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Practice Update

The Environmental Perspective: U.S. Supreme Court Overturns *Chevron* in Landmark Decision and Limits Federal Agency Powers

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In a much anticipated, landmark decision in *Loper Bright Enterprises et al. v. Raimondo*, the U.S. Supreme Court on June 28, 2024, overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Going forward, in reviewing the legality of federal agency rulemaking, federal courts are no longer required to defer to "permissible" agency interpretations of federal statutes when the statute is ambiguous, silent, or leaves a gap. Instead, federal courts are to decide those cases on their own — without binding deference to the agency's views, although an agency's perspective can still be considered. This is a groundbreaking change in federal administrative law and practice. This Akerman client alert focuses on the effect of the *Loper* decision on federal environmental agency authority and programs.

While *Chevron* was in effect for 40 years and was largely considered a bedrock of federal administrative law, the Court had not relied on *Chevron* since 2016, and in recent years, some justices had stated growing concern. Now that *Chevron* has fallen, the full effect will take some time to unpack as agencies, regulated parties, and stakeholders evaluate the breadth of *Loper*'s impact

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on current and proposed federal rules and on environmental regulatory programs. While *Loper* may lead to some surprising outcomes, the Court's decision signals a major shift in both the development and defense of federal regulations, making it more challenging for agencies to defend where the underlying statute is broadly written or silent. *Loper* will also make it more difficult for agencies to change regulatory positions in the future without congressional authorization.

Earlier *Chevron* Cases

Importantly, *Loper* does "not call into question prior cases that relied on the *Chevron* framework" — nor the holdings of those cases that specific agency actions were lawful, despite the Court's change in "interpretive methodology." The Court stated that mere reliance on *Chevron* in those cases did not justify overruling those holdings. So those decisions stand.

Previous *Chevron* Test and *Loper* Court Analysis

Under the previous two-step *Chevron* doctrine, federal courts were, in the first step, to determine if a federal statute spoke directly to the precise question at issue. If the statute and congressional intent were clear, then the analysis ended and courts were to reject administrative constructions contrary to the clear statutory intent. In the second step, if a federal statute was ambiguous or silent, the court was required to defer to the agency's interpretation if it was "based on a permissible construction of the statute."

In *Loper*, in a 6-3 decision, the Court rejected the *Chevron* approach, concluding that *Chevron* deprived federal courts of their role, including under the federal Administrative Procedure Act (APA), to determine if agencies had acted legally in rulemaking — without tilting the playing field toward the agencies. The *Loper* Court also concluded that

Chevron had become unworkable, subject to numerous caveats and reinterpretations over the years, making it difficult for courts, litigants, agencies, and the public to understand if, whether, and how *Chevron* may apply (if at all). Per *Loper*, courts are to decide "all relevant questions of law" under the federal APA and follow the usual rules of statutory construction and constitutional analysis, but without *Chevron* deference aiding the agencies.

Notably, however, *Loper* did not overturn *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore* deference — which appears to remain good law — federal agency opinions, rulings, and interpretations can be relied on for non-binding guidance, and the weight given to them by a court depends on the thoroughness of the agency's consideration, the validity of the agency's reasoning, and consistency with earlier and later agency pronouncements.

Stare Decisis

In acknowledging the Court had not applied *Chevron* deference in recent cases, the Court found *stare decisis*, which is the doctrine generally governing judicial adherence to precedent, did not require it to uphold *Chevron*.

The Court explained that *stare decisis* is not an "inexorable command." The Court examined *stare decisis* considerations and determined that *Chevron* was "fundamentally misguided," unworkable, flawed, and fostered "unwarranted instability in the law." In overruling *Chevron*, the Court stated that *Chevron* had actually "undermined the very 'rule of law' values that *stare decisis* exists to secure."

Potential Broad Impacts of *Loper*

The impacts of the Court's decision to overrule *Chevron* — and its shift away from federal executive agency deference — are expected to be wide. *Loper* cuts across the vast spectrum of the federal agencies that regulate and administer environmental regulatory and permitting programs.

Absent *Chevron*, federal executive agency authority will be more limited as it relates to the agency's statutory and regulatory interpretations. Time will tell, but the force of federal executive agency regulations that construe and implement statutes is likely to be blunted. In the wake of *Loper*, the U.S. Congress might seek to pass more detailed legislation, or it may look to courts to resolve alleged statutory ambiguities.

Still, *Loper* has the potential to be more nuanced and cut against conventional expectations. For future federal rulemaking — including to withdraw or revise federal rules or regulations or to change policy direction — *Loper* could reduce some of the force of proposed or desired changes that often occur under a new presidential administration. While the analysis can be complex, agencies will not be entitled to *Chevron* deference. That could lead to surprising results, such as leaving existing rules in place.

In his concurring opinion, Justice Neil Gorsuch explained that "under *Chevron,* executive officials can replace one 'reasonable' interpretation with another at any time, all without any change in the law itself. The result: Affected individuals can never be sure of their legal rights and duties." Justice Gorsuch warned that agency staff may change their "mind year-to-year and election-to-election." On this same topic, in the majority opinion, Chief Justice John Roberts noted it is the role of courts to ensure the impartial administration of the laws and that a statute's "best meaning" is discernible by a court using its "full interpretive toolkit," for which courts will now be tasked in a post-*Chevron* world.

Conclusion

Understanding the complex impact of *Loper* will take time. While federal agencies will have less authority in challenged rulemakings, agencies can still receive (non-binding) consideration of their views. Environmental laws and statutes are drafted

in many different ways: some provide more specificity than others; some delegate discrete tasks to agencies. Much of the post-*Loper* analysis will be fact-sensitive and focus on the environmental program and the precise statutory language at issue. Moving forward, if Congress wishes to legislate in an environmental area, it may wish to be more exacting (if possible). In addition, because *Loper* was decided on statutory (and not constitutional) grounds, it is possible for Congress to weigh in and revisit *Loper*. Still, *Loper* has brought about a watershed change in the way federal administrative and environmental law work, and while this day was largely expected, it has now arrived.
