Blue Book

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***Resolved: That the United States Federal Government should significantly reform its environmental policy.***

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NOT EASY BEING GREEN: THE CASE FOR FREE MARKET ALTERNATIVE ENERGY

by Jared Rixstine

As then Presidential hopeful Barack Obama was campaigning in 2008, he promised to pursue “green” technology. He talked about wind farms, clean coal, and increasing funding for the research and development of these “alternative energies.” These are all based on the false assumption that government can manage the economy better than the private sector. Recognizing this as folly, my partner and I stand Resolved: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1: Definitions and Overview

**United States Federal Government** – “Federal Government means all entities of the Government of the United States” - US Code of Federal Regulations, Title 5, Chapter 1, Part 531, Sub- part b, 531.203 – Definitions

**Significantly:** “Having or likely to have influence or effect” – important” *– Merriam-Webster Online Dictionary*

**Reform:** “to put or change into an improved form or condition” – *Merriam-Webster Online Dictionary*

Environmental Policy

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.

The affirmative team will be presenting a Comparative Advantage Case with the goal of achieving Net Benefits over the Status Quo. When deciding who to vote for at the end of today’s round, remember: whichever team shows the most net benefits warrants a ballot in their favor…

OBSERVATION 2: Status Quo alternative energy policies are not going to work. We see this in 3 subpoints:

1. Clean Coal isn’t clean

A. Obama wants Clean Coal. Explaining his agenda on his Presidential transition website, Pres. Obama said in January 2009 that he would [quote] “develop and deploy clean coal technology”

President Barack Obama January, 2009 “Energy Agenda” from The Office of the President Elect’s website, the Presidential Transition Project (Throughout the Presidential Transition Project, this website will be your source for the latest news, events, and announcements so that you can follow the setting up of the Obama Administration.) <http://change.gov/agenda/energy_and_environment_agenda/>

* + “Create Millions of New Green Jobs
  + Ensure 10 percent of Our Electricity Comes from Renewable Sources by 2012, and 25 percent by 2025.
  + Deploy the Cheapest, Cleanest, Fastest Energy Source – Energy Efficiency.
  + Weatherize One Million Homes Annually.
  + Develop and Deploy Clean Coal Technology”

But realize B. Clean Coal isn’t clean

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html> (brackets added)

CCS [Carbon Capture & Sequestration] is a waste of both money and energy. CCS will increase the power needs of a typical coal plant by 10% to 40% -- meaning that 10% to 40% more coal must be mined, transported, and burned, producing 10% to 40% more wastes that must be managed. The destructive effects of coal mining are legion. Mine wastes present enormous long-term problems for current and future generations, and these costs are typically "externalized"—meaning passed along to the public and to our children.

2. Gone with the Wind

A. The Dept. of Energy is chasing the wind

US Department of Energy , 6 May 2009, “DOE Selects 53 new Projects Focused on Wind Energy for up to $8.5 Million” [www.energy.gov/news2009/7381.htm](http://www.energy.gov/news2009/7381.htm)

U.S. Department of Energy (DOE) Secretary Steven Chu today announced selection of 53 new wind energy projects for up to $8.5 million in total DOE funding. These projects will help begin to address market and deployment challenges identified in DOE’s 2008 report: “20% Wind Energy by 2030.” Increasing wind energy generation will be a critical factor in achieving the Obama Administration’s goals for clean energy, while also supporting new green jobs. Secretary Chu made the announcement by video at the WindPower 2009 Conference in Chicago this week.

B. Wind power is expensive and inefficient

Global Subsidies Initiative (A collaborative effort of International Institute for Sustainable Development and the Earth Council, the Van Lennep Program focused on four sectors in its initial phase: energy, road transport, water and agriculture. The GSI receives core funding from four governments: the Government of Denmark, the Government of The Netherlands, the Government of New Zealand, and the Government of Sweden. The William and Flora Hewlett Foundation also provides funding) 2008 “Wind farms Criticized as costly and inefficient in report by renewable energy group” [www.globalsubsidies.org/en/subsidy-watch/studies/wind-farms-criticized-costly-inefficient-report-renewable-energy-group](http://www.globalsubsidies.org/en/subsidy-watch/studies/wind-farms-criticized-costly-inefficient-report-renewable-energy-group)

Wind farms are an expensive and inefficient way of generating sustainable energy, according to a study from Germany, the world's leading producer of wind energy.

3. Ethanol fuels hunger and starves the environment

A. Government intervention drives ethanol and backfires on the environment

Frances B. Smith ( Adjunct Fellow with the Competitive Enterprise Institute; former member of US Trade Representative’s Trade and Environmental Policy Advisory Committee) 5 Nov 2007 “Federal Ethanol Mandates Will Plow Us All Under,” Competitive Enterprise Institute, <http://cei.org/gencon/019,06243.cfm>

But the incentives for farmers to expand their corn acreage are there in the form of mandates and subsidies, which may lead to Conservation Reserve lands being converted to corn and other biomass production, or the use of more marginal land with attendant environmental problems resulting from soil erosion, more fertilizer use, more runoff, plus greater water use and water quality issues. There is a role for biofuels in the mix of energy sources. But government intervention, through mandates, subsidies and import tariffs, distorts the market by betting taxpayers’ money on winners before they’ve been tested in the marketplace. Ethanol is a case study in the unintended consequences of such a bet.

B. Ethanol leads to global poverty and food insecurity

Prof. C. Ford Runge (Professor of Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the Univ of Minnesota) and Prof. Benjamin Senauer (Professor of Applied Economics and Co-director of the Food Industry Center at Univ of Minnesota.) May/June 2007 “How Biofuels Could Starve the Poor” Foreign Affairs Magazine [www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor](http://www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor) [Brackets Added]

Wheat and rice prices have also surged to decade highs, because even as those grains are increasingly being used as substitutes for corn, farmers are planting more acres with corn and fewer acres with other crops. This [increase in prices of corn and wheat] might sound like nirvana to corn producers, but it is hardly that for consumers, especially in poor developing countries, who will be hit with a double shock if both food prices and oil prices stay high. The World Bank has estimated that in 2001, 2.7 billion people in the world were living on the equivalent of less than $2 a day; to them, even marginal increases in the cost of staple grains could be devastating. Filling the 25-gallon tank of an SUV with pure ethanol requires over 450 pounds of corn -- which contains enough calories to feed one person for a year. By putting pressure on global supplies of edible crops, the surge in ethanol production will translate into higher prices for both processed and staple foods around the world. Biofuels have tied oil and food prices together in ways that could profoundly upset the relationships between food producers, consumers, and nations in the years ahead, with potentially devastating implications for both global poverty and food security.

OBSERVATION 4: We offer The Plan

**Agency:** Congress will vote to enact our mandates.

**Mandates:**

1. All alternative and renewable energy programs funded by the federal government will be permanently de-funded.

2. All federal ethanol mandates and subsidies are canceled.

**Funding:** This plan reduces federal spending.

**Enforcement:** Comes from the Department of Energy and any other necessary federal agencies.

**Timeline:** This plan will take effect immediately upon an Affirmative ballot.

**The affirmative team reserves the right to further explain this plan as needed throughout the round.**

Observation 5: Plan Advocate: Free markets are the answer

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) December 8, 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 (brackets added) [www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm](http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm)

But you [President Elect Barack Obama] should not undercut these goals by shackling energy with costly restrictions and mandates, which have long been a regrettable Washington tradition; nor should you apply this problematic approach to global warming. A truly new energy policy would recognize the importance of free markets and a light touch from Washington in meeting the energy needs of the American people.

OBSERVATION 6: ADVANTAGES

ADVANTAGE 1. The Free Market meets energy challenges without weakening America

Iain Murray (Director of Projects and Analysis and Senior Fellow in Energy, Science, and Technology at the Competitive Enterprise Institute.) 17 April, 2008 “A Free Market Approach to Energy Security” Competitive Enterprise Institute (A public interest group dedicated to free enterprise and limited government) <http://cei.org/cei_files/fm/active/0/Iain%20Murray%20-%20Energy%20Security%20-%20FINAL.pdf>

Oil, gasoline, and other fossil fuels have literally supplied the engine of American economic growth over the past century. To abandon their use prematurely would be a massive mistake, weakening America just as it needs to be at its strongest. America has weathered energy crises in the past, and will do so again. As long as U.S. policy makers maintain an open and competitive economy, we can continue to meet energy challenges well into the future.

ADVANTAGE 2. $80 Billion savings to taxpayers.

We will examine this advantage in two pieces of evidence. First, let’s look at what JUST THE DEPARTMENT OF ENERGY has invested into alternative energy Research and Development (R&D) since 2001:

US Department of Energy 2009 “Energy Security – Promoting America’s energy security through reliable, clean, and affordable energy” [www.cfo.doe.gov/strategicplan/energysecurity.htm](http://www.cfo.doe.gov/strategicplan/energysecurity.htm)

Since 2001, the Department has invested nearly $10 billion developing and promoting the use of cleaner, more affordable, and more reliable alternative energy sources and DOE is on the threshold of incredible scientific and technological advances that will change how we power our homes, businesses, and automobiles.

Now, let’s look at what President Obama spent in his stimulus bill for Energy R&D:

Amanda Ruggeri (journalist) 6 Mar 2009 US NEWS & WORLD REPORT “What the Stimulus Package Does for Renewable Energy - Some $70 billion in tax and spending provisions is set aside for energy-related programs [www.usnews.com/articles/news/energy/2009/03/06/what-the-stimulus-package-does-for-renewable-energy.html](http://www.usnews.com/articles/news/energy/2009/03/06/what-the-stimulus-package-does-for-renewable-energy.html)

With about $50 billion in spending and $20 billion in tax provisions, energy won big in the stimulus package.

Now add these two together and you get a grand total of Around 80 Billion Dollars of funding given to energy R&D just since 2001! In conclusion…

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) December 8, 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 <http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm>

From 1970 to 1980, policymakers tried to solve energy problems with higher energy taxes, heavy-handed government regulation of energy markets, or attempts by Washington to pick winners and losers among emerging alternatives. In every instance, Washington took an already difficult energy situation and made it worse with shortsighted meddling. There is simply no excuse for repeating past mistakes, whether it be reinstating the windfall profits tax on oil companies, reimposing price controls or their functional equivalent, overregulating the nuclear industry, or mandating wind power or other politically correct alternatives. Remember: It was Ronald Reagan's decisive steps that freed the nation from Jimmy Carter's failed policies.

Thank you, and I am now open for cross-examination.

2A EVIDENCE: CANCEL ALTERNATIVE ENERGY PROGRAMS

GOAL

Goal of Obama is Go Green! Alternative energy is on the list!

“Earth Day 2009 – Remarks of the President” by Barack Obama Published by the Office of the Press Secretary 22 April 2009 [/www.whitehouse.gov/the\_press\_office/Presidential-Proclamation-Earth-Day/](http://www.whitehouse.gov/the_press_office/Presidential-Proclamation-Earth-Day/)

Government and business alike must also take serious and sustained action to protect our valuable natural inheritance. Through investments in scientific research and development, and the vigorous pursuit of alternative and renewable energy, we can create millions of green jobs that allow us to reduce greenhouse gases and excel in a competitive global economy. My Administration is committed to increasing fuel economy standards and putting more Plug-In Hybrid cars on the road, weatherizing millions of homes, and catalyzing private efforts to build a clean energy future. My Administration is also working to achieve a comprehensive energy and climate policy, one that will lessen our dependence on foreign oil, make the U.S. the global leader in clean energy technology, and prevent the worst impacts of climate change.

INHERENCY

Obama budgets $5.3 billion for renewable energy and related programs in Fiscal Year 2010

US House of Representatives, Committee on the Budget, ”Summary and Analysis of the President’s Detailed Fiscal Year 2010 Budget Request” 15 May 2009 <http://budget.house.gov/doc-library/FY2010/05.15.09_Presidents_Budget_Analysis.pdf>

For 2010, the President’s budget proposes $5.3 billion in appropriated funding for renewable energy, energy efficiency, emerging energy and vehicle technologies, and related programs – funding that accounts for about one-fifth of the Department of Energy’s (DOE) appropriations. This total does not include funding for DOE’s national security and science programs. The request is $175 million (3.4 percent) more than the 2009 level of regular appropriations. The regular appropriations for 2009 and 2010 build on $39.8 billion in emergency appropriations and $20.0 billion in tax incentives for energy investments included in the Recovery Act and other legislation.

Federal government has useless ethanol mandates

Max Schulz, April 2007, “Energy and the Environment: Myths and Facts”, The Manhattan Institute, (ellipses and brackets in original) [www.manhattan-institute.org/pdf/Energy\_and\_Environment\_Myths.pdf](http://www.manhattan-institute.org/pdf/Energy_and_Environment_Myths.pdf)

Because ethanol is so much less efficient than gasoline, the several billion dollars in subsidies that governments annually provides to ethanol R&D and production have done virtually nothing to increase ethanol’s share in our energy mix. Nevertheless, policymakers still champion ethanol as a surrogate for gasoline. The 2005 Energy Policy Act mandates the use of 7.5 billion gallons of renewable and alternative fuels in the U.S. energy supply by 2012.

Obama’s environmental agenda hurts the economy with little benefit to global warming goals

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) December 8, 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 <http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm> [Brackets Added]

But you [President elect Barack Obama] have also promised a costly environmental agenda. If you do undertake such measures, you risk far higher energy prices. Moreover, you will put jobs and growth at risk while doing little to meet global warming goals. The voters connected strongly with your pledges to provide affordable energy. The following steps would help you to deliver on these promises.

DOE is pursuing Clean Coal

John Gartner, Huffington Post, 15 June 2009 “Clean Coal: Fuel of the Future or a Fallacy?” <http://www.huffingtonpost.com/john-gartner/clean-coal-fuel-of-the-fu_b_215540.html>

In a surprising reversal of a reversal, the Department of Energy has announced new funding for the "FutureGen" clean coal project, less than 18 months after the previous DOE Secretary [pulled the plug](http://www.ens-newswire.com/ens/jan2008/2008-01-31-03.asp). DOE Secretary [Stephen Chu](http://www.matternetwork.com/2008/12/reactions-steven-chu-energy-secretary.cfm), who previously called coal "very, very bad," said the government will spend more than $1 billion on research on a prototype coal power plant that will capture and sequester the CO2 produced.

Clean Coal is like a “Healthy Cigarette - it doesn’t exist”

Business Week "The dirty truth about clean coal" 19 June 2008 [www.businessweek.com/magazine...0055452749.htm](http://www.businessweek.com/magazine...0055452749.htm)

“’Clean coal' is like a healthy cigarette,” says Blan Holman, an attorney with the Southern Environmental Law Center in Charleston, S.C. “It doesn't exist.” That fact won't mute the marketing bluster. All the talk relates to the idea of separating CO2 from the coal-burning process and burying it in liquid form so it won't contribute to climate change.

Clean Coal Would cost TRILLIONS

Business Week "The dirty truth about clean coal" 19 June 2008 [www.businessweek.com/magazine...0055452749.htm](http://www.businessweek.com/magazine...0055452749.htm)

Corporations and the federal government have tried for years to accomplish "carbon capture and sequestration." So far they haven't had much luck. The method is widely viewed as being decades away from commercial viability. Even then, the cost could be prohibitive: by a conservative estimate, several trillion dollars to switch to clean coal in the U.S. alone.

Clean Coal requires TONS of free space to dump the CO2 – We don’t have much!

Business Week "The dirty truth about clean coal" 19 June 2008 [www.businessweek.com/magazine...0055452749.htm](http://www.businessweek.com/magazine...0055452749.htm)

One large, coal-fired plant generates the equivalent of 3 billion barrels of CO2 over a 60-year lifetime. That would require a space the size of a major oil field to contain. The pressure could cause leaks or earthquakes, says Curt M. White, who ran the U.S. Energy Dept.'s carbon sequestration group until 2005 and served as an adviser until earlier this year. “Red flags should be going up everywhere when you talk about this amount of liquid being put underground.”

a. Coal is not clean, and technology doesn’t exist to make it so

Steven Mufson [Washington Post Staff Writer], Washington Post, “Environmental Groups Bash ‘Clean Coal’ in New Campaign.” 5 December 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/12/04/AR2008120404032.html> (brackets added)

“Coal is not clean. It is one of the leading sources of global warming pollution and the technology does not exist today to make it clean on a widespread scale,” [Al] Gore said in an interview.

"Clean Coal" isn't clean

Richard Conniff [ National Magazine Award-winning writer, and his articles have appeared in Time, Smithsonian, The Atlantic, The New York Times Magazine, National Geographic, and other publications. A frequent commentator on NPR's Marketplace, Conniff is the author of six books]"The Myth of Clean Coal" Published by Yale Enviroment 360 , 3 July 2008 <http://e360.yale.edu/content/feature.msp?id=2014> (CL)

Coal-fired power plants generate about 50 percent of the electricity in the United States. In 2006, they also produced 2 billion metric tons of carbon dioxide — 36 percent of total U.S. emissions. For a remedy, the industry was banking on a proposed pilot plant called FutureGen, which would have used coal gasification technology to separate out the carbon dioxide, allowing it to be pumped into underground storage. But in January, the federal government canceled that project because of runaway costs. At last count, FutureGen was budgeted at $1.8 billion — with about $400 million of that coming from corporate partners over ten years. That is, the “commitment to clean” would have cost roughly as much per year as the industry is now spending on lobbying and “Clean Coal” advertising. The business logic of this spending pattern is clear: Promoting the illusion that coal is clean, or maybe could be, helps to justify building new coal-fired power plants now. The tactic is at times transparent: In Michigan recently, a utility didn’t promise that a proposed $2 billion plant would have carbon-control technology — merely that it would set aside acreage for such technology. The proponents of a new power plant in Maine talked about capturing and storing 25 percent of the carbon dioxide emissions, but didn’t say how, and even if they figure that out, the plant would still produce two million tons of CO2 annually.

Subsidies increase wind cost and harm effectiveness

Patrick Sawyer (Writing for Telegraph Newspaper one of the oldest newspapers in England) 13 Sept 2008 “Wind farms fail to deliver value for money, report claims” <http://www.telegraph.co.uk/news/newstopics/politics/2910739/Wind-farms-fail-to-deliver-value-for-money-report-claims.html>

Excessive subsidies make them an expensive and inefficient way of reducing greenhouse gas emissions, a study by the Renewable Energy Foundation (REF) think-tank says.

Wind is unreliable

Patrick Sawyer (Writing for Telegraph Newspaper one of the oldest newspapers in England) 13 Sept 2008 “Wind farms fail to deliver value for money, report claims” (brackets added) <http://www.telegraph.co.uk/news/newstopics/politics/2910739/Wind-farms-fail-to-deliver-value-for-money-report-claims.html>

[Speaking of Britain’s wind] The industry admits that for up to 30 per cent of the time, turbines are idle because wind speeds are either too low to turn the blades, or too high, risking damage to the machines.

**Analysis:** Although this evidence is specifically talking about England, the same principle applies. Wind turbines are useless if there is too much or not enough wind

No suitable way to store excess power so the turbines are turned off!

Patrick Sawyer (Writing for Telegraph Newspaper one of the oldest newspapers in England) 13 Sept 2008 “Wind farms fail to deliver value for money, report claims” <http://www.telegraph.co.uk/news/newstopics/politics/2910739/Wind-farms-fail-to-deliver-value-for-money-report-claims.html>

Without any suitable method of storing the excess power produced when winds are blowing but electricity use is low, many turbines also have to be turned off for fear of overloading the grid.

The evils of wind power (increase gas/electricity prices, needs subsidies, etc)

Patrick Sawyer (Writing for Telegraph Newspaper one of the oldest newspapers in England) 13 Sept 2008 “Wind farms fail to deliver value for money, report claims” <http://www.telegraph.co.uk/news/newstopics/politics/2910739/Wind-farms-fail-to-deliver-value-for-money-report-claims.html>

“The report says that wind farms are unprofitable and rely on hefty subsidies that ultimately come from consumers in the form of rising energy prices. This cost comes on top of increases in gas and electricity prices caused by the high price of oil. They risk leaving the poorest members of society struggling to heat their homes.”

Wind is a “Waste of Taxpayer Money”

Luke Harding (Luke Harding is the Guardian's Moscow correspondent), John Vidal (John Vidal is the Guardian's environment editor), and Alok Jha (Alok Jha is a science and environment correspondent at the Guardian, specialising in green technologies; physics graduate from Imperial College London) Guardian Newspaper , 26 Feb 2005 “Reports doubts future of wind power” [www.guardian.co.uk/world/2005/feb/26/sciencenews](http://www.guardian.co.uk/world/2005/feb/26/sciencenews)

[Speaking of Britain] “At last. This report confirms what we have been saying,” said Angela Kelly, director of Country Guardian, an umbrella group for the anti-wind-power lobby. “Wind power is three times more expensive than conventional electricity. It is a scandalous waste of taxpayers' money.”

**Analysis:** Even though this evidence is specifically talking about the UK, it still applies to the US. Wind power IS a waste of US Taxpayer dollars.

Wind Farms Destroy the Landscape/Environment

Luke Harding (Luke Harding is the Guardian's Moscow correspondent), John Vidal (John Vidal is the Guardian's environment editor), and Alok Jha (Alok Jha is a science and environment correspondent at the Guardian, specialising in green technologies; physics graduate from Imperial College London) Guardian Newspaper , 26 Feb 2005 “Reports doubts future of wind power” [www.guardian.co.uk/world/2005/feb/26/sciencenews](http://www.guardian.co.uk/world/2005/feb/26/sciencenews)

There is growing resistance in Germany to wind farms, not least because of the disastrous effect on our landscape.

Large Wind Farms not feasible as wind farms don’t always operate at full capacity

Renewable Energy Foundation (a UK registered charity supporting research into renewable and alternative energy. The Foundation is supported by private donation, and has no corporate membership or political affiliation.) 7 June 2008 “Wind Power Study Reveals hidden Cost and Reliability Issues” [www.ref.org.uk/Files/pr.07.07.08.pdf](http://www.ref.org.uk/Files/pr.07.07.08.pdf)

The study casts doubt on the feasibility of such large wind fleets. Using wind data supplied by the Met Office, and corroborated with empirical data from the wind fleets of Ireland and Germany, together with information about times of peak electricity demand for the past six years, the researchers calculated that in January, the coldest month of the year when energy demand is highest, the wind farms can produce very little energy, frequently as little as 4% of their rated output.

**Analysis:** Although the latter part of this evidence is talking about how British wind farms have low productivity in January, the principle still applies. When it gets colder, the wind farms lose productivity.

Hidden costs and reliability issues in wind power

Renewable Energy Foundation (a UK registered charity supporting research into renewable and alternative energy. The Foundation is supported by private donation, and has no corporate membership or political affiliation.) 7 June 2008 “Wind Power Study Reveals hidden Cost and Reliability Issues” [www.ref.org.uk/Files/pr.07.07.08.pdf](http://www.ref.org.uk/Files/pr.07.07.08.pdf)

The publication of a major independent study by James Oswald, Mike Raine and Hezlin Ashraf-Ball in *Energy Policy* and funded by the Renewable Energy Foundation (REF) has confirmed fears that there are hidden costs and reliability issues from wind power.

Fossil fuel emissions come back due to on/off switching when combined with wind power

Renewable Energy Foundation (a UK registered charity supporting research into renewable and alternative energy. The Foundation is supported by private donation, and has no corporate membership or political affiliation.) 7 June 2008 “Wind Power Study Reveals hidden Cost and Reliability Issues” [www.ref.org.uk/Files/pr.07.07.08.pdf](http://www.ref.org.uk/Files/pr.07.07.08.pdf) (brackets added)

Additionally, the authors [of a recent study by a German Company regarding Wind Farm efficiency] argue that conventional fossil fuel plants would need to be switched on and off as many as 23 times a month to make up the shortfall in supplies. They conclude that this would impair efficiency, and reduce emissions savings.

