

THE START OF ANOTHER ELECTION YEAR

A month after President Trump's 2016 election, I sent an alert predicting changes in environmental regulation resulting from that election, including that the Trump EPA would issue a new definition of "waters of the United States" (WOTUS). On December 23, 2019, the regulation providing a new definition of WOTUS became effective. While I admit to some pride in the accurate prediction, I am also glad I did not predict when the new definition would become effective. If someone would have offered to bet in December 2016 that a year before the next presidential election we would still not have a final new definition of WOTUS, I would have made and lost that bet. Despite my numerous statements that our system resists rapid change, even I am surprised at how long it has taken for EPA's new WOTUS definition to become final.



No Significant Federal Environmental Legislation since President Trump's Election

In that December 2016 alert, I said the predicted changes, including a new WOTUS definition, would come more quickly if Congress addressed the issues through legislation. Congress did not address WOTUS, despite Republican control of both houses of Congress and the Presidency. Thus, the new WOTUS definition came via the much longer route of the EPA and the Department of Army repealing the 2015 rule defining WOTUS and going through the administrative steps of issuing a new rule with a new WOTUS definition.

Federal Environmental Legislation Will Remain Unlikely

Chances of significant federal environmental legislation remain low both before and after the 2020 election. The current partisan divide between the House of Representatives and the Senate makes significant legislation in an election year virtually impossible.

The chances of significant environmental legislation after the 2020 election will probably continue to be low. Regardless of the presidential election, Democrats will likely retain control the House and Republicans will likely retain control of the Senate. Even if Republicans gain control of the House and President Trump is reelected, the 2017-2018 experience indicates significant environmental legislation will remain unlikely, due to the ongoing Senate rule of requiring 60 votes for most legislation.

Similarly, if President Trump is not reelected, significant environmental legislation will remain unlikely, unless two additional unlikely events occur. First, the Democrats would need to gain enough seats (three) to control the Senate; second, the Senate would need to change its rules to allow a simple majority to pass legislation.

The 2020 election will still have consequences, especially because the president appoints the leaders of regulatory agencies and the judges for federal courts. While changes in environmental regulation can result from these appointments, significant changes are harder to make and take longer without legislation, which will remain unlikely.