LEADERS IN INDUSTRY LUNCHEON

New Administration
New Congress
New Opportunities
Inherited Challenges

- NEPA Guidance on Effects of Climate Change from Greenhouse Gas Emissions
- Social Cost of Carbon Regulatory Impact Analysis
- BLM Mitigation Policy
- BLM Drilling Regulations
- BLM Venting and Flaring Regulations
- EPA New Source Methane Regulations
- EPA Existing Source Methane Regulations and Information Collection Request
- EPA RCRA Litigation Settlement
- BLM Onshore Royalty Regulations
- BOEM Offshore Air Regulations
- BOEM Offshore Five-Year Plan
- EPA Effluent Limitations Guidelines
- EPA Ozone National Ambient Air Quality Standard (NAAQS)
- EPA Waters of the United States (WOTUS) Regulations
Inherited Challenges

– Numerous lawsuits are pending challenging the Obama regulations
  • WOTUS
  • Ozone NAAQS
  • BLM Drilling Regulations
  • EPA Methane Regulations (Subpart OOOOa)
  • BLM Venting and Flaring Regulations
Transition

– Immediately after the election, IPAA developed issues and recommendations for the incoming Trump Administration to address after the Inauguration

– 51 issues for action divided into 5 categories – Executive actions, policies, potential regulations, regulations in litigation and regulations in place
Early Actions

– Trump Administration
  • Actions to move forward on Keystone and Dakota Access pipelines
  • Regulatory reductions for new regulations & Regulatory budget
  • Permit Streamlining Action Plan
  • Regulatory Reform Task Forces
  • Waters of the United States
  • Terminated Methane Regulation Information Collection Request
Early Actions

– Congress
  • Congressional Review Act (CRA) allows Congress to terminate recently finalized federal regulations
    – Provides an opportunity to review and remove regulations pushed through in the final days of an Administration
    – Has to pass House and Senate and the President must sign
  • CRA Resolutions
    – Dodd-Frank Section 1504 Reporting Regulations (required U.S. oil and gas industry to disclose all payments to foreign governments, putting domestic industry at a competitive disadvantage) – passed House and Senate; approved by President
    – BLM Venting and Flaring Regulations – passed House, struggling in the Senate
    – BLM Resource Management Plan Revisions – passed House and Senate, awaiting President’s signature
Opportunities

– Pending Litigation

• Many regulations are under litigation – BLM Drilling Regulations, Subpart OOOOa, BLM Venting and Flaring Regulations, Ozone NAAQS
• Trump Administration can change the former Administration's position on regulations and settle cases
  – Announced its intent to restructure the WOTUS regulations and acting to end litigation
  – Complicated by parties in the lawsuits opposing the regulations as excessive or as inadequate
  – Changing positions on the regulations that have been sustained or rejected by lower court rulings complicates future regulatory options
• Environmentalists will challenge settlements
Opportunities

– Regulatory Actions and Reforms

• Trump Administration wants to eliminate two existing regulations for each new one

• Eliminating regulations requires the same process as creating new ones
  – Proposal, comments, final revisions, promulgation
  – Eliminating will require the government to justify that its basis for promulgating the initial regulation is now incorrect
Potential Hurdles

– Regulatory Actions & Reforms
  • Agency staff issues can undermine effort
    – Delaying the regulatory development process to prevent completion during the next four years
    – Inadequately supporting the justification for the revisions could open them to reversal during inevitable litigation
  • Reducing staff can adversely affect action
  • Opportunities for challenging revised/repealed existing regulations will grow dramatically
Potential Hurdles

– Legislation
  • Many issues may require legislation to succeed
  • Congress largely remains subject to gridlock
  • Some issues may need to await 2018 election where substantial Republican Senate majority is possible
    – 25 Democratic Senators (2 are Independents that caucus with Dems) up for re-election
      » Trump won 10 of those states
    – 8 Republican Senators up for re-election
Delegation to States

• Trump Administration indicates that it wants to delegate regulatory authority to states
  – Key federal laws written with a structure that relies on state agencies as the principal regulator
  – States must seek delegation; states need money to run program that is authorized in federal law but not necessarily appropriated
    » Congress needs to fund the state authority

• Barriers to delegation need to be identified and eliminated
  – Some legislation may be necessary
Industry Role

– Industry

  • Maintain an active litigation role to resolve existing litigation and respond to new environmentalist actions
  • Expand presence in regulatory arena to support reform actions and provide information to regulation dockets
  • Support state delegation requests and both federal and state funding
  • Develop grassroots responses to counter aggressive environmental efforts to increase state regulation and opposition to permits
The Opposition is Better at …

– Social Media
– Emotional argument
– Willingness to engage
– Getting publicity
Tax Reform

– When
  • After Obamacare repeal/replace/reform
    – Much harder to do than it appears
    – May drag out far longer
  • House is talking about some action by the August break but what is unclear
  • Trying to crush into several months actions that typically take several years
Tax Reform

– How

• Republicans would like to pass tax reform under regular order
  – Democrat opposition in Senate makes that path unlikely in this Congress

• Budget Reconciliation provides an alternative approach with pros and cons
  – Reconciliation prevents filibusters in the Senate and provides for a simple majority final vote
  – Reconciliation limits changes that increase deficits beyond 10 years after enactment
    » Triggered the 2010 and 2012 crises over the Bush tax cuts
Tax Reform

– What
  • Budget rules compel development of a revenue neutral or revenue raising tax reform proposal
    – Some indications that Congress may try to waive this constraint
  • Status
    – House Republican leadership has a blueprint but no detailed language
    – Trump Administration promises a proposal soon
    – Senate is quietly looking at options while awaiting House action
Tax Reform

– House Blueprint generally positive
  • Lower rates – 20% corporate rate, 25% pass through entities, 12%/25%/33% individual rates
  • No AMT
  • Capital expenditures amortization – One year

– Offsetting revenue approach controversial
  • Border Adjustment denying deductibility of costs of imports while allowing deduction of export sales
  • Changes in revenue options could limit extent of reform if revenue neutrality retained

– Transition to a new tax code