

Recent Executive and Judicial Actions Implications for Communities

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Executive Actions - Repealing Rules

- ▶ April 9, 2025, Presidential Memorandum to the Heads of Executive Departments and Agencies Directing the Repeal of Unlawful Regulations.
- ▶ Agencies are to prioritize the review and repeal regulations that violate any of 10 Supreme Court cases including:
 - ▶ *Loper Bright v. Raimondo* (in case involving fees for overseeing fisheries management, the Court overruled Chevron and adopted the principle that courts should not defer to agency interpretations of law)
 - ▶ Has implications for all judicial challenges to regulations
 - ▶ *Michigan v. EPA* (a statute that directs an agency to issue a regulation “as appropriate” requires consideration of cost, unless prohibited by the statute)
 - ▶ Has implications for both the CERCLA PFAS listing and the PFAS MCL case
 - ▶ *Sackett v. EPA* (the CWA regulates only relatively permanent bodies of water that are connected to navigable water and wetlands that abut such waters)
 - ▶ Narrows CWA jurisdiction, making it easier to site infrastructure.
 - ▶ *Students for Fair Admissions v. Harvard* (the 14th Amendment and Title VI of the Civil Rights Act prohibit consideration of race prohibiting use of race when granting admission to college, with implications for any program that bestows benefits)
 - ▶ Has implications for the distribution of EPA grants.

Executive Actions - Repealing Rules, continued

- ▶ If an agency determines that a regulation is inconsistent with one of the 10 Supreme Court cases listed in the April 9 memorandum then the agency is directed to repeal the rule *without notice and comment rulemaking*, arguing that the “good cause” exception to the Administrative Procedure Act applies.
- ▶ To date, we have seen only one rule repealed following the procedure outlined in the April 9 memorandum.
 - ▶ On April 9, 2025, President Trump ordered the repeal of showerhead water pressure standards, declaring notice and comment was unnecessary because the President ordered the action. The Department of Energy promptly implemented that directive. That action has not yet been challenged.
- ▶ If upheld by the courts, repealing regulations without rulemaking could create regulatory uncertainty.

Regulatory Reform - Executive Actions

- ▶ An April 9, 2025, Executive Order “Zero-Based Regulatory Budgeting to Unleash America Energy, requires:
 - ▶ Agencies to incorporate a sunset provision into regulations governing energy production, to the extent permitted by law, with a deadline of September 30, 2025.
 - ▶ The sunset is to be one year for existing regulations and 5 years for new regulations.
 - ▶ The sunset date can be extended in 5-year intervals, if the agency believes warranted.
 - ▶ Applicable DOE, FERC, NRC, OSMRE, BLM, BOEM, BSEE, and FWS regulations are listed, but EPA and the Corps are required to submit a list of regulations subject to the E.O. to OMB within 30 days.
 - ▶ The order excludes regulatory permits, like the Corps’ Nationwide Permits and EPA’s General Permits.

Regulatory Reform - Executive Actions

- ▶ An April 15, 2025, Presidential Memorandum, “Updating Permitting Technology for the 21st Century,” requires:
 - ▶ use of technology rather than paper in the permitting process,
 - ▶ agency coordination,
 - ▶ predictable project permitting schedules,
 - ▶ use of existing analyses, etc.

Regulatory Reform - Judicial Actions

- ▶ On May 29, 2025, in *Seven County Infrastructure Coalition v Eagle County, CO* a unanimous Supreme Court held that NEPA requires agencies to evaluate only the environmental effects of the project at issue. Accordingly, the Surface Transportation Board did not need to address upstream oil drilling or downstream oil refining when reviewing proposal to construct a railroad line that would be used to transport oil.
- ▶ On March 4, 2025, in *City & County of San Francisco v. EPA*, a 5-4 Supreme Court ruled that a limitation or standard in a Clean Water Act permit must tell the permittee what to do to maintain compliance. It must be imposed “from without,” not from within.
 - ▶ An “end result” requirement, like “meet water quality standards” is not permissible.
 - ▶ The Court’s ruling does not preclude descriptive narrative requirements, like stormwater best management practices. However, the narrative requirement must be specific.

Trump EPA

- ▶ So far, most of the regulatory actions by the Trump EPA have been energy related.
 - ▶ Proposal to repeal the CAA Power Plant Greenhouse Gas Emissions standards and Mercury and Air Toxics rules.
 - ▶ Setting Renewable Fuel Volume requirements.
 - ▶ Allowing year-round E15 fuel.
- ▶ EPA has issued a memorandum on the scope of state authority to put conditions on federally licensed or permitted projects under section 401 of the Clean Water Act, limiting it to water quality related considerations.
- ▶ We have not seen a new Waters of the United States proposal, but the agencies finished their listening sessions and plan to issue a proposal in the coming months.
- ▶ Administrator Zeldin has indicated support for the Biden Administration's PFAS MCLs for PFOA and PFOS (at 4 ppt) but has indicated the agency will revoke the MCLs for the other 4 PFAS chemicals (PFHxS, PFNA, HFPO-DA, and PFBS).
- ▶ EPA has not yet announced its plans for the PFAS CERCLA rule.
- ▶ The President's FY 2026 Budget Request would zero out categorical grants that support state regulatory programs and make deep cuts to the Clean Water and Drinking Water SRFs.

Questions?

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