

The First 100 Days: Crisis Management

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SHORT BIOGRAPHY

Karl Heisler is a nationally-recognized environmental lawyer in enforcement defense and incident response. Karl has managed the legal fallout from a wide array of environmental and workplace safety incidents, ranging from fires and explosions to pipeline releases and the abandonment of hazardous waste. He has over two decades of experience responding to governmental investigations involving the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Occupational Safety and Health Act. He is a prolific speaker on environmental law and incident response.

Chambers USA distinguished Karl as “exceptionally proactive,” with “strategic thinking” and “the ability to understand the complex and translate it.” *Legal 500 USA* characterized him as a “true partner to his clients” and “highly strategic,” with a “singular ability to clarify the inordinately opaque and confusing nature of environmental laws for the uninitiated.” *Lawdragon* recognized him as a “Leading Environmental Lawyer.” *Benchmark Litigation* recognized him as having an “unparalleled ability to master the facts and an encyclopedic mastery of environmental law.”

As a respected thought leader, Karl is frequently called upon to comment, write or speak about environmental enforcement and incident response for publications and organizations including Law360, Thomson Reuters, American Fuel and Petrochemical Manufacturers, the Journal of Petroleum Technology, Resource Recycling, Inc., the Rocky Mountain Mineral Law Foundation, the Association of Corporate Counsel, Lawline, the American Bar Association, the Environmental Law Institute, the Practising Law Institute, and the American Law Institute. He has written or spoken about managing the first 48 hours of an incident, incident response for public information officers, responding to hazardous waste abandonments, hurricane readiness and response, climate risk disclosure, environmental due diligence, the environmental aspects of commercial and real estate transactions, environmental enforcement, the design and implementation of environmental compliance programs, the regulation of electronic waste, cybersecurity in the energy and transportation sectors, evidence preservation, and preparing for a government inspection. He wrote the introductory chapter for *Inside the Minds: Environmental Law Enforcement and Compliance*, published by Thomson Reuters/Aspatore, and co-authored the chapter entitled “Environmental Criminal Enforcement: A Primer for the Real Estate Practitioner” in the Fifth Edition of *Environmental Aspects of Real Estate and Commercial Transactions: Acquisitions, Development, and Liability Management*, which is one of the ABA's most widely read publications.

His clients include public and private entities in the energy, chemical manufacturing, construction and waste management industries, as well as lenders, private equity and real estate firms with interests in these industries.

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ARTICLE

I. INTRODUCTION

This article explores how President Trump has exercised his executive powers in the area of emergency preparedness and response during his first 100 days in office and offers a preliminary forecast for the remainder of his term.

II. THE FIRST 100 DAYS

The first 100 days of a presidential administration can serve as a comparative measure for political success. In 1933, President Franklin D. Roosevelt set the benchmark when he laid the foundation for the New Deal through a series of legislative initiatives designed to help the nation recover from the Great Depression. Over the course of his first 100 days in office, President Roosevelt succeeded in passing 15 landmark laws, citing the “emergency at home” to justify the rapid-fire adoption of “measures that a stricken nation in the midst of a stricken world may require.”¹ During his first 100 days, President John F. Kennedy attempted to overthrow Fidel Castro in the botched Bay of Pigs invasion in 1961, during a brief presidency that would be defined by Cold War conflict and an assassination. President Gerald R. Ford pardoned President Richard M. Nixon, which may have contributed to his defeat to President Jimmy Carter in 1976. And President Ronald Reagan announced the release of U.S. diplomats in 1981 following the Iranian hostage crisis, before winning a 49-state landslide re-election in 1984. In 2025, President Donald J. Trump issued a record 142 executive orders over the course of his first 100 days, which blanketed a host of disparate policy initiatives, citing national emergencies in energy,² in mineral production,³ in foreign trade and economic practices,⁴ and at the southern border.⁵ Emboldened by a clean sweep of all 7 swing states and a Republican trifecta, President Trump declared during his inaugural address that he has a “mandate” to reshape the U.S. government, and he has charted a course to do just that.⁶ How history will view it all remains to be seen. There is no question, however, that President Trump’s first 100 days have been historic.

As one of the many disparate policy initiatives announced during the first 100 days, the Trump administration repeatedly signaled its intention to prioritize emergency preparedness and response. The U.S. Environmental Protection Agency (“EPA”) Office of Enforcement and Compliance Assurance (“OECA”) issued a memorandum asserting, in pertinent part, “[e]nforcement and compliance assurance at any facility or activity involved in energy production or power generation shall prioritize addressing violations that threaten human health and safety or risk releases or accidents that would disrupt energy production or power generation.”⁷ The new enforcement initiative builds upon at least 11 executive orders issued to advance President Trump’s energy policy.⁸ Less than a week after

¹ President Franklin Delano Roosevelt, First Inaugural Address (Mar. 4, 1933).

² Exec. Order No. 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 20, 2025).

³ Exec. Order No. 14241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13673 (Mar. 20, 2025).

⁴ Exec. Order No. 14257, *Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits*, 90 Fed. Reg. 15041 (Apr. 2, 2025).

⁵ Presidential Memoranda 10886, *Declaring a National Emergency at the Southern Border of the United States*, 90 Fed. Reg. 8327 (Jan. 20, 2025).

⁶ President Donald J. Trump, Second Inaugural Address (Jan. 20, 2025), <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/>.

⁷ EPA, Office of Enforcement and Compliance Assurance, *Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities*, at 3 (Mar. 12, 2025).

⁸ Exec. Order 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 20, 2025); Exec. Order 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 20, 2025); Exec. Order 14270, *Zero Based Regulatory Budgeting to Unleash American Energy*, 90 Fed. Reg. 15643 (Apr. 9, 2025); Exec. Order 14153, *Unleashing Alaska’s Extraordinary Resource Potential*, 90 Fed. Reg. 8347 (Jan. 20, 2025); Exec. Order 14260, *Protecting American Energy from State Overreach*, 90 Fed. Reg. 15513 (Apr. 8, 2025); Exec. Order 14213, *Establishing the National Energy Dominance Counsel*, 90 Fed. Reg. 9945 (Feb. 14, 2025); Presidential Proclamation, *Regulatory Relief for Certain Stationary Sources to Promote American Energy* (Apr. 8, 2025); Exec. Order 14261, *Reinvigorating America’s Beautiful Clean Coal Industry and Amending Exec. Order 14241*, 90 Fed. Reg. 15517 (Apr. 8, 2025); Exec. Order 14192, *Unleashing Prosperity Through Deregulation*, 90 Fed. Reg. 9065 (Jan. 31, 2025); Exec. Order

he was confirmed, EPA Administrator Lee Zeldin announced that the response to the East Palestine, Ohio train derailment was the agency's "highest priority."⁹ The following day, he announced the "five pillars that will guide the EPA's work over the first 100 days and beyond."¹⁰ The first pillar – Clean Air, Land, and Water for Every American – included EPA's commitment to "ensuring emergency response efforts are helping Americans get back on their feet in the quickest and safest way possible."¹¹

This article explores how President Trump has exercised his executive powers in the area of emergency preparedness and response during his first 100 days in office and offers a preliminary forecast for the remainder of his term.

III. EXECUTIVE ORDERS AND EMERGENCY POWERS

Presidential power to issue executive orders arises from Article II of the U.S. Constitution, which vests the President with executive power and includes the obligation to "take care that the laws be faithfully executed."¹² Although every President in U.S. history except one has issued an executive order,¹³ no President has exercised this power so much, and so quickly. Executive orders can be used to order the government to take any step within the President's constitutional authority provided it does not violate federal statutory law. They carry the force of law, subject to judicial review. The executive order power has often been buttressed by emergency powers to enact wartime measures and to address economic depression. President Abraham Lincoln issued the Emancipation Proclamation via executive order during the Civil War.¹⁴ President Franklin D. Roosevelt created the Works Progress Administration to create jobs during the Great Depression via an executive order,¹⁵ then exercised the power again several years later to establish Japanese-American internment camps during World War II.¹⁶ President Harry S. Truman attempted to seize control of the U.S. steel industry via an executive order to avert a strike during the Korean War.¹⁷ The U.S. Supreme Court, however, invalidated President Truman's order just two months later in *Youngstown Sheet & Tube Co. v. Sawyer*, a landmark decision prescribing the limits of inherent executive authority.¹⁸

President Trump's use of executive orders and his invocation of emergency powers to support them appear to be without precedent, although an exhaustive comparison with his presidential predecessors is beyond the scope of this article. He has invoked several emergency powers during a period without war or economic depression, drawing widespread criticism from the left. The National Emergencies Act of 1976 ("NEA") authorizes the President to

14241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13673 (Mar. 20, 2025); Exec. Order 14272, *Ensuring National Security and Economic Resilience Through Section 232 Actions on Processed Critical Minerals and Derivative Products*, 90 Fed. Reg. 16437 (Apr. 15, 2025); Exec. Order 14285, *Unleashing America's Offshore Critical Minerals and Resources*, 90 Fed. Reg. 17735 (Apr. 24, 2025).

⁹ EPA Administrator Lee Zeldin, *New EPA Administrator Lee Zeldin Says East Palestine Recovery Will Be Agency's "Highest Priority,"* FORBES BREAKING NEWS (Feb. 3, 2025), <https://www.youtube.com/watch?v=8S9nTKQwnB4>.