Wind power results in increased carbon production among other bad things

Renewable Energy Foundation (a UK registered charity supporting research into renewable and alternative energy. The Foundation is supported by private donation, and has no corporate membership or political affiliation.) 7 June 2008 “Wind Power Study Reveals hidden Cost and Reliability Issues” [www.ref.org.uk/Files/pr.07.07.08.pdf](http://www.ref.org.uk/Files/pr.07.07.08.pdf)

Wind power does not obviate the need for fossil fuel plants, which will continue to be indispensable. The problem is that wind power volatility requires fossil fuel plant to be switched on and off, which damages them and means that even more plants will have to be built. Carbon savings will be less than expected, because cheaper, less efficient plant will be used to support these wind power fluctuations. Neither these extra costs nor the increased carbon production are being taken into account in the government figures for wind power.

Ethanol forces an increase in the demand of corn

Prof. C. Ford Runge (Distinguished McKnight University Professor of Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the University of Minnesota) and Prof. Benjamin Senauer (Professor of Applied Economics at the University of Minnesota.) May/June 2007 “How Biofuels Could Starve the Poor” Foreign Affairs Magazine [www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor](http://www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor)

The enormous volume of corn required by the ethanol industry is sending shock waves through the food system. (The United States accounts for some 40 percent of the world's total corn production and over half of all corn exports.) In March 2007, corn futures rose to over $4.38 a bushel, the highest level in ten years. Wheat and rice prices have also surged to decade highs, because even as those grains are increasingly being used as substitutes for corn, farmers are planting more acres with corn and fewer acres with other crops.

Ethanol Subsidies increases food prices around the globe

Prof. C. Ford Runge (Distinguished McKnight University Professor of Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the University of Minnesota) and Benjamin Senauer (Professor of Applied Economics and Co-director of the Food Industry Center at the University of Minnesota.) May/June 2007 “How Biofuels Could Starve the Poor” Foreign Affairs Magazine <http://www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor>

Thanks to high oil prices and hefty subsidies, corn-based ethanol is now all the rage in the United States. But it takes so much supply to keep ethanol production going that the price of corn -- and those of other food staples -- is shooting up around the world.

Ethanol has made an increase in the demand for corn

Prof. C. Ford Runge (Professor of Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the Univ of Minnesota) and Prof. Benjamin Senauer (Professor of Applied Economics and Co-director of the Food Industry Center at Univ of Minnesota.) May/June 2007 “How Biofuels Could Starve the Poor” Foreign Affairs Magazine [www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor](http://www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-biofuels-could-starve-the-poor)

The push for ethanol and other biofuels has spawned an industry that depends on billions of dollars of taxpayer subsidies, and not only in the United States. In 2005, global ethanol production was 9.66 billion gallons, of which Brazil produced 45.2 percent (from sugar cane) and the United States 44.5 percent (from corn). Global production of biodiesel (most of it in Europe), made from oilseeds, was almost one billion gallons. The industry's growth has meant that a larger and larger share of corn production is being used to feed the huge mills that produce ethanol. According to some estimates, ethanol plants will burn up to half of U.S. domestic corn supplies within a few years. Ethanol demand will bring 2007 inventories of corn to their lowest levels since 1995 (a drought year), even though 2006 yielded the third-largest corn crop on record. Iowa may soon become a net corn importer.

Biofuels actually harm the environment

Prof. C. Ford Runge (Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the University of Minnesota) and Prof. Benjamin Senauer ( Applied Economics and Co-director of the Food Industry Center at the University of Minnesota.) 28 May 2008 “How Ethanol Fuels the Food Crises” Foreign Affairs Magazine [www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis](http://www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis)

Moreover, the supposedly "green" virtues of biofuels are not quite what they seemed. In fact, biofuels pose major risks to the environment. In October 2007, the Nobel Prize winning chemist Paul Crutzen, who pioneered the atmospheric science of ozone depletion, co-authored an article demonstrating that the heavy application of nitrogen fertilizer on corn (for ethanol) and on European rapeseed (for vegetable-oil biodiesel) would produce such high levels of atmospheric nitrous oxide--which is 296 times more damaging as a greenhouse gas than carbon dioxide--that it would have a net negative effect on greenhouse gas emissions.

Biofuel craze disrupts food market

Prof. C. Ford Runge (Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the University of Minnesota) and Prof. Benjamin Senauer ( Applied Economics and Co-director of the Food Industry Center at the University of Minnesota.) 28 May 2008 “How Ethanol Fuels the Food Crises” Foreign Affairs Magazine [www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis](http://www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis)

The current biofuels craze is neither clean nor green. Instead, it has disrupted food and commodities markets and inflicted heavy penalties on poor consumers. These developments have occurred despite record global grain harvests in 2007.

Craze for ethanol has increased food prices and pushed 100 million people to poverty and hunger

Prof. C. Ford Runge (Applied Economics and Law and Director of the Center for International Food and Agricultural Policy at the University of Minnesota) and Prof. Benjamin Senauer ( Applied Economics and Co-director of the Food Industry Center at the University of Minnesota.) 28 May 2008 “How Ethanol Fuels the Food Crises” Foreign Affairs Magazine [/www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis](http://www.foreignaffairs.com/articles/64915/c-ford-runge-and-benjamin-senauer/how-ethanol-fuels-the-food-crisis)

In the year since the publication of our article, "How Biofuels Could Starve the Poor" (May/June 2007), the average price of corn has increased by some 60 percent, soybeans by 76 percent, wheat by 54 percent, and rice by 104 percent. What at first seemed alarmist has turned out to be an underestimate of the effects of biofuels on both commodity prices and the natural environment. These price increases are substantial threats to the welfare of consumers, especially in poor developing countries facing food deficits. They are especially burdensome to the rural landless and the urban poor, who produce no food at all. Josette Sheeran, the Executive Director of the World Food Program, calls this a global "tsunami of hunger." Robert Zoellick, President of the World Bank, estimates that there are 100 million newly poor and hungry people as a result of rising food prices.

The cost of Obama’s environmental policies is high

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) 8 December 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 <http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm> [Brackets Added]

Overall, the cost of ill-advised climate policy would end up taking at least as much from low- and middle-income households as your [President Elect Barack Obama] tax cuts and other spending programs have promised them. It would also undercut your push for greater domestic energy use by restricting the use of coal, the one energy source America has in great abundance. If you really want to address the rising costs of energy, you should reject these kinds of measures that cause great economic harm and have scant environmental benefits.

Nuclear power won’t be sustainable with government subsidies

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) 8 December 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 <http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm> [Brackets Added]

As you [President-elect Barack Obama] and others have recognized, the nation's energy, economic, security, and environmental objectives cannot be met without nuclear power. This has led to multiple initiatives to restart the industry in the U.S. However, many of these plans rely heavily on subsidies and are not sustainable. Instead, you should work with Congress to institute a fast-track program aimed at halving the time for granting construction/operation permits for certain new plants. Such a proposal would direct the Nuclear Regulatory Commission (NRC) to focus its efforts on fast-tracked applications.

Clean coal is still far too environmentally damaging

Alexandra Berzon, Green Tech Media [News Service], “India Moves on “Clean Coal””. 21 November, 2008. <http://www.greentechmedia.com/articles/india-moves-on-clean-coal-318.html>

But emphasis on coal is unpopular among many environmentalists, who argue that even at its "cleanest," coal still is far too environmentally damaging. They also argue that carbon storage that would permanently remove carbon-dioxide emissions from the atmosphere is still largely theoretical.

Obama’s Global Warming Based Restrictions will be expensive

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) 8 Dec 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 [www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm](http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm)

Global warming-based restrictions on the use of the fossil fuels--coal, oil, and natural gas--that currently provide 85 percent of America's energy will be very expensive. For example, the Lieberman-Warner America's Climate Security Act, the so-called cap-and-trade bill defeated in the Senate last summer, would have imposed significant costs on consumers and the overall economy. Gasoline prices would have increased by 29 percent by 2030, electricity and natural gas prices would also have risen, and job losses would have extended well into the hundreds of thousands. You should particularly note that these are net job losses after including the overhyped "green jobs" that would have been created. Having the EPA pursue a similar policy through regulations under the Clean Air Act would prove even costlier.

SOLVENCY

Example: Free Market is solving for electric/hybrid cars

Iain Murray (Director of Projects and Analysis and Senior Fellow in Energy, Science, and Technology at the Competitive Enterprise Institute.) 17 April 2008 “A Free Market Approach to Energy Security” Competitive Enterprise Institute (A public interest group dedicated to free enterprise and limited government) <http://cei.org/cei_files/fm/active/0/Iain%20Murray%20-%20Energy%20Security%20-%20FINAL.pdf>

Plug-in hybrids and electric powered vehicles show much more long-term potential than flex-fuel vehicles, but the technology is simply not there yet in a useable and affordable fashion. Previous massive government investment programs, like the Partnership for a New Generation of Vehicles, have little to show for the millions of taxpayer money spent. Automakers are investing heavily in the design of new technologies, so it is likely that private enterprise can bring about the needed technological breakthroughs in due course without government interference. It is likely that affordable, powerful hybrids and more advanced vehicles will be available and attractive to consumers within a decade.

Plan Advocate

Ben Lieberman (Senior policy analyst in energy and the environment at the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation ) and Jack Spencer (Research Fellow in Nuclear Energy at the Thomas A. Roe Institute for Economic Policy studies at the Heritage Foundation) 8 December 2008 “Making Domestic Energy Affordable: A Memo to President-elect Obama” Heritage Foundation Special Report #31 <http://www.heritage.org/Research/EnergyandEnvironment/sr0031.cfm> [Brackets Added]

You [President-Elect Barack Obama] should be especially vigilant about avoiding policies that abandon free enterprise and instead mandate government-chosen alternatives. This includes the renewable fuel mandates already in effect as well as the wind and other renewable electricity mandates that you have proposed. If these energy sources made sense, they would be flourishing without government mandates. The fact that people must be forced to use them is a sign that they are otherwise too costly to compete and thus run counter to your energy-affordability agenda. You should start by repealing the ill-conceived biofuels mandate that has already helped to drive up the price of food. Moreover, alternative energy sources, including nuclear, should not be mandated or subsidized by the government, but they should not be blocked by it either, as has been the case with oil shale in Colorado, Wyoming, and Utah.

Free market will solve: already working on a new clean nuclear reactor

William Atkins (a writer for ITWire which is a news website for IT professionals ) 11 November 2008 “Nuclear Power Comes to your neighborhood” <http://www.itwire.com/content/view/21590/1066/> [Brackets added]

“

However, these HPMs [Mini reactors ] have all the advantages of large nuclear power plants—clean fuel, with no emissions of greenhouse gases, and [are] safe for the environment—but without the prohibitive expenses of purchasing large areas of land and using enormous amounts of materials and equipment.”

To learn more about Hyperion Reactors, see this article:

“Interview with John Deal, Hyperion Power Generation” by Tech-Rockies (High Technology News and Information for the Rocky Mountain Region) Quoting John Deal (CEO of the Hyperion Power Generation) September 22, 2008, <http://www.techrockies.com/story/0017490.html>

Solvency: Hyperion Reactor is clean, safe, affordable, and efficient

a. Clean

“Interview with John Deal, Hyperion Power Generation” by Tech-Rockies (High Technology News and Information for the Rocky Mountain Region) Quoting John Deal (CEO of the Hyperion Power Generation) September 22, 2008, <http://www.techrockies.com/story/0017490.html>

[Talking about the waste from a Hyperion reactor] We're going to take it back to the factory and we're going to reuse most of it. The waste that comes out of our reactor after powering 20,000 homes for 8-10 years is about the size of a football. Using coal and gas over the same time frame, the waste stream for just you, after factoring in CO2 emissions, would overflow Mile High Stadium in Denver. So our waste stream is very concentrated, and yes, we have to do something with it, but there are known ways of dealing with it. The U.S. has a different political philosophy, but from a technical standpoint, dealing with waste is really not complicated. It's a regulatory complication, it's a political complication, it's a social complication. We have enough uranium to power the planet for the next thousand years, but the problem again is the waste, so you want to handle that waste in a smart manner and not just put it in a pond somewhere. Depending on where the waste originates will determine how we dispose of that waste because there are different regulations depending on where you are in the world. We know how to deal with it. For security reasons, we're not disclosing what will happen to it, but it's not going to just sit in some bucket somewhere. Recycling was "baked in" to our reactor design from the beginning.

b. Affordable

Interview with John Deal, Hyperion Power Generation” by Tech-Rockies (High Technology News and Information for the Rocky Mountain Region) Quoting John Deal (CEO of the Hyperion Power Generation) September 22, 2008, <http://www.techrockies.com/story/0017490.html>

[Speaking of the cost of a reactor] About $25-$30 million each, depending on options.

c. Efficient

“Interview with John Deal, Hyperion Power Generation” by Tech-Rockies (High Technology News and Information for the Rocky Mountain Region) Quoting John Deal (CEO of the Hyperion Power Generation) September 22, 2008, <http://www.techrockies.com/story/0017490.html>

“Thirty megawatts[the amount of energy a Hyperion Reactor produces]is enough to power 20,000 U.S. homes or, internally, we've figured out that would equate to about 100,000 homes anywhere outside the U.S. There's not a lot of 100,000-home places out there in the developing world, so they're going to have enough electricity to power residential, plus industrial, plus clean water, plus sewage. It's everything; it's not just powering homes.”

More details of what is put in to R&D in the Stimulus Package

Amanda Ruggeri, 6 Mar 2009, US NEWS & WORLD REPORT, “What the Stimulus Package Does for Renewable Energy - Some $70 billion in tax and spending provisions is set aside for energy-related programs” <http://www.usnews.com/articles/news/energy/2009/03/06/what-the-stimulus-package-does-for-renewable-energy.html>

“Some $8.8 billion goes to energy research. That includes $800 million for clean coal, $1.5 billion for industrial carbon capture, $800 million for biomass, and $400 million for geothermal energy. And $300 million of R&D funding goes to the military.”

FROZEN TREAT: The Case for ANWR Oil

By Leanne Livingston

An environmental policy that hurts American consumers, US foreign policy and the US economy – and does nothing for the environment – calls out for reform. That’s why my partner and I are happy to affirm: **That the United States Federal Government should significantly reform its environmental policy. We will offer a comparative advantage case showing that the advantages of adopting our plan are significantly better than the Status Quo.**

OBSERVATION 1. We offer the following Definitions:

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD; Visiting Professor of Environmental Policy at Duke Univ), and Dr. William L Ascher [editor] (PhD; Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke Univ Press, p. 186 [Google Books]

“Environmental Policy: a government policy that explicitly intends to promote environmental protection, conservation, and rational use of natural resources.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

ANWR:

Institute for Energy Research (not-for-profit organization that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets), 2009, “ANWR’s 1002 Area,” <http://www.instituteforenergyresearch.org/anwr/>

The Arctic National Wildlife Refuge (ANWR) comprises an area of about 19 million acres in Alaska’s North Slope region. 1.5 million acres of ANWR was set aside in 1980 by Congress and President Jimmy Carter in order to study its potential for energy resource production.

Contextual definition:

Rep. Charles Bass (R-NH), quoted by Sarah Crosland (journalist), Fall 2005, Boston University Washington Journalism Center, “Lawmakers oppose Alaska drilling,” <https://www.bu.edu/washjocenter/newswire_pg/fall2005/nh/nhanwr.htm>

"Opening up ANWR to drilling would dramatically shift U.S. environmental policy," Bass said in a press release Tuesday.

OBSERVATION 2. Inherency: We look at what the Status Quo is doing today

A. The U.S. Imports 68% of its Oil

T. Boone Pickens (the chairman and CEO of BP Capital, which operates energy focused commodity and equity funds. He is also the largest shareholder in Clean Energy, the largest provider of vehicular natural gas (CNG and LNG) in North America) 8 May 2009, “U.S. Continues to Import Nearly 70% of Foreign Oil,” The Daily Pickens, [www.pickensplan.com/news/2009/05/08/us-continues-to-import-nearly-70-of-foreign-oil/](http://www.pickensplan.com/news/2009/05/08/us-continues-to-import-nearly-70-of-foreign-oil/)

Pickens said that based on the latest figures from the U.S. Department of Energy’s Energy Information Administration (EIA), the U.S. imported 68 percent of its oil, or 375 million barrels in April 2009, sending approximately $18.6 billion, or $430,524 per minute, overseas to foreign governments.

B. ANWR oil production is blocked

Energy Information Administration, US Dept of Energy, March 2009, “Assumptions to the Annual Energy Outlook 2009,” [www.eia.doe.gov/oiaf/aeo/assumption/oil\_gas.html](http://www.eia.doe.gov/oiaf/aeo/assumption/oil_gas.html)

Oil and gas exploration and production currently are not permitted in the Alaska National Wildlife Refuge.

OBSERVATION 3. Lifting restrictions on ANWR would produce significant advantages over the Status Quo, so we offer a Plan:

**Agency:** Congress

**Mandate 1:** Lift developmental restrictions on ANWR and allow leasing to proceed.

**Mandate 2:** Regulations for site restoration and removal of infrastructure upon completion of oil operations and bonding mechanisms to ensure compliance.

**Funding:** General Federal Revenue.

**Enforcement**: …will be carried out by the EPA and the Fish & Wildlife Service. Violations will be punished by up to 5 years imprisonment without parole. Ecological damage will be punished by fines equal to the complete cost of clean-up and recovery + 50%.

OBSERVATION 4. SOLVENCY: ANWR will safely produce lots of oil

A. The drills are ready to roll

Elizabeth Arnold (Elizabeth Arnold is a freelance reporter for National Public Radio. From 2000 - 2004, she was an NPR national correspondent, covering America's public lands with a focus on the environment, politics, economics, and culture) April 15, 2009, “Battle Over Arctice Drilling in Arctice Dwarfs ANWR,” Royal Dutch Shell Plc. <http://royaldutchshellplc.com/2009/04/16/battle-over-offshore-drilling-in-arctic-dwarfs-anwr/>

“We are drill-bit ready to move in the Arctic right now, and this is stuff that can happen right now, and with a few things going our way, we will be ready to go in 2010,” says Pete Slaiby, Shell’s Alaska general manager.

B. ANWR can offset large amounts of imported oil

Max Schulz, April 2007, “Energy and the Environment: Myths and Facts”, The Manhattan Institute, (ellipses and brackets in original) [www.manhattan-institute.org/pdf/Energy\_and\_Environment\_Myths.pdf](http://www.manhattan-institute.org/pdf/Energy_and_Environment_Myths.pdf)

Another argument against opening a portion of the ANWR in Alaska to energy exploration is that “there is not enough oil in ANWR to make a difference,” as Congressman Roscoe Bartlett (R-MD) stated. How much is enough to “make a difference”? The United States Geological Survey estimates that ANWR holds 5.7 to 16 billion barrels of recoverable reserves, with a mean estimate of 10.4 billion barrels. Those estimates, from over five years ago, assume the use of older drilling technology. According to the House of Representatives Committee on Resources, that mean estimate of 10.4 billion barrels is “more than twice the proven oil reserves in all of Texas … [and] almost half of the total U.S. proven reserves of 21 billion barrels.” Former energy secretary Spencer Abraham notes that this figure could “offset seven years of oil imports from all of OPEC and nineteen years of oil imports from Saudi Arabia.”

C. Little environmental impact

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm), 24 May 2006, “Congress Should Let ANWR's Oil Flow to U.S. Customers”, The Heritage Foundation, [www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm](http://www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm)

The Prudhoe Bay experience presents strong evidence that drilling can be done with only a small impact on the environment. Decades of drilling on a scale larger than that envisioned in ANWR has not harmed the porcupine caribou herds near the drilling sites or caused any of the other predicted environmental problems. Furthermore, ANWR drilling would be done with technology and environmental safeguards far more advanced than those available decades ago when Prudhoe Bay was developed. ANWR drilling would also be far less sprawling than in Prudhoe Bay. The surface disturbance would be limited to a few thousand acres of the 1.5 million acre coastal plain, leaving the vast majority of the 19 million acre refuge untouched.

OBSERVATION 5. By lifting restrictions on the Arctic National Wildlife Refuge, the following advantages will occur:

A. Reduced funding for terrorists.

Phillip H. Gordon (Senior Fellow, Energy Security, Brookings Institute), 12 May 2006, “An Improbable Cure for Oil Addiction”, The Financial Times, [www.brookings.edu/opinions/2006/0512globalenvironment\_gordon.aspx](http://www.brookings.edu/opinions/2006/0512globalenvironment_gordon.aspx)

Perhaps most importantly, our failure to move decisively away from a dependence on oil and the subsequent high oil prices that failure produces means that we are funding both sides in the war on terror. Many of the extra dollars we spend on energy goes to countries such as Saudi Arabia, which funds the Madrassas that teach extremist Islam in Pakistan, and Iran, which finances Hezbollah. Even friendly Qatar is giving $50m out of the oil revenues it received from us to Hamas.

B. 736,000 new jobs

Institute for Energy Research (not-for-profit organization that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets), 2009, “ANWR’s 1002 Area,” <http://www.instituteforenergyresearch.org/anwr/>

While estimates vary, a large number of jobs will directly and indirectly result from exploration, development, and production in the 1002 area. One analysis finds that ANWR production would create [736,000 new jobs](http://www.anwr.org/features/pdfs/employment-facts.pdf" \t "_blank) in the U.S.

C. ANWR drilling brings billions of dollars of federal revenue

Salvatore Lazzari (Specialist in Energy and Environmental Economics, Resources, Science, and Industry), 23 June 2008, “Possible Federal Revenue from Oil Development of ANWR and Nearby Areas” The Congressional Research Service, <http://ncseonline.org/nle/crsreports/08July/RL34547.pdf>

For instance, if producers were able to recover 10.3 billion barrels of oil over the life of the area — there is an estimated 50-50 chance that the ANWR coastal plain contains at least this amount of oil — and if oil prices average $90/barrel over the production lifetime of the area, then the federal government is projected to collect nearly $138 billion in revenues over the production period, estimated to be at least 30 years once production commences. This would consist of nearly $95 billion in federal corporate income taxes (**Table 2)**, and nearly $43 billion in federal royalties **(Table 3**).

D. Rapid relief from high gas prices

Robert Murphy, Ludwig Von Mises Institute, 28 July 2008, “ANWR Drilling Would Provide Quick Relief”, <http://mises.org/story/3047>

Yet there is an even stronger argument for opening up ANWR: because of its impact on oil prices in the future, relaxing federal prohibitions would cause current oil producers to change their pumping decisions right now. Even though the additional barrels from ANWR wouldn't physically hit the market for years, current knowledge of this fact will alter current behavior, leading to rapid relief at the pump.

In summary, we conclude with the words of Resources Committee chairman, Representative Richard Pombo, in 2004: “Given America’s energy crunch, ANWR production is a must.” (*Associated Press, March 16, 2004, “Study: ANWR oil would have little impact Heavy reliance on foreign imports would continue, agency finds” MSNBC* [*http://www.msnbc.msn.com/id/4542853/*](http://www.msnbc.msn.com/id/4542853/)*)*

2A EVIDENCE: ANWR OIL DRILLING

Topicality

ANWR was established to conserve wildlife

Richard Voss (Refuge Manager, Arctic National Wildlife Refuge) 12 Sept 2008, US Fish & Wildlife Service, “Arctic National Wildlife Refuge,” <http://arctic.fws.gov/>

Arctic National Wildlife Refuge was established to preserve unique wildlife, wilderness and recreational values; to conserve caribou herds, polar bears, grizzly bears, muskox, dall sheep, wolves, wolverines, snow geese, peregrine falcons, other migratory birds, dolly varden, and grayling; to fulfill international treaty obligations; to provide opportunities for continued subsistence uses; and to ensure necessary water quality and quantity.

