

Environmental law may face attack on many fronts during the Trump Administration. As we were all forcefully reminded last week, predictions are always uncertain. Trump's own intentions are not yet clear, and there are many permutations that could affect the end result. Rather than trying to predict exactly what will or won't happen, it may be most useful to classify the risks into the most likely and the less likely.

Three of Obama's environmental actions have been particular targets for Trump and other Republicans: the Paris Agreement, the Clean Power Plan, and the Waters of the United States (WOTUS) rule on wetlands. The Paris Agreement would be the easiest to walk away from, since it's not a formal treaty or statute. It might violate international law for Trump to renounce the treaty, but the World Court does not have an army, and there is really no one in the U.S. legal system who could stop him. He is likely to face pressure from various quarters, here and abroad, but he may be oblivious to international and domestic complaints.

Unless Congress eliminates the Clean Power Plan and WOTUS, Trump will either need to work all the way through the litigation process (where he'll probably win after appointing a new Justice to the Supreme Court), or else ask the lower courts to send the rules back to EPA for further consideration. Reconsideration might be a bit time-consuming and could result in further litigation, but in the end I suspect Trump can get his way. Again, he may face some counter-pressures, especially on the Clean Power Plan, but probably nothing he can't deal with.

These three Obama policies are also at risk simply because they are so high visibility, making it hard for Trump to walk back his campaign promises. Overturning these actions also poses fewer risks of being overruled by the courts.

It's also possible that Congress might amend the Clean Air Act to eliminate EPA jurisdiction over greenhouse gases. This is definitely not possible if the Democrats still have the right to filibuster. If the filibuster is abolished, however, Democrats will have to try to scrounge up some votes from Sen. Collins and others (McCain? Graham?) to block congressional action.

There are also any number of more garden-variety EPA rules on air and water pollution that Trump may want to ditch. But they will require significant administrative hassles, and they pose the risk that he'll be seen as undermining public health. Given enough time, Trump can manage this, but it won't be quick, and it may prove politically costly. We might expect to see some efforts to retrench on the Endangered Species Act, probably with Congressional support, but again there might be a political cost: it's easy to get the public worked up about polar bears and other furry creatures.

There was also talk during the campaign about much more radical changes, like abolishing EPA or turning it into an independent agency, rewriting the pollution laws from scratch, eliminating vast numbers of existing EPA regulations, and so forth. In my view, these are unlikely, given that the Republicans have such a thin margin in the Senate. Even if the Republicans abolish the filibuster, which is by no means a done deal, the Democrats could quite likely come up with the three Republican votes they would need to block such drastic measures. There would also probably be severe public backlash. For this reason, I view these radical steps as being substantially less likely. On the other hand, the mere fact that I have to discuss them indicates just how far off-course we are in danger of wandering.

As in the Bush Administration, budget cuts are probably the greatest single threat; but even there, Senate Democrats may have some leverage. Moreover, if it turns out that Ryan needs Democratic support to pass bills in the House due to opposition from the far Right, House Democrats could also have some leverage.

To summarize, the greatest risk probably involves the three highest-profile of Obama's environmental actions and EPA's budget. There are likely to be adverse moves on other fronts, but those will take more time and care. (And so far, it remains to be seen whether Trump will make lower-level appointments with the skill to carry off more complex efforts.) The most radical actions are unlikely, particularly during the first two years of the Trump Administration, and for longer unless the GOP Senate majority grows very substantially in 2018.

Still, anything is possible.