetoric surrounding the continued protections of the ESA-listed Sacramento-San Joaquin Delta smelt against the backdrop of the Los Angeles wildfires, as well as the first Trump Administration's attempts to reroute water from the Delta's Central Valley Project (CVP). Like those attempts, any action in the Delta is almost certain to face legal challenges. President Trump followed through just four days later in his executive order "Emergency Measures to Provide Water Resources in California and Improve Disaster Responses in Certain Areas." There, he ordered the Secretary of the Interior to expedite action related to any ESA exemption for the long-term operation of the CVP. He further ordered the Secretaries of Interior and Commerce to identify ongoing or potential major water supply and storage projects within California subject to the ESA, identify any regulatory hurdles that burden the water projects, and appropriately suspend, revise, or rescind any regulations or procedures that "unduly burden" the projects.

The first Trump administration yielded a number of ESA regulatory reforms long sought by the regulated community. These regulations trimmed regulatory requirements, namely in species listing decisions and critical habitat designations (ESA Section 4) and in agency consultations (ESA Section 7). But the Biden administration promptly rolled those changes back. In what has become a painfully familiar game of regulatory ping pong, we expect the second Trump administration to reinstitute its prior regulations, or promulgate even more far-reaching ones, either of which could prove to be fertile ground for legal challenges by environmental groups and blue state coalitions.

The Trump administration will likely slow the pace of new species listing decisions and critical habitat designations over the next few years. We can also expect the administration to pause significant proposed, but not yet finalized, listings and designations. The most obvious species listing candidate for such a rollback is the U.S. Fish and Wildlife Service's (FWS) proposed listing of the monarch butterfly, which—if finalized—would be the most significant species listing in ESA history. We also expect FWS's recent decision to deny "Red State"-sponsored petitions to delist the threatened grizzly bear and surprising choice to reconfigure the bear populations under that threatened listing to be an enticing target—particularly with former North Dakota Governor Doug Burgum at the helm of the U.S. Department of the Interior.

Permitting Reform

We expect the Trump administration to continue its laser-like focus on streamlining federal permitting processes. This is especially the case regarding federal permitting involving natural resources. As discussed above, President Trump has repeatedly touted plans to exempt from federal permitting processes any projects that result in a $1 billion investment into the U.S. economy. There is also strong momentum towards broad streamlining and reform initiatives for each of the federal regulatory programs that affect the timing and costs of project development. It remains to be seen if these initiatives can be accomplished at the executive branch level, as such changes typically require Congressional action. Even with Republican majorities in both the House and the Senate, only time will tell whether Congress can reach an agreement on this front in a manner that leads to meaningful legislation.

Energy

Authors: Brook Detterman, Amber Ahmed, Taylor Ferrell, Tim J. Sullivan, Ben Champion

President Trump fulfilled his promises to restore "American energy dominance" by issuing the following Day One executive orders:

- "Declaring a National Energy Emergency,"
- "Unleashing American Energy,"
- "Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing . . .,"
- "Unleashing Alaska's Extraordinary Resource Potential," and
- withdrawing the U.S. from the Paris Climate Agreement and other international agreements and actions.

These Executive Orders define "energy" as oil and gas and related gas and petroleum products, uranium, coal, biofuels, geothermal heat, hydropower, and critical minerals. This definition notably excludes solar and wind power.

The orders reflect a whole-of-government approach to removing restrictions on energy development and to accelerating this development using emergency authorities where possible.

Through the Executive Orders, the Trump administration seeks to rapidly facilitate the identification, leasing, siting, production, transportation, refining, and generation of these domestic energy resources – both on federal lands and in the private sector, and possibly through the use of special and emergency authorities and through eminent domain, as mentioned in the Executive Order declaring a national energy emergency.

The Executive Orders also rescind a long list of Biden administration Executive Orders and end energy production restrictions, electric vehicle mandates, LNG-export constraints, and prohibitions on oil and gas exploration on public lands, including the Arctic National Wildlife Refuge in Alaska. Some of these early actions face uncertain paths to implementation, as the Administration and political leadership in the federal agencies will have to navigate limitations on various agency emergency authorities and will encounter litigation on the use of those authorities.

