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United States
Environment

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This country-specific Q&A provides an overview of environment laws and regulations applicable in United States.

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United States: Environment

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Congress enacts statutes that apply nationwide at a federal level. The Executive Branch of the federal government, primarily through the United States Environmental Protection Agency (EPA), enforces those federal laws and regulations promulgated pursuant to those laws. Individual states, municipalities, and tribal jurisdictions also may enact their own laws and regulations. In assessing environmental issues in the United States, it is important to consider federal, state, and local laws and regulations, how they fit together, and—in some cases—whether the federal laws pre-empt the state and local laws.

The primary federal laws are the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Safe Drinking Water Act (SDWA); the Clean Air Act (CAA); the Clean Water Act (CWA); the Endangered Species Act; the Oil Pollution Act; the National Environmental Policy Act (NEPA); the Resource Conservation and Recovery Act (RCRA); and the Toxic Substances Control Act (TSCA). Generally, states, local, and tribal authorities can enact laws and regulations that are stricter than the requirements of federal laws, but they must not conflict with the purposes of those laws. Where such conflict arises, the federal laws will typically pre-empt the other laws.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The EPA is the primary environmental regulatory authority in the United States. It is an independent agency of the Executive Branch of the federal government, serving under and at the direction of the President of the United States. The EPA is represented in legal matters by its own counsel and/or the United States Department of Justice. The Army Corps of Engineers retains regulatory authority over the waters of the United States, although what constitutes "waters of the United States" is often a contested legal issue. The Fish and Wildlife Service is the regulatory authority over fish, wildlife, endangered species, and natural habitats. There are also federal agencies that regulate specific locales (e.g., the National Park Service for national parks and monuments). Most states have agencies that generally mirror the responsibilities of these federal authorities. It is not uncommon for federal and state regulatory agencies to work together on environmental issues.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Environmental permitting in the United States is organized under specific statutes and regulations. Environmental permits are typically issued by the EPA, state regulators, local regulators, or tribal authorities. Permits generally are required for a wide array of activities, including without limitation the construction, development, and operation of facilities or structures; the discharge or emission of certain hazardous materials into the environment; and the storage, management, transportation, and disposal of hazardous materials.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Generally, environmental permits can be transferred between entities, but the requirements for doing so often vary by jurisdiction. Some permits can be transferred by providing notice to the issuing authority, while others require approval of such authorities before the transfer can be effectuated. In some limited instances, transfer of environmental permits may not be possible, and an entity may be required to apply for and obtain a new permit.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The appealability of a permitting decision often hinges on whether that decision is a final agency action. If final, the decision typically can be appealed. Often, the EPA and many other regulatory authorities require that challenges to permitting decisions be first filed in an independent intra-agency forum. Should those challenges be unsuccessful, the challenging party usually may appeal to federal or state court or to an administrative law judge.

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6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs (including any considerations in relation to biodiversity or GHG emissions) and to what extent can EIAs be challenged?

When a federal agency develops a proposal to take a 'major' federal action (as interpreted by statute, regulations, and case law), that action must comply with the NEPA. NEPA requires the preparation of an Environmental Assessment (EA), which includes a discussion of the potential environmental impacts of both the proposed action and any alternatives. If significant environmental impacts are anticipated, the agency must then prepare an Environmental Impact Statement (EIS). An EIS includes, among other things, (1) a purpose and need statement; (2) a discussion of reasonable alternatives to the proposed action; (3) the environmental consequences of the proposed action; and (4) a summary of information submitted by commenters on the proposed action. The EIS process ends with the issuance of a record of decision, which explains the federal agency's decision on the proposed action.

Many states have their own laws surrounding environmental impact assessments. With the advent of environmental justice, some states have enacted or are in the process of enacting laws requiring detailed environmental impact assessments for certain projects or decisions in overburdened or disadvantaged communities.

Federal and state agency EA and EIS decisions can often be challenged in court after exhausting any administrative remedies available.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

CERCLA, also known as the Superfund law, creates the federal liability regime for the investigation and remediation of soil and groundwater. It imposes strict liability on four categories of potentially responsible parties (PRPs): current owners/operators of a site, former owners/operators at the time hazardous substances were disposed of at the site, parties that arranged for the disposal or treatment of hazardous substances at the time, and parties that transported hazardous substances to the site for disposal or treatment.

