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Trump Transition Underway At Key Environmental Agencies

By **Juan-Carlos Rodriguez**

Law360 (January 2, 2025, 1:54 PM EST) -- President-elect Donald Trump's landing team — tasked with aiding the upcoming transition in the White House — is busy gathering information to set the new administration on course to implement its priorities on day one.

"Landing teams are critical to an incoming administration's ability to hit the ground running and avoid unwelcome surprises," said Kevin Minoli, a partner at Alston & Bird LLP who served as acting general counsel at the U.S. Environmental Protection Agency during the transition between former President Barack Obama and Trump's administrations.

For the EPA and the U.S. Department of Justice's Environment and Natural Resources Division, that means getting up to speed on a broad palette of pending policy and litigation matters, from proposed air and water quality rules to lawsuits over chemical standards and a variety of enforcement actions.

"If a landing team is not effective, the incoming president's team will arrive at the agency not knowing everything that agency is about to do — and some actions will get taken that the new administration would have done differently had they known about them," Minoli said.

Trump's transition team has chosen not to identify the landing team members, as some former presidents-elect **have done**. The EPA and ENRD also declined to name the landing team members, and the White House did not respond to a request for their identities.

However, Washington lawyers who have experienced several presidential transitions say that the work they're doing and how that work will inform the incoming administration is no mystery.

Trump's team signed a memorandum of understanding with President Joe Biden's White House in November that cleared the way for the landing teams, also called agency review teams, to begin their work. The teams report to the incoming administration's transition team and may include some transition team members.

Under the watchful eyes of senior agency employees, the landing teams are expected to interview career staff, obtain general information about what's happening at various agencies and more specific information about what to expect during the new administration's first 30 days, according to John Cruden, a principal at Beveridge & Diamond PC, who worked at the ENRD during four presidential transitions from Bill Clinton to Trump, and also served on Biden's transition team after the 2020 election.

"It is both general — What's the jurisdiction of that agency? What are their responsibilities? What policy issues are hot that the new administration will want to know about? — and specific — What's going to happen in the early moments of the administration?" Cruden said.

He added that this transfer of knowledge is important so that the new administration is not caught by surprise by a U.S. Supreme Court decision, or press releases, or any other important event that they would want to know about before they start on Jan. 20.

But there are limits to the information that the landing team may access. Agencies like the EPA and ENRD will prepare thorough briefings on a variety of important subject areas, but usually will only provide the information if it's requested by landing team members, Minoli said. And the information

itself is all publicly available, he added.

"Throughout the entire process, the agency still respects and recognizes the privileges that attach to information," he said. "For example, if an agency review team asks for information that's protected by attorney-client privilege or is otherwise privileged, they have to go through a special process in order to request that — and sometimes the agency will grant that request and sometimes it won't."

Some of the key EPA policies that the Trump team is likely reviewing include proposed Clean Water Act rules restricting chemicals in drinking water, Clean Air Act regulations for power plants and greenhouse gases, and Toxic Substances Control Act rules for a slew of chemicals.

At the ENRD, scores of lawsuits are pending over EPA rules that have been finalized and could be subject to change or rescission under the new administration. The landing team will have to learn all it can about the department's litigation strategies thus far in these suits, as well as pending enforcement cases, to make a pivot easier for incoming appointees and staff.

Landing team members are usually given an office in an agency's headquarters but work with physical constraints, as well, Minoli said.

"It's very much controlled access, and they can't wander about the building," he said. "They have escorts when they leave their suite space that they're given to work out of. And likewise, people can't wander into their space."

Justin Smith, of counsel at Beveridge & Diamond, who worked at the ENRD during the transitions from Obama to Trump and Trump to Biden, also said that even within those parameters, the conversations between the agency representatives and the landing team still tend to be "very candid."

"The career staff have a strong incentive to educate the incoming administration, to build trust with the incoming administration," Smith said. "They do not have an incentive to hide the ball. So if the process is working correctly, those will be very thorough and helpful discussions where the career staff are really doing their best to get information to the people who shortly will be coming in to run the agency."

Landing team members are selected in different ways, with some coming from the Trump campaign orbit and others who are policy experts. They must get a clear view of current agency activities before the new administration assumes authority, said Matt Leopold, a partner at Hunton Andrews Kurth LLP and former EPA general counsel who worked at the ENRD during the transition between George W. Bush and Obama.

"For example, let's say the [EPA] Office of Air and Radiation has multiple rules under development, and they're all in various stages," Leopold said. "The landing team may not be told the content of all of the rules, but they may learn the status, they're going to learn which office is working on it and potentially who's working on it. Those are things you need to know to manage government processes on day one."

Rules that could be **reviewed right away** include the EPA's greenhouse gas emissions standards for power plants, its definition of a key Clean Water Act term regarding the federal government's jurisdiction under the law, and the first drinking water standards for forever chemicals.

Another function of the landing team is to help identify issues that are likely to be raised during the confirmation processes for key personnel — but there's a caveat to that, said Smith of Beveridge & Diamond.

"It's tricky, because you actually don't want your nominee to know too many details about what's going on at the agency, because they're not at the agency, and they shouldn't profess to know the details, but they should know what the sensitive issues are and what questions will be coming," he said.

Trump's landing teams have a tighter timeline to obtain all this information and prepare future agency leaders. They started their work in mid-December, after Trump refused to sign an agreement

that would've given them secure technological access for information exchanges.

Trump said he wanted his team to be self-sufficient in the interest of saving taxpayer money. However, teams in the past began sooner after the election, and they will lose all access come Jan. 20, Minoli said.

"That period of time can be really helpful for the new political team to begin building a relationship with the senior leadership team at the agency," Minoli said. "I think a president-elect neglects to invest time and energy into making that time useful at their own peril. If you wait too long to establish that relationship, it can be hard to ever get it going."

--Editing by Nicole Bleier.

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