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The (Possible) Future of Federal Environmental Regulations during Donald Trump's Second Term as U.S. President

The 2024 U.S. presidential election concluded with the victory of Republican candidate and former president Donald Trump, signaling anticipated shifts in environmental and energy policies. Expected changes include potential reversals of recent EPA regulations, reallocations of unspent funds from the Inflation Reduction Act (IRA) and Bipartisan Infrastructure Law (BIL), and heightened support for domestic energy production.

As Trump prepares to take office in less than a week, this document highlights potential changes in the current suite of environmental regulations and the steps the incoming administration may take to reverse some of the Biden-era policies. Please note that this document presents EVA's analysis of likely outcomes for each of the rules and should not be relied upon as legal advice.

Congressional Review Act

The **Congressional Review Act (CRA)** was established in 1996 to provide a mechanism for Congress to address significant regulatory changes implemented by outgoing administrations during the final months of their tenure. By allowing an expedited process for reviewing qualifying recent federal regulations, the CRA ensures that major regulatory actions taken during this period can be subject to enhanced scrutiny. Under the CRA, Congress can overturn a rule through a resolution of disapproval passed by a simple majority in both chambers, making it the easiest pathway for the incoming administration to reverse existing rules. If the resolution is vetoed by the President, overturning the veto would require a two-thirds majority in Congress.

The CRA establishes a lookback period that is typically the final 60 legislative days of the previous congressional session. If a regulation falls within the lookback period, it is vulnerable to repeal through this streamlined process, making it a particularly impactful tool for incoming administrations to shape policy quickly without requiring extensive legislative deliberation.

The estimated CRA lookback period for this transition began **around August 1st (the exact date will depend on the number of legislative sessions between the election and the start of the 119th Congress)**. All agencies are well aware of the CRA exposure and sought in their final rulemaking activities to finalize and publish in the *Federal Register* rules prior to the commencement of the lookback dates. Several key environmental regulations were finalized in 2024 prior to the lookback period, including the **Greenhouse Gas (GHG) Rule**, the **Effluent Limitation Guidelines (ELG) Update**, and the **Mercury & Air Toxics Standard (MATS) Update**, all of which were published in May 2024, making an expedited appeal through the CRA unavailable. That being said, these and other regulations may face challenges using other mechanisms.

Chevron Doctrine

The Chevron doctrine is a principle derived from the 1984 Supreme Court case Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. It establishes a legal framework for judicial deference to administrative agencies' interpretations of statutes they administer, provided the statute is ambiguous and the agency's interpretation is reasonable. On June 28, 2024, the Supreme Court overturned this precedent ruling in Loper Bright Enterprises et al. v Raimondo, Secretary of Commerce et al., that courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.

The implications of this ruling are starting to unfold. In East Kentucky Power Cooperative, Inc.'s (EKPC) case against the EPA[1], EKPC disputed EPA's authority to regulate "legacy" coal ash disposal sites under the Resource Conservation and Recovery Act (RCRA), asserting that EPA's interpretation exceeds the statutory limits Congress intended. EKPC's argument—that the statutory language unambiguously excludes regulation of closed sites—gained strength in this new judicial landscape, citing the Loper decision. However, on December 11, 2024, the Supreme Court declined to take up the case and denied the request for a stay, thereby upholding EPA's rule and allowing its enforcement to proceed as scheduled.

Cases like these are likely to become more frequent, testing the boundaries of administrative authority. It will be compelling to see how courts interpret similar challenges in the context of the next administration.

Litigation Withdrawal, Stay Motion and Rulemaking

Any new major federal rule is subject to potential legal challenges. It is not unusual for affected parties to request a stay pending the disposition of the challenges. For a stay to be granted, petitioners must demonstrate that they will suffer significant and irreparable harm if the rule is allowed to take effect or continue while litigation is pending. In addition, the petitioner must show a strong likelihood that the case will succeed on the underlying legal claims once the case is fully litigated. Other factors, such as the balance of hardships and the public interest, can also play a significant role in the court's decision.

A new administration can choose to withdraw from a case where a federal rule is being litigated, especially if the new administration disagrees with the policy underlying the rule. By motioning to withdraw or delay the litigation of the existing rule, the new administration signals to the court that it intends to revisit the regulation, which may render the litigation moot. However, this depends on whether the court grants such a motion, as it has discretion here, and on any additional parties' interests in the litigation (such as intervenors).

