

# ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



*This is the first in a series of Administrative Watch alerts to assist in understanding the significant regulatory actions arising out of the Trump administration, and the effect of legal challenges to those actions by environmental groups.*

## Early Moves in Trump Administration Reduce Regulation, Rouse Environmental Groups

The first 60 days of the Trump administration have seen a host of executive and congressional actions impacting environmental regulations and the energy sector. Industry has largely applauded these moves, but environmental groups have signaled that they intend to aggressively challenge these actions in court:

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### Executive Actions

- *Regulatory Freeze Memo.* On January 20, 2017, White House Chief of Staff, Reince Priebus, issued a [memo](#) to the heads of all departments and federal agencies imposing a temporary moratorium on most regulatory actions. The memo indicated that no new regulations should be sent to the Office of Federal Register (OFR) without the review and approval of the new administration; that any regulations awaiting publication by the OFR should be withdrawn; and that consideration should be given to postponing the effective date of any recently-published regulations for at least 60 days.

On January 24, 2017, the Acting Director of the Office of Management and Budget (OMB) issued [guidance](#) to agencies implementing the Regulatory Freeze memo. OMB directed executive agencies to promptly identify effective dates that need to be extended. OMB also discussed the types of rules that would likely meet the exceptions laid out in the Regulatory Freeze memo. Examples include those rules that would frustrate statutory or judicial deadlines such as the civil penalty adjustments required to be filed as a result of the Federal Civil Penalties Inflation Adjustment Act of 1990.

- *Presidential Pipeline Memoranda.* On January 24, 2017, President Donald J. Trump issued memoranda calling for the expedited review and approval of two pipeline projects that had been blocked or stalled during the previous administration, the [Keystone XL Pipeline](#) and [Dakota Access Pipeline](#) projects. The president also directed the Secretary of Commerce to develop a [plan](#) within 180 days for using materials and equipment produced in the United States in all new, repaired, or replaced pipelines, although the White House recently announced that the Keystone XL Pipeline would not be subject to the terms of that plan.
- *2-for-1 Executive Order.* On January 30, 2017, President Trump issued an [executive order](#) for reducing regulation and controlling regulatory costs. The executive order generally requires federal agencies to identify two existing regulations that will be repealed for every new regulation proposed or otherwise promulgated and to comply with certain net cost limitations in establishing new rules. On February 2,

2017, OMB issued interim [guidance](#) clarifying that the provisions in the executive order only apply to significant regulatory actions.

- *Executive Order Enforcing Regulatory Reform.* On February 24, 2017, President Trump issued another [executive order](#) on enforcing regulatory reform. The executive order requires federal agencies to designate a Regulatory Reform Officer (RRO) to oversee the implementation of the president's new regulatory reform initiatives and policies. The RRO will chair a Regulatory Reform Task Force charged with reviewing existing regulations and making recommendations for their repeal, replacement, or modification. An initial report of the Regulatory Reform Task Force must be issued by May 25, 2017.

## **Congressional Actions**

The Congressional Review Act allows Congress to take expedited action to overrule regulations issued by federal agencies within 60 legislative days. Congress has begun to use that authority to pass joint resolutions of disapproval nullifying regulations finalized in the waning days of the Obama administration. On February 16, 2017, President Trump signed a resolution withdrawing the Department of Interior's Stream Protection Rule, which would have imposed new limitations on coal mining operations. On February 3, the U.S. House of Representatives passed a joint resolution withdrawing a rule issued by the Bureau of Land Management that would have imposed restrictions on oil and gas development relating to venting and flaring methane emissions. The U.S. Senate has not yet voted on the joint resolution, which must still be passed before it can be signed into law by President Trump.

## **Environmental Non-Governmental Organization Response**

Environmental groups have already instituted law suits to challenge the presidential orders and congressional actions. On February 8, Public Citizen, Inc., the Natural Resources Defense Council (NRDC), and other environmental groups filed a [complaint](#) for declaratory and injunctive relief in federal district court challenging the president's executive order for reducing regulation. The NRDC has stated in recent media reports that they have seen a "huge spike" in donations since the election. Other environmental groups have acknowledged large increases in donations which are expected to fund litigation opposing easing of regulatory requirements. The Sierra Club has reported a 700 percent increase in funding in the first month of 2017, and Earthjustice recorded a 160 percent increase for the same period. The director of the Sierra Club predicted that its 50-member legal team is likely to grow as environmentalists increasingly regard the courts as their best option to block regulatory rollbacks.

Babst Calland plans to issue a series of Administrative Watch alerts to assist our clients and friends in understanding the significant regulatory actions arising out of the Trump administration, and the effect of legal challenges to those actions including citizen suits by environmental groups. State agencies, such as the Pennsylvania DEP, and local municipalities, may react to the change in the federal administration by modifying their rules and policies governing environmental matters. As such, in addition to reporting on decisions issued by federal courts and agencies, we will identify significant enforcement actions and regulations issued by state agencies, as well as ordinances issued by municipalities to restrict energy projects and commercial development.

If you have any questions regarding the regulatory developments or challenges described in this Administrative Watch, please contact Joseph K. Reinhart at (412) 394-5452 or [jreinhart@babstcalland.com](mailto:jreinhart@babstcalland.com) or Keith J. Coyle at (202) 853-3460 or [kcoyle@babstcalland.com](mailto:kcoyle@babstcalland.com).