

## ENVIRONMENTAL POLICY UNDER TRUMP 2.0

Presented by:



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David Rockman helps clients to manage environmental compliance and environmental risks and to understand and meet their legal obligations with respect to federal, state, and local environmental laws, regulations, and permits. David also defends clients facing enforcement actions, represents clients involved in environmental litigation, and provides representation with respect to environmental issues in the purchase and sale of businesses and property.

David has experience with all of the major environmental programs governing air, water, waste, and land issues, across a broad spectrum of industries and activities. Environmental compliance requires attention to the broad range of statutory and regulatory requirements, as well as negotiation of appropriate permit requirements, and accounting for government guidance and policies. Managing compliance risks involves attention to government agency inspections, information requests, and violation notices, as well as strategic use of auditing and environmental management systems. Even the best-intentioned and managed companies can find themselves the target of government enforcement or citizen suit litigation. Such situations require an unflinching assessment of the validity of the charges, an evaluation of available defenses, and a strategy that balances litigation, liability, and penalty risks.



# Environmental Policy Under Trump 2.0

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## Looking Back: Trump 1.0

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- Environmental Policy the first time around
  - Changed guidance and policy memos
  - Limited regulatory changes
  - No significant statutory changes
  - Increased personnel turnover at EPA
  - Reduced enforcement by EPA
- In all, no lasting changes to function of US EPA

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# EPA National Enforcement and Compliance Initiatives (NECI)

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- US EPA identifies national initiatives to focus its compliance and enforcement resources
- Identified on a four-year cycle
- Usually a multi-media set of issues
- Some carry over from cycle to cycle
- Current NECI in effect from 2024-2027

# Current NECI

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- Continuing
  - Reducing Air Toxics in Overburdened Communities
  - Increasing Compliance with Drinking Water Standards
  - Chemical Accident Risk Reduction
- New for 2024
  - Mitigating Climate Change
  - Addressing Exposure to PFAS chemicals
  - Protecting Communities from Coal Ash Contamination

## Trump EPA: Limiting the NECI

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- Climate change –no focus on methane from oil and gas facilities
- Coal Ash contamination – EPA will only target imminent threats
- Air Toxics – no focus on communities with existing high levels of pollution impacts
- Chemical Accident risk reduction – limit enforcement that would burden energy production

## Executive Orders - Energy

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- Establish a National Energy Dominance Council
- Declared a National Energy Emergency
  - Encourage energy production on federal lands and waters
  - Move away from electric vehicle incentives
  - Allow greater choice in lightbulbs, appliances, and plumbing fixtures
  - Review all regulations that burden development of domestic energy resources

## **Executive Orders (con't)**

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- Withdraw all of Outer Continental Shelf from Wind Projects and Review of Permitting of Wind Projects
- Maximize natural resource extraction in Alaska
- Withdraw from Paris Climate Agreement
- Promote domestic coal industry
  
- A variety of other energy development focused EO's

## **New EPA Administrator Priorities (Feb '25)**

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- Clean Air, Land and Water
- Permitting Reform, Cooperative Federalism and Cross-Agency Partnership
- Restore American Energy Dominance
- Make the US the Artificial Intelligence Capital of the World
- Protecting and Bringing Back American Auto Jobs

## EPA – Deregulatory Actions (March 2025)

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- “Unleashing American Energy” - Reconsideration of regulations affecting power plants, oil and gas industry, including:
  - Mercury and Air Toxics standards
  - Mandatory GHG reporting
  - Water discharge standard for electric power generation
  - Wastewater regulations for oil and gas
  - Risk Management Program rules

## EPA – Deregulatory Action (con't)

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- “Lowering Cost of Living”
- Reconsideration of:
  - Car emissions standards
  - Ambient Air Quality standards
  - Air Toxics and Regional Haze rules
  - Air pollution control technology standards for semiconductor and grocery sectors
- Terminate EJ and DEI within the EPA