ANWR is an environmental policy

Business Wire [a CBS news wire], 4 Oct 2000, “Alaska Senator Murkowski Blasts U.S. Energy Policy, Calls for Exploring Alaska's North Slope” <http://findarticles.com/p/articles/mi_m0EIN/is_2000_Oct_4/ai_65724728/>

While the United States suffers from dependence upon high-priced foreign oil, misguided environmental policy keeps the domestic industry from developing the billions of barrels of crude below Alaska's North Slope, says Senator Frank Murkowski, Alaskan senator who heads the Senate Energy and Natural Resources Committee

INHERENCY

Relying on imported oil creates constraints on our foreign policies

Phillip H. Gordon (Senior Fellow, Energy Security, Brookings Institute), 12 May 2006, “An Improbable Cure for Oil Addiction”, The Financial Times <http://www.brookings.edu/opinions/2006/0512globalenvironment_gordon.aspx>

It is difficult to overstate the costs of relying so extensively on expensive, imported oil, not only for the obvious economic and environmental reasons. It also imposes serious constraints on our foreign policies. With oil near $70 per barrel, we have little leverage on Russia as it erodes democracy at home, bullies its neighbours and drags its feet on nuclear non-proliferation. Iran feels emboldened to defy the international community and continue its suspected nuclear weapons programme, human rights abuses and support for terrorists. China protects energy producers such as Sudan, standing in the way of United Nations Security Council action, while Venezuela uses its oil revenues to pursue an arms buildup and promote anti-American movements in Latin America.

Our oil dependence is bad for oil exporters themselves

Phillip H. Gordon (Senior Fellow, Energy Security, Brookings Institute), 12 May 2006, “An Improbable Cure for Oil Addiction”, The Financial Times [www.brookings.edu/opinions/2006/0512globalenvironment\_gordon.aspx](http://www.brookings.edu/opinions/2006/0512globalenvironment_gordon.aspx)

Perversely, our oil dependence is not only bad for us, it is bad for the oil exporters themselves. Countless studies have shown the relationship between rentier economies that live off a single natural resource export and the tendency toward undemocratic rule. It is not a coincidence that many of the world's big oil exporters – Saudi Arabia, Iran, Iraq, Russia, Nigeria, Venezuela – are authoritarian regimes or worse.

Congress won’t lift ANWR oil drilling restrictions

Erika Bolstad (journalist), 14 Mar 2008, McClatchy Newspapers, “Alaska Senators Make Another Push For Oil Drilling in ANWR,” [www.commondreams.org/archive/2008/03/14/7687](http://www.commondreams.org/archive/2008/03/14/7687) (brackets added)

"The coastal plain of ANWR is the nation's single greatest onshore prospect for future oil," he [Interior Dept. Spokesman Shane Wolfe] said. But environmentalists say they're confident that Murkowski and Stevens simply don't have 60 votes in the Senate to overcome a filibuster that would allow the bill to be heard. It's equally unlikely that a Democratic-led House of Representatives would even consider hearing the legislation, said Myke Bybee, a spokesman for the Sierra Club. Environmentalists also have a proven track record at rallying national opposition to drilling in the refuge and could mobilize their forces with a simple e-mail campaign.

Congress deemed part of ANWR off-limits to development

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

When Congress expanded the boundary of ANWR in the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, it designated about 8 million acres within the earlier boundaries of the refuge as wilderness – off-limits to any form of development

ANWR could contain more than 10 billion barrels of oil

Ben Lieberman, 24 May 2006, “Congress Should Let ANWR's Oil Flow to U.S. Customers”, The Heritage Foundation, [www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm](http://www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm)

The Prudhoe Bay experience should allay environmental fears, and it provides other lessons as well. The amount of oil found in Prudhoe Bay turned out to be several billion barrels above even the most optimistic early estimates. ANWR’s estimated 10 billion barrels is more than enough to make this a worthwhile project, but it could prove to contain more oil, possibly much more.

Energy efficiency is not the solution

Max Schulz, April 2007, “Energy and the Environment: Myths and Facts”, The Manhattan Institute, , <http://www.manhattan-institute.org/pdf/Energy_and_Environment_Myths.pdf>

A belief in the power of efficiency is widespread across political lines. More than 240 members of Congress claim membership in either the House or Senate Renewable Energy and Energy Efficiency Caucuses. If there is one point of agreement when it comes to energy, it’s that raising efficiency will lower consumption. In practice, however, the evidence demonstrates otherwise. The history of the twentieth century is one of gigantic increases in efficiency—and even larger increases in consumption. The American economy has experienced massive efficiency gains: for each unit of energy, we produce more than twice as much GDP today than we did in 1950. Yet during that period of time, our national total energy consumption has tripled. Paradoxically, when it comes to energy, the more we save, the more we consume. How and why can this be? Essentially, the cost of energy output has been spiraling downward—and lowering the cost per output of any activity will likely lead to more of it. “Efficiency fails to curb demand because it lets more people do more, and do it faster—and more/more/faster invariably swamps all the efficiency gains,” Peter Huber and Mark Mills state in *The Bottomless Well*. Or, as Huber characterized this “efficiency paradox” in a 2001 *Forbes* column: “More efficient jet engines … cheaper tickets …more passengers … more jets in the air.” The same holds true for cars, lightbulbs, power plants, and everything else that uses energy. Our demand for energy has increased, partially because our machines and our devices have all become much more efficient. Although efficiency advances might curtail demand in the short term for any particular activity, the long-term impact has always proven to be the opposite—and in the future this pattern will be repeated.

Without ANWR, there is a decline in domestic oil production

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), 15May 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Many argue that this large potential should be explored and developed to offset the decline in domestic oil production. Domestic production without ANWR is projected by the U.S. Energy Information Administration (EIA) in its base case to be down to 5.6 million barrels per day (bbl/d) by 2020 (from 5.8 million bbl/d in 2000) while consumption is projected to rise from 19.7 million bbl/d to 26.7 million bbl/d.

Energy efficiency cannot solve the problem

Max Schulz, April 2007, “Energy and the Environment: Myths and Facts”, The Manhattan Institute, <http://www.manhattan-institute.org/pdf/Energy_and_Environment_Myths.pdf>

Supplying the large amounts of raw power needed to drive economic growth is extremely different from relying on conservation and efficiency measures, which, by their nature, merely nibble on the edges of our current demand. Can further conservation and efficiency gains help Americans deal with future energy challenges? Yes, they certainly can. But can they serve as a substitute for the massive quantities of energy that our economy will require? Based on all evidence, that would seem impossible.

“Long start-up time” for ANWR doesn’t matter: Alternatives will take just as long

Robert Murphy, Ludwig Von Mises Institute, 28 July 2008, “ANWR Drilling Would Provide Quick Relief” <http://mises.org/story/3047>

Of course, calls to open up domestic areas for drilling horrify environmentalists and others on the Left, who liken the move to giving a junkie one more fix rather than dealing with his addiction. One of their strongest arguments is that ANWR drilling isn't a real solution for today's crisis, since The Energy Information Administration (EIA) estimates that it will require 8 to 10 years after opening ANWR before oil is produced from any new leases. Furthermore, it would be 20 years after opening ANWR before oil production reached its peak of only 780,000 barrels per day. Faced with this response, the people on the Right have typically come back with a few zingers. First, they point out that the critics of drilling have provided alternative proposals (development of renewable energy, conservation measures such as raising CAFE standards, etc.) that would also take years to kick in. They also frequently mention that this ten-year lag would have been over by now, if President Clinton hadn't vetoed the attempt to open up ANWR back in 1995.

Domestic production will fall to 4.6 million barrels a day without ANWR

Associate Press, 16 March 2004, “Study: ANWR oil would have little impact- Heavy reliance on foreign imports would continue, agency finds” MSNBC <http://www.msnbc.msn.com/id/4542853/>

But after that, domestic production will decline steadily without access to the Alaskan coastal plain, and it is expected to fall to 4.6 million barrels a day by 2025. With demand increasing, imports will continue to play a larger role, jumping from 9.7 million barrels a day to nearly 16 million barrels a day, about 70 percent of what is consumed by 2025.

Without ANWR, domestic output would supply only 1/5 US consumption

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Other things being equal, domestic output without ANWR would supply only about one-fifth of U.S. consumption, with the rest coming from imports.

DISADVANTAGE RESPONSES

ANWR drilling = only 2000 acre “footprint”

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Industry representatives now argue that the entire ANWR area can be developed with only a 2,000 acre “footprint.”

Modern technology reduces environmental contamination

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Industry points out that companies use improved technology in the arctic today (compared with that used in the past for development of existing sites in the arctic region) which greatly reduces the “footprint” of operations and relies on practices that minimize and provide for better disposal of wastes. The result is less direct and indirect impact in terms of habitat loss and environmental contamination. Moreover, numerous environmental protection requirements administered by federal and state authorities are intended to govern and regulate activities that might take place.

Little environmental harm: even the Eskimos support ANWR drilling

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm), May 24 2006, “Congress Should Let ANWR's Oil Flow to U.S. Customers”, The Heritage Foundation, <http://www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm>

Alaskan residents, who know first-hand that oil-drilling causes little environmental harm, continue to support ANWR by wide margins. This includes the native Inupiat Eskimos, some of whom live close to the area where the drilling is likely to occur.

Modern technology can allow environmental sensitivity

Kenneth P. Green, American Enterprise Institute, “Bringing Down Gas and Oil Prices”, May 2006, [www.aei.org/outlook/24336](http://www.aei.org/outlook/24336)

Over time, by decreasing U.S. imports, it could provide a supply to help buffer fluctuations in world oil prices. Modern technology would allow this to be done with environmental sensitivity. The president should continue to press Congress to allow environmentally careful exploration and development of ANWR’s oil and gas resources.

No adverse effect from drilling: Caribou and polar bears doing fine in other drilled areas

Max Schulz, April 2007, “Energy and the Environment: Myths and Facts”, The Manhattan Institute, <http://www.manhattan-institute.org/pdf/Energy_and_Environment_Myths.pdf>

Yet the experience of oil exploration at nearby Prudhoe Bay suggests that drilling need not endanger wildlife. When oil exploration began in the 1970s, an estimated 3,000 caribou roamed in the central Arctic herd in Prudhoe Bay. At the time, conservationists raised concerns, similar to those voiced today, about the dangers that drilling might pose to the caribou and other wildlife. In the three decades since, however, the caribou herds multiplied more than tenfold, to an estimated 32,000. Similarly, studies of local polar bears have found no adverse effect on their population from energy exploration and production.

SOLVENCY

Increased supplies of oil would improve trade, benefit consumers and reduce terror funding

Keith Crane (Director, Environment Energy & Economic Development Program) 2009, RAND Corporation (nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world) [www.rand.org/pubs/monographs/2009/RAND\_MG838.pdf](http://www.rand.org/pubs/monographs/2009/RAND_MG838.pdf)

The United States would also benefit from policies that would push down the world market price of oil by curbing demand or increasing competitive supplies of oil, domestic and foreign, and alternative fuels. U.S. terms of trade would improve, to the benefit of U.S. consumers; rogue oil exporters would have fewer funds at their disposal; and oil exporters that support Hamas and Hizballah would have less money to give these organizations.

Oil companies will seek leases in ANWR if restrictions are lifted

Associated Press, 17 March 2005, “Senate votes to open arctic refuge to oil drilling” [http://www.msnbc.msn.com/id/7195164//](http://www.msnbc.msn.com/id/7195164/)

But how much of that oil would be attractive to oil companies would depend on the price of oil. In recent years a number of major oil companies have stopped lobbying for opening ANWR, focusing their activities elsewhere in the world. Interior Secretary Gale Norton said she has no doubt that oil companies would seek out exploratory leases in the Alaska refuge. If given a go-ahead from Congress, she said, she would expect to begin offering leases in 2007 with refuge oil beginning to flow down the Alaska pipeline “seven or 10 years after that.”

ANWR has 10 billion barrels of oil

Institute for Energy Research (not-for-profit organization that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets), 2009, “ANWR’s 1002 Area,” [www.instituteforenergyresearch.org/anwr/](http://www.instituteforenergyresearch.org/anwr/)

U.S. Geological Survey (USGS) [estimates](http://pubs.usgs.gov/fs/fs-0028-01/" \t "_blank) that the entire assessment area contains a mean expected value of **10.4 billion** barrels of technically recoverable oil.

* The 1002 area could produce about one million barrels of oil per day, which is about 20% of our [daily domestic production](http://tonto.eia.doe.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_m.htm" \t "_blank)
* 10.4 billion barrels, with a production rate of 1 million barrels per day, would make ANWR the single largest producing field in North America.

Alaskan drilling has been a success story – economically and environmentally

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm), 24 May 2006, “Congress Should Let ANWR's Oil Flow to U.S. Customers”, The Heritage Foundation, <http://www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm>

Alaskan oil drilling has been a success story, both economically and environmentally. The 800-mile trans-Alaska pipeline built in the 1970s recently sent its 15 billionth barrel of oil to the lower 48 states. Most of this oil came from Prudhoe Bay, about 80 miles west of ANWR in northern Alaska.

ANWR development would boost domestic oil production by 20%

Associate Press, 16 March 2004, “Study: ANWR oil would have little impact Heavy reliance on foreign imports would continue, agency finds” MSNBC <http://www.msnbc.msn.com/id/4542853/>

Rep. Richard Pombo, R-Calif., chairman of the Resources Committee, seized on the finding Tuesday that development of the refuge would boost domestic oil production by 20 percent over what it otherwise would be in 2025.

ANWR would fuel 85 million cars for 35 years

Kenneth P. Green, American Enterprise Institute, “Bringing Down Gas and Oil Prices”, May 2006, <http://www.aei.org/outlook/24336>

The price of crude oil is not something entirely beyond America’s control. As AEI’s James K. Glassman points out, had we opened up the Arctic National Wildlife Refuge to development ten years ago, we would have been producing another million barrels per day of domestic oil, or about 6 percent of our total consumption. And, according to the Interior Department, there are 102 billion barrels of oil under the Outer Continental Shelf of the United States and Alaska. That is enough oil to fuel 85 million cars for thirty-five years. Regrettably, most of that oil has been placed off-limits to production by presidential, Congressional, and state moratoria on exploration and development.

ANWR = billions of dollars in federal revenues

Institute for Energy Research (not-for-profit organization that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets), 2009, “ANWR’s 1002 Area,” <http://www.instituteforenergyresearch.org/anwr/>

The Congressional Budget Office estimates that energy companies would pay the government at least $5 billion for leases in the 1002 Area. Billions more would come from royalty payments while oil is being produced.

Oil company bidding gives the government larger returns

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Two considerations might be noted at this point. One is that the projected price of oil is a key factor in estimating the amount of oil that might be economically recoverable. The second is that the larger the area is open to leasing and resultant oil company participation, the more likely that company bidding will give the government (the people of the United States) a larger return for making resources accessible to private entities.

Oil development in ANWR would create jobs in Alaska and elsewhere

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), May 15, 2003, “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

“Further, oil development would create several thousand short-term jobs in Alaska and elsewhere, and a substantial number of long-term jobs as well. The state would benefit from additional royalty income, and many of Alaska’s Native groups would benefit as well.”

Little additional production makes a noticeable difference in price

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm), 24 May 2006, “Congress Should Let ANWR's Oil Flow to U.S. Customers”, The Heritage Foundation, <http://www.heritage.org/Research/EnergyandEnvironment/wm1094.cfm>

However, the experience of the past two years shows that, in a tight market with limited spare capacity, just a little additional production can make a noticeable difference in price. And ANWR’s estimated one million barrels per day is more than a little—that’s two-thirds of the amount of oil taken offline by Hurricane Katrina, which caused a significant price spike.

WASTED ON THE WAY: THE CASE FOR THE BASEL CONVENTION

By Vance Trefethen

If more Americans realized how thousands of tons of our toxic trash are dumped on poor people in poor countries, everyone would join us in affirming: **That the United States Federal Government should significantly reform its environmental policy. Today we will offer you a Comparative Advantage case for change, starting with…**

OBSERVATION 1. Our DEFINITIONS

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental Policy: a government policy that explicitly intends to promote environmental protection, conservation, and rational use of natural resources.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

**Hazardous Waste:** Any of the substances on the 2½ page list contained in Appendix I and Appendix II of the Basel Action Network’s “Model Legislation Implementing the Basel Convention” in 2008. The list is available if requested in cross-examination.

OBSERVATION 2. The Status Quo fails to regulate electronic waste exports

A. The US has not joined the Basel Convention. Patti Whiting, an EPA expert on hazardous materials in March 2009:

Patti Whiting (master's degree in Civil Engineering focusing on hazardous materials management; has worked for the Environmental Protection Agency’s (EPA) Office of Resource Conservation and Recovery (ORCR) for 18 years, and on international waste issues for 9 years; serves as EPA’s Basel delegate and has played a similar role within the OECD Working Group on Waste Prevention and Recycling ) 25 March 2009, "Basel Convention Technical Guidelines on the Environmentally Sound Management of Used Tires" <http://cluin.org/meetings/border2012/slides/whiting.pdf> (parentheses in original; brackets added)

The Basel Convention is a multi-lateral environmental agreement (treaty) governing the transboundary movement of hazardous waste– the Convention established a “prior informed consent” system to control the import and export of Basel hazardous waste.

• This Convention was negotiated under the auspices of the UNEP [United Nations Environment Programme] in the late 1980s; was adopted in 1989 and entered into force in 1992.

• There are over 170 Parties to the Basel Convention. Canada and Mexico are both Parties to the Convention. The U.S. is not a Party.

– Every U.S. Administration has been in favor of ratification, however, we have been unable to get implementing legislation in place to enable ratification.

B. US regulations are notoriously lax

Tom Zeller Jr. (Journalist), 31 May 2009, "Few Rules for Recycling Electronics," NEW YORK TIMES, <http://www.ban.org/ban_news/2009/090531_few_rules.html>

Whatever its specifics, the case is emblematic of a larger and oft-lamented truth attending the endless tide of consumer electronics coursing through the American waste stream — and one that works in favor, at least for the moment, of American brokers like Mr. Nixon: There really are precious few rules to break. As noted in a report from the Government Accountability Office for the House Foreign Affairs Committee last August, the United States remains notoriously lax in its regulation of electronics waste and the business of shipping it overseas.

C. The US allows massive exports of toxic e-waste

Associated Press, 25 June 2008, “U.N. says lack of resources hampers toxic waste flow,” <http://www.usatoday.com/news/world/2008-06-25-toxic-waste_N.htm>

Puckett along with delegates from Africa and China place part of the blame for the growing waste problem on the United States, which is the only major economic power not to approve the U.N.-administered Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The United States takes a tough line on waste disposal within its boundaries, they say, while allowing recyclers to legally send electronic waste and other toxic materials abroad to China and other developing countries. "The U.S. routinely allows massive exports of toxic e-waste to countries it knows prohibit such imports," Puckett said Wednesday.

OBSERVATION 3. Our failure to ratify Basel and properly regulate electronic waste creates several FAILURES in the Status Quo

FAILURE 1. Environmental Injustice. We dump our toxic waste on those unable to manage it.

Basel Action Network (BAN; recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

Even if Africa possessed state-of-art waste management systems, such disproportionate burdening of these toxic wastes on peoples and environments in Africa would be an environmental injustice. But in fact, the lack of any kind of ewaste recycling infrastructure in Nigeria and other African nations, means that this useless imported material ends up in the worst global examples of waste management – BAN witnessed formal and informal dumps where toxins are easily leached into the near-surface groundwater and are routinely burned, emitting airborne toxic chemicals such as dioxins, polycyclic aromatic hydrocarbons and heavy metals. This type of very damaging toxic trade, similar in many respects to the export of ewaste revealed in Exporting Harm, is precisely the type of trade which the global community sought to prohibit in the late 1980s with the adoption of the Basel Convention.

FAILURE 2. Horrifying conditions and human tragedy

Joan Delaney (journalist), 19 Nov 2008, “Recyclers Illegally Exporting Electronic Waste,” EPOCH TIMES <http://www.theepochtimes.com/n2/canada/recyclers-illegal-exporting-electrical-waste-7440.html>

The conditions Puckett describes are most evident in Guiyu in southern China, where the streets are lined with pile after pile of electronic junk. It is in Guiyu that, according to a recent exposé by CBS' 60 Minutes, “21st century toxins are being managed in a 17th century environment.” In crude operations, unprotected workers use fire and mercuric acid baths to extract the precious metals from the e-waste. The fire produces clouds of acrid smoke which, according to the documentary, releases polychlorinated and polybrominated dioxins — some of the most toxic compounds on earth. The acid residue is dumped in the local river which is contaminated beyond redemption. Drinking water now has to be trucked into Guiyu which, before becoming a dump for much of the world's e-waste, was a small, rice-growing village. Although China banned the import of e-waste in 1996, an estimated one million tons of it are treated in Guiyu yearly by 5500 family-based operations, supporting 100,000 migrant workers. Scientific studies have found that 80 per cent of Guiyu's children have dangerously high levels of lead in their blood, and pregnancies are six times more likely to end in miscarriage.

FAILURE 3. Reduced incentive for better products. Companies have no incentive to make better products as long as foreign dumping is an option.

Basel Action Network (BAN; recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') June 2008, “Hazardous Waste Recycling: No Justification for Toxic Trade,” [www.ban.org/Library/BP07\_June\_2008.pdf](http://www.ban.org/Library/BP07_June_2008.pdf)

Not only does waste trade under the name of recycling victimize the poor simply because they are poor, but it creates a disincentive to achieving true waste prevention and minimization. As long as the cheap and dirty avenue of export is available, there will be little incentive for upstream efforts to make products more long-lived, more recyclable, and without toxic inputs.

OBSERVATION 4. We offer the following plan, to be implemented by Congress and the President by any necessary constitutional means:

**1.** The US will ratify and fully participate in the Basel Convention including the Basel Ban Amendment.

**2.** Congress will enact any necessary legislation to uphold the principles of the Convention and our mandates

**3.** Export of hazardous wastes from the USA, including electronic waste, shall be prohibited to

**a.** To any point south of 60 degrees South latitude

**b.** To any nation that bans the import of such waste

**c.** To any place lacking a clear plan for handling it in an environmentally sound manner

**d.** To any nation that is not a party to the Basel Convention

**e.** By any exporter not licensed by the EPA

**f.** To any nation NOT in: the OECD, the European Union, or Liechtenstein

**g.** Summary: Mandates 3a-e will uphold the basic Basel Convention. 3F will uphold the Basel Ban Amendment by prohibiting the US from exporting waste to poor countries.

**4**. Enforcement shall be through the EPA, Justice Department, Customs and Border Patrol, the Coast Guard, US military forces, and any other necessary Federal agency. Violators shall be imprisoned for 5 years without parole.

**5.** Funding shall come from cancelling the Corporation for National Community Service and from general federal revenues.

**6.** This plan takes effect 30 days after an Affirmative ballot.

**7.** All Affirmative speeches may clarify the plan as needed.

OBSERVATION 5. We create several ADVANTAGES

ADVANTAGE 1. Create US recycling jobs

Rep. Gene Green (D-Tex., Chairman of Environment and Hazardous Materials Subcommittee ) 31 July 2008, Toxic e-waste exports present pressing problem, Rep. Green press release, [www.house.gov/list/press/tx29\_green/20080731ewaste.html](http://www.house.gov/list/press/tx29_green/20080731ewaste.html)

“If we export our e-waste improperly, it can come back to haunt us,” Green said. “Instead, we should create jobs by recycling it properly at home.” Almost all other developed nations ban the export of toxic e-waste to developing nations, but the EPA has determined that most toxic e-waste is not subject to export restrictions. The Resource Conservation and Recovery Act regulates the export of hazardous waste from the United States to other nations, but the EPA has determined that much e-waste is excluded or exempted from the definitions of “waste” and “hazardous waste” under the Act, a major environmental gap in regulation. “The EPA regulates exports of ‘hazardous waste’ but it imposes little or no regulation on e-waste,” Green said. “If the EPA cannot or will not act to halt the toxic e-waste trade to developing nations, then Congress should take action.”

ADVANTAGE 2. Self-sufficiency and environmental soundness in hazardous waste management

Basel Action Network (BAN; recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') June 2008, “Hazardous Waste Recycling: No Justification for Toxic Trade,” [www.ban.org/Library/BP07\_June\_2008.pdf](http://www.ban.org/Library/BP07_June_2008.pdf)

In 1994, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal banned all exports of hazardous wastes for final disposal *and recycling* from developed to developing countries (see BAN Briefing Paper 1). The Parties to the Convention included recycling in the total ban due to the knowledge that export of hazardous waste for recycling from developed to developing countries, works in contradiction to the obligations of the Basel Convention. These obligations include the achievement of national self-sufficiency in hazardous waste management and environmentally sound management of wastes through waste prevention.

