

## Closing Statement

## Transition and Reform: Starting the Conversation



**Scott Fulton**  
President

**W**e are getting a lot of questions about the transition to the Trump administration and the new Congress. One of the president's executive orders would require two regulations to be eliminated for every new rule. This may be a stretch goal at a place like EPA. Deregulation will need to pass through formal rule-making procedures — a time-consuming and resource-intensive process with judicial challenge waiting at the end.

The agency would likely be developing and defending these superseding rules against a backdrop of continued legislative stalemate. This means EPA would be working to produce new regulations required by statute even as it works to reduce the overall body of rules.

But whether or not the goal is in fact achievable, it makes clear that the Trump administration will be hungry for reforms that are geared toward reducing the cost and process burden of environmental regulation.

This, of course, is welcome news to those who see a fundamental conflict between environmental protection and

economic development, as well as those concerned that environmental requirements have become so extensive, detailed, and layered as to make compliance an elusive pursuit. It is unwelcome news for those who see environmental protection and economic development as fully compatible goals.

In my view, the system is neither a train wreck nor the flawless regime seen by some. On the one hand, our environmental programs have unquestionably improved our environment. On the other, these programs are not perfect. I have worked within them, as have many of you. They can be improved. They are at times inefficient and can be preoccupied with the small picture.

At ELI, we are all about good environmental governance and the rule of law, and are always interested in ideas for reform that could make the system work better and more efficiently. But we are also committed to the idea that law must be built to work and must be actualized through effective implementation.

Actualizing the law requires accountability. The current system has done a decent job with accountability, and this has contributed greatly to the environmental gains that we have experienced.

The laws passed by earlier Congresses — back when the environment was a bipartisan concern — painstakingly hold the Executive Branch accountable for forward movement in addressing environmental concerns through mandatory duties and schedules for action. They hold states with delegated programs accountable for program performance by threatening various forms of federal intervention. They hold the regulated community to account through tough enforcement measures. To complete the package, Congress gave citizens and other interested stakeholders the ability to force the government's hand, and pursue enforcement actions

through the courts where the government failed to do so.

The net result of this accountability system has been to prod the federal government forward according to Congress's direction, to help ensure that states maintain a nationally consistent baseline of protection, to usher in a culture of compliance in the regulated community, and to improve the environment.

One of my worries concerns tinkering with this basic accountability model. I think we would find that it is extremely sensitive to change. I worry that if the federal backstop is diminished, this may lead as well to erosion of needed state standards, state environmental program budgets, and state implementation effectiveness.

Why? Because the same political pressures that exist at the national level also exist at the state level, often in even greater force, and the federal backstop has, I believe, helped states make tough, protective decisions in the face of those pressures. This slippage concern extends to the other elements of the accountability system. Tampering with the citizen role could lead to government action that is less timely and less principled, and decreasing federal enforcement may lead to a decrease at the state level, which may at some point begin to influence compliance choices within the regulated community. Too hard of a tug on any one of these threads could cause a rather valuable garment to unravel.

There must be room for conceding the improvements in environmental quality from the current system and acknowledging the importance of ensuring that reforms do not compromise those gains, while also recognizing that the current system doesn't always work perfectly, and may carry inefficiencies that can be overcome without changing the environmental bottom line.

Let's talk.