In addition to these immediate, high-profile reversals of Biden administration actions and sweeping declarations that match campaign rhetoric, we expect the Trump administration to focus on longer-term legislative and deregulatory efforts that reflect and respond to industry's energy policy priorities.

Common denominators for these near- and longer-term initiatives will be a renewed emphasis on conventional energy sources, a de-emphasis on carbon emission avoidance and environmental justice, and efforts to speed up permitting and other regulatory processes for conventional energy sources by relaxing or bypassing associated requirements.

While many of President Trump's "Day One" pronouncements have garnered media attention and environmentalist backlash, we expect the most significant energy policy changes will, in fact, be made through more deliberate Congressional action and agency regulatory processes. These legislative and regulatory processes will likely reflect long-running industry and Republican priorities and will prioritize oil, natural gas, and critical mineral development—including on federal lands.

LNG Export

President Trump immediately rescinded through Executive Order the Biden administration's pause of LNG export licenses and to approve all pending export license requests. This action may be vulnerable to legal challenge, but the Trump administration can also pursue the slower, more durable path through the regular agency decision-making process by rebutting the Biden administration's December 2024 study finding that unconstrained LNG exports could exacerbate climate change if the supplies replace lower carbon energy sources in the importing countries.

Public Lands

DOI—and its bureaus and offices—will be a key player in the Trump administration's push to roll back regulatory requirements for onshore and offshore oil and natural gas production and expand production on federal lands, and also to slow renewable energy development on public lands. President Trump also issued an Executive Order to place a moratorium on new offshore leases for wind development while the administration reviews their impacts. At the same time, increased onshore and offshore oil and gas lease sales will likely be key sources of expanded production. The Bureau of Land Management's Waste Prevention Rule has been consistently discussed as a top target for reconsideration and roll back. Royalty rates and bonding requirements are other areas where the Trump administration could further relax requirements to encourage additional oil and gas production on federal onshore and offshore lands. President Trump also reversed President Biden's recent action under Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA) to protect all U.S. Outer Continental Shelf areas off the East and West coasts, the eastern Gulf, and additional portions of the Northern Bering Sea in Alaska from future oil and natural gas leasing. It remains to be seen how meaningful this reversal is for actual expansion of oil and gas development in these areas, as leasing and production proposals for particular areas will encounter opposition from the military or legislators from coastal areas, not to mention some areas face challenges to commercial viability that make them costly to developers.

Emission Regulations

As mentioned, the IRA's methane fee implemented by EPA has been consistently discussed as a top target to be overturned under the Congressional Review Act. Further, while possible that Congress could seek to revise or even repeal all or parts of the IRA itself—the provisions creating the methane fee would almost certainly be included in such efforts. The IRA was passed on a party line vote, with Vice President Harris breaking a tie vote in the Senate; deployment of IRA funds in numerous states (including those with Republican senators) under the Biden administration may create a lack of consensus among critics of the IRA in Congress for a wholesale repeal of the IRA. In the meantime, the Trump administration has frozen disbursement of IRA grants, and some previously declared are now subject to review. B&D will be closely monitoring the status of IRA grants and the political conversation about IRA.

In addition, EPA's Clean Air Act regulations for the oil and natural gas sector that were finalized in March 2024—New Source Performance Standards (OOOOb) and Emissions Guidelines for existing sources (OOOOc)—will also be a priority for regulatory revisions. Given the ongoing litigation surrounding these regulations, expect to first see a pause in the litigation followed by broad remand of these regulations. In reconsidering the regulation, we expect EPA to address industry's and some states' biggest objections to these regulations, including the Super-Emitter Program, limits on flaring, the impacts on existing oil and natural gas sources, especially marginal wells, and a lack of time and flexibility for states to craft their own emission standards for existing oil and natural gas sources.