ADVANTAGE 3. Technological advancement for poor countries

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

This most recent BAN investigation revealed that Nigeria does possess a remarkable capability to accomplish very highly skilled repair and refurbishment operations. *If* the material that was being handled were designed in the near future to be nonhazardous, or even now, *if* proper trade controls were implemented under the framework of the Basel Convention to ensure against the transfer of hazardous waste, *then* the used electronics trade to Nigeria and countries like it could approach the dream of a win-win scenario for exporter and importer nation alike. In this way, product longevity might well be achieved via export while countries like Nigeria could be helped to leap-frog more rapidly into the information age.

2A EVIDENCE: RATIFY BASEL CONVENTION

DEFINITIONS

B.A.N. is good: GAO consults B.A.N. (Basel Action Network) when investigating e-waste

Julie Schmit (journalist), 30 Dec 2008, USA TODAY, “USA’s trashed TVs, computer monitors can make toxic mess,” [www.usatoday.com/money/industries/environment/2008-12-29-environmental-toxic-waste-watchdogs\_N.htm](http://www.usatoday.com/money/industries/environment/2008-12-29-environmental-toxic-waste-watchdogs_N.htm)

Because of the GAO's investigation, "EPA enforcement went from non-existent, to them actually doing something," says John Stephenson, the GAO's lead investigator on the e-waste report. He says the GAO consulted BAN, and other groups, when doing its investigation.

The Basel Ban Amendment: Ban on export of hazardous waste to countries not in: OECD, European Union or Liechtenstein

(Hasn’t been put into effect yet – waiting for enough countries to ratify it; even if it were in effect, the US hasn’t ratified Basel, so it doesn’t apply to us yet)

Decision Adopted by the Third Conference of the Parties in Geneva, The Basel Convention Ban Amendment, 22 Sept 1995, [www.basel.int/pub/baselban.html](http://www.basel.int/pub/baselban.html)

At the Second Meeting of the Conference of the Parties (COP – 2) in March 1994, Parties agreed to an immediate ban on the export from OECD to non-OECD countries of hazardous wastes intended for final disposal. They also agreed to ban, by 31 December 1997, the export of wastes intended for recovery and recycling (Decision II/12). However, because Decision II/12 was not incorporated in the text of the Convention itself, the question as to whether it was legally binding or not arose. Therefore, at COP-3 in 1995, it was proposed that the Ban be formally incorporated in the Basel Convention as an amendment (Decision III/1). Scope of the Ban Decision III/1 does not use the distinction OECD/non-OECD countries. Rather, it bans hazardous wastes exports for final disposal and recycling from what are known as Annex VII countries (Basel Convention Parties that are members of the EU, OECD, Liechtenstein) to non-Annex VII countries (all other Parties to the Convention). Ratification The Ban Amendment has to be ratified by three-fourths of the Parties who accepted it in order to enter into force

OECD: Organization for Economic Cooperation and Development

OECD official web site, last updated 2009, “Ratification of the Convention on the OECD” [www.oecd.org/document/58/0,3343,en\_2649\_201185\_1889402\_1\_1\_1\_1,00.html](http://www.oecd.org/document/58/0,3343,en_2649_201185_1889402_1_1_1_1,00.html)

Twenty countries originally signed the Convention on the Organisation for Economic Co-operation and Development on 14 December 1960. Since then a further ten countries have become members of the Organisation. The Member countries of the Organisation and the dates on which they deposited their instruments of ratification are:

[AUSTRALIA](http://www.oecd.org/country/0,3377,en_33873108_33873229_1_1_1_1_1,00.html): 7 June 1971

[AUSTRIA](http://www.oecd.org/country/0,3377,en_33873108_33873245_1_1_1_1_1,00.html): 29 September 1961

[BELGIUM](http://www.oecd.org/country/0,3377,en_33873108_33873261_1_1_1_1_1,00.html): 13 September 1961

[CANADA](http://www.oecd.org/country/0,3377,en_33873108_33873277_1_1_1_1_1,00.html): 10 April 1961

[CZECH REPUBLIC](http://www.oecd.org/country/0,3377,en_33873108_33873293_1_1_1_1_1,00.html): 21 December 1995

[DENMARK](http://www.oecd.org/country/0,3377,en_33873108_33873309_1_1_1_1_1,00.html): 30 May 1961

[FINLAND](http://www.oecd.org/country/0,3377,en_33873108_33873360_1_1_1_1_1,00.html): 28 January 1969

[FRANCE](http://www.oecd.org/country/0,3377,en_33873108_33873376_1_1_1_1_1,00.html): 7 August 1961

[GERMANY](http://www.oecd.org/country/0,3377,en_33873108_33873402_1_1_1_1_1,00.html): 27 September 1961

[GREECE](http://www.oecd.org/country/0,3377,en_33873108_33873421_1_1_1_1_1,00.html): 27 September 1961

[HUNGARY](http://www.oecd.org/country/0,3377,en_33873108_33873438_1_1_1_1_1,00.html): 7 May 1996

[ICELAND](http://www.oecd.org/country/0,3377,en_33873108_33873476_1_1_1_1_1,00.html): 5 June 1961

[IRELAND](http://www.oecd.org/country/0,3377,en_33873108_33873500_1_1_1_1_1,00.html): 17 August 1961

[ITALY](http://www.oecd.org/country/0,3377,en_33873108_33873516_1_1_1_1_1,00.html): 29 March 1962

[JAPAN](http://www.oecd.org/country/0,3377,en_33873108_33873539_1_1_1_1_1,00.html): 28 April 1964

[KOREA](http://www.oecd.org/country/0,3377,en_33873108_33873555_1_1_1_1_1,00.html): 12 December 1996

[LUXEMBOURG](http://www.oecd.org/country/0,3377,en_33873108_33873574_1_1_1_1_1,00.html): 7 December 1961

[MEXICO](http://www.oecd.org/country/0,3377,en_33873108_33873610_1_1_1_1_1,00.html): 18 May 1994

[NETHERLANDS](http://www.oecd.org/country/0,3377,en_33873108_33873626_1_1_1_1_1,00.html): 13 November 1961

[NEW ZEALAND](http://www.oecd.org/country/0,3377,en_33873108_33873658_1_1_1_1_1,00.html): 29 May 1973

[NORWAY](http://www.oecd.org/country/0,3377,en_33873108_33873681_1_1_1_1_1,00.html): 4 July 1961

[POLAND](http://www.oecd.org/country/0,3377,en_33873108_33873739_1_1_1_1_1,00.html): 22 November 1996

[PORTUGAL](http://www.oecd.org/country/0,3377,en_33873108_33873764_1_1_1_1_1,00.html): 4 August 1961

[SLOVAK REPUBLIC](http://www.oecd.org/country/0,3377,en_33873108_33873781_1_1_1_1_1,00.html): 14 December 2000

[SPAIN](http://www.oecd.org/country/0,3377,en_33873108_33873806_1_1_1_1_1,00.html): 3 August 1961

[SWEDEN](http://www.oecd.org/country/0,3377,en_33873108_33873822_1_1_1_1_1,00.html): 28 September 1961

[SWITZERLAND](http://www.oecd.org/country/0,3377,en_33873108_33873838_1_1_1_1_1,00.html): 28 September 1961

[TURKEY](http://www.oecd.org/country/0,3377,en_33873108_33873854_1_1_1_1_1,00.html): 2 August 1961

[UNITED KINGDOM](http://www.oecd.org/country/0,3377,en_33873108_33873870_1_1_1_1_1,00.html): 2 May 1961

[UNITED STATES](http://www.oecd.org/country/0,3377,en_33873108_33873886_1_1_1_1_1,00.html): 12 April 1961

HARMS

Exported electronics are dismantled in Asia under unsafe conditions

US Government Accountability Office (GAO), 28 Aug 2008, “Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation,” <http://www.gao.gov/products/GAO-08-1044>

Some exported used electronics are handled responsibly in countries with effective regulatory controls and by companies with advanced technologies, but a substantial quantity ends up in countries where disposal practices are unsafe to workers and dangerous to the environment. Recent surveys made on behalf of the United Nations found that used electronics exported from the United States to many Asian countries are dismantled under unsafe conditions, using methods like open-air incineration and acid baths to extract metals such as copper and gold.

Toxic waste exports causing health problems in Africa

Michael Casey (journalist), 26 June 2008, ASSOCIATED PRESS, “Officials: Poor nations can’t manage toxic waste,” <http://www.ban.org/ban_news/2008/080626_poor_nations_cant_handle_toxic_waste.html>

"There is a need to reduce the export of toxic waste into Africa," said Dr. O.O. Dada, director of Nigeria's Department of Pollution Control and Environmental Health. "It's causing a lot of health problems, environment problems. The region is wondering why we have to do this when we have our own problems."

3 million tons of toxic waste: Much of it going to Africa and Asia, hurting communities, farms and waterways

Joan Delaney (journalist), 19 Nov 2008, “Recyclers Illegally Exporting Electronic Waste,” EPOCH TIMES <http://www.theepochtimes.com/n2/canada/recyclers-illegal-exporting-electrical-waste-7440.html>

It contains toxic components such as lead, mercury and cadmium, and Canada generates about 140,000 tons of it each year. The United States generates three million tons yearly. It is electronic waste, and disposing of it in an environmentally friendly way is proving complicated and open to abuse. With the astronomical growth of e-waste in the last decade, the number of recyclers of the ever-growing tidal wave of discarded computers, monitors, printers and cell phones has exploded in North America. And while some are doing their best to recycle responsibly, many are illegally shipping e-waste to developing countries in Asia and Africa where its toxic materials are taking a high toll on communities, farmland and waterways.

E-waste exports give poor nations choice between poverty or poison

United Nations Environment Programme, 2009, E-Waste – The great e-waste recycling debate, <http://www.grida.no/publications/vg/waste/page/2868.aspx>

The high tech boom has brought with it a new type of waste – electronic waste, a category that barely existed 20 years ago. Now e-waste represents the biggest and fastest growing manufacturing waste. The black and white TV turned to colour, the basic mobile phone needed a camera, personal organizer and music, and who wants last year’s computer when it can’t handle the latest software? As we continually update and invent new products the life of the old ones is getting shorter and shorter. Like shipbreaking, e-waste recycling involves the major producers and users, shipping the obsolete products to Asia, Eastern Europe, and Africa. But instead of being “green” we are exporting a sack full of problems to people who have to choose between poverty or poison.

Each computer yields toxic contamination and only $6 worth of material in Third World garbage dump

United Nations Environment Programme, 2009, E-Waste – The great e-waste recycling debate, <http://www.grida.no/publications/vg/waste/page/2868.aspx>

In many countries entire communities, including children, earn their livelihoods by scavenging metals, glass and plastic from old computers. To extract the small quantity of gold, capacitors are melted down over a charcoal fire. The plastic on the electrical cords is burnt in barrels to expose the copper wires. All in all each computer yields about US $6 worth of material (Basel Action Network). Not very much when you consider that burning the plastic sends dioxin and other toxic gases into the air. And the large volume of worthless parts are dumped nearby, allowing the remaining heavy metals to contaminate the area.

E-waste exports are not hi-tech opportunities: They’re an environmental and health disaster

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

Unfortunately, BAN’s latest investigation in Lagos, Nigeria, a new hotbed of high-tech growth and impressive entrepreneurial spirit, reveals these visions to be the stuff of dreams. Seen at ground level, the massive importation of used equipment is a success story seriously clouded by the smoke of a growing environmental and health disaster. The reality is that this burgeoning new trade is not driven by altruism, but rather by the immense profits that can be made through it and those involved are oblivious to, or unconcerned with, its adverse consequences. Too often, justifications of “building bridges over the digital divide” are used as excuses to obscure and ignore the fact that these bridges double as toxic waste pipelines to some of the poorest communities and countries in the world.

Not “closing the digital divide” – we’re opening the digital dump

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

While supposedly closing the “digital divide”, we are opening a “digital dump”. In the current scenario of global electronic hand-me-downs, witnessed in its nascent stages in Lagos, Nigeria, rich developed countries *lose* an opportunity to enable their own national recycling infrastructure, cleaner technologies, and the development of innovative designs to prevent further toxics use. And, at the same time, the developing countries are increasingly victimized by a disproportionate burden of the world’s toxic cyber waste.

No way to justify exporting pollution: Impacts are even deadlier there than here

Basel Action Network (BAN; recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') June 2008, “Hazardous Waste Recycling: No Justification for Toxic Trade,” [www.ban.org/Library/BP07\_June\_2008.pdf](http://www.ban.org/Library/BP07_June_2008.pdf)

Thus, it is clear that even in the United States and other rich industrialized countries where the technological level is high and the infrastructure and resources exist to monitor and maintain the highest standards, it is still not possible to prevent pollution from hazardous waste recycling. So how can we ever justify export of that same pollution to developing countries where the possibility to mitigate the impacts are even less? In developing countries the hazardous waste recycling becomes even deadlier than what is experienced in developed countries.

Toxic exports are wrong and block true solutions to toxic waste problems

Basel Action Network (BAN; recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') June 2008, “Hazardous Waste Recycling: No Justification for Toxic Trade,” [www.ban.org/Library/BP07\_June\_2008.pdf](http://www.ban.org/Library/BP07_June_2008.pdf)

The export of toxic wastes to poorer economies for recycling is an unacceptable transfer of pollution to those least able to afford it. It can only be justified by brute economics and not from a moral or environmental standpoint. Such trade leaves the workers in developing countries with a choice between poverty and poison - a choice nobody should have to make. Moreover, by allowing a convenient escape valve for rich consumptive societies and manufacturers, it stifles the innovation needed to truly solve our toxic waste problems through upstream “green” design and clean production. We must all do our part to reaffirm the Basel Convention commitment to ban this destructive trade.

INHERENCY

US, Haiti and Afghanistan – the only countries that haven’t ratified the Basel Convention

Plan Advocates: Several European Union countries have incorporated Basel into their national law

Tom Zeller Jr. (Journalist), 31 May 2009, "Few Rules for Recycling Electronics," NEW YORK TIMES, <http://www.ban.org/ban_news/2009/090531_few_rules.html>

The Basel Convention, an international treaty drawn up in the late 1980s at the dawn of the e-waste boom and ultimately ratified by 169 nations, was designed to curb the international trade in electronics waste. A later amendment — signed by considerably fewer nations — restricted the movement of hazardous electronics waste from rich countries to poor ones. Several countries — including those in the European Union — have incorporated the tenets of the Basel Convention and its amendment into national law. The United States, along with Haiti and Afghanistan, have thus far not ratified the Basel Convention.

US refuses to ratify Basel - we’re the only developed country outside the treaty!

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

The worst actor on this list, the United States, refuses even to ratify the Basel Convention, which is now ratified by 165 nations. There are but three countries globally that have signed the Convention (indicating agreement and intent to ratify) but have never ratified it – Haiti, Afghanistan and the United States. Whereas Afghanistan and Haiti represent some of the most impoverished lands on earth and contribute in a negligible way to the global toxic waste burden, the United States is the world’s most wasteful country per capita. As the only developed country absent at the table of the world’s only waste treaty, the US can be viewed as nothing short of a remarkable example of irresponsibility. The US policy on electronic waste is shamelessly negligent -- even to the point of failing to implement OECD treaties demanding controls on all hazardous waste exports.

Waste dumping problem growing: Poor countries can’t afford better enforcement

Michael Casey (journalist), 26 June 2008, ASSOCIATED PRESS, “Officials: Poor nations can’t manage toxic waste,” <http://www.ban.org/ban_news/2008/080626_poor_nations_cant_handle_toxic_waste.html>

Katharina Kummer Peiry, the executive secretary of a UN convention on hazardous waste disposal, said the dumping of everything from hazardous chemicals to electronic waste from televisions and computers in poor countries is a growing problem. She blamed it mostly on the inability of poor nations to finance better enforcement and monitoring of waste coming into their ports. "The problem lies in the lack of interest and lack of resources on the issue at all levels," Peiry said.

They’re just “Guidelines”: EPA does not have “approved methods” for electronic recyclers

Environmental Protection Agency, 2009, Wastes - Resource Conservation - Common Wastes & Materials – eCycling, [www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported](http://www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported)

While EPA does not have “approved methods” for electronic recyclers, we do encourage safe recycling practices. We have issued a set of voluntary [Guidelines for Material Management](../../../partnerships/plugin/guide.htm) under our Plug-In to eCycling Program. Look for recyclers that adhere to these practices.

EPA enforcement of existing laws is lacking

Impact/Analysis: This is referring to the minimal rule we have in effect now regulating exports of junk CRT (computer monitors)

GAO, Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation GAO-08-1044, 28 August 2008 [www.gao.gov/products/GAO-08-1044](http://www.gao.gov/products/GAO-08-1044)

EPA's enforcement is lacking. Since the CRT rule took effect in January 2007, Hong Kong officials intercepted and returned to U.S. ports 26 containers of illegally exported CRTs. EPA has since penalized one violator, and then only long after the shipment had been identified by GAO. EPA officials acknowledged compliance problems with its CRT rule but said that given the rule's relative newness, their focus was on educating the regulated community. This reasoning appears misplaced, however, given GAO's observation of exporters willing to engage in apparent violations of the CRT rule, including some who are aware of the rule. Finally, EPA has done little to ascertain the extent of noncompliance, and EPA officials said they have neither plans nor a timetable to develop an enforcement program.

Existing CRT regulations aren’t enough: Lots of electronics flow overseas virtually unrestricted

GAO, Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation GAO-08-1044, 28 August 2008 [www.gao.gov/products/GAO-08-1044](http://www.gao.gov/products/GAO-08-1044)

GAO observed thousands of requests for these items on e-commerce Web sites during a 3-month period--mostly from Asian countries such as China and India but also from some in Africa. U.S. hazardous waste regulations have not deterred exports of potentially hazardous used electronics, primarily for the following reasons: (1) Existing EPA regulations focus only on CRTs. Other exported used electronics flow virtually unrestricted--even to countries where they can be mismanaged--in large part because relevant U.S. hazardous waste regulations assess only how products will react in unlined U.S. landfills. (2) Companies easily circumvent the CRT rule. GAO posed as foreign buyers of broken CRTs in Hong Kong, India, Pakistan, and other countries, and 43 U.S. companies expressed willingness to export these items. Some of the companies, including ones that publicly tout their exemplary environmental practices, were willing to export CRTs in apparent violation of the CRT rule.

Current regulations not adequate: Congress should ratify Basel and enact more regulations

GAO, Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation GAO-08-1044, 28 August 2008 [www.gao.gov/products/GAO-08-1044](http://www.gao.gov/products/GAO-08-1044)

Finally, EPA has done little to ascertain the extent of noncompliance, and EPA officials said they have neither plans nor a timetable to develop an enforcement program. Beyond enforcing the CRT rule, EPA can take steps to ensure that the larger universe of potentially harmful electronic devices--such as computers, printers, and cell phones--are exported in a manner that does not harm health or the environment. Among the options raised by GAO are (1) expanding hazardous waste regulations to cover other exported used electronics; (2) submitting a legislative package to Congress for ratifying the Basel Convention, an international regime governing the import and export of hazardous wastes; and (3) working with Customs and Border Protection and other agencies to improve identification and tracking of exported used electronics. Options such as these could help make U.S. export controls more consistent with those of other industrialized countries.

SOLVENCY

US must ratify Basel Convention + Basel Ban Amendment

Basel Action Network, June 2008, "The US Must Ratify the Entire Basel Convention (or not at all)" <http://www.ban.org/Library/BP02_June_2008.pdf>

Would US Ratification of the Basel Convention *without* the Basel Ban Amendment be a step in the right direction for the global environment? *Given* that the original 1989 text of the Basel Convention has been denounced by environmentalists and developing countries alike as legitimizing hazardous waste trade instead of criminalizing it; that the Basel Ban Amendment was passed by a consensus of the Basel Parties to rectify this shortcoming; that the United States is still intent on weakening or destroying the Basel Ban and given that the original 1989 Convention is largely a replica of a 1986 OECD decision which the United States has never bothered to implement; and given that the US ability to weaken or eliminate the Basel Ban will be vastly enhanced *if* the US becomes a Party; we would say…. *No.*

Plan Advocate: GAO recommends submitting Basel Convention to Congress

US Government Accountability Office (GAO), 28 Aug 2008, “Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation,” <http://www.gao.gov/products/GAO-08-1044>

Recommendation: In addition, because determining whether to ratify international treaties is a policy decision that rests with Congress and the President, EPA should submit to Congress a legislative package for ratification of the Basel Convention, so Congress can deliberate whether and to what extent the United States should adopt additional controls over the export of used electronics that may threaten human health and the environment when disassembled overseas.

Plan advocates: GAO, BAN, Electronic TakeBack Coalition, European Union

Joan Delaney (journalist), 19 Nov 2008, “Recyclers Illegally Exporting Electronic Waste,” EPOCH TIMES <http://www.theepochtimes.com/n2/canada/recyclers-illegal-exporting-electrical-waste-7440.html>

In September, the U.S. Government Accountability Office released a report denouncing the lack of government controls and enforcement over e-waste exports. BAN and the Electronic TakeBack Coalition are pursuing federal legislation to ban national exports. By stringently implementing the Basel Convention, the European Union has banned the export of all hazardous waste and has recently made strides toward forcing manufacturers to phase out the use of toxic compounds in their products.

Plan Advocate: Australia

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 24 Oct 2005, "Executive Summary: Are We Building High-Tech Bridges or Waste Pipelines?" [www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf](http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf)

This then is our foremost recommendation. Governments must pressure manufacturers to remove the toxic chemicals from this massively proliferating industry at the earliest possible date. And until that time, strict enforcement of the Basel Convention for the hazardous hand-me-downs must become the norm. Thankfully, some countries have already embarked on such measures of responsibility. Australia is noted especially for seeing the problem described in this report before most, and now implementing rules that require full testing of electronic waste to certify compliance with the Basel Convention prior to any export.

Definition of “Hazardous Wastes”

Basel Action Network (recognized by the UN Environment Program as the leading organization dedicated exclusively to issues of 'toxic trade') 2008 Model Legislation Implementing the Basel Convention, Prohibiting the Import and Transit of Hazardous Wastes, and Controlling Their Export, <http://www.ban.org/Library/modeleg.html>

Appendix I

CATEGORIES OF WASTES WHICH ARE HAZARDOUS WASTES

Waste Streams:

Y0 All wastes containing or contaminated by radionuclides, the concentration or properties of which result from human activity

Y1 Clinical wastes from medical care in hospitals, medical centers and clinics

Y2 Wastes from the production and preparation of pharmaceutical products

Y3 Waste pharmaceuticals, drugs and medicines

Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals

Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals

Y6 Wastes from the production, formulation and use of organic solvents

Y7 Wastes from heat treatment and tempering operations containing cyanides

Y8 Waste mineral oils unfit for their originally intended use

Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions

Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)

Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment

Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish

Y13 Wastes from production, formulation and use latex, plasticizers, glues/adhesives

Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known

Y15 Wastes of an explosive nature not subject to other legislation

Y16 Wastes from production, formulation and use of photographic chemicals and processing materials

Y17 Wastes resulting from surface treatment of metals and plastics residues arising from industrial waste disposal operations

Y18 Wastes arising from industrial waste disposal operations

Y46 Wastes collected from households, including sewage and sewage sludges

Y47 Residues arising from the incineration of household wastes

Y48 Used pneumatic tires

Y49 Mixed post-consumer plastic wastes

Wastes having as constituents:

Y19 Metal carbonyls

Y20 Beryllium; beryllium compounds

Y21 Hexavalent chromium compounds

Y22 Copper compounds

Y23 Zinc compounds

Y24 Arsenic; arsenic compounds

Y25 Selenium; selenium compounds

Y26 Cadmium; cadmium compounds

Y27 Antimony; antimony compounds

Y28 Tellurium; tellurium compounds

Y29 Mercury; mercury compounds

Y30 Thallium; thallium compounds

Y31 Lead; lead compounds

Y32 Inorganic fluorine compounds excluding calcium fluoride

Y33 Inorganic cyanides

Y34 Acidic solutions or acids in solid form

Y35 Basic solutions or bases in solid form

Y36 Asbestos (dust and fibres)

Y37 Organic phosphorous compounds

Y38 Organic cyanides

Y39 Phenols; phenol compounds including chlorophenols

Y40 Ethers

Y41 Halogenated organic solvents

Y42 Organic solvents excluding halogenated solvents

Y43 Any congener of polychlorinated dibenzo-furan

Y44 Any congener of polychlorinated dibenzo-p-dioxin

Y45 Organohalogen compounds other than substances referred to in this Annex (e.g., Y39, Y41, Y42, Y43, Y44), including polyvinyl chloride and vinyl chloride.