Similar liability regimes have been enacted in the individual states. Generally, after assessing the environmental risk at a site, the federal government can decide to add the site to the National Priorities List and will send notice letters to PRPs regarding potential liability for site response costs. Allocation of liability occurs either through the courts or privately among the government and/or PRPs through allocation and/or mediation proceedings. An allocation can take a variety of forms, but it most often reflects a PRP's pro-rata share of the contamination at issue taking into consideration legal standards, technical factors, and equitable principles.

In addition to investigation and remediation costs, CERCLA and similar state laws also authorize claims for certain designated trustees to recover for damages to natural resources caused by hazardous substances.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

At the federal level, CERCLA and the Emergency Planning and Community Right-to-Know Act require reporting to authorities of releases of certain quantities of hazardous substances. Following a verified release of a hazardous substance, CERCLA requires a preliminary assessment and site investigation to determine if further investigation is needed. If so, the PRP must perform a remedial investigation and eventually assess the need for a remedial action.

Some states, including New Jersey and Connecticut, have enacted laws imposing a positive obligation to investigate a property in connection with certain real estate and corporate transactions, which includes reporting requirements.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Yes; see the prior answer. While this requirement generally falls on the responsible party, some states have enacted laws imposing reporting obligations on other individuals, including environmental professionals.

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10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Under certain circumstances, yes. However, unless specific criteria are met for CERCLA and state-level statutory defenses, the owner may also be liable for the investigation and remediation costs as the current owner of the affected land. In such circumstances, an allocation of liability between the current and former owner/operator may be necessary.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

RCRA is the main federal law governing the storage, handling, and disposal of hazardous waste. CERCLA provides the liability regime for hazardous substances that reach, or threaten to reach, the environment. Other federal laws and regulations governing waste disposal include the CAA, CWA, Nuclear Waste Policy Act, Low-Level Radioactive Waste Policy Act, SDWA, and Hazardous Materials Transportation Act. Most states have their own laws and regulations on waste disposal. Generally, entities handling, disposing of, or transporting waste in the United States will require some type of approval or permit from the relevant authorities.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Under both CERCLA and RCRA, a transporter, handler, producer, and/or disposer of waste can retain full liability for such waste even after disposal off-site. Subject to certain exceptions, CERCLA imposes strict, joint and several liability on parties that arrange for the disposal of or transport hazardous substances. Under RCRA, a hazardous waste generator is responsible from the point of hazardous waste generation to the point of final disposal or destruction, even if the waste is transferred to another party for off-site disposal. Many state laws impose similar strict, joint and several liability for the transportation and disposal of hazardous waste. The regulatory agencies also often have broad authority to restrain a waste handler/disposer/transporter that is not performing its activities in compliance with law.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

There are a wide array of programs in the United States that permit producers to take back used products for recycling or reuse. Federal laws generally do not require producers to take back such products, although some states and local authorities have enacted their own take-back regulations. Further, some authorities indirectly encourage such activities by enacting laws that require the use of recycled material in products and packaging.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

The federal Occupational Safety and Health Administration has promulgated regulations to protect workers from the hazards of asbestos. Those regulations include a permissible exposure limit, monitoring requirements, protective equipment standards, workplace training, medical surveillance, and recordkeeping obligations. The Asbestos Hazard Emergency Response Act requires local educational agencies to inspect schools for asbestos-containing materials (ACM) and to prevent or reduce such hazards. Many states and local municipalities have their own regulations for managing and remediating asbestos and ACM. Owners/occupiers may also voluntarily address asbestos or other deleterious materials to avoid human health and safety hazards and associated potential liabilities.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Under TSCA, EPA has issued requirements concerning the manufacturing (including importing), reporting, recordkeeping, use, and testing of chemical substances and/or mixtures. States may have their own similar regulations, such as California's Proposition 65, which requires businesses to provide warnings about significant exposures to chemicals that can cause cancer, birth defects, or other reproductive harm. Other states are beginning to enact similar laws or regulations, including with respect to per- and polyfluoroalkyl substances (PFAS).

