

## WHERE ARE WE ON ENVIRONMENTAL REGULATION UNDER TRUMP?

By Alice Loyd

Every environmental regulation that exists in law or policy came into being because people valued the health of humans and the planet above other considerations. Most of the rules were hard-won—the result of years of advocacy, and sometimes blood and tears. Probably none has ever received unanimous support before or after it was put in place, and usually the strongest objections to regulation have been economic. To embrace without resentment an inconvenient or costly way of conducting business, thoughtful people have to believe that some things are so important they can't be ignored or damaged for the sake of their companies' jobs or profits in the near term.

Needless to say, we now live in a time when the thoughtful people who fought for limitations on how businesses can do business are not in power. The other side, the side that prioritizes economic advantage, is in ascendance at the moment, and it has found a strong voice to express its values. In a May 2016 campaign speech in Bismarck, North Dakota, that voice said, "A Trump administration will focus on real environmental challenges, not the phony ones we've been looking at." The speech classified climate change, species preservation, conservation of public lands, and safety regulations to protect the environment as phony issues when they restricted rapid development of fossil fuel production and "killed" jobs ([time.com](http://time.com)).

Donald Trump made his ambitions clear. Elsewhere in his campaign he said, "Under my presidency, we will accomplish a complete American energy independence. Complete. Complete" ([politifact.com](http://politifact.com)). To do this he vowed to cancel the Paris climate agreement and all funding for domestic and foreign climate change programs. To restore the coal industry he said he would rescind the Obama-era regulations to curb carbon emissions from coal-fired power plants. He also promised to lift the restrictions on the Keystone XL pipeline to increase the flow of petroleum from Canada's tar sands. He promised to rescind Obama-era fracking rules and to lift restrictions on where offshore drilling may occur and loosen offshore drilling safety regulations. With respect to the Environmental Protection Agency (EPA), he said, "We are going to get rid of it in almost every form" ([time.com](http://time.com)).

He won the 2016 presidential election and a like-minded Republican majority won the 2016 Congressional election as well. Together the executive and legislative branches of the US government began to roll back environmental laws and policies they saw as being harmful to business.

This article points out the threads of environmental regulation that have been attacked during the first seventeen months of Republican dominance under Trump's leadership. Some things the president can do quickly, such as reverse Executive Orders (especially, in Trump's case, Obama's Executive Orders), and administration officials can enact policies that inhibit enforcement of established regulations. Readers will see, however, that established regulations cannot simply be abolished. A long process is involved, and this process can be stalled or

stymied by legal proceedings and intervening political considerations. Just as they took a long time to install, they will take a long time and a good bit of effort to remove.

Congress began by addressing the rules that had been issued toward the end of the Obama administration that were in its power to undo under the Congressional Review Act through a joint Congressional resolution with the approval of the President.<sup>1</sup> On February 16, 2017, a joint resolution of Congress revoked the “Stream Protection Rule” of the US Department of the Interior, which had been finalized shortly before President Obama left office. The Rule had [placed stricter restrictions](#) on dumping mining waste into surrounding waterways ([cnn.com](#)). On March 2, 2017, EPA withdrew a request for more detailed information on oil and natural-gas facilities, which the Obama administration had finalized on November 10, 2016. Oil and gas facilities are the country’s largest industrial emitters of methane, and the goal of the request was to better track the industry’s methane and volatile organic compound (VOC) emissions ([seattletimes.com](#)). March 2, 2017, was also the day Interior Secretary Ryan Zinke rescinded an Obama-era prohibition against using lead ammunition on federal lands and waters, which the Obama Administration’s Fish and Wildlife Service had issued the day before Trump’s inauguration ([reuters.com](#)).

Not so easily achieved has been the intended rollback of the auto fuel efficiency requirement, the Corporate Average Fuel Economy (CAFE) standards. On January 12, 2017, the Obama EPA had attempted to lock in rules requiring light-duty vehicles with model years between 2022 and 2025 to have average fuel efficiencies of 54.5 miles per gallon by 2025. On March 15, 2017, EPA Administrator Scott Pruitt and Secretary of Transportation Elaine Chao announced the EPA would reconsider the Obama-era emissions requirements. More than a year later, on April 2, 2018, Pruitt announced he was beginning the process. The announcement included an EPA statement that it is still considering the status of California’s waiver to set its own standards. California officials have vowed to sue in order to preserve the power of states to address climate change with stringent emissions guidelines. Twelve other states have enacted clean-car

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<sup>1</sup> The Congressional Review Act . . . Congress to review, by means of an expedited legislative process, new federal regulations issued by government agencies and, by passage of a joint resolution, to overrule a regulation. Once a rule is thus repealed, the CRA also prohibits the reissuing of the rule in substantially the same form or the issuing of a new rule that is substantially the same “unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”

Prior to 2017, the CRA had only been successfully invoked once to overturn a rule [in 2001]. In January 2017, however, with a new Republican president (Donald Trump), the Republican-controlled 115th Congress began passing a series of disapproval resolutions to overturn a variety of rules issued under the Obama administration. Ultimately, fourteen such resolutions repealing Obama administration rules were passed and signed into law . . . . Because of the shortness of legislative sessions during the 114th Congress, the 115th Congress was able to target rules issued by the Obama administration as far back as May 2016.

