

## ENVIRONMENTAL LAW:

# What to Expect from President Trump's Administration

**D**uring the campaign, President Trump vowed to eliminate the U.S. EPA. In an interview on Fox News, Donald Trump stated the "Environmental Protection

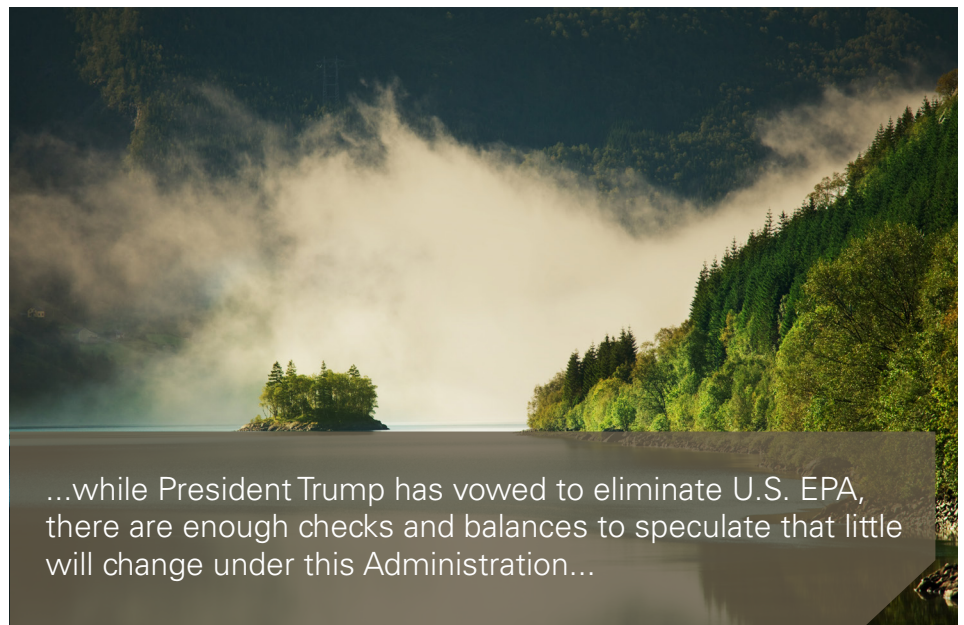
[Agency], what they do is a disgrace. Every week they come out with new regulations." Once elected, President Trump named Scott Pruitt, the Attorney General of Oklahoma, as Administrator of the U.S. EPA. Mr. Pruitt has been well known to challenge U.S. EPA's regulations

and have a pro-industry stance when it comes to environmental issues. So many people have asked, what would happen to the U.S. EPA and environmental regulation of industry?



By Cheri A. Budzynski

In March, President Trump proposed to cut the U.S. EPA by 31%, lay off



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25% of the employees, and eliminate 56 programs. He also signed an executive order to repeal most of President Obama's rules and policies related to climate change. However, the recent budget revealed that only \$208 million was cut from the \$8.2 billion that U.S. EPA requested for the 2017 fiscal budget. So at least in the short term, U.S. EPA is spared from the drastic cuts proposed by U.S. EPA.

Even if President Trump gets his way, that does not mean that industry would be free from environmental

regulations. In fact, industry could find it more costly operating under a deregulated U.S. EPA for some of the following reasons.

**Expect More Citizen Suits and State Enforcement.** Every major environmental statute includes citizen suit provisions that allow a citizen to stand in the shoes of U.S. EPA to enforce environmental law. If there is a concern that a source of pollutants is violating environmental laws or regulations, a citizen can give notice to U.S. EPA that it should take

appropriate enforcement or the citizen will file suit in the federal district court. Thus, even if President Trump decreased enforcement on the federal level, non-governmental organizations (NGOs) such as Sierra Club or Natural Resources Defense Council will seek to enforce the environmental laws and regulations in the federal courts. Not only is enforcement more costly in the court system, NGOs will seek more stringent terms and can obtain attorney fees, which is permitted under the citizen suit provisions. Many NGOs have publicly stated that there will be more citizen suits under President Trump's administration.

In addition, the top administrative officers of Democratic-majority states have indicated that they will increase enforcement at the state level if President Trump reduces federal enforcement. Environmental statutes allow states to have their own agencies to oversee rulemaking and enforcement. Therefore, even if President Trump could dismantle U.S. EPA, there are still state agencies to protect the environment. There is some concern, however, that U.S. EPA could drastically cut funds that go to the state agencies and this could have an impact on enforcement.

**Expect Challenges to President Trump's Rules.** While President Trump has signed several executive orders that could impact the U.S. EPA, U.S. EPA has not revised or rescinded any major rules since he has taken office. To make changes to any regulation, U.S. EPA is required to promulgate the regulations as "proposed rules." Once proposed, the law requires a public comment period. U.S. EPA must then review and respond to those comments before finalizing the regulations.

Once finalized, individuals who submitted comments can petition a U.S. Circuit Court to review the rules. If the court finds that there was no technical or legal justification for the regulation (known as the arbitrary or capricious standard), the court can vacate it and remand it back to U.S. EPA for further consideration. Under both Democratic and Republican administrations, this has been the fate of all significant environmental laws. This will not change under President Trump's administration.

**Expect to Continue Compliance.**

The take-home message is that industry must continue to comply with the environmental laws and regulations that are currently in place. Further, if there is no administrative or judicial stay of environmental regulations that have implementation dates in the future, industry must move forward in planning and implementing those rules. In short, while President Trump has vowed to eliminate U.S. EPA, there are enough checks and balances to speculate that little will change under this Administration; if there is change, expect it to come slowly.

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