The Bush Record on the Environment: What a Difference Two Years Make

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When George W. Bush took office in 2001, many environmental groups expected a president less environmentally friendly than his predecessor. Few, however, anticipated what has resulted—a hard-right, ideological environmental policy that has consistently favored private interests over protection of the environment. Although the Bush Administration has proposed a few environmentally positive initiatives—new regulations addressing diesel emissions from construction, farm, and other off-road vehicles; and the adherence to a controversial Clinton Administration plan for dredging toxic PCBs from the Hudson River—these initiatives have been far overshadowed by the efforts to weaken or roll back environmental protections.
Ignoring Global Warming

There is a strong scientific consensus that global warming is occurring and that much of the warming can be attributed to human activities. The ‘90s were the warmest decade on record; 1998 was the warmest year ever, and 2002 was the second warmest year. Rising temperatures raise the possibility of catastrophic effects, including severe floods, storms, fires, drought, glacial melting, increases in sea levels, and reductions in biodiversity in various parts of the world.

The primary cause of global warming is the emission of “greenhouse gases.” The United States, with five percent of the world’s population, currently produces a quarter of the world’s emissions of greenhouse gases.

In 1997, the nations of the world, including the United States, negotiated the Kyoto Protocol, which calls for reductions in the greenhouse gases emitted by industrialized nations to a level approximately five percent below their 1990 emissions (seven percent for the United States). In early 2001, the Bush Administration abruptly announced that the United States was withdrawing from the Kyoto Protocol. Other industrialized nations, however, have agreed to implement the treaty, and it appears likely that enough will sign for the treaty to go into effect, leaving the United States essentially sitting alone on the sidelines.

The Bush Administration has been promoting voluntary industry efforts in lieu of compliance with the Kyoto Protocol, but they fall far short of the reductions envisioned by Kyoto. The president also abandoned a pledge he had made during the presidential campaign to regulate carbon dioxide emissions, a major contributor to global warming.

More Flexible Air Quality Rules = More Pollution

A central provision of the Clean Air Act since 1977 has been the “new source review” (NSR) program. NSR requires that new or modified sources that increase their emissions install stringent pollution-control equipment. The EPA has proposed relaxing NSR’s requirements such that it would cover 50% fewer cases than at present. State and local pollution agencies complained that the changes “go beyond even what industry requested,” and will “result in unchecked emission increases that will degrade our air quality and endanger public health.”

In a related vein, the EPA has proposed enlarging NSR exemptions for “routine maintenance” and repair operations.

(continued on page 6)
These revisions would, for example, allow a facility to completely rebuild an old boiler with new parts, extend the life of the plant by another 35 to 40 years, and increase its pollution by tens of thousands of tons—but not be required to install new pollution-control devices.

The Bush Administration has also proposed a so-called “cap and trade” for regulating power plant emissions of sulfur dioxide, nitrogen dioxide, and mercury. Such market-based approaches, which allow facilities to choose the way they meet emissions caps imposed on them and sell excess credits to other facilities, can, if designed appropriately, reduce emissions in a more cost-effective manner than traditional regulation. According to environmental groups, however, the Clear Skies program will result—based on EPA’s own data—in significantly higher levels of emissions for at least the next 10 to 15 years.

**Water Quality: “Got Arsenic?” and Other Issues**

One of the Bush Administration’s most unpopular actions was its delay in imposing a stricter arsenic standard under the Safe Drinking Water Act. The existing standard of 50 parts per billion (ppb) was based on a level first recommended in 1943, before arsenic was known to cause cancer. The Clinton Administration proposed a new limit of 10 ppb, but under heavy pressure from the mining industry, President Bush delayed the rule. About six months later, and only after extensive public outcry, the EPA finally set the standard at 10 ppb.

The EPA also reversed a Clinton Administration rule that makes it illegal for companies to dump mining waste into waterways and wetlands. The Bush Administration maintained that this change was needed to save West Virginia’s coal industry from shutting down; environmental groups argue that permitting such discharges makes the already destructive practice of “mountaintop mining”—which involves blasting off the top of mountains for coal—even worse by allowing mining waste to clog up streams and rivers, destroy wildlife and habitat, and contribute to flash flooding.

**Selective Federalism**

President Bush came to office pledging greater flexibility for state governments in carrying out federal environmental regulatory.
programs. But where leeway for the states means more protective regulation, he has shown no hesitation in overriding state interests.

One salient example is the NSR regulation discussed above. The Clean Air Act (CAA) explicitly allows states to adopt programs that are more stringent than those of the federal government. The Bush Administration's NSR rule, while weaker than current law in California and other states, nonetheless makes it mandatory for states to follow the federal approach, absent narrow exceptions. As the South Coast Air Quality Management District dryly noted, the EPA “has wholly failed to prove its thesis ... that making the rules less stringent would actually make them more stringent.”

The CAA also allows California to adopt emission controls on cars that are stricter than federal requirements. In the '90s, California adopted rules requiring that a small percentage of the cars sold in the state be electric cars. The automobile industry challenged the requirement, and in an unprecedented move, the Bush Administration sided with the industry, arguing that the state was barred from adopting more protective standards. The case is currently pending in the Ninth Circuit.

Public Lands: These Lands Are Our Lands—to Develop!

One area in which the executive branch has great discretion is the management of federal public lands, including national parks, monuments, and forests. The Bush Administration's management of public lands thus far includes greater resource extraction, greater accommodation of development interests, and fewer environmental protections. The following are a few examples of this management approach. (For those interested in more detail about some of these issues, the Golden Gate University Law Review has just published a symposium issue examining the Bush Administration's policy on wilderness and wildlife, titled Wild Ideas: George W. Bush on Wilderness and Wildlife. The law school will host a conference on this topic on October 4.)