Wikipedia contributors, “Congressional Review Act,” *Wikipedia, The Free Encyclopedia*, [https://en.wikipedia.org/w/index.php?title=Congressional\\_Review\\_Act&oldid=846138460](https://en.wikipedia.org/w/index.php?title=Congressional_Review_Act&oldid=846138460) (accessed June 19, 2018) (citations omitted).

rules similar to California's, and resistance to federal interference in this area is sure to produce legal as well as political opposition ([washingtonpost.com](http://www.washingtonpost.com)).

The EPA's Clean Power Plan, also a longstanding annoyance to corporations, is also a rollback drawing resistance and legal fire. On March 28, 2017 President Trump signed an [executive order](#) that begins the process of rescinding the Obama-era regulation designed to reduce carbon dioxide emissions from new and existing power plants. The order also called for steps to downplay the future costs of carbon emissions, walk back tracking of the federal government's carbon emissions, rescind a 2016 moratorium on coal leases on federal lands, and strike down Obama-era executive orders and memoranda aimed at helping the country prepare for climate change's worst impacts, including threats to national security. The EPA's unified agenda states EPA will publish a notice of proposed rulemaking this month if a review of public comments on the initial advance notice finds replacing the rule is appropriate. That would leave just five or six months to come up with a proposed rule, review public comments, and develop a final rule. Meanwhile, EPA's agenda puts a final Clean Power Plan repeal date in October 2018 ([scientificamerican.com](http://www.scientificamerican.com)).

One regulation that fell under the jurisdiction of EPA to control concerns the chemical chlorpyrifos. On April 5, 2017, EPA formally denied a petition to strengthen that regulation, which had a long history of advocacy within the department, in Congress, and in the courts. EPA was required by the Food Quality Protection Act of 1996 to reassess risk for nearly 10,000 pesticides using new factors. Eventually 4,000 assessments were revoked or modified, including the assessment for chlorpyrifos, which had been finalized in 2006. In 2007 several environmental groups petitioned EPA to "revoke all tolerances (allowing certain uses with certain amounts of damage) and cancel all registrations for the pesticide chlorpyrifos." In 2015, after agency delay and a lawsuit asking the court to require a response, the court set a March 31, 2017, deadline for a decision on the petition. EPA administrator Scott Pruitt rejected the petition on March 29, and EPA's formal denial included the statement that it would delay action on chlorpyrifos until the statutory deadline for reassessment, October 1, 2022, had passed ([harvard.edu](http://www.harvard.edu)).

An executive order issued on April 26, 2017, by President Trump called for review of as many as forty national monuments protected under the Antiquities Act of 1906, and on June 12, 2017 Interior Secretary Ryan Zinke recommended that Bears Ears National Monument in southern Utah's red rock country be shrunk to a much smaller area. On December 8, 2017, Trump announced an 85% reduction in size of that monument. Soon after the announcement, five Native American tribes, arguing that Mr. Trump was "attempting to, in effect, abolish the Bears Ears National Monument, sued the Trump administration." Several more lawsuits have since been filed by conservation, historical, and outdoor industry groups ([nytimes.com](http://www.nytimes.com)).

Another executive order issued on April 28, 2017, directed Secretary Zinke to review a five-year plan in which President Obama banned drilling in parts of the Pacific, Arctic, and Atlantic Oceans. Zinke told reporters the process would be long and complex since not all areas have oil or gas, and not all coastal communities want offshore drilling ([washingtonpost.com](http://www.washingtonpost.com)). Indeed, in

states where offshore drilling doesn't already exist, governors of both parties in every state except Maine have expressed opposition to opening their coastlines to the oil and gas industry. Florida Gov. Rick Scott, a Republican, met privately with Zinke and announced in January 2018 the state would be exempt from the plan. (Pundits speculated that the reason was to give Rick Scott a boost in his expected campaign to unseat Democratic Senator Bill Nelson ([vox.com](http://www.vox.com))). Other governors then asked for similar exemptions ([politico.com](http://www.politico.com)). In April 2018 Zinke told Congress he would scale back the offshore plan, but he made no promises about exemption. On June 14, 2018, Republicans on the House Natural Resources Committee put forward a proposal to impose sizable fees on any state that disapproves drilling on more than 50% of the oil-and-gas lease blocks off its coast ([washingtonpost.com](http://www.washingtonpost.com)). For now the Obama administration's drilling bans will remain in place.

