

What are the key things to watch for in 2019 in the environmental area?

### **Regulations.**

- According to the Administration's schedule, three big rules should be issued in March: repeal of the Waters of the United States rule (WOTUS), repeal and replacement of the Clean Power Plan, and the freeze on fuel efficiency standards. This seems very ambitious to me, especially for the last two where there are major technical issues to be resolved. EPA will likely lose at least a couple of weeks due to the shutdown. But even with slippage, the rules are likely to come out sometime next year. There will also be movement on a bunch of other rules, such as the effort to loosen restrictions on methane emissions.
- In addition, just prior to shutting down, EPA proposed a re-do of the toxics standards for power plants. The proposed rule would not change the standard, which would be pointless now that the industry has complied. Instead, EPA will try to establish a precedent for disregarding co-benefits (health benefits involving other pollutants, besides the one being directly regulated).

### **Courts.**

- More environmental rules will be hitting the courts. That will include the regulations mentioned above. It's very unlikely that the legal issues posed by these major regulations will be resolved in 2019, but there will be stay requests, which will give an initial read on judicial attitudes.
- None of the major environmental rules is likely to get to the Supreme Court next year, but we'll begin to get a read of how Kavanaugh's appointment will shift the Court. For instance, we'll see whether the Court is tightening the rules for plaintiffs to get standing and whether it is moving toward less deference toward agency statutory interpretation.

### **Politics.**

- The House Democrats are going to make life difficult for the Administration as they unleash a slew of investigations. No doubt there will also be continuing drama over the budget, and shutdown.
- We'll see how the 2018 elections start shifting things in Congress. There are also a few off-year elections coming up, including governor's races in Louisiana, Kentucky, and Mississippi, and important legislative races in New Jersey and Virginia.
- The Iowa caucuses are Feb.3, 2020. That's the official start of the presidential

campaign, but we'll see a lot of jockeying around before then to determine which potential candidates actually throw their hats in the ring. That's particularly true on the Democratic side, of course, but we may also see who (if anyone) in the GOP tries to challenge Trump.

In short, a lot of things were set in motion in 2018. We'll start to seeing them emerge into the light of day in 2019.