2014 U.S. ENVIRONMENTAL POLICY OUTLOOK: A STRONGER EPA?

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KEY THEME FOR 2014

✪ Expanding or limiting EPA's authority under various statutes; questions of federal vs. state jurisdiction

✪ Several rules and resulting court decisions this year and in coming years will be critical to defining the scope of EPA's jurisdiction

✪ These issues are not new, but several developments in the year ahead could mark a significant shift one way or the other (toward expansion or limits)
AGENDA

- Briefly review key legal and policy developments expected in 2014 in several areas and, where relevant, how they tie into the question of expanding or limiting EPA's authority

- Air, climate, renewables/efficiency, water, chemicals/waste, fracking
AIR

- EPA to propose new rule to address interstate transport of air pollution as Supreme Court considers previous rule; EPA seeking to cover sources beyond power plants

- D.C. Circuit to issue ruling in challenge to EPA's mercury and air toxics standard

- Both cases could further define the limits of EPA's authority under the Clean Air Act

- EPA to propose new ozone standards; groups seek December deadline
EPA rule to limit carbon emissions from new power plants reproposed in January; proposed rule for existing plants expected in June

EPA considering "system-wide" regulations for existing plants

Supreme Court to review whether limits on greenhouse gas emissions from vehicles automatically trigger permitting requirements for large stationary sources

Congressional Republicans will continue efforts to block President Obama's climate agenda
Congress expected to eventually extend many of the clean energy tax incentives that expired at the end of 2013

Administration considering expanding scope of Real Estate Investment Trusts to include renewable energy facilities

Chance for limited energy efficiency legislation in 2014; DOE expected to propose/finalize various efficiency standards

EPA to finalize 2014 requirements under Renewable Fuel Standard; Congress will continue efforts to reform the standard
WATER

- EPA and U.S. Army Corps of Engineers to propose rule modifying the definition of “waters of the United States" under the Clean Water Act

- Rule could expand the scope of waters subject to Clean Water Act protection

- EPA under court deadlines to issue final effluent guidelines to control release of toxic pollutants from fossil fuel-fired power plants and performance standards for cooling water intake structures

- Water resources legislation to fund infrastructure projects expected to pass in 2014 with bipartisan support
CHEMICALS/WASTE

- Could this be the year for TSCA reform? W. Va., other incidents could spur action, but hurdles remain

- Senate bill would expand EPA’s authority to regulate chemicals; House version expected in spring; key issue = state preemption

- W. Va. spill likely to continue fueling demand for more data on chemicals to be in the public realm

- EPA expected to take action on regulating chemicals in products, confidential business information, risk assessment, nanomaterials

- Key waste issues -- final rules expected on management of coal ash and definition of solid waste
FRACKING

- BLM to issue final rule updating requirements for oil and gas exploration and production on federal lands, with a primary focus on fracking.

- States/industry argue rule is unnecessary as states already regulate federal and other lands within their border; Republicans seek legislative limits.

- EPA close to issuing final guidance on regulation of fracking when diesel fuels used in fracking fluid.

- Courts continue to define state vs. local jurisdiction in setting limits on fracking.
CONCLUSION

- As in previous years, most environmental policy developments will be driven by regulation and litigation, not legislation.

- The administration’s environmental priorities could come into clearer view with the upcoming budget and State of the Union address.

- There’s always the potential for Congress to break through its gridlock and pass significant environmental legislation; disasters can spur action.

- Court rulings will help define the scope of EPA’s authority in several key issue areas.

- But the push and pull of expanding or limiting EPA’s jurisdiction under environmental laws and questions of federal vs. state control will persist.
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