If the litigation is withdrawn or paused, the administration could initiate a new rulemaking process. This would involve complying with the Administrative Procedure Act (APA), which requires a public notice-and-comment period for any new rule or modification to existing regulations. To rescind or replace the existing rule, the administration must provide a "reasoned explanation" for the change, as set out in FCC v. Fox Television Stations, Inc. (2009). Courts generally allow agencies to reverse prior policies if they offer a rational basis and address reliance interests, but they cannot do so arbitrarily. Additionally, any new rule would still have to undergo a detailed cost-benefit analysis under executive orders governing regulatory review (like EO 12866), and the agency would need to justify its new cost-benefit rationale, which may differ from the benefit found for the initial rule. For example, during Trump's first term, the EPA asked the U.S. Court

[1] www.supremecourt.gov/DocketPDF/24/24A463/331069/20241105171923255_EKPC%20SCOTUS%20stay%20application.pdf

of Appeals to delay a ruling on the Obama-Era Clean Power Plan, which the U.S. Supreme Court already stayed, while it reconsidered and issued a new replacement rule called the Affordable Clean Energy rule.

Even if the new administration can issue a new rule, any deviation from the previous cost-benefit analysis could make the new rule vulnerable to legal challenges from environmental groups or other stakeholders, who may argue that the administration did not sufficiently justify the economic or scientific grounds for the change. The litigation in the Court of Appeals may proceed if the court or intervenors contest the withdrawal or if it's unclear whether the new rule sufficiently addresses the issues under litigation. This creates a potential for "remand without vacatur," allowing the initial rule to remain in effect until the new rulemaking is finalized.

Critical Environmental Regulations and Projected Developments

The major environmental regulations affecting the U.S. power and natural gas sectors are discussed below.

Greenhouse Gas (GHG) Rule:

The final iteration of the GHG Rule was announced in April 2024 and published in the Federal Register (FR) in May of the same year. Of note, new regulations can only be legally challenged once they have been published in the FR. The GHG rules are effectively amendments to Sections 111(b) and 111(d) of the Clean Air Act. The changes to Section 111(d) specify emission limits for existing fossil fuel-fired electric generating units (EGUs). The changes to Section 111(b) specific emission limits for newly constructed, modified, or rebuilt natural gas combustion turbines. The Section 111(b) changes set limits on new gas-powered units to operate at a particular capacity factor or maintain a specific emissions rate using emission reduction technology. The Section 111(d) changes set emission rates for coal-fired EGUs based upon three possible emission reduction requirements based on the retirement date of the coal-fired EGU.

On October 16, 2024, the U.S. Supreme Court denied emergency applications from specific states, energy companies, and industry groups seeking to stay the implementation of the GHG Rule while the U.S. Court of Appeals for the D.C. Circuit reviews the underlying challenge. As mentioned, to obtain a stay, petitioners must demonstrate both a likelihood of irreparable harm and a substantial likelihood of success on the merits of the case. Given that the GHG Rule's compliance start is set for 2030, the Court likely found that immediate irreparable harm was not sufficiently established. The D.C. Circuit heard the oral arguments on the rule on December 6, 2024, but has not issued a decision yet. Should the court overturn the GHG Rule, environmental organizations are expected to appeal to the Supreme Court. Conversely, if the rule is upheld, opponents will likely seek Supreme Court review. A decision from the Supreme Court could emerge as early as the end of June 2025.

The incoming Trump administration may also consider withdrawing the GHG Rule and initiating a new rulemaking process. This approach would require substantial justification, including identifying deficiencies in the rule's scientific or technological basis or demonstrating through cost-benefit analysis that the existing rule imposes unduly costs or reduced net benefits. The GHG Rule's reliance on ancillary environmental benefits, such as those identified in the Harvard Six Cities Study—which links air pollution to adverse health outcomes—could be contested under the Trump administration's previous "Secret Science" rule. This rule mandates that EPA use only studies with publicly available data and methodologies in significant regulatory actions. Since the Six Cities Study utilizes confidential health information, its findings might be excluded from consideration under this policy and, therefore, would significantly impact the cost-benefit analysis of the existing GHG rule.