¹⁰ EPA Press Release, *EPA Administrator Lee Zeldin Announces EPA's "Powering the Great American Comeback" Initiative* (Feb. 4, 2025), <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-announces-epas-powering-great-american-comeback>.

¹¹ *Id.*

¹² U.S. CONST. art. II, § 3.

¹³ President William Henry Harrison died a month after his inauguration. *See also* Statistica, *Number of executive orders signed by each U.S. president from 1789 to 2025*, <https://www.statista.com/statistics/1125024/us-presidents-executive-orders/>.

¹⁴ Presidential Proclamation 95, *Emancipation Proclamation* (Jan. 1, 1863).

¹⁵ Exec. Order No. 7034, *Establishing the Division of Applications and Information, the Advisory Committee on Allotments, the Works Progress Administration, and for Other Purposes* (May 6, 1935).

¹⁶ Exec. Order No. 9066, *Authorizing the Secretary of War to Prescribe Military Areas*, 17 Fed. Reg. 1407, (Feb. 19, 1942).

¹⁷ Exec. Order 103430, *Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies*, 17 Fed. Reg. 3139 (Apr. 10, 1952).

¹⁸ 343 U.S. 579 (1952); *see generally*, Federal Judicial Center, *Judicial Review of Executive Orders*, <https://www.fjc.gov/history/administration/judicial-review-executive-orders#:~:text=Federal%20courts%20have%20occasionally%20invalidated,which%20authorized%20such%20industrial%20codes>.

declare national emergencies to unlock powers and authorities authorized by emergency provisions in federal statutes, albeit subject to certain restrictions.¹⁹ President Trump's Executive Order No. 14156 invokes this authority, declares a "national energy emergency," then unlocks powers set forth in the Defense Production Act, the Clean Air Act, the Clean Water Act, and the Endangered Species Act to shore up the nation's energy security.²⁰ President Trump's Executive Order 14257 invokes the same authority, declares a national emergency arising out of "structural imbalances in the global trading system," then unlocks powers set forth in the International Emergency Economic Powers Act,²¹ which was enacted to address "any unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States."²² President Trump again invoked the same authority when he declared a "national emergency at the southern border" via a presidential action, citing a "large-scale invasion at an unprecedented level."²³

It remains to be seen whether and to what extent President Trump's exercise of emergency powers to support his executive orders will withstand judicial scrutiny. On May 9, 2025, Democratic Attorneys General from 15 states filed a Complaint in the U.S. District Court for the Western District of Washington, challenging the declaration of a national energy emergency.²⁴ Plaintiffs asserted that national energy production had reached an "all-time high" under the Biden administration, and that the "NEA was intended to ensure that presidential emergency powers would 'be utilized only when emergencies actually exist.'"²⁵ Plaintiffs argue that Congress enacted the NEA because presidents had "overused authorities granted by Congress for quick action" and that the "primary purpose of the NEA was to prevent the President from exercising unbounded authority to declare states of emergency and continue them in perpetuity."²⁶ In announcing the Complaint, California Attorney General Rob Bonta stated: "The invocation of the country's emergency authorities is reserved for actual emergencies – not changes in Presidential policy or because the President feels like it. These procedures misuse authorities meant for disaster response and bypass important health and environmental protections for the benefit of the fossil fuel industry."²⁷ Some commentators, however, believe the challenge may be premature, because no permits have yet to be expedited and because of judicial deference to executive authority to declare emergencies.²⁸

The 142 executive orders issued in President Trump's first 100 days address policy concerns that run the gamut from energy, critical minerals, trade, and border security; to paper straws, showerhead water pressure, "Keeping Men Out of Women's Sports," and ending diversity, equity, and inclusion programs. Set forth immediately below is a summary of three orders that may offer insight into the administration's approach to emergency preparedness and response through the lens of the "national energy emergency":

Exec. Order No. 14239, *Achieving Efficiency Through State and Local Preparedness*, 90 Fed. Reg. 14239 (Mar. 18, 2025)

Executive Order No. 14239 sets forth "the policy of the United States that State and local governments and individuals play a more active and significant role in national resilience and preparedness" based on the notion that "preparedness is most effectively owned and managed at the State, local, and even individual levels." The order calls for a policy shift from an "all-hazards approach" to a "risk-informed approach," requiring the creation of a "National Risk Register" that "identifies, articulates, and quantifies natural and

¹⁹ 50 U.S.C. § 1631.

²⁰ See *supra* n. 2. By contrast, it is worth noting that President Trump's immediate predecessor refused to bow to pressure from the left to declare a national climate emergency pursuant to the NEA.

²¹ See *supra* n. 2.

²² 50 U.S.C. § 1701.

²³ See *supra* n. 5.

²⁴ Complaint, *State of Washington, et al. v. Donald Trump, et al.*, No. 2:25-cv-00869 (W.D. Wash., May 9, 2025).

²⁵ *Id.* ¶¶ 1, 21 (internal citations omitted).

²⁶ *Id.* ¶ 20.

²⁷ Cal. Att'y Gen. Rob Bonta, *Attorney General Bonta Sues Trump Administration over "Declaring a National Energy Emergency" Executive Order* (May 9, 2025), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-sues-trump-administration-over-declaring-national-energy>. Executive Order No. 14156 squarely blames "[t]he policies of the previous administration," which "have driven our Nation into a national [energy] emergency."²⁷ See *supra* n. 2.

²⁸ Keith Goldberg, *Lawsuit Challenging Trump Energy Order May Be Premature*, LAW360 (May 13, 2025).

malign risks to our national infrastructure, related systems, and their users.” The order further directs a review of national critical infrastructure policy, which would include consideration of the threats facing domestic energy infrastructure.

The policy set forth in Executive Order No. 14239 does not deviate from the basic premise that has long supported the U.S. Department of Homeland Security’s National Incident Management System, *i.e.*, “that all incidents begin and end locally.”²⁹ Whether federal and/or state agencies respond to an incident and which particular enforcement agencies are dispatched depends on the facts and the risks to public health and the environment. For major environmental incidents occurring onshore, EPA has historically served as the lead investigatory and enforcement agency, given its jurisdiction, resources, reach, funding, and knowhow. Depending upon the nature of the incident, state environmental agencies; federal and state Occupational Safety and Health Administration (“OSHA”) agencies; the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”); the National Transportation Safety Board; the U.S. Chemical Safety and Hazard Investigation Board (“CSB”); the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”); and the State Fire Marshal may play prominent roles as well. It is hard to imagine a major realignment of first responders shifting from federal to state agencies for serious incidents, but perhaps efficiencies could be gained by reallocating disaster relief funding with tighter controls at the local level.

Exec. Order No. 14180, *Council to Assess the Federal Emergency Management Agency*, 90 Fed. Reg. 8743 (Jan. 31, 2025).

The Federal Emergency Management Agency (“FEMA”) was originally created as an independent executive agency by President Jimmy Carter via two executive orders in 1979.³⁰ Congress codified some of FEMA’s roles and responsibilities into a statutory framework via the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988.³¹ Following the terrorist attacks of September 11, 2001, FEMA was folded into the U.S. Department of Homeland Security via the Homeland Security Act of 2002.³² FEMA’s mission is not limited to natural disasters, although it is commonly associated with responses to hurricanes, floods, earthquakes, and wildfires. Its mission expressly extends to “acts of terrorism and other man-made disasters,” which include industrial accidents in the energy industry.³³ FEMA, for example, assisted in responding to the Deepwater Horizon oil spill in 2010.

The Trump administration has been harshly critical of FEMA as ineffective and partisan. While assessing damage wrought by Hurricane Helene in Fletcher, North Carolina, President Trump announced that “FEMA has turned out to be – a disaster” and that “I think we’re going to recommend that FEMA go away and we pay directly – we pay a percentage to the state.”³⁴ With less than a month to go before the start of the hurricane season, he fired Cameron Hamilton, the acting head of FEMA.³⁵ It is not, however, abundantly clear that the administration is indeed getting rid of FEMA. After initially vowing to “eliminate” it, Homeland Security Secretary Kristi Noem backtracked, asserting instead that the administration is “reorienting” the agency.³⁶ Executive Order No. 14180 is ostensibly designed to accomplish this purpose. The order raises “serious concerns of political bias in FEMA” and asserts that “FEMA has managed to leave vulnerable Americans without the resources or support they need when they need it most.” The order then

²⁹ U.S. Dep’t of Homeland Security, *NIMS: Frequently Asked Questions*, <https://www.fema.gov/pdf/emergency/nims/nimsfaqs.pdf>.

³⁰ *Reorganization Plan No. 3 of 1978*, 43 Fed. Reg. 41943 (June 17, 1978); Exec. Order 12127, *Federal Emergency Management Agency*, 44 Fed. Reg. 19367 (Mar. 31, 1979); Exec. Order 12148, *Federal Emergency Management*, 44 Fed. Reg. 43239 (July 20, 1979).

³¹ 42 U.S.C. §§ 5121/5208.

³² 6 U.S.C. § 313.

³³ 6 U.S.C. § 313(b)(1).

³⁴ President Donald J. Trump, Remarks by President Trump During Hurricane Helene Briefing (Jan. 25, 2025), at <https://www.whitehouse.gov/remarks/2025/01/remarks-by-president-trump-during-hurricane-helene-briefing/>.

³⁵ Christopher Flavelle, *Leader of FEMA is Dismissed as Trump Administration Takes Aim at the Agency*, N.Y. TIMES, May 8, 2025.

