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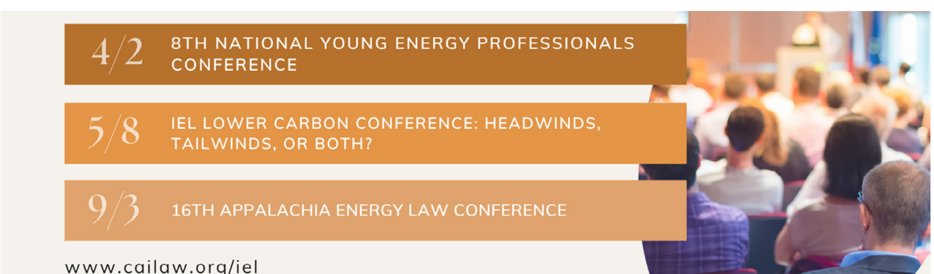

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INDUSTRY UPDATES

Outlook for Trump Administration Environment, Energy, and Natural Resource Regulation, Enforcement and Litigation

By Brook Detterman, Amber Ahmed, Tim J. Sullivan and Ben Champion, Beveridge & Diamond PC

The second Trump Administration has ushered in a significant shift in environmental and natural resource law and policy, building upon its much-publicized deregulatory agenda. Understanding these evolving dynamics is crucial for stakeholders aiming to engage with policymakers, mitigate legal risks, and strategically position their environmental and business priorities in this new regulatory landscape.

This article discusses what we anticipate with regard to energy law in the second Trump Administration.

President Trump fulfilled his promises to restore “American energy dominance” by issuing the following Day One executive orders:

- "Declaring a National Energy Emergency,"
- “Unleashing American Energy,”
- “Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing . . .,”
- “Unleashing Alaska’s Extraordinary Resource Potential,” and
- "Putting America First in International Environmental Agreements".

These Executive Orders define “energy” as oil and gas and related gas and petroleum products, uranium, coal, biofuels, geothermal heat, hydropower, and critical minerals. This definition notably excludes solar and wind power.

The orders reflect a whole-of-government approach to removing restrictions on energy development and to accelerating this development using emergency authorities where possible.

Through the Executive Orders, the Trump Administration seeks to rapidly facilitate the identification, leasing, siting, production, transportation, refining, and generation of these domestic energy resources — both on federal and privately owned lands, and possibly through the use of special and emergency authorities and through eminent domain.

The Executive Orders also rescind a long list of Biden Administration Executive Orders and end energy production restrictions, policies that incentivize electric vehicles, LNG-export constraints, and prohibitions on oil and gas exploration on public lands, including the Arctic National Wildlife Refuge in Alaska. Some of these early actions face uncertain paths to implementation, as the Administration and political leadership in the federal agencies will have to navigate limitations on various agency emergency authorities and will encounter litigation on the use of those authorities.

In addition to these immediate, high-profile reversals of Biden Administration actions and sweeping declarations that match campaign rhetoric, we expect the Trump Administration to focus on longer-term legislative and deregulatory efforts that reflect and respond to industry’s energy policy priorities.

Common denominators for these near- and longer-term initiatives will be a renewed emphasis on conventional energy sources, a de-emphasis on carbon emission avoidance and environmental justice, and efforts to speed up permitting and other regulatory processes for conventional energy sources by relaxing or bypassing associated requirements.

LNG Export

President Trump immediately rescinded through Executive Order the Biden Administration’s pause of LNG export licenses and approved all pending export license requests. The Trump Administration may build upon this Executive Order directive through a more systematic, multi-agency decision-making process that would include a rebuttal of the Biden Administration’s December 2024 study finding that unconstrained LNG exports could exacerbate climate change if the supplies replace lower carbon energy sources in the importing countries. We also expect the Administration to seek faster permitting for deepwater petroleum export terminals.

Public Lands

Department of Interior (DOI)—and its bureaus and offices—will be a key player in the Trump Administration's push to roll back regulatory requirements for onshore and offshore oil and natural gas production and expand production on federal lands, and also to slow renewable energy development on public lands. President Trump also issued an Executive Order to place a moratorium on new offshore leases for wind development while the Administration reviews their impacts. At the same time, increased onshore and offshore oil and gas lease sales will likely be key sources of expanded production. The Bureau of Land Management's Waste Prevention Rule has been consistently discussed as a top target for reconsideration and roll back. Royalty rates and bonding requirements are other areas where the Trump Administration could further relax requirements to encourage additional oil and gas production on federal onshore and offshore lands. President Trump also reversed President Biden's recent action under Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA) to protect all U.S. Outer Continental Shelf areas off the East and West coasts, the eastern Gulf, and additional portions of the Northern Bering Sea in Alaska from future oil and natural gas leasing. It remains to be seen how meaningful this reversal is for actual expansion of oil and gas development in these areas, as leasing and production proposals for particular areas will encounter opposition from the military or legislators from coastal areas, not to mention some areas face challenges to commercial viability that make them costly to developers.

