

# There's Something in the Air:

## Shifting Regulatory Winds Under a New Administration

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The Pillsbury logo, featuring the word "pillsbury" in a lowercase, sans-serif font. The letters are a reddish-brown color. The 'i' and 'l' are slightly taller than the other letters, and the 'y' has a long, thin tail that extends downwards.

## *ALA v. EPA*: D.C. Circuit Rejects ACE Rule

- On January 19, 2021, the D.C. Circuit vacated and remanded the Trump Administration's repeal of the Clean Power Plan and replacement with the Affordable Clean Energy Rule.
- Following the decision, the court granted EPA's request to stay its order vacating the repeal of the Clean Power Plan.
- EPA has indicated intent to proceed with a "blank slate" on GHG emissions, rather than revert to the Obama administration's rule.

# Executive Orders on Climate Crisis

## January 20<sup>th</sup> EO:

- Requires all agencies to review all regulations, orders, guidance and policies enacted over the last four years.
- Issues deadlines for reviewing key Trump EPA policies, including:
  - Reconsideration of new source performance standards for methane emissions: September 2021
  - Emissions standards for hazardous air pollutants for coal- and oil-fired utilities: August 2021
- Calls for EPA to “consider” proposing a broader regulation of methane and other emissions from existing oil and gas facilities.
- Calls for EPA to consider proposing by January 2022 a federal implementation plan to spur implementation of oil and gas control technique guidelines targeting ozone pollution.

# Executive Orders on Climate Crisis Ctd.

## January 27<sup>th</sup> EO:

- Establishes a moratorium on new oil and gas lease permits on federal land and waters until a comprehensive review of Federal oil and gas permitting and leasing practices is completed.
  - The moratorium was immediately challenged, both in the courts and in Congress.
- Establishes goal of eliminating fossil fuel subsidies from the budget altogether by Fiscal Year 2022.
- Establishes goals of improving air and water quality, creating jobs for people in hard hit communities, and reducing methane emissions and “other environmental harms.”
- Establishes the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization.

# CO2 NAAQS?

- December 2, 2009: the Center for Biological Diversity and 350.org submitted a Petition requesting that EPA declare CO2 a criteria pollutant and set a NAAQS to reduce emissions to 350 ppm.
- January 19, 2021: EPA denied the 2009 petition.
- March 4, 2021: EPA withdrew the denial of the petition.
- EPA is reportedly giving serious consideration to setting secondary NAAQS for CO2.
  - At what level should the standard be set?
  - How could EPA measure attainment?
  - What should the deadline be?
  - Could CO2 NAAQS survive judicial review?

# Environmental Justice

- President Biden has directed EPA and DOJ to significantly elevate environmental justice enforcement efforts, including making it a top priority for EPA's enforcement office and renaming DOJ's environment division to highlight the equity focus.
- EPA plans to pursue a “more integrated approach” for using its environmental justice screening and mapping tool, EJ Screen.
  - EJ Screen allows users to choose a geographic area and receive demographic and environmental information based on 11 publicly available indicators, 6 demographic indicators and 11 EJ indexes.
  - The indexes include air toxics cancer risk, air toxics respiratory hazard risk, ozone and particulate matter levels, lead paint indicator, traffic indicator, wastewater discharge indicator and proximity to storage and disposal facilities, Superfund sites and more.
- An early test of then Biden EPA's environmental justice priorities:
  - In a petition submitted on February 12, 2021, the Louisiana Bucket Brigade, Environmental Integrity Project and Sierra Club cite environmental justice concerns in a challenge of the Title V permit issued by the Louisiana Department of Environmental Quality for a unit at ExxonMobil's Baton Rouge, LA, refinery.

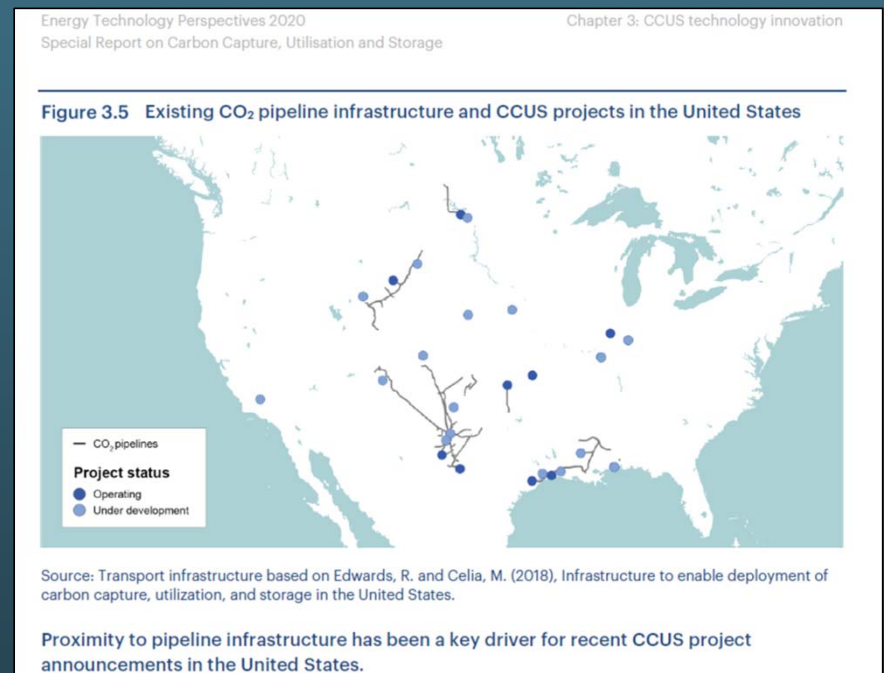
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# Environmental Justice and Environmental, Social, and Corporate Governance

- The Biden administration's prioritization of EJ raises the prospect that EJ will increasingly factor into ESG considerations.
- Community engagement on EJ issues pursuant to statutory requirements may face greater scrutiny.
  - Early last year, the Fourth Circuit vacated and remanded a decision by the Virginia Air Pollution Control Board for the Atlantic Coast Pipeline for failing to adequately consider EJ.
- Voluntary community engagement as a matter of EJ is a way to promote project goals and address ESG concerns in a proactive manner.

# Carbon Capture, Utilization, and Storage (CCUS)

- The Biden administration is expected to continue supporting CCUS, primarily through the Department of Energy.
- “The CO<sub>2</sub> pipelines that will be necessary for [CCUS] could put lots of people to work, so I think it's a big job opportunity, I think it's a big carbon reduction opportunity, and we're going to be bullish about it.” DOE Secretary Jennifer Granholm
- Because of its proximity to potential storage (saline formations), fossil fuel production (CO<sub>2</sub> for enhanced oil recovery), and the presence of natural gas and other chemical processing industries, the Gulf Coast and Texas are well-positioned for CCUS projects.
- Whether and to what extent new CCUS projects prompt EJ concerns is an open question.



Source: [IEA](#)



# Thank you!



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