KING & SPALDING

A SEA CHANGE

Biden Administration Oil & Gas Industry

01 Extensive Regulatory Changes and Restrictions.

President Biden promised extensive regulatory changes impacting energy production while on the campaign trail, and Executive Orders and presidential appointments to date suggest that the President intends to follow through on many of these promises. We expect there to be significant regulatory changes in the next four years in the following areas:

A. A comprehensive climate change agenda that could include updates to the Obama Administration's Clean Power Plan new fuel efficiency mandates and required consideration of climate impacts in environmental assessments, permitting decisions, leasing on federal land, restrictions or a moratorium on offshore drilling, and pressure to declare that climate change is a national emergency.

B. Restrictions or outright bans on any new leases or permits for fracking on federal lands as well as new regulatory mandates for existing fracking operations that make them less economically viable.

C. More rigorous permitting and NEPA reviews and related environmental assessments that may delay or impede many projects, including offshore drilling and mineral leasing activities. This includes (1) the evaluation of climate change impacts in permitting decisions on upstream and downstream projects, including impacts of resource development upstream and emissions of GHGs downstream; and (2) the need to balance environmental group and landowner concerns against ambitions to support renewable energy development.

D. Heightened consideration of environmental justice concerns in agency decision-making and required measures to mitigate impacts on disproportionately impacted fence line communities.

E. Changes in royalties due on oil, gas and coal developed on public lands that may make these activities less economical to pursue.

F. "Resistance to the retention or reauthorization of permitting approaches intended to promote efficiency (e.g., the Army Corps' NWP 12 program)".

Energy companies will almost certainly be affected by some or all of these forthcoming regulatory changes. The Department of Interior (and other relevant agencies) may issue broad rules to implement this agenda but may also pursue regulatory changes through individual leasing and permitting decisions that may require affected companies to challenge any adverse determinations on an as-applied basis.

02 Administration Support for ESG Initiatives.

Where the Trump Administration sought to slow growing private sector interest in Environmental, Social, and Governance ("ESG") topics, expect the Biden Administration to accelerate growing market demand for oil and gas companies to do more, and be more transparent, about ESG activity.

The SEC will be more favorably disposed to mandating ESG disclosure. During the campaign, President Biden stated he would require public companies to "disclose their climate risks and greenhouse gas emissions in their operations and supply chains." We see no reason to doubt the sincerity of that campaign promise. The Acting SEC Chair's recent appointment of a Senior Policy Advisor for Climate and ESG builds on past statements of Democratic Commissioners and is a strong signal that companies – particularly those in the oil and gas industry – will be expected to disclose more robust ESG performance metrics. Companies are well-advised to track their performance against more comprehensive third-party frameworks, particularly those sought by the Sustainability Accounting Standards Board. Ensuring that that data is available, and that it is subject to rigorous disclosure controls, will be critical should these disclosures become mandated.

Pressure for ESG disclosure will not be limited to environmental impacts; a host of people related topics, including environmental justice, diversity, equity, and inclusion efforts, will also be on the table. Growing interest in disclosure about political involvement, including lobbying and trade association activity, is likely to increase, following successful pressure campaigns against companies that donated to politicians who challenged electoral college results.

03 Renewed Focus on Criminal Investigations and Enforcement.

Based on campaign promises, executive orders issued to date, and the administration President Biden is assembling, we expect the following four developments will affect environmental criminal investigations and enforcement:

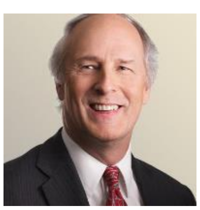
A. a reversal in the ~10 year decline in federal environmental criminal enforcement, particularly with respect to facilities located near fenceline communities impacted by environmental justice concerns;

B. a renewed focus on two Obama-era enforcement initiatives: the worker endangerment initiative and an initiative to hold individuals accountable for corporate wrongdoing;

C. restoring the historic strict liability interpretation of the Migratory Bird Treaty Act, which the Trump administration sought to reverse through a DOI Solicitor's Opinion and federal rulemaking; and

D. a reversal of the Trump administration's prohibition on the use of supplemental environmental projects, which have often benefitted communities impacted by environmental justice concerns.

Entities and individuals involved in enforcement actions should expect to face suspension and debarment proceedings that would render them ineligible to do business with the U.S. federal government. Entities that are debarred are also restricted in their ability to operate on federal land and federal leases.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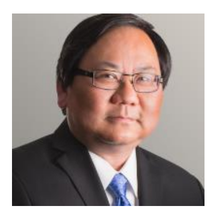
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