In 2000, President Clinton established the Giant Sequoia National Monument in the Southern Sierra, which includes in its protected groves some of the largest and oldest organisms on earth (including trees as old as 2000 years). The Bush Administration has proposed a management plan that contemplates commercial logging in the Giant Sequoia Groves, including the cutting of 100-year-old sequoias, road building, and related activities.

In late 2000, the Clinton Administration modernized regulations governing hard rock mining on public lands to address the impacts of environmentally destructive mining techniques. A year later, the Bush Administration revised and greatly weakened the rules.

More than 1,000 snowmobiles enter Yellowstone National Park every day in the winter. The pollution gathers at the line to buy park passes, creating a “tunnel of fumes,” according to a Yellowstone park ranger. The Bush Administration's solution? Respirators. Reversing a three-year phase-out of snowmobiles in Yellowstone and Grand Teton National Parks ordered by the National Park Service under the Clinton Administration, the Bush Administration handed out respirators to park rangers to protect them from the fumes. The ban would have eliminated all snowmobile use in the parks by 2003–04. The Bush administration reversed the ban, merely requiring cleaner, quieter engines and allowing an increase in snowmobile use.

Devastating forest fires swept across the west in the summer of 2002. The Bush Administration blamed environmentalists' appeals and litigation for delaying wildfire prevention projects which would have prevented the fires. Its “Healthy Forests Initiative” would exempt 10 million acres of federal forest land from environmental review. Under the plan, the Forest Service can initiate “thinning” projects without compliance with NEPA if they are, according to the Forest Service, not likely to harm the environment. The plan provides loopholes that allow the timber industry to log mid-sized and large trees as well as the small trees and brush that actually increase the risks of wildfire.

In April 2003, the Department of the Interior announced that it was halting efforts to consider any new lands in the western states for possible wilderness protection, and that it was opening up for development 3 million acres of red rock canyons and other areas in Utah that the Clinton Administration had recommended be protected as wilderness.

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Drilling in the Arctic National Wildlife Refuge

Home to nearly 200 animal species, including the Porcupine River caribou herd, polar bears, musk oxen, and snow geese, the 1.5 million acres of the coastal plain of the Arctic National Wildlife Refuge (ANWR) is often referred to as “Alaska’s . . .

(continued on page 10)
As a centerpiece of its energy policy, however, the Bush Administration has proposed opening up ANWR to oil exploration and drilling. In making this recommendation, the Administration chose to ignore a study by the US Geological Survey (USGS), which found that drilling would affect wildlife in the area and present a particular threat to the Porcupine River caribou herd, which uses the coastal plain as a calving ground. The herd is also the primary source of sustenance for the indigenous Gwich’in people.

Drilling in the ANWR would do little to decrease American dependence on foreign oil. The Bush Administration estimates that the refuge contains up to 16.5 billion gallons of recoverable oil; the USGS figures are 3.2 billion barrels. At our current rate of oil consumption (7.1 billion barrels a year), ANWR could provide us with at most a two-year supply of oil (Bush estimate) and more likely a six-month supply (USGS estimate) of oil. In March 2003, the Senate narrowly defeated (by a vote of 52–48) a proposal to open ANWR to drilling as part of its consideration of the budget, but the proposal will come up again as part of energy legislation and other initiatives.

Weakening Efficiency Standards

At the same time that it is promoting drilling in ANWR, the Bush Administration has given short shrift to conservation and renewable energy sources. The Administration has proposed raising the fuel economy standard for SUVs and light trucks a paltry 1.5 miles per gallon over the next five years and to leave passenger car fuel economy standards unchanged. The National Academy of Sciences has reported that fuel economy standards could be raised by more than ten times the amount proposed by the Administration.

The Bush Administration also withdrew an Energy Department rule issued by the Clinton Administration increasing energy efficiency standards for air conditioners and central pumps, replacing it with standards that require one-third less efficiency than the initial rules.

Putting the Military above the Law

Military installations have long been some of the worst polluters in the country. Nonetheless, the Pentagon is moving forward with new plans to ask Congress to exempt the military from complying with environmental laws on military bases. (A similar proposal was defeated in Congress last year.)

There is little, if any, evidence that such a waiver is needed. Last year, the General Accounting Office found no evidence that military preparedness had been significantly affected by environmental regulations. Moreover, most environmental laws already allow the Secretary of Defense to exempt the military from environmental laws, if doing so is necessary for national security.

A Questionable Future

Since 2001, the Bush Administration has embarked on an aggressive policy of weakening environmental protections and opening up public lands to development. Senator James M. Jeffords, the Vermont independent who until recently was the chairman of the Senate Committee on Environment and Public Works, has said, “Across the board, we would be better off doing nothing than doing what the Bush Administration wants to do, which will make things worse than they already are.”

Emboldened by the 2002 Congressional elections and President Bush’s popularity, the Administration’s attacks on the environment have intensified in recent months. Whether the public’s strong concern about environmental issues will be sufficient to turn back these assaults in the days ahead is very much an open question.

Rebecca Robbins provided excellent research assistance on this article.

Clifford Rechtschaffen has been a professor of law at Golden Gate since 1993, where he teaches a variety of environmental law (and civil procedure) courses. He is the author of two recent books on environmental law, Reinventing Environmental Regulation and the State/Federal Relationship and Environmental Justice: Law, Regulation and Policy. He is also a member of the Center for Progressive Regulation.