

Trump's opening round of executive orders called for rollbacks of many environmental regulations, including almost everything relating to climate. His EPA Administrator followed up with a long list of projected rollbacks. Rollbacks were a major feature of his first term, so we have some idea of what to expect. But 2025 isn't 2017. There are likely to be some major differences, with more extreme legal positions and formal rollbacks taking second place to efforts to destroy regulatory agencies.

In some ways, the idea of repealing regulation you don't like seems quaint if not charmingly innocent. Repealing a regulation suggests that you think laws and regulations are important - that's so last decade. Why bother repealing a regulation when you can just fire everyone who might enforce it? Or when, instead, you can just announce that you're "pausing" enforcement of laws you don't like, as Trump did about TikTok and the Foreign Corrupt Practices Act?

Nonetheless, efforts to formally repeal regulations are still going to have their place. It will take longer to do so, since the Trump/Musk Administration has fired many of the people who would manage the complex rulemaking process. Putting together a convincing case based on scientific evidence and careful analysis is time consuming and labor-intensive. Rather than doing a complicated policy analysis, it's easier to get a couple of lawyers to throw together a legal argument for your position. EPA tended to favor this tactic in Trump's first term, but Musk's decimation of EPA and other agencies makes this an even more appealing move now.

In general, Trump's has been less restrained and more willing to take radical steps in his second term than the first time around. This will be reflected in the kinds of legal arguments we will see from EPA and other agencies.

In the first term, EPA's arguments for rollbacks were generally based on statutory language and past practice. I suspect that EPA may argue for much bigger changes in statutory interpretation, based on arguments that previous interpretations of the statute crossed constitutional lines. For instance, we may start to see arguments that existing regulations go beyond Congress's power over interstate commerce or violate the constitutional rights of landowners. They may also argue that previous Administration's view of agency discretion violated the non-delegation doctrine, which limits how much discretion Congress can give to agencies.

Going out on a limb, I would offer two predictions. One is that repealing and replacing existing environmental regulations will have a lower priority in this iteration of the Trump presidency - it will often be easier to just ignore the existing regulations or eliminate the

regulators rather than the regulations. The other is that, when it does undertake rollbacks, the administration will take more extreme legal positions and could be more prone to make constitutional arguments against environmental regulation.