Emission Regulations

The Inflation Reduction Act's (IRA) methane fee implemented by Environmental Protection Agency (EPA) has been consistently discussed as a top target to be overturned under the Congressional Review Act. Further, while possible that Congress could seek to revise or even repeal all or parts of the IRA itself—the provisions creating the methane fee would almost certainly be included in such efforts. The IRA was passed on a party line vote, with Vice President Harris breaking a tie vote in the Senate; deployment of IRA funds in numerous states (including those with Republican senators) under the Biden Administration may create a lack of consensus among critics of the IRA in Congress for a wholesale repeal of the IRA. In the meantime, the Trump Administration has frozen disbursement of IRA grants, and some previously declared are now subject to review.

In addition, EPA's Clean Air Act regulations for the oil and natural gas sector that were finalized in March 2024—New Source Performance Standards (OOOOb) and Emissions Guidelines for existing sources (OOOOc)—will also be a priority for regulatory revisions. Given the ongoing litigation surrounding these regulations, expect to first see a pause in the litigation followed by broad remand of these regulations. In reconsidering the regulation, we expect EPA to address industry's and some states' biggest objections to these regulations, including the Super-Emitter Program, limits on flaring, the impacts on existing oil and natural gas sources, especially marginal wells, and a lack of time and flexibility for states to craft their own emission standards for existing oil and natural gas sources.

Electric Power Generation

Meeting the exploding energy demand from data centers and addressing the forecasted shortfalls in the nation's energy supply to meet these demand increases is one of the core underpinnings of President Trump's Executive Order declaring a national energy emergency. The Trump Administration and its Congressional allies will likely pursue increased development of and permitting for natural gas and nuclear generation assets—including small modular and next generation nuclear reactors—that provide baseload capacity to the grid. The Administration will also likely seek to complement those generation efforts with increased pipeline infrastructure to bring natural gas downstream to generation facilities and transmission infrastructure to connect gas and nuclear generation assets to the grid. Energy supply will be a cornerstone of the Administration's permitting reform efforts.

In addition to facilitating new gas and nuclear generation, the Trump Administration will likely seek to extend the lifetimes of legacy generation assets by rolling back Biden Administration power plant rules that required the adoption of advanced carbon sequestration technology and that—pending the actual pace of those advances—could have resulted in decommissioning of legacy gas and coal-fired generation and hamper construction of new baseload gas-fired plants. Other recent Biden Administration rules governing power plant wastewater, coal ash, and the Mercury and Air Toxics Standards (MATS) are other targets for regulatory rollbacks.

Energy Infrastructure

Finally, a key piece of the Trump Administration's energy policy will be facilitating accelerated permitting of energy development through permitting reforms, including NEPA changes. The early Trump Executive Orders call out specifically for greater development on the West Coast and Northeast regions, where President Trump has identified state and local policies as a barrier to his energy development goals.

Initiative for Mexico's Energy Sector Property

By Adrián Ortiz de Elguea, Holland & Knight LLP

An official notice of an initiative was published in the Gazette of the Senate on Feb. 5, 2025, enacting the following laws: State-Owned Company Laws for Federal Electricity Commission and Petróleos Mexicanos (PEMEX), Power Sector Law, Hydrocarbons Sector Law, Planning and Energy Transition Law, Biofuels Law, Geothermal Law, and National Energy Commission Law. Additionally, the same initiative includes amendments to various provisions of the Mexican Petroleum Fund for Stabilization and Development Law, Revenue on Hydrocarbons Law and Federal Public Administration Organic Law. If ultimately approved and published, the new laws and amendments proposed in the initiative will have a major impact on Mexico's energy policy.

The initiative establishes a unified structure for the Federal Electricity Commission (CFE) and PEMEX to improve efficiency and energy security, reinforcing their roles as parastatal public administration entities. It prioritizes CFE in power generation, ensures equitable operations and makes energy planning binding under the ministry of energy. It also designates lithium as a state-exclusive resource and recognizes state internet service as a strategic area.

The Energy Regulatory Commission and National Hydrocarbons Commission will transfer their functions to the Secretariat of Energy for improved efficiency and to prevent duplication, creating the National Energy Commission as a decentralized body with technical and operational independence to grant permits and regulate tariffs in the energy sector.

