

Regan Rejoins EPA: A “Who’s Who” Guide to the Key Officials Who Will Shape the Agency

March 15, 2021

Key Points

- On Wednesday, March 10, 2021, the U.S. Senate confirmed Michael Regan as the next EPA Administrator.
- Although Regan and most of the Biden-Harris administration’s other high-level EPA officials have fairly limited private sector experience, they are known as seasoned, pragmatic leaders who bring substantive expertise to their roles.
- Over the next four years, expect Regan’s team to oversee significant regulatory action and increased enforcement across all media, all while prioritizing environmental justice.

The bipartisan confirmation of Michael Regan as Administrator of the U.S. Environmental Protection Agency (EPA) elevates a public servant with a wealth of federal, state and nonprofit experience. Regan is not alone: nearly all of the Biden-Harris administration’s EPA appointees and hires have experience on Capitol Hill and at EPA (many having returned from the Obama administration), state regulatory agencies, prominent environmental groups or educational institutions. Only a small number (approximately 15 percent or fewer) of the agency’s leaders appointed or hired to date bring notable private sector experience to their current jobs, and nearly all of those with private sector experience also spent time working for environmental nonprofit groups.¹ While EPA’s new leadership generally is regarded as pragmatic and capable, their relative lack of “boots-on-the-ground” experience in the industries they now regulate has generated some concern among the regulated community.

Accordingly, businesses in industries most likely to bear the brunt of the transition to President Biden’s “clean energy” future—including those in the energy, agriculture, transportation and manufacturing sectors—must frame their positions in thoughtful, targeted ways based on science, law and innovation as they interact with EPA officials over the next four years. To facilitate those interactions, we have examined and summarized the experiences of the key EPA officials who will inform the agency’s policy and enforcement priorities.²

Administrator Regan

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A former EPA career official during the Clinton and George W. Bush administrations, Regan most recently served as the Secretary of the North Carolina Department of Environmental Quality (NCDEQ), having worked as a regional director and vice president of the Environmental Defense Fund (EDF) in the interim. During his first stint at EPA, Regan focused on energy efficiency and air quality issues. But he earned his reputation as a forceful and, to many, well-respected regulator during his time at NCDEQ.

As NCDEQ Secretary, Regan led the implementation of North Carolina Gov. Roy Cooper's climate change order that sought to transition the state's energy use away from fossil-based sources.³ He also oversaw what may be the largest coal ash settlement in the country's history: a February 2020 agreement with Duke Energy that required Duke to excavate more than 76 million tons of coal ash from unlined impoundments at several of its facilities in the state.⁴ As part of this settlement, Duke Energy promised to implement "additional protective measures" at its impoundments, including enhanced stabilization, impervious cover systems, surface and groundwater monitoring, and potential remediation.⁵ At the time, Regan characterized Duke's coal ash storage practices (including the use of unlined impoundments) as "outdated" and a "threat" to nearby communities.⁶ Given the unprecedented nature of the agreement Regan brokered, some industry leaders viewed NCDEQ's actions as "very tough on Duke."⁷ Environmentalists, meanwhile, saw the agreement as a necessary step to protect North Carolina's land and waters and decrease the state's reliance on coal-fired energy sources.⁸

Additionally, Regan's tenure at NCDEQ put him squarely in the middle of what will be one of the most significant environmental issues facing his new agency: the cleanup of per- and polyfluoroalkyl substances (PFAS). From 2017 through 2020, Regan oversaw a large cleanup of PFAS contamination at the Cape Fear River, an experience that undoubtedly will inform future efforts to regulate the substances and remediate areas with significant impacts.⁹ Regan's NCDEQ also promulgated a new air toxics rule that established emission control requirements for log fumigation operations, representing the first time in nearly three decades that NCDEQ had regulated a new toxic air pollutant.¹⁰ Lastly, Regan sought to enlarge the role of environmental justice considerations in state decision-making, having reshaped North Carolina's swine operations permitting program and served on a task force that advocated for an environmental review process for large projects reminiscent of National Environmental Policy Act reviews.¹¹

