



# 10<sup>TH</sup> ANNUAL CONFERENCE

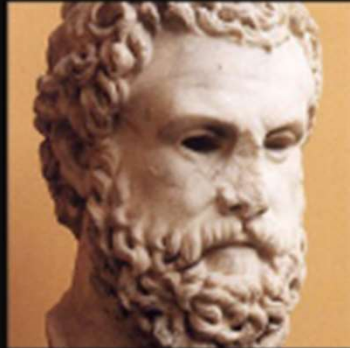
## Environmental Professionals of Arizona

The Transition from Biden to Trump Administration

“The Laws of a State Change With The Changing Times”

Jerry D. Worsham II  
3200 N. Central Avenue, Suite 1600  
Phoenix, AZ 85012  
602.440.4808  
jworsham@clarkhill.com

January 23, 2025



The laws of a state change with  
the changing times.

~ Aeschylus

AZ QUOTES

Aeschylus (525 -456 BC) The “father of Greek tragedy.”  
Wrote numerous plays.

# AGENDA

- I. Legal Landscape
- II. The Death of “Chevron Deference”
- III. Biden Administration
- IV. Congressional Review Act
- V. Humble Predictions – EPA Leadership
- VI. Executive Orders
  1. Eliminating 10 regulations for each new regulation
  2. The Paris Agreement
  3. NEPA Review
  4. EPA Environmental Enforcement
  5. Drill, Baby, Drill
  6. Liquefied Natural Gas Exports
  7. Carbon Capture, Utilization and Storage (CCUS)



# I. LEGAL LANDSCAPE

*West Virginia v. EPA*, 597 U.S. 697 (June 30, 2022)

“Major Questions Doctrine” – Principle of statutory interpretation in administrative law which holds that Courts will presume that Congress does not delegate to Executive Agencies issues of major political or economic significance unless specifically granted in legislation. Agencies have asserted highly consequential power beyond what Congress could reasonably be understood to have granted.

Think “Climate Agenda.” Biden’s goal was to cut United States’ Green House Gases by 50 to 52% below 2005 levels in 2030.



# I. LEGAL LANDSCAPE (continued)

## NEPA



49924 Federal Register / Vol. 88, No. 145 / Monday, July 31, 2023 / Proposed Rules

### COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508 (CEQ-2023-0003)

RIN 0331-AA07

### National Environmental Policy Act Implementing Regulations Revisions Phase 2

AGENCY: Council on Environmental Quality.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Council on Environmental Quality (CEQ) is proposing the "Bipartisan Permitting Reform Implementation Rule" to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including to implement the Fiscal Responsibility Act's amendments to NEPA. CEQ proposes the revisions to provide for an effective environmental review process that promotes better decision making, ensures full and fair public involvement, provides for an efficient process and regulatory certainty, and provides for sound decision making grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. CEQ proposes these changes to better align the provisions with CEQA's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; NEPA's statutory text and purpose, including making decisions informed by science; and case law interpreting NEPA's requirements. CEQ invites comments on the proposed revisions.

**DATES:** Comments: CEQ must receive comments by September 29, 2023. Public meetings: CEQ will conduct four virtual public meetings for the proposed rule on Saturday, August 26, 2023, from 1 p.m. to 4 p.m. EDT; Wednesday, August 30, 2023, from 5 p.m. to 8 p.m. EDT; Monday, September 11, 2023, from 1 p.m. to 4 p.m. EDT; and Thursday, September 21, 2023, from 2 p.m. to 5 p.m. EDT. For additional information and to register for the meetings, please visit CEQ's website at [www.neqa.gov](http://www.neqa.gov).

**ADDRESSER:** You may submit comments, identified by docket number CEQ-2023-0003, by any of the following methods:

• Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

• Fax: 202-456-6546.

• Mail: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20583.

**INSTRUCTIONS:** All submissions received must include the agency name, "Council on Environmental Quality," and docket number, CEQ-2023-0003, for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please do not submit electronically any information you consider private, Confidential Business Information (CBI), or other information, the disclosure of which is restricted by statute. Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Coyle, Deputy General Counsel, 202-395-3750, [Amy.B.Coyle@ceq.eop.gov](mailto:Amy.B.Coyle@ceq.eop.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

##### A. NEPA Statute

Congress enacted NEPA in 1969 by a unanimous vote in the Senate and a nearly unanimous vote in the House to declare an ambitious and visionary national policy to promote environmental protection for present and future generations.<sup>1</sup> President Nixon signed NEPA into law on January 1, 1970. NEPA seeks to "encourage productive and enjoyable harmony" between humans and the environment, recognizing the "profound impact" of human activity and the "critical importance of restoring and maintaining environmental quality" to the overall welfare of humankind. 42 U.S.C. 4321, 4331.

Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and wilderness and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations. *See, e.g.*, 42 U.S.C. 4332.

<sup>1</sup> See Linda Luther, Cong. Rep., Sec. 2, 83-132, The National Environmental Policy Act: Background and Implementation, 4 (2009), <https://www.eop.gov/production/NEPA132>.

provisions of Articles 42 U.S.C. 4331(a). It also recognizes that each person should have the opportunity to enjoy a healthy environment and has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. 4331(c).

NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making. 42 U.S.C. 4332. To that end, section 102(2)(C) of NEPA requires Federal agencies to prepare "detailed statements," referred to as environmental impact statements (EISs), for "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment" and, in doing so, provide opportunities for public participation to help inform agency decision making. 42 U.S.C. 4332(2)(C). The EIS process embodies the understanding that informed decisions are better decisions and lead to better environmental outcomes when decision makers understand, consider, and publicly disclose environmental effects of their decisions. The EIS process also matches understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making, such as decisions on infrastructure and energy development, in line with high-quality information, including the best available science, information and data, as well as the environmental design arts.

In many respects, NEPA's a statute ahead of its time and remains relevant and vital today. It codifies the commonsense idea of "look before you leap" to guide agency decision making, particularly in a complex and consequential area, because conducting sound environmental analysis before agencies take actions reduces conflict and waste in the long run by avoiding unnecessary harm and uninformed decisions. *See, e.g.*, 42 U.S.C. 4332. It establishes a framework for agencies to ground decisions in sound science and recognizes that the public may have important ideas and information on how Federal actions can occur in a manner that reduces potential harms and enhances ecological, social, and economic well-being. *See, e.g.*, *id.*

On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 (FRA) into law, which included amendments to NEPA. Specifically, the FRA amended section 102(2)(C) and added sections 102(2)(D) through (F) and sections 102(2)(E) through (G) and amendments in section 102(2)(C) largely codify longstanding principles that EIS

proposed action also would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531-1538.

**J. Paperwork Reduction Act**  
This proposed rule would not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508**  
Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

**Brenda Malley, Chair.**

For the reasons discussed in the preamble, the Council on Environmental Quality proposes to amend 40 CFR chapter V by revising subchapter A to read as follows:

#### ■ 1. Revise subchapter A to read as follows:

##### PART 1500—PURPOSE AND POLICY

Sec. 1500.1 Purpose.  
1500.2 Policy.  
1500.3 NEPA compliance.  
1500.4 Concise and informative environmental documents.  
1500.5 Efficient process.  
1500.6 Agency authority.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1501—NEPA AND AGENCY PLANNING

Sec. 1501.1 Purpose.  
1501.2 Apply NEPA early in the process.  
1501.3 Determine the appropriate level of NEPA review.  
1501.4 Categorical exclusions.  
1501.5 Environmental assessments.  
1501.6 Finding of no significant impact.  
1501.7 Lead agency.  
1501.8 Cooperating agencies.  
1501.9 Public and governmental engagement.  
1501.10 Deadlines and schedule for the NEPA process.  
1501.11 Programmatic environmental documents and hearing.  
1501.12 Incorporation by reference into environmental documents.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p.

49966 Federal Register / Vol. 88, No. 145 / Monday, July 31, 2023 / Proposed Rules

### PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec. 1502.1 Purpose of environmental impact statement.  
1502.2 Implementation.  
1502.3 Statutory requirements for environmental impact statements.  
1502.4 Scoping.  
1502.5 Timing.  
1502.6 Interdisciplinary preparation.  
1502.7 Page limits.  
1502.8 Writing.  
1502.9 Draft, final, and supplemental statements.

1502.10 Recommended format.  
1502.11 Cover.  
1502.12 Summary.  
1502.13 Purpose and need.  
1502.14 Alternatives including the proposed action.  
1502.15 Affected environment.  
1502.16 Environmental consequences.  
1502.17 List of proposals.  
1502.18 Appendix.  
1502.19 Publication of the environmental impact statement.  
1502.20 Incomplete or unavailable information.