Mercury and Air Toxics Standards (MATS):

The 2024 update to the MATS Rule significantly tightens the filterable particulate matter (fPM) emission limit for existing coal-fired EGUs, lowering the standard from 0.030 lbs/MMBtu (2012 MATS Rule) to 0.010 lbs/MMBtu. The compliance date for this rule is set to be May 2027. The EPA estimates about 11.6 GW of operational coal capacity that will need to implement PM control upgrades or replacements. In September 2024, North Dakota and a coalition of industry groups asked the Court of Appeals to put the rule on hold while the litigation went forward, but the D.C. Circuit rejected that request. The challengers then went to the Supreme Court in August, filing seven separate applications to stay the rule while the D.C. Circuit's review of the underlying case continued. Later, on October 4, the Supreme Court denied applications for a stay of the rule.

As discussed in the previous sections, a stay motion is granted only if the petitioners can demonstrate both immediate, irreparable harm and a strong likelihood that the regulation in question would not withstand judicial scrutiny. In this case, the petitioners failed to meet one or both conditions, as evidenced by the denial of the stay motion.

Additionally, the updated MATS rule was published in May 2024, placing it outside the scope of the Congressional Review Act (CRA) and, therefore, not subject to direct repeal under its provisions. However, the new administration retains the option to ask the court to delay the case against the MATS Update while it prepares a new, likely less stringent, rule.

Effluent Limitation Guidelines (ELG):

The EPA released an update to the Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category. The rule revises technology-based effluent limitations guidelines and standards (ELGs) for the steam electric power generating point source category. It mainly targets flue gas desulfurization (FGD) wastewater, bottom ash (BA) transport water, legacy wastewater at existing sources, and combustion residual leachate (CRL) at new and existing sources.

On October 9, 2024, the Eight Circuit denied the stay motion for the 2024 ELG brought by Southwestern Electric Co. and other intervenors. The intervenors immediately appealed the decision to the U.S. Supreme Court, where a decision is still pending. In the meantime, the legal challenge of the underlying rule remains active. Therefore, the possible actions of the incoming Trump EPA regarding this rule mirror that of the GHG and MATS rules.

Coal Combustion Residuals Rule (CCR):

In April 2024, the Biden administration issued a new rule under the Resource Conservation and Recovery Act (RCRA) specifically targeting legacy coal combustion residuals (CCR) impoundments. The rule mandates that coal companies address contamination caused by these older disposal units, requiring them to take corrective actions to control and clean up pollution. This update closes a significant loophole in the 2015 regulations, which exempted inactive and leaky legacy CCR impoundments from compliance. Under the new rule, closed facilities must retroactively apply these standards to remediate groundwater contamination at affected sites, enhancing protections for communities near inactive coal-burning power plants.

Kentucky and associated utilities are currently petitioning for a stay of this rule, arguing that it exceeds the federal government's regulatory authority under existing law. These stakeholders claim that the retroactive application imposes undue burdens.

Good Neighbor Rule & National Air Quality Ambient Standards (NAAQS):

The National Ambient Air Quality Standards (NAAQS), established by EPA under the Clean Air Act, include two types of standards: primary and secondary. While primary standards are set to protect public health, secondary NAAQS are established to protect public welfare, which includes considerations such as the environment, visibility, property, crops, forests, and wildlife. EPA is required to **review the NAAQS every five years** for each of the six "criteria pollutants." To assess how these rules have evolved, it's helpful to examine their treatment under recent administrations:

- The Obama administration placed a strong emphasis on environmental protection and climate change, leading to some of the most significant adjustments to the NAAQS. EPA, during the Obama administration, lowered the NAAQS for ground-level ozone from 75 ppb to 70 ppb over an 8-hour average, reduced PM2.5 from 15 ug/m3 to 12 ug/m3 on an annual basis, and made similar changes to lead and SO2 standards.
- The Trump administration adopted a more industry-friendly regulatory stance, emphasizing economic growth and reduced regulatory burdens. Under Trump, the EPA decided to retain both ozone and PM2.5 standards, rejecting recommendations from the EPA's own Clean Air Scientific Advisory Committee (CASAC) and other health experts for more stringent standards. In January 2021, the EPA finalized the 'secret science' rule aimed to limit the EPA's use of scientific studies in regulatory decision-making unless the underlying data were publicly available, citing a need for transparency, which the federal court later vacated.
- Biden Administration - The Biden administration reversed the Trump-era "secret science" rule by finalizing its removal from the **Code of Federal Regulations** in May 2021. In March 2023, EPA under Biden finalized the **Good Neighbor Plan (GNR)** to address the 2015 ozone NAAQS, targeting interstate pollution. However, the GNR faced legal challenges from several states and industry groups. In June 2024, the **Supreme Court issued a stay**, temporarily halting the rule's enforcement in certain states.

