



TRUMP ADMINISTRATION
RESPONSE TO KEY OBAMA
ENVIRONMENTAL RULES
BEING CHALLENGED IN
COURT

October 6, 2017

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
EPA Methane Rule for New Oil and Gas Operations	<p>Rulemaking activities</p> <ul style="list-style-type: none"> 4/18/17 – EPA announced reconsideration of fugitive emission req'ts. 6/5/17 – EPA proposed to stay req'ts for 90 days. 6/16/17 – EPA proposed to stay req'ts 2 add'l years and 90 days as stop gap. 	Comment period on 2-year stay closed 8/9/17.
	<p><i>API v. EPA</i>, 13-1108 (D.C. Cir.) (challenge to merits)</p> <ul style="list-style-type: none"> 5/18/17 – Merits case held in abeyance. 9/19/17 – Status reports indicates agency review ongoing. 	Case remains in abeyance.
	<p><i>Clean Air Council v. Pruitt</i>, 17-1145 (D.C. Cir.) (challenge to 90-day stay)</p> <ul style="list-style-type: none"> 7/3/17 – Per curiam order vacated 90-day stay. 8/10/17 – Petitions for rehearing en banc denied. 	Case concluded. Challenged provisions in effect as of 7/31/17.
BLM Rule on Hydraulic Fracturing on Federal and Indian Lands	<p><i>Wyoming, et. al v. Zinke, et. al</i>, 16-8068 (10th Cir.) (challenge to merits)</p> <ul style="list-style-type: none"> 7/25/17 – BLM proposed rescinding rule in its entirety. 9/21/17 – Case dismissed because of proposed rescission. 	Case concluded. Comment period on proposed rescission closed 9/25/17.
BLM Rule to Regulate Venting and Flaring on Federal and Indian lands	<p>Rulemaking activities</p> <ul style="list-style-type: none"> 6/15/17 – BLM postponed 1/17/18 compliance req'ts through court review. 10/5/17 – BLM proposed to postpone 1/17/18 compliance req'ts until 1/17/19. 	Comments on postponement due 11/3/17.
	<p><i>Wyoming v. DOI</i>, No. 2:16-cv-00285–SWS (D. Wyo.) (challenge to merits)</p> <ul style="list-style-type: none"> 6/23/17 – Order setting briefing schedule. <p><i>California, et al. v. BLM</i>, No. 3:17-cv-03804 (N.D. Cal.) (challenge to initial stay)</p> <ul style="list-style-type: none"> 7/27/17 – CBD, et al. filed motion for SJ. 10/4/17 – Opinion rejecting initial stay. 	<p>Briefing through 11/22/17.</p> <p>Court rejected initial stay and delayed portions of rule in effect as of 10/4/17.</p>

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
BLM Land-Use Rule	3/27/17 – Repealed by CRA resolution	None.
ICR on Methane Emissions	3/2/17 – Withdrawn by EPA	None.
National Wildlife Refuges Rule	4/3/17 – Repealed by CRA resolution <i>CBD v. Zinke</i> , No. 3:17-cv-00091-JWS (D. Alaska) <ul style="list-style-type: none"> 4/20/17 – CBD filed complaint challenging CRA repeal. 6/26/17 – DOI filed motion to dismiss (denied on 8/31). 	Briefing through 12/15/17.
Clean Power Plan	<i>West Virginia v. EPA</i> , 15-1363 (D.C. Cir.) <ul style="list-style-type: none"> 4/28/17 – Case held in abeyance (ongoing). 6/8/17 – EPA sent OMB proposed rule regarding rollback. 8/2/17 – Press reports EPA will repeal CPP first, then propose replacement. 	EPA to provide 90-day status reports beginning 9/7/17; proposed plan to repeal CPP expected Fall 2017.
NSPS for CO2 from New Power Plants	<i>North Dakota v. EPA</i> , 15-1381 (D.C. Cir.) <ul style="list-style-type: none"> 3/28/17 – Abeyance motion filed by EPA (granted, and ongoing). 4/28/17 – Case held in abeyance. 	EPA to provide 90-day status reports beginning 10/27/17.
2015 Ozone NAAQS (70 ppb)	<i>Murray Energy Corp. v. EPA</i> , No. 15-1385 (D.C. Cir.) <ul style="list-style-type: none"> 4/11/17 – Oral argument postponed and case placed in abeyance. 7/12/17 – New petition: <i>Am. Lung Ass’n v. EPA</i>, 17-1172 (D.C. Cir.) 	EPA to provide 90-day status reports.

