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Trump Environmental Record Marked by Big Losses, Undecided Cases

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- EPA, Interior lost series of early procedural cases
- Failed to lock in most ambitious legal interpretations

In October 2017, President Donald Trump's critics were celebrating. They'd won their latest fight against the new administration's industry-friendly environmental agenda, and were confident in racking up more victories.

"It was very gratifying, but it was not unexpected," Center for Biological Diversity attorney Michael Saul said, recalling the district court [decision](#) that revived Obama-era methane restrictions for the oil and gas industry.

The ruling followed [two other](#) legal rebukes for Trump's energy and environment policies, decisions that came down in quick succession in the early days of his term. The new administration had gotten off to a rough start in the courtroom.

Fast forward to 2021, and the story of the Trump team's legal scorecard is more complicated, showing a mixed record of success, failure, and unresolved cases. Its exact win-loss rate in environmental cases is the subject of ongoing debate—a moving target depending on which lawsuits are tallied and how they're categorized.

What's clear is that while the Trump administration won some important environmental lawsuits during its single term, it lost a mountain of other critical cases and failed to get most of its top priorities across the legal finish line, leaving them more vulnerable to reversal by President-elect Joe Biden.

"The biggest rules are still being litigated, and that doesn't help solidify a legacy for this administration," said Bethany Davis Noll, litigation director for New York University's Institute for Policy Integrity.

'Uniformly Rejected'

The Trump administration's environmental actions largely fell into two categories: swift moves to freeze or delay Obama-era regulations, and longer efforts to rewrite the rules on the books. The first category fed a series of early courtroom defeats in 2017 and 2018.

"Those were almost uniformly rejected because they didn't even try to follow the procedure laid out in the APA," Georgetown University law professor William W. Buzbee said, referring to the Administrative Procedure Act.

In addition to the first-year trio of legal rebuffs, Trump officials lost lawsuits over their efforts to delay energy efficiency [standards](#), chemical [restrictions](#), stiffer [penalties](#) for violating emissions rules, and other regulations.

Current and former Trump administration officials say critics read too much into those losses. Matthew Z. Leopold, who recently stepped down as EPA general counsel, argues agencies were in uncharted waters for some of those actions, with limited established guidance on the legality of particular tactics for stalling regulations.

“There was some precedent out there, but not by the number of courts and with the consistency that the courts have now expressed,” said Leopold, now at Hunton Andrews Kurth LLP.

The sheer ambition of the Trump administration’s agenda also explains some of its legal setbacks, said Greenberg Traurig LLP attorney Paul M. Seby, who represents North Dakota in several cases involving federal environmental rules.

“There are plenty of instances where the administration stubbed its toes,” he said. “It’s easy to say this in hindsight, but many times they rushed thinking through things.”

“But I think the best way to look back on the administration’s four years is that it came in with some very ambitious and clearly laid out goals and objectives,” he said.

On the Merits

The Trump administration also struggled to defend many of its actions on their merits, not just on procedural grounds.

For example, judges in multiple courts [tossed](#) former EPA Administrator Scott Pruitt’s effort to revamp the membership of powerful advisory boards after concluding the move conflicted with federal ethics regulations.

And in one of the biggest environmental cases of 2020, the U.S. Supreme Court flatly [rejected](#) the EPA’s interpretation of how the Clean Water Act works, saying it “would open a loophole allowing easy evasion of the statutory provision’s basic purposes.”

Those types of losses are telling because the government usually has a leg up in litigation, thanks to Justice Department resources and legal doctrines that are deferential to agencies, said Drew Caputo, vice president of litigation at Earthjustice, one of the president’s most persistent legal foes.

The administration’s record in oil, gas, and coal cases is particularly illuminating, Caputo said, because Trump officials adopted an “energy dominance” agenda that prioritized domestic fossil fuel development.

The Trump administration lost a [series](#) of cases involving the climate impacts of oil and gas leasing, extending a pattern that started with Obama-era leasing decisions. Courts also [blocked](#) a

major offshore oil and gas proposal in Alaska and a broader [plan](#) to reopen millions of acres of Arctic waters to development. An appeal is still pending.

Tallying Wins

But the Trump administration notched some significant environmental wins in four years, a reality top agency lawyers have worked hard to highlight.

Leopold, the former EPA general counsel, and Daniel Jorjani, the Interior solicitor, wrote recent opinion pieces designed to “set the record straight” on the agencies’ win-loss rates in the courtroom. Both claimed their agencies had secured more legal victories than outside groups’ litigation trackers acknowledged.

The EPA gave Bloomberg Law a case list to back up its assertion. It [shows](#) that the agency’s claimed win rate differs from what’s shown in other trackers because it includes some agency victories that others left out, excludes some defeats others counted, and categorizes certain mixed rulings as victories.

Some of the EPA’s biggest wins include when federal judges upheld a general [permit](#) for oil and gas operations in the Gulf of Mexico, and the agency’s decision to [abandon](#) financial assurances for hardrock mining.

Leopold also pointed to a pair of preliminary legal wins that allowed key Trump administration policies to advance, despite opponents’ efforts to block them: a final [rollback](#) of an EPA methane rule for the oil and gas industry, and a new interpretation of the Clean Water Act’s reach, a rule that has taken effect in all but one state.

Interior’s biggest victories include a federal court’s 2019 decision to [uphold](#) the rollback of an Obama-era rule for hydraulic fracturing, or fracking, on public lands. The agency also scored a win at the Supreme Court, when the justices [OK’d](#) a permit for the proposed Atlantic Coast natural gas pipeline across the Appalachian Trail—though developers later scrapped the project.

In an October interview with Bloomberg Law, Jorjani explained the methodology for the Interior Department’s claimed 80% win rate, saying it included “priority actions” that survived lawsuits or went unchallenged. But the department refused to publicly release the underlying case list, making it impossible to break down how it differs from other analyses.

‘Swinging for the Fences’

The Trump administration’s most ambitious environmental policies—many of which featured novel interpretations of environmental laws—remain [unresolved](#) in court. Litigation is in progress over climate rules for power plants, the water jurisdiction rule, federal emissions standards for cars, the shrinking of national monuments in Utah, and other actions.

Incoming Biden officials are set to move quickly to review and unwind many of those decisions, which will render much of the litigation moot—though some cases may stay on track.

“They were swinging for the fences, and they knew if a few cases were able to get courts to agree with their interpretation, that would have a lasting impact,” Hana Vizcarra, a staff attorney at Harvard Law School’s Environmental and Energy Law Program, said of the Trump administration. “If they had another four years, they would have that opportunity.”

Still, Trump’s four years in office created a sharp break from aggressive Obama-era environmental regulation, providing some benefit to regulated industries, said Vinson & Elkins LLP attorney Corinne Snow, who was a Justice Department lawyer earlier in the Trump administration.

“If there hadn’t been a Trump administration, a lot more Obama-era regulations probably would have gone into effect, and those would have had additional burdens,” she said.

That dynamic was on display with the Bureau of Land Management methane rollback, the issue that triggered one of the early court rebukes in 2017. Though opponents of the multistep rollback repeatedly beat the Trump administration in court, the legal tug of war meant oil and gas companies didn’t have to comply with the Obama rule for years.

State and industry lawyers later [defeated](#) the regulation in their own lawsuit, which has been appealed.

“The administration has managed to do a lot of harm just by delaying,” the Center for Biological Diversity’s Saul said. “It’s four years later and all of that methane has continued to leak, be flared, be vented in the interim. That’s lost time.”