1502.21 Cost-benefit analysis.  
1502.22 Methodology and scientific accuracy.  
1502.23 Environmental review and consultation requirements.  
1502.24 Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

**PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS**

Sec. 1503.1 Inviting comments and requesting information and analyses.  
1503.2 Duty to comment.  
1503.3 Specificity of comments and information.  
1503.4 Response to comments.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1504—PRE-DECISIONAL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec. 1504.1 Purpose.  
1504.2 Duty to dispute resolution.  
1504.3 Criteria and procedure for referrals and responses.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1505—NEPA AND AGENCY DECISION MAKING

Sec. 1505.1 Reserved.  
1505.2 Record of decision in cases requiring environmental impact statements.  
1505.3 Implementing the decision.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1506—OTHER REQUIREMENTS OF NEPA

Sec. 1506.1 Limitations on actions during NEPA process.  
1506.2 Elimination of duplication with State, Tribal, and local procedures.  
1506.3 Adoption.  
1506.4 Combining documents.  
1506.5 Agency responsibility for environmental documents.  
1506.6 Reserved.  
1506.7 Further guidance.  
1506.8 Proposals for legislation.  
1506.9 Filing requirements.  
1506.10 Timing of agency action.  
1506.11 Emergencies.  
1506.12 Innovative approaches to NEPA review.  
1506.13 Effective date.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1507—AGENCY COMPLIANCE

Sec. 1507.1 Compliance.  
1507.2 Agency capability to comply.  
1507.3 Agency NEPA procedures.  
1507.4 Agency NEPA program information.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1508—DEFINITIONS

Sec. 1508.1 Definitions.  
1508.2 Reserved.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26987, 3 CFR, 1977 Comp., p. 123.

##### PART 1509—PURPOSE AND POLICY

Sec. 1509.1 Purpose.  
(a) The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. It establishes policy, sets goals (section 103), and provides direction (section 102) for carrying out the policy.

Authority: 42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p.

# I. LEGAL LANDSCAPE (continued)

35442 Federal Register / Vol. 89, No. 85 / Wednesday, May 1, 2024 / Rules and Regulations

**COUNCIL ON ENVIRONMENTAL QUALITY**  
40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508  
(CEQ-2023-0003)  
RIN 0331-AA07

**National Environmental Policy Act Implementing Regulations Revisions Phase 2**

**AGENCY:** Council on Environmental Quality.

**ACTION:** Final rule.

**SUMMARY:** The Council on Environmental Quality (CEQ) is finalizing its "Bipartisan Permitting Reform Implementation Rule" to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including the recent amendments to NEPA in the Fiscal Responsibility Act. CEQ is making these revisions to provide for an effective environmental review process; ensure full and fair public engagement; enhance efficiency and regulatory certainty; and promote sound Federal agency decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. These changes are grounded in NEPA's statutory text and purpose, including making decisions informed by science; CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; and case law interpreting NEPA's requirements.

**DATES:** The effective date is July 1, 2024.

**ADDRESSES:** CEQ established a docket for this action under docket number CEQ-2023-0003. All documents in the docket are listed on [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Amy B. Coyle, Deputy General Counsel, 202-395-5750, [amy.b.coyle@ceq.gov](mailto:amy.b.coyle@ceq.gov); Megan Hsieh, Deputy Director for NEPA, 202-395-5750, [Megan.Hsieh@ceq.gov](mailto:Megan.Hsieh@ceq.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This final rule completes a multiphase rulemaking process that CEQ initiated in 2021 to revise its regulations to improve implementation of the National Environmental Policy Act (NEPA). Throughout the process, CEQ engaged with agency experts who

implement NEPA on a daily basis to develop revisions to the regulations to enhance the clarity of the regulatory text, improve the efficiency and effectiveness of the NEPA process, enhance regulatory certainty and address potential sources of litigation risk, and promote consistency across the Federal Government while recognizing the importance of providing agencies with flexibility to tailor their NEPA processes to the specific statutes and factual contexts in which they administer their programs and decisions. CEQ also engaged with individuals affected by agency implementation of NEPA, including representatives of Tribal Nations, environmental justice experts, and representatives of various industries, to gather input on how to improve the NEPA process. CEQ proposed and is now finalizing this rule to reflect the input CEQ has received, the decades of CEQ and agency experience implementing NEPA, and the recent statutory amendments to NEPA. This final rule will help agencies more successfully implement NEPA and facilitate a more efficient and effective environmental review process.

**A. NEPA Statute**

To declare an ambitious and visionary national policy to promote environmental protection for present and future generations, Congress enacted NEPA in 1969 by a unanimous vote in the Senate and a nearly unanimous vote in the House,<sup>1</sup> and President Nixon signed it into law on January 1, 1970. NEPA seeks to "encourage productive and enjoyable harmony" between humans and the environment, recognizing the "profound impact" of human activity and the "critical importance of restoring and maintaining environmental quality" to the overall welfare of humankind.<sup>2</sup> 42 U.S.C. 4321, 4331. Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). It also recognizes that each

<sup>1</sup> See Linda Luchs, Cong. Rec., *RE31122*, The National Environmental Policy Act: Background and Implementation, 4 (2011), <https://ceq.doe.gov/publications/ceqdocs/RE31122>.

