

Environmental Regulation and Enforcement: Where we have been and what we expect

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Abstract: The environmental regulatory climate is likely to change dramatically in the next four years based on the transition of the Presidency and EPA Administrator. This presentation will highlight the significant environmental developments from the last eight years of the Clinton Administration and provide insight on what to expect during the Bush Administration.



Abstract (continued)

President Clinton and former EPA Administrator Browner will be remembered for enhanced federal enforcement, especially criminal sanctions for polluters, while at the same time increasing the protections afforded to industry through environmental compliance audits. Regulatory reinvention and innovation projects were also a highlight of the Clinton Administration as were efforts to rewrite and strengthen the Clean Air Act's ozone and particulate standards. The Administration strongly defended EPA against stakeholder and Congressional attacks alike.

It is believed that President Bush and EPA Administrator nominee Whitman will promote state involvement in the regulatory development process, with a strong emphasis on peer reviewed science-based analysis of new regulations.



Abstract (continued)

The President has already halted or delayed several rulemakings for publication in the Federal Register pending a more thorough scientific review. A Bush Administration is likely to continue to trend toward market-based incentives and programs that stress voluntary measures to achieve compliance, rather than enforcement of existing regulations. Energy exploration will likely be a focus of the Administration as well as a call for utility and New Source view reform driven by the California electricity crisis and energy shortfalls nationwide.



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**Where Have We Been?
Where Are We Going?**

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Opposing Viewpoints

In keeping with the President's philosophy of government, the EPA is promoting market-based solutions to environmental challenges, focusing on environmental results over bureaucratic process, and building partnerships with the American people.

Administrator Whitman
July 20, 2001

5



Opposing Viewpoints continued

Wealthy special interests with their friends in the White House and Congress have launched an all-out attack on the environmental protections won over the past 30 years.

Campaign to Defend
America's Environment

6



Opposing Viewpoints continued

This has been the worst three months for environmental protection in the last 30 years.

NDRC
April 29, 2001

7

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The Bush Administration Has Raised the Environmental Dialogue

A Sampling of Headlines

- 60 days suspension of Clinton administration rules at the outset of the administration.
- Announcement that the Bush Administration would not support the Kyoto Protocol.

8

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continued

- Release of the bush "Energy Plan"
- Affirmed Clinton Administration's diesel rules for buses and large trucks
- Withdrew the "Arsenic Rule"
- Initiated review of the "TMDL Rule"
- Initiated review of the NSR program
- Announced the Hudson River ROD mandate dredging

9

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The Energy Plan and the Kyoto Protocol

Kyoto Protocol's Impact

Mandates reductions in six gases: nitrous oxide, HFS's, methane, PFC's sulfur hexafluoride, and carbon dioxide.

Target US to reduce emissions to 7% below 1990 levels in years 2008-2012.

10

Criminal Vs. Civil Liability (continued)

- "Knowingly" transports without a manifest;
- "Knowingly" exports a hazardous waste without consent of receiving country; or
- "Knowingly" handles used oil in violation of material condition or requirement of a permit or regulation.

11

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Actual emission reductions less due to allowances for greenhouse gas "sinks". Estimated actual emission reduction from 1990 levels is 2%-3%.

Protocol would require US emissions to be 20%-30% below what they otherwise would be during the period 2008-2012.

Congressional Research Service

12

Bush Administration on Kyoto Protocol

- Protocol fatally flawed in fundamental ways.
- Two of the largest emitters, China and India, exempt from US type mandated reductions in greenhouse gases.
- Protocol's target reductions are unrealistic.
- For the US, compliance with the Protocol would have negative economic impact.

13

Some Elements of the Energy Plan

- EPA directed to propose legislation establishing mandatory reduction targets for sulfur, nitrogen oxide, and mercury.
Note: Carbon dioxide not included
- EPA and DOE to cooperate in streamlining permitting for refineries.
- EPA (and other agencies) to expedite permits for energy related projects.

14

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- EPA (and other agencies) to assess impact on energy supply, distribution, and use from any regulatory action.
- EPA to assess the impact of NSR rules on investment in new utility and refining capacity, energy efficiency, and environmental protection.

15

Status of NSR Review

- DOJ also is conducting a review of NSR enforcement actions.
- NSR reviews conclusions will be incorporated into a fall, 2001 rollout of a comprehensive air strategy, including proposed legislation directed at Nox, SO₂, and mercury.
- EPA says it has received 130,000 comments during the course of the review.

16

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Initial report on NSR review, issued this summer

Noted that EPA had very little data on the economic impact of the NSR program.

Highlighted claims by utilities the NSR program discouraged investment at existing facilities to improve energy efficiency.

17

Status of Arsenic Review

Background:

- Current standard set in 1942 at 50 ppb
- Safe Drinking Water Act amendments in 1996 concluded that the current standard was not protective of the public health.
- Environmental groups believe the standard should be at less than 5 ppb.

18

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EPA promulgated a final rule on January 22, 2001 setting standard at 10 ppb.

Rule was subject to Bush Administration's 60-day suspension.

19

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At end of suspension, EPA proposed withdrawal of the rule stating:

- 50 ppb standard too high
- Scientific indicators unclear as to whether standard needs to be as low as 10 ppb.
- EPA may have underestimated the costs of compliance.

20

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In April, 2001 EPA announced a renewed study to evaluate the costs and risks for a standard at 3, 5, 10, or 20 ppb.

Effective date of rule now extended to February 2002. Comment on rule currently being solicited. Further comment following release of review reports.

21

TMDL Review

Background:

- Rule published in July 2000 to be effective October 2001.
- Congress, through a budget bill rider, delayed implementation.
- Suits challenging rule filed in August 2000.
- National Academy of Science performed a congressionally mandated study and proposed changes to rule.

22

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EPA Action:

- Proposed delay of rule by additional 18 months.
- Released cost data indicating implementation costs between \$900 million and \$4 billion annually.
- Expressed intention to revise program outlined in rule.

23

Where Have We Been? Where Are We Going?

- Environmental interest groups generally satisfied with the Clinton administration.
- Distrust/dislike of the Bush Administration by interest groups is operating to heighten the level of public awareness of the Administration's actions.
- It seems clear that the Bush Administration's environmental agenda is not going to be driven by environmental concerns alone, but also concerns about energy and other economic impacts.

24

**Where Have We Been?
Where Are We Going?**

There is no apparent intent to significantly address carbon dioxide issues.

Implicit in the NSR, Arsenic, and TMDL reviews underway is an intent to reassess the cost-benefit of programs, preserving the ability to make independent policy judgments in light of those cost benefit determinations.

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Anticipate the possibility of changes in the NSR/PSD rules, particularly with respect to major modifications to existing facilities.