Given his background and the Biden-Harris administration's priorities, we expect a Regan-led EPA to distance itself from the prior administration's policies that bolstered the coal-fired electric utility, oil, and gas industries. Despite concern from many in these industries, a Regan-led EPA can be expected to move quickly and implement aggressive, albeit pragmatic, changes across a wide swath of regulatory areas. In particular, we anticipate that a number of these actions will respond to the clear directives provided in President Biden's Day One and "Climate Day" executive orders.¹² This will require Regan to rely on his expertise in air quality and climate issues—and the cleanup agreements he brokered at NCDEQ—as he oversees increased regulation of traditional energy sources and businesses whose operations result in air, land and water pollution. In particular, look for more stringent EPA regulations that touch a number of areas, including:

- Greenhouse gas (especially methane) and volatile organic compound emissions from the oil and gas industry.
- Maximum Available Control Technology standards for emissions of hazardous air pollutants.
- Stationary source emissions (e.g., a revamped Clean Power Plan, dependent, to some extent, on if and how Congress acts in this space).
- Coal ash disposal.
- Aircraft emissions.
- Motor vehicle emissions (e.g., restoration of California's Clean Air Act waiver, and greenhouse gas emission standards for light-duty vehicles).
- PFAS (e.g., "hazardous" designations, drinking water standards, and point source requirements).
- Wastewater discharges from power plants.
- Discharges to some marshes, wetlands, streams and other water resources.

Beyond rulemaking, Regan will oversee increased administrative, civil and criminal enforcement across the panoply of federal environmental laws, with a focus on enforcement actions and cleanups in geographic areas facing environmental justice concerns (which EPA likely will identify through the use of a new "geospatial" screening tool).¹³ Similarly, we expect Regan's seasoned negotiation skills to inform the agency's implementation of the myriad federal programs it administers. Early in his term, for instance, Regan must determine whether the agency will grant extensions to imminent closure deadlines for more than 60 facilities that store coal combustion residuals in unlined surface impoundments.¹⁴ He also must navigate the complicated relationship between the agriculture and oil industries as the agency decides how many small refinery exemptions to grant and pending petitions for renewable fuel pathways to approve under the Renewable Fuel Standard program.¹⁵ Consistent with his pledge to see complex challenges "from all sides," we expect Regan to employ an inclusive approach to addressing these issues, leaving room for discussion with most or all relevant stakeholders on the more far-reaching actions EPA takes with him at its helm.¹⁶

Regan's Team

Although Regan will guide the agency's overall direction, he will do so in concert with other higher-level officials, including the Deputy Administrator and General Counsel.

Once confirmed, Janet McCabe will return to the agency as its Deputy Administrator.¹⁷ McCabe brings a wealth of Clean Air Act experience to her role, having led the Office of Air and Radiation during the second half of the Obama administration and led the development of the Clean Power Plan. Earlier in her career, she served as an air director of the Indiana Department of Environmental Management and worked for the Massachusetts Attorney General's Office. She, like some of EPA's other leaders, maintains a close relationship with former EPA administrator and current National Climate Advisor, Gina McCarthy. While the extent to which McCabe will engage in the promulgation of air and other regulations remains to be seen, she is an ideal person to serve as Deputy Administrator. Indeed, during her initial stint at the agency, she

gained the trust and respect of its career employees, an aspect of the traditional Deputy Administrator role that is particularly critical during this transition.

Acting General Counsel (and Principal Deputy General Counsel nominee) Melissa Hoffer also spent time at the Massachusetts Attorney General's Office, where she oversaw its environmental arm and litigated in support of the Obama-era Mercury and Air Toxics Standards. While Hoffer is one of the few appointees with significant private sector experience (having spent "many years" at a law firm, according to EPA's announcement), she more recently worked at the Conservation Law Foundation and has garnered a reputation as "an outspoken proponent of strong federal involvement in climate change issues."¹⁸ She will be responsible for ensuring the legal defensibility of regulations across the agency, and, through an effective relationship with Regan, can be expected to influence the administration's broader priorities.

Air

Most of the officials in charge of EPA's air program are seasoned public servants who have spent years navigating the complex array of federal laws governing air quality, albeit with limited private sector experience. Joe Goffman, the Acting Assistant Administrator (and Principal Deputy Assistant Administrator) of the Office of Air and Radiation, has worked on most aspects of the Clean Air Act, including for the Obama administration. Goffman has focused his career in part on low-cost initiatives to apply the Clean Air Act to the changing energy generation industry, such as cap-and-trade and other market-based programs. While such programs may not come to fruition under the current Congress, Goffman has experience working on both sides of the aisle, including a stint at the Senate Committee on Environment and Public Works. Importantly, he is well regarded by many Republicans, having earned a reputation as "the ideal guy to be quarterbacking" regulatory efforts to limit power plant pollution.¹⁹

Goffman's history differs from that of the Deputy Assistant Administrator for Stationary Sources, Tomás Elias Carbonell. Carbonell spent time in private practice early in his career, but he comes to the agency directly from EDF, where he oversaw its air program and worked with Regan. During that tenure, Carbonell led a litigation team that defended the Clean Power Plan. Accordingly, he may leverage his professional relationship with Regan to push for robust emission standards in a future rule that replaces the Clean Power Plan. Interestingly, Carbonell's resume is strikingly similar to that of his counterpart in charge of mobile sources, Alejandra Nuñez, who transitioned from a private law firm to the World Bank and Sierra Club prior to joining EPA. Nuñez can be expected to work closely with senior career officials, including Sarah Dunham, Director of the Office of Transportation and Air Quality, who will initially be focused on rescinding and replacing the previous administration's rules that weakened greenhouse gas emission standards for light-duty vehicles. As part of these efforts, we expect EPA to take actions that will lead to the restoration of California's waiver authority for the State (and other States that chose to adopt California's rules) to set its own greenhouse gas emission standards for light-duty vehicles.

Goffman, Carbonell, Nuñez and their respective deputies and office directors have their work cut out for them as they work to fulfill President Biden's ambitious climate and air campaign promises. Without a doubt, they will consult heavily with Regan, McCabe and Hoffer, all of whom have combined decades' worth of experience in these areas.

Water

Radhika Fox, the Acting Assistant Administrator (and Principal Deputy Assistant Administrator) of the Office of Water, brings to her job significant public and nonprofit experience dealing with water issues. Fox previously led a prominent cross-sector initiative, the US Water Alliance, and directed policy at the San Francisco Public Utilities Commission and PolicyLink, the latter of which is a “national research and action institute” that advances “racial and economic equity” and environmental justice.²⁰ During her time as chief executive officer of the US Water Alliance, the group called for “[n]ew thinking” on the Clean Water Act and Safe Drinking Water Act, including new regulation and increased enforcement “at a regional, watershed level.”²¹ This experience suggests that Fox will look to bring together diverse groups of stakeholders across the public and private sectors to support the Biden-Harris administration’s water goals. Among the more difficult tasks in front of Fox will be replacing the Trump administration’s Navigable Waters Protection Rule, which constrained the Clean Water Act’s reach with respect to some marshes, wetlands, streams and other water resources. Given the Supreme Court’s April 2020 ruling rejecting the Trump administration’s analysis that “functional equivalents” of direct discharges to navigable waters through groundwater were not subject to the Clean Water Act’s permitting requirements, the agency has some insight on how best to take another crack at a nationwide regulation clarifying—and likely broadening—the Act’s reach while ensuring it will withstand scrutiny from the Supreme Court.²²

Moreover, Fox’s experiences at the US Water Alliance and PolicyLink suggest that she will dedicate significant attention to advocating for enhanced federal investment in the country’s aging infrastructure and solutions to drinking water contamination, such as that from lead, arsenic, and PFAS.²³ In particular, we expect Fox to advocate for increased attention in environmental justice communities that face these issues.

Land and Waste Management

Carlton Waterhouse, a renowned environmental justice advocate, was appointed in February to be a Deputy Assistant Administrator for the Office of Land and Emergency Management. In this role, Waterhouse will supervise the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or “Superfund”) program and the various waste-related programs established by the Resource Conservation and Recovery Act. Early in his career, Waterhouse led EPA enforcement actions and developed the agency’s environmental justice policies. He then transitioned to academia, where he studied the causes of contamination leading to Superfund cleanup responses in low-income urban areas, among other issues.²⁴

Waterhouse will play a critical role in not just overseeing the continued cleanup of highly contaminated areas throughout the country, but also striving to achieve the President’s promises to strengthen environmental justice monitoring and enforcement and shift more benefits from federal investment to disadvantaged communities.²⁵ Accordingly, we expect to see continued Superfund cleanup actions, but with a focus on marginalized rural and urban communities located near former industrial sites that did not receive attention from prior administrations.

Chemicals

Toxic chemicals and pesticides will command significant attention over the next four years as EPA finds itself grappling with the near-omnipresence of PFAS throughout

various environmental media, a surge of new cleaning products that hit the market in the wake of the COVID-19 pandemic and the ongoing need to conduct chemical risk evaluations. The highest-ranking official in charge of these and other chemical issues is Michal Ilana Freedhoff, the Acting Assistant Administrator (and Principal Deputy Assistant Administrator) of the Office of Chemical Safety and Pollution Prevention. Freedhoff is well suited for this job, having earned a doctorate in physical chemistry and spent two decades working on Capitol Hill for then-Rep. Ed Markey, multiple House committees (including the Science, Energy and Commerce, and Natural Resources committees) and the Senate Environment and Public Works Committee. Crucially, Freedhoff worked closely with the drafters of the 2016 amendments to the Toxic Substances Control Act (TSCA) and a 2019 bill that sought to regulate PFAS.

While some in industry consider Freedhoff's politics to be aggressive, if not "left-wing," she has won high praise from multiple senators (Sen. Markey and Sen. Tom Carper) and enjoys a Regan-esque reputation for producing sensible policies with the input of scientists and stakeholders across the political spectrum.²⁶ She will need to live up to this reputation as she works with others across the agency to consider whether to rescind and replace—or build upon—the prior administration's significant chemical-related actions. For example, the agency could choose to rescind a July 2020 Significant New Use Rule and January 2021 guidance governing the manufacture and processing of certain long-chain PFAS.²⁷ EPA also faces calls from environmental groups to reevaluate the 10 chemical risk evaluations completed under TSCA during the last four years.²⁸ Additionally, Freedhoff will oversee the agency's efforts to respond to calls from environmental justice advocates to further restrict the use of asbestos and to comply with a court mandate to consider asbestos-related reporting requirements.²⁹ We also expect Freedhoff to look for ways the agency can invoke existing federal laws like TSCA to identify and mitigate risks faced by disadvantaged communities, including those located near chemical manufacturing and processing plants.

Environmental Justice

Given the President's and Congress's stated priorities, we expect that Regan, McCabe, Hoffer, Fox, Waterhouse and most other high-level EPA officials will pay close attention to environmental justice concerns on a daily basis.³⁰ In addition to these officials' environmental justice bona fides, we anticipate that Regan will select a close advisor to lead those efforts for him within the agency. The official selected to champion those concerns will benefit from collaboration with Marianne Engelman-Lado, a longtime environmental civil rights attorney appointed to Deputy General Counsel for Environmental Initiatives. Engelman-Lado has worked for multiple public interest organizations, including Earthjustice and the NAACP Legal Defense and Education Fund, and joins the agency from stints at Yale University and Vermont Law School. Known as a "coal ash activist [and] advocate," Engelman-Lado has filed a number of Title VI complaints under the Civil Rights Act in an attempt to force EPA to account for allegedly disproportionate environmental harms.³¹ A number of these complaints involved power plants and coal ash storage facilities.³²

This special advisor will work to prioritize environmental justice within and outside of the agency. That person likely will represent EPA on the interagency environmental justice council created by Executive Order 14008, collaborate with the Council on Environmental Quality to create a "geospatial Climate and Economic Justice Screening Tool," and push for efforts to reduce and remediate pollution in areas with

vulnerable populations.³³ Under Regan's direction, we expect the agency to target areas with longstanding pollution from industrial operations linked to deep-pocketed responsible parties, including large manufacturers and those in the energy industry. Compared to predecessors in previous administrations, Regan's environmental justice advisor can be expected to wield greater influence over the agency's priorities and participate in most high-level decisions. Similarly, it is not outside the realm of possibility that, in conjunction with Engelman-Lado, the agency will work with Congress to pursue the establishment of a private right of action to redress harms resulting from environmental siting and permitting decisions, an initiative President Biden has supported.³⁴

Conclusion

Regan and many of EPA's other leaders have demonstrated substantive expertise in the areas they regulate. We expect this experience—and, to some extent, their ideologies—to translate into an agenda that faithfully effectuates the Biden-Harris administration's expansive environmental and climate goals. As a result, virtually every major industry will see new regulations and increased enforcement. Prudent businesses and investors should take steps now to develop a better understanding of the key players involved and formulate a plan to engage, as needed, over the next four years.

¹ This figure is derived from a review of the new appointments and hires listed in the Agency's January and February 2021 press releases. *EPA Welcomes Members of the Biden-Harris Leadership Team*, U.S. Env'tl. Protection Agency (Jan. 21, 2021), <https://www.epa.gov/newsreleases/epa-welcomes-members-biden-harris-leadership-team>; *EPA Welcomes Additional Members of the Biden-Harris Leadership Team*, U.S. Env'tl. Protection Agency (Jan. 27, 2021), <https://www.epa.gov/newsreleases/epa-welcomes-additional-members-biden-harris-leadership-team>; *EPA Announces Additional Biden-Harris Appointees*, U.S. Env'tl. Protection Agency (Feb. 2, 2021), <https://www.epa.gov/newsreleases/epa-announces-additional-biden-harris-appointees-0>.

² Many of the senior leadership positions across the agency currently are filled by Biden-Harris appointees to the Principal Deputy position who also currently are filling the role of head of the respective offices in an "acting" capacity. It is anticipated that many ultimately will be nominated to the position they currently are filling on a temporary basis. This same approach has been used at other federal agencies, like the Department of the Interior and the Council on Environmental Quality, which will play a role in implementing President Biden's environmental agenda. This article focuses solely on EPA, but we have written about other federal agencies' environmental- and climate-related actions in other recent pieces. See, e.g., *Three Weeks Later, the Oil and Gas Industry Continues to Navigate Biden's "Climate Day" Actions*, AG Speaking Energy (Feb. 16, 2021), <https://www.akingump.com/en/experience/industries/energy/speaking-energy/three-weeks-later-the-oil-and-gas-industry-continues-to-navigate-bidens-climate-day-actions.html> (outlining recent actions taken by the U.S. Department of the Interior that impact the oil and gas industry).

³ "Climate Nominees and Appointees," BIDEN-HARRIS TRANSITION, <https://buildbackbetter.gov/nominees-and-appointees/michael-regan/> (last visited Dec. 18, 2020).

⁴ *Court approves consent order to excavate more than 80 million tons of coal ash*, NC Dept. of Env'tl. Quality (Feb. 5, 2020), <https://deq.nc.gov/node/88993>. The consent order also required Duke Energy to excavate over 3 million tons of non-impoundment coal ash. Id.

⁵ Consent Order, *State of North Carolina et al. v. Duke Energy Progress, LLC*, 13 CVS 11032 (Feb. 5, 2020), <https://files.nc.gov/ncdeq/Coal%20Ash/2020-closure/2020-02-05---Consent-Order---file-stamped.pdf>,

⁶ *Court approves consent order to excavate more than 80 million tons of coal ash*, NC Dept. of Env'tl. Quality (Feb. 5, 2020), <https://deq.nc.gov/node/88993>.

⁷ Brady Dennis et al., *Biden picks top North Carolina environmental official to run EPA*, Wash. Post (Dec. 17, 2020), <https://www.washingtonpost.com/climate-environment/2020/12/17/biden-epa-regan/>.

⁸ Emma Foehringer Merchant, *Biden to Pick Top North Carolina Environmental Regulator Michael Regan to Head EPA*, Greentech Media (Dec. 17, 2020), <https://www.greentechmedia.com/articles/read/biden-harris-to-pick-michael-regan-of-north-carolina-to-head-epa>.

⁹ DEQ orders additional PFAS reductions by Chemours, NC Dept. of Env'tl. Quality (Aug. 13, 2020), <https://deq.nc.gov/news/press-releases/2020/08/13/deq-orders-additional-pfas-reductions-chemours>.

¹⁰ RELEASE: New state rules regulating methyl bromide use in log fumigation take effect, NC Dept. of Env'tl. Quality (Nov. 2, 2020), <https://deq.nc.gov/news/press-releases/2020/11/02/releasenew-state-rules-regulating-methyl-bromide-use-log-fumigation>.

¹¹ Report shows significant progress on swine permitting program, community engagement, NC Dept. of Env'tl. Quality (May 4, 2020), <https://deq.nc.gov/news/press-releases/2020/05/04/report-shows-significant-progress-swine-permitting-program-community>; *Environmental Justice Goals in Andrea Harris Task Force First Biannual Report to Governor Cooper*, NC Dept. of Env'tl. Quality (Dec. 3, 2020), <https://deq.nc.gov/news/press-releases/2020/12/03/environmental-justice-goals-andrea-harris-task-force-first-biannual>.

¹² See, e.g., *Face Sheet: List of Agency Actions for Review*, The White House (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (directing EPA to reconsider a number of Trump administration environmental regulations); *Biden Vows to Marry Climate, Jobs on "Climate Day,"* AG Speaking Energy (Jan. 28, 2021), <https://www.akingump.com/en/experience/industries/energy/speaking-energy/biden-vows-to-marry-climate-jobs-on-climate-day.html> (overview of the Biden-Harris administration's "Climate Day" actions).

¹³ Exec. Order No. 14008, 86 Fed. Reg. 7619, 7631 (Feb. 1, 2021); see also *Biden's Science and Environmental Justice Orders Foretell a New Era of Rulemaking and Enforcement That Go Beyond Climate*, AG Speaking Energy (Feb. 2, 2021), <https://www.akingump.com/en/experience/industries/energy/speaking-energy/bidens-science-and-environmental-justice-orders-foretell-a-new-era-of-rulemaking-and-enforcement-that-go-beyond-climate.html> (overview of Biden administration actions related to environmental justice).

¹⁴ *Coal Combustion Residuals (CCR) Part A Implementation*, U.S. Env'tl. Protection Agency (updated Feb. 11, 2021), <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>.

¹⁵ E.g., Notice of Receipt of Petitions for a Waiver of the 2019 and 2020 Renewable Fuel Standards, 86 Fed. Reg. 5182 (Jan. 19, 2021).

¹⁶ *Statement of Michael S. Regan Nominee for the Position of Administrator of the United States Environmental Protection Agency Before the Comm. on Env't and Pub. Works*, 117th Cong. 2 (2021), https://www.epw.senate.gov/public/_cache/files/1/a/1a6c999c-bed5-49a9-9087-9f4686987c88/6376084E921660DFF2E24D463AF56B4F.regan-testimony-02.03.2021.pdf.

¹⁷ McCabe's hearing in front of the U.S. Senate Committee on Environment and Public Works took place on March 3, 2021. *Hearing on the Nominations of Brenda Mallory to Serve as Chair of CEQ and Janet McCabe to be Deputy Administrator of EPA*, U.S. Sen. Comm. on Env't and Pub. Works (Mar. 3, 2021), <https://www.epw.senate.gov/public/index.cfm/2021/3/hearing-on-the-nomination-of-brenda-mallory-to-serve-as-chair-of-the-white-house-council-on-environmental-quality-and-janet-mccabe-to-be-deputy-administrator-of-the-environmental-protection-agency>.

¹⁸ *EPA Welcomes Members of the Biden-Harris Leadership Team*, U.S. Env'tl. Protection Agency (Jan. 21, 2021), <https://www.epa.gov/newsreleases/epa-welcomes-members-biden-harris-leadership-team>; Juan Carlos Rodriguez, *Biden Fills Agency Ranks with Climate Fight Veterans*, Law360 (Jan. 22, 2021), <https://www.law360.com/articles/1347512/biden-fills-agency-ranks-with-climate-fight-veterans>.

¹⁹ Jean Chemnick, *Clean Air Act guru returns to shape power plant rule*, E&E News (Jan. 22, 2014), <https://www.eenews.net/stories/1059993282>.

²⁰ PolicyLink, <https://www.policylink.org/> (last visited Mar. 11, 2021).

²¹ *Three-Year Strategic Framework 2020 to 2023*, US Water Alliance (2020), http://www.uswateralliance.org/sites/uswateralliance.org/files/publications/FINAL_US%20Water%20Alliance_Strategic%20Framework_2.12.2020.pdf.

²² *Cty. of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462 (2020). This decision pre-dated the arrival of Justice Amy Coney Barrett to the Court. We expect Barrett and the Court's current conservative majority to restrict the ability of administrative agencies to expand or maintain federal environmental protections, thus potentially jeopardizing the future of any expansive water-related rules. See generally "Not a Scientist," *Just a (Likely) Supreme Court Justice: What Amy Coney Barrett's Nomination Might Portend for Climate Change and Environmental Regulation*, AG Speaking Energy (Oct. 23, 2020), <https://www.akingump.com/en/experience/industries/energy/speaking-energy/not-a-scientist-just-a-likely-supreme-court-justice-what-amy-coney-barretts-nomination-might-portend-for-climate-change-and-environmental-regulation.html>.

²³ *Policy Innovations to Secure Drinking Water for All*, US Water Alliance (2020), http://www.uswateralliance.org/sites/uswateralliance.org/files/publications/Final_uswa_drinking-water_061120_a_0.pdf; *Water, Health, and Equity*, PolicyLink, <https://www.policylink.org/resources-tools/water-health-equity> (last visited Feb. 27, 2021).

²⁴ Professor Waterhouse Interviewed on Industrial Contamination, IU Robert H. McKinney School of Law (Sept. 21, 2017), <https://mckinneylaw.iu.edu/news/releases/2017/09/professor-waterhouse-interviewed-on-industrial-contamination-.html>.

²⁵ Exec. Order No. 14008, 86 Fed. Reg. 7619, 7631-32 (Feb. 1, 2021).

²⁶ E.A. Crunden, *Ex-Hill aide in hot seat on TSCA, forever chemicals*, Greenwire (Feb. 8, 2021), <https://www.eenews.net/stories/1063724611>.

²⁷ Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule, 85 Fed. Reg. 45,109 (July 27, 2020) (to be codified at 40 C.F.R. pt. 721); *Compliance Guide for Imported Articles Containing Surface Coatings Subject to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances Significant New Use Rule*, U.S. Evtl. Protection Agency (Jan. 19, 2021), https://www.epa.gov/sites/production/files/2021-01/documents/final_lcpfac-snur_surface-coating-compliance-guide_0.pdf.

²⁸ Britt E. Erickson, *EPA faces pressure to revamp chemical risk evaluations*, c&en (Feb. 1, 2021), <https://pubs.acs.org/doi/10.1021/cen-09904-cover4>.

²⁹ See Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment, *Asbestos Disease Awareness Org., et al., v. Wheeler, et al.*, Docket Nos. 49, 52, Case No. 19-cv-00871-EMC (N.D. Cal. Dec. 23, 2020), https://www.courthousenews.com/wp-content/uploads/2020/12/EPA_Asbestos-RULING.pdf (court mandate to consider asbestos-related reporting requirements); E.A. Crunden, *A 'poster child' for policy failure: Will EPA ban asbestos?*, Greenwire (Mar. 12, 2021), https://www.eenews.net/greenwire/2021/03/12/stories/1063726635?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire (calls to further restrict the use of asbestos).

³⁰ *Id.*; see Letter from Sen. Tammy Duckworth et al., to Pres. Joe Biden (Feb. 25, 2021), <https://www.duckworth.senate.gov/imo/media/doc/Letter%20to%20President%20Biden%20EJ%20Executive%20Action%2025.2021.pdf> (urging President Biden to take additional executive actions to advance environmental justice commitments).

³¹ U.S. Comm'n on Civil Rights, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898* (Sept. 2016), https://www.southernenvironment.org/uploads/words_docs/Civil_Rights_Commission_Statutory_Enforcement_Report2016.pdf.

³² Hannah Northey & Jeremy P. Jacobs, *Biden picks leading civil rights attorney for EPA*, E&E News (Feb. 2, 2021), <https://www.eenews.net/stories/1063724135>.

³³ Exec. Order No. 14008, 86 Fed. Reg. 7619, 7631-32 (Feb. 1, 2021).

³⁴ *The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity*, Biden Harris, <https://joebiden.com/environmental-justice-plan/> (last visited Mar. 11, 2021) (expressing President Biden's support for private right of action). See, e.g., Clean Energy Jobs and Innovation Act, H.R. 4447, 116th Cong. § 11015 (2020) (would have established private right of action); Environmental Justice For All Act, H.R. 5986, 116th Cong. § 5 (2020) (would have established private right of action).

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