<sup>2</sup> See Linda Luchs, Cong. Rec., *RE31122*, The National Environmental Policy Act: Background and Implementation, 4 (2011), <https://ceq.doe.gov/publications/ceqdocs/RE31122>.

person should have the opportunity to enjoy a healthy environment and has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. 4331(c). NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making. 42 U.S.C. 4332. To that end, section 102(2)(C) of NEPA requires Federal agencies to prepare "detailed statement[s]," referred to as environmental impact statements (EIS), for "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment" and, in doing so, provide opportunities for public participation to help inform agency decision making. 42 U.S.C. 4332(2)(C). The EIS process embodies the understanding that informed decisions are better decisions and lead to better environmental outcomes when decision makers understand, consider, and publicly disclose environmental effects of their decisions. The EIS process also enriches understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making based on high-quality information, such as decisions on infrastructure and energy development.<sup>3</sup> See, e.g., *Winter v. NRDC*, 555 U.S. 7, 23 (2008) ("Part of the harm NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures."). In many respects, NEPA was a statute ahead of its time and remains vital today. It codifies the common-sense idea of "look before you leap" to guide agency decision making, particularly in complex and consequential areas, because conducting sound environmental analysis before agencies take actions reduces conflict and waste in the long run by avoiding unnecessary harm and uninformed decisions. See, e.g., 42 U.S.C. 4332; *Leachette Cos. Co. v. FERC*, 870 F.2d 1484, 1488 (D.C. Cir. 1989) ("When so much depends upon the agency having a sure footing, it is not too much for us to demand that it look first, and then leap if it likes."). It establishes a framework for agencies to ground decisions in science, by

<sup>3</sup> See CEQ, *The National Environmental Policy Act: A Study of Its Effectiveness after Twenty-Five Years* (1995) (reporting that study participants, which included academic, nonprofit organizations, and businesses, "appreciated NEPA as organizing the Federal process to public input and were convinced that this open process has improved project design and implementation.").

May 1, 2024, CEQ Published the final Phase II Rule



## I. LEGAL LANDSCAPE (continued)

**NEPA Environmental Review** – Seven County Infrastructure Coalition v. Eagle County, CO, Docket No. 23-975 (Supreme Ct. Dec. 10, 2024) **Issue** – Whether the National Environmental Policy Act (NEPA) requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority. (EIS for 88 mile rail line – Increase GHG emissions). **Holding** – To be decided.

## I. LEGAL LANDSCAPE (continued)

Marin Audubon Society v. Federal Aviation Administration – Docket No. 23-1067 United States Court of Appeals – D.C. Circuit (Nov. 12, 2024). **Issue** – FAA approval of commercial air operations over tourist flights over National Parks. **Holding** – “The Council on Environmental Quality (CEQ) which purports to govern how all federal agencies must comply with the National Environmental Policy Act are ultra vires.” CEQ rulemaking was unfortunately based upon an Executive Order not rooted in grant of authority from Congress.



## I. LEGAL LANDSCAPE (continued)

State of Iowa et al. v Council on Environmental Quality and Brenda Mallory, in her official capacity as Chair, Case No. 1:24-cv-00089 (District Court of North Dakota Feb. 3, 2025) – [¶ 54] “There is also no need to look for implied authorization from Congress because Congress was explicit. CEQ was to advise the President and make recommendations; it was not to make regulations. 42 U.S.C. § 4344. If this was an oversight, then Congress has a long history of making amendments to circumvent judicial interpretation. See e.g., U.S. Const. Amend. XIII, XIV.... That is Congress’s job as the law-making body of government, not the Court or the President. Therefore, this Court holds Executive Order 11,991 [by President Jimmy Carter in 1977 directing CEQ to issue NEPA regulations to Federal agencies] was not a valid exercise of the President’s power under the Take Care clause.” p. 20 of 46. (Cites to *Marin Audubon Society* case.)



## II. “THE DEATH OF CHEVRON DEFERENCE”

(June 25, 1984 – June 28, 2024) (Cited in 17,661 cases)



*Chevron USA Inc., v. Natural Resources Defense Council*,  
467 U.S. 837 (June 25, 1984) With regard to judicial review of  
an agency’s construction of the statute which it administers, if  
Congress has not directly spoken to the precise question at  
issue, the question for the Court is whether the agency’s  
interpretation is a permissible construction of the statute. “We  
have long recognized that considerable weight should be  
accorded to an executive department’s construction of a  
statutory scheme it is entrusted to administer, and the  
principle of deference to administrative determinations.”  
(467 U.S. 844)

## II. “THE DEATH OF CHEVRON DEFERENCE” (continued)

*Loper Bright Enterprises v. Raimondo*, Docket No. 22-451, 603 U.S. \_\_\_\_\_, 144 S. Ct. 2244 (June 28, 2024) **Issue** – National Marine Fishing Services required fishing companies to pay for the cost of federal monitors that would be assigned to their boats. **Holding** – The Court overrules Chevron Deference and determines that the Administrative Procedures Act (APA) requires federal courts to exercise independent judgment in deciding whether an agency has acted within its statutory authority and courts should not “defer” to an agency’s legal interpretation just because it is ambiguous.