For the power sector, the initiative enacts the Electricity Sector Law in which CFE, as a state-owned company, will have priority to generate at least 54 percent of the electricity injected into the National Electricity System (SEN) each year. Under CFE's prevalence, power generation and commercialization will operate in a competitive regime, allowing both the Mexican State and private entities to participate. Private entities can act individually or in collaboration with the State in several modalities: distributed generation (up to 0.7 megawatts (MW) without a permit), self-consumption (from 0.7 MW, either isolated or interconnected to the SEN), and Wholesale Electricity Market (from 0.7 MW). In addition, mixed development will involve long-term contracts for sales to CFE and mixed investment, with at least 54 percent of CFE participation.

Finally, the initiative enacts the Hydrocarbons Sector Law to strengthen PEMEX and promote private investment through mixed schemes. The Ministry of Energy will grant assignments to PEMEX under either of two modalities: "Own Development" or "Mixed Development." PEMEX, with prior authorization from its board of directors, may indicate a lack of interest or capacity for such assignments on an exceptional basis, in which case for the exploration and extraction of hydrocarbons agreements may be granted.

Once the initiative is submitted to the Senate, it is referred to the relevant committees (in this case, Energy and Legislative Studies) and then discussed and approved in the Plenary. If approved, it moves to the House of Representatives for review and approval. After both chambers approve it, the executive branch has a term to review and return it with observations. If no observations are returned, the initiative is automatically approved. The executive branch then has a set term to publish the law, or the president of the originating House will order its publication in the *Federal Official Gazette*, at which time it will become effective.

Ohio's Seventh District Confirms Residuary Clauses Are Title Transactions, But Leaves Behind Some Residue of Its Own

By Christopher W. Rogers, Frost Brown Todd LLP

With its January 29, 2025 opinion in cite as *Claugus Family Farm & Forests, L.P. v. M.F. Piatt*, 2025-Ohio-291, Ohio's Seventh District Court of Appeals addressed, yet again, questions of what constitutes a title transaction under Ohio's Marketable Title Act (R.C. 5301.47-55) (the "MTA"). This time, the court's focus was on the "by will or descent" portion of the definition of "title transaction." R.C. 5301.47. The Seventh District reaffirmed that a probated will containing a residuary clause recorded in the county where the property sits constitutes a title transaction under the MTA.

At issue in *Claugus* was a May 14, 1900 royalty conveyance concerning Monroe County, Ohio property: Isaac and Matilda Agin conveyed "unto J.T. Craig 3/4 and M.F. Piatt the 1/4 part of the one-half part of their royalties of all the oil and gas". 2025-Ohio-291 at ¶ 5. No estate for M.F. Piatt was ever filed in Monroe County. *Id.* at ¶ 11. As for the J.T. Craig interest, estates were filed in Monroe County, showing that J.T. Craig died testate in 1943 with a last will and testament that left, via residuary clause, everything to Anna Holtsclaw, his daughter. *Id.* at ¶ 12. Anna died testate in 1968, and her will was probated in Monroe County, though her estate was opened under the name Margaret Ann Holtsclaw. Her will contained a residuary clause leaving everything to her six children. *Id.* at ¶ 12. This interest was eventually passed via several additional estate residuary provisions to the present-day ownership, which is split between nine individuals. *Id.* at ¶ 19.

Claugus Family Farm & Forests, L.P. ("Claugus FF&F") filed suit on April 17, 2023, asserting the severed royalty interests were extinguished by the MTA. *Id.* at ¶ 22. Heirs of the M.F. Piatt interest never appeared to defend and were defaulted pending the substantive determination to be made on the MTA. *Id.* Ultimately, the Court of Common Pleas of Monroe County, Ohio held on summary judgment that both severed royalty interests were preserved, though it only provided explanation for the J.T. Craig 3/4 interest. *Id.* at ¶ 26 (noting the trial court recognized M.F. Piatt as the owner of the 12.5% royalty in a chart in the judgment entry).

On appeal, the Seventh District Court of Appeals affirmed as to the J.T. Craig 3/4 interest, but vacated and reversed as to the M.F. Piatt 1/4 interest, holding the latter was extinguished under the MTA.

