



# **2015 U.S. ENVIRONMENTAL POLICY OUTLOOK: CONFLICT AND COOPERATION?**

Larry Pearl  
January 23, 2015

## A SERIES OF CONFLICTS....

- U.S. environmental policy, like many other issues, can be viewed as a series of conflicts:
  - Democrats vs. Republicans (in our current environment, White House vs. Congress)
  - Industry vs. NGOs
  - Federal Government vs. State Government (sometimes states vs. states)
  - State Government vs. Local Government
  
- Key areas of ongoing conflict in 2015 will include climate regulations, the scope of the Clean Water Act, and state and local fracking regulations
  
- This is admittedly a simplification, as many issues and players are intertwined in the environmental policy arena, but it's a good general lens to use

## ...AND POTENTIAL COOPERATION

➤ There are a number of areas for potential cooperation in the U.S. environmental policy arena, despite the strong partisanship that exists today, including:

- Chemical Policy Reform
- Energy Efficiency
- Coal Ash
- Water Infrastructure Funding
- Funding for Brownfields and Superfund cleanups

➤ But the biggest potential area for environmental cooperation in 2015 will come to a success or failure (or perhaps a bit of both) in Paris in December where more than 190 nations will meet to agree on a new global climate deal that would be designed to go into effect by 2020.

➤ There are a number of potential obstacles, including issues related to climate finance, the level of emissions reductions and the legal nature of any accord, that will have to be addressed.

# WHITE HOUSE VS. CONGRESS

- The Obama Administration will push strongly in 2015 on:
  - Climate regulations, including limits on carbon emissions from new and existing power plants and methane emissions from oil and natural gas wells
  - Air quality rules, including a potential tightening of the national ozone standard
  - Expanding the scope of the Clean Water Act
  
- The Republican-controlled Congress will push back and use various means, including stand alone bills, appropriations riders and challenges under the Congressional Review Act
  
- Republicans have wasted no time in the 114<sup>th</sup> Congress in trying to roll back the president's environmental agenda and push their own agenda
  - S. 1, H.R. 3 – To approve the Keystone pipeline
  - S. 66 – To prohibit the U.S. from regulating greenhouse gas emissions until India, China and Russia implement similar policies
  - S. 33, H.R. 351 – To require the Energy Department to expedite review of applications to export natural gas

# SUCCESS OR FAILURE?

- Republicans are more likely to succeed on:
  - Slowing or blocking the Waters of the U.S. regulation
  - Accelerating the approval process for natural gas exports
  - Reauthorizing EPA's Superfund and Brownfields programs
  
- Republicans are less likely to succeed on:
  - Blocking EPA's power plant rules
  - Blocking an international climate deal
  - Blocking revisions to the national ozone standard

## WHO MAKES THE RULES?

- A key question for many environmental and other policy issues is: Whose rules take precedence? Local, state or federal?
- This questions comes up frequently in litigation over the Clean Air Act, Clean Water Act and other environmental statutes
- It's a key issue in the area of chemical policy reform, with several states and localities banning or restricting certain chemicals
- It's also a major issue in the ongoing debate over hydraulic fracturing, with cities in Texas, Colorado, Pennsylvania and other states moving to ban the practice
- Republicans and industry stakeholders generally favor federal preemption in the chemical arena, but not in the fracking arena

# INDUSTRY VS. NGOS

- Throughout these issues, NGOs and industry are often on opposite sides, though sometimes they work together
  - Fuel Efficiency Standards
  - Green Infrastructure
  - Energy Efficiency
  - Natural Resource Conservation
  
- And both sides are far from monolithic in their views of energy and environmental matters, including for industry on:
  - Renewable Fuels (petroleum refiners vs. biofuel producers)
  - Climate Change Action (coal-heavy utilities vs. consumer product companies)
  - Export of Crude Oil (oil producers vs. oil refiners)
  - Public Land Use (energy and mining vs. recreation sectors)

## Key Battlegrounds

- Key battlegrounds for industry, NGO and other stakeholders to pursue their environmental policy agenda are Capitol Hill and the courts
  - According to the Center for Responsive Politics, overall spending on registered lobbying activities through the 3<sup>rd</sup> quarter of 2014 was about \$2.41 billion, nearly \$6.5 million higher than at the same point in 2013, but down more than \$260 million from 2010.
- In the courts, many environmental cases are working their way through on a number of key issues, including:
  - Mercury and Air Toxics – The cost of limiting emissions from power plants
  - Carbon – EPA’s authority to regulate emissions from new and existing power plants
  - Air Pollution – EPA’s application of a rule targeting pollution that crosses state lines
  - Cooling Water Intakes – Inadequate protection of aquatic life
  - Pesticides – The risk to bees and other pollinators from neonicotinoid pesticides
- In all these cases, the courts will either add to the propensity in recent years to defer to EPA on complex policy issues or pull back



## Seven Key Things to Look for in 2015

- Release of final rules limiting carbon emissions from new and existing power plants and related litigation
- The UN climate talks in Paris
- A revised ozone standard and implementation of the cross-state air pollution rule
- Release of the final rule clarifying the scope of U.S. waters subject to the Clean Water Act
- Reform of the Toxic Substances Control Act
- Republican efforts in Congress to expand the production and export of fossil fuels
- Further efforts at the state and local level to limit hydraulic fracturing

# THE UNKNOWN

**Oil Heading to \$40 a barrel; What's the impact?**

# PREDICTIONS

- Some say predictions are a fool's game, but I think the following are pretty safe for 2015:
  - We'll be talking about many of the same issues a year from now
  - While there may be some areas of compromise, Republicans in Congress will continually clash with the White House over what they consider burdensome regulations that negatively impact jobs and economic growth
  - The courts will continue to define the limits of EPA's authority to interpret and implement key environmental statutes, such as the Clean Air Act and the Clean Water Act
  - Environmental stakeholders—from industry to NGOs, EPA officials to Congress—and those who write about their actions, will be as busy as ever!

# ACKNOWLEDGEMENT

Last, but not least, I'd like to acknowledge the terrific work done by Bloomberg BNA's reporters and correspondents who go into much more detail on these and many other energy and environmental issues every day.

# THANK YOU!

Larry Pearl  
Director, Environment, Health and Safety News  
Bloomberg BNA  
(703) 341-3763  
lpearl@bna.com