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16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

Generally, energy efficiency audits are not required in the United States. However, the federal government and some states have established minimum efficiency standards for certain home appliances (i.e., refrigerators and washing machines). Certain programs, like EnergyStar, are designed to encourage manufacturers to comply with energy efficiency standards by allowing them to use certain branding on their products. Additionally, some commercial and/or residential construction codes require certain performance benchmarks for the design, materials, and equipment used in new construction and renovations. And some states are passing laws requiring energy conservation by expanding existing energy efficiency resource standards for utilities. Alternative forms of energy are also being explored and implemented throughout the United States, including inland and offshore wind farms.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The CAA is the primary federal law regulating air pollution in the United States. In 2007, the Supreme Court, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), empowered the EPA to regulate certain greenhouse gas (GHG) emissions. The EPA regulates GHGs from newly constructed stationary sources (e.g., power plants and industrial facilities) or existing sources that undergo major upgrades or modifications through the establishment of New Source Performance Standards. Under the CAA, states are typically delegated the authority to set the enforceable rules governing existing sources, but the EPA establishes emissions limits with which existing sources must comply. In 2022, the Supreme Court in *West Viginia v. EPA*, 597 U.S. 697 (2022), which is described in more detail below, limited the EPA's options for regulating GHG emissions by prohibiting the EPA from requiring power plants to shift electricity production from high-GHG emitting to lower-GHG emitting energy sources. In response to the Supreme Court's decision, in May 2024, the EPA finalized rules that set carbon dioxide limits for certain fossil-fuel-fired power plants and guidelines for existing coal, oil, and gas-fired power plants. However, President Trump has indicated his administration will rescind EPA rules placing GHG emission limits on natural gas-fired plants and existing coal-fired power plants.

Under the Biden Administration, the federal government enacted several incentives to promote clean and renewable energy. The federal Inflation Reduction Act of 2022 provides funding, programs, and incentives to accelerate the transition to a clean energy economy. As of 2024, 29 states, including the District of Columbia, have a Renewable Portfolio Standard, which requires electric utilities in those jurisdictions to supply a specified minimum percentage of renewable electricity. In addition, eleven states in the northeastern United States participate in the Regional Greenhouse Gas Initiative, the first market-based GHG emissions cap-and-trade regional initiative. California's GHG emissions cap-and-trade program primarily applies to large GHG emitters, including industrial facilities, electricity generators, natural gas suppliers, and transportation fuel suppliers and aims to reduce carbon dioxide emissions by setting a limit on total emissions and requiring covered entities to either reduce emissions, obtain allowances to cover their emissions, and/or purchase offsets.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

In 2021, the Biden Administration set a goal of achieving a carbon pollution-free power sector by 2035 and a net-zero GHG emissions economy no later than 2050. To help streamline the 2050 net-zero goal, in December 2024, the Biden Administration announced a new climate target for the United States: a 61-66 percent reduction in economy-wide net GHG emissions from 2005 levels by 2035. This announcement came on the eve of President Donald Trump's second administration. It remains to be seen what action the new administration will take concerning climate policies.

19. Are companies under any obligations in your jurisdiction to have in place and/or publish a climate transition plan? If so, what are the requirements for such plans?

Companies in the United States are not required by law to publish a climate transition plan, but they may eventually be required to make certain disclosures. For instance, in 2024, the United States Securities & Exchange Commission published final rules establishing climate-

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related public disclosure requirements, including (1) material climate-related risks, strategy, targets/goals, emissions, and governance; and (2) material expenditures directly related to climate-related risk mitigation/adaptation, disclosed transition plans and/or disclosed targets and their impact on a company's finances. Those disclosure rules were stayed shortly after publication and may not survive the second Trump Administration. That said, many companies voluntarily publish climate-related plans and goals, which fall under the umbrella of Environmental, Social, and Governance (ESG). ESG has received significant attention from the public, investors, and regulators, as it offers information to evaluate a company's environmental and sustainability impacts.

20. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

In the United States, statements referring to products or companies as 'sustainable,' 'green,' and similar terms are subject to the Federal Trade Commission's (FTC) Green Guides, which are meant to ensure that environmental and sustainability claims are truthful and non-deceptive. Some states, including Rhode Island and Maine, have incorporated the Green Guides by reference into state law. California has enacted statutes containing their own environmental marketing guidelines while also incorporating the Green Guides. The FTC requires all marketing claims be substantiated and supported by reliable scientific evidence. In addition, companies making false and/or unsupportable environmental or sustainability claims may be subject to consumer fraud lawsuits or administrative enforcement action.

21. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Federal antitrust laws in the United States do not exempt climate-related activities. As a result, climate-related collaborations may give rise to antitrust concerns, including agency enforcement and litigation. Under the Biden Administration, antitrust enforcement increased, including in relation to energy company ESG initiatives. It is anticipated that, under the second Trump Administration, this enforcement practice may be scrutinized and reduced.

22. Have there been any notable court judgments in relation to climate change litigation over the past three years?

As referenced above, in 2022, the United States Supreme Court issued a decision in *West Viginia v. EPA*, 597 U.S. 697 (2022), holding that the EPA lacks authority under the CAA to regulate caps on GHG emissions based on a "generation-shifting" approach that would have required shifting electricity production from higher-GHG emitting to lower-GHG emitting producers to combat climate change. The Court embraced the 'major question doctrine,' which dictates that administrative agencies lack authority to act on questions of extraordinary economic and political significance unless Congress clearly granted the agency such authority. Beyond explicitly curtailing the EPA's power to direct a transition away from fossil-fuel-based power, this decision may signal broader legal restrictions on the EPA's authority to address climate change under its statutory programs.

Over the past three years, there has also been an increasing number of climate change-related legal proceedings in the United States. As of 2024, approximately 1,700 such cases are pending. Climate change litigation in the United States includes (1) federal statutory claims under the CAA, Endangered Species Act, CWA, Freedom of Information Act (FOIA), and NEPA; (2) claims under the United States Constitution; (3) state law claims; (4) common law claims; (5) public trust claims; and (6) securities and financial regulation claims, among others.

On January 13, 2025, the United States Supreme Court declined to hear two cases, *Sunoco LP v. Honolulu*, 537 P.3d 1173 (Haw. 2023), *cert. denied*, __ S. Ct. __ (Jan. 13, 2025) and *Shell PLC v. Honolulu*, 537 P.3d 1173 (Haw. 2023), *cert. denied*, __ S. Ct. __ (Jan. 13, 2025), in which fossil fuel companies sought review of the Hawaii Supreme Court's decision allowing the City and County of Honolulu to proceed with climate-based claims against fossil fuel industry defendants. In December 2024, the United States Solicitor General submitted a brief to the Supreme Court expressing the United States' view that the Court should not hear those cases because, among other reasons, the Hawaii Supreme Court correctly determined that the CAA did not pre-empt Honolulu's climate-based claims.

On December 18, 2024 in *Held v. State*, 419 Mont. 403 (2024), the Montana Supreme Court held that a climate change exception provision in the Montana Environmental Policy Act, which restricted consideration of GHG emissions and corresponding climate change

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impacts in environmental reviews, violated the youth plaintiffs' rights to a clean and healthful environment under the Montana Constitution. The Montana Supreme Court found that a stable climate system was clearly within the Montana Constitution's right to a clean and healthful environment and that the plaintiffs showed that GHG emissions are drastically altering and degrading Montana's climate and natural resources.

Climate change law and policy in the United States is continuing to evolve and may change dramatically during the second Trump Administration.

23. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

In campaigning for a second term, President Trump promised to roll back nearly all Biden Administration regulations intended to cut carbon emissions and move away from fossil fuels. During his first term, President Trump halted most federal climate initiatives, and he is expected to follow that same course during his second term. Many predict that President Trump will also cut the EPA's funding and resources, expand oil and gas production, and limit clean energy development.

24. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities? Transactions

Generally, the United States has adopted a 'polluter pays' approach. As a result, companies and their successors are liable for violations of environmental law, including their own pollution. Shareholders and directors may also be liable to the extent they participated in the liability-creating conduct or exercised control over the operations or decisions of the company that caused the violation or contamination; this is referred to as the 'responsible corporate officer' doctrine. A parent company may also be directly liable if it managed, directed, or controlled activities that caused contamination. Liability can also flow vertically and temporally to parent, successor, and predecessor companies through common law doctrines such as piercing the corporate veil, de facto merger, and corporate successorship.

Banks holding mortgages on a property are generally exempt from liability if certain criteria are met. However, banks can be liable when foreclosing on a contaminated property and where they fail to divest the property at the earliest practicable, commercially reasonable time, on commercially reasonable terms. Banks, like shareholders and directors, may also be liable if they exercise decision-making control over a property's environmental compliance or exercise control similar to a manager of a facility or property.

25. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

Sellers and buyers allocate liability between themselves through contract negotiations, but such allocation is only binding on the parties to that agreement. Generally, there are no limits on the ability of parties to negotiate the allocation of environmental liabilities. Under corporate law, pre-acquisition liabilities typically remain with the entity being acquired in a share sale or merger. But a buyer in an asset sale may avoid assuming pre-acquisition liabilities if the contract governing the sale does not clearly allocate those liabilities to buyer.

26. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

Environmental diligence for transactions is standard practice in the United States. While it can vary state-to-state, diligence typically takes the form of a Phase I and/or Phase II environmental site assessment, the requirements for which are promulgated by an independent standards organization. It is also common for states to require sellers to disclose the existence of certain environmental conditions when selling a property, including, but not limited to, asbestos, polychlorinated biphenyls, radon, lead paint, underground tanks, mold, hazardous substances, and more. Failure to disclose such conditions could result in a fraud and/or breach of contract lawsuit. Environmental diligence is also a standard element of trying to secure an innocent purchaser defense to contamination liability under state

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and federal law.

27. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Environmental insurance is standard in the United States. While there are many different types of environmental insurance products available, the most common are: (1) Pollution Legal Liability insurance, which covers businesses in the event of pollution that causes bodily injury, property damage, or clean-up costs; (2) Cost Cap insurance, which protects against cost overruns in contamination cleanup projects; (3) Contractor's Pollution Liability insurance, which covers pollution liability associated with contractor's operations; and (4) Underground Storage Tank insurance, which protects against unforeseen cleanup costs relating to underground storage tanks. Property owners can also pursue Environmental Liability Buyouts, which involve a specialty company assuming the cleanup and closure risk in exchange for payment. However, environmental insurance policies in the United States typically include an array of policy limits and exclusions, including for PFAS, and must be reviewed and negotiated carefully. Certain risks either cannot or likely will not be insured in the United States, including for instance intentional misconduct or criminal liability.

28. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Many federal and state environmental statutes require the regulated community to submit additional information and reports, much of which is made publicly available. For example, the EPA collects: (1) air quality data from stationary and mobile sources; (2) basic exposure-related information of chemicals produced domestically and imported into the United States under the TSCA's Chemical Data Reporting rule; (3) geospatial data to help search environmental issues affecting local communities; (4) Superfund site location and data reports; and (5) water quality data. The EPA's Enforcement and Compliance History Online database allows the public to search facilities and assess their compliance with environmental regulations. To the extent certain information is not maintained on a publicly available database, FOIA and state corollaries grant any person the right to request certain records from a federal or state agency.

29. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

FOIA and state corollaries generally grant any person, United States citizen or not, including businesses and organizations, the right to request information in possession of the federal government or its agencies. There are several exemptions to FOIA and similar state statutes, including trade secrets and proprietary commercial or financial business information.

30. Are entities in your jurisdictions subject to mandatory greenhouse gas public reporting requirements?

In the United States, the Greenhouse Gas Reporting Program requires reporting of greenhouse gas data and other relevant information from certain large emission sources, fuel and industrial gas suppliers, and carbon dioxide injection sites. Annual reports are due by March 31 of each year, and the data is made available to the public in the ensuing autumn.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

In June 2024, the United States Supreme Court overruled *Chevron v. NRDC*, 467 U.S. 837 (1984), in a case called *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024). Under *Chevron*, courts deferred to a federal agency's permissible interpretation of statutes where the statute was silent or ambiguous on an issue. *Loper Bright* overruled that framework and required courts to exercise their independent judgment to determine whether an agency acted within its statutory authority. It is likely that *Loper Bright* will increase and strengthen legal challenges to agency actions.

In January 2025, Donald Trump was sworn in as the 47th President of the United States. As discussed above, during the first Trump Administration, the EPA reversed, revoked, or otherwise rolled back more than 100 environmental rules and policies. This approach is likely

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to continue under the second Trump Administration, with a focus on reducing the environmental burdens and costs on business at the federal level to advantage economic growth and energy independence. With a reduction of environmental regulations and enforcement at the federal level, an increase in state and local environmental activity is expected.

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