Environmental Outlook Under EPA Administrator Pruitt

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 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. It remains unclear whether changes 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.

Trump’s inaugural speech made no mention of environmental concerns or climate change issues. Scott Pruitt, Trump’s choice for EPA administrator and a vocal critic of the EPA, also did not mention climate change issues in his welcoming address to EPA employees. While some campaign promise-related actions have been taken by Trump, environmental issues do not appear to be a critical priority for the administration at this time. Nevertheless, the initial positions and actions taken by the recently confirmed EPA Administrator Scott Pruitt may provide insight into the new administration’s thinking around environmental matters and whether it will decide to escalate more aggressive decision-making and action.

EPA Administrator Scott Pruitt: What We Know

On Feb. 17, former 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. In his six years as Oklahoma attorney general, Pruitt sued the EPA 14 times to challenge EPA regulations, including currently pending litigation over the Obama administration’s Clean Power Plan regulation of greenhouse gas emissions from existing power plants and the EPA’s Clean Water Rule.

In his confirmation hearing and his opening remarks to EPA employees on Feb. 21, Pruitt identified a number of principles that will guide his management of the EPA, including:

- Protecting the environment while also promoting economic growth;
• Focusing on federalism and partnering with states with respect to enforcement and related issues;

• Following set procedures when developing rules to provide certainty to industry; and

• Dealing with contentious issues with civility.

Pruitt’s biography posted on the EPA’s website provides some additional insight into how he views the EPA’s role in environmental regulation. The biography starts with the positive statement that “Pruitt believes that promoting and protecting a strong and healthy environment is among the lifeblood priorities of the government, and that the EPA is vital to that mission.” It then goes on to describe Pruitt as “a national leader in the cause to restore the proper balance between the states and federal government, [who] established Oklahoma’s first federalism unit to combat unwarranted regulation and overreach by the federal government.”

Based on these initial statements, Pruitt appears ready to continue his work of ensuring a larger role for states in defining and enforcing environmental protections, which will certainly mean a reduced role for the EPA and the federal government.

Changes on the Horizon for EPA Priorities

One of the first orders of business for Pruitt will be to review recent and pending EPA regulations that have been subject to the Trump administration’s “Regulatory Freeze Pending Review.” Under the administration’s direction, all pending EPA regulations that have not yet been published in the Federal Register are on hold, and all EPA regulations that have been published in the Federal Register but had not reached their effective date (as of Jan. 26, 2017) have been delayed until March 21, 2017. The “regulatory freeze” impacts dozens of EPA regulations, including EPA’s risk management program (RMP) facility safety rule, the 2017 renewable fuel standard (RFS) targets and the addition of vapor intrusion to Superfund NPL site scoring.

As far as Pruitt’s substantive environmental agenda, he has indicated that under his leadership, the EPA will prioritize cleaning up contaminated Superfund sites, attaining compliance with National Ambient Air Quality Standards (NAAQS) and improving water infrastructure. In his confirmation proceedings, Pruitt stated that he would advocate for additional funding for Superfund cleanup in the large infrastructure packaged tentatively proposed by the Trump administration. He has also indicated the need for infrastructure spending to go beyond roads and bridges to address water infrastructure, which has been at issue in the Flint, Michigan, lead contamination of drinking water and recent threats to California dams.

In addition to Pruitt’s affirmative plans for the agency, the administration will likely direct the EPA to roll back or revise certain environmental regulations and policies implemented during the Obama administration. Two issues explicitly in the Trump administration’s crosshairs are Obama’s Clean Power Plan and the breadth of the EPA’s jurisdiction under the Clean Water Act. There are a number of alternatives available to potentially alter these key regulatory initiatives. Working within the existing legal framework, Pruitt could direct the EPA to launch a formal effort to rescind final rules consistent with the Administrative Procedure Act. Taking action under the APA to rescind final rules is a lengthy process, but may be the only way for the Trump administration to get rid of all of the Obama administration’s climate change regulations, many of which have been final rules for years.
In addition, the administration has enforcement discretion and can make a determination not to defend existing litigation over controversial rulemakings including consideration of a stay or settlement in any such case. This enforcement discretion will likely come into play with regard to currently pending litigation challenging the EPA’s regulation of GHG emissions from existing power plants — a key component of the Clean Power Plan. As Oklahoma attorney general, Pruitt represented the state of Oklahoma, which joined with 27 other states to challenge the EPA’s Clean Power Plan in the case of West Virginia v. EPA, Case No. 15-1363. This case is currently pending in the D.C. Circuit. As Pruitt was one of the attorneys general challenging the EPA’s Clean Power Plan regulations, he is not likely to defend those regulations now that he controls the EPA.

Similarly situated is the EPA’s Clean Water Rule, which sets forth a broad definition of the types of waters subject to regulation by the EPA under the Clean Water Act. In another case Pruitt was involved in as Oklahoma attorney general, Oklahoma and several other states have sued the EPA over the Clean Water Rule. The case, National Association of Manufacturers v. U.S. Department of Defense et al., Case No. 16-299, is currently before the U.S. Supreme Court, which will determine whether the Sixth Circuit has jurisdiction under the Clean Water Act to review the EPA rule. Once again, the EPA and the Trump administration are not likely to continue to defend a rule that Pruitt was challenging up until his appointment.

A New Focus on Energy Policy

With Pruitt now confirmed, it is believed that Trump will consider further action to ensure full use of domestic energy sources. In addition to the potential rollback of the Clean Power Plan, the Trump administration’s actions on energy likely will include:

- **Opposition to International Climate Change Obligations**: It is believed that Trump is readying a 2017 rollback of the existing U.S. climate change agenda. Potential actions by the administration include the possible withdrawal by the U.S. from the United Nations Framework Convention on Climate Change (UNFCCC); the possible withdrawal by U.S. from the Paris agreement; and the likely elimination of the $3 billion U.S. funding commitment under the Green Climate Fund.

- **Yucca Mountain**: Trump may authorize funding and reinstate the process to finalize the permanent radioactive waste disposal site in Nevada.

- **Coal, Oil and Natural Gas**: Trump has promised increased support for fossil fuels including possible exploration on federal lands.

Pruitt has a long history of working closely with oil and gas companies in his home state of Oklahoma. This relationship has been the focus of recent inquiries into Pruitt’s emails as Oklahoma attorney general. On Feb. 22, 2017, under court order, the Oklahoma attorney general’s office released thousands of emails, many of which indicate a close relationship between Pruitt and energy companies and organizations. Pruitt’s past support of these oil and gas entities is in line with Trump’s stated goals of increasing U.S. fossil fuel production.

Conclusion

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. Pruitt has expressed similar priorities. 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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