Electric Power Generation

Meeting the exploding energy demand from data centers and addressing the forecasted shortfalls in the nation's energy supply to meet these demand increases is one of the core underpinnings of President Trump's Executive Order declaring a national energy emergency. The Trump administration and its Congressional allies will likely pursue increased development of and permitting for natural gas and nuclear generation assets—including small modular and next generation nuclear reactors—that provide baseload capacity to the grid. The administration will also likely seek to complement those generation efforts with increased pipeline infrastructure to bring natural gas downstream to generation facilities and transmission infrastructure to connect gas and nuclear generation assets to the grid. Energy supply will be a cornerstone of the administration's permitting reform efforts.

In addition to facilitating new gas and nuclear generation, the Trump administration will likely seek to extend the lifetimes of legacy generation assets by rolling back Biden administration power plant rules that required the adoption of advanced carbon sequestration technology and that—pending the actual pace of those advances—could have resulted in decommissioning of legacy gas and coal-fired generation and hamper construction of new baseload gas-fired plants. Other recent Biden administration rules governing power plant wastewater, coal ash, and the Mercury and Air Toxics Standards (MATS) are other targets for regulatory rollbacks.

Energy Infrastructure

Finally, a key piece of the Trump administration's energy policy will be facilitating accelerated permitting of energy development through permitting reforms, including NEPA changes. See the section on permitting reform elsewhere in this resource for more insights on this topic. The early Trump Executive Orders call out specifically for greater development on the West Coast and Northeast regions, where President Trump has identified state and local policies as a barrier to his energy development goals.

ESG/Supply Chains/Extended Producer Responsibility/Plastics/International Impacts

Authors: Dan Eisenberg, Megan Morgan, Allyn Stern, Claire Schacter, Sara Eddy, Deepti Gage

ESG Reporting and the SEC Climate Disclosure Rule

Under the incoming administration, we expect to see a significant rollback of President Biden 's prioritization of ESG reporting and enforcement. In April 2024, the U.S. Securities and Exchange Commission (SEC) stayed its final rules entitled The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Final Climate Rules") pending the resolution of legal challenges playing out in the U.S. Court of Appeals for the Eighth Circuit. Regardless of the outcome of the current litigation challenges, we expect the SEC to significantly walk back the Final Climate Rules or table them altogether. Similarly, we expect the SEC and U.S. Federal Trade Commission to reduce their scrutiny around environmental or green marketing claims ("greenwashing" claims). This approach would be consistent with a vocal anti-ESG and Diversity, Equity, and Inclusion (DEI) movement that has developed in the past few years, including state-level anti-ESG and DEI legislation, shareholder activism, and litigation over ESG and DEI policies.

While we expect reduced emphasis on ESG reporting and enforcement at the federal level, states and other jurisdictions continue to push forward with ESG reporting obligations. Companies subject to these reporting requirements, many of which are broad in scope, will be obligated to make potentially significant adjustments to their data collection and compliance programs in order to fulfill their ESG reporting compliance obligations.

In the U.S., California's trio of climate disclosure laws impose reporting obligations on many companies doing business in California. California now requires disclosures for businesses making climate-related claims in California (AB 1305). Beginning January 1, 2026, certain companies conducting business in California will be obligated to post a climate-related financial risk report (SB 261). Also, in 2026, certain companies conducting business in California will be required to publicly disclose and assure their scope 1 and 2 greenhouse gas emissions (scope 3 reporting begins in 2027) (SB 253). In December 2024, the California Air Resources Board (CARB) issued an enforcement notice announcing that CARB will exercise its enforcement discretion in relation to the first reporting cycle for SB 253 when certain conditions are met. CARB is also soliciting feedback (until February 14, 2025) from stakeholders on the implementation of SB 253 and SB 261. We also expect to see continued action at a state level enforcing green marketing standards, as well as private litigation scrutinizing such marketing claims.