## II. “THE DEATH OF CHEVRON DEFERENCE” (continued)

*Skidmore v. Swift Co.*, 323 U.S. 134 (1944)

“Although the rulings, interpretation, and opinions of the administrator under the [Fair Labor Standards] Act do not control judicial decisions, they do constitute a body of experienced and informed judgment to which Courts and litigants may properly resort for guidance.” (323 U.S. 140).

**NOTE:** This may be the remaining standard!

## II. “THE DEATH OF CHEVRON DEFERENCE” (continued)

Interstate Natural Gas Association of America v. Pipeline and Hazardous Materials Safety Administration, Docket No. 23-1173, United States Court of Appeal-D.C. Circuit (August 16, 2024)

**Issue** – In 2022, the PHMSA issued a long list new and revised safety regulations. PHMSA must publish two cost-benefit analyses: one when it first proposed the standard and another when it finalized the rule.

**Holding** – We thus cannot discern the agency's reasoning: Does the standard impose no costs at all or does it impose some costs that cannot be calculated?

## II. “THE DEATH OF CHEVRON DEFERENCE” (continued)

The agency's explanation contradicts itself and thus fails to meet the requirement of a reasoned cost-benefit analysis. See 49 U.S.C. § 60102(b)(5); cf. *Nat. Res. Def. Council v. Nuclear Regul. Comm'n*, 879 F.3d 1202, 1214 (D.C. Cir. 2018) (“[I]t would be arbitrary and capricious for the agency's decision making to be internally inconsistent.”). “Without properly identifying the costs of the new standard, “it is not apparent just how the agency went about weighing the benefits against the costs”. “We conclude that PHMSA failed to provide a reasoned cost-benefit analysis for this standard.”



## II. “THE DEATH OF CHEVRON DEFERENCE” (continued)

The court relied on the agency record, which does not explain PMHSA’s reasoning. “It would be arbitrary and capricious for the agency’s decision making to be internally inconsistent.”

### III. BIDEN ADMINISTRATION FEDERAL REGISTER NOTICES



Vol. 89 2024 – 106,406 pages

Vol. 88 2023 – 90,402 pages

Vol. 87 2022 – 80,509 pages

Vol. 86 2021 – 74,532 pages

**TOTAL – 351,849 pages**



<sup>1/</sup>“More than 6,000 full-time employees were brought on at [EPA] during former President Joe Biden’s term.” “EPA fires probationary employees” E. News (02/14/2025)



### III. BIDEN ADMINISTRATION

“10 Big Biden Environmental Rules, and What They Mean,”  
N.Y Times, Section A, p. 14 (May 10, 2024)

1. **Electrifying Cars** – By 2032 more than 50% of cars sold are electric vehicles (up from 7.6%).
2. **Slashing Power Plant Emissions** – Coal Plants/Natural Gas Plants 90% reduction by 2032.
3. **Plugging Methane Leaks** – Oil & Gas methane reduction from pipelines, drill sites and storage facilities.
4. **Banning Asbestos** – Chrysotile asbestos for roofing materials, textiles, cement, gaskets, clutches, brake pads.
5. **Ending “Forever” Chemicals in Tap Water** – PFOA/PFAS in municipal water systems.

### III. BIDEN ADMINISTRATION (continued)

“10 Big Biden Environmental Rules, and What They Mean,”  
N.Y Times, Section A, p. 14 (May 10, 2024)

6. **Protecting Endangered Species** – U. S. Fish & Wildlife/National Oceanic and Atmospheric Administration – Consider “Climate Change” in protect decisions, also protect “threatened” species not just “endangered” species.
7. **Protecting Alaska Wilderness** – Denied permission for Ambler Road, a 211-mile industrial road [stopped any ANWAR development from oil and gas production].
8. **Chemical Plant Safety** – 12,000 Chemical Plants must plan for and invest in “expanded” safety measures.

### III. BIDEN ADMINISTRATION (continued)

“10 Big Biden Environmental Rules, and What They Mean,”  
N.Y Times, Section A, p. 14 (May 10, 2024)

9. **Raising the Price to Drill on Public Lands** – Raised royalty rates from 12.5% to 16.67%, drilling bonds increased.
10. **Permitting for Highways, Power Lines, and Pipelines** – Speed up construction permits but consider Climate Change and Environmental Justice (EJ) issues.