Appendix II

LIST OF HAZARDOUS CHARACTERISTICS

The first number corresponds to the hazardous classification system included in the United Nations Recommendations on the transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988). The Second number is the Basel Convention hazardous characteristic number.

1 H1 Explosive

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction or producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3 H3 Flammable liquids

The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapor at temperatures of not more than 60.5 degrees C, closed-cup test, or not more than 65.6 degrees C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition).

4.1 H4.1 Flammable solids

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

4.2 H4.2 Substances or wastes liable to spontaneous combustion

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3 H4.3 Substances or wastes which, in contact with water emit flammable gases

Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

5.1 H5.1 Oxidizing

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to the combustion of other materials.

5.2 H5.2 Organic peroxides

Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self accelerating decomposition.

6.1 H6.1 Poisonous (Acute)

Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

6.2 H6.2 Infectious substances

Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.

8 H8 Corrosives

Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.

9 H10 Liberation of toxic gases in contact with air or water

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

9 H11 Toxic (Delayed or chronic)

Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

9 H12 Ecotoxic

Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.

9 H13 Capable, by any means, after disposal, of yielding another material, e.g.,

leachate, or dioxins, which possesses any of the characteristics listed above.

CIRCLE OF LIFE: THE CASE FOR THE CONVENTION ON BIOLOGICAL DIVERSITY

By Vance Trefethen

In the 1990s, the US was a leader in promoting a treaty to uphold the preservation of the diverse species of life on Planet Earth. But times changed, and the US backed away from its leadership role in global biodiversity. America had it right the first time, and the comparative advantages of promoting biodiversity compel us to affirm: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following DEFINITIONS

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Environmental Policy:

Professor John McCormick (Professor of political science at Indiana University Purdue University Indianapolis, IUPUI), 1991, British politics and the environment, p. 7 [Google Books]

“Environmental policy is defined as public policy concerned with governing the relationship between people and their natural environment.”

CBD – The Convention on Biological Diversity:

Convention on Biological Diversity official web site, 2007, “Sustaining Life on Earth” <http://www.cbd.int/convention/guide.shtml>

At the 1992 Earth Summit in Rio de Janeiro, world leaders agreed on a comprehensive strategy for "sustainable development" -- meeting our needs while ensuring that we leave a healthy and viable world for future generations. One of the key agreements adopted at Rio was the Convention on Biological Diversity. This pact among the vast majority of the world's governments sets out commitments for maintaining the world's ecological underpinnings as we go about the business of economic development. The Convention establishes three main goals: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources.

OBSERVATION 2. INHERENCY: Status Quo Biodiversity Efforts are Lacking

A. Isolated among the nations, the US refuses to ratify CBD

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

However, the CBD never received a ratification vote on the Senate floor. 1995 - 2008: The Senate has not revisited CBD ratification for 14 years. But, during this time, the USA still has sent large delegations of governmental officials and representatives from environmental and industry groups to all CBD meetings. Nevertheless, as a CBD “observer,” our nation’s delegations have no official voice – we cannot directly engage in key negotiations or final decision-making. Summary: Beginning more than 20 years ago, leadership by the USA led to the most comprehensive agreement ever written to reduce the global loss of biodiversity. Then, our nation stepped away while nearly every other nation in the world joined the CBD. The USA stands starkly isolated as a non-party, harming our world image and our ability to affect global conservation and sustainable use efforts.

B. Biodiversity is squandered; Assessment and conservation aren’t happening

Prof. John C. Dernbach, editor (Prof of Law at Widener Univ.), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, (“illusive” was misspelled in the original; it should be “elusive”) [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

Biodiversity conservation remains an illusive goal in the United States. Although no standard, systematic assessment of the state of biodiversity exists in the United States, the clear message from a variety of sources is that we are squandering our rich heritage of species and ecosystem diversity through continuing habitat destruction. Conservation remains a formal domestic and policy objective, but the 1992 Biodiversity Convention remains unratified.

OBSERVATION 3. We offer the following PLAN to be implemented by any necessary constitutional means:

**1.** The US Senate will vote to ratify the Convention on Biological Diversity treaty as submitted by President Clinton.

**2.** Congress will establish and fund the US Biological Survey in a manner similar to the US Geological Survey. It will

**a.** create a publically accessible inventory of the nation’s biodiversity heritage

**b.** provide the scientific support for the establishment of biodiversity indexes and conservation performance standards.

**c.** create educational programs to increase public awareness of the importance of biodiversity

**d.** establish biodiversity goals and action plans and report on their progress

**e.** carry out any other necessary actions needed to ensure US compliance with CBD

**3.** Congress will fund biodiversity conservation research at the nation’s land-grant universities at a level equal to agricultural research.

**4.** Funding will come from General Federal Revenues and cuts in NASA. $1.1 billion for the Biological Survey and $1.2 billion for research grants.

**5.** Enforcement will be through the Justice Department, the US Biological Survey and Federal Courts using normal means under existing law.

**6.** This plan takes effect 30 days after an Affirmative ballot.

**7.** All Affirmative speeches may clarify the plan.

OBSERVATION 4. Experts recommend our plan because it works

A. We stimulate a national comprehensive biodiversity strategy

Prof. John C. Dernbach, editor (Prof of Law at Widener Univ.), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

The United States should ratify the Convention on Biological Diversity. Ratification would establish biodiversity conservation as an overarching legal objective in the United States and stimulate the development of a comprehensive national biodiversity conservation strategy.

B. US Biological Survey is needed for effective conservation

Prof. Dan Tarlock (Prof. of Law at Chicago-Kent College of Law) and Andrew Zabel (practices law in Seattle, focues on environmental issues for tribal, municipal and corporate clients) Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

The United States should create a Biological Survey equal to the U.S. Geological Survey. The purpose of the new agency would be to inventory the nation’s biodiversity heritage and to provide the necessary scientific support for the establishment of biodiversity indices and conservation performance standards. Effective conservation will not be possible until we have substantive criteria to establish conservation goals and performance measures.

C. Biodiversity research is needed

Prof. Dan Tarlock (Prof. of Law at Chicago-Kent College of Law) and Andrew Zabel (practices law in Seattle, focues on environmental issues for tribal, municipal and corporate clients) Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, <http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book_result&ct=result&resnum=5>

The creation of a Biodiversity Survey should be complemented by providing support to state land-grant universities for biodiversity conservation research, in order to bring such research into parity with agricultural research.

D. CBD sets goals and standards for biodiversity conservation

Secretariat of the Convention on Biological Diversity, 2000, “Sustaining life on Earth,” [www.cbd.int/doc/publications/cbd-sustain-en.pdf](http://www.cbd.int/doc/publications/cbd-sustain-en.pdf)

The Convention on Biological Diversity, as an international treaty, identifies a common problem, sets overall goals and policies and general obligations, and organizes technical and financial cooperation. However, the responsibility for achieving its goals rests largely with the countries themselves. Private companies, landowners, fishermen, and farmers take most of the actions that affect biodiversity. Governments need to provide the critical role of leadership, particularly by setting rules that guide the use of natural resources, and by protecting biodiversity where they have direct control over the land and water. Under the Convention, governments undertake to conserve and sustainably use biodiversity. They are required to develop national biodiversity strategies and action plans, and to integrate these into broader national plans for environment and development. This is particularly important for such sectors as forestry, agriculture, fisheries, energy, transportation and urban planning. Other treaty commitments include:

* Identifying and monitoring the important components of biological diversity that need to be conserved and used sustainably.
* Establishing protected areas to conserve biological diversity while promoting environmentally sound development around these areas.
* Rehabilitating and restoring degraded ecosystems and promoting the recovery of threatened species in collaboration with local residents.
* Respecting, preserving and maintaining traditional knowledge of the sustainable use of biological diversity with the involvement of indigenous peoples and local communities.
* Preventing the introduction of, controlling, and eradicating alien species that could threaten ecosystems, habitats or species.
* Controlling the risks posed by organisms modified by biotechnology.
* Promoting public participation, particularly when it comes to assessing the environmental impacts of development projects that threaten biological diversity.
* Educating people and raising awareness about the importance of biological diversity and the need to conserve it.
* Reporting on how each country is meeting its biodiversity goals.

OBSERVATION 5. Greater attention to Biodiversity offers comparative ADVANTAGES

ADVANTAGE 1. Preserves the health and resilience of the world’s food supply

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19,](\l%20)  "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Fourth, biological diversity is necessary for the health and resilience of the world’s food supply. The replacement of indigenous crop varieties and biodiverse cultivation systems with monocultures increases vulnerability to pests and disease, diminishes soil fertility, promotes dependence on toxic agrochemicals, increases the likelihood of catastrophic crop failure in the event of blight, and adversely affects human nutrition by reducing the variety of foods consumed. Even though thousands of crops have been cultivated since the dawn of agriculture, the global food supply currently depends on approximately 100 species of food crops. Just four of these crops (corn, wheat, rice and potatoes) supply over sixty percent of the world’s dietary energy needs. Thus, development strategies that encourage monocultural production techniques render our food supply vulnerable to catastrophic disruptions of the food supply akin to the Irish potato famine.

ADVANTAGE 2. Protection of human life, health & well-being

*Pavan Sukhdev, Study Leader,**European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report,*

<http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

There seems to be little appreciation of the many dimensions of biodiversity loss, or the connections between biodiversity loss, climate change and economic development. Species loss and ecosystem degradation are inextricably linked to human well-being, and unless we take urgent remedial action, “normal service” – in the sense of being able to enjoy the benefits that our environment affords us – may never be resumed. Humanity receives countless benefits from the natural environment in the form of goods and services (generally grouped under the collective title of ecosystem services) such as food, wood, clean water, energy, protection from floods and soil erosion (see Box 1.1). Natural ecosystems are also the source of many life-saving drugs as well as providing sinks for our wastes, including carbon. Human development has also been shaped by the environment, and this interlinkage has strong social, cultural and aesthetic importance. The well-being of every human population in the world is fundamentally and directly dependent on ecosystem services.

2A EVIDENCE: CONVENTION ON BIOLOGICAL DIVERSITY

DEFINITIONS

The full text of the Convention on Biological Diversity is 83 pages long and available here: <http://www.cbd.int/doc/legal/cbd-un-en.pdf>

Biological diversity:

Text of the Convention on Biological Diversity, 1992, Article 2 “Use of Terms,” (brackets added) [www.cbd.int/doc/legal/cbd-un-en.pdf](http://www.cbd.int/doc/legal/cbd-un-en.pdf)

“Biological diversity” means the variability among living organisms from all sources including, inter alia [among others], terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part: this includes diversity within species, between species and of ecosystems.

Biological diversity/Biodiversity:

Prof. Ken W. Belcher (Assistant Professor, Dept of Agricultural Economics at the Univ of Saskatchewan**, *Canada****)*, Nov 2004, “The Convention on Biological Diversity: Opportunities and Constraints for Agricultural Systems in Canada,” <http://ideas.repec.org/a/ags/cafric/45738.html> (the “evolution” referred to here may be (and the sharp Affirmative debater will argue that it is) a reference to Special Theory evolution (the fact that there are significant variations within species that have developed over time), not General Theory evolution (the theory that various new species originated from other species and ultimately from non-living matter); see here for more: <http://www.apologeticspress.org/articles/215>).

Biological diversity, or biodiversity, refers to the diversity of life at all levels and the linkages between these different levels (Wilson, 1992). Biodiversity is commonly interpreted at three levels: 1) genetic diversity -- “ the genetic variation provided by species; 2) species diversity -- “ the variety of species within a given area; and 3) ecosystem diversity -- “ the variety of biotic communities and habitats and the diversity within ecosystems at the landscape or regional level.

Definition of Sustainable Development: Precision isn’t necessary

Prof. John C. Dernbach, editor (Prof of Law at Widener Univ.), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

The challenge in any given situation, however, is to determine what is necessary to achieve sustainable development. Disputes about the sustainability of a particular project or activity are inevitable, but a more precise rendering of the term is not likely to help resolve them. We will define and further sustainable development, in other words, by the actions we take and by what we learn from those actions.

History of CBD

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· June 1993: President Clinton signed the CBD on behalf of the USA.

· November 1993: President Clinton transmitted the CBD to the Senate for advice and consent along with “seven understandings” to accompany the ratification instrument. He noted that existing Federal, State and local laws and programs were “sufficient to enable any activities necessary to effectively implement our responsibilities under the Convention” and the “Administration does not intend to disrupt the existing balance of Federal and State authorities through the Convention”.

· 1994: The Senate Foreign Relations Committee supported CBD ratification by a 16-3 bipartisan vote, subject to the seven understandings. (Five of the 16 senators who voted for ratification are still in the Senate: Senators Dodd, Feingold, Gregg, Kerry, and Lugar. None of the three senators who voted against ratification remain in office.) However, the CBD never received a ratification vote on the Senate floor.

· 1995 - 2008: The Senate has not revisited CBD ratification for 14 years. But, during this time, the USA still has sent large delegations of governmental officials and representatives from environmental and industry groups to all CBD meetings. Nevertheless, as a CBD “observer,” our nation’s delegations have no official voice – we cannot directly engage in key negotiations or final decision-making.

Summary: Beginning more than 20 years ago, leadership by the USA led to the most comprehensive agreement ever written to reduce the global loss of biodiversity. Then, our nation stepped away while nearly every other nation in the world joined the CBD. The USA stands starkly isolated as a non-party, harming our world image and our ability to affect global conservation and sustainable use efforts.

SIGNIFICANCE

Loss of biodiversity threatens the planet – we must act now

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The loss of biodiversity and ecosystems is a threat to the functioning of our planet, our economy and human society. We believe it is essential to start tackling this problem as soon as possible.

Economics can’t measure the need for biodiversity

European Commission Directorate General Environment, 2008, THE ECONOMICS OF ECOSYSTEMS AND BIODIVERSITY, <http://ec.europa.eu/environment/nature/biodiversity/economics/index_en.htm>

Human well-being is dependent upon "ecosystem services" provided by nature for free, such as water and air purification, fisheries, timber and nutrient cycling. These are predominantly public goods with no markets and no prices, so their loss often is not detected by our current economic incentive system and can thus continue unabated.

Biodiversity loss getting worse and the world’s poor are most at risk

European Commission Directorate General Environment, 2008, THE ECONOMICS OF ECOSYSTEMS AND BIODIVERSITY, <http://ec.europa.eu/environment/nature/biodiversity/economics/index_en.htm>

A variety of pressures resulting from population growth, changing diets, urbanisation, climate change and many other factors is causing biodiversity to decline, and ecosystems are continuously being degraded. The world’s poor are most at risk from the continuing loss of biodiversity, as they are the ones that are most reliant on the ecosystem services that are being degraded.

Human-caused species extinction is 1000 times the natural rate

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The human-caused (anthropogenic) rate of species extinction is estimated to be 1,000 times more rapid than the “natural” rate of extinction typical of Earth’s long-term history (Millennium Ecosystem Assessment 2005b).

Biodiversity decline creates losses not measured by standard economics

Pavan Sukhdev, Study Leader, European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

Nature provides human society with a vast diversity of benefits such as food, fibres, clean water, healthy soil and carbon capture and many more. Though our well-being is totally dependent upon the continued flow of these “ecosystem services”, they are predominantly public goods with no markets and no prices, so are rarely detected by our current economic compass. As a result, biodiversity is declining, our ecosystems are being continuously degraded and we, in turn, are suffering the consequences.

Biodiversity losses are significant – occurring in temperate and tropical grasslands & forests

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

Humans have been causing biodiversity loss for centuries (see maps below). By the year 2000, only about 73%of the original global natural biodiversity was left. The strongest declines have occurred in the temperate and tropical grasslands and forests, where human civilizations first developed (Mc Neill and Mc Neill 2003).

INHERENCY

Only 4 nations haven’t joined CBD - Andorra, Iraq, Somalia and US

Plan Advocate: Senate should ratify CBD

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

One of the pressing challenges of our time is confronting the multiple threats to Earth’s natural flora and fauna that have led to the current extremely high rate of species extinctions and habitat loss. The Convention on Biological Diversity (CBD) is the only comprehensive agreement dedicated to the conservation and sustainable use of biodiversity. It is a 16 year-old treaty with 191 parties. Only four nations in the world are non-parties: Andorra, Iraq, Somalia, and the USA. It clearly is in the interest of the USA to become a party. President-elect Obama should endorse the CBD and the Senate should promptly offer its advice and consent to ratification.

SOLVENCY / PLAN ADVOCACY

US membership in CBD would be good: Advance world approach to conservation

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· The CBD’s effectiveness and the urgent cause of stemming the ongoing high rate of global biodiversity loss both suffer from the lack of official involvement and support from the USA. Membership will allow our nation to help shape and advance the world’s approach to conservation and sustainable use.

CBD can be implemented effectively using existing laws

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· November 1993: President Clinton transmitted the CBD to the Senate for advice and consent along with “seven understandings” to accompany the ratification instrument. He noted that existing Federal, State and local laws and programs were “sufficient to enable any activities necessary to effectively implement our responsibilities under the Convention” and the “Administration does not intend to disrupt the existing balance of Federal and State authorities through the Convention”.

US Geological Survey budget: $1.1 billion

Office of the Secretary of US Dept. of the Interior, 7 May 2009, NEWS RELEASE, $12 Billion Interior Budget Focuses on New Energy Frontier, Climate Impacts, America’s Treasured Landscapes, a 21st Century Youth Conservation Corps, and Native American Communities (referring in context to Pres. Obama’s proposed Fiscal Year 2010 budget) [www.doi.gov/news/09\_News\_Releases/050709b.html](http://www.doi.gov/news/09_News_Releases/050709b.html)

Total proposed funding by bureau is as follows:

Bureau of Indian Affairs $2.5 billion

National Park Service $2.7 billion

U.S. Fish and Wildlife Service $1.6 billion

Bureau of Reclamation $1.0 billion

Central Utah Project Completion $42 million

Bureau of Land Management $1.1 billion

Minerals Management Service $181 million

U.S. Geological Survey $1.1 billion

Agricultural Research Budget Fiscal Year 2010 : $1.173 Billion

United States Department of Agriculture, 2009, USDA FY2010 BUDGET SUMMARY AND ANNUAL PERFORMANCE PLAN, [www.obpa.usda.gov/budsum/FY10budsum.pdf](http://www.obpa.usda.gov/budsum/FY10budsum.pdf)

(dollars in millions)

Budget Authority

RESEARCH, EDUCATION, AND ECONOMICS 2008 2009 2010

Agricultural Research Service: Enacted Estimate Budget

Ongoing Discretionary Programs…………………………………… 1,172 1,187 1,153

Ongoing Mandatory Programs………………………………………… 21 20 20

Recovery Act…………………………………………………………… 0 176 0

Other Supplementals…………………………………………………… 5 0 0

Total, Agricultural Research Service……………………………………1,198 1,383 1,173

ADVANTAGES

Compelling reasons for the USA to ratify CBD

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

COMPELLING REASONS FOR THE USA TO RATIFY The CBD’s effectiveness and the urgent cause of stemming the ongoing high rate of global biodiversity loss both suffer from the lack of official involvement and support from the USA. Membership will allow our nation to help shape and advance the world’s approach to conservation and sustainable use. Joining the CBD will signal the USA’s re-commitment to global environmental leadership and could markedly enhance our international relations.

Environmental and industry groups want CBD

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· USA environmental and industry groups have long seen the value of the CBD for their work and they actively contribute to its processes and implementation. For example, several major organizations participate in the CBD’s protected areas work program, which sets goals for networks of protected areas, strengthens capacity and skills, and provides recognized guidance on management of protected areas. Industry groups and other stakeholders are very active in the CBD’s genetic resource and access and benefit-sharing (ABS) negotiations. USA membership could significantly aid the molding of fair, workable ABS policies. Conservation and sustainable use of biodiversity and habitats such as the tropical forests – Earth’s “lungs”- are integral to tackling the impacts of global warming. The CBD helps ensure that Earth’s native plants and wildlife are considered in negotiations over global warming mitigation and adaptation.

CBD increases international coordination on invasive species + other benefits

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· A few other notable CBD benefits: it fosters needed international coordination in addressing harmful invasive species; it is implementing a broadly-applauded Global Strategy for Plant Conservation; and it provides strong support for the vital, but neglected, scientific discipline of taxonomy.

CBD ratification would give the US a real voice in CBD conservation activities

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

· No new legislation is necessary to implement the CBD. A 2/3rds vote of the Senate is the only requirement for ratification under the Constitution (Art. II, Sec. 1). No further formal action from the President is required, but an announcement of Mr. Obama’s strong endorsement is critical to making ratification a national priority. Ratification will give the USA a real voice in CBD activities including a broad array of ongoing conservation initiatives vital to saving Earth’s imperiled species and habitats. Let’s join now.

US environmental actions will affect behavior of other countries

Prof. John C. Dernbach, editor (Prof of Law at Widener Univ.), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

This country thus has a major role to play. Our nation’s global energy, ecological, and economic footprint is so large that it is difficult to imagine how the world can achieve sustainability unless the United States also does. We can lead or follow, but we are too big to get out of the way. What we do within our own borders, moreover, can influence other countries, both positively and negatively. We can create models of sustainability that are so attractive that other countries will want to emulate or improve on them. Or, by appearing fearful or indifferent in spite of our wealth and power, we can dissuade less wealthy and powerful countries from doing what they also need to do.

Sustainable development would make the US more healthy, secure and prosperous

Prof. John C. Dernbach, editor (Prof of Law at Widener Univ.), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

Sustainable development would make the United States more livable, healthy, secure, and prosperous. Policies that promote sustainability would reduce risks to our national security, improve our economic efficiency and productivity, enhance our health and communities, create jobs, improve the lives of the poorest among us, and foster greater human well-being in other countries. And it would achieve these things while protecting and restoring the environment for our generation and for generations that follow.

Social and life-sustaining benefits

Prof. Ken W. Belcher (Assistant Professor, Dept of Agricultural Economics at the Univ of Saskatchewan**, *Canada****)*, Nov 2004, “The Convention on Biological Diversity: Opportunities and Constraints for Agricultural Systems in Canada,” <http://ideas.repec.org/a/ags/cafric/45738.html> (the “evolution” referred to here may be (and the sharp Affirmative debater will argue that it is) a reference to Special Theory evolution (the fact that there are significant variations within species that have developed over time), not General Theory evolution (the theory that various new species originated from other species and ultimately from non-living matter); see here for more: <http://www.apologeticspress.org/articles/215>).

Biological diversity, or biodiversity, refers to the diversity of life at all levels and the linkages between these different levels (Wilson, 1992). Biodiversity is commonly interpreted at three levels: 1) genetic diversity -- “ the genetic variation provided by species; 2) species diversity -- “ the variety of species within a given area; and 3) ecosystem diversity -- “ the variety of biotic communities and habitats and the diversity within ecosystems at the landscape or regional level. An extensive body of research has shown that biodiversity has intrinsic, ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic value, and that it is essential for the adaptation and evolution of systems and species and for maintaining the life-sustaining systems of the biosphere (Holling et al., 1995).

Policies that uphold biodiversity will improve the well-being of our generation and those to come

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

Countries, companies and individuals need to understand the real costs of using the Earth’s natural capital and the consequences that policies and actions, individual or collective, have on the resilience and sustainability of natural ecosystems. We believe that policies which better reflect the true value of biodiversity and natural ecosystems will contribute to sustainable development by helping to secure the delivery of ecosystem goods and services, particularly food and water, in a transparent and socially equitable way. This will not only protect biodiversity, ecosystems and the associated ecosystem services, but will also improve the well-being of our present generation and the generations to come.

