

Trump Second Term: Legal Tracker

PRESIDENTIAL MEMORANDUM DIRECTING AGENCIES TO REPEAL ENVIRONMENTAL REGULATIONS

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On April 9, 2025, President Trump directed federal agencies to repeal certain categories of regulations in his memorandum entitled *Directing the Repeal of Unlawful Regulations* ("Memorandum"). In this Memorandum, President Trump lists 10 Supreme Court decisions that the Trump Administration identifies as the basis to repeal certain rules. The Administration encourages all executive departments and federal agencies ("Agencies") to "identify certain categories of unlawful and potentially unlawful regulations," with a mandate to repeal these regulations. A list of the 10 decisions driving this directive are listed at the end of this alert. This alert focuses on environmental impacts resulting from four cases with direct environmental implications: *Loper Bright*, *Ohio v. EPA*, *Sackett*, and *West Virginia*.

As discussed in President Trump's February 19, 2025, Executive Order, Agencies have been directed to follow a 60-day review period "to identify unlawful and potentially unlawful regulations." Then, Agencies shall "immediately take steps to effectuate the repeal of any regulation," or in the alternative, Agencies shall submit a short summary of each regulation that has not been targeted for repeal. BCLP expects that it will be a rather intensive process for Agencies to identify regulations subject to the Memorandum and to develop and implement a process to repeal such regulations, particularly in light of the increasingly sparse resources available to Agencies.

FOUR ENVIRONMENTAL DECISIONS THAT MAY DRIVE DE-REGULATION PURSUANT TO THE MEMORANDUM

BCLP discusses four decisions identified in the Memorandum that may be a particular focus for upcoming environmental de-regulation.

1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). This decision overturned the long-standing *Chevron* doctrine, and as a result, the Administration instructed agencies to repeal any regulation that: (1) is not consistent or with the statute authorizing it; (2) that was only promulgated in reliance on the *Chevron* doctrine; (3) and that could only be defended by relying on *Chevron*. Agencies could use this decision to unwind regulations now argued to exceed the

original scope of statutory authority. Notably, courts can still give weight to an agency's subject matter expertise, especially when the agency interpretation has been reasonable and consistent.

2. ***Ohio v. EPA, 603 U.S. 279 (2024)***. This decision stayed a federal plan for emissions reductions to prevent air pollution from travelling to other states pursuant to the Clean Air Act ("CAA"). The Court did not to give absolute deference to EPA as it related to its determination regarding the adequacy of State Implementation Plans under the "Good Neighbor" provision of the CAA and the subsequent implementation of a Federal Implementation Plan. As a result, environmental regulations and programs may be altered in the future to further restrict a federal agency's ability to regulate interstate related air matters.
3. ***Sackett v. EPA, 598 U.S. 651 (2023)***. This decision limited jurisdiction under the Clean Water Act ("CWA") by effectively limiting the breadth of the term "waters of the United States." Accordingly, Agencies must repeal any regulation inconsistent with the revised interpretation of "waters of the United States." BCLP expects the resulting changes to further limit the jurisdiction previously afforded to EPA (and the Army Corps of Engineers) with respect to water. While EPA issued amendments via final rule consistent with this decision, the enforcement and application of the law has varied greatly among the individual states as reported by third party industry groups. In general, BCLP expects to see a continued decrease of the federal protection of wetlands pursuant to the CWA in light of *Sackett*.
4. ***West Virginia v. EPA, 597 U.S. 697 (2022)***. This decision reviewed the 2015 Clean Power Plan rule, which addressed carbon dioxide emissions from existing power plants. The Court applied the Major Questions Doctrine on the basis that EPA's rulemaking sought to restructure the energy market, a major question. The doctrine requires the agency to identify "clear congressional authorization" for such rules. As a result, Agencies are directed to repeal any regulation promulgated in violation of the Major Questions Doctrine, or those rules that lack a clear congressional authorization. Ultimately, this decision can limit EPA in its ability to regulate issues in environmental law particularly if the rule risks exceeding congressional authorization, which could target policies seemingly disfavored by the current Administration, such as the regulation or reduction of greenhouse gas emissions.

PROCEDURES

The next steps will be fraught with judgment calls by Agencies and a time-consuming review and implementation process, as well as judicial challenges expected along the way. According to the Memorandum, Agencies shall finalize rules "where doing so is consistent with the 'good cause' exception in the Administrative Procedure Act" (APA). The 'good cause' exception essentially allows federal agencies to suspend certain administrative requirements; for example, the APA usually requires agencies to follow specific rules when modifying regulations. The 'good cause' exception allows Agencies to eliminate the notice-and-comment rulemaking when that process would be "impracticable, unnecessary, or contrary to the public interest." If Agencies were to invoke this

exception, some rules may be subject to repeal without undergoing traditional notice to the public or affording the public an opportunity to comment.

Further, as identified in the February 2025 [Executive Order](#), within 30 days after the conclusion of the review period, Agencies must submit a one-page summary of each regulation to OMB's Office of Information and Regulatory Affairs. This summary is required to explain each regulation identified as potentially unlawful "[which has not been targeted for repeal, explaining the basis for the decision not to repeal that regulation.](#)"

TEN DECISIONS

This insight has focused on four of the 10 decisions expected to have the greatest direct impact on environmental regulations. To be sure, the [Memorandum](#) lists ten Supreme Court decisions issued within the past decade, listed here for reference:

1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024);
2. *West Virginia v. EPA*, 597 U.S. 697 (2022);
3. *SEC v. Jarkesy*, 603 U.S. 109 (2024);
4. *Michigan v. EPA*, 576 U.S. 743 (2015);
5. *Sackett v. EPA*, 598 U.S. 651 (2023);
6. *Ohio v. EPA*, 603 U.S. 279 (2024);
7. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021);
8. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023);
9. *Carson v. Makin*, 596 U.S. 767 (2022); and
10. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020).

CONCLUSION

BCLP will continue to monitor and analyze these developments, providing insights and guidance as to the Memorandum and subsequent regulatory repeal initiatives and/or the Trump Administration's actions regarding environmental law. For additional information regarding these actions, please contact [Erin Brooks](#), [Anna Donald](#), or [John Kindschuh](#) at BCLP.

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