## IV. CONGRESSIONAL REVIEW ACT (5 U.S.C. §§ 801 – 808)

This statute allows Congress to pass a resolution officially disapproving of an agency action, so long as the rule was adopted within the last 60 “legislative days.” The CRA also has a **lookback provision** that provides Congress with additional time to use the CRA to review rules that were submitted towards the end of the previous session.

If Congress passes – on simple majority votes – and Trump signs a CRA resolution, the agency is bound to retract and reconsider its rule, **but it is also barred from promulgating any rules “substantially similar” to the disapproved regulation.**

## IV. CONGRESSIONAL REVIEW ACT (continued)

1. The CRA has its limits: it only applies to rules that are adopted within the specified timeframe, and it can only be used to abrogate rules in their entirety, as opposed to removing individual provisions.
2. The CRA legislative review **lookback period** for the next Congress will extend to any regulations issued on or after **August 1, 2024. (Vol. 89 – FR 62746)[43,660 pgs.]**

## IV. CONGRESSIONAL REVIEW ACT (continued)

3. Unfortunately, this process takes up Congressional time and resources which may be limited due to the significant legislative agenda of the Trump Administration.
4. Congress has only 60 legislative days to act on the identified rules.
5. EPA's Methane Emissions Reduction Program (MERP) and the Waste Emissions Fee on Methane Emission (on November 18, 2024) is likely victim (as well as Immigration and any Diversity Equity & Inclusion (DEI) regulations).

## V. HUMBLE PREDICTIONS

### 1. EPA LEADERSHIP



Lee Zeldin, a 44-year-old attorney and former Army lieutenant, does not have a background in environmental policy.

## V. HUMBLE PREDICTIONS

### EPA LEADERSHIP (continued)



Trump has indicated Zeldin “will ensure fair and swift deregulatory decisions that will be enacted in a way to unleash the power of American businesses, while at the same time maintaining the highest environmental standards, including the cleanest air and water on the planet.”



## V. HUMBLE PREDICTIONS

### EPA LEADERSHIP (continued)



Without saying it directly, Zeldin signaled a tough road ahead for the thousands of community advocates who have spent years pushing for stronger regulations. **I predict he will experience significant resistance from EPA's professional staff!**

## V. HUMBLE PREDICTIONS

### 2. CARBON CAPTURE UTILIZATION AND STORAGE (CCUS)

CCUS projects have been proposed by the oil and gas industry and some cases are actually being built and in operation.

Trump's EPA will continue to support the development of this technology and one aspect of the previous Biden Administration's Climate Agenda.

## VI. EXECUTIVE ORDERS

### 1. ELIMINATING 10 REGULATIONS FOR EACH NEW REGULATION ISSUED (January 31, 2025)

Today, President Donald J. Trump signed an **Executive Order** to unleash prosperity through deregulation.

The Order requires that whenever an agency promulgates a new rule, regulation, or guidance, it must identify at least 10 existing rules, regulations, or guidance documents to be repealed.

## VI. EXECUTIVE ORDERS

### 2. PARIS AGREEMENT – Special Presidential Envoy, Climate National Security Council Position

The Paris Agreement is a legally binding international treaty on Climate Change. It was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016. Its goal is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels” and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels.”



## VI. EXECUTIVE ORDERS

### 2. PARIS AGREEMENT – Special Presidential Envoy, Climate National Security Council Position (continued)

In recent years, world leaders have stressed the need to limit global warming to 1.5°C by the end of this century. That's because the UN's Intergovernmental Panel on Climate Change indicates that crossing the 1.5°C threshold risks unleashing far more severe climate change impacts, including more frequent and severe droughts, heatwaves and rainfall. [Note: To limit global warming to 1.5°C, greenhouse gas emissions must peak before 2025 at the latest and decline 43% by 2030.]



## VI. EXECUTIVE ORDERS

### 2. PARIS AGREEMENT – Special Presidential Envoy, Climate National Security Council Position (continued) (January 20, 2025)

U.S. withdraws from Paris Agreement and Special Presidential Envoy for Climate is eliminated.

## VI. EXECUTIVE ORDERS

### 3. NEPA REVIEW

After the court's holding in Marin Audubon Society, federal agencies face a raft of legal issues concerning their reliance on the CEQ regulations and the unavailability of Chevron Deference after Loper Bright, making individual agencies' NEPA regulations and project-specific NEPA compliance vulnerable to challenge under the Administrative Procedures Act.

## VI. EXECUTIVE ORDERS

### 3. NEPA REVIEW (continued)

This decision raises critical questions about the validity of existing NEPA regulations and other agency actions taken under the CEQ framework, as well as the procedural requirements for federal agencies moving forward. If the decision is not overturned by a full en banc appellate panel or by the U.S. Supreme Court, it could significantly alter the landscape of NEPA review.