Endangered plants have pharmaceutical benefits

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, [*http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb\_report.pdf*](http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf)

A recent global study reveals that hundreds of medicinal plant species, whose naturally occurring chemicals make up the basis of over 50% of all prescription drugs, are threatened with extinction. This prompted experts to call for action to “secure the future of global healthcare”.

Ecosystem collapse = $33 trillion impact

Pavan Sukhdev, Study Leader, European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The treatment of climate change by the Stern Review surfaced an issue which had been widely recognized but not tackled squarely: how to assess a roll of the dice, when one of the outcomes is the end of civilization as we know it? This dilemma also applies to assessing the risks of ecosystem collapse. The difficulty was highlighted when one academic study (Costanza et al. 1997) estimated the economic value of ecosystem services at US$33 trillion (compared to US$ 18 trillion for global GDP). This result was criticized on the one hand for being far too high, but on the other hand for being “a significant underestimate of infinity”

Biodiversity has huge health and economic benefits

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

People have known the medicinal value of certain plants for thousands of years and biodiversity has helped our understanding of the human body. So ecosystems provide huge health benefits, and thus economic benefits. The corollary is that losing biodiversity incurs potentially huge costs, and our knowledge of these is growing.

Biodiversity provides many goods & services that sustain our lives

Convention on Biological Diversity official web site, 2007, “Sustaining Life on Earth” <http://www.cbd.int/convention/guide.shtml>

It is the combination of life forms and their interactions with each other and with the rest of the environment that has made Earth a uniquely habitable place for humans. Biodiversity provides a large number of goods and services that sustain our lives.

Ethical imperative to move toward sustainable future

Dieter T. Hessel (Presbyterian minister specializing in social ethics; adjunct professor at Bangor Theological Seminary), Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

What people, enterprises, and government at all levels in the United States do to consume and waste less while acting to share limited world resources equitably will make a big difference. If American society and the U.S. government continue to ignore sustainability requirements, and fail to set the pace toward a just and sustainable future, other nations that have been developing rapidly and polluting excessively will have little incentive to go green voluntarily and to accede to binding international agreements. The national and global situation of unsustainable human enterprise exposes a deep spiritual and ethical crisis requiring priority attention from people of faith in the United States.

CBD promotes conservation and sustainable use activities around the world

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

The CBD’s 24 work programs – ranging from agricultural biodiversity to forests, climate change to island issues, and plant conservation to ecotourism – set the agenda for key conservation and sustainable use activities around the world.

DISADVANTAGE RESPONSES

US interests fully recognized and no loss of national sovereignty

Defenders of Wildlife (a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities; work to protect and restore America’s native wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public) and the Center for Biological Diversity (nationwide conservation group focused on endangered species with full-time staff of 17 environmental lawyers and twelve scientists ) 2008, “The United States and the Convention on Biological Diversity,” [www.defenders.org/resources/publications/programs\_and\_policy/international\_conservation/the\_u.s.\_and\_the\_convention\_on\_biological\_diversity.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf)

The CBD’s consensus-based decision processes will ensure the interests of the USA are fully recognized, which they are not as a non-party. No party’s national sovereignty has ever been undercut by joining or participating in the CBD.

Economic measurements must measure ecosystems

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

No matter how challenging, if we truly want to manage our ecological security, we must measure ecosystems and biodiversity – scientifically as well as economically. The economic compass that we use today was a success when it was created, but it needs to be improved or replaced.

MONEY TO BURN: THE CASE FOR THE CARBON TAX

By Vance Trefethen

There’s a simple way to harness free markets to clean the air, reduce fossil fuel dependency and protect future generations. We invite you to join us today as we affirm: **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Carbon Tax:

Charles Komanoff (economist) and Dan Rosenblum (attorney), 21 Feb 2009, “Introduction – What’s a Carbon Tax?”, Carbon Tax Center [*http://www.carbontax.org/introduction/#what*](http://www.carbontax.org/introduction/#what)

A carbon tax is a tax on the carbon content of fuels — effectively a tax on the carbon dioxide emissions from burning fossil fuels. Thus, **carbon tax** is shorthand for **carbon dioxide tax** or **CO2 tax**. Carbon atoms are present in every fossil fuel — coal, oil and gas — as is hydrogen. The bond between hydrogen and carbon atoms is the primary source of energy from fossil fuels and of the heat released in fuel combustion. Essentially all carbon atoms are converted to CO2 when the fuel is burned. Carbon dioxide, an otherwise non-lethal and innocuous gas, rises in the atmosphere and remains resident there, trapping heat re-radiated from Earth’s surface and causing global warming and other harmful climate change. In contrast, non-combustion energy sources — wind, sunlight, falling water, atomic fission — do not convert carbon to carbon dioxide. Accordingly, a carbon tax (or CO2 tax) is effectively a tax on the use of fossil fuels, and only fossil fuels.

OBSERVATION 2. INHERENCY

A. Subsidies and tax breaks favor fossil fuels over alternative energy

Stephen Leahy (journalist) 29 May 2009, “CLIMATE CHANGE: More Subsidies for Fossil Fuels in Recovery Plans,” INTERPRESS SERVICE NEWS AGENCY, <http://ipsnews.net/news.asp?idnews=47026>

But in last fall's 700 billion dollar bailout for the U.S. financial sector they [Taxpayers for Common Sense] noted there were some new tax breaks worth 2.2 billion dollars through 2013 for the oil and gas industry. And of course there haven't been any significant reductions in subsidies although President Obama's proposed budget for 2010 does. "There is an awful lot money in the stimulus bill," [Earth Policy Institute Director of Research Janet] Larson told IPS. And alternative energy is getting some of it. But one fact remains clear: "Alternative energy is never going to catch up to what the fossil fuel industry has received."

B. Status Quo policies are doomed unless we make fossil fuels more expensive than clean energy.

Dr. James Hansen, (Adjunct Professor, The Earth Institute at Columbia University, New York; NASA scientist famous for bringing climate change to public attention in the 1980s) 25 Feb 2009, Testimony Before the House Committee on Ways and Means, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7577>

The President deserves credit for recognizing that our planet is in peril, and his administration deserves credit for initial steps that may lead to increased vehicle fuel efficiencies and constraints on coal emissions. These steps are important. Greater fuel efficiency, e.g., is essential. But it must be recognized that these steps address the symptoms of the problem, not the root cause. Moreover, these steps will fail if the root cause is not addressed. The root cause is our failure to make polluting fossil-fuel energy more expensive than clean energy. Instead we subsidize fossil fuels!

C. Americans emit 1.6 billion tons of carbon per year – 4 times the global average

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

In all, the United States emits about 1.6 billion tons of carbon a year, which is slightly more than 5 tons per person annually. For the world, the emissions rate is about 1.25 tons per person.

OBSERVATION 3. FAILURES OF THE STATUS QUO

FAILURE 1. Energy efficiency improvements don’t happen.

And the Impact: Business failures and consumer rip-offs

Dr. James Hansen, (Adjunct Professor, The Earth Institute at Columbia University, New York; former NASA scientist famous for bringing climate change to public attention in the 1980s) 25 Feb 2009, Testimony Before the House Committee on Ways and Means, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7577>

If we continue to subsidize fossil fuels and do not impose a carbon price, our automobile manufacturers will likely fail – they are being instructed to build fuel-efficient vehicles, which will be in limited demand as long as fossil fuels do not have to pay their true costs. Similarly, “renewable energy portfolios” for utilities will rip off the public (rate-payers), with marginal benefit for the environment. Energy-inefficient buildings will continue to be built.

FAILURE 2. Risk of catastrophic climate change

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

There is a growing scientific consensus that rising concentrations of carbon dioxide (CO2) and other greenhouse gases, which result from the burning of fossil fuels, are gradually warming the Earth’s climate. The amount of damage associated with that warming remains uncertain, but there is some risk that it could be large and perhaps even catastrophic.

FAILURE 3: Unpaid social costs

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

The annual social cost per capita of all CO2 emissions for the United States would be about $150 per person (5 tons of carbon X $30 per ton). From an economic point of view, CO2 emissions are an “externality,” meaning that the driver or household is imposing these costs on the rest of the world today and in the future without paying the costs of these emissions.

OBSERVATION 4: We offer the following PLAN, to be passed by Congress and administered by the IRS

**1.** A tax on all products sold in the United States that emit carbon dioxide when burned in the normal course of their usage.

**2.** Imported products shall have the tax reduced by the amount of any carbon tax paid in the country of origin.

**3.** The tax rate shall be $27/ton of carbon increasing at the rate of inflation + 2.5% per year until the year 2100.

**4.** Proceeds from the tax are rebated equally to all American citizens monthly after the model of the Alaska Permanent Dividend Fund.

**Enforcement** through the IRS and the Justice Department with the same penalties for tax evasion as under existing law for similar crimes.

**Administrative funding** from the proceeds of the carbon tax and existing IRS budget.

Plan takes effect 6 months after an Affirmative ballot.

**And all Affirmative speeches may clarify the plan.**

OBSERVATION 5. SOLVENCY & PLAN ADVOCACY

A. The optimal carbon tax starts at $27 and rises

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

This book also shows that the trajectory of optimal carbon prices should rise sharply over the coming decades to reflect rising damages and the need for increasingly tight restraints. This is the policy ramp for carbon prices. The optimal price would rise steadily over time, at a rate between 2 and 3 percent per year in real terms, to reflect the rising damages from climate change. In the optimal trajectory, the carbon price would rise from $27 per ton of carbon in the first period to $90 per ton of carbon by 2050 and $200 per ton of carbon in 2100.

B. Carbon tax should be revenue neutral

Charles Komanoff (economist) and Dan Rosenblum (attorney), 21 Feb 2009, “Introduction – What’s a Carbon Tax?”, Carbon Tax Center <http://www.carbontax.org/introduction/#what>

A carbon tax should be revenue-neutral. Revenue-neutral means that little if any of the tax revenues raised by taxing carbon emissions would be retained by government. The vast majority of the revenues would be returned to the public, with, perhaps, a very small amount utilized to mitigate the otherwise negative impacts of carbon taxes on low-income energy users. Two primary return approaches are being discussed. One would rebate the revenues directly through regular (e.g., monthly) equal dividends to all U.S. residents. In effect, every resident would receive equal, identical slices of the total revenue pie. [Just such a program has operated in Alaska](http://www.carbontax.org/issues/softening-the-impact-of-carbon-taxes/) for three decades, providing residents with annual dividends from the state’s North Slope oil revenues.

OBSERVATION 6. We achieve the following ADVANTAGES

1. Market forces find fuel efficiency when polluters pay social costs

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

Currently, the costs incurred through carbon pollution are a debt unpaid; therefore, governments should begin by collecting these costs through a mechanism such as imposing a fee on greenhouse gas emissions. In other words, the polluter pays. This step would act to level the economic playing field among high-carbon emitters such as traditional coal-fired plants and no- and low-carbon emitters such as highly efficient natural gas plants, nuclear plants, and wind- and solar-generated electricity. No single energy source is a technical panacea for combating global warming. Also, there are too many uncertainties in having governments pick the correct mix of energy sources to achieve the goal of countering the worst effects of climate change. However, a price, in some form, imposed on carbon emissions would stimulate the market to work toward an appropriate mix.

ADVANTAGE 2. Reduced risk of climate change

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

Incentive-based policies can reduce emissions of carbon dioxide (CO2) and other greenhouse gases, thereby reducing the risks associated with global climate change, at a lower cost than less flexible alternatives. Policymakers have many options, however, for giving businesses and households an economic incentive to reduce emissions. One option is to regulate the price of emissions—for example, by imposing a tax on them.

ADVANTAGE 3. Cleaner environment

Dr. James Hansen, (Adjunct Professor, The Earth Institute at Columbia University, New York; former NASA scientist famous for bringing climate change to public attention in the 1980s) 25 Feb 2009, Testimony Before the House Committee on Ways and Means, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7577>

We must put a price on carbon emissions, a rising price. If we do this promptly we can stabilize the atmosphere and climate, with healthier air, improved agricultural productivity, clean water, an ocean providing fish that are safe to eat, with a reversal of the trend toward increased birth defects and other consequences of fossil fuel pollution in our air and water.

2A EVIDENCE: CARBON TAX

FAILURES

Climate change left unabated will cost $23 trillion

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

Climate change is unlikely to be catastrophic in the near term, but it has the potential for serious damages in the long run. There are big economic stakes in designing efficient approaches. The total discounted economic damages with no abatement are on the order of $23 trillion.

Climate change impacts will be faster and deeper than previously predicted

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

Recent evidence of climate change suggests much faster and deeper impacts than previously predicted, including the risk of human conflicts caused by competition for biodiversity resources and ecosystem services (WBGU 2008).

Risk of climate change = $33 trillion impact

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The treatment of climate change by the *Stern Review* surfaced an issue which had been widely recognized but not tackled squarely: how to assess a roll of the dice, when one of the outcomes is the end of civilization as we know it? This dilemma also applies to assessing the risks of ecosystem collapse. The difficulty was highlighted when one academic study (Costanza et al. 1997) estimated the economic value of ecosystem services at US$ 33 trillion (compared to US$ 18 trillion for global GDP). This result was criticized on the one hand for being far too high, but on the other hand for being “a significant underestimate of infinity”

INHERENCY

Lawmakers won’t act: Fossil fuel special interests will overcome wisdom of carbon tax

Dr. James Hansen, (Adjunct Professor, The Earth Institute at Columbia University, New York; former NASA scientist famous for bringing climate change to public attention in the 1980s) 25 Feb 2009, Testimony Before the House Committee on Ways and Means, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7577>

Two years ago I sat next to the Saudi Arabian Ambassador to the United States at a dinner. He became upset, politely, when I mentioned this concept of a carbon tax. Clearly, he understood the implications. He did not seem too concerned that it would be adopted – he probably took it for granted that fossil fuel special interests could overcome any wisdom of our law-makers.

SOLVENCY

Rising carbon tax better than cap-and-trade: Provides flexible incentive to reduce emissions

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

Relative to a cap-and-trade program with prespecified emission limits each year, a steadily rising tax could better accommodate cost fluctuations while simultaneously achieving a long-term target for emissions. Such a tax would provide firms with an incentive to undertake more emission reductions when the cost of doing so was relatively low and allow them to reduce emissions less when the cost of doing so was particularly high.

Many economists favor carbon tax

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

An alternative approach is a carbon tax, which many economists favor. While many representatives and senators have opposed taxing carbon emissions, such a tax might win over enough political support if it were revenue neutral. Proceeds from the tax could be used to alleviate the financial burden on poor citizens and to stimulate research in innovative energy technologies.

Gradually ramping carbon tax provides incentives for carbon sequestration and nuclear power

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

The particular price set for carbon emissions would signal to the market whether a specific no- or low-carbon-emitting energy source is favored with respect to high-carbonemitting energy sources. A high initial carbon price could hurt the coal industry, which would lobby against such an initiative. On the other hand, gradually ramping up the price in a predictable way over several years could provide long-term incentive for development of coal-fired power plants that employ carbon sequestration as well as for nuclear power plants.

Lowering CO2 emissions would produce greater benefits than costs

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

Reducing greenhouse-gas emissions would be beneficial in limiting the degree of damage associated with climate change. However, decreasing those emissions would also impose costs on the economy—in the case of CO2, because much economic activity is based on fossil fuels, which release carbon in the form of carbon dioxide when they are burned. Most analyses suggest that a carefully designed program to begin lowering CO2 emissions would produce greater benefits than costs.

$30/ton carbon tax = 9c/gallon of gasoline, 10% tax on electricity

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

For example, if a country wished to impose a carbon tax of $30 per ton of carbon, this would involve a tax on gasoline of about 9 cents per gallon. Similarly, the tax on coal-generated electricity would be about 1 cent per kWh, or 10 percent of the current retail price. At current levels of carbon emissions in the United States, a tax of $30 per ton of carbon would generate $50 billion of revenue per year.

Tax equal to the benefit of emission reductions would motivate reductions costing less than the tax

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

A tax would avoid significant year-to-year fluctuations in costs. Setting the tax equal to the estimate of the marginal benefit of emission reductions would motivate reductions that cost less than their anticipated benefits but would not require reductions that cost more than those benefits.

Carbon tax keeps the cost of emissions in balance with the benefits

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

Given the gradual nature of climate change, the uncertainty that exists about the cost of reducing emissions, and the potential variability of the cost of meeting a particular cap on emissions at different points in time, a tax could offer significant advantages. If policymakers chose to specify a long-term target for cutting emissions, a tax could be set at a rate that could meet that target at a lower cost than a comparable cap. In addition, if policymakers set the tax rate at a level that reflected the expected benefits of reducing a ton of emissions (which would rise over time), a tax would keep the costs of emission reductions in balance with the anticipated benefits, whereas a cap would not.

CO2 tax could use existing structures – easier to implement than Cap & Trade

Terry Dinan (of CBO’s Microeconomic Studies Division) Feb 2008, Congressional Budget Office, CBO Study: Policy Options for Reducing CO2 Emissions, <http://www.cbo.gov/ftpdocs/89xx/doc8934/02-12-Carbon.pdf>

An upstream tax may be somewhat easier to implement than an upstream cap-and-trade program because many of the entities that would be covered by either policy are already subject to excise taxes. A CO2 tax could build on that existing structure.

Social cost of carbon = $30/ton

Prof. William Nordhaus PhD (economics, Yale Univ.) 2008, A Question of Balance - Weighing the Options on Global Warming Policies, <http://nordhaus.econ.yale.edu/Balance_2nd_proofs.pdf>

Another key concept in the economics of climate change is the “carbon price,” or, more precisely, the price that is attached to emissions of carbon dioxide. One version of a carbon price is the “social cost of carbon.” This measures the cost of carbon emissions. More precisely, it is the present value of additional economic damages now and in the future caused by an additional ton of carbon emissions. We estimate that the social cost of carbon with no emissions limitations is today and in today’s prices approximately $30 per ton of carbon for our standard set of assumptions.

DISADVANTAGE RESPONSES

Lower and middle income people will come out ahead

Dr. James Hansen, (Adjunct Professor, The Earth Institute at Columbia University, New York; former NASA scientist famous for bringing climate change to public attention in the 1980s) 25 Feb 2009, Testimony Before the House Committee on Ways and Means, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7577>

A carbon tax will raise energy prices, but lower and middle income people, especially, will find ways to reduce carbon emissions so as to come out ahead. Effects will permeate society. Food requiring lots of carbon emissions to produce and transport will become more expensive and vice versa. There will be a growing incentive for life style changes needed for sustainable living.

Poor households will get back more than they pay for the carbon tax

Charles Komanoff (economist) and Dan Rosenblum (attorney), 21 Feb 2009, “Introduction – What’s a Carbon Tax?”, Carbon Tax Center <http://www.carbontax.org/introduction/#what> (parentheses in original)

Because income and energy consumption are strongly correlated, most poor households will get more back in carbon dividends than they will pay in the carbon tax. The overall effect of a carbon tax-shift could be equitable and perhaps even “progressive” (benefiting lower-earning households).

EVERY BREATH YOU TAKE: STOP EPA REGULATION OF GREENHOUSE GASES

By Vance Trefethen

Maybe the title of Thomas Eddlem’s April 2009 article in the NEW AMERICAN says it all: quote “EPA Declares Human Breath (CO2) a Pollutant.” Unquote [[*www.thenewamerican.com/tech-mainmenu-30/environment/1022*](http://www.thenewamerican.com/tech-mainmenu-30/environment/1022)]

Unfortunately it’s not a joke, it’s reality. And the opportunity to stop such foolishness makes my partner and me eager to affirm: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following definitions:

Environmental Policy:

Dr. William P. Cuningham (Ph.D. in Botany from the University of Texas), Dr. Mary Ann Cunningham (PhD in Geography at the University of Minnesota), and Dr. Barbara Woodworth (Ph.D. in Science Education from the University of Iowa), 2001, Environmental Science: A Global Concern, 7th Edition, McGraw Hill, <http://highered.mcgraw-hill.com/sites/0070294267/student_view0/glossary_e-l.html>

**“**Environmental Policy: The official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Greenhouse Gases:

[JONATHAN WEISMAN](http://online.wsj.com/search/search_center.html?KEYWORDS=JONATHAN+WEISMAN&ARTICLESEARCHQUERY_PARSER=bylineAND) and [SIOBHAN HUGHES](http://online.wsj.com/search/search_center.html?KEYWORDS=SIOBHAN+HUGHES&ARTICLESEARCHQUERY_PARSER=bylineAND) (journalists), 18 Apr 2009, WALL STREET JOURNAL, “US in Historic Shift on CO2,” <http://online.wsj.com/article/SB123997738881429275.html>

Along with carbon dioxide, the EPA named methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride as deleterious to the environment.

OBSERVATION 2. INHERENCY. We see what the Status Quo is doing in 3 sub-points

A. Supreme Court opens the door. The US Supreme Court declared greenhouse gases covered under the Clean Air Act.

Environmental Protection Agency, 17 Apr 2009, “Overview of EPA’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act” <http://epa.gov/climatechange/endangerment/downloads/Determination.pdf>

On April 2, 2007, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court found that greenhouse gases are air pollutants covered by the Clean Air Act.

B. EPA expands regulatory control. The EPA declares a new policy of regulating greenhouse gases

Richard Black (Environment correspondent), 17 Apr 2009, BBC NEWS, "Obama to regulate 'pollutant' CO2" <http://news.bbc.co.uk/2/hi/science/nature/8004975.stm>

The US government is to regulate carbon dioxide emissions, having decided that it and five other greenhouse gases may endanger human health and well-being. The Environmental Protection Agency (EPA) announced the move following a review of the scientific evidence. The decision marks a major change from the Bush presidency, when the EPA argued it could not regulate CO2 because the gas was not a pollutant.

C. Power grab. Congress never intended EPA to regulate greenhouse gases

Dr. Marlo Lewis (PhD in government, Harvard; senior fellow in environmental policy at the Competitive Enterprise Institute) 12 June 2007, “Would Dingell's legislation overturn Mass v EPA? (Pt. 3)” NATIONAL REVIEW online, <http://planetgore.nationalreview.com/post/?q=ZjQ3NDQ1OGQzODg5NDAxMzMwMmIzNGRiYWEyOGQ0ZTE>=

In its brief in Mass v EPA, EPA noted that, during the past quarter century, Congress has either voted against or declined to adopt every regulatory climate proposal it has considered. For example, and most pertinently, during debate on the 1990 Clean Air Act Amendments, Congress decided not to adopt a Senate committee-approved provision requiring EPA to regulate CO2 emissions from motor vehicles. The majority deemed such legislative history irrelevant, arguing that Congress’s failure to pass subsequent laws or provisions cannot curtail EPA’s authority under Section 202. But this misses the point. EPA was not suggesting that “post-enactment legislative history” implicitly repeals portions of the Clean Air Act. Rather, EPA was trying to clarify what Congress might or might not have intended when it enacted and amended Section 202. Popular alarm about global warming and congressional support for regulatory climate policy is vastly stronger now than it was in 1970 or 1977. Yet even in recent years, proponents of regulatory climate policy have failed to secure passage of their proposals. It is silly to pretend that in 1970 or 1977, Congress granted EPA authority to regulate greenhouse gases but just forgot to tell anybody.

OBSERVATION 3. These new policies cause massive HARMS.

HARM A: Democracy undermined. Transferring rule-making authority from Congress to an executive agency bypasses and undermines the democratic process that protects our liberties.