International regimes will also continue to drive change, with key deadlines coming up for the European Union's Corporate Sustainability Reporting Directive (CSRD). The first CSRD reports are due to be published in 2025 and will be closely scrutinized by the larger number of companies required to report for the first time in 2026. Companies will also watch to see if EU Member State authorities initiate any related enforcement actions. Although companies in the scope of the EU Corporate Sustainability Due Diligence Directive (CSDDD), intended to complement the CSRD, are not facing a deadline in 2025, they will need to continue preparing for compliance given the wide scope of the obligations under that directive. The scope of companies' obligations under the CSRD, CSDDD, and the EU Taxonomy may be affected by omnibus legislation intended to simplify reporting requirements and reduce the burden on companies under these regimes.

Outside the EU, an increasing number of jurisdictions have already adopted or are in the process of adopting the International Sustainability Standards Board (ISSB)'s sustainability disclosure standards (IFRS S1 and S2) into their financial reporting frameworks, with deadlines varying depending on the jurisdiction. According to the ISSB, as of November 2024, 30 jurisdictions are progressing towards introducing ISSB Standards in their legal or regulatory frameworks.

Energy Efficiency and Extended Producer Responsibility

Federal and state appliance and equipment standards programs obligate manufacturers, importers, private labelers (and in some circumstances retailers) to test, certify, and mark covered products as compliant with energy efficiency standards prior to introduction of those products for sale. Federal standards and test procedures preempt state standards and procedures, but states can generally regulate those products for which there are no federal requirements. The Biden administration enacted many new standards, strengthened many existing standards, and aggressively enforced non-compliance by assessing civil penalties as high as $25 million for violations. In the final days of the Biden administration, the U.S. Department of Energy (DOE) withdrew a number of proposed rules that faced industry opposition and which the Department was concerned would be vulnerable to legal challenge. Based on the posture of the prior Trump administration to the federal program, and efforts by Congressional Republicans over the past four years to block new efficiency standards, the new administration has paused all ongoing rulemakings and will withdraw many if not all proposed new standards. DOE will likely, as it did in the prior Trump administration, initiate rulemakings to amend its process to delay or preclude issuance of new standards. DOE will likely also propose new exclusions for categories of appliances to evade statutory anti-backsliding requirements. Enforcement will likely drop considerably, although note that Chinese manufacturers have been a prominent enforcement target in recent years, such that a protectionist case could be made for continuing such enforcement. During the last Trump administration, states (in particular California, but also Oregon, Washington, Vermont, Hawaii, Massachusetts, New York, and others) regulated a number of products in the absence of federal activity, and also built out their enforcement processes and staffs. We expect a similar uptick in state activity and plaintiff litigation over the next four years.

Extended Producer Responsibility (EPR) laws are state-level laws that hold parties – primarily brand owners, manufacturers, importers or distributors – accountable for the end of life disposal of their products. Currently, there is no federal EPR legislation and that will not likely change under the Trump administration. States will continue to take the lead, and we expect to see a proliferation of these laws, most notably EPR programs for packaging. These packaging EPR laws set fees based on the materials used and packaging EPR laws in California, Maine, and New Jersey require packaging design modifications by imposing minimum postconsumer recycled content. A handful of states, including California, Colorado, Oregon, Minnesota, Maryland, and Maine will continue to take steps forward to implement packaging EPR programs. Several states are expected to propose EPR legislation for packaging in 2025 or begin the evaluation process to gather necessary data to support an EPR program. Watch for this in Illinois, Massachusetts, New Jersey, New York, Tennessee, and Washington. States are also implementing legislation relating to EPR programs for other products, including batteries, textiles, paint and electronic waste. And of course, the wave of plaintiff litigation on EPR issues will continue to require companies' attention.

Supply Chain and Domestic Production

The first Trump administration and the Biden administration both emphasized the importance of reshoring critical supply chains, including for critical minerals, and this is likely to remain a high priority for the new administration. The administration may continue some of the friendshoring efforts initiated by the Biden

administration, but we expect a greater emphasis on unilateral action. Legislative amendments to the IRA will likely leave incentives to reshoring in place and seek to further reduce opportunities for companies with links to China to benefit from any incentives.

