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## Trump election puts environment into less than green state

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The transition of power from former President Barack Obama to President Donald Trump poses significant uncertainty for the future of U.S. environmental protection measures. At issue is whether President Trump will follow through on campaign commitments to limit the authority of the U.S. Environmental Protection Agency and to dismantle new and existing environmental initiatives, or if a more moderate approach to realign environmental priorities will emerge.

What is certain is that conservative, free-market, business organizations have lined up to tell President Trump what should be done with the current U.S. regulatory agenda. What is less certain is if challenges to environmental protections will look similar to what we have seen with the Bush and Reagan administrations or if we can expect action that is unpredictable and different from what has happened in the past.

President Trump's inaugural speech made no mention of environmental concerns or climate change issues. While some campaign-related follow-up actions have been taken, environmental considerations do not appear to be a critical priority for this administration at this time.

Recently confirmed former Oklahoma attorney general Scott Pruitt, President Trump's choice for EPA administrator and a vocal critic of EPA, may provide insight into the new administration's thinking around environmental matters and escalate more aggressive decision-making and action.

### **Trump's authority to implement change: What can he do?**

What legal authority does President Trump have to change course from Obama-era environmental and climate change decisions? While it depends upon the regulatory or litigation at issue, there are a number of alternatives available to potentially alter key regulatory initiatives.

To date, he has issued a number of executive orders directing the actions of government agencies about how to operate or manage in key areas as well as to reverse previously issued executive orders.

An executive order is legally binding, numbered and will be published in the official government record, the Federal Register. Granted by Article II of the Constitution, the wide-ranging executive order authority is limited in scope and cannot be used to overturn existing law passed by Congress.

The Congressional Review Act is another potential means of responding to the most recent Obama authorized regulations. Pulling back regulations under this law technically means that the rule will not take effect and no similar rule can be issued.

There has been a great deal of focus on the possible uses of this law, but until this year it had been largely untested, used only once to repeal Department of Labor ergonomic standards. Reliance on this approach is burdensome since each resolution of disapproval only applies to one regulation.

This law may be used to overturn any Obama-era regulation finalized after June 2016, applicable to more than 50 major regulations.

Working within the existing legal framework, President Trump also could launch a formal effort to rescind rules consistent with the Administrative Procedure Act as well as work with Congress to amend laws setting forth a longer-term policy change.

In addition, he has enforcement discretion and can make a determination not to defend existing litigation over controversial rule-makings including consideration of a stay or settlement in any such case.

### **Environmental outlook for 2017: What we know – what we anticipate**

Within the first 30 days of his administration, President Trump has taken key action to minimize the authority of EPA consistent with earlier campaign promises. Significant environmental developments include:

- **New EPA Administrator Scott Pruitt:** On Feb. 27, Oklahoma attorney general Scott Pruitt was confirmed by the Senate to serve as EPA administrator amid controversy and criticism given his past opposition to the agency.

Pruitt has sued EPA numerous times to challenge EPA regulations, including current litigation over the Obama administration's Clean Power Plan. Oklahoma is part of the coalition of 28 states challenging EPA's regulation of greenhouse gas emissions from existing power plants — a key component of the Clean Power Plan — in the case of *West Virginia v. EPA*, Case No. 15-1363. This case is currently pending in the U.S. Court of Appeals for the D.C. Circuit.

- **Executive orders impacting EPA-related matters:** President Trump has issued a number of executive orders since taking office, with several focused on environmental issues:
  1. Freeze on new and pending rules: Jan. 20 — halts rules until directly approved by Trump administration or by agency led by Trump appointee;
  2. Advancing the Dakota Access and Keystone XL pipelines: Jan. 24 — instructs expedited review and approval of construction and operation of pipeline by the Army Corp of Engineers and invites Trans Canada to resubmit its application for presidential permit to construct the pipeline with 60-day response;
  3. Expedited environmental review on infrastructure projects: Jan. 24 — instructs Council on Environmental Quality to create expedited procedures for review/approval of high priority infrastructure projects including U.S. electric grid, telecommunications, repair/upgrade of port facilities, airports, pipelines, bridges and highways;
  4. Review domestic manufacturing regulation: Jan. 24 — expedites review and approval process to construct or expand manufacturing facilities reducing regulatory burden specifically including EPA rules; and
  5. Reducing regulation: Jan. 30 — directs any executive department that proposes a new regulation to identify two regulations to be repealed and requires fiscal year 2017 costs of new/repealed regulations to be zero.

- Congressional Review Act: The Republican-led Congress also has taken action under the Congressional Review Act to pull back on recent environmental regulations:
  1. H.J. Res. 41: Resolution to disapprove Security and Exchange Commission rule re disclosing payments to foreign governments passed the House (2/1/17) and the Senate; signed by the president (2/14/17);
  2. H.J. Res. 38, 55-45: Senate voted to repeal the Stream Protection Rule (2/2/17); signed by the president (2/16/17);
  3. H.J. Res. 44: Resolution to disapprove Bureau of Land Management's regulations to prepare, revise and amend land use plans pursuant to the Federal Land Policy and Management Act passed House, in Senate as of 2/8/17;
  4. H.J. Res. 39 and S.J. Res. 11: Resolution to disapprove the Department of Interior's methane venting and flaring rule; and
  5. H.J. Res. 59: Introduced to disapprove the Risk Management Plan rule.

With EPA Administrator Pruitt now confirmed, it is believed that President Trump will consider further action to ensure full use of domestic energy sources and the subject matter of these actions likely will include:

- Climate change opposition: It is believed that President Trump is readying a 2017 rollback of the existing U.S. climate change agenda and possible actions include:
  1. United Nations Framework Convention on Climate Change: possible withdrawal by U.S.;
  2. Paris Agreement: possible withdrawal by U.S.
  3. Green Climate Fund: likely elimination of \$3 billion U.S. funding commitment
- Yucca Mountain: President Trump may authorize funding and reinstate process to finalize permanent radioactive waste disposal site in Nevada.
- Clean Power Plan: President Trump's transition website highlights plans to eliminate the Clean Power Plan and to dismantle climate policy law setting a national limit on carbon dioxide emissions from power plants.
- Coal, oil and natural gas: President Trump has promised increased support for fossil fuels including possible exploration on federal lands.

### **Environmental groups' advocacy**

Early actions targeted at EPA already have resulted in several environmental groups suing the Trump administration to block the two-for-one executive order directing any executive department that proposes a new regulation to identify two regulations to be repealed.

The new lawsuit filed in the U.S. District Court for the District of Columbia names as defendants the president, the acting director of Office of Management and Budget and the current or acting secretaries and directors of more than a dozen executive departments and agencies.

The complaint alleges that the agencies cannot lawfully comply with the president's order because doing so would violate the statutes under which the agencies operate and the Administrative Procedure Act.

### **Conclusion**

President Trump pledged to eliminate restrictions on the energy sector to authorize the full use of domestic energy sources.

In doing so, he committed to rolling back climate change regulations and overhauling long-standing environmental law.

President Trump also successfully campaigned on the promise to make America great again. Surely this includes continued protection of human health, the environment and this country's natural resources.

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