



FIVE WAYS TRUMP CAN IMPROVE ENVIRONMENTAL POLICY

By Ryan M. Yonk

The advent of a new administration in Washington, DC, offers the opportunity to reconsider stale approaches to federal environmental policy and to implement innovative new strategies that would protect our natural surroundings while preserving the institutions vital to the flourishing of our social and economic environment. Such an opening comes at an important time. The Obama administration left office after a prolonged expansion of the regulatory state, promulgating thousands of pages of new permitting requirements, regulations, and anticompetitive statutes and subsidies.

Significant and enduring improvements in federal environmental policy will require comprehensive rather than ad hoc changes, but even modest success in taming the regulatory beast would be a noteworthy achievement. Between those two alternatives sit numerous possible combinations of worthwhile reforms.

Here are five changes the Trump administration should consider to improve environmental policy.

THE CLEAN WATER ACT: CLARIFY AMBIGUOUS DEFINITIONS

The Clean Water Act (CWA) is a blunt tool that imposes huge bureaucratic costs. That may work well enough for large-scale point-source pollution in major waterways, but it drowns smaller clean-up projects in costly paperwork and compliance. Moreover, the original act refers only to “navigable waters,” but that definition has since been abused. The Supreme Court, for example, ruled in *Rapanos v. United States* (2006) that “navigable waters” could include tributaries of navigable rivers or even wetlands adjacent to those rivers. An Environmental Protection Agency (EPA) rule currently under challenge in the courts would allow CWA application even to intrastate pocosins (unnavigable forested bogs).

Merely instructing federal bureaucracies to reintroduce sanity to their definition of “navigable waterways” would restrict CWA to projects for which it has a possibility of doing some good.

THE NATIONAL ENVIRONMENTAL POLICY ACT: END DEATH BY PAPERWORK

The National Environmental Policy Act (NEPA) requires that written Environmental Assessments and Environmental Impact Statements accompany any project proposal that involves federal lands, federal funding, or a federal agency (even if the agency’s role is only to issue a permit). While NEPA requires those documents to be “brief” and “concise,” it also allows third parties to require excessive amounts of additional paperwork.

Not only does the law create wasteful duplication of efforts, because existing assessments of a similar project are inadmissible, but it also mandates full written assessments of *all* policy alternatives thought to have less environmental impact. Therefore, project personnel are required to explain in detail why even clearly unreasonable alternatives are not workable. Consequently, NEPA documents can run hundreds or even thousands of pages long, increasing costs and threatening project completion by extending timelines beyond reason. By 2012, federal agencies required on average 4.6 years to complete an Environmental Impact Statement, according to a study cited by the Government Accountability Office.

Simplifying the assessment process would substantially improve the implementation of environmental policy.

THE ENDANGERED SPECIES ACT: CARROTS, NOT STICKS

The Endangered Species Act (ESA) substantially restricts the actions of private landowners whose land is habitat for such species. While this policy may seem great on paper, it gives landowners incentives to prevent their land from becoming recognized as such habitat in the first place. Instead of a stick, the ESA should be turned into a carrot.

One approach would be to require the agency to establish a stewardship incentives program or biodiversity trust that rewards beneficial land ownership. Another would be to give property owners tax credits for habitat maintenance or improvement. Such policies would align the incentives of landowners with the well-being of endangered species.

If environmental policy rewarded the owners of land having endangered species, instead of penalizing them, then new political dynamics would emerge. Federal agents calling on such landowners would be viewed as potential friends rather than enemies. Habitat protection would proceed on a local level rather than under edicts from Washington, DC.

THE CLEAN AIR ACT: BETTER METHODS, MORE TRANSPARENCY

Section 321(a) of the Clean Air Act (CAA) requires the EPA to monitor the potential impact of CAA regulations on employment. Unfortunately, this provision has been unsuccessful. Current protocols for these evaluations are myopic. Among other issues, they overlook the cumulative impact that regulatory changes (and related uncertainties) can have across the broader economy.

Also, agency studies undertaken to support CAA policies often fail to include the data or specify the methods used to reach the published conclusions. That failure alone makes impartial review of CAA findings impossible, running counter to principles of government transparency and academic legitimacy. Requiring transparency is paramount to crafting good environmental policy, and should be at the forefront of any regulatory reform.

Mandating better methods and better transparency would promote a high-priority goal: Regulators should be required to provide the public with rigorous assessments of the social and economic dimensions of their actions as well as studies of the environmental impacts.

THE ENERGY POLICY ACT: UNPLUG WASTEFUL SUBSIDIES

The Energy Policy Act could be greatly improved by ending its subsidies for a numerous energy industry players. Subsidies require recipients to pursue goals in prescribed ways and discourage innovations that might pass the market test. Further, subsidies open opportunities for cronyism and “subsidy farming” by established companies eager to reduce competition from new rivals.

One program especially suitable for termination is the Renewable Fuel Standard (RFS), which requires ethanol to be mixed into domestic fuel. Its environmental benefits are so miniscule that even the advocacy coalition that supported it has dried up. The RFS acts as a subsidy for just a few large agricultural and ethanol-refining corporations. Everybody else—even, as my colleagues and I have shown, small Midwestern communities that produce corn ethanol—loses.

There’s much more to be done, but these five changes would be excellent starting points. Meaningful reforms would be more likely, of course, if the public better understood the roots of failure in environmental policymaking. Discussion of those factors is beyond the scope of this Executive Summary, but the underlying truths are encapsulated in the following principles, taken from the concluding chapter of *Nature Unbound: Bureaucracy vs. the Environment*:

- Powerful political forces are invested in existing legislation and regulation.
- Making political changes will require extensive and intensive political entrepreneurship.
- Marginal changes are more possible than wholesale changes.
- Decentralizing environmental regulation is more effective than centralizing it. That is, fifty competing answers (i.e., policymaking by the states) are better than one, especially since no one knows which is the right answer.

Reformers who keep these principles in mind can help ensure that environmental policy will be made more pragmatic, effective, and intellectually honest.

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