With the Supreme Court's stay in place, the incoming Trump administration may attempt to remove the GNR altogether. However, an update to the Cross-State Air Pollution Rule is likely needed as states rely on their participation in it as part of their State Implementation Plans for the Ozone NAAQS. The latest CSAPR updates from 2017 and 2021 only brought the program in compliance with the 2008 Ozone NAAQS, not the 2015 Ozone NAAQS.

Methane Emissions Standards for the Oil & Gas Sector

In December 2023, EPA issued the methane rule establishing New Source Performance Standards (NSPS) and Emissions Guidelines aimed at reducing methane and volatile organic compound (VOC) emissions from both new and existing oil and gas wells. The rule was published in the Federal Register in March 2024. A vital component of the rule is the inclusion of a "model rule," which provides "presumptive standards for designated facilities." States are required to develop plans that are "at least as protective as the model rule" or adhere to a separate regulatory process involving variance provisions. Stakeholders initially challenged the rule in the D.C. Circuit Court, arguing that EPA overstepped its authority and set unattainable standards with the new regulations and requesting a stay during ongoing litigation. In July, the D.C. Circuit denied the request for a stay, prompting challengers to escalate the matter to the Supreme Court in August. In October 2024, the Supreme Court declined to grant a stay on the rule. Additionally, since the rule was published in March 2024, the CRA cannot be used to vacate it.

Subsequently, on November 12, the EPA announced a final rule targeting methane emissions along the entire supply chain of the oil and gas sector, including the implementation of a waste emissions charge scheduled to take effect in 2025. The Waste Emissions Charge applies to methane from certain oil and gas facilities that report emissions of more than 25,000 metric tons of carbon dioxide equivalent per year to the Greenhouse Gas Reporting Program. The incoming Trump

administration may attempt to weaken or rescind the rule, potentially through the CRA. Notably, the IRA mandates specific fees and penalties for companies emitting methane above the established thresholds. However, the newly elected and fully Republican-controlled Congress could move to dismantle the critical parts of the IRA and remove the required methane emission fees.

Regional Haze

The EPA established the Regional Haze Rule (RHR) in 1999 to improve visibility in 156 Class I national parks and wilderness areas, as mandated by the Clean Air Act (CAA) amendments of 1977 and 1990. The RHR requires states and territories to develop State Implementation Plans (SIPs) aimed at achieving natural visibility conditions by 2064, with periodic updates and progress reports every five years. States are encouraged to collaborate regionally, and significant pollution sources were initially required to implement Best Available Retrofit Technology (BART), with subsequent SIPs focusing on long-term strategies to continue progress.

The program is currently in its second implementation period (2018–2028), with SIPs initially due by July 31, 2021. If a state fails to submit an adequate SIP or misses the deadline, EPA has the authority to implement a Federal Implementation Plan (FIP) to ensure compliance. As of now, 28 state SIPs are under review, while ten states are still in the process of drafting their plans despite the deadline having long passed. Under the new administration, the EPA may prioritize expediting the review and approval process for SIPs, potentially applying less stringent checks to facilitate progress.

Conclusion

At this time, there is no doubt that the change in the administration will result in significant and potentially disruptive changes in the energy and environmental areas. This discussion is not definitive as to what will occur but instead points out areas where there could be significant and impactful changes. Careful monitoring and potential involvement with the stay actions are helpful to ensure that the appropriate outcomes are reached.

In its Quarterly Environmental Report, EVA covers all major environmental regulatory updates and the major U.S. emissions markets. For more information, please email us at publications@evainc.com or visit us at www.evainc.com.