The J.T. Craig 3/4 Royalty Interest

Acknowledging a 1961 deed from the Monroe County Auditor to F.W. Claugus as the root of title (*see* R.C. 5301.47 for the definition of "root of title" as used in the MTA), which made no mention of the royalty interests, the Seventh District agreed with the trial court that the 1968 will of Margaret Ann Holtsclaw was a title transaction under the MTA, preserving the royalty interest from extinguishment. The Seventh District rejected the argument that the probated will failed as such because it did not *specifically* identify the royalty interest as being devised therein, noting that only R.C. 5301.49(A) contains the requirement that the reference in the muniments of title be non-general (*i.e.*, specific), and Part (A) was not relevant here. *Id.* at ¶ 41. The court explained that Part (D) of this section, on the other hand, is applicable to title transactions and contains no similar language; as such, the failure to specifically identify the royalty interest as being passed via the will is irrelevant. *Id.* at ¶¶ 41-42. The Seventh District therefore reaffirmed the proposition that a last will and testament containing a residuary clause (disposing of all property) that is probated in the county where the property sits constitutes a title transaction, notwithstanding the lack of a specific devise of the severed interest. *Id.* ¶¶ 33-42 (discussing *Warner v. Palmer*), 2019-Ohio-4078, appeal not allowed, 2020-Ohio-647, reconsideration denied, 2020-Ohio-2819; and *Peppertree Farms, L.L.C. v. Thonen*, 2022-Ohio-396.

Likewise, the Seventh District rejected Claugus FF&F's argument that the will of Margaret Ann Holtsclaw could not constitute a title transaction for Anna Holtsclaw's interest because the names in the deed and estate are different. The public record appeared to provide sufficient evidence that Margaret and Anna were one and the same and, perhaps more significantly, Claugus FF&F's prior lawsuit contained allegations indicating it had actual knowledge of this fact. *Id.* at ¶¶ 46-47.

The M.F. Piatt 1/4 Royalty Interest

With no deeds or estates ever filed in Monroe County, there was no title transaction to preserve M. F. Piatt's royalty interest from extinguishment. Importantly, on this point, the Seventh District noted that the preservation of the J.T. Craig interest could not also serve to preserve the M.F. Piatt interest: "Here, the purported royalty interest owners are the heirs of two separate grantees in a sale of royalty. Therefore, we find the title transactions that prevent extinguishment of the Craig royalty interest do not likewise prevent extinguishment of the Piatt royalty interest." *Id.* at ¶ 52.

A prior decision under *Hartline v. Atkinson,* 2020-Ohio-5606 (7th Dist.) held that, pursuant to the Dormant Mineral Act (R.C. 5301.56(C)(6)), actions by one holder of a mineral interest could "'preserve[] the rights of all holders of a mineral interest in the same lands.'" *Id.* at ¶ 50, citing to *Hartline*, 2020-Ohio-5606 at ¶ 36. Curiously, the Seventh District did not expressly distinguish *Hartline* on the basis of the law being applied (Dormant Mineral Act versus MTA). Instead, the court distinguished Hartline on its facts, noting it involved multiple fractional interest holders of the same lands and an affidavit of preservation by one (which preserved for all), whereas this case involved separate and distinct royalty interests with separate chains of title. *Id.* at ¶¶ 51-52. This appears to leave open the possibility that, where there are multiple severed mineral interest holders *of the same lands*, a title transaction preserving one may constitute a title transaction for all, despite the lack of MTA language providing for such an outcome.

The unique facts of *Claugus*—involving separate royalty interests created from a single deed where the chains of title followed very different paths, with one involving multiple estates and the other involving no recorded transaction at all—provides a useful point of reference confirming existing guidance on when a probated will constitutes a title transaction (*i.e.*, contains residuary clause) and when it won't (*i.e.*, doesn't contain residuary clause). It also confirms that intestate succession without any documents recorded in the county where the property sits does not constitute a title transaction, meaning the phrase "will or descent" in the definition of a title transaction under the MTA still requires something of record.

However, while appearing to close one door, the Seventh District has opened another—implying the possibility of the preserving acts of one fractional owner as preserving for all fractional owners under the MTA despite the MTA itself not providing for such an outcome. Whether this turns out to be true remains to be seen, but it is a possibility of which interested parties should be aware.

Let My Nuclear Reactors Go: Texas, Utah, and Last Energy, Inc. Challenge the NRC

By Ellen Conley, Michael Mazzone, and Sam Richards, Haynes and Boone, LLP

Does the United States Nuclear Regulatory Commission (NRC) have the authority to regulate microreactors and small modular reactors (SMRs)? According to the plaintiffs in a recent case, the answer is an emphatic "no."

On Dec. 30, 2024, the States of Texas and Utah, along with Last Energy, Inc., a commercial developer of micro-modular nuclear power plants, filed suit against the NRC in a Texas federal court. The plaintiffs argue that the NRC's Utilization Facility Rule incorrectly includes all nuclear reactors under its umbrella of control and imposes unnecessary and burdensome licensing requirements that exceed the agency's statutory authority. Additionally, the plaintiffs contend that the Utilization Facility Rule is arbitrary and capricious due to the NRC's failure to articulate why it requires small reactors to comply with its licensing regime. The plaintiffs seek declaratory relief and vacatur of the rule as it relates to SMRs and microreactors to facilitate the development and deployment of advanced nuclear technology in the United States.

