

Environment and Climate Change under the Biden Administration

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The Road Ahead: The Biden Administration

- This deck provides our current views on the likely key areas of focus of the Biden Administration on environmental and climate change policy. Our views are based on Biden's campaign and transition websites, proposals of Congressional Democrats and key press reports.
- President-elect Biden laid out an aggressive environmental agenda in his campaign centered around:
 - a target for the U.S. to achieve net-zero carbon emissions economy wide by 2050
 - a \$2 trillion investment in clean energy
 - re-entering the U.S. in the Paris Climate Agreement
 - more robust enforcement and administration of environmental laws, and a focus on environmental justice
- Party control of the Senate is not yet certain. For the purposes of this deck, we have assumed that the Republicans will retain a slim majority in the Senate. If this premise is correct:
 - The tools available to President-elect Biden will most likely be limited to executive actions, regulation and enforcement.
 - New legislation would be limited to initiatives that can muster bipartisan support.
 - Appointees requiring Senate confirmation, such as EPA administrator, will also have to garner bipartisan support.

Legal Framework for Implementing President-elect Biden's Environmental Agenda

The ability of the Biden Administration to enact its environmental agenda depends on the relevant legal framework:

- **Legislation:** Any legislation requires a majority in the House of Representatives and the Senate to pass through Congress (although under Senate debate rules applicable to most legislation, a 60 vote majority is effectively required).
 - Given our assumption of a Republican-controlled Senate, any legislative agenda items will require some bipartisan support.
- **Regulation:**
 - New, or changes to existing, regulations require lengthy notice and comment. It may also be subject to review by a judiciary that has generally become less receptive to broad interpretations of statutes by federal agencies.
 - Regulations published 60 session days or less prior to the adjournment of Congress (likely sometime in spring 2020) can be reversed with simple majorities in Congress under the Congressional Review Act (“CRA”).
 - Federal agencies can withdraw any regulations which have been proposed but not yet finalized.
- **Executive action:** Executive actions such as enforcement policies or executive orders can generally be implemented unilaterally.

Climate Change and Clean Energy

- **Zero Emissions Targets.** Biden's climate change plan centers on an economy wide net-zero carbon emissions target by 2050. Biden's plan, when viewed together with the House Democrats' Climate Plan, contemplates a patchwork of legislation and regulation targeting different sectors of the economy. These include:



- **Electricity.** Federal portfolio standard providing for net-zero carbon-free energy generation by 2035
 - Given that legislation enacting a national zero-carbon portfolio standard is unlikely to garner bipartisan support, we would expect President-elect Biden to try to achieve this goal through new regulation under the Clean Air Act, likely by replacing the Affordable Clean Energy Rule with regulations structurally similar to the Obama Administration's Clean Power Plan, and withdrawing currently proposed rules weakening carbon emission standards from new coal-fired power plants.
 - As with the Clean Power Plan, which was stayed by the U.S. Supreme Court, any effort at broad regulation of the power industry under the Clean Air Act is likely to be challenged in the federal courts.

Climate Change and Clean Energy

• Zero Emissions Targets (cont.)



- **Oil & Gas Production.**

- An executive order to end new leasing of federal lands and offshore areas to coal, oil and gas operations
- Stricter methane emissions standards from new and existing oil and gas facilities



- **Transportation.** Tighter fuel economy standards targeting zero-emissions for light- and medium-duty vehicles and annual improvements for heavy-duty vehicles

- These standards would likely be promulgated under the existing authority under the Clean Air Act and not through new legislation.



- **Buildings.**

- The Biden campaign targeted a 50% reduction in the carbon footprint of the nation's building stock by 2035, including a net-zero emissions standard for new commercial buildings by 2030.
- These targets may be met through tax incentives for developers and owners to make buildings greener and more energy efficient, and funding to states to incentivize the adoption of green building codes and standards.

Climate Change and Clean Energy

- **Clean Energy Stimulus.**

- The Biden campaign proposed the following:

- Spending in research to drive down the cost of clean energy technologies, including battery storage, carbon capture and sequestration, negative emissions technologies, energy efficient building materials, renewable hydrogen and advanced nuclear reactors
 - Tax incentives favoring clean energy, including restoration of the electric vehicles tax credit and expansion of the 45Q tax credit for carbon capture and sequestration
 - \$400 billion in federal procurement of clean energy technologies such as electric vehicles and batteries

- Assuming a Republican-controlled Senate, each of these measures would require bipartisan support

- Senate Republicans have in the past supported infrastructure-related spending, such as America's Transportation Infrastructure Act of 2019 (S. 2302).
 - This suggests the possibility of bipartisan support for certain kinds of clean energy-related stimulus spending.

Climate Change and Clean Energy

- **Climate Diplomacy.** President-elect Biden promises to take a number of steps to make the U.S. a leader on climate change on the world stage. These could include:
 - Re-entering the Paris Climate Agreement and convening a meeting of world leaders to increase their carbon reduction commitments under Paris within the first 100 days
 - We expect the Republican leadership in the Senate to maintain that the Paris Climate Agreement or any new international agreements are not binding on the U.S. without the Senate’s consent.
 - Negotiating international agreements to reduce carbon emissions from the global shipping and aviation sectors
 - Imposing carbon adjustment fees or quotas on carbon-intensive goods from countries that are failing to meet their climate and environmental obligations
 - Working with other countries on a world-wide ban on fossil fuel subsidies and a limit to financing of high carbon emissions projects
 - Incentivizing climate commitments by developing countries by offering debt relief
- **Public Disclosure Requirements.** Biden’s campaign website states that his administration would require public companies to disclose climate risks and the greenhouse gas (“GHG”) emissions in their operations and supply chains.