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
Electric Generating Unit Effluent Limitation Guidelines (EGU ELGs) for Coal-fired Power Plants	Rulemaking activities <ul style="list-style-type: none"> 6/6/17 – EPA proposed to postpone compliance dates. 9/13/17 – EPA issued rule staying compliance with 2015 Rule deadlines. 	Awaiting further action, if any, following 9/13 final rule postponing compliance dates.
	<i>Southwestern Elec. v. EPA</i> , 15-60821 (5 th Cir.) (challenge to merits) <ul style="list-style-type: none"> 8/22/17 – Mot to sever and hold in abeyance aspects of 2015 Rule related to more stringent BAT limitations and PSES granted. 9/27/17 – Briefing schedule established for remaining issues. 	Briefing on remaining issues through 2/22/18.
	<i>Clean Water Action v. EPA</i> , 17-cv-00817 (D.D.C.) (challenge to stay) <ul style="list-style-type: none"> 8/8/17 – UWAG re-filed earlier MTD/cross-motion for SJ; mot to transfer case. 9/21/17 – EPA filed second motion to dismiss for lack of jurisdiction. 	Awaiting ruling on UWAG motions; briefing in progress on EPA motion to dismiss.
Moratorium on New Coal Leases	3/28/17 – Revoked by Executive Order. <i>Cit. for Clean Energy v. DOI</i> , 4:17-cv-00030 (D. Montana) (challenge to revocation) <ul style="list-style-type: none"> 3/29/17 – Complaint filed to challenge revocation. 	Briefing on contents of administrative record through 11/2/17.
EPA SIP Call on Startup, Shutdown, and Malfunction (SSM)	<i>Envtl. Comm., et al. v. EPA</i> , 15-1239 (D.C. Cir.) <ul style="list-style-type: none"> 4/24/17 – Removed from oral argument, placed in abeyance. 7/24/17 – EPA still considering whether to reconsider. 	EPA to provide 90-day status reports beginning 7/24/17.
MATS Supplemental Finding	<i>Murray Energy Corp. v. EPA</i> , 16-1127 (D.C. Cir.) <ul style="list-style-type: none"> 4/18/17 – Abeyance motion filed by EPA (later granted). 7/26/17 – EPA review ongoing. 	EPA review of April 2016 Supp'l Finding is ongoing.

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
CSAPR Update	<p><i>Wisconsin v. EPA</i>, 16-1406 (D.C. Cir.)</p> <ul style="list-style-type: none"> 5/15/17 – Order setting briefing schedule. 8/21/17 – Cedar Falls Utilities motion to stay its petition for review. 9/6/17 – Per curiam order denying motion to extend briefing schedule and motion to sever. 	Briefing through 2/16/18; awaiting ruling on motion to stay.
CCR Rule (Coal Ash Rule)	<p><i>Util. Solid Waste Activities Group v. EPA</i>, 15-1219 (D.C. Cir.)</p> <ul style="list-style-type: none"> 5/15/17 – USWAG petition to reconsider portions of rule. 9/13/17 – EPA granted recon of portions of CCR Rule. 9/27/17 – Oral argument rescheduled for 11/20/17 	Oral argument set for 11/20/17.
Regional Haze Rule	<p><i>Texas v. EPA</i>, 17-1021 (D.C. Cir.)</p> <ul style="list-style-type: none"> 9/27/17 – EPA mot to extend briefing format deadline granted. 	Proposed formats for briefing due 12/21/17.
Arkansas Regional Haze FIP	<p><i>State of Arkansas v. EPA</i>, 16-4270 (8th Cir.)</p> <ul style="list-style-type: none"> 4/25/17 – EPA stayed effectiveness for 90 days. 10/2/17 – Order continuing to hold in abeyance until 10/31/17. 	New effective date expected to be 1/25/18 (old effective date was 10/27/17).
Stream Protection Rule	<ul style="list-style-type: none"> 2/16/17 – Repealed by CRA resolution. 	None.