As certain states plan for the looming explosion of energy demand on their grids, nuclear power is increasingly finding its way back into the good graces of state legislators. Advanced nuclear technologies, particularly SMRs and microreactors, are often seen as critical for securing affordable, reliable and safe power and would provide additional economic benefits, including job creation and increased investment. To that end, Texas Governor Greg Abbott has directed the Public Utility Commission of Texas to promote the development of advanced nuclear technology to make Texas a national leader in this field. Similarly, Utah Governor Spencer J. Cox has announced "Operation Gigawatt," an initiative to double Utah's power production in response to an impending energy crisis.

Much smaller and less powerful than the reactors that made hair-raising headlines in the late 20th century, SMRs and microreactors claim to offer numerous safety and technological advantages over traditional nuclear reactors, including extremely low radiation risks, lower cost, greater siting flexibility and faster construction. Additionally, the plaintiffs highlight that these reactors are particularly well-suited for industrial applications, such as providing power for hydraulic fracturing operations in remote locations like Texas's Permian Basin.

Last Energy, Inc. has substantially invested in the development of small nuclear reactors, including $2 million in manufacturing efforts in Texas. Despite having agreements to develop over 50 nuclear reactor facilities across Europe, Last Energy has found it impractical to develop similar projects in the United States due to the NRC's regulatory framework. The complaint points out that non-U.S. regulatory frameworks incorporate a de minimis standard for nuclear power permitting, which require regulators to consider the scale of risk embodied in the technology. This lack of a de minimis standard is the crux of the plaintiffs' arguments.

The NRC's licensing requirements, the plaintiffs contend, are a significant barrier to the use of SMRs and microreactors in the United States. The plaintiffs argue that the NRC's interpretation of the Atomic Energy Act of 1954 (AEA) is misplaced and that the agency's requirements for companies in the SMR and microreactors space are overly complicated, costly and time-intensive, and such requirements should be reserved for reactors that use significant amounts of nuclear material and pose significant risks to public health and safety. They assert that the NRC's Utilization Facility Rule exceeds its statutory authority by requiring licenses for all reactors, regardless of size or risk.

The complaint underscores that Congress deliberately narrowed the Atomic Energy Commission's (the predecessor to the NRC) licensing authority when it passed the AEA in 1954, intending to exclude certain reactors from federal licensing requirements, focusing only on those that use nuclear material in quantities significant to national defense or public health and safety. The plaintiffs therefore argue that the NRC's Utilization Facility Rule is inconsistent with the legislative intent of the AEA and that the NRC's misinterpretation has stifled innovation and hindered the development of advanced nuclear technology in the United States.

The plaintiffs seek a declaration from the court that the NRC's Utilization Facility Rule exceeds its statutory authority under the AEA and request that the court vacate the Utilization Facility Rule and remand it to the NRC for a new rulemaking process that considers the statutory limitations related to common defense and public health and safety. The court had not issued its decision as of the writing of this article.

A copy of the complaint referenced above can be found here: United States District Court, Eastern District of Texas, (Case No. 6:24-cv-00507).

France's Launch of Long-Awaited Procedure Supporting Production of Renewable or Low-Carbon Hydrogen

By Sandra Hahn Duraffourg and Anne Lapierre, Bracewell LLP

Legal and regulatory framework

Just before Christmas, France took another major step forward in its decarbonization strategy with the launch, in December 2024, of the competitive bidding procedure designed to award financial support for the production of renewable or low-carbon hydrogen (H2) by water electrolysis. The terms "renewable" and "low-carbon" are defined in article L. 811-1 of the French Energy Code, supplemented by decree.

This support mechanism falls within the legal framework defined by Ordinance no. 2021-167 of February 17, 2021, codified in a dedicated chapter of the Energy Code (Chapter II of Title I of Book VIII on hydrogen). Articles L.812-1 *et seq.* and R.812-1 *et seq.* of the Energy Code provide a framework for the State to grant public operating and/or investment aid to accelerate the deployment of green hydrogen production capacity.

The support mechanism set out in the current procedure launched by Ademe provides for the granting of aid over 15 years, with a ceiling price of 4 euros/kgH2.

Details of the procedure

The published consultation document specifies that the power allocated to this first phase of competitive bidding is 200 MW of indicative electrolysis for the period 2024-2025, with a planned ramp-up to 1000 MW spread over several periods, in particular 250 MW in 2026 and 550 MW in 2027.

The procedure comprises three successive phases:

1. Selection of candidates on the basis of their technical and financial capabilities, assessed on the requirements detailed in article 3.4 of the consultation document. In principle, between 3 and 12 candidates will be admitted to the next step, i.e. the dialogue phase.
2. A competitive dialogue phase with the selected candidates in order to refine their projects.
3. Designation of the winners who will be awarded financial support after evaluation of the final applications.

