The election of Donald Trump as the 45th President of the United States will spur significant changes to U.S. energy policy and regulation, many of which flatly contradict positions the Obama Administration has taken. While some of those anticipated changes may be implemented quickly, most will take considerable effort and collaboration, and others are unlikely to be implemented at all. Additionally, the fact that the House and Senate are held by the Republican Party provides an opportunity for legislation affecting energy policy and regulation. It is not clear the extent to which Congress will acquiesce to Mr. Trump's energy agenda, although his stated policies are largely in line with Republican energy orthodoxy.

Our initial views on the Trump Administration’s likely impacts on energy are discussed below in the form of responses to the most common questions we expect in the aftermath of the election. There is, of course, inherent uncertainty to any analysis of how the Trump Administration might shape energy policy. Never having held elective office, Mr. Trump has no record of prior energy policies to provide insight into his likely approach, and his populist movement has defied prediction and all political conventions. Moreover, it is highly unlikely he will retain senior agency officials in his new administration. In this atmosphere of uncertainty, however, we hope to shed some light on the baseline questions about the future of energy policy and regulation in the United States.

**Will the Trump Administration promote domestic energy development and export?**

Unquestionably, yes. The promotion and development of fossil fuels has been a key part of the Trump campaign, alongside his insistence on the illegitimacy of climate change science and disapproval of the Paris Agreement. It is, therefore, reasonable to expect that his administration will promote changes to environmental laws, regulations, and policies that could facilitate the development, transportation, and export of coal, oil, gas, and other petroleum products, which could include at least the following:

- reincarnating the Keystone Pipeline project;
- promoting the Dakota Access Pipeline;
- opening up (or easing the way for) increased exploration and production in the Arctic
As far as existing initiatives are concerned, the Trump Administration almost certainly will attempt to dismantle the regulatory framework for greenhouse-gas emissions. An early step in that direction would be abandoning the Obama Administration’s Climate Action Plan, which addresses methane emissions from existing oil and gas sources, including Information Collection Requests under the plan that are currently pending. Other targets will include the Clean Power Plan. Gutting the Clean Power Plan would make it easier and cheaper to burn coal and natural gas. These efforts will be complicated by precedent in the U.S. Supreme Court and D.C. Circuit compelling the Environmental Protection Agency (EPA) to address greenhouse gas emissions, at least in the short term. That precedent could change dramatically, however, assuming the Trump Administration will populate current and future judicial vacancies — including on the Supreme Court — with conservative judges and justices. Litigation over the degree to which those precedents constrain Trump’s deregulatory agenda in the future should be expected.

One very uncertain issue for everyone to watch carefully is how the Trump Administration communicates with and attempts to work, either with or against, other countries that have significant energy interests, including those in the Middle East. Mr. Trump’s apparent antipathy for international collaboration, which was evident during his campaign, could have wide-ranging effects on the ability of U.S. energy companies to export petroleum products abroad and otherwise compete in the world market.

**Will Mr. Trump immediately abolish the U.S. Environmental Protection Agency?**

No. Legally speaking, abolishing EPA would require the approval of Congress to repeal the laws that EPA administers. Until that time, the president is constitutionally bound to uphold and implement those laws, which requires administrative support. More practically, abolishing EPA would require Congress to unwind more than 40 years of environmental law upon which the business community depends. Regulatory compliance is built into the standard processes, profit evaluations, and investment strategies of countless business across the country. Cars and trucks require EPA approval to be sold in the U.S.; pesticides must be registered with EPA; and pollution-control and risk-reduction technologies have been mandated by EPA. Immediately abolishing EPA without addressing any of the underlying environmental laws that EPA administers and enforces would throw all of industry into uncertainty and wreak havoc on the economy.
It is much more likely that the Trump Administration and Congress would narrow or eliminate certain provisions of U.S. environmental laws that are currently implemented and enforced by EPA. However, accomplishing that objective will not only require his Administration to secure sufficient votes in the U.S. House and Senate to pass the legislation, but would likely require securing 60 votes in the U.S. Senate to overcome any threatened Democratic filibusters. Though achievable, any such significant changes to environmental statutes will certainly not occur overnight. The second Bush Administration imposed a 60-day stay on pending regulations when it succeeded the Clinton Administration, and the Trump Administration could impose a similar hiatus while it assesses the regulatory framework.

**How might the Trump Administration attempt to amend environmental laws?**

Regulated industries, especially those that produce energy and depend on energy production, have long sought a number of environmental reforms, many of which now may find life in the Trump Administration. Such perennial priorities include:

- reforming how the National Ambient Air Quality Standards (NAAQS) are implemented so that costs are considered and the automatic five-year cycle for NAAQS reconsideration is removed;
- reforming the Administrative Procedure Act to curb the level of deference judges pay to federal agencies' interpretations;
- reducing the delays and burdens associated with the review of major federal projects, particularly infrastructure projects, under the National Environmental Policy Act (NEPA);
- reforming regulations under the Clean Water Act to limit the extent to which waters are considered “Waters of the United States,” a set of regulations currently held up in court; and
- limiting the import and substantive requirements of the Endangered Species Act.

We note, however, that deregulation in some of these areas, such as air quality, where significant authority has been delegated to the states, may prompt certain states to increase their regulatory frameworks in response to that deregulation, or to address any perceived gaps.

**Will the Trump Administration enforce environmental laws?**

Yes. Although Mr. Trump's political appointees will head both EPA and the U.S. Department of Justice (DOJ), a majority of existing personnel are non-political and will continue into the new administration. Bureaucratic inertia and pre-existing caseloads will prevent any changes in enforcement from kicking in immediately upon the inauguration. DOJ has hundreds of pending civil and criminal cases and investigations for environmental violations. From both a political and legal perspective, it would be impracticable to dismiss all such cases. Of course, there may be individual pending cases where appropriate Executive Branch oversight may be given. While the administration has some latitude to adjust its prosecutorial focus, it will have to exercise care to avoid controversies such as those that occurred early in the Reagan Administration when EPA
Administrator Gorsuch was accused of politically interfering in Superfund clean-ups.

With respect to future cases, DOJ and EPA enjoy significant enforcement discretion in selecting enforcement matters. The Trump Administration’s enforcement priorities will be shaped to a large degree by the political appointees Mr. Trump nominates for senior enforcement positions, none of whom have been publicly identified yet. It is reasonable to expect to see the Trump Administration appoint officials who are more sympathetic to the regulated community, particularly small businesses, than the current administration has been.

**What might the Obama Administration do in response to Mr. Trump’s election?**

We expect three immediate impacts. First, the Obama Administration will push through as many “midnight rules” and other regulatory actions as it can before the inauguration. Among those we expect to be included are the Risk Management Program Rule regulation under the Clean Air Act, the Stream Protection Rule that would burden the coal industry, the Bureau of Land Management’s venting and flaring rule, issuance of Information Collection Requests directed at the oil and gas industry, and other actions. Second, the Obama Administration may file priority environmental enforcement cases on the theory that an already pending case is much more difficult for a new administration to dismiss, as discussed above. Finally, the Obama Administration may agree to settle other pending lawsuits more quickly and favorably than it previously indicated, particularly ones for violations of regulatory regimes that might be at risk in the new administration, or lawsuits by environmental organizations.

**What can you do to understand these and other issues in more depth?**

As all of us find our way under a new Trump Administration, we will work closely with you to navigate the many changes that are certain to come in the world of environmental regulation and enforcement, to anticipate those that are less obvious, and to help you obtain clarity as we settle in to the new regime.
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