

EPA's Deregulation Road Riddled With Potential Potholes

By **Keith Goldberg**

Law360 (March 13, 2025, 10:51 PM EDT) -- The U.S. Environmental Protection Agency's plan to unwind dozens of climate change and other pollution control rules confronts the practical reality of laborious federal rulemaking, where any attempted shortcuts may backfire in court.

The EPA's Wednesday announcement that it will consider revising or repealing Biden administration rules as well as the agency's own 2009 finding that greenhouse gas emissions are harmful to human health is a significant regulatory lift under normal circumstances, as the agency must follow similar procedures and offer similar levels of technical and legal justification for undoing rules as it did in crafting them.

That regulatory lift will be even heavier as the EPA slashes hundreds of jobs and faces the prospect of significant budget cuts. Experts say it further increases the chances of the EPA issuing unintentionally sloppy, poorly supported rules that may not withstand judicial scrutiny, especially if the agency cuts any corners to try to speed up the rulemaking process.

"We saw this during the initial part of the first Trump administration, where they tried to rush a number of rulemakings out the door without giving them sufficient attention," said Tom Lorenzen, who co-chairs Crowell & Moring LLP's environment and natural resources practice group and previously handled defense of EPA regulations at the U.S. Department of Justice. "And the way that manifested was with a spike in judicial losses."

The EPA's task is difficult not just because of the number of rules it's reconsidering, but the breadth and complexity of many of the rules themselves, experts say. Besides the GHG endangerment finding, rules targeted by the EPA include GHG standards for power plants and vehicles, national ambient air quality standards for several air pollutants and the Biden-era waters of the United States rule, which sets the limits for federal permitting and enforcement jurisdiction under the Clean Water Act.

"A lot of these are monsters," Lorenzen said. "And these things are kind of baked into the mix now, businesses have adapted to them because they've been in place for quite some time. And so it is hard to unbake those things."

Yet the agency's rulemaking obligations remain, whether it's providing sufficient technical and legal justification for a policy change, or providing adequate public notice-and-comment periods and conducting inter-agency reviews.

"You have to check all the same boxes on the way out that you checked on the way in," said University of Connecticut School of Law professor Jack Lienke, who focuses on environmental and administrative law. "Just as it was a resource-intensive slog for the Biden administration to stand up all these rules, it will similarly be a resource-intensive slog for the Trump administration to dismantle them."

But the EPA may not have as many resources available this time around. Hundreds of agency employees have either been fired or left the agency since President Donald Trump took office, and the White House has said additional job cuts are on the table. Meanwhile, it's calling for the agency's spending to be reduced by 65%.

"It is very possible that some of the people that they would need and typically rely on, whether it's for economic analysis or just moving the rulemaking through the inter-agency review process ... may no longer work for EPA," said Alston & Bird LLP environmental partner Kevin Minoli, a former EPA acting general counsel. "Certainly, you're going to need people in almost every corner of the agency to help with this effort, and clearly, a lot of them are not there."

It means the EPA may be short on staff and experience as it works on revising or repealing many of the targeted regulations, which not only increases the chances of mistakes or omissions, but also provides additional temptation to take procedural shortcuts to get final rules out the door.

That risks a repeat of courtroom losses suffered by the EPA during Trump's first term, experts say.

"One of the places that is easiest for a court to reverse what an agency has done is on procedure," said George Washington University law professor Emily Hammond, who focuses on energy and environmental law. "Attending to all of those procedural steps is important for an agency under any administration, just to reach the merits of the decision they've made."

Experts say the EPA is going to have to prioritize some rules over others. Hammond, who previously served at the Department of Energy during the Biden administration, expects the EPA's political appointees to hammer out a schedule with the Office of Information and Regulatory Affairs, which is within the White House's Office of Management and Budget and is responsible for reviewing draft regulations.

Minoli said how and when the EPA schedules initial public outreach sessions on the rules being reconsidered may provide clues as to the agency's priorities.

"You can't have 30 major rules going over to OMB at the same time and expect them to clear those on a timely basis," Minoli said.

Since the GHG endangerment finding is a foundation for virtually all climate-related rules subsequently issued, experts say the EPA may elect to start there, even though it may be the most difficult rule to rescind given the further development of climate change science since the agency originally issued the finding in 2009.

"It's something of a novel legal question: if that predicate is removed, what's the appropriate procedural mechanism for rolling back the other regulations based on that?" Hammond said.

With judicial challenges to any EPA moves to revise or rescind the targeted rules are all but certain, experts say it's worth watching what path the agency takes as it embarks on any rulemaking process.

Lorenzen of Crowell & Moring said the EPA could heavily rely on factual and technical determinations, which tend to get more deference from courts but also take more time and legwork.

Or, Lorenzen said, the EPA could rely on narrowly constructing the underlying statute to argue that the original rule overreached, which takes less time, but also puts the agency more at the mercy of the courts.

"What the administration will be hoping for is that with the U.S. Supreme Court's signals about how to properly interpret statutes, they will have a better shot at getting courts to construe the statutes narrowly," Lorenzen said.

But in a post-Chevron deference world, that's a gamble the EPA needs to think long and hard about making, Minoli of Alston & Bird said.

"Now, judges are instructed to tell you what the law actually means," Minoli said. "I would think the agency would want to be careful about rushing interpretations and new rulemakings out. That carries with the risk of, if you lose, you're going to be locked in."

--Additional reporting by Juan-Carlos Rodriguez. Editing by Emily Kokoll and Rich Mills.