The deadline for applications for the first period is March 14, 2025. Applications will be analyzed within two months of this date, with a view to selecting the candidates for the dialogue phase in May. The date for submission of the final bids and selection of the winning projects remains to be confirmed.

Project eligibility criteria and information expected from candidates

Only entirely new installations are eligible. This means that: work on the project must not have begun prior to the selection of candidates or at the time of the final application for aid (excluding any connection work), investments must not be committed before the winners are chosen, and the plant must not produce H2 before the contract comes into force (except in the test phases).

As part of the procedure, candidates must demonstrate their technical capabilities, their experience in the development of industrial projects involving technological risks (and present a minimum of 3 relevant references) and the stage of maturity and development of their project.

Candidates must submit a file detailing in particular:

- A description of the project: only projects with an electrolysis capacity of more than 5 MW and less than 100 MW, located in France, are eligible.
- Electricity supply plan demonstrating that 30% of the total volume of electricity used is secured over 10 years by means of memoranda of understanding, letters of intent or other forms of pre-contractual clauses signed by the applicant, and that the electricity used is of renewable or low-carbon origin.
- Commercial commitments covering at least 60% of production for direct industrial use. The applicant must therefore be able to demonstrate that 60% of the offtake (Hydrogen Purchase Agreement - HPA) is secured by memoranda of understanding, letters of intent or other forms of pre-contractual clauses. For the purposes of the consultation document, direct industrial use does not include heating (with the exception of high-temperature thermal processes (>400°C)), injection into the natural gas network, or electricity production from hydrogen.
- Financial guarantee: a guarantee equivalent to 8% of the maximum amount of support requested is required, which must take the form of a GAPD (Guarantee on First Demand) or a deposit in the hands of the CDC.
- Strict timetable for financial closure and industrial commissioning: financial closure must take place within 30 months of signature of the aid contract between the French government and the winning candidate, and industrial commissioning must occur within 60 months (except in exceptional circumstances, duly justified, which will be detailed in the specifications).
- Cybersecurity criteria: facilities must be operated and data stored within the EEA (European Economic Area).

- The consultation document also emphasizes the resilience of projects and their contribution to Europe's "net zero" strategy, notably by limiting to 25% of the project's electrolysis capacity (in electrical MW) the supply of cell stacks whose surface treatment, cell unit production or assembly has been carried out in a non-EU country (if the volume concerned makes the EU dependent). The procedures for checking this requirement will be detailed in the specifications at the end of the dialogue phase.

Summary of selection criteria and weighting issues

At the end of the dialogue phase, successful applicants will be asked to submit their final applications. Project selection will be based on two criteria, defined by article R. 812-14 of the French Energy Code, with a weighting that strongly favors the financial criterion:

- Price criterion (at least 70% of the weighting): projects will be assessed on the level of subsidy requested, expressed in euros per kilogram of hydrogen produced. The amount of the subsidy may not exceed the ceiling of 4 euros/kgH2. However, the consultation document does not specify how this weighting is to be applied. *Should we deduce, for example, that a request for 4euro/kg would be equivalent to a score of zero?*
- Non-price criteria (maximum 30% of the weighting): these criteria will assess the energy, technological and environmental impact of the projects.

The high weighting of the price criterion encourages applicants to limit their subsidy requests to maximize their chances of being selected. However, non-price criteria, although secondary, will play a decisive role in differentiating projects on strategic aspects such as innovation, energy efficiency, and environmental benefits.

Opportunities and challenges for economic operators

This procedure represents a significant opportunity for economic players wishing to position themselves on the green hydrogen market in France. However, it implies rigorous preparation of applications, mastery of regulatory requirements, and the ability to structure a sustainable and secure business model. The conditions for participation require a well-defined strategy and a perfect command of the commitments required by the consultation document and future specifications.

Interested operators should therefore familiarize themselves with the requirements of the consultation document and prepare for the various phases of the procedure. Particular attention should be paid to compiling administrative and technical files, identifying industrial partnerships, and securing supply and sales contracts.

In particular, the technical information to be provided by bidders should focus on the progress and strategy of engineering, procurement, and construction contracts (EPC, O&M, MOE, MOA, etc.), securing offtake, and selecting equipment suppliers. It seems illusory to expect bidders to present firm commitments or signed contracts at the bid submission stage, given the uncertainty surrounding their selection, the risk of exposure linked to the indexation of material prices, and the impossibility for their co-contractors to commit to a firm price at this stage.

