

Environmental Compliance: Readiness for a Potential Change in Administration

Update

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While U.S. national elections are still three months away and inauguration day isn't for well over six months, current national and battleground state polling suggests that a change in Administration seems more likely than not. Companies asking themselves how to maximize their readiness for a change should consider looking closely at their environmental compliance efforts.

The challengers' presumptive nominee, former Vice President Joe Biden, has offered expansive ideas on addressing climate change and on other environmental programs, most of which will take months or years to bring to fruition through legislation or regulation, if at all. One opportunity for pursuing enhanced environmental protection and a visible separation from the current Administration available to a new President on the day he takes office, however, would be a directive to acting officials at the U.S. Environmental Protection Agency and other federal environmental agencies to ramp up their environmental enforcement efforts under existing environmental laws. Numerous articles have pointed to a slowdown in new enforcement actions and to declining penalties and other enforcement metrics in recent years. And, indeed, presumptive nominee Biden has specifically criticized sharply declining criminal environmental prosecutions under the current Administration.

Moving significant environmental legislation on the Hill or using the heavily procedural rulemaking process to achieve change on environmental matters will not produce any quick wins for a new Administration. Seeking to show a turnaround in tone starting on "day one" or some tangible achievements in the "first one hundred days," we can expect a new Administration to promptly roll back some of the current Administration's executive orders on regulation and

Related People

Timothy A. Wilkins
Managing Partner – Austin
AUSTIN
+1.512.542.2134
tim.wilkins@bracewell.com

Daniel J. Pope
Counsel
AUSTIN
+1.512.494.3675
daniel.pope@bracewell.com

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environmental protection and pause any pending rulemakings, but also to place a strong emphasis on using its immediately available enforcement tools.

Recognizing that much could change between now and November, if an enforcement ramp-up beginning early in the new year is a real possibility, companies should be asking themselves now how to maximize their readiness, especially where months of pandemic-related headwinds may have compromised the everyday rigor of existing management systems.

Environmental compliance audits to detect gaps in current efforts, combined with environmental audit disclosures to EPA or to the relevant state environmental agencies to resolve enforcement exposure and eliminate penalties, offer a great way to get ahead of enforcement risks. But planning, mobilizing, completing, and digesting an environmental compliance audit is a process that can take many months – especially if a company is looking at multiple facilities – and there are potentially significant advantages to completing any audit disclosures and closing out any disclosed findings before a new Administration has the opportunity to launch enhanced enforcement efforts or even potentially restrict the availability and effectiveness of its audit policies. There are also important steps companies can be taking outside the context of formal compliance audits to maximize their readiness for potential future information requests, on-site inspections, and enforcement proceedings.

If you would like to discuss your environmental compliance readiness and the options available for resolving potential compliance and enforcement exposures ahead of a possible change in Administration, the Bracewell environmental team is deeply experienced with compliance auditing, audit disclosure, and enforcement readiness strategies.