Addressing President Trump's Environmental Policies

- **Roll Back of Trump-Era Regulation and Executive Action.**
 - President-elect Biden is expected to try to reverse, halt or otherwise reorient President Trump's deregulatory agenda.
 - In some cases, this will entail “rolling back the roll back,” i.e., reversing President Trump's efforts to rescind regulation promulgated by President Obama.
 - In other cases, a Biden-led EPA may promulgate more aggressive regulations than those issued during the Obama Administration.
 - Potential executive actions include:
 - Reversing or withdrawing certain President Trump executive orders and/or issuing new executive orders including those relating to:
 - energy exploration and production, including on the Outer Continental Shelf
 - preservation of national monuments
 - issuance of permits for cross-border infrastructure
 - reduction of regulatory actions and controlling of regulatory costs
 - Rescinding the Presidential permit issued by President Trump that authorizes TransCanada to construct and operate the Keystone XL pipeline at the U.S.-Canada border
 - Re-entering the Paris Agreement

Addressing President Trump's Environmental Policies

- Potential actions through the regulatory process include:
 - Repealing the [Navigable Waters Protection Rule](#), which defines the scope of the waters of the United States under the Clean Water Act and replacing it with a rule that is more in line with the Obama-era [Clean Water Rule](#)
 - Repealing the [Affordable Clean Energy Rule](#) and replacing it with a new rule regulating GHG emissions from existing power plants
 - Repealing and replacing the [existing rules](#) revising [standards for methane and volatile organic compound emissions from new oil and gas facilities](#)
 - Developing [methane emission guidelines for existing oil and gas facilities](#)
 - Withdrawing or repealing (if finalized) the [proposed rule on considering benefits and costs](#) in the Clean Air Act rulemaking process
 - Withdrawing or repealing (if finalized) the [proposed rule](#) weakening certain requirements for **coal ash disposal**
 - Undoing the Trump Administration's efforts to [undermine the legal basis of the Mercury and Air Toxics Standard](#)
 - Reinstating preemption waiver for **California's GHG standards and zero-emission vehicle program**
 - Rescinding and replacing the [Safe Affordable Fuel Efficient Vehicle Rule](#)
 - Withdrawing [ongoing rulemaking](#) that would restrict **EPA's reliance on science based on non-public data**
 - Reversing the Council on Environmental Quality's [overhaul of National Environmental Policy Act](#) implementing regulations
 - Replacing the Trump EPA's [PFAS Action Plan](#) with an accelerated, more aggressive regulatory process

Addressing President Trump's Environmental Policies

- Rescinding and replacing regulation requires economic analysis and notice and comment. New regulations may be subject to litigation or other challenges.
 - For instance, replacing the Obama Administration's Clean Water Rule took over three years.
- President-elect Biden is being advised by a transition team that includes several former Obama EPA officials who were directly involved in drafting Obama EPA regulations.
- A Biden-led DOJ may file motions to hold lawsuits challenging Trump EPA regulations in abeyance so as to reconsider its defense of those regulations.
- The CRA allows Congress to void final regulations published 60 session days or less prior to the adjournment of Congress by a joint congressional resolution passed by a majority of each of the House of Representatives and Senate and signed by the President.
 - This 60 day date occurred sometime in spring 2020 according to some experts
 - Unless the Democratic Party gains control, the CRA is unlikely to be used.

Environmental Justice

- President-elect Biden has pledged to place heavy emphasis on protecting vulnerable and disadvantaged communities from environmental harms. Key elements of his agenda include:
 - Expanding Executive Order 12898 and establishing performance metrics to ensure that the order is being implemented
 - Executive Order 12898 is an executive order signed by President Clinton in 1994 that directs federal agencies to incorporate environmental justice concerns in decision making.
 - Creating regulatory and legislative changes to provide private parties with the ability to challenge governmental actions that violate Title VI of the Civil Rights Act, which prohibits discrimination in federally funded programs
 - Any legislation will require bipartisan support assuming Republican control of the Senate.
 - Targeting clean energy investments to disadvantaged communities
 - Creating programs requiring industries:
 - to ensure that communities have real-time knowledge of pollution incidents
 - engage with community groups regarding remediation plans

Enforcement

- A Biden Administration and Biden-led EPA and DOJ would be expected to adopt a more aggressive approach to the regulated community. This could include:
 - More routine inspections, which declined by as much as 50% under President Trump
 - More aggressive civil and criminal enforcement of anti-pollution laws
 - Biden’s campaign website notes that additional legislation would be sought as needed to hold corporate executives personally accountable for pollution, including by clawing back golden parachutes and bonuses at companies that shift the environmental burdens of their actions onto taxpayers.
 - New legislation, however, is unlikely to proceed under a Republican controlled Senate.
 - Revocation of President Trump executive orders, including the executive order governing the use of agency guidance in civil administrative enforcement and adjudication
- DOJ may side more often than in the past with plaintiffs in private party climate change lawsuits.

Selected Source Documents

- The Biden Plan to Build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future ([Infrastructure and Energy Plan](#))
- The Biden Plan for a Clean Energy Revolution and Environmental Justice ([Climate Plan](#))
- The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity ([Environmental Justice Plan](#))
- The Case for Climate Action: Building a Clean Economy for the American People, the Senate Democrats' Special Committee on the Climate Crisis ([The Case for Climate Action](#))
- Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America, the House Select Committee on the Climate Crisis ([The Climate Crisis Action Plan](#))

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