## VI. EXECUTIVE ORDERS

### 3. NEPA REVIEW (continued)

“Unleashing American Energy” (January 20, 2025)

To expedite and simplify the permitting process, within 30 days of the date of this order, the Chairman of the Council on Environmental Quality (CEQ) shall provide guidance on implementing the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and propose rescinding CEQ’s NEPA regulations found at 40 CFR 1500 *et seq.*

Following the provision of the guidance, the Chairman of CEQ shall convene a working group to coordinate the revision of agency-level implementing regulations for consistency. The guidance in subsection (b) and any resulting implementing regulations must expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023 (Public Law 118-5).



## VI. EXECUTIVE ORDERS

### 4. DRILL, BABY, DRILL “Declaring A National Energy Emergency” (January 20, 2025)

The oil and gas industry expects that Federal Lease Sales will again be routinely offered and Applications for Permits to Drill (APDs) on federal lands will no longer be held up in DOI/EPA/BLM/USFS regulatory quagmire. Expect increased legal challenges by environmental advocates under the Administrative Procedures Act and/or various environmental statutes.

Note: According to the U.S. Energy Information Agency, the United States produced more crude oil than any nation for the last six years at 13.3 million BBls/day. About 12% of oil from federal lands and 11% of natural gas. Biden Administration has limited the land available for lease sales and Trump Administration will significantly increase available federal and offshore lease acreage.



## VI. EXECUTIVE ORDERS

### 5. LIQUIFIED NATURAL GAS EXPORTS

**FACTS:** Federal Energy Regulatory Commission (FERC) approved multi-billion-dollar South Texas LNG projects. A three-judge panel “vacated” the FERC approvals using the National Environmental Policy Act (NEPA) based on the “environmental justice” evaluation and “climate change” impacts in the Environmental Impact Statement (EIS). NEPA revision could take another 4.5 years.

**ISSUE:** Is judicial review in this case under the Natural Gas Act (NGA) where approving natural gas projects are considered under the importance of economic development and national security with a presumption of having authorization or under NEPA environmental concerns. Is vacatur the proper remedy or remand to revise the EIS?

## VI. EXECUTIVE ORDERS

### 6. LIQUIFIED NATURAL GAS EXPORTS (continued) “Unleashing American Energy” (January 20, 2025)

President Trump issued an Executive Order for the U.S. to resume processing export permit applications for new liquefied natural gas (LNG) projects, part of an effort to raise U.S. energy output and dismantle Biden’s climate policies. Within 30 days of issuing an Environmental Assessment (EA) or (ROD), the Administrator of the Maritime Administration (MARAD) within 30 days shall issue a Deep Water Port Act (DWPA) License.

Under Trump’s EPA, Liquefied Natural Gas (LNG) exports will be approved to support European markets and permits to operate or build new LNG facilities and export hubs will be fast tracked.

*City of Port Isabel, et al. v. Federal Energy Regulatory Commission, Rio Bravo Pipeline Company, LLC, and Rio Grande LNG, LLC, No. 23-1174(L), 23-1221, U.S. Court of Appeals, D.C. Circuit (May 17, 2024).*



## VI. EXECUTIVE ORDERS

### 7. ENVIRONMENTAL ENFORCEMENT

“Ending Radical and Wasteful Government DEI [Diversity, Equity & Inclusion] Programs and Preferencing” (January 20, 2025)

Terminates, to the extent allowed by law, all DEI, DEIA and Environmental Justice offices and positions . . . Including performance requirements of employees, contractors, or grants and environmental justice positions.

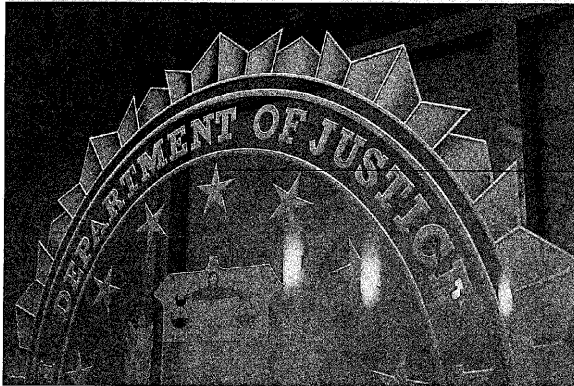
## GREENWIRE

### Bondi orders DOJ to terminate environmental justice programs

The department is reassigning lawyers, putting staff on leave and eliminating a section of its environment division.