One of the few potential areas for bipartisan cooperation on climate-related legislation is a carbon border tariff (*i.e.*, a tariff on imported goods linked to their carbon footprint). A carbon border tariff would provide an advantage to U.S. producers over their relatively more carbon intensive foreign competitors, including China. There is already proposed legislation to study the carbon intensity of U.S. producers to lay the groundwork for a future carbon border tariff. President Trump's tariff-centered trade policy is likely to add momentum to these efforts. The continuing implementation of the EU's Carbon Border Adjustment Mechanism (CBAM) (transitioning to full implementation starting on January 1, 2026), plans by the UK to adopt their own CBAM by 2027, and the exploration of similar measures in other jurisdictions, are also likely to turn legislators' attention on this issue.

The Future Global Plastics Treaty

The Fifth Session of the Intergovernmental Negotiating Committee (INC) meeting in Busan, Korea was anticipated to be the last negotiation for the development of a global plastics treaty. Delegates were unable to reach an agreement on a final text for a global plastics treaty but did determine the need for further negotiation in 2025 using the INC Chair's draft negotiating text published on December 1, 2024. Negotiations were stalled in part due to the broad list of elements and options for potential treaty text. Elements discussed at INC-5 included: chemical and polymer restrictions, product design, waste management, and extended producer responsibility, among several other topics. While plastics do not appear to be a direct focus in the Trump administration's initial policies, the administration's actions focus on domestic oil and gas production may be an indication of where U.S. priorities could lie in future plastics treaty negotiations.

Human Rights and Forced Labor

The U.S. Department of Homeland Security (DHS) added 37 Chinese entities to the Uyghur Forced Labor Prevention Act (UFLPA) entity list just days before the change of administration. We expect to see continued bipartisan support for UFLPA. We expect the Trump administration, with Marco Rubio as Secretary of State nominee, to continue the push to decouple from China. As a result, DHS will likely continue to add to UFLPA's entity and priority product lists.

In President Biden's final weeks, he imposed additional sanctions on Russia with the hopes that it will be difficult for the new administration to undo them. Lifting the sanctions would require the notification of Congress, who could then take a vote of disapproval. President Trump's nominee for Secretary of Treasury, Scott Bessent, stated that he supports even heavier sanctions against Russia in hopes to end the war against Ukraine. It is unclear what will happen to sanctions against Russia in the coming days.

During President Trump's first administration, he threatened to suspend the conflict minerals provision of the Dodd-Frank Act. This issue was not raised during his campaign or in the press before President Trump's return to office. For now, we expect this issue to be a low priority for the second Trump administration.

Separate from any action in the U.S., other countries are continuing to move forward with forced labor and supply chain due diligence legislation. In November 2024, the Council of the European Union adopted the European Forced Labor Regulation (Regulation). The Regulation takes effect December 14, 2027, and prohibits products made with forced labor from being imported or exported to the European market.

Additionally, the European Union adopted the Corporate Sustainability Due Diligence Directive (CSDDD) on July 5, 2024. The CSDDD obligates in-scope companies to carry out due diligence regarding actual and potential adverse impacts to human rights and the environment with respect to their operations, the operations of their subsidiaries, and their value chain. Member states must adopt the CSDDD into their national laws by July 26, 2026. Under the Canada Forced and Child Labour in Supply Chains Act, covered entities are required to publish reports discussing their efforts to prevent and mitigate forced and child labor in their supply chains. The first reports were due under the Canadian legislation in May 2024.

Environmental Justice

Author: Hilary Jacobs

The Trump administration's actions within the first few days of taking office demonstrate a fervent opposition to all things environmental justice, with several day- and week-one actions attempting to reverse the past four years of momentum driven by the Biden administration in this area. While they are distinct concepts, the administration appears to be equating diversity, equity, and inclusion initiatives with environmental justice. Some of the biggest rollbacks of federal environmental justice policy occur in two anti-DEI-focused initiatives—Ending Illegal Discrimination and Restoring Merit-Based Opportunity, and Ending Radical and Wasteful Government DEI Programs and Preferencing.