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
Waters of the United States (WOTUS)	<p><i>Nat'l Ass'n of Manufacturers v. DOD</i>, 16-299 (SCOTUS)</p> <ul style="list-style-type: none"> 2/28/17 – E.O. directs EPA and USACE to rescind and revise. 6/27/17 – EPA released a pre-pub proposal. 7/27/17 – EPA and USACE published proposed WOTUS rule. 	Comments on proposed rule were due 8/28/17; oral argument set for 10/11/17.
Reconsideration of MATS and Utility NSPS	<p><i>ARIPPA v. EPA</i>, 15-1180 (D.C. Cir.)</p> <ul style="list-style-type: none"> 4/27/17 – Removed from oral argument, placed in abeyance. 7/26/17 – EPA status report indicates agency review ongoing. 	EPA to provide 90-day status reports beginning 7/26/17.
2008 NAAQS SIPs	<p><i>S. Coast Air Quality Management Dist. v. EPA</i>, 15-1115 (D.C. Cir.)</p> <ul style="list-style-type: none"> 9/14/17 – Oral argument held. 	Awaiting court decision.
Regional Haze FIPs for TX and OK	<p><i>Texas v. EPA</i>, 16-60118 (5th Cir.)</p> <ul style="list-style-type: none"> 3/22/17 – EPA motion to remand for reconsideration granted. 9/29/17 – EPA signed notice of proposed rulemaking on BART req'ts. 	EPA to provide 60-day status reports beginning 6/5/17; awaiting publication of BART proposal in Federal Register.

TRUMP ADMINISTRATION RESPONSE TO KEY OBAMA ENVIRONMENTAL RULES BEING CHALLENGED IN COURT

Rule	Trump Administration Response	Next steps
CAA Risk Management Programs	<p><i>ACC v. EPA</i>, 17-1085 (D.C. Cir.) (challenge to merits)</p> <ul style="list-style-type: none"> 4/3/17 – Case held in abeyance until 6/19/17. 	Petitioners to provide 90-day status reports beginning 6/19/17; EPA reconsideration is ongoing.
	<p><i>Air Alliance Houston v. EPA</i>, 17-1155 (D.C. Cir.) (challenge to stay)</p> <ul style="list-style-type: none"> 6/9/17 – EPA signed rule delaying effective date until 2/19/19. 7/24/17 – Petitioners and pet-intervenors’ motion for stay denied. 8/30/17 – Order denying mot to stay, mot for SJ, and mot for add’l time for briefing; granting mot for expedition and consolidating. 9/26/17 – Order establishing briefing schedule. 	Briefing scheduled through 1/31/18.
Cooling Water Intake Requirements	<p><i>Cooling Water Intake Structure Coalition v. EPA</i>, 14-4645 (2d Cir.)</p> <ul style="list-style-type: none"> 9/14/17 – Oral argument held. 	Awaiting court decision.
Truck GHG Emissions Standards	<p><i>Truck Trailer Manufacturers v. EPA</i>, 16-1430 (D.C. Cir.)</p> <ul style="list-style-type: none"> 5/8/17 – Case held in abeyance for 90 days. 8/21/17 – Cases remain in abeyance through 9/18/17. 9/18/17 – EPA motion to continue abeyance through completion of administrative proceedings. 	Briefing on motion to continue abeyance through 10/12/17.

CONTACTS



JEFF HOLMSTEAD

jeff.holmstead@bracewell.com
+1.202.828.5852



BRITTANY PEMBERTON

brittany.pemberton@bracewell.com
+1.202.828.1708



RYAN ELETTO

ryan.eletto@bracewell.com
+1.202.828.5807

This presentation is provided for informational purposes only and should not be considered specific legal advice on any subject matter. You should contact your attorney to obtain advice with respect to any particular issue or problem. The content of this presentation contains general information and may not reflect current legal developments, verdicts or settlements. Use of and access to this presentation does not create an attorney-client relationship between you and Bracewell.