## EPA – Deregulatory Actions (con't)

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- “Advancing Cooperative Federalism”
  - Ending the “Good Neighbor Plan” rule (which protected downwind states from upwind air pollution)
  - Reduce backlog of State Implementation Plans
  - Reconsider “exceptional events” rules
  - Reconstitute Science Advisory Board and Clean Air Scientific Advisory Committee

## Compliance Waivers

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- Issued waivers for over 100 industrial facilities
- From air toxics rules
  - From rules proposed to be rescinded
- Waivers = 2-year delays from compliance
- Power plants, chemical and other industrial production plants, commercial sterilizers, taconite ore

## Deregulation in the Courts: *Loper Bright*

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- All significant regulatory reconsiderations and changes likely to be challenged in court
- EPA will have to defend its reversals
  - Will be evaluated under *Loper Bright*, not *Chevron*
  - Arguably, increased burden for EPA
  - More unpredictable, with power in the courts
  - Protracted litigation likely

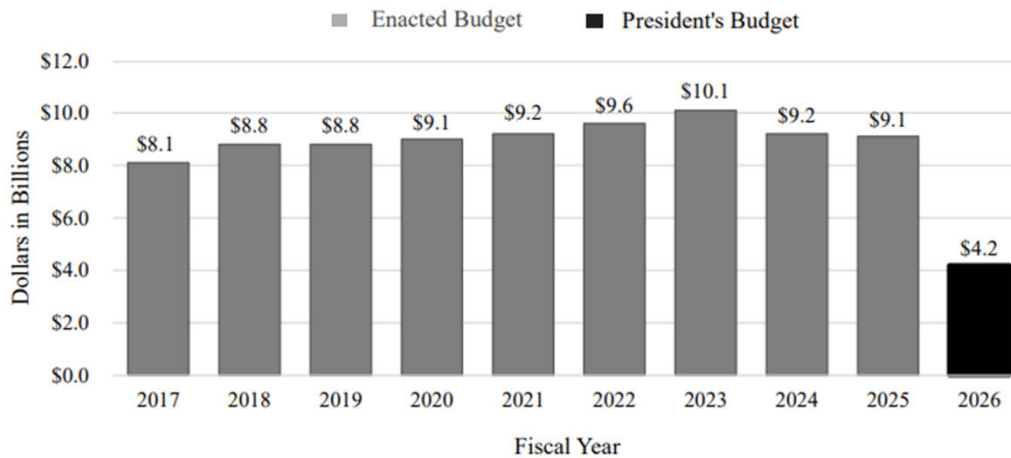
## US EPA Budget and Staffing

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- EPA within the scope of agencies affected by DOGE layoffs and early retirement offers
- 2026 EPA budget
  - Proposed 54% decrease in funding
  - 30% reduction in civil enforcement
  - 49% reduction in criminal enforcement
  - 35% reduction in compliance monitoring

# EPA Budget Comparison

## *EPA's Budget FY 2017 to 2026*



# EPA Staffing and Reorganization

- Head Count
  - January 2025: 16,155 employees
  - With various reductions in force, now at 12,488 (as of July 18)
- Dissolution of Advisory Boards
  - (Science Advisory Board and Clean Air Scientific Advisory Committee)
- Office of Research and Development terminated

## Current EPA Enforcement

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- Reduced from Biden and Trump 1.0
  - Fewer cases being initiated or resolved than last year (down by about a third)
  - Fewer cases that during same part of Trump's first term
  - No new major enforcement cases
- Too early to draw conclusions (but not too early to speculate!)
- Directive that enforcement will not shut down any stage of energy production or power generation
  - Absent imminent and substantial threat

## Climate Change: Endangerment Finding

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- 2007: SCOTUS determined EPA can regulation GHGs, if demonstrated to threaten public health/welfare
- 2009: EPA concluded that greenhouse gas emissions pose a threat to public health
  - Basis for limits on GHG emissions from cars/trucks and from power plants