Summer 2017 saw movement toward deregulation in several areas. In June Secretary Zinke ordered a review of an Obama administration conservation plan to protect the greater sage grouse to determine if that plan interferes with Trump administration efforts to increase energy production on federal lands. In August, following a 60-day review, the Secretary announced that certain aspects of the conservation plan would be relaxed. When public comment periods, new proposals and legal challenges are taken into account, rewriting the plan could extend beyond President Trump's initial term. In August the fisheries division of the National Oceanic and Atmospheric Administration (NOAA) cancelled a rule that would have helped prevent endangered whales and sea turtles from becoming entangled in fishing nets off the US west coast. In the same month NOAA also disbanded a federal advisory panel for the National Climate Assessment. The 15-member group was created in 2015 to help businesses and state and local governments understand and prepare for the government's next National Climate Assessment. The report, which is due in 2018, is expected to be issued as required by law. In another August development, President Trump signed an executive order revoking federal flood-risk standards that required taking into account sea level rise predicted by climate science. These standards were established by Executive Order 13690, signed by President Obama on January 30, 2015. Also in August the Interior Department's Office of Surface Mining Reclamation and Enforcement suspended a study of health risks to residents who live near mountaintop removal coal mine sites in the Appalachian Mountains ([nationalgeographic.com](http://www.nationalgeographic.com)).

In October 2017 the Interior Department announced it would open all available unleased areas within the Gulf of Mexico for oil and gas leases in an auction to be held in August 2018. Interior's Bureau of Ocean Energy Management estimates the Gulf of Mexico's Outer Continental Shelf contains 48 billion barrels of recoverable oil and 141 trillion cubic feet of natural gas. The auction will include 77 million acres of federal waters off Texas, Louisiana, Mississippi, Alabama, and Florida ([kallanishenergy.com](http://www.kallanishenergy.com)).

In December 2017 the Trump administration eliminated climate change from a list of national security threats. The new National Security Strategy will emphasize the importance of balancing energy security with economic development and environmental protection. In the words of the document, "U.S. leadership is indispensable to countering an anti-growth, energy agenda that is detrimental to US economic and energy security interests." Climate change will only be a factor

as it relates to global energy policy ([thefederalist.com](http://thefederalist.com)). Also in December the Department of the Interior reversed interpretation of a hundred-years-old law, the Migratory Bird Treaty Act (MBTA), that prohibits harming protected species and had been viewed as forbidding “incidental takes”—the accidental yet foreseeable deaths of birds from industrial activity. But the phrase itself does not appear in the law, and through the years, some US courts have questioned whether the MBTA really does cover incidental takes ([law.com](http://law.com)).

EPA began the year 2018 by loosening regulations on toxic air pollution. In a brief legal memo, the agency has dropped “once in, always in” (OIAI), a Clinton-era EPA policy that aimed to lock in reductions of hazardous air pollution from industrial sources. A perhaps over-simplified explanation of the highly technical factors involved might be this: companies regulated as major hazardous air pollution (HAP) sources who have fallen below the major source thresholds may obtain a permit amendment that will allow cutting back on recordkeeping, reporting, and, in some cases, operational or emissions limitations that were required under the EPA’s former OIAI policy ([freshlawblog.com](http://freshlawblog.com)).

In March 2018 the US Federal Emergency Management Agency (FEMA) removed “climate change” and associated verbiage from its strategic plan. Instead the plan refers to “rising natural hazard risk,” which could include human-caused climate change, and states, “Additionally, we will consider new pathways to long-term disaster risk reduction, including increased investments in pre-disaster mitigation.” The section “Emerging Threats” cites cybersecurity and terrorism but not global warming, rising sea levels, or extreme weather events ([npr.org](http://npr.org)).

On May 15, 2018 the White House and Congress acted to end NASA’s \$10 million per year Carbon Monitoring System (CMS). The program was not in Trump’s budget and was not among the NASA functions Congress included in its budget over White House objections. The CMS complements other NASA carbon monitoring work by taking Earth science observations and doing research with them that improves understanding of how carbon flows through land, biosphere, waterbodies, ocean, and atmosphere. ([blog.ucsusa.org](http://blog.ucsusa.org)).

And the topic of carbon monitoring brings us to the most prominent rollback of all—as stated in headlines around the world on June 1, 2017: “Trump Pulls the United States out of the Paris Climate Agreement.” Withdrawal from the global pact will take almost four years—perhaps leaving the final decision to the winner of the 2020 presidential race. Even so, Trump has already stopped implementing US Paris accord pledges, including contributions to the Green Climate Fund to help developing countries deal with the effects of climate change. An analysis by [Climate Action Tracker](http://ClimateActionTracker), a consortium of researchers, estimates that, 2030 if Trump succeeds at rolling back Obama’s climate policies, US emissions would increase by 400 million tonnes of carbon dioxide by 2030. Nevertheless, the United States remains a party to the United Nations Framework Convention on Climate Change (UNFCCC), the foundational agreement under which the Paris accord was negotiated. This means that, even though the United States has withdrawn from the Paris accord, it is likely to continue to participate to some degree in

international climate talks, just as it did when former President George W. Bush pulled out of another global climate pact, the 1997 Kyoto Protocol ([nature.com](#)).

What else? Several sources have reviewed the status of regulation under Trump at the end of 2017. See [How many regulations has Trump actually killed?](#); [Trump boasts of bringing a 'screeching' halt to growth of regulations](#); and [Trump quick to pursue deregulation in first year](#). For a summary of administration actions regarding environmental issues, see National Geographic's [A running list of how Trump is changing the environment](#).