

2010 Elections Could Impact EPA Programs

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Some new senators may take a hard line against EPA program expansion.

The 2010 Congressional elections will likely significantly impact policy and legislative developments in the U.S. Environmental Protection Agency's (EPA) regulation of chemicals and pesticides. The decline in the number of elected House Democratic members will make for some significant differences in EPA's budget, legislative proposals and general operations. Meanwhile, some newly elected senators stridently oppose government expansion and want to rein in federal deficit spending, which could affect the future of EPA and other government agencies.

Committees of Jurisdiction

Changes in House committee leadership will be monumental. Most notably, Rep. Fred Upton (R-MI) replaces Henry Waxman (D-CA) as House Energy and Commerce Committee Chairman. This will affect any prospects for climate legislation, as well as almost every element of EPA's operational programs. The new goal for many interested parties, who a short time ago hoped for expansion of EPA programs, now will be to maintain the current status quo.

EPA's budget will also face an expected spending freeze, and less likely to be allowed exceptions or special initiatives directed by the Appropriations Committee. The new chairman of the Oversight and Government Reform Committee, Rep. Darrell Issa (R-CA), intends to conduct extensive oversight hearings on various programs and agencies.

In the Senate, much less change in committee leadership is expected. Sen. Barbara Boxer (D-CA) was reelected, and is expected to continue as chair of the Senate Environment and Public Works Committee. Senator Boxer renewed interest in focusing on climate change. Sen. Lautenberg (D-NJ) was not up for reelection, and is expected to continue to champion Toxic Substances Control Act (TSCA) reform and attempt to keep it high on the Committee agenda.

EPA Appropriations

In addition to any expected freeze in domestic program spending, EPA could face a variety of restrictions or reductions in its operating programs. Some legislators could also attempt to use appropriations restrictions to limit any EPA program or policy, which is speculated to be a real possibility in 2011.

Chemicals Management

The future of EPA's toxics program is one of the most affected by the 2010 election. The possible changes to TSCA during the past two years are moot. The absence of Mr. Waxman in the Senate will have significant implications for TSCA legislation. Sen. Lautenberg is expected

to continue to support more extensive changes, but some of the new Senate members are expected to oppose any legislation that seeks to "expand government."

The most interesting question lies with the response of the chemical industry and its allies to the change in House leadership. Notwithstanding the rhetoric of agreeing on many, if not all, of the principles of TSCA reform, industry trade groups or any of their members put forth no legislative proposal. Perhaps now with expected friendlier forums for discussion of TSCA amendments, industry representatives will hesitate less to develop specific amendments they believe will give expression to the stated principles.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) implementation has been quiet over the first half of the Obama administration. The new Republican majority in the House will likely lead to some level of aggressive oversight of all EPA programs. For the pesticide program, immediate candidates for an increased level of scrutiny include the use of "good science" in decision-making, the use of FIFRA or Food Quality Protection Act (FQPA) authority in removing pesticide uses from the market without going through the FIFRA cancellation process, specific product decisions, and transparency and participation in developing new program initiatives.

Administration Reaction

As President Clinton reminded leaders of the Republican "takeover" in 1995, the President remains relevant. Presidents can unilaterally sign Executive Orders or determine priorities under current law. One such example for President Clinton came in 1995 when the President ordered EPA to accelerate the expansion of Toxics Release Inventory (TRI) and issued an Executive Order mandating greater TRI reporting obligations on federal contractors. The Obama White House likely will consider similar initiatives.

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