# Climate Change: Endangerment Finding

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- EPA now intending to reverse the endangerment finding
  - Reconsideration notice issued in Federal Register on 8/1
  - EPA new position:
    - Regulation of GHG's exceeds EPA's authority under the Clean Air Act
    - Claim that it has led to costly over-regulation
    - EPA unreasonably analyzed scientific information underlying endangerment finding
    - Repeal will not affect federal preemption of state rules

# Climate Change Related

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- Reconsideration of:
  - Car emissions standards/Electric Vehicle Mandate
  - GHG reporting rules
  - Change “social cost of carbon”
- Withdrew US from Paris Climate Agreement
- Cancelled grants for climate resilience projects
- Limit/eliminate collecting climate change data

# Renewable Energy

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- EO: end tax credits for wind and solar
- Reversed approvals for several large wind projects
- Interior Department
  - New regulatory hurdles for solar and wind projects
  - Withdrawing offshore areas from wind projects
  - Reconsideration of wind project permits (for challenged projects)
- Transportation: adding setback requirements for wind projects
- FAA: to evaluate dangers to aviation from wind farms

# Environmental Justice

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- EJ a top Biden administration priority
  - EJ had been established as an element of all enforcement priorities

## Trump 2.0:

- Revoke: 1994 Executive Order (Clinton) that was a foundation of environmental justice programs
- Revoke: Biden EO on EJ “whole of government” approach
- Now – policy memos that EJ concerns will not influence EPA’s enforcement and compliance work
- EJ Advisory Council terminated
- EJ screening tools disabled

## PFAS (Forever chemicals)

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- PFAS regulation had been moving forward at state and federal level, including under Trump 1.0
- Under Trump 2.0
  - Delay deadlines for drinking water limits for PFOS/PFOA
  - Rescind and reconsider other PFAS drinking water limits
  - Delayed PFAS reporting requirements
  - Reduced/eliminated PFAS studies

## Other Changes

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- OBBB: Terminate tax incentives from the 2022 IRA for clean energy, electric vehicles and energy efficiency
- Energy programs: Promote coal mining and other energy resource projects, through reduced regulations and use of federal lands
- Revoke or reduce wildlife protection programs
  - Oil and gas drilling in Alaska/Arctic
  - Commercial fishing in former marine sanctuaries
  - Logging/timbering in national forests
- Rescind SEC climate disclosure rules
- Cuts to NOAA personnel and activities
- National Park service staffing and budget cuts

## So, what does it all mean?

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- What are the impacts on environmental protection going forward?
- How does this impact you, and your business, employer and/or clients?

## Big Picture: Impacts on US EPA and on Environmental Protection

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- Changes likely to be much more lasting than Trump 1.0
  - Regulatory Changes (not just policy changes)
  - Large reductions in EPA staffing
  - Significant loss of institutional knowledge
  - Dismantling of government resources and facilities

# Impact on You and Your Business

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- **Perspective 1: Everything has changed**

- Have had decades of progress in terms of environmental protection
- Now, an aggressive rollback of requirements
- Funding/staffing/facilities cuts
  - Reduced enforcement, data collection and research
  - Eliminate state and local pollution control programs and infrastructure programs
- Clean air, clean water and climate change mitigation all in question
  - Past the tipping point on climate change?
- Unique opportunity for energy and energy intensive projects
- Even if a change in future administrations, will take a long time to recover

# Impact on You and Your Business (con't)

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- **Perspective 2: Nothing has really changed**

- Regulations take a long time to enact
  - A short pause in updating standards or enforcement is not significant
- Drastic changes to baseline environmental statutes are unlikely
- Much day-to-day permitting and enforcement is conducted by the states
- Climate change (either a false issue, or we're so far gone that Trump 2.0 won't make it that much worse)

# Thank you & Questions

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## Key Takeaways: Ask me again in 2029!

- Environmental rollbacks will have deeper, longer-lasting impact than before
- (For now) Environmental protection remains largely intact at the state and local level

## Let's stay connected

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