These actions rescind Biden administration environmental justice executive orders—and reach back even further, to withdraw the 1994 Executive Order 12898. EO 12898 was the first federal action requiring agencies to systematically consider environmental justice in their respective activities, and, until a few years ago, represented the only express federal environmental justice authority. Key Biden Administration executive orders that have now been rescinded include Executive Orders 14008 and 14096, which built on EO 12898 to deepen the federal government's commitment to environmental justice by 1) requiring, a "whole-of-government" approach to advancing environmental justice, and, (2) implementing enhanced measures to track agency accountability for implementing environmental justice responsibilities.

Among other things, the rescinded orders endorsed a broad conception of which communities may be impacted by environmental justice, and required agencies to develop programs, policies, and activities to address "disproportionately high and adverse human heath, environmental, environmental climate-related and other cumulative impacts on disadvantaged communities," including through enforcement initiatives, and to facilitate meaningful engagement with communities. Another hallmark of these executive orders was the creation of "Justice40"—which required federal agencies to direct 40% of benefits from federal investments in areas such as clean energy, energy efficiency, training and workforce development to disadvantaged communities.

We can now expect to see—as Project 2025 and early Trump administration actions have promised—all DEI and environmental justice offices and positions within the federal government eliminated. This will likely result in the removal of EPA's Office of Environmental Justice & External Civil Rights and other agency offices recently established, such as the U.S. Department of Health and Human Service's (HHS) Office of Climate Change and Health Equity. Additionally, agency environmental justice tools are already being taken down—for instance, CEQ's Climate and Economic Justice Screening Tool, established pursuant to E.O. 14008 to effectuate Justice40, was taken down on January 22. HHS's Environmental Justice Index and DOE's Energy Justice Mapping Tool have also been taken down. Even EPA's decade-old mapping tool, EJScreen, may be on the chopping block.

Beyond this, we can also expect to see agencies taking far narrower interpretations of existing authority to incorporate environmental justice considerations into their statutory duties—if at all—and may take affirmative steps to memorialize these interpretations. For instance, during the first Trump administration, DOJ proposed revisions to regulations implementing Title VI of the Civil Rights Act of 1964 that would have removed disparate impact provisions. We may see this rulemaking revived, especially depending on the outcome of the U.S. District Court for the Western District of Louisiana's ruling on the state of Louisiana's request to enjoin DOJ from imposing or enforcing its disparate impact regulations *anywhere* in the country. Pending Title VI investigations and settlements initiated under the previous administration are currently paused pending administrative review and may ultimately be dropped entirely.

States with environmental justice laws, such as Washington, New York, and New Jersey, will continue to enforce those laws regardless of federal policy. For instance, the Massachusetts Attorney General recently established the Environmental Justice Trust designed to direct funds from environmental enforcement settlements to environmental justice projects.

Congressional Review Act

Author: Justin Smith

The CRA provides a mechanism by which Congress can override executive actions, such as rulemakings, if they meet certain criteria. Congress can only review rules issues in the final months before a new Congressional session. Calculating the time frame for Congressional review is not straightforward, but one group recently estimated that the "lookback period" under the CRA extends to actions taken on or after August 16, 2024. With the beginning of the current session of Congress, multiple resolutions invoking the CRA have already been introduced; they seek to override multiple EPA rules including a TSCA rule regulating trichloroethylene, a rule on the phasedown of hydrofluorocarbons, drinking water regulations for lead and copper, and greenhouse gas standards for heavy duty vehicles, as well as four DOE rules setting energy conservation standards for consumer and commercial equipment. Additional CRA resolutions are likely to be introduced in the coming weeks. We issued a client advisory that contains a more detailed overview of the CRA process, and that also discusses other mechanisms for review and revocation of agency rules.