Timothy Wheeler and David Kopel (J.D., Former Assistant Attorney General, State of Colorado, Hazardous and solid waste enforcement) 13 Jan 2004, “Guns Vs. Teddy Bears” [www.claremont.org/projects/pageid.2599/default.asp](http://www.claremont.org/projects/pageid.2599/default.asp)

Under the Constitution, it is supposed to be hard to make new laws; the proposed law must be passed by the House of Representatives, by the Senate, and then signed by the president (or re-passed by two-thirds of each house of Congress over the President's veto). By making it difficult to impose new laws, the Founders created a system in which liberty would be the norm, and restraint would be the exception. But law making by executive agencies inverts the whole process; a single bureaucrat, with the wave of his pen, creates new laws. Then, victims of the new restriction carry the difficult burden of trying to get Congress to pass a law to remove the infringement on liberty. An additional liberty protection implicit in the Constitution's grant of law-making power to Congress alone is that there are a finite number of hours in the day. If only Congress can make the laws, then we will have only as many laws as Congress has the time to pass. Delegation, though, enables hundreds of executive-branch agencies to make laws, even while Congress is adjourned. Foisting the hard choices off onto federal agencies undermines democracy, since a person who does not like a congressional vote can vote against the congressman in the next election, but no one can vote against a bureaucrat.

HARM B. Economic losses. We lose $7 trillion and millions of jobs.

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

Since 85 percent of the U.S. economy runs on fossil fuels that emit carbon dioxide, imposing a cost on CO2 is equivalent to placing an economy-wide tax on energy use. The Heritage Foundation's Center for Data Analysis study of the economic effects of carbon dioxide cuts found cumulative gross domestic product (GDP) losses of $7 trillion by 2029 (in inflation-adjusted 2008 dollars), single-year GDP losses exceeding $600 billion in some years (in inflation-adjusted 2008 dollars), energy cost increases of 30 percent or more, and annual job losses exceeding 800,000 for several years. Hit particularly hard is manufacturing, which will see job losses in some industries that exceed 50 percent.

HARM C. Impact multiplier. The greenhouse rules create momentum for a new generation of environmental controls.

Prof. [Jonathan H. Adler](javascript:void();) (Professor of Law and Director, Center for Business Law & Regulation, Case Western Reserve University School of Law; co-author of a brief used in Massachusetts v. EPA) 21 May 2007, “ Warming Up to Climate Change Litigation“ VIRGINIA LAW REVIEW, <http://virginialawreview.org/inbrief.php?s=inbrief&p=2007/05/21/adler>

Although a Supreme Court majority has concluded that the CAA applies to greenhouse gases, few (if any) seriously contend that the Act’s provisions are well suited to the problem of climate change. Even if one assumes the United States should take unilateral action—in the absence of cooperative efforts by the other users of the atmosphere, which is the world’s greatest common pool resource—applying the CAA’s specific requirements to greenhouse gases makes little sense. As even further regulatory pressure is brought to bear on American industry by states eager to jump aboard the climate policy bandwagon, new federal regulation is sure to arise. And this, perhaps, was the point. Massachusetts and others engaged in strategic litigation to create leverage for a new generation of environmental controls.

OBSERVATION 4. We offer the following PLAN to be implemented by any necessary constitutional means:

**Agency**: Congress and the President

**Mandate:** Congress will pass legislation specifically denying the Environmental Protection Agency and all other executive branch agencies the authority to make rules on greenhouse gas emissions.

**Funding:** Existing budgets of existing agencies from general federal revenues.

**Enforcement:** Federal courts will strike down any rules not in compliance with the plan.

**Timing:** Immediately upon an Affirmative ballot.

**Clarification:** All Affirmative speeches may clarify the plan as needed.

OBSERVATION 5. Experts recommend our plan because it SOLVES the harms.

A. Democracy upheld. Elected members of Congress should take responsibility instead of the EPA

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

Congress should make the rules — not necessarily in all the detail in the Code of Federal Regulation, but at a minimum with the basic choices, such as requiring the 90 percent emissions reduction for new cars. The EPA should have an important role in the rulemaking: providing Congress with technical information and draft statutes, filling in the details on the legislated rules, and enforcing them. But responsibility for the hard choices should fall on the elected members of Congress instead of being shifted to the agency. That is exactly where responsibility should fall in a democracy.

B. Congressional action needed. Congress should reject the shoddy science and avoid the huge economic burden.

Dr. S. Fred Singer (PhD physics; emeritus professor of environmental science, Univ. of Virginia, specializing in planetary science, global warming, ozone depletion, and other global environmental issues; president of the Science and Environmental Policy Project) quoted by Drew Thornley, July 2009, Environment & Climate News “EPA Rules CO2 a Danger, Prepares to Regulate,” [www.heartland.org/article/25502/EPA\_Rules\_CO2\_a\_Danger\_Prepares\_to\_Regulate.html](http://www.heartland.org/article/25502/EPA_Rules_CO2_a_Danger_Prepares_to_Regulate.html)

“The proposed EPA initiative is based on shoddy science and would impose a huge economic burden on American households. Carbon dioxide is not a pollutant and should not be regulated, least of all by EPA under the terms of the Clean Air Act. Congress must stop this unwarranted action by means of legislation, but without committing the same errors as EPA.”

C. Net benefits. The extraordinary perils of CO2 regulation outweigh the little environmental benefit.

[Ben Lieberman](http://www.heritage.org/about/staff/BenLieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) 28 Mar 2008, The EPA's Prudent Response to Massachusetts v. EPA,” <http://www.heritage.org/research/energyandenvironment/wm1870.cfm>

The extraordinary perils of CO2 regulation for the American economy come with little, if any, environmental benefit. In fact, analysis by the architects of the endangerment finding, the EPA, strongly suggests that a 60 percent reduction in carbon-dioxide emissions by 2050 will reduce global temperature by 0.1 to 0.2 degrees Celsius by 2095.

2A EVIDENCE: STOP EPA REGULATION OF GREENHOUSE GASES

INHERENCY

Massachusetts v. EPA case decided greenhouse gases are covered by Clean Air Act

Environmental Protection Agency, 17 Apr 2009, “Overview of EPA’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act” <http://epa.gov/climatechange/endangerment/downloads/Determination.pdf>

On April 2, 2007, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court found that greenhouse gases are air pollutants covered by the Clean Air Act. The Court held that the Administrator must determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In making these decisions, the Administrator is required to follow the language of section 202(a) of the Clean Air Act. The Supreme Court decision resulted from a petition for rulemaking under section 202(a) filed by more than a dozen environmental, renewable energy, and other organizations.

EPA Administrator believes greenhouse gases are risk to human health

Environmental Protection Agency, 24 Apr 2009, FEDERAL REGISTER, Vol. 74, No. 78, p. 18896

Therefore, by defining air pollution as the six greenhouse gases, the Administrator is identifying the fundamental and underlying driver of human-induced climate change, which in turn, as described below, poses risks to human health, society, and the environment. The Administrator believes that the proposed definition of air pollution captures the root of the problem, and addresses the part of the problem that is best understood, scientifically speaking, and that is already the focus of scientists and policy analysts involved in studying climate change.

EPA Administrator made “endangerment” finding on GHGases using CCSP and IPCC data

Environmental Protection Agency, 17 Apr 2009, “Overview of EPA’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act” <http://epa.gov/climatechange/endangerment/downloads/Determination.pdf>

Scientific Basis: After a thorough examination of the scientific evidence on the causes and impacts of current and future climate change, as well as other effects of greenhouse gases, the Administrator concludes that the science compellingly supports a positive endangerment finding for both public health and welfare. In her decision, the Administrator relied heavily upon the major findings and conclusions from recent assessments of the U.S. Climate Change Science Program and the Intergovernmental Panel on Climate Change.

IPCC and CCSP studies are bad: Failed to look at key data

Dr. Roy W. Spencer, (PhD in meteorology; Principal Research Scientist, Univ of Alabama in Huntsville) 23 June 2009, public comments on Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act [www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-OAR-2009-0171-3371.1](http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-OAR-2009-0171-3371.1)

But even though such long-term observations do not exist, one could instead study known natural climate indices such as the Pacific Decadal Oscillation (PDO, Mantua *et al*., 1997) during that 10 year period to look for evidence that known natural modes of climate variability modulate global average cloud cover. This kind of research should be required before one even begins to discuss ruling out natural climate variability as a source of climate change. Unfortunately, this type of research has never been performed by anyone. The failure to sufficiently investigate natural, internal modes of climate variability by the climate research and modeling community is a major failing of the IPCC and the CCSP processes. Under the Federal Information Quality Act, the U.S. science process must be held to a higher standard of objectivity and utility.

CCSP report is biased and should be rejected

Dr. Roger Pielke Sr., (Former Colorado State Climatologist, presently senior scientist at the University of Colorado -Boulder ) 20 June 2008, "[New CCSP Report Appears “Weather and Climate Extremes in a Changing Climate” - Unfortunately, Another Biased Assessment](http://climatesci.org/2008/06/20/new-ccsp-report-appears-weather-and-climate-extremes-in-a-changing-climate-unfortunately-another-biased-assessment/)", <http://climatesci.org/2008/06/20/new-ccsp-report-appears-weather-and-climate-extremes-in-a-changing-climate-unfortunately-another-biased-assessment/>

**Since this assessment is so clearly biased, it should be rejected as providing adequate climate information to policymakers. There also should be questions raised concerning having the same individuals preparing these reports in which they are using them to promote their own perspective on the climate, and deliberately excluding peer reviewed papers that disagree with their viewpoint and research papers. This is a serious conflict of interest.**

EPA action signals that Obama intends to take more aggressive approach to global warming

Mark Clayton, 17 Apr 2009, CHRISTIAN SCIENCE MONITOR, <http://features.csmonitor.com/environment/2009/04/17/carbon-emissions-pose-danger-epa-finds/>

In adding carbon dioxide and five other greenhouse gases to the list of compounds that can be regulated under the Clean Air Act, the EPA creates a legal basis for limiting CO2 emitted from tailpipes – an authority the US Supreme Court has said the agency could claim but that the Bush administration declined. Automobiles are a major source of C02, and the EPA action Friday signals that the Obama administration intends to take a more aggressive approach to addressing global warming.

EPA can go ahead with regulations without waiting for Congress

Richard Black (Environment correspondent), 17 Apr 2009, BBC NEWS, "Obama to regulate 'pollutant' CO2" <http://news.bbc.co.uk/2/hi/science/nature/8004975.stm>

Carbon-cutting legislation is being proposed in Congress, but the EPA decision - known as an "endangerment finding" - will allow the agency to mandate some cuts without waiting for the draft bills to become law.

Public comments will not alter EPA’s course of action on rulemaking

Prof. Susan Webb Yackee (policy, planning & development, UCLA), 1 Jan 2006, Journal of Public Administration Research and Theory, “Sweet-talking the fourth branch: the influence of interest group comments on federal agency rulemaking” <http://www.accessmylibrary.com/coms2/summary_0286-15007350_ITM>

Final rules may or may not differ from the proposed rule, as there is no specific requirement that an agency alter the proposed rule to reflect the concerns raised by the comments (West 1995; Kerwin 2003). (1) In other words, current law provides the public the right to participate in--but not the right to influence--rulemaking. Quite interestingly, a scholarly consensus has developed that downplays the importance of the notice and comment period within the policy implementation process (Chubb 1983; Harter 1982). In fact, some have argued that few, if any, significant changes occur during the notice and comment period (Golden 1998; West 2004).

SIGNIFICANCE

EPA greenhouse gas endangerment finding is a game-changing move in the policy debate over climate change

Chris Marraro (attorney who has handled tort, environmental and commercial matters in federal, state and administrative courts; former Chair of the American Bar Association Annual Conference on Environmental Law ) 21 Apr 2009, “Obama administration ups the ante for climate change legislation by proposing regulation of greenhouse gases under the Clean Air Act,” <http://www.globalclimatelaw.com/tags/massachusetts-v-epa/>

The US [Environmental Protection Agency (EPA)](http://www.epa.gov/" \t "_blank) made a game-changing move last Friday in the policy debate over climate change. EPA declared in a [proposed rule](http://epa.gov/climatechange/endangerment/downloads/GHGEndangermentProposal.pdf" \t "_blank) released on April 17 that [greenhouse gases endanger human health and welfare](http://epa.gov/climatechange/endangerment.html" \t "_blank) and that greenhouse gas emissions from new motor vehicles and new motor vehicle engines [contribute to climate change](http://yosemite.epa.gov/opa/admpress.nsf/0/0EF7DF675805295D8525759B00566924" \t "_blank). The proposal is the Obama Administration’s response to the 2007 US Supreme Court decision in [*Massachusetts v. EPA*](http://www.globalclimatelaw.com/stats/pepper/orderedlist/downloads/download.php?file=http%3A//www.globalclimatelaw.com/uploads/file/Mass%2520v_%2520EPA.pdf), wherein the Court held that greenhouse gases are “air pollutants” under the [Clean Air Act](http://www.epa.gov/air/caa/" \t "_blank) and remanded the matter to EPA to set forth a reasoned explanation for its decision as to whether to regulate greenhouse gasses.

The UnStimulus: EPA red tape will block economic recovery

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

Having EPA bureaucrats micromanage the economy, all in the name of combating global warming, would be a chilling shift to a command-and-control system in which EPA officials regulate just about every aspect of the market. Beyond the costs of such actions, the red tape and permitting delays are almost unfathomable. Though the Administration recently enacted a stimulus bill and touted "shovel ready" construction projects to boost the economy, EPA regulations would essentially assure that a great deal of such economic activity would be held up for months, if not years.

Usurping Congress: Congress explicitly voted not to give EPA greenhouse gas authority

Prof. [Jonathan H. Adler](javascript:void();) (Professor of Law and Director, Center for Business Law & Regulation, Case Western Reserve University School of Law; co-author of a brief used in Massachusetts v. EPA) 21 May 2007, “ Warming Up to Climate Change Litigation“ VIRGINIA LAW REVIEW, <http://virginialawreview.org/inbrief.php?s=inbrief&p=2007/05/21/adler>

Not only did Congress never explicitly authorize EPA to regulate greenhouse gas emissions from automobiles or any other source, it explicitly denied EPA such authority when unilateral agency action seemed a possibility. When the Clinton EPA suggested it had the authority to regulate greenhouse gas emissions despite the absence of explicit authority, Congress responded with appropriations riders explicitly barring the expenditure of any EPA funds on developing or implementing such rules.

EPA GHG regulation will open a new era of litigation and regulation, and do little to cool the planet

Prof. [Jonathan H. Adler](javascript:void();) (Professor of Law and Director, Center for Business Law & Regulation, Case Western Reserve University School of Law; co-author of a brief used in Massachusetts v. EPA) 21 May 2007, “ Warming Up to Climate Change Litigation“ VIRGINIA LAW REVIEW, <http://virginialawreview.org/inbrief.php?s=inbrief&p=2007/05/21/adler>

Now that EPA has authority to regulate greenhouse gases, regulatory controls on motor vehicles (as well as on other sources of greenhouse gases, including utilities and industrial facilities) are sure to follow. In time, however, Mass. v. EPA may come to stand for more than the simple proposition that Congress delegated authority to regulate greenhouse gases under the CAA. It may herald in a new era of state-sponsored litigation, environmental standing, and statutory interpretation—and yet still do little to cool down a warming planet.

EPA can regulate anything that emits carbon dioxide: hospitals, churches, farms…

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

On April 17, the Environmental Protection Agency (EPA) issued an endangerment finding, saying that global warming poses a serious threat to public health and safety. Thus, almost anything that emits carbon dioxide and other greenhouse gases could be regulated under the Clean Air Act. This is the first official action taken by the federal government to regulate carbon dioxide. The endangerment finding is the initial step in a long regulatory process that could lead to the EPA requiring regulations for almost anything that emits carbon dioxide. Automobiles would likely be the first target, but subsequent regulations could extend to a million or more buildings and small businesses, including hospitals, schools, restaurants, churches, farms, and apartments.

Democracy violation: Unaccountable EPA bureaucrats are trying to circumvent Congress

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

While some Members of Congress undoubtedly support the EPA's attempt to curb global warming, the fact that unelected and unaccountable EPA bureaucrats are trying to bypass legislative efforts makes it all the more objectionable. Equally indefensible is any attempt to use the threat of EPA regulations to induce Congress into enacting a cap-and-trade bill it would not support otherwise. Members should not be forced to prematurely pass a bill without fully understanding its effects and consequences.

Even small businesses will be regulated: Massive business costs and diversion of public resources

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

Most emissions regulated under the Clean Air Act are trace compounds measured in parts per billion, so these threshold levels make sense to distinguish *de minimis* contributors from serious ones. But carbon dioxide occurs at far higher levels (background levels alone account for 275 parts per million), and even relatively small usage of fossil fuels could meet these thresholds. Thus, even the kitchen in a restaurant, the heating system in an apartment building, or the activities associated with running a farm could cause these and other entities—potentially a million or more—to face substantial and unprecedented requirements whenever they are built or modified. The bottom line: The kind of industrial-strength EPA red tape that routinely imposes hundreds of thousands, if not millions, of dollars in compliance costs in a process that can drag on for a year or more could now be imposed for the first time on many commercial buildings, farms, and all but the smallest of businesses. Not only would the costs and delays hamper the private sector, but the paperwork would do the same to federal and state environmental regulators, drawing resources away from more useful endeavors.

High energy costs hurt the economy and the poor

[Ben Lieberman](http://www.heritage.org/about/staff/benlieberman.cfm) J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, [Thomas A. Roe Institute for Economic Policy Studies](http://www.heritage.org/About/Departments/roe.cfm)) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

High energy costs result in production cuts, reduced consumer spending, increased unemployment, and ultimately a much slower economy. But importantly, higher energy prices fall disproportionately on the poor, since low-income households spend a larger percentage of their income on energy.

Air regulations will apply to everything: they’ll completely shut the country down!

Ian Talley (journalist), 23 Feb 2009, EPA Set to Move Toward Carbon-Dioxide Regulation, WALL STREET JOURNAL, <http://online.wsj.com/article/SB123531391527642021.html> (ellipses in original)

Administration officials have said they would limit regulation to facilities over a certain size. But legal experts say designating carbon dioxide a public danger could open up any emitters to legal challenge. The U.S. Chamber of Commerce and the National Association of Manufacturers have been lobbying the EPA for months against trying to regulate greenhouse gases under the Clean Air Act, warning that such action would lead to costly new regulations affecting not only coal plants and large manufacturers but also schools, apartment buildings and hospitals. "Once carbon dioxide is regulated, they can no longer contain the Clean Air Act...and it would completely shut the country down," said William Kovacs, a chamber vice president.

SOLVENCY & PLAN ADVOCACY

Nothing EPA can do would reduce the impact of global warming: they shouldn’t even try

Dr. H. Sterling Burnett PhD (senior fellow with the National Center for Policy Analysis) 2 Apr 2007, Supreme Court Ruling Doesn't Mean EPA Will Regulate CO2 Emissions, National Center for Policy Analysis, <http://environment.ncpa.org/news/supreme-court-ruling-doesnt-mean-epa-will-regulate-co2-emissions>

"There is no predicted human health effect from increased CO2 emissions at any foreseeable level," said Burnett. "Nothing the EPA could do would reduce the speculative effects of global warming on sea levels, human health, or weather patterns - since EPA regulations can't affect these things, it ought not to regulate emissions as if it could."

Regulating CO2 emissions would be unreasonably difficult

Bryan Walsh (journalist), 20 Feb 2009, TIME magazine, “The EPA's Move to Regulate Carbon: A Stopgap Solution” <http://www.time.com/time/health/article/0,8599,1880897,00.html>

As the law is written, using the Clean Air Act to regulate greenhouse-gas emissions directly would be unreasonably difficult, because of carbon dioxide's sheer ubiquity. In 2000, the U.S. emitted less than 18 million tons of the pollutant sulfur dioxide, chiefly from cars, power plants and factories. In the same year, national CO2 emissions reached nearly 6 *billion* tons, from virtually every aspect of modern life. Regulating emissions would be like trying to gather up the ocean. In addition, the Clean Air Act technically requires "major" sources of pollutants — meaning those that emit more than 250 tons a year — to acquire costly and time-consuming permits before building or expanding. Again, because carbon is so ubiquitous, establishments as small as a fast-food franchise could emit more than the limit, which is why conservative critics have nicknamed the 2007 decision the Dunkin' Donuts rule.

DISADVANTAGE RESPONSES

EPA endangerment finding based on judgment not fact

Environmental Protection Agency, 24 Apr 2009, FEDERAL REGISTER, Vol. 74, No. 78, p. 18891

The court also rejected petitioner’s argument that any threatened harm must be ‘‘probable’’ before regulation was authorized. Specifically, the court recognized that danger ‘‘is set not by a fixed probability of harm, but rather is composed of reciprocal elements of risk and harm, or probability and severity.’’ *Id.* at 18. Next, the court held that EPA’s evaluation of risk is necessarily an exercise of judgment, and that the statute did not require a factual finding.

Atmosphere can adapt to CO2 and cools itself back down

Prof. John R. Christy, (Atmospheric Science, Univ. of Alabama in Huntsville; Ala. State Climatologist) 25 Feb 2009, House Ways and Means Committee - Written Testimony, <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863>

While the thermal properties of the gases are well known (there is no doubt we are adding CO2 to the air) what is usually overlooked is the fact that the atmosphere is much more subtle and complicated than expressed in climate models. The real atmosphere has many ways to respond to the changes that the extra CO2 is forcing upon it. My colleague Dr. Roy Spencer has shown that in the real world – the world of observations from satellites - that during warming episodes, clouds respond by stepping up their cooling effect (the basic effect of clouds is the cool the climate already). When climate model output calculated in the same way is compared with observations, not one model mimics this cooling effect – in fact the models’ clouds lead to further warming, not cooling as it is in nature. We hypothesize that this poor representation of clouds in models is the reason we find the warming rates of model projections to have significantly overshot what has actually happened.

Warming is overstated and not related to CO2

Prof. John R. Christy, (Atmospheric Science, Univ. of Alabama in Huntsville; Ala. State Climatologist) 25 Feb 2009, House Ways and Means Committee - Written Testimony, <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863>

Secondly, we have demonstrated in several publications that as humans develop the surface through agriculture, urbanization and so on, that this leads, by complicated physical processes, to higher nighttime temperatures over time, but which are unrelated to CO2 emissions. Thus, the current, popular land-based mean surface temperature charts, which average the nighttime and daytime temperatures, and which are often shown to demonstrate warming, overstate the actual warming of the basic atmosphere.

BACK TO THE FUTURE: THE CASE FOR COMMON LAW ENVIRONMENTALISM

By Vance Trefethen

The ancient Anglo-American tradition of Common Law offers a more vibrant and human-rights-affirming solution to water pollution than our current regulatory structures. Offering a comparative advantage case for Common Law over Federal regulation, we will affirm: **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION 1. DEFINITIONS

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental Policy: a government policy that explicitly intends to promote environmental protection, conservation, and rational use of natural resources.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Water Pollution:

United States Code, Title 33 Chapter 26 Sub-Chapter V Section 1362 Paragraph 19, 3 Jan 2007, <http://www.law.cornell.edu/uscode/search/display.html?terms=means&url=/uscode/html/uscode33/usc_sec_33_00001362----000-.html>

"The term “pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water."

**Policy:** a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions (*Merriam-Webster's Online Dictionary, 2009,* [*www.merriam-webster.com/dictionary/policy*](http://www.merriam-webster.com/dictionary/policy)*)*

**Tort**: "a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction" (*Merriam-Webster's Online Dictionary, 2009* [*http://www.merriam-webster.com/dictionary/tort*](http://www.merriam-webster.com/dictionary/tort)*)*

**Common Law:** "A system of law that is derived from judges' [decisions](decision.html) (which arise from the judicial branch of government), rather than [statutes](statute.html) or constitutions (which are derived from the legislative branch of government)." *(Georgetown University Law Library, 2001* [*http://www.ll.georgetown.edu/tutorials/definitions/common\_law.html*](http://www.ll.georgetown.edu/tutorials/definitions/common_law.html)*)*

OBSERVATION II. INHERENCY: The Status Quo has replaced Common Law with regulatory law, leading to a system that is not as good as it could be. Consider…

A. Common Law pre-emption. The Clean Water Act blocks Federal Common Law remedies for water pollution.

Matthew F. Pawa (Massachusetts attorney with extensive environmental litigation experience), 2007, Creative Common Law Strategies for Protecting the Environment, "Global Warming: The Ultimate Public Nuisance," (brackets added) <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP9,M1>

Federal common law claims for ambient or interstate pollution are, of course, less common than they once were because, beginning in the early 1970s, Congress and EPA began to regulate many of the most important interstate water and air pollutants. Generally, where EPA has issued regulations pursuant to a federal statute, the applicable federal law is expressed in the statute and regulations, preempting federal common law. Nine years after the enactment of the CWA [Clean Water Act], the Court addressed this preemption argument in City of Milwaukee v. Illinois (Milwaukee II), a case in which the earlier sewage pollution case returned to the Court for resolution of the preemption issues. The Court held that where Congress has enacted a sweeping prohibition on sewage pollution and EPA had subsequently enacted regulations on point, the federal common law claim was preempted.

