

Speaker 1: Welcome to the legal environment of insights, griever, current podcast.

Speaker 2: Hello everyone. And welcome back to empire environmental today. We're going to talk about the presidential election and impacts it could have on environmental policy in New York. It looks like after about three days [00:00:30] of counting that Joe Biden is going to be the next president United States. And I'm here with my GT colleague from Albany Zachary knob. Hey Zach, how

Speaker 3: Are you? Hi, Steve. How are you doing? Can I

Speaker 2: Complain? So Zach, it looks like we are going to have a new president and you spent some time pretty recently, a little over a year ago in the circle of governor Cuomo went as one of his counsels. And I thought it would be a good time to chat a little bit about what this could mean for New York [00:01:00] and both major infrastructure projects, New York energy policy and environmental matters, which are all kind of somewhat linked here in New York state. And so first thing I thought I would turn to is, is infrastructure projects, because as everybody likely knows, governor Cuomo has spent a lot of time before. At least he got distracted by COVID too, to really focus on, on major infrastructure projects like the Tappan Zee bridge. And he's got a lot of other ones that are [00:01:30] in the planning stages that are going through environmental review may have completed environmental review, maybe very close to completing environmental review underneath, but are just kind of somewhat in never, never land as he was at an impasse with the federal government over funding and similar issues.

Speaker 2: And so I think that a bunch of these projects are probably going to, you know, get much better treatment under a Biden administration, even without democratic control of the Senate, which is still [00:02:00] with the two runoffs in Georgia. It looks like it's still an open question. So first thing I wanted to talk about on this is congestion pricing. Zack congestion pricing, as you know, was passed by New York. The idea is in the, in the Midtown zone, when cars go in there that there would be a toll as a way to control traffic and also bring revenue into the state, which they're going to need now more than ever for major infrastructure, major transportation infrastructure projects. So it's been held up though, because it turns out there are some federal environmental approvals [00:02:30] that are needed underneath. So what do you think, Zack, what do you think gonna happen on congestion pricing?

Speaker 3: Well, you know, congestion pricing is really interesting because there's not much of an environmental impact from putting in the necessary infrastructure for congestion pricing. And yet it was held up by the federal government. I believe it was on a, on an environmental review. So, you know, I think looking at, at Biden's overall platform, these projects [00:03:00] are going to be key to job creation to his environmental platform. And I think you're going to see those projects move much more quickly than they have under a Trump administration. And that's a good thing for New York. Those infrastructure projects are going to be key to economic recovery, and they're going to be key to helping the federal government meet what are probably going to be new environmental goals [00:03:30] that the Biden administration will set.

Speaker 2: I agree. I think congestion pricing probably will move pretty quickly. We may be able to have it in place. I would think late 20, 21, early 20, 22. I, you know, I don't know about how much building there is when it comes to congestion pricing, but it, nevertheless, it's, it's definitely key for New York state and maybe also key in getting people out of their cars and to trust getting back into mass transit once, once COVID is more under control, which hopefully we'll also be saying sometime in 2021, [00:04:00] um, another project that is a major, major priority for the region, not just for New York state is, uh, the Hudson tunnel. And this is a project that is trying to create new tunnels under the Hudson river, connecting New York and New Jersey first reason so that they can close the existing tunnel, which has been in existence for close to a hundred years and make sure it's in good repair and do whatever repairs, because right now, if that tunnel went down, there really would be no decent [00:04:30] way to get mass transit from New Jersey into New York, which would be awful for the region, awful for Amtrak's Northeastern corridor, it'd be an utter disaster.

Speaker 2: And that project has also has gone through a significant part of its NEPA review, but has been stalled over funding again. So any thoughts on Hudson tunnel? I think that's another one that's going to go, it's going to take a while to build that project and finish the approvals, but that seems like a major priority that is also likely to go forward in a Biden image.

Speaker 3: Yeah. Again, I think these, these infrastructure [00:05:00] projects, which are much, much needed infrastructure projects for the state, not just for New York, but for New Jersey as well. And, and I think Amtrak, yeah, they're really key to, to moving forward with infrastructure development in the state and ensuring safe transportation. And, you know, I think unlike the Trump administration, the Biden administration is going to push forward with these and do anything [00:05:30] that they can to help move those projects in New York. Yeah. I mean,

Speaker 2: And you know, and you've got a bunch of other projects. I mean the expansion of Penn station, which is another governor wants to do as well as renovating the existing Penn station. A lot of that goes hand in hand with the Hudson tunnel project and the overall what's known as the gateway program that is in its early stages. Something that we here at GT are a little bit involved in and, you know, that's another one I think would have been on pretty thin ice. Had Trump been reelected based on what we've seen.

Speaker 3: Absolutely. And you know, in the Trump administration, [00:06:00] you saw this idea of pulling back funds, federal funding from states where let's say there was general political disagreement with blue state governors. And I think you'll see that on freeze and, uh, a Democrat led administration,

Speaker 2: I think in terms of infrastructure, regardless of your political views, if you're you're from a New York state perspective, I think it's, it seems like a good thing. If you'd like to see [00:06:30] major infrastructure projects in the state and the region go forward. Now one of

Speaker 3: The federal money flowing into the state, it's going to be, it's going to be good. Yep. That should

Speaker 2: Be, that should be a bipartisan thing here in New York.

Speaker 3: I agree now,

Speaker 2: One of the things that Trump administration also, there was a bunch of streamlining of the, of the NEPA, federal environmental review process putting in a two year timeline page limits, which I've, you know, we've discussed before the page limits is kind of meaningless because they just put more stuff. [00:07:00] EIS writers just put more stuff in the dependencies. It's, it's more marketing than anything else, but there have been some real significant reforms under NEPA, which, you know, I at least think that will not be rolled back with one exception that I'll talk about. I don't think it will be rolled back because I think you've seen that NEPA efficiency moving NEPA along concept in the Obama administration as well. So I don't think you're going to see a rollback of trying to make NEPA reviews faster and more efficient, but with the exception [00:07:30] of, I think the attempt to mandate that there'll be no cumulative impact review in a NEPA EIS, which was aimed significantly at climate change impact review for fossil fuel projects. I think that's going to go away. What do you think about that sack you okay.

Speaker 3: I think that's probably right. It's a, it's very interesting because the Trump administration had pushed through the change in their NEPA approach, uh, in, uh, in a way that makes it a little more difficult to [00:08:00] overturn. It is it is a, a rule that has been promulgated. And, you know, I think that it's one of those areas where the Biden administration is going to have to tread a little bit lightly because not all of those changes were terrible ideas. They may not have been executed entirely appropriately, but you know, the idea of moving the NEPA review a little more quickly, certainly doesn't strike a [00:08:30] strike me as a terrible in concept, but the execution and some of the details that the Trump administration had put forward were perhaps procedurally. And in some instances substantively not going to sit well with folks on the, on, on the Democrat side of the aisle, but, uh, you, it's going to be, it's going to be interesting to see what the Biden administration does with some of those NEPA changes, [00:09:00] whether they, uh, do a complete 180 or whether they try to take some of the, the good pieces out of that, uh, that roll back and, and try to move forward to use it to, to move some of the big infrastructure projects.

Speaker 2: I think the efficiency stuff really builds on things that happened even before Trump was president. But I think on the cumulative impact, the cumulative impact piece, um, [00:09:30] it's interesting because yeah, that, that, that rule has been challenged. So I don't know, perhaps they won't defend it. Um, that would be one way to take care of it. Unlike 2016, at least as of now, we'll have to see what happens in Georgia. Democrats don't have control of Congress. They don't have control of the Senate. So the roll back of a number of late past regulations is they are not going to have the power and ability to do that in the same way. So it's not like they can do that. What you said 180 on a regulatory [00:10:00] basis, they'd have to go through the rule-making process on a lot of things. And we'll come to that when we talk about the environment, but they're not,

at least as of now, we'll have to see what happens in Georgia and to be a lot of money and attention spent there, you know, after the presidential election, as of now, it does not look like anybody should be able to count on a lot of regulatory changes.

Speaker 2: Don't want to shift gears to energy policy. And this is interesting because vice-president Biden. The president elect Biden now, I guess, is, uh, you know, at the last debate he really talked [00:10:30] about, he went kind of full in on, on the democratic line of what's becoming the democratic line on energy policy, which is a transition from fossil fuel dependent to renewable solar, wind, hydro, and nuclear. You know, some people questioned about whether that was going to cost him and I'll leave that to the pundits about whether it hurt him in some of the states, but he did come out on top. Anyway, we'll see if he sticks to that. But I think who knows exactly what he'll do on fossil fuels, but I think regardless, [00:11:00] I think it's a safe bet that renewables are going to have much more favorable treatment in a Biden administration than they have in a Trump administration.

Speaker 2: And one of those areas is off shore where governor Cuomo has really gone all in, in trying to incentivize offshore wind power as a way of getting renewable energy into the needed zones of New York city and downstate and long island, those projects they needed, the federal government regulatory approval, even though leases [00:11:30] had been awarded, there's an extensive, extensive federal permitting that is required for these things and having an administration that supports that endeavor is definitely, I think, an, uh, gonna make the difference on how quickly that moves, because there are complex environmental issues. When you're talking about putting wind farms deep in the Atlantic ocean, what do you think about that SAC?

Speaker 3: There, there are many environmental issues. And one of the great ironies of the Trump administration has been [00:12:00] that while pushing for a faster NEPA review, they've effectively use those environmental issues to hold up approval of, of offshore wind and the, the Bo um, environmental review as solved to a certain extent or expanded in any of them to address issues with the fisheries. But I, I think you will see that move off shore wind is going to be a major part of the Biden [00:12:30] platform. Uh, you know, I think he said in his platform day one, that, uh, he's going to enter into a series of executive orders. And it'll be interesting to see what those executive orders do in terms of big, renewable energy type projects, uh, big solar, offshore, wind, um, other issues. And, you know, it's not entirely clear what the president could do in executive [00:13:00] orders on those issues, but he has made the promise to do it day one. And it's going to be important to keep an eye on what those, what he's doing in those executive orders. And, uh, you know, it'll be interesting to see how those play out. Yeah.

Speaker 2: I mean, again, you'd just see, it's like good news for New York state, what a shock, because the governor has been very all in, you know, very much all in, on offshore wind projects and they haven't moved much. A lot of them haven't even begun. They're [00:13:30] complex NEPA permitting and environmental review processes. And there was a lot of ability to slow those down under an administration that looked upon them as less favorable. So I think there still will be issues, but I don't think there can be any question that it's good news for off shore wind. Good news for governor Cuomo's

energy policy. I think you're going to see the same thing on, on cars. I think you're going to see a more excitement for electric vehicles when it comes to energy storage, alternative fuels is hydrogen, [00:14:00] I think is something that, that New York state is trying to build upon.

Speaker 2: Hydrogen is not really a fuel it's really because you use energy to make it it's really more energy storage. And I think what you're going to see is probably a lot, because that energy storage is critical to dealing with things like a wind and solar, that way you need to store some of this energy for when the wind's not blowing or the sun's not shining. I think you're going to see a lot more emphasis on all of those and federally the center of a lot of that is going to be the federal energy regulatory [00:14:30] commission or FERC. And it'll be interesting to maybe have our Washington DC colleague Howard Nelson, come on and talk about that, but what for can do. And Zach, I know you follow this very closely in your practice. What kind of things are gonna happen at FERC and, and how can they impact us here?

Speaker 3: Well, the first thing that jumps to mind is that it's a little bit more difficult for Biden to, uh, get control of FERC on day one than perhaps some of the other agencies [00:15:00] where he'll have a greater control over, over leadership. He can appoint a new chair when he comes in, uh, and there will be terms expiring in mid 2021 that would give him a majority in FERC. Uh, but I think, you know, when he does get control of, of FERC, you're going to see differences between a Biden led FERC on, you know, issues of how to support renewable [00:15:30] energy and states, uh, fossil fuel pipeline ruling permitting for fossil fuel pipelines, uh, and how to address issues. Like you mentioned, with energy storage and hybrid generation, uh, you know, that's where you may have, uh, uh, combined renewable energy project and energy storage. Those are very, uh, very different, uh, types of energy, putting energy onto the [00:16:00] grid in different ways, whether you're generating it intermittently with wind and solar, which isn't going to produce energy all the time, uh, whereas storage can put energy onto the grid continuously.

Speaker 3: So, you know, those, those have been areas where FERC has said, you know, we need to do something a little bit, a little bit different here and how, how differently you treat energy storage is something that, uh, you know, I think you're going to see did a little [00:16:30] bit more favorably under the Biden administration, distributed energy resources, uh, you know, the potential for looking at carbon pricing, which is something that has been a huge issue in New York. You know, I think you're, you're going to see maybe a bigger push to get something accomplished, uh, at FERC on carbon pricing. So, you know, lots of moving lots of balls in the air, in, in the energy world and FERC, and I'm sure FERC experts could probably do a, a whole separate [00:17:00] podcast on all of those. Yeah,

Speaker 2: Baby, we will do that. I wanted to talk a little bit about carbon pricing because that's an interesting one, a lot of energy advocates, even some major energy companies have talked about carbon pricing. They like it because economically efficient because then just for people who don't know what that would mean, I mean, some people would call it a carbon tax. That's kind of a bad word. And really the idea is to in the energy markets

price, in the cost of fossil fuels, the environmental cost, the impacts on climate [00:17:30] and so that it would make, makes it renewables. It makes it easier for them to compete, even if they are technically more expensive to generate your building, the price of carbon in terms of impacts on the environment. You know, the people think that that rather than doing straight subsidies for renewables, that will be a more market efficient way.

Speaker 2: If one wants to incentivize renewables, New York does not do that right now. Although the recently enacted climate act in New York does require DC to the state [00:18:00] environmental agency, the department of environmental conservation to establish a price of carbon. And it will be interesting if there, now everyone was concerned about whether FERC would even allow carbon pricing to happen with the different FERC. Although this is, as you said, I don't think this is going to happen day one. This is something that's gonna, you know, we're looking at 20 22, 20 23, you might see carbon pricing as a reality, and that could impact New York and how it, how it essentially incentivizes its renewables portfolio [00:18:30] and attempts to achieve its very aggressive, clean energy goals under the climate leadership and protection

Speaker 3: Act. Be really interesting. Steve is, uh, is if Biden is going to support, um, form of a green new deal or green new deal light that mirrors New York, state's aggressive climate and emission goals. And you see that nationwide, uh, you know, that could really, you know, it at Firkin and elsewhere, that could really [00:19:00] be a complete change in terms of energy and environmental policy nationwide. And you really could, you know, it would really, it's going to be fascinating to see how things like carbon pricing and all of those issues play into the play into that. It's going to be challenging for him, uh, to get legislation like that if he doesn't have the Senate and it could be just a, uh, issue for [00:19:30] gridlock more than anything else, but if they are able to accomplish anything on that front, uh, it would be, uh, a major shift in thinking about how all of those issues come together nationwide. Yeah. I mean,

Speaker 2: I think legislatively, I don't think we're going to see a lot. I think he would have to see what, what, what, what a Biden administration could do administratively. Because I mean, even if the Democrats had taken the Senate, they've got some senators who I think would be, would be reluctant to take ahead and given [00:20:00] the politics and the competitiveness of the Senate and even in the house, I think politics is definitely going to rear its ugly head. And I don't think you're going to see the words green new deal. We'll see if you see the words green, new deal ever pass, uh, Joe Biden or Kamala Harris has lips ever.

Speaker 2: They would view that as, as electorally, um, something that, that is in their political interest, but we'll see maybe I'm wrong, but [00:20:30] that's, that's what I think let's just spend the last couple of minutes here on environmental issues. Lot of, lot of kind of rollbacks that gave environmental advocates a lot of agida during the Trump administration. I think people were excited to see rollbacks of the rollbacks. You know, we're talking about regulating methane leaks from pipelines, um, issues on emerging contaminants and water pollution promoting off shore drilling the usual issues, the usual hot button issues in the environment. [00:21:00] I think that again, as we talked

about may not be so easy to quickly roll back. Advocates may be disappointed about how quickly some of these things happen, you know, on those, on that front. We'll have to see, I mean, any thoughts about that, Zach? I mean, I think it's, I think you're going to see some changes, but as our good colleague, Byrne ruffled, always notes from our DC office, the ship of state is large and it moves slowly.

Speaker 3: It is, this is, uh, this is really, you know, turning around [00:21:30] a battleship and, you know, I don't think it's going to happen very quickly. I think the Biden administration and, and its lawyers are going to have to really sharpen their pencils and do some, some drafting and some nitty gritty, uh, rulemaking to turn back some of these rollbacks. So, you know, I think there have been over a hundred, uh, environmental regulations, rules, and, and guidance documents that have been [00:22:00] rolled back. Uh, like you said, they, they include emerging contaminants positions on things like PSOA even offshore drilling and oil exploration in the north and mid Atlantic, you know? So there, there are quite a few rules and regulations that have been rolled back and it is no easy task to go back and, and fix or [00:22:30] go back and roll back the rollbacks. Uh, it's going to take a significant amount of time and this is going to be a multi-year effort in my view.

Speaker 2: Yeah. A grade a grade. So I think for New York, you know, they'll, you'll see some changes there, but nothing instantly. And, but to the extent these things do change. New York state government controlled by the Democrats will likely be a w willingly embrace. A lot of those things, absolutely [00:23:00] annually. You'll see a state and a governor who will have probably very, very good relations and access to the, to this president, given that he was, he was a very early supporter of Joe Biden in this presidential race. You know, last thing is, I think we'll see some more EPA enforcement, you know, you didn't see as much environmental enforcement that's been documented during the Trump administration. New York state environmental enforcement is not dominated by the EPA. It is typically much more dominated by the DEC the state agency. But, [00:23:30] um, again, you might see our friends at region two EPA doing a little bit more enforcement. So I think, especially for industries that are more heavily regulated energy industries and the like who are more heavily regulated by EPA, where EPA has primary authority for enforcement, you definitely may see a little more enforcement actions in or joint enforcement activity with the state occurring under binding ministrations, which should strike, you know, not surprise anybody. I would think.

Speaker 3: Yeah, the, the idea of [00:24:00] a joint, uh, joint enforcement and EPA working a little more closely with the department of environmental conservation, I think is something we're very likely to see. And if you look at Biden's environment platform, front and center is increased enforcement against the regulated industries that, that you were talking about. I agree. I think in, in New York, the primary agency for enforcing environmental regulations is, [00:24:30] is the state. And the regulate, the state regulations tend to be a little more complex and sometimes more stringent than the federal regulations. So it makes sense that there would be more state enforcement, but I, I wouldn't be surprised if we, if we do see more activity out of region two, especially in some of those hot button issues. And, you know, I, wouldn't be surprised to see more action from EPA on, on emerging contaminants and maybe some [00:25:00] more chemical regulations as well. So it'll be interesting to keep an eye on that and, and see if

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there is in fact, an uptick in enforcement, uh, maybe following some of the rollbacks of the rollbacks and, you know, we'll have to, we'll have to see how that plays out in New York state

Speaker 2: It's it's it's it's whiplash. I have to say. It's just, uh, it'll be interesting to see how it goes well on that note, Zach, thank you very much [00:25:30] for sharing your thoughts about, uh, Biden administration and its impact on New York and the environmental and energy and infrastructure arenas. You've been listening to empire environmental. Thanks for listening. Hope you tune in again. [inaudible].