Finally, given the prices currently observed in France for green hydrogen compared with those for grey hydrogen, it is legitimate to question the level of support envisaged in this procedure. Is a ceiling of €4/kg sufficient to enable a transition to scale and provide an adequate incentive for the development of the sector? This is doubtful.

USEPA Approves West Virginia's Request for Primacy Regarding Issuance of Class VI Injection Well Permits

By Armando F. Benincasa, Steptoe & Johnson PLLC

The U.S. Environmental Protection Agency (USEPA) has approved West Virginia's application to obtain authorization and primacy regarding the issuance of permits for Class VI underground injection control (UIC) wells. This follows USEPA's initial filing of its intent to approve West Virginia's request for program primacy and the agency's accepting public comment and holding a public hearing, which can be found here.

UIC wells are regulated pursuant to the federal Safe Drinking Water Act (SDWA). Similar to the federal Clean Water Act and the Clean Air Act, the SDWA contains provisions that allow the states to request authorization to operate the permitting program under the act. Prior to gaining approval of a request by an individual state to become the primary agency to enforce and operate the permitting program, the state must adopt rules and regulations that are as stringent as its federal counterparts to address the permitting of these wells. West Virginia already maintained authorization to permit UIC for Class I through Class V wells. Class VI UIC wells are authorized for the injection and sequestration of carbon dioxide for the purpose of permanent geologic storage, and West Virginia's rules are largely modeled after USEPA's existing Class VI UIC well rules.

West Virginia will now be just the fourth state, along with North Dakota, Wyoming, and Louisiana, to receive primacy over the Class VI UIC permitting program. With the passage of the Inflation Reduction Act allocating potentially significant investments in the states to promote the use of hydrogen as a source of energy and the continued push to control the emission of greenhouse gases, the ability of the states to issue these permits and bypass what is often a significantly more time-consuming permitting and authorization process by USEPA is crucial to potential future development and investment in these hydrogen energy projects, which utilize natural gas to generate hydrogen and require carbon capture and sequestration to control greenhouse gas emissions, and for existing power-generating facilities that utilize coal and/or natural gas and require carbon capture and sequestration to meet potential new emission standards or wish to generate potential credits.

West Virginia will now be able to issue these permits without having to follow the lengthy procedures required under the National Environmental Policy Act that apply to USEPA, putting the state in a more advantageous position to attract investment for these energy projects that require a component of carbon capture and sequestration.

NEPA Changes Slated Under President Trump's "Unleashing American Energy" Executive Order

By Greg L. Johnson, Clare M. Bienvenu, and Emily von Qualen, Liskow

On January 20, 2025, President Trump issued the "Unleashing American Energy" Executive Order (EO) with the stated purpose of ensuring an abundant supply of affordable and reliable energy in the United States. The EO orders several agency actions aimed at eliminating undue burden on domestic energy development, including specific actions related to the implementation of the National Environmental Protection Act (NEPA). NEPA is the statute under which federal agencies are required to assess the environmental impact of their actions, which in turn requires environmental assessments for most federal permits. NEPA established the Council on Environmental Quality (CEQ or Council) within the executive office and charged the Council with overseeing NEPA implementation.

With respect to NEPA, the "Unleashing American Energy" EO first revokes President Carter's Executive Order 11991 of May 24, 1977, "Relating to Protection and Enhancement of Environmental Quality," which directed CEQ to issue regulations for the implementation of NEPA. Thereafter, the "Unleashing American Energy" EO directs CEQ to propose rescinding its existing NEPA regulations and provide "guidance" on implementing NEPA by February 19, 2025.

The CEQ NEPA regulations have been in a state of flux, undergoing revisions in Trump's first term and subsequent revisions under the Biden Administration. The current CEQ regulations promulgated under the Biden Administration have come under recent fire, both with a coalition of states challenging the substance of the amendments in *State of Iowa v. CEQ* (1:24-cv-00089) and with the issuance of the D.C. Circuit panel decision in *Marin Audubon Society v. FAA*, which stated as dicta that CEQ had exceeded its statutory authority under NEPA by promulgating binding NEPA regulations. President Trump's revocation of President Carter's 1977 Executive Order and directive to rescind existing CEQ NEPA regulations appears to be grounded in the rationale of the *Marin* opinion. On January 31, 2025, the D.C. Circuit denied an *en banc* rehearing of the *Marin Audubon Society v. FAA* opinion, finding the rehearing unnecessary because the panel had unanimously resolved the case on other grounds. *Marin Audubon Society et al. v. Federal Aviation Administration et al.*, No. 23-1067, *petition for en banc rehearing denied* (D.C. Cir. Jan. 31, 2025).

