Historically, the term, “Hundred Days” was associated with Napoleon’s March 1815 escape from exile on the island of Elba, his return to France at the head of a reinvigorated French Army, through his defeat at the Battle of Waterloo in June 1815, and the restoration of the French monarchy. What began with so much promise ended anticlimactically (unless, of course, you were bearing arms). The term is now casually applied to the first 100 days of any new U.S presidential administration.

As is common in American politics, a more liberal administration is often followed by a more conservative administration. Following the Inauguration, the new Trump Administration...
issued a plethora of Executive Orders, presidential memoranda, and policy statements to the executive departments and agencies under its control. In addition, in concert with the U.S. Congress, the Administration employed the processes and procedures of the Congressional Review Act to register congressional disapproval of a host of newly-minted regulations issued by the previous administration. These changes can be made legislatively, without the necessity of adhering to the more exacting requirements of the Administrative Procedure Act (i.e., the public notice of a proposed rulemaking, the solicitation of comments, and the development and publication of the agency’s rulemaking determination), which can be tedious and time-consuming.

With regard to environmental regulation, President Trump has issued Executive Orders to expedite federal environmental review, direct the U.S. Environmental Protection Agency (EPA) and the U.S. Corps of Engineers to reexamine their 2015 redefinition of “Waters of the United States”, consider anew the cost of regulation, delete unneeded regulations, and implement new regulatory reforms. More generally, the Administration has directed the agencies and executive departments to submit proposals for the reform and reorganization of the executive branch, require the use of U.S. products and materials in federally-licensed projects and use American workers, and enhance the production of domestic energy from onshore and offshore federal lands and territories. Similarly, a decidedly different approach is being taken with respect to climate change, and the need to impose new climate change mandates and requirements on the U.S. economy and federal and state governments. To develop new plans and approaches to regulation, the Administration and the agencies are soliciting public comments and suggestions.

Working with Congress, legislation has been enacted to revoke a number of rules, such as the U.S. Department of the Interior’s stream protection rule, new federal acquisition regulations, new procedures to implement the Federal Land Policy and Management Act, and new wildlife management rules affecting Alaska. The Consolidated Appropriations Act of 2017, which funds the federal government until October 2017, included many directives from Congress to the agencies. With respect to EPA, Congress stated that it never intended the Solid Waste Management Act to apply to animal or crop waste, and that it supports efforts to codify the law as it applies to agricultural byproducts. In addition, Congress expressed its view that EPA should expeditiously implement and streamline its new coal combustion waste management authority.

Recently, both the Department of the Interior and EPA have solicited comments from the public and the regulated community regarding which existing regulations should be considered for deletion, replacement, or modification and amendment. On April 13, 2017, EPA published a notice in the Federal Register, entitled “Evaluation of Existing Regulations” that solicited comments on EPA’s regulatory programs.

Notably, many critical comments were filed regarding the agency’s waste management and remediation rules and policies. EPA’s RCRA hazard waste management system rules have been in place for many years, and indeed the 1980 generator rules have only recently been revised. The Corrective Action program is nearly as old, and impacts the assessment and cleanup of thousands of sites around the nation. The Superfund (i.e., CERCLA) cleanup process, which is a companion to the RCRA Corrective Action program, albeit one that is concerned with “hazardous substances” and not “hazardous waste”, has also received its fair share of comment. The cleanup of Superfund sites tends to move slowly through an elaborate process encompassing several cleanup phases, a process that is usually measured in years after the immediate environmental threats have been addressed.

Finally, the Trump Administration, through the U.S. Department of Justice, has asked the courts, chiefly the U.S. Court of Appeals for the District of Columbia Circuit, to postpone pending oral argument in a number of important cases in which the validity of major environmental rules has been challenged. These requests have been granted to allow the Administration sufficient time to familiarize itself with the issues before the court.

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