³⁶ Thomas Frank, *Noem backpedals on her claim that FEMA will be eliminated*, E&E NEWS, (May 5, 2025), <https://www.eenews.net/articles/noem-backpedals-on-her-claim-that-fema-will-be-eliminated/>.

establishes a “Federal Emergency Management Agency Review Council,” charged with, among other things, evaluating “the traditional role of States and their coordination with the Federal Government” in disaster relief efforts as well as “whether FEMA can serve its functions as a support agency, providing supplemental Federal assistance, to the States rather than supplanting State control of disaster relief.” President Trump has since appointed 13 officials to the Council, including those with extensive experience in disaster relief: Texas Gov. Greg Abbott (R); Virginia Gov. Glenn Youngkin (R); W. Nim Kidd, Chief, Texas Division of Emergency Management; Kevin Guthrie, Executive Director of the Florida Division of Emergency Management; and Robert J. Fenton, Jr., EPA Region 9 Administrator and two-time Acting Administrator for FEMA.³⁷

Exec. Order No. 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 20, 2025)

President Trump has issued at least 11 executive orders to further his ambitious energy policy, citing an inadequate, unreliable, and intermittent energy supply. He seeks to “unleash” American energy by mitigating or eliminating any perceived threats to energy production, transportation, refining, or generation. Executive Order No. 14156 directs the U.S. Department of Defense to conduct an assessment “to identify specific vulnerabilities, including, but not limited to, potentially insufficient transportation and refining infrastructure across the Nation, with a focus on such vulnerabilities within the Northeast and West Coast regions of the United States.” Although not express, it would appear that this directive would extend to the identification of vulnerabilities arising from aging energy infrastructure, which can disrupt the energy supply chain and which has contributed to some of the worst industrial accidents in U.S. history.

Executive Order No. 14156 also directs the heads of executive departments to identify “any lawful emergency authorities available to them” to facilitate domestic energy production, transportation, refining, and generation. It is not unreasonable to assume that the government may consider using these same authorities to help expedite the approval process of bringing an oil and gas facility back online following a major incident or to streamline regulatory restart approvals following pipeline releases. Business continuity and effective management of the energy supply chain are of paramount importance in industrial accident response involving energy production, transportation, refining, and generation. There is a long history of refinery fires and explosions and pipeline failures that threatened fuel shortages for much of the country.

IV. THE DEREGULATORY AGENDA

In his first 100 days, President Trump launched an aggressive deregulatory agenda through series of executive orders and presidential actions, in part, to help “unleash” American energy and prosperity through regulatory freezes, repeals, reconsiderations, and other rollbacks. He set a course to unshackle regulatory burdens on fossil fuel energy sources and to rescind subsidies for renewable energy sources, seeking to replace the “all-of-the-above” energy policy championed by the Biden, Obama, and Bush administrations with an energy policy that levels the playing field for coal, oil and gas, solar, and wind energy. There is little question that existing regulatory regimes will be heavily scrutinized by the Trump administration. The question presented, however, is whether, and to what extent President Trump will be successful in paring them back. Each incoming administration is becoming more and more sophisticated regarding how to fortify its regulatory agenda from attempts by the next administration to destroy it.³⁸

A. REGULATORY FREEZES

On Day 1, President Trump issued memorandum entitled “Regulatory Freeze Pending Review,” ordering “all executive departments and agencies” (1) not to propose or issue any rule unless approved by the President or his designee; (2) to immediately withdraw any rules sent to the Office of the Federal Register that had not been published, pending further review; and (3) to consider postponing for a period of 60 days the effective date for those

³⁷ U.S. Dep’t of Homeland Security, *President Trump Appoints New Members to Federal Emergency Management Agency Review Council* (Apr. 28, 2025), <https://www.dhs.gov/news/2025/04/28/president-trump-appoints-new-members-federal-emergency-management-agency-review>.

³⁸ Karl Heisler, et al., *Methane Regulation in the Oil and Gas Sector: A Primer and Post-Election Forecast*, J. OF PETROLEUM TECH., (Feb. 20, 2025).

rules that had been published in the Federal Register or any rules that had otherwise been issued in any manner but that had not taken effect.³⁹ It is not unusual for a new president to impose a moratorium on new rules immediately after taking office. President Joseph R. Biden issued a “Regulatory Freeze Pending Review” on January 20, 2021;⁴⁰ President Trump did the same during his first term on January 24, 2017;⁴¹ and President Barack Obama did the same on January 26, 2009.⁴² Nor is there any aspect of President Trump’s most recent regulatory freeze that is otherwise remarkable. As is standard fare, any rule deemed necessary to address “emergency situations or other urgent circumstances” could be insulated from the freeze.

B. REGULATORY REPEALS

On Day 12, the Trump administration’s released the centerpiece of its deregulatory agenda, *i.e.*, an executive order calling for the repeal of 10 prior regulations for each new one issued in an effort to “unleash” prosperity through deregulation.⁴³ Executive Order No. 14192, “Unleashing Prosperity Through Deregulation,” provides that whenever an agency promulgates a new regulation, it must identify at least 10 existing regulations for repeal. Perhaps shedding light on the supporting rationale, a separate executive order provides:

[U]nelected agency officials write most of the complex, legally binding rules on top of that, often stretching these statutory provisions beyond what the Congress enacted. . . . In particular, the previous administration added more pages to the *Federal Register* than any other in history, with the result that the Code of Federal Regulations now approaches a staggering 200,000 pages. These regulations linger in such volume that serious reexamination seldom occurs.⁴⁴

The 10-for-1 executive order is a rift off an executive order President Trump issued during his first administration that called for the repeal of two regulations for each new one issued.⁴⁵ President Trump’s penchant for going “big” prompted conservative columnist Peggy Noonan to write:

I imagine him with an eager aide. “On this issue, Mr. President, there are two clear choices. We can make history by moving forward 6 inches, in which case we’re guaranteed to secure victory and improve America. Or we can try for 12 inches, but the opposition will be aroused, the battle long and bloody, the outcome uncertain.” Trump looks, blinks. “Twelve is bigger than 6, right? Go 12.”⁴⁶

Notably, the definition of “regulation” for purposes of Executive Order No. 14192 goes well beyond regulations that require notice and comment rulemaking, extending to “memoranda, administrative orders, guidance documents, policy statements, and interagency agreements, regardless of whether the same were enacted through the processes in the Administrative Procedure Act,” subject to delineated exceptions.⁴⁷

To help identify the 10 regulations to be repealed for each new one issued, Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” directs all agency heads to identify classes of regulations within their sole or joint jurisdiction that are:

³⁹ *Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review*, 90 Fed. Reg. 8249 (Jan. 20, 2025).

⁴⁰ *Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review*, 86 Fed. Reg. 7424 (Jan. 28, 2021).

⁴¹ *Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review*, 82 Fed. Reg. 8346 (Jan. 24, 2017).

⁴² *Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review*, 74 Fed. Reg. 4435 (Jan. 26, 2009).

⁴³ Exec. Order 14192, *Unleashing Prosperity Through Deregulation*, 90 Fed. Reg. 9065 (Jan. 31, 2025).

⁴⁴ Exec. Order 14270, *Zero-Based Regulatory Budgeting to Unleash American Energy*, 90 Fed. Reg. 15643 (Apr. 9, 2025).

⁴⁵ Exec. Order 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Jan. 30, 2017).

⁴⁶ Peggy Noonan, *When Establishments Fail*, WALL ST. J. (May 1, 2025).

⁴⁷ See 5 U.S.C. § 551(4) (defining “rule” for purposes of the Administrative Procedure Act).

- unconstitutional or that “raise serious constitutional difficulties”;
- based on “unlawful delegations of legislative power”;
- based on anything other than the “best reading” of the underlying statutory authority;
- not authorized by “clear statutory authority”;
- “impose significant costs upon private parties that are not outweighed by public benefits”;
- “harm the national interest” by, among other things, impeding “disaster response” and “energy production”;
- and
- impose “undue burdens on small businesses and impede private enterprise and entrepreneurship.”

In a Presidential Memorandum issued several weeks later, President Trump directed that this “review-and-repeal” effort should prioritize those regulations that may be found unlawful in view of several recent decisions issued by the U.S. Supreme Court, including, most notably, *Loper Bright Enterprises v. Raimondo*.⁴⁸ *Loper Bright* overruled *Chevron* deference, a longstanding principle of administrative law that stood for the proposition that courts should defer to agency interpretations of the laws they administer.⁴⁹ Regulations that meet this and the above-referenced criteria will be subject to rescission or modification.

If successful, the Trump administration’s 10-for-1 initiative may disproportionately impact EPA regulations, which contribute to the majority of the financial impacts from federal regulations. According to Peter Van Doren, a senior fellow at the Cato Institute, “between 2006 and 2016, [EPA] rules comprised 71 percent of the benefits and 55 percent of the costs of all major federal regulations, with air quality rules accounting for 95 percent of the benefits, most of those attributable to fine particulate matter limits.”⁵⁰ While it is too premature to project how this initiative will be rolled out, it is worth noting that nearly every major federal environmental regime includes provisions specific to emergency preparedness and response, including provisions used by EPA in response to the East Palestine, Ohio train derailment discussed further below.