Moreover, on February 3, 2025, the North Dakota federal district court issued an opinion in *State of Iowa v. CEQ* that the regulations were invalid and vacated as a matter of law based on the reasoning included in the *Marin* opinion. This opinion is likely to be appealed, and other federal courts may come to a different conclusion. This posture potentially creates a patchwork of states in which CEQ regulations are considered valid or invalid, until the regulations are rescinded by CEQ through the formal rulemaking process.

If the CEQ regulations are invalidated or rescinded, any existing agency-specific NEPA regulations will govern NEPA implementation in that agency's permitting process. To that end, the Trump EO directs CEQ to form a "working group to coordinate the revision of agency-level implementing regulations for consistency" with the CEQ guidance. The EO specifies that the guidance and any resulting regulations "must expedite permitting approvals and meet [statutory] deadlines" and that "agencies must prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the [EO's] policy goals."

The EO's proposed major changes to CEQ's function and regulations will likely face court challenges, resulting in a period of uncertainty and inconsistency regarding what is required under NEPA. In preparing permit applications, industry should both monitor federal agency requirements and assess any further protections that may be needed to safeguard the permit from possible court challenges by project opponents.

A Message from IEL

Registration is open the 8th National Young Energy Professionals Conference, April 2-3 at The Cosmopolitan in Las Vegas! Registration is also open for IEL's new Lower Carbon Conference: Headwinds, Tailwinds, or Both?, May 8 at the Norris Conference Centers – CityCentre in Houston, TX.

Mark Your Calendars for IEL's Fall 2025 Conferences: 16th Appalachia Energy Law Conference, September 3 in Pittsburgh, PA; Strategic Negotiation Course: Mastering Influence, Strategy, and Results, September 17-18 in Houston, TX *(participation in this highly interactive course will be limited to 36 individuals)*; 24th Annual Energy Litigation Conference, November 4 in Houston, TX; and 9th Midstream Oil & Gas Law Conference, December 9 in Houston, TX.

NEW MEMBERS

We are honored and excited to add the following companies and individuals to IEL's membership roster. Please join us in welcoming them to our organization!

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- Beatty & Wozniak, P.C., Denver, CO, with Malinda Morian, Tyler Weidlich, Andrew Glenn, and Taryn Hanrahan as Advisory Board Members

ASSOCIATE MEMBERS

- Nadia Barrow, Houston, TX
- Beth Bauer, HeplerBroom LLC, Edwardsville, IL
- Rita Beale, Energy Unlimited LLC, McLean VA
- David Bentson, Stinson LLP, Wichita, KS
- Ila Bibb, Wolters Kluwer Law & Business, Deerfield, IL
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- Bradley Chambers, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Houston, TX
- Jessica Daniels, Exxon Mobil Corporation, Spring, TX
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- Felicia Harris Hoss, Miles Mediation & Arbitration, Pearland, TX
- Paul Hescox, Enbridge Inc., Houston, TX
- Tara Kuchar, HeplerBroom LLC, Edwardsville, IL
- Royce Lanning, PIE Operating, LLC, The Woodlands, TX
- Alex Messina, HeplerBroom LLC, Springfield, IL
- John Ngunjiri, Norton Rose Fulbright US LLP, Houston, TX
- Nicholl Paulerio, Orion S.A., Houston, TX
- Mike Piazza, CM Law PLLC, Dallas, TX
- Jose Plata Puyana, Serrano Martinez CMA, Bogotá, Columbia
- Ryan Richardson, Bricker Graydon LLP, Columbus, OH
- Daniel Seligman, Columbia Research Corporation, Seattle, WA
- Tanner Sykes, Kimmeridge Texas Gas, LLC, Houston, TX
- Mary Wolf, Keogh Cox & Wilson, Baton Rouge, LA
- Randel Young, Charles River Associates (CRA), Houston, TX

ACADEMIC / GOVERNMENT / NON-PROFIT MEMBERS

- Nasiru Aliyu, Bayero University Kano, Kano, Nigeria
- Kim Diamond, Fordham Law School, New York, NY

NEW MEMBERS, CONT.

NON-ANNUAL CONFERENCE MEMBER

- Sunu Pillai, Saul Ewing Arnstein & Lehr LLP, Pittsburgh, PA

YOUNG ENERGY PROFESSIONAL MEMBERS

- Brianna Andeson, Rainbow Energy Center, LLC, Bismarck, ND
- Alex Boykin, Santoyo Wehmeyer P.C., Houston, TX
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- Matthew Melbourn, Norton Rose Fulbright US LLP, Houston, TX
- Holly Rioux-Lefebvre, Kirkland & Ellis LLP, Washington, D.C.

FULL-TIME LAW STUDENT

- Jordi Villa, Tulane University Law School, Austin, TX

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