White Collar

Authors: Lou Manzo

From what we can tell thus far, we anticipate white collar enforcement to decrease substantially. The administration is redeploying senior attorneys across DOJ from sections as wide-ranging as National Security, Environment and Natural Resources, and Antitrust to Immigration Enforcement. The administration also seeks to cut federal employment writ large, which will include investigators, analysts, attorneys, and support staff. In addition, we expect criminal enforcement to follow the administration's goals of loosening regulation on business. These developments will substantially slow enforcement. State level enforcement and private lawsuits will fill some of the vacuum in federal enforcement. As noted in our introduction, companies should retain focus on fundamental compliance with core environmental statutes.

Litigation/Enforcement *(not otherwise discussed above)*

Authors: Maddie Boyer, Tap Kolkin, Justin Smith

Please refer to each subject-area section in this alert for more detail on likely litigation and enforcement. We offer some general litigation and enforcement observations in this section.

New & Existing Enforcement Cases

Earlier in the transition, we issued a more detailed alert addressing federal enforcement under the Trump administration. Generally speaking, companies can expect a slow-down in both ongoing and new enforcement matters while President Trump's agency teams and leadership are installed and get up to speed on existing enforcement efforts and establish new enforcement priorities. Case initiations will likely slow further due to President Trump's announced deregulation efforts, cuts to EPA's budget, and reduced staffing levels. President Trump's emphasis on speed will also likely mean more administrative settlements and fewer referrals to DOJ for civil and criminal enforcement. Companies should also expect the federal government to coordinate more closely with state regulators in enforcement matters, which may create opportunities for more favorable settlements for companies operating in business-friendly states.

Forms of Relief

During the first Trump administration, DOJ (and, to a lesser extent, EPA) imposed new restrictions on the types of relief that the government would seek in judicial enforcement matters—as well as the settlement terms that the government would approve. In particular, the Trump DOJ is likely to reduce the usage of certain kinds of settlement tools:

a) *Third Party Audits.* During the Biden administration, the federal government increasingly demanded settling parties to hire third party auditors to complete compliance evaluations as a condition of settlement. Under the Trump administration, however, expect fewer demands for third party audits and, where such demands are made, additional flexibility regarding the number and frequency of such audits. Other novel forms of relief, like advanced monitoring, will also likely fall out of favor with the new administration.

b) *Mitigation Projects.* Mitigation is injunctive relief to remedy, reduce, or offset past harms caused by violations in the case. Since it is part of the injunctive relief package, mitigation warrants no direct civil penalty reduction. Because such projects are aimed at offsetting past environmental harm, they typically require a nexus between the project and the harm caused by the violations to restore the status quo ante. While such projects will likely continue under the new administration, they will likely be smaller, less expensive, and tied to the offending site or other facilities under the same ownership.

c) *Supplemental Environmental Projects (SEPs).* A SEP is a voluntary and environmentally beneficial project resulting from negotiation between the government and an alleged violator that would be unavailable outside the settlement context. As explained in an earlier alert, the first-term Trump DOJ issued a series of policy memos restricting the use of SEPs. Companies should expect re-restriction of SEPs involving payments to third parties, and, depending on new EPA and DOJ leadership, a broader prohibition may also be on the table.

State Attorney General Litigation

During the first Trump administration, state attorneys general filed more than 160 multistate lawsuits against the administration; we expect the same pattern during this administration. California called a special legislative session to appropriate additional funds for anticipated litigation. "Blue states" attorneys general have already begun to intervene in litigation to defend Biden administration priorities, including the lead and copper rule and a number of non-environmental rules including those surrounding federal grants.

NGO Litigation

Similar to President Trump's first term, environmental groups began raising significant funds on election night touting their plan to take on the Trump administration once again. In the first Trump administration, environmental groups did not focus solely on suing the federal government; some also filed enforcement suits.

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[1]The PFAs rule by contrast is outside the time period prescribed in the CRA for rolling back recently issued regulations.