C. REGULATORY RECONSIDERATIONS

On Day 52, EPA Administrator Lee Zeldin announced 31 “historic” actions on what he dubbed the “greatest and most consequential day of deregulation in U.S. history” as well as “the most momentous day in the history of the EPA.”⁵¹ Administrator Zeldin classified these actions within three categories: (1) Unleashing American Energy; (2) Lowering the Cost of Living for American Families; and (3) Advancing Cooperative Federalism. Perhaps the most notable action proposes a reconsideration of the 2009 endangerment finding, which provides much of the underpinning of U.S. climate change regulation.⁵² At least 11 of the 31 actions involve reconsiderations of regulations promulgated during the last four years of the Biden administration, which calls into question just how “historic” these 11 reconsiderations may be. Notable reconsiderations include the “Clean Power Plan 2.0,” which targets carbon emissions from fossil fuel-fired power plants; Clean Air Act standards requiring enhanced methane emissions controls and leak detection in the oil and natural gas sector; EPA’s greenhouse gas reporting program; and multiple reconsiderations involving national emissions standards for hazardous air pollutants.

Relevant to emergency preparedness and response, one of the reconsiderations targets recent revisions to the Clean Air Act Risk Management Program (“RMP”) rule. EPA’s CAA RMP rule implements 42 U.S.C. §

⁴⁸ Presidential Memorandum, *Directing the Repeal of Unlawful Regulations* (Apr. 9, 2025).

⁴⁹ *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024).

⁵⁰ Dawn Reeves, *Conservatives Skeptical of White House 10-For-1 Rule Repeal Directive*, INSIDEEPA (Apr. 29, 2025).

⁵¹ EPA, *EPA Launches Biggest Regulatory Action in U.S. History* (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>.

⁵² Just two months later, a European Union climate monitoring agency declared that April 2025 was the world’s second-hottest month on record. Zia Weise, *This April was world’s second-hottest on record, EU scientists say*, POLITICO (May 8, 2025), <https://www.politico.eu/article/this-april-was-worlds-second-hottest-on-record-eu-scientists-say/>.

7412(r)(7), which authorizes EPA “to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements” to prevent accidental releases of regulated substances stored at or above threshold quantities.⁵³ The RMP rule has been the subject of extraordinary attention by the Obama administration, the first Trump administration, the Biden administration, and now the second Trump administration. During the last week of the Obama administration, EPA issued a final rule that would have imposed several additional RMP obligations on regulated industries.⁵⁴ These “RMP Amendments” addressed various aspects of RMPs, including an additional analysis of safer technology and alternatives as part of the process hazard analysis for certain processes; third-party audits and incident investigation root cause analysis for certain processes; enhancements to the emergency preparedness requirements; and increased public availability of chemical hazard information.⁵⁵ President Trump delayed its effective date when he took office in 2017, then issued a final rule in 2019 that rescinded many of the RMP Amendments in favor of a “more reasonable and practicable approach to accident prevention” that was designed “to emphasize case-specific oversight of those facilities that are performing poorly over regulatory changes that increase compliance costs for the entire regulated community.”⁵⁶ Much of the rulemaking preamble was dedicated to evaluating whether and to what extent public disclosure of chemical hazard information and safety risks create “potential security risks.” The Biden administration subsequently restored much of the Obama-era RMP Amendments in a final rule issued March 11, 2024.⁵⁷ Although the rationale for the second Trump administration’s reconsideration remains unclear, it is reasonable to assume it is, at least in part, based on the concerns raised during the first Trump administration. To this end, in a separate press release announcing the third CAA RMP Amendments reconsideration, EPA noted:

“The Biden EPA’s costly Risk Management Plan rule ignored recommendations from national security experts on how their rule makes chemical and other sensitive facilities in America more vulnerable to attack,” said EPA Administrator Zeldin.

Accident prevention was and continues to be a priority for EPA in the Trump Administration. In 2019, the agency implemented rules that promoted coordination between chemical facilities and emergency responders, cut red tape and regulatory burdens, and addressed security risks associated with prior amendments to the rule. . . .⁵⁸

In furtherance of these concerns, EPA shuttered its RMP chemical safety database a month after announcing the reconsideration of the CAA RMP rule.⁵⁹ The database made detailed information regarding RMP-regulated facilities and chemical inventories available to fenceline communities, which was a Biden administration priority. While it is, again, unclear as to whether and to what extent EPA will successfully rescind the RMP Amendments, industry has expressed clear opposition to the regulatory “whiplash” that has befallen entities subject to the RMP rule throughout the last several years of Democratic and Republican administrations.⁶⁰

Rulemaking reconsiderations and rescinding final regulations take significant time and energy. The administration must provide (1) a rational basis as to why the rule should be rescinded; (2) a notice of proposed rulemaking; (3) an opportunity for public review and comment; and (4) a response to public comments. There will likely be extensive

⁵³ 42 U.S.C. § 7412(r)(7)(A).

⁵⁴ *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4594 (Jan. 13, 2017).

⁵⁵ *Id.*

⁵⁶ *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 84 Fed. Reg. 69834 (Dec. 19, 2019).

⁵⁷ *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*, 89 Fed. Reg. 17622 (Mar. 11, 2024).

⁵⁸ EPA, *EPA Announces Reconsideration of the Risk Management Plan to Boost Safety, Competitiveness of American Businesses* (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-announces-reconsideration-risk-management-plan-boost-safety-competitiveness>.

⁵⁹ Kataya Schwenk, *The Government’s Chemical Disaster Tracking Tool Just Went Dark*, THE LEVER (Apr. 21, 2025), <https://www.levernews.com/the-governments-chemical-disaster-tracking-tool-just-went-dark/>.

⁶⁰ Letter to EPA Administrator Lee Zeldin from several industry petitioners (Jan. 30, 2025), <https://earthjustice.org/wp-content/uploads/2025/03/industry-letter-to-zeldin-re-sccap-rollback-jan.-2025.pdf>.

economic impact analyses. For complex rules – like the CAA RMP rule – the process can take 2–3 years from beginning to end. There will also invariably be judicial challenges that tie the rules up in litigation, leaving them enacted while litigation unfolds.⁶¹

D. OTHER REGULATORY ROLLBACKS

The Trump administration rounds out its deregulatory agenda with a series of executive orders designed to “unleash” American energy and “unleash” offshore critical minerals. These orders seek to employ a variety of mechanisms, including expedited permitting and regulatory sunset provisions, to facilitate energy production, transportation, refining, and generation as well as seabed critical mineral mining.

Exec. Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 20, 2025)

Exec. Order No. 14154 asserts that “burdensome and ideologically motivated regulations have impeded” the development of energy and natural resources, and orders an immediate review of “All Agency Actions that Potentially Burden the Development of Domestic Energy Resources.” The order directs “[t]he Secretaries of Defense, Interior, Agriculture, Commerce, Housing and Urban Development, Transportation, Energy, Homeland Security, the Administrator of the Environmental Protection Agency (EPA), the Chairman of CEQ, and the heads of any other relevant agencies [to] undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule” and specifically directs the Chairman of the Council on Environmental Quality (“CEQ”) to “propose rescinding CEQ’s [National Environmental Policy Act] regulations found at 40 CFR 1500 *et seq.*” The order further directs the National Economic Council and the Director of the Office of Legislative Affairs to prepare joint recommendations to Congress to “facilitate the permitting and construction of interstate energy transportation and other critical infrastructure, including, but not limited to, pipelines, particularly in regions of the Nation that have lacked development in recent years.”

Exec. Order. No. 14270, *Zero-Based Regulatory Budgeting to Unleash American Energy*, 90 Fed. Reg. 15643 (Apr. 9, 2025)

Exec. Order. No. 14270 builds on the above Exec. Order 14154, by directing “certain agencies to incorporate a sunset provision into their regulations governing energy production” in an effort to require their periodic reexamination. Covered agencies include EPA, the Bureau of Safety and Environmental Enforcement, and the U.S. Department of Fish and Wildlife, among other agencies that administer emergency preparedness and response statutes.

Exec. Order No. 14285, *Unleashing America’s Offshore Critical Minerals and Resources*, 40 Fed. Reg. 17735 (Apr. 24, 2025)

Exec. Order No. 14285 is predicated on concerns with “unprecedented economic and national security challenges in securing reliable supplies of critical minerals independent of foreign adversary control.” The order, which builds off an earlier executive order entitled “Immediate Measures to Increase American Mineral Production,” sets forth the policy of the United States to advance seabed mineral development.⁶² Among other things, the order directs the Secretary of Interior to establish an “expedited processes for reviewing and approving permits for prospecting and granting leases for exploration, development, and production of seabed mineral resources. . . .”

Nothing in the “unleashing” series of executive orders squarely speaks to emergency preparedness and response. That noted, and as observed above, the concept of expedited permit approvals raises the prospect that federal agencies responding to major incidents may be inclined to expedite the approval process to bring the facility back online after

⁶¹ See *supra* n. 38.

⁶² See *supra* n. 3.

an environmental release or workplace safety incident to mitigate or prevent energy supply chain impacts caused by the incident.⁶³

V. PRESIDENTIAL FIREPOWER

One of the President's greatest powers is the power to hire and fire. The Trump administration is pursuing an historic workforce reduction in an effort to rid the federal government of waste, fraud, and abuse. Immediately upon taking office, President Trump instituted a hiring freeze, which was later extended it through July 15, 2025.⁶⁴ He also instituted a return-to-work policy immediately upon taking office.⁶⁵ The directive required the heads of all departments and agencies to "take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full time-basis. . . ."⁶⁶ The return-to-work policy upended several years of remote work for thousands of families, requiring many to face difficult choices to relocate, to arrange for child care services or other accommodations, or to leave the government altogether. Many chose, or are choosing, to leave the government, which was an intended consequence of the Trump agenda. Another workforce reduction effort arose from a Presidential Action entitled "Restoring Accountability for Career Senior Executives," through which the administration is seeking to purge the government of any career Senior Executive Service officials that "engage in unauthorized disclosure of Executive Branch deliberations, violate the constitutional rights of Americans, refuse to implement policy priorities, or perform their duties inefficiently or negligently."⁶⁷

President Trump also created a new agency to administer the presidential firepower – the Department of Government Efficiency ("DOGE").⁶⁸ Executive Order No. 14158, "Establishing and Implementing the President's 'Department of Government Efficiency,'" established DOGE, ostensibly to "moderniz[e] Federal technology and software to maximize governmental efficiency and productivity." Executive Order No. 14210, "Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative," thereafter launched a "critical transformation of the Federal bureaucracy . . . [b]y eliminating waste, bloat, and insularity." The order directed the Director of the Office of Management and Budget to submit a plan to reduce the government's workforce, by requiring each agency to "hire no more than one employee for every four employees that depart." The order also directs agency heads to "promptly undertake preparations to initiate large-scale reductions in force" and to "Develop Agency Reorganization Plans." Agencies have implemented these directives, in part, through the issuance of deferred resignation offers, tens of thousands of which have been accepted.

The workforce reductions and agency reorganizations may take a major toll on the U.S. Department of Environment and Natural Resources Division ("ENRD"), EPA, OSHA, and several other agencies charged with emergency preparedness and response functions. Under Attorney General Pam Bondi, the Deputy Assistant Attorney Generals from four ENRD sections – Appellate, Environmental Crimes, Environmental Enforcement, and Natural Resources – were reassigned to handle immigration matters involving sanctuary cities, resulting in a loss of institutional knowledge in those sections charged with investigating and enforcing environmental incidents.⁶⁹ The U.S. Department of Justice is now contemplating closing several field ENRD offices, including

⁶³ See also Exec. Order 14153, *Unleashing Alaska's Extraordinary Resource Potential*, 90 Fed. Reg. 8347 (Jan. 20, 2025); Exec. Order 14260, *Protecting American Energy from State Overreach*, 90 Fed. Reg. 15513 (Apr. 8, 2025).

⁶⁴ Presidential Action, *Hiring Freeze*, 90 Fed. Reg. 8247 (Jan. 20, 2025); Presidential Action, *Extension of Hiring Freeze* (Apr. 17, 2025).

⁶⁵ Presidential Action, *Return-to-Work*, 90 Fed. Reg. 8251 (Jan. 20, 2025).

⁶⁶ *Id.*

⁶⁷ Presidential Action, *Restoring Accountability for Career Senior Executives*, 90 Fed. Reg. 8481 (Jan. 20, 2025).

⁶⁸ Exec. Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 Fed. Reg. 10583 (Feb. 19, 2025); Exec. Order 14210, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*, 90 Fed. Reg. 9669 (Feb. 11, 2025); Exec. Order 14158, *Establishing and Implementing the President's "Department of Government Efficiency,"* 90 Fed. Reg. 8441 (Jan. 20, 2025).

⁶⁹ Pamela King, *DOJ environment section chiefs reassigned to work on immigration*, E&E NEWS (Jan. 24, 2025), <https://www.eenews.net/articles/doj-environment-section-chiefs-reassigned-to-work-on-immigration/>.

in Denver, Seattle, San Francisco, and Sacramento.⁷⁰ The workforce reductions currently underway may likewise result in a diminished capacity to discharge agency functions, including in emergency preparedness and response.

VI. EXERCISE OF FEDERAL AGENCY DISCRETION

The government has remarkably broad discretion to determine if, and when, to conduct investigations and enforce violations. Investigatory and enforcement discretion are often circumscribed by government policy, although governmental officials have wide latitude to initiate investigations or pursue formal enforcement actions. Independent investigatory agencies like the NTSB and CSB have statutory obligations to investigate transportation and chemical accidents (including accidents that disrupt the energy supply chain), but which accidents are investigated is often a function of agency priorities and available resources. Regulatory agencies like EPA and OSHA likewise have sweeping jurisdiction with comparatively little resources. Areas prioritized and de-prioritized for enforcement are accordingly carefully selected. EPA's National Enforcement and Compliance Initiatives ("NECIs") can swing markedly from one presidential administration to another. There have been several representations made during President Trump's first 100 days that may inform his administration's exercise of discretion in the area of emergency preparedness and response.⁷¹

A. FEDERAL REGULATORY AGENCIES

1. U.S. ENVIRONMENTAL PROTECTION AGENCY

Within the first few days of his confirmation, EPA Administrator Zeldin signaled EPA's intention to focus on emergency preparedness and response as an agency priority:

I was just sworn in in the middle of last week, and, as soon as I was sworn in, I instantly heard from the Vice-President's office saying that your first order of business right away – that your first trip – we are going to East Palestine. As someone who was watching this disaster strike two years ago, from someone who was watching from out of state, I saw then-Senator Vance go to the site and lead – to be a voice for people looking for leadership from all levels of government. It educated the rest of us around America what was going on, and it motivated all of us to want to do our part now knowing this tragedy and what it meant for this community. I know how much of a high priority that this is for Vice-President Vance and, because it is such a high priority for him, I will make sure that for the EPA it is our highest priority, day in, day out, doing everything in our power to make sure that this is completed as quickly as possible. Anything that is left will be done as fast as we possibly can.⁷²

In announcing EPA's "Powering the Great American Comeback Initiative," Administrator Zeldin again made reference to the agency's focus on emergency preparedness and response as one the first of 5 pillars that would guide EPA's work "over the first 100 days and beyond":

Pillar 1: Clean Air, Land, and Water for Every American

Every American should have access to clean air, land, and water. I will ensure the EPA is fulfilling its mission to protect human health and the environment. In his first term, President

⁷⁰ Memorandum from the Office of the Dep'y Att'y Gen., U.S. Dep't of Justice, in re *Soliciting Feedback for Agency Reorganization Plan and RIF* (Mar. 25, 2025), at https://democrats-judiciary.house.gov/uploadedfiles/doj_memo_1.pdf.

⁷¹ See generally, Karl Heisler, *Understanding Environmental Law Enforcement*, Inside the Minds: Environmental Law Enforcement and Compliance (Thompson Reuters/Aspatore 2011).

⁷² *New EPA Administrator Lee Zeldin Says East Palestine Recovery Will Be Agency's "Highest Priority,"* FORBES BREAKING NEWS (Feb. 3, 2025), <https://www.youtube.com/watch?v=8S9nTKQwnB4>; see also EPA Press Release, *EPA Administrator Lee Zeldin Visits East Palestine, Ohio, with Vice President JD Vance to Mark Two-Year Anniversary of Train Derailment* (Feb. 3, 2025), <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-visits-east-palestine-ohio-vice-president-jd-vance-mark>.

Trump advanced conservation, reduced toxic emissions in the air, and cleaned up hazardous sites, while fostering economic growth for families across the country. We remain committed to these priorities in this administration, as well as ensuring emergency response efforts are helping Americans get back on their feet in the quickest and safest way possible. We will do so while remaining good stewards of tax dollars and ensuring that every penny spent is going towards advancing this mission,” said Administrator Zeldin.⁷³

EPA’s exercise of enforcement discretion has historically been informed by EPA’s NECIs, which are issued every four years “to focus resources on serious and widespread problems where federal enforcement can make a difference.”⁷⁴ On March 12, 2025, EPA’s OECA issued a memorandum clarifying how the Biden-era NECIs should be implemented consistent with the Trump administration’s executive orders and agency priorities and with Administrator Zeldin’s “Powering the Great American Comeback Initiative.”⁷⁵ The revisions are informed, in part, by at least two executive orders that make express reference to the use of enforcement discretion as a means to advance the Trump agenda:

- Executive Order 14154, “Unleashing American Energy,” provides: “All agencies shall assess whether enforcement discretion of authorities and regulations can be used to advance the policy outlined in section 2 of this order.” Section 2 of the order establishes several underlying policy interests, including, but not limited to, “encourage[ing] energy exploration and production on Federal lands and waters”; “establish[ing] our position as the leading producer and processor of non-fuel minerals”; “ensur[ing] that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation”; and “ensur[ing] that all regulatory requirements related to energy are grounded in clearly applicable law.”
- Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” provides: “Subject to their paramount obligation to discharge their legal obligations, protect public safety, and advance the national interest, agencies shall preserve their limited enforcement resources by generally de-prioritizing actions to enforce regulations that are based on anything other than the best reading of a statute and de-prioritizing actions to enforce regulations that go beyond the powers vested in the Federal Government by the Constitution.”

Against this backdrop, the March 12, 2025 OECA memorandum sheds light on how the Trump EPA may exercise its enforcement discretion in the area of emergency preparedness and response:

Unleashing American Energy

Pursuant to the President’s Executive Orders, enforcement and compliance assurance actions shall not shut down any stage of energy production (from exploration to distribution) or power generation absent an imminent and substantial threat to human health or an express statutory or regulatory requirement to the contrary. Enforcement and compliance assurance at any facility or activity involved in energy production or power generation shall prioritize addressing violations that threaten human health and safety or risk releases or accidents that would disrupt energy production or power generation. Any proposed order or other enforcement action that would unduly burden or significantly disrupt energy production or power generation, shut down any facility engaged in energy production or power generation, or severely restrict capacity for energy production or power generation must be approved in advance by the Assistant Administrator for OECA or his/her delegatee. . . .

⁷³ EPA Press Release, *EPA Administrator Lee Zeldin Announces EPA’s “Powering the Great American Comeback” Initiative* (Feb. 4, 2025), <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-announces-epas-powering-great-american-comeback>.

⁷⁴ *Public Comment on EPA’s National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027*, 88 Fed. Reg. 2093 (Jan. 12, 2023).

⁷⁵ Memorandum from EPA, Office of Enforcement and Compliance Assurance, in re *Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities* (Mar. 12, 2025).

Specific NECI and Considerations

Mitigating Climate Change: . . . To conform this NECI to the President’s Executive Orders and the Administrator’s Initiative, enforcement and compliance will no longer focus on methane emissions from oil and gas facilities. Any orders, settlements, or other resolution of Clean Air Act violations regarding methane emissions from oil and gas facilities already found shall require the concurrence of the Assistant Administrator for OECA or his/her delegate. . . .

Reducing Air Toxics in Overburdened Communities: This NECI provides that regions will focus on communities facing high levels of toxic air pollution from hazardous air pollutants (HAPs). While enforcement and compliance assurance can continue to focus on areas with the highest levels of HAPs affecting human health, to ensure consistency with the President’s Executive Orders, they will no longer focus exclusively on communities selected by the regions as being “already highly burdened with pollution impacts” (and thereby ignore areas with high levels of a singular, toxic pollutant). Instead, enforcement and compliance assurance will target the worst pollution from HAPs affecting human health, wherever that may be found, in accordance with the above directives regarding environmental justice.

Chemical Accident Risk Reduction: This NECI focuses on ensuring that facilities handling extremely hazardous substances implement the risk management programs required under Section 112(r) of the Clean Air Act. The NECI further focuses on two particular hazardous substances, anhydrous ammonia and hydrogen fluoride, the latter of which is used in petrochemical manufacturing. Nevertheless, in practice hydrogen fluoride has comprised the justification for only a small number of inspections, and hazardous substances other than the two noted in the NECI have comprised the justification for the majority of inspections. Future inspections should prioritize high-risk facilities regardless of the regulated chemicals utilized at the facility. Any order or other enforcement that would unduly burden or significantly disrupt energy production shall require the advance approval described above.

One other source of information regarding EPA’s exercise of enforcement discretion is budget requests. Although the Trump administration is proposing to make sweeping reductions to EPA’s overall budget, it is nevertheless proposing a “\$9 million increase from the 2025 enacted level . . . to properly equip EPA with funds to respond to drinking water disasters, directly helping people on the ground recover from such emergencies.”⁷⁶ This request is consistent with a press release announcing “organizational improvements” that impact several EPA offices, including the Office of Water: “EPA is also elevating issues of . . . emergency response . . . to ensure they are receiving appropriate resources to address today’s pressing water issues.”⁷⁷

2. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Relative to EPA, the Trump administration provided little information during the first 100 days that signals how OSHA will pursue enforcement, beyond having named the officials tapped to run the agency. One of these officials is a career workplace safety professional; the other has been at OSHA for several years. On February 11, 2025, President Trump nominated David Keeling to serve as the Assistant Secretary of Labor for OSHA.⁷⁸ Mr. Keeling is a career workplace safety professional in the private sector, having formerly served as Director, Global Road & Transportation Safety, for Amazon; and as the Vice-President, Global Health & Safety, for UPS (among other

⁷⁶ Letter from Office of Management and Budget to Sen. Susan Collins, Chair, Committee on Appropriations in re *Major Discretionary Finding Changes*, at 14 (May 2, 2025) (providing President Trump’s recommendations on discretionary funding levels for fiscal year 2026).

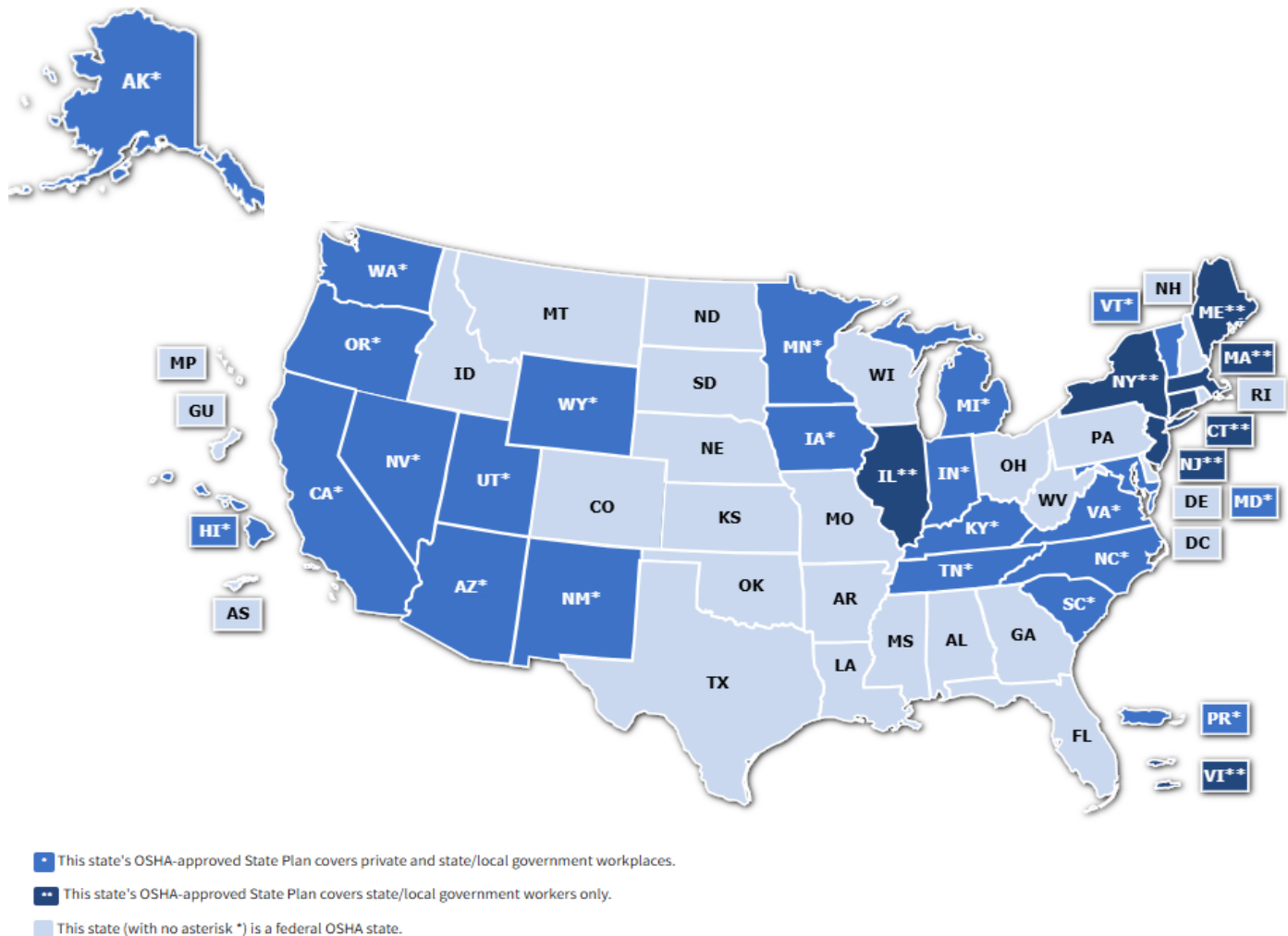
⁷⁷ EPA Press Release, *EPA Announces Next Phase of Organizational Improvements to Better Integrate Science into Agency Offices, Deliver Clean Air, Land, and Water to All Americans* (May 2, 2025), <https://www.epa.gov/newsreleases/epa-announces-next-phase-organizational-improvements-better-integrate-science-agency>.

⁷⁸ PN25-25 – David Keeling – Department of Labor, <https://www.congress.gov/nomination/119th-congress/25/25>.

positions).⁷⁹ Assuming he is confirmed, Mr. Keeling would be supported by Amanda Wood Laihow, who will serve as the Deputy Assistant Secretary for OSHA.⁸⁰ Ms. Laihow spent several years with the Occupational Safety and Health Review Commission, including as the Commissioner during the first Trump administration.⁸¹

OSHA is a relatively small agency, as compared with the number of workplaces in the United States. According to OSHA, there are 1850 inspectors charged with oversight of more than 8 million workplaces, amounting to one compliance officer for every 70,000 workers.⁸² Thus, any significant workforce reduction impacting the number of OSHA inspectors may certainly impact the number of federal inspections and enforcement actions.⁸³ Likewise, any significant regulatory reconsiderations or rollbacks that curtail OSHA enforcement authority may likewise impact OSHA's approach to prevention of, response to, workplace safety incidents.

Regardless of what occurs at the federal level, it is important to note that many states have their own OSHA plans and can enact more stringent regulations and pursue more stringent enforcement than at the federal level. Set forth below is an illustration delineating state OSHA plan states from federal OSHA.



Map courtesy of the U.S. Occupational Safety and Health Administration.⁸⁴

⁷⁹ David Keeling, LinkedIn, <https://www.linkedin.com/in/david-keeling-a17503226/> (last visited May 21, 2025).

⁸⁰ U.S. Dep't of Labor, OSHA National News Release, *US Department of Labor announces senior Trump Administration appointees* (Mar. 13, 2025), <https://www.osha.gov/news/newsreleases/osha-national-news-release/20250314>.

⁸¹ Amanda Wood Laihow, LinkedIn, <https://www.linkedin.com/in/amandawood97/> (last visited May 21, 2025).

⁸² OSHA, *Commonly Used Statistics*, <https://www.osha.gov/data/commonstats> (last visited May 16, 2025).

⁸³ Although OSHA's exercise of enforcement discretion may be informed by how it was exercised during the first Trump administration, the data is skewed given the impact of the COVID-19 pandemic on agency inspections.

⁸⁴ OSHA, State Plans, <https://www.osha.gov/stateplans> (last visited May 16, 2025).

B. FEDERAL INVESTIGATORY AGENCIES

1. NATIONAL TRANSPORTATION SAFETY BOARD

The NTSB is an independent federal agency charged with investigating civil aviation accidents and significant transportation accidents involving highways, railroads, and pipelines.⁸⁵ Originally housed within the U.S. Department of Transportation, Congress re-established NTSB as a separate agency in 1974, because “no federal agency can properly perform such (investigatory) functions unless it is totally separate and independent from any other . . . agency of the United States.”⁸⁶

NTSB investigations are like no other. While lacking regulatory and enforcement authority, the NTSB wields tremendous power. By statute, NTSB investigations take “priority over any investigation by another department, agency, or instrumentality of the United States Government.”⁸⁷ Only those persons or entities expressly designated by NTSB as “parties” can participate in them.⁸⁸ And lawyers are not invited: “no party representative may occupy a legal position.”⁸⁹ The NTSB can revoke party status at any time, and at its discretion, “if a party fails to comply with assigned duties and instructions, withholds information, or otherwise acts in a manner prejudicial or disruptive to an investigation.”⁹⁰ No information can be released during an NTSB investigation except in consultation with the NTSB Investigator-in-Charge.⁹¹ Navigating this environment can be incredibly challenging, as company counsel must stave off competing information demands from other federal, state, and local agencies; corporate stakeholders; media outlets; and insurance carriers.

Although the NTSB does not report to the Executive Branch, all five Board members are nominated by the President, subject to Senate confirmation.⁹² No more than three of them can be appointed from the same political party.⁹³ President Trump has appointed three of the five NTSB Board members, including Jennifer Homendy, the Chairman. Chairman Homendy oversees a \$145 million annual budget; more than 400 full-time employees; and 1250 active accident investigations.⁹⁴ President Trump first appointed her as a Board Member in 2018, and she was unanimously confirmed.⁹⁵ President Biden renominated her in 2021 as the Board Chairman, and she was unanimously confirmed again.⁹⁶ President Trump fired Alvin Brown in May 2025, along with a purge of other Democratic members of independent federal agencies, leaving one vacancy.⁹⁷

On January 28, 2025, all NTSB staffers received the “Fork in the Road” memorandum offering a buyout,⁹⁸ *i.e.*, 23 hours before American Airlines flight 5342 collided with an Army Black Hawk helicopter at Reagan National

⁸⁵ 49 U.S.C. § 1131.

⁸⁶ NTSB, *History of the National Transportation Safety Board*, <https://www.nts.gov/about/history/Pages/default.aspx> (last visited May 17, 2025).

⁸⁷ 49 U.S.C. § 1131(a)(2)(A); 49 C.F.R. § 831.5.

⁸⁸ 49 C.F.R. § 831.11.

⁸⁹ *Id.* § 831.11(b).

⁹⁰ *Id.* § 831.11(a)(4).

⁹¹ *Id.* § 831.13(c).

⁹² 49 U.S.C. § 1111(b).

⁹³ *Id.*

⁹⁴ Chairman Jennifer Homendy, *Written Testimony for Oversight Hearing Before the House Committee on Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies* (Mar. 26, 2025),

<https://www.nts.gov/news/Testimony/Pages/Homendy20250326.aspx#:~:text=Our%20current%20investigative%20workload%20includes%20almost%201%2C250,and%20we%20expect%20the%20number%20of%20cases>.

⁹⁵ NTSB, *NTSB Chairman Homendy*, <https://www.nts.gov/about/board/Pages/Jennifer-Homendy.aspx> (last visited May 17, 2025).

⁹⁶ *Id.*

⁹⁷ Kris Van Cleave, *Trump White House fires Biden-appointed vice chair of NTSB*, CBS NEWS (May 7, 2025).

⁹⁸ CNN, *Exclusive: NTSB fought to retain employees after Trump’s federal worker resignation offer* (Feb. 1, 2025), <https://www.cnn.com/2025/02/01/politics/nts-employee-retention-resignation-offer>.

Airport, killing all 64 people on board the plane and all 3 soldiers on board the helicopter.⁹⁹ It was the worst airline disaster in 25 years, and just two years after the East Palestine, Ohio train derailment. Chairman Homendy immediately sought and received a full exemption to the deferred resignation program, citing ongoing investigations and the “mission critical” nature of the NTSB’s work.¹⁰⁰ She is currently requesting a budget increase in 2026 to increase staffing to 500.¹⁰¹ By all outward appearances, the nature of NTSB’s “mission critical” work in emergency response appears to have exempted it from the historic workforce reductions and budget cuts befalling other federal agencies.

2. U.S. CHEMICAL SAFETY AND HAZARD IDENTIFICATION BOARD

The CSB is an independent federal agency charged with investigating industrial chemical accidents. Although created by the Clean Air Act Amendments of 1990, it does not fall under EPA jurisdiction, nor does it report to the Executive Branch. Modeled after the NTSB, “Congress directed that the CSB’s investigative function be completely independent of the rulemaking, inspection, and enforcement authorities of EPA and OSHA.”¹⁰² The legislative history provides that “[t]he principal role of the new chemical safety board is to investigate accidents to determine the conditions and circumstances which led up to the event and to identify the cause or causes so that similar events might be prevented.”¹⁰³ Whereas the NTSB’s authority extends to transportation accidents, CSB’s authority extends to accidental releases from stationary sources. Like the NTSB, CSB primarily exercises its power through investigations and reports that include recommendations to government agencies, trade associations, the private sector, and the investigated party. These recommendations are often adopted in federal regulations and recognized industry standards, codes, and practices.

The CSB has investigated some of the largest chemical accidents in U.S. history, including the BP Texas City refinery explosion in 2005, and the Macondo blowout and explosion in 2010, and it has done so with a fraction of the resources available to NTSB. At 40 employees and with a budget of \$14 million, CSB is less than a tenth the size of NTSB,¹⁰⁴ and likewise has a budget a tenth of the size of NTSB.¹⁰⁵ BP Texas City and the Macondo blowout were unspeakable tragedies resulting in multiple fatalities that gripped the nation. CSB continues to implore industry to revisit the lessons learned from BP Texas City, which serves as a case study in just about every major refinery in the United States and abroad. In March 2025, the CSB commemorated the 20th anniversary of the disaster through the release of a new report entitled “The 20th Anniversary of the 2005 Fatal BP America Refinery Explosion in Texas City, TX – Lessons Learned and Improvements Implemented by Industry.”¹⁰⁶ The Macondo blowout was the subject of multiple books, a Hollywood movie, and remains a mainstay of process safety education in offshore drilling. Restoration efforts in the Gulf remain ongoing to this day, 15 years later.¹⁰⁷

Like the NTSB, the CSB has five Board members appointed by the President and confirmed by the Senate.¹⁰⁸ The Board, however, has had multiple vacancies since 2011, and still has two vacancies today.¹⁰⁹ At one point, in 2020,

⁹⁹ NTSB, *Aviation Investigation Preliminary Report, Investigation ID DCA25MA108* (Mar. 11, 2025), <https://www.nts.gov/investigations/Documents/DCA25MA108%20Prelim.pdf>.

¹⁰⁰ See *supra* n. 98.

¹⁰¹ Testimony of Jennifer Homendy, Chairwoman of the NTSB, Before the U.S. Senate Committee on Commerce, Science & Transportation Subcommittee on Aviation (Mar. 27, 2025), <https://www.commerce.senate.gov/services/files/E5B25EC5-D3A3-4A82-BCCF-607281E7C9F3>.

¹⁰² CSB, *History*, <https://www.csb.gov/about-the-csb/history/> (last visited May 17, 2025).

¹⁰³ S. Rep. 101-228, P.L. 101-549 Clean Air Act Amendments of 1989 (Dec. 20, 1989), p. 3615.

¹⁰⁴ CSB, *Fact Sheet*, https://www.csb.gov/assets/1/6/csb_fact_sheet.pdf.

¹⁰⁵ CSB, *Budget Request FY 2025*, https://www.csb.gov/assets/1/6/final_fy25_csb_congressional_budget_justification.pdf.

¹⁰⁶ CSB, *Investigation Digest: The 20th Anniversary of the 2005 Fatal BP America Refinery Explosion in Texas City*, (Mar. 2025), [https://www.csb.gov/assets/1/6/csb_bptc_investigation_digest_v3_\(004\).pdf](https://www.csb.gov/assets/1/6/csb_bptc_investigation_digest_v3_(004).pdf).

¹⁰⁷ National Oceanic and Atmospheric Administration, *Restoring the Gulf: 15 Years After the Deepwater Horizon Oil Spill* (Apr. 21, 2025), <https://www.fisheries.noaa.gov/feature-story/restoring-gulf-15-years-after-deepwater-horizon-oil-spill>.