B. Under-regulation. Current policy reduces incentives and blocks legal channels for stopping water pollution

Prof. [Roger E. Meiners](file://localhost/aboutus/person_detail.asp%3fid=246) PhD (Economics and Law, Univ. of Texas/Arlington), Prof. [Bruce Yandle](file://localhost/aboutus/person_detail.asp%3fid=336) (economics, Clemson Univ.) 1995, TAKING THE ENVIRONMENT SERIOUSLY, (brackets added) <http://books.google.com/books?id=AkGeprfSFBEC&dq=Milwaukee+%2B+%22Clean+water+act%22+%2B+%22polluting%22+%2B+%22common+law%22&source=gbs_summary_s&cad=0>

The preemption of common law rights against polluters by various statutes has forced courts to dismiss common law actions. For example, common law actions against the dumping of toxic substances in coastal waters were dismissed because of the CWA [Clean Water Act] and the Marine Protection, Research and Sanctuaries Act. Milwaukee prevented Illinois from suing it for dumping its raw sewage into Lake Michigan because of federal pollution statutes. Similarly, when Tennessee tried to stop a North Carolina company from polluting a river that flowed into Tennessee, its only recourse was to complain to the EPA that North Carolina should not have issued the water pollution permit to the company. Again, a common law right of action was prohibited by a statute. The Clean Water Act explicitly eliminated common law actions for interstate water pollution. Statutes give regulators, who have no personal incentive to bring action, rather than those harmed, primary control of the environment.

C. Over-regulation: Property rights are damaged by Clean Water Act restrictions

Prof. Andrew P. Morriss (Professor of Law and Professor of Business at the University of Illinois and a senior fellow at the Property and Environment Research Center), March 2007, "The Economics of Property Rights," <http://www.thefreemanonline.org/featured/the-economics-of-property-rights/>

At the same time, however, there have been value-destroying, liberty-restricting developments in property law. The widespread adoption of central-planning methods for land-use control, the seizure of private property to redistribute it to favored interest groups masquerading as “economic development,” and regulatory restrictions on property owners in pursuit of special interests’ agendas, as has happened with laws such as the Endangered Species Act and Clean Water Act, are the result of the combination of an unconstrained state and the attraction of the wealth individuals create through the trade made possible by property rights.

D. No cost-benefit balancing

Prof. Keith Hylton (Boston Univ School of Law), March 2008, "The Economic Theory of Nuisance Law and Implications for Environmental Regulation" CASE WESTERN RESERVE LAW REVIEW, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112631>

Common law nuisance doctrine provided the first system of environmental regulation in English-speaking countries. Today, most of what modern scholars refer to as environmental regulation is statutory law. But statutory law often supplants or displaces common law without reflecting its accumulated wisdom. This is perhaps most obvious in the field of environmental law, where statutory interpretation has now taken the place of the careful cost-benefit balancing of the common law.

OBSERVATION III. You should adopt the following PLAN, to be implemented by any necessary Constitutional means:

**Agency:** Congress, the Justice Department and the EPA

**Mandates**:

**1.** All water pollution regulations that restrict activities done on private land are repealed.

**2.** All water polluters will be liable under Common Law in civil court for any damage done by their pollution

**3.** The EPA will aid in the investigation and filing of lawsuits in cases of interstate water pollution and cases where the origin or source of water pollution is difficult to identify.

**Enforcement:** ...through the Federal Courts.

**Funding:** ...through existing budgets of existing agencies and money shifted from enforcing statutory regulations into aiding investigations of lawsuits.

**Timing**: This plan takes effect the day after an Affirmative ballot

**And all affirmative speeches may clarify the plan as needed.**

OBSERVATION IV. Common Law produces ADVANTAGES over statutory regulations

ADVANTAGES 1, 2 and 3. a) Property rights are upheld, b) pollution is discouraged, and c) harms are compensated

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Individual landowners have perceived environmental harms largely in terms of unreasonable interference with land use created by neighbors. For many centuries, such allegations have been the subject of nuisance law. Common law private nuisance actions, like other tort actions, are intended to rectify harms to individual rights. Similarly, public nuisance actions rectify harms to the rights of aggregates of individuals within a community. Thus, property rights, including those in environmental amenities, were protected by an approach through which past harms were compensated and future harms thus discouraged.

Advantage 4. Better management of uncertainty and better outcomes than statutory regulation

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The genius of the common law is the fact that it combines the protection of expectations with the possibility of incremental change. There is opportunity for courts, in cooperation with the parties, to fashion settlements that improve upon the outcomes for property and the environment that is apt to be achieved under top down statutory regulation. Given the state of scientific uncertainty and the tendency to apply rules before articulating policy, no decision maker can impose command and control outcomes with confidence.

Judge, today I have shown that current policies favor broad top-down federal mandates about how much pollution is emitted, rather than allowing polluters and victims to arrive at solutions based on actual damages, impacts and costs on a case-by-case basis and resolving their differences through lawsuits or settlements under the common law doctrine of "nuisance." America should change from a regime of statutory regulation back to the common law solution where polluters pay for the actual damage they cause to others -- and have the liberty to use their own property as they see fit if they are harming no one.

2A EVIDENCE: COMMON LAW ENVIRONMENTALISM

DEFINITIONS

Common law was managing conflicts about rights throughout most of US history

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Throughout most of American history, the common law was the principal institution for mediating conflicting claims about rights. Justice Lemuel Shaw of the Supreme Judicial Court of Massachusetts described the common law in 1854 as “a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it.”

Common Law = Property, contract and tort

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The three great bodies of the common law are property, by which the rights of individuals regarding things are established and perfected; contract, by which those rights are exchanged through mutual consent; and tort, by which harm to those rights is rectified. In each of its branches, the focus of the common law was upon bilateral relationships, principally those of property owner and stranger to title, contract buyer and seller, and tort victim and tortfeasor.

INHERENCY

CWA regulations block water pollution lawsuits

Prof. [Roger E. Meiners](file://localhost/aboutus/person_detail.asp%3fid=246) PhD (Economics and Law, Univ. of Texas/Arlington), Prof. [Bruce Yandle](file://localhost/aboutus/person_detail.asp%3fid=336) (economics, Clemson Univ.) April 1992, "The Common Law Solution to Water Pollution" <http://www.independent.org/aboutus/person_detail.asp?id=336> (misspelling in original, brackets added)

The last major case was in 1972, when the Supreme Court reasserted that a federal common law basis exists for water pollution actions. In that case, Illinois sued Milwaukee for polluting Lake Michigan, the source of Chicago’s water supply, with sewage. The Supreme Court held that a federal injunction against Milwaukee’s pollution could be issued. Months after this case, the CWA [Clean Water Act] was passed. Milwaukee ran back to the courts so it could continue to pollute, and won. The Supreme Court held that the CWA displaced federal common law. It could not ~~he~~ [be] used to impose more stringent effluent standards than those set forth under the CWA and its attendant regulations. Thus, the CWA largely eliminated common law rights of action in point source water pollution cases.

Public enforcement of environmental regulation has flawed incentives and flawed outcomes

*Prof. Keith Hylton (Boston Univ School of Law), March 2008, "The Economic Theory of Nuisance Law and*

Implications for Environmental Regulation" CASE WESTERN RESERVE LAW REVIEW, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112631>

The agency cost problem is a label that I will use to describe the suboptimal outcomes that result because the public enforcement agent is likely to have incentives that differ from those of the hypothetical principle. The hypothetical principle, a social planner committed to maximizing society’s welfare, would adopt an environmental regulation scheme that minimizes the sum of the costs of environmental injuries, avoidance costs, and administrative costs. The public enforcement agent may have incentives that are skewed from this objective for several reasons: malfeasance, lack of interest, and lack of information. Public enforcers can be bribed by regulated parties. They may over- or under-invest in enforcement efforts because their compensation arrangements fail to align their incentives with the social objective. Or, public enforcers may support laws that benefit a concentrated interest group while providing no benefit to or perhaps harming the majority. Finally, public enforcers will not have access to information that is held privately, and as a result may be unable to find optimal solutions, even if they sincerely attempted to find them.

Status Quo wants regulatory system because they believe free markets are bad

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (brackets in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Much of the pressure for the adoption of statutory rules for environmental protection stems from the view that the common law, bottom up, system of enforcing individual property rights in environmental amenities is inadequate. According to Dean Huffman, “[t]he idea of free market environmentalism is particularly distressing for orthodox environmentalists, because for them it is environmentally correct to believe that markets and the wealth they produce are the source of many, if not most, environmental problems.”

Supreme Court ruled that the Clean Water Act pre-empts federal common law

Prof. Robert V. Percival (Univ. of Maryland School of Law), 2003, "The Frictions of Federalism: The Rise and Fall of the Federal Common Law of Interstate Nuisance" All Faculty Publications. Paper 91. <http://digitalcommons.law.umaryland.edu/fac_pubs/91>

Despite its unique role in resolving disputes between states, the Supreme Court long doubted its competence to make complex judgments concerning appropriate levels of pollution control. Thus, it sought to encourage states to resolve transboundary pollution disputes through negotiation and cooperation. While these efforts largely failed, the Court ultimately removed itself from the role of arbiter of transboundary pollution disputes by holding that the Clean Water Act's comprehensive federal regulatory program to control water pollution preempted the federal common law of interstate nuisance.

Wrong and unjust to assign social activity to higher level when lower level can do it

Impact/Analysis: Private parties can solve water pollution through private civil action; it’s wrong to take that power away from them and give it to Federal regulators instead

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

While “subsidiarity” usually is employed with respect to the relative competence of competing institutions to deal with social problems, the seminal text makes it clear that, in a fundamental sense, *all* institutions are subsidiary:

Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them. [[Peter Widulski, Bakke, Grutter, *and the Principle of Subsidiarity*, 32 HASTINGS CONST. L.Q. 847, 847 (2005) (quoting Pius XI, *Quadragesimo anno*, § 79 (1931)]

Tortured legal arguments and fictions used to justify Federal environmental regulation

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487> (brackets added)

Professor Richard Lazarus, a strong supporter of environmental legislation, candidly admits that the Property Clause provides Congress plenary authority, but only on federal land, and that the Spending Clause is limited to the federal purse. [Quoting Lazarus:]

At least in recent history, the only clause susceptible to a broader reading has been the Constitution’s Commerce Clause (Art. I, § 8, cl. 3), which authorizes Congress to regulate interstate commerce. An expansive reading of that clause authorizes federal legislation for environmental protection based on the theory that activities adversely affecting the environment have substantial effects on interstate commerce. The vast majority of modern federal environmental legislation is based on just such a reading of the Commerce Clause and has, to date, been upheld by the courts when challenged. The fit is nonetheless theoretically uneasy. The rhetoric of the Commerce Clause itself suggests the problem: it makes congressional control dependent on a commercial nexus. Commerce possessing a substantial interstate dimension is what the Constitution isolates as being of sufficient national interest to warrant the exercise of federal authority. The problem for environmental protection lawmaking is that, although commerce is certainly of central relevance to environmental protection, it is not ultimately that area of law’s central concern. To base the validity of federal lawmaking authority for environmental protection on a commercial nexus invariably invites the creation of tortured legal arguments and legal fictions.

Federal regulations have replaced common law

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487> (brackets added)

Concomitant with the de-emphasis of the common [law] as a means of harmonizing property and environmental concerns has been the growth of environmental regulation by statute. Since the 1970s, environmental protection largely has become a “top down” process, in three senses of that term. One is centralization of policymaking. Sweeping federal environmental statutes largely have supplanted the States’ police powers. Another is the collectivization of rights. While the common law vindicated the rights of individuals and groups of individuals in a community with similar claims, modern environmental statutes envision collective rights that go beyond the sum of individual rights. Finally, the mode of vindication of rights has gone from the case-by-case accretion of precedent associated with the common law to the categorical delineation of rights promulgated by comprehensive laws.

SOLVENCY

Public attorney can file legal action for public nuisances

Prof. Roger E. Meiners PhD (Economics and Law, Univ. of Texas/Arlington), Prof. Bruce Yandle (economics, Clemson Univ.) 1998, The Common Law: How it Protects the Environment, <http://www.perc.org/articles/article653.php>

A public nuisance is an act that causes inconvenience or damage to public health or order or that obstructs public rights. If a business creates noxious emissions that affect many citizens, a public attorney may bring an action on behalf of all affected citizens to have the activity terminated.

Public lawsuits solve private cost and free-riding problems: Attorney general can act for everyone

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

One important attribute of public nuisance actions, as opposed to private nuisance, is that collective action and free riding problems are attenuated.215 The rights of residents of a town, or state, who are deprived of enjoyment of their lands and similar rights do not have to pass the hat to raise money to vindicate their rights. Their town solicitor or state attorney general may act for them.

Lawsuits provide incentives for relocating to places where the harms are insignificant

*Prof. Keith Hylton (Boston Univ School of Law), March 2008, "The Economic Theory of Nuisance Law and*

Implications for Environmental Regulation" CASE WESTERN RESERVE LAW REVIEW, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112631>

In an advanced economy, the traditional nuisance test will operate in a manner that results in strict liability in probably the vast majority of cases in which there is a serious environmental injury. The exceptional cases are: (1) those in which there is no serious environmental injury that distinguishes the nuisance generator from any number of other background activities, and (2) those in which the external benefits of the source exceed the external harms. The traditional test permits courts to reach different conclusions in these cases, depending on the strength of the evidence and the circumstances of the location. Moreover, this approach provides incentives for nuisance generators to find locations in which external harms are insignificant.

Government intervention not needed: Parties can negotiate compensation for environmental damage

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Where conduct harmful to the property rights of others might nonetheless result in a net benefit to society, consensual adjustments could be made by the parties themselves. By employing easements, covenants, and similar devices, individuals could sell the right to be free from trespass and nuisance. The erstwhile victim would be compensated in full by his or her own lights, and the erstwhile tortfeasor could engage in the more valuable activity. No elaborate government inquiry was required to ascertain if the compensation was more or less than sufficient, since each party preferred the bargain to his or her former position.

ADVANTAGES

Lower level decision-making – like common law environmentalism – promotes liberty and self-determination

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Subsidiarity, referring to local government, or, in the case of the European Union, national government, furthers self-determination and accountability, political liberty, flexibility, preservation of identities, and diversity. These factors are just as applicable to decisions being made at the individual level, such as decisions to assert common law environmental rights.

Interference with individual rights should be limited: protects against despotism

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487> (brackets in original)

As described by Isaiah Berlin, “negative” liberty is the right of individuals to pursue their chosen activities free from external social interference by others. The concept of negative liberty often is associated with John Stuart Mill, who declared that “[t]here is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.”

Property rights protected by common law

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

In short, “the Constitution is a charter of negative rather than positive liberties. The men who wrote the Bill of Rights were not concerned that government might do too little for the people but that it might do too much to them.” To the extent that environmental amenities are deemed to be property, they are protected by the common law of nuisance. To the extent that the benefit of environmental amenities is created by statute, citizens often have standing to bring lawsuits to protect them.

Common law upholds rights and imposes discipline on resources users: they have a lot to lose if they make bad decisions

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The utility of the common law lies in its basic adherence to settled expectations about rights. Such expectations “are the foundation of effective cooperation in any large, complex society.” Anderson and Leal assert that “[a]t the heart of free market environmentalism is a system of well-specified property rights to natural resources. Whether these rights are held by individuals, corporations, non-profit environmental groups, or communal groups, a discipline is imposed on resource users because the wealth of the owner of the property right is at stake if bad decisions are made.”

Long history of success: Common law works to solve environmental problems

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487> (ellipses and bracktes in original)

In more routine cases, common law public nuisance has served as a satisfactory basis for environmental remediation. According to the Restatement (Second) of Torts, “[a] public nuisance is an unreasonable interference with a right common to the general public.” In its inception a public, or common, nuisance was an infringement of the rights of the Crown. … By the time of Edward III [1312-77] the principle had been extended to the invasion of the rights of the public, represented by the Crown, by such things as interference with the operation of a public market or smoke from a lime-pit that inconvenienced a whole town. Public nuisances included interference with the public health, safety, morals, peace and comfort, and convenience. It is applicable cases of “widely disseminated bad odors, dust and smoke,” obstruction of highways or navigable stream, and similar situations. There is a large body of caselaw involving environmental public nuisances, such as those involving odors, dust, emissions, and water pollution.

Common law better: No political pressure, stronger incentives for taking action, more flexibility

Michael D. Axline (attorney, former law professor at Univ. of Oregon Law School), 2007, "The Limits of Statutory Law and the Wisdom of Common Law," Creative Common Law Strategies for Protecting the Environment, <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP5,M1>

Regulated entities have been quite successful in forcing agencies to provide extensive scientific justifications for drawing regulatory lines. Regulators therefore require a high level of certainty before they will act, even if limited available information, combined with their experience and instincts, tells them that there is a basis for acting. The common law, by contrast, is not subject to political pressures and bureaucratic intertia. Plaintiffs in common law actions often have stronger incentives for initiating and prosecuting such actions, such as the immediate risk of personal harm and the potential to recover economic damages. Moreover, although proof of causation is required in common law cases, judges and juries still have flexibility to act in the face of uncertainty. The "more probable than not" standard of proof, for example, allows juries to make decisions in the face of uncertainty far greater than would be tolerated in the scientific arena.

Common law better: Polluters run to regulatory law to escape from common law juries

Michael D. Axline (attorney, former law professor at Univ. of Oregon Law School), 2007, "The Limits of Statutory Law and the Wisdom of Common Law," Creative Common Law Strategies for Protecting the Environment, <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP5,M1>

The most compelling evidence of the potency of the common law, however, is the fact that defendants in common law environmental cases regularly rely on statutory law as a defense to common law claims. Defendants may complain about the burdens of statutory law, but when faced with the choice, they would almost always prefer to be in front of regulators, where they can wield their economic and political clout -- rather than in front of a jury, where 12 of their peers will evaluate whether their conduct, and its environmental consequences, was "reasonable."

Regulatory law blocks citizen participation – common law requirements for participation are easier

Michael D. Axline (attorney, former law professor at Univ. of Oregon Law School), 2007, "The Limits of Statutory Law and the Wisdom of Common Law," Creative Common Law Strategies for Protecting the Environment, <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP5,M1>

Jurisprudence applying the notice provisions of citizen suits unfortunately has treated the requirement so literally that it now serves principally as a stumbling block to initiating enforcement actions, rather than as the device for informing regulatory agencies and promoting voluntary compliance that its drafters originally intended. Courts and defendants hostile to the concept of private citizen enforcement of environmental laws can comb through notices looking for technical errors or omissions to bar perfectly meritorious cases involving serious pollution problems. In contrast, pleading requirements for common law claims merely require that complaints notify tortfeasors of the "gravamen" of the claims against them.

Common law is better than regulatory law because is it case specific

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The efficacy of common law remedies for nuisance is demonstrated by the fact that statutory enactments are not generally demonstrable as superior, or even equally satisfactory. Common law decisionmaking consists of *ex post* inquiry into whether given conduct conformed with relevant community standards. It therefore is case specific. It is juxtaposed statutory decisionmaking, which consists of *ex ante* general determinations that individuals are obligated to obey specific rules in the future.

DISADVANTAGE RESPONSES

Market imperfections don’t prove alternatives are better

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487> (brackets in original)

Terry Anderson and Donald Leal have asserted that there is nothing about environmental goals that makes them less amenable to the working of markets than other desirable amenities and goods. Imperfections in markets do not necessarily mean that an alternative system is better. Free market environmentalism has been extolled as substituting for “[p]opulist sentiment and pork-barrel politics” a “system of private ownership [that] would protect the environment for the same reason that it protects other kinds of property: because it encourages good stewardship.”

Additional reading:

<http://www.law.northwestern.edu/faculty/fulltime/butler/papers/ADefenseofCommonLaw_Butler.pdf>

<http://www.independent.org/publications/article.asp?id=289>

GENTLY DOWN THE STREAM: THE CASE FOR THE CLEAN WATER RESTORATION ACT

By Vance Trefethen

Congress passed the Clean Water Act in 1972 with the goal of making all US waters swimmable and fishable again. While we were on the way to making great progress toward that goal, the US Supreme Court recently "muddied the waters" by re-interpreting the Act in a way that leaves thousands of bodies of water unprotected. To protect wildlife, human life and property, please join us in affirming: **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION I. The following DEFINITIONS will explain the resolution.

Environmental policy:

Dr. William P. Cuningham (Ph.D. in Botany from the University of Texas), Dr. Mary Ann Cunningham (PhD in Geography at the University of Minnesota), and Dr. Barbara Woodworth (Ph.D. in Science Education from the University of Iowa), 2001, Environmental Science: A Global Concern, 7th Edition, McGraw Hill, <http://highered.mcgraw-hill.com/sites/0070294267/student_view0/glossary_e-l.html>

**“**Environmental Policy: The official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** "to put or change into an improved form or condition" (Merriam-Webster's Online Dictionary, 2009 <http://www.merriam-webster.com/dictionary/reform>)

OBSERVATION II. INHERENCY: The fundamental framework of the Clean Water Act is shattered

A. Supreme Court decisions limit the scope

Carol Browner (former Administrator of the Environmental Protection Agency), 9 April 2008, testimony before hearing of the US Senate Environment & Public Works Committee, "Legislative Hearing on S.1870, The Clean Water Restoration Act of 2007," <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=d48c14cb-42ec-439e-bcda-cbf2763f09b2>

I recognized, as did the administrators who preceded me, that Congress intended for the Clean Water Act to cover all of our nation's interconnected water resources, including watersheds, tributaries, and wetlands. These waters are essential not only for safeguarding water quality, but also for our nation's public health, economy, and ecosystems: they protect and purify water, shield our homes and businesses from flooding, and provide valuable habitat for a wide range of wildlife. However, this congressional intent has been challenged in recent years by Supreme Court decisions such as *SWANCC v. United States*, and *Rapanos* and *Carabell v. United States*. In the *Rapanos* case, I joined three of my fellow former EPA Administrators in supporting the government's interpretation of which waters should be protected under the Clean Water Act. In enacting that law, Congress acknowledged that ALL of our nation's waters are connected through hydrologic cycles and therefore must be given equal protection. Agencies and courts, in keeping with that legislative intent, must interpret the term "navigable waters" broadly as "waters of the United States," in order for our waters to be adequately protected from pollution. My fellow former Administrators and I --two of us Democrats, and two Republicans -- argued that the misinterpretation of "navigable waters" suggested by the petitioners in the *Rapanos* case would, if accepted, do serious damage to enforcement of the Clean Water Act and protection of not just tributaries and wetlands, but all of the United States' waters.

B. Critical protections are gone

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

In 1972, Congress passed an expansive Clean Water Act to protect all “waters of the United States.” For almost 30 years, both the courts and the agencies responsible for administering the Act interpreted it to broadly protect our Nation’s waters. However, in two recent decisions, Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC) in 2001 and Rapanos v. United States in 2006, the Supreme Court misinterpreted the law and placed pollution limitations for many vital water bodies in doubt. After the decisions, the Bush administration’s Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) excluded numerous waters from protection and placed unnecessarily high hurdles to protecting others. These decisions shattered the fundamental framework of the Clean Water Act. Today, many important waters – large and small – lack critical protections against pollution or destruction.

OBSERVATION III. These legal failures create several HARMS:

HARMS 1 and 2. Wasted law enforcement resources and risks to public health

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf) (brackets added)

The legal chaos spawned by *SWANCC* and *Rapanos* and the misguided EPA and [Army] Corps [of Engineers] interpretations of them have also had devastating effects on law enforcement. In December 2008, