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Pre-Election Environmental Outlook: Either Outcome Means Active Agenda

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Senate and House caucus whips can count votes so accurately there is almost never a doubt over the outcome of a particular vote. When it comes to the 2012 election, however, there is no certainty at all. With less than one week before the election, the words most often used to describe the outcome are “toss-up.”

On November 7th we may be waking up to a totally different Washington, DC with a new President and Republican Congress or the status quo with a divided Congress and President Obama re-elected to a second term.

When it comes to environmental policy, either outcome will mean big changes and opportunities over the next two to four year horizon. Let's look at the possible scenarios.

Obama – Part Two

If President Obama is re-elected to a second term, we should **expect EPA's regulatory agenda to explode**. There are dozens of regulations waiting for OMB approval before they can be issued and dozens more waiting to go to OMB for final signoff. Many of these rules have been caught up in election year politics, and it's a good bet that they will move soon after the election.

Moreover, the conventional wisdom is that during a second term the **Administration will double down on the environment** with a renewed focus on climate change, greenhouse gas regulations, coal ash and other coal-related rules, new source performance standards for electric power plants and tighter controls on hydraulic fracturing. This agenda is likely to be coupled with an aggressive enforcement policy, exhaustive permit approvals and extensive NEPA reviews.

Of course a re-elected President Obama and his EPA agenda may be tempered, depending on which party controls Congress. If the Republicans control both houses of Congress, the Administration should expect unrelenting pushback, EPA budget cuts and spending restrictions and countless oversight hearings. Even if the Democrats maintain control of the Senate, Republicans will likely retain a majority in the House and have demonstrated a willingness over the past two years to keep a close eye on the EPA. There is no indication that will change.

A Romney Administration

If Mitt Romney is elected President, two things will likely happen in short order. First, as past Administrations have done, President **Obama's EPA will try to get as many regulations out the door before the transfer of power**. Likely regulations to be pushed out include greenhouse gas New Source Performance Standards for power plants, National Ambient Quality Standards for particulate matter, and cooling water intake standards for power plants. Second, as soon as Mitt Romney is sworn in as President, we should expect his chief of staff to send out a memorandum, like Andy Card did for President George W. Bush in January 2001, “freezing” all regulations and calling for an extensive review of rules followed by regulatory “rollback.”

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Within a Romney EPA, we should also expect his Administrator to look for opportunities to delay, modify or abolish greenhouse gas rules for stationary sources, mercury air toxics, coal ash and new source performance standards targeting coal-fired utilities. If history is a barometer of future actions, in a Romney Administration EPA will also shift its emphasis from issuing mandatory rules toward one of voluntary programs and regulatory streamlining.

A Romney Administration, through its allies in Congress, may also have another tool at its disposal to overturn certain regulations. The rarely used **Congressional Review Act (CRA) may become a more potent tool in the legislative toolbox**. CRA requires only a simple majority of both Houses to overturn a final regulation along with a presidential signature. With Mitt Romney as President, CRA becomes a more likely option, although it will still require 51 votes in the Senate which will not be easy to achieve if the Democrats retain a majority. Senator Inhofe (R-OK) utilized the CRA earlier this year in an effort to overturn EPA regulations for mercury and air toxic emissions. His resolution failed on a 46-53 vote.

Either Outcome Means an Active Environmental Agenda

The bottom line is that this election will have broad sweeping impacts in Washington, DC and beyond the Beltway. **If Barack Obama is re-elected president, we can expect an active EPA touting new environmental policies and a lengthy regulatory agenda to control emissions from fossil-fuel power plants and other industries**. There will likely also be a continued focus on aggressive enforcement, extensive permit conditions and exhaustive NEPA reviews. If the Republicans retain the House majority, we should also expect his EPA Administrator to become a permanent fixture at Capitol Hill oversight hearings.

Additionally, state regulatory officials, local businesses and others may be asked to testify about the benefits of a streamlined regulatory process and greater flexibility for states to address environmental issues. The Senate will conduct confirmation hearings for cabinet level and senior Executive Branch positions. These hearings present an opportunity to address client issues by working with Members to ask questions or submit information for the record.

If Mitt Romney is elected president, we should also expect an active EPA and environmental agenda. The difference is that in a Romney Administration, we can expect a new **emphasis on voluntary compliance** over mandatory regulations, and a serious effort administratively and with help from Capitol Hill Republicans to **delay and eliminate “unnecessary” and “burdensome” regulations** now on the books or on the drawing board.

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