¹⁰⁸ 42 U.S.C. § 7412(r)(6)(B).

¹⁰⁹ CSB, *CSB News Release: CSB Back to Three Board Members Again* (Feb. 2, 2023), <https://www.csb.gov/csb-back-to-three-board-members->

the CSB had a “quorum of one,” with the Board consisting of only one person, then-Chairperson Katherine Lemos.¹¹⁰ CSB has had its share of other challenges to navigate as well. Most notably, during his first term, President Trump proposed to zero out CSB’s budget entirely.¹¹¹ The agency survived the effort and rebounded. In the years that followed, the CSB was able to eliminate a long-standing investigation backlog, announcing in December 2023 that it was successful in doing so.¹¹² On January 23, 2025, three days after President Trump’s inauguration, CSB Chairperson Steve Owens vowed to continue to “rebuild and revitalize the CSB” as “one of the most productive and efficient agencies in the federal government today.”¹¹³ Relative to the NTSB, the future of CSB is less uncertain. That noted, if past serves as prologue, CSB’s resilience through the last few years of political turmoil suggests it may carry on as the little engine that could.

VII. CONCLUSION

The first 100 days of a presidential administration are a helpful comparator to prior administrations, but are obviously not dispositive of the years to follow. President Trump has laid out an ambitious agenda relative to his predecessors, and time will tell whether and to what extent it will withstand legislative and judicial scrutiny. With respect to legislative scrutiny, President Trump is well-positioned with Republican majorities in the House and Senate, at least until the midterm elections in 2026. With respect to judicial scrutiny, tracking the number of lawsuits that have been filed against the Trump administration has become a bit of a cottage industry.¹¹⁴ Some challenges will succeed, whereas others will fail. In the interim, President Trump will continue to advance his agenda. The Executive Branch moves far more quickly than the Judicial Branch that checks its power, which is a fact that is likely not lost on this President and his administration.

Examining President Trump’s exercise of executive power during his first 100 days is a worthwhile endeavor, and there will be lessons learned by future administrations with respect to what went right, and what went wrong. This article winnows in on those policy initiatives affecting emergency preparedness and response. In this regard, President Trump declared a “national energy emergency” during a period without war or economic depression, and despite the fact that U.S. crude oil production is at an all-time high.¹¹⁵ In support of the declaration, he cited to the policies of his immediate predecessor, targeting regulatory burdens that shackle the energy industry. The declaration unlocks emergency powers to “unleash” American energy through expedited permitting and regulatory reviews. The deregulatory agenda that accompanies this effort includes regulatory freezes, repeals, reconsiderations, and rollbacks, which EPA Administrator Lee Zeldin characterized as the “Biggest Deregulatory Acton in U.S. History.”¹¹⁶ Legal

again/#:~:text=Sandoval%20was%20nominated%20to%20the%20CSB%20Board,whom%20joined%20the%20agency%20in%20February%202022.

¹¹⁰ EPA, Office of Inspector General, *Fiscal Year 2020 U.S. Chemical Safety and Hazard Investigation Board Management Challenges* (July 6, 2020), https://www.epaoig.gov/sites/default/files/2020-07/documents/_epaoig_20200706-20-n-2018.pdf.

¹¹¹ Sam Lemonick, *Trump’s Budget Kills The Chemical Safety Board. Here’s What It Does* (Mar. 17, 2017), <https://www.forbes.com/sites/samlemonick/2017/03/17/what-is-the-chemical-safety-board/>.

¹¹² CSB, *CSB News Release, U.S. Chemical Safety Board Eliminates Long-Standing Investigation Backlog* (Dec. 27, 2023), <https://www.csb.gov/us-chemical-safety-board-eliminates-long-standing-investigation-backlog/#:~:text=U.S.%20Chemical%20Safety%20Board%20Eliminates%20Long%2DStanding%20Investigation%20Backlog,-December%2027%2C%202023&text=Washington%20D.C.%20December%2027%2C%202023,long%2Dstanding%20backlog%20of%20investigations>.

¹¹³ Chairperson Steve Owens, *CSB January 23, 2025, Quarterly Business Meeting* (Jan. 23, 2025), <https://www.youtube.com/watch?v=QrcE-flp9fU&t=6s>.

¹¹⁴ See, e.g., Alex Lemonides, et al., *Tracking the Lawsuits Against Trump’s Agenda*, N.Y. TIMES (May 16, 2025), at <https://www.nytimes.com/interactive/2025/us/trump-administration-lawsuits.html>; Associated Press, *Tracking the lawsuits against Donlad Trump’s executive actions* (May 16, 2025), at <https://apnews.com/projects/trump-executive-order-lawsuit-tracker/>; Peter Charalambous, *220 lawsuits in 100 days: Trump administration faces unprecedented legal blitz*, ABC NEWS (Apr. 29, 2025), at <https://abcnews.go.com/US/220-lawsuits-100-days-trump-administration-faces-unprecedented/story?id=121252266>.

¹¹⁵ U.S. Energy Information Administration, *Petroleum & Other Liquids*, <https://www.eia.gov/dnav/pet/hist/leafhandler.ashx?n=pet&s=mcrfpus2&f=m> (last visited May 18, 2025).

¹¹⁶ See *supra* n. 51.

challenges will invariably result, tying up certain regulations in litigation and leaving them enacted while litigation unfolds. To exercise his presidential firepower, President Trump created an entirely new agency via executive order. Finally, as with all presidents before him, he has the power of federal agency discretion, which EPA recently exercised in declaring its emergency response to the East Palestine train derailment as the agency's "highest priority." For all of these reasons, regardless of what policy initiatives will ultimately carry forward, President Trump's first 100 days in office may forecast a renewed focus on emergency preparedness and response.

APPENDIX A

High-Level Checklist for Incident Response

The following checklist provides a high-level overview of the moving pieces that must be carefully managed following a major incident. To obtain more detailed guidance about each of these steps, please consider working with King & Spalding to develop a version of the incident response playbook that is tailored to your needs.

- ❑ Attain situational awareness of the incident, including initial assessment of injuries or releases and proximity to population centers, protected lands, water bodies, etc.
- ❑ Implement appropriate business unit/facility's emergency response procedures and protocols, including emergency response, containment and agency engagement plans.
- ❑ Provide appropriate reports and immediate notifications to various federal, state and local governmental entities and emergency planning commissions, as required by applicable statutes and regulations.
- ❑ Establish a core team of legal and business personnel to oversee internal response and interact with agencies, where applicable.
- ❑ Retain outside counsel with subject matter expertise (especially in the context of any government investigation), including to strengthen privilege.
- ❑ Where appropriate, notify the board of directors, executive officers and key business unit leaders, taking into account the need, where feasible, to limit the number of individuals with knowledge in order to prevent leaks.
- ❑ Take immediate and swift action to identify and preserve all potentially relevant information from custodians and company systems, including implementing the company's litigation hold order process. This will likely require a level of preservation that is more in-depth than is required in the typical commercial litigation matter.
- ❑ Implement best practices to maximize privilege protection in the wake of an emergency.
- ❑ Establish a point of contact for all press and media inquiries and an action plan for press/media relations, including a preliminary company position.
- ❑ Take the necessary steps in an effort to ensure that all public statements by the company/company employees are reviewed and approved by the legal team assigned to handle the investigation/incident.
- ❑ Conduct an internal investigation into the incident, at the direction of and with the participation of counsel, where possible. Investigation should include, inter alia, interviews of key personnel, documentation of any physical scene, review of relevant documents and a root cause analysis.
- ❑ Consider how to document the internal investigation's findings—for example, in a privileged investigation memorandum—and whether/how to share such documentation with any government authorities.
- ❑ Where applicable, negotiate a compromise with government regulators to allow the company to perform an internal investigation while permitting government inspectors to perform an investigation to their satisfaction, including seeking agreements to limit privilege waiver for cooperation.
- ❑ Develop a strategy for interaction with regulators and criminal authorities, including deciding who will interact with the authorities and accept service of subpoenas on the company's behalf, negotiate the scope of subpoenas and negotiating the timing and staging of document productions. When interacting with foreign regulators and criminal authorities, consider unique issues concerning privilege, data privacy laws and restrictions on transfer of employee information.
- ❑ Coordinate the responses to multiple investigations; maintaining consistency and accuracy is critical. The teams handling each of the investigations should be in close contact. To the extent possible, sequence negotiations with and responses to entities so that (1) the information requests of the company's primary U.S. regulator(s) and U.S. criminal enforcement authorities take priority, and (2) the scope of the company's responses to other entities' requests (e.g., Congress, state attorneys general and civil plaintiffs) is contained as much as possible within the scope of responses previously provided to regulatory and criminal authorities.
- ❑ Pursue efforts to ensure all workflows are being tracked and coordinated (e.g., contact with third-party vendors, forensic investigation, public relations, regulator inquiries) and that teams are working together and reporting appropriately.
- ❑ Identify and analyze any compliance-related shortcomings that will need to be addressed during negotiations with authorities. Prepare and begin implementing a remediation plan as soon as feasible.
- ❑ Consider the availability of insurance coverage and alternative sources of recovery, such as additional insured coverage or legal or other contractual claims against third parties. Provide prompt notice of all claims and potential claims to insurers; track communications with insurers; and record and document all costs, expenses and damages for which the company may seek coverage. Avoid problematic terminology in how a loss is characterized, internally and externally.