BY: PAMELA KING | 02/06/2025 01:44 PM EST



The Department of Justice seal. | Jenny Kane/AP

**GREENWIRE** | On her first day as U.S. attorney general, Pam Bondi took aim at programs designed to fight pollution in communities of color and low-income areas amid a broader reshuffling and reduction of Justice Department staff focused on environmental enforcement and policy.

In one of her first memos to DOJ staff Wednesday, Bondi ordered each component of the department to confirm by March 15 termination of all environmental justice programs, offices and jobs — and ensure that those efforts do not continue under another name. The directive also required identification of federal contractors that have worked on diversity, equity and inclusion, or DEI, initiatives for the department.

Bondi ordered the department to rescind all “materials that encouraged or permitted race- or sex-based preferences as a method of compliance with federal civil rights laws.”

Those materials, she said in a memo obtained by POLITICO, “will be replaced with new guidance affirming that equal treatment under the law means avoiding identity-based considerations in employment, procurement, contracting, or other Department decisions.”

Bondi arrives at DOJ as the department is undergoing major staff cuts and reshuffling.

On Friday, a section of DOJ’s environment division was given notice that their office of nearly 20 people would be eliminated and that they would be ineligible for other positions within the department or anywhere else in government, according to Gary Jonesi, a former EPA enforcement attorney, who left his post last month after 40 years with the agency.

The office — the Law and Policy Section within DOJ’s Environment and Natural Resources Division — is responsible for coordination across ENRD, legislation review and ethics advising. The section also has a hand in response to Freedom of Information Act requests and monitoring of citizen suits under the Clean Air Act and Clean Water Act.

“These are outstanding career lawyers who have worked for administrations of both parties and understand who gets to make policy. They are not loose cannons,” Jonesi said. “By firing them and transferring top environment division managers at the Justice

Department, the Trump administration has blown any possibility of building trust with remaining staff who could have helped the administration carry out its agenda.”

A spokesperson for ENRD declined to comment on Bondi’s memo and the notice to the Law and Policy Section.

DOJ last month also placed the head of its Office of Environmental Justice and other attorneys on administrative leave, reassigned environment section chiefs to work on immigration and revoked job offers for recent law school graduates headed to work with ENRD.

“The messages for ENRD’s career lawyers are clear,” wrote three law professors and former ENRD staffers in a Tuesday blog post. “Depth of experience, independent judgment, and keen legal skills are no longer valued. Dedication to upholding the Constitution and the Rule of Law is irrelevant. Nonpartisanship is disloyalty. ENRD is expendable.”

They noted that while ENRD’s work sometimes does not align with the policy preferences of the administration in power, the division itself has no political agenda. They said hearing honest critiques from DOJ’s legal experts is crucial to avoiding pitfalls in court.

“If the dismantling of ENRD proceeds, the new Trump administration will find itself with a substantially diminished reservoir of expert counsel,” the law professors wrote. “Those attorneys who remain also could be reluctant to provide candid analyses for fear of being labeled disloyal.”

*This reporter can be reached on Signal at pamelaking.56.*

**Correction:** An earlier version of this report misstated Bondi’s first day at the Justice Department. She arrived and issued memos Wednesday.

Reporter Kevin Bogardus contributed.

## VII. ENVIRONMENTAL ENFORCEMENT

### EPA'S INFORMAL RESOLUTION AGREEMENTS CONCERNING "ENVIRONMENTAL JUSTICE" COMPLAINTS

Previous "Administrative Complaints" brought under Title VI of the Civil Rights Act and EPA's Implementing Regulations at 40 C.F.R. Parts 5 and 7. EPA pursued many "Informal Resolution Agreements" ("IRA") with state agencies concerning permits.

Requiring programs (*i.e.*, nondiscrimination policy, a nondiscrimination coordinator, a grievance procedure and public participation on environmental decision-making use of EJ Screen Tool). Required increased inspections of permitted facilities and adoption of a full nondiscrimination program.

## VII. ENVIRONMENTAL ENFORCEMENT

Trump's EPA will revive a previous collaboration with State Environmental Enforcement Agencies. During the previous Trump administration, the EPA's Enforcement Office published a policy supported by most State Environmental Agencies that deferred to state enforcement of environmental laws unless the State was unable or unwilling to enforce the law. That policy was reflexively overturned by the Biden Administration's EPA, which returned the EPA to a "gorilla in the closet" approach to oversight of State enforcement.

A collaborative approach with State Environmental Agencies will allow the EPA to focus its enforcement resources on the most important and complex cases.



# HANG IN THERE!





# Questions?

## **Legal Disclaimer**

The views and opinions expressed in this material represent the view of the authors and not necessarily the official view of Clark Hill PLC. Nothing in this presentation constitutes professional legal advice nor is it intended to be a substitute for professional legal advice.

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.



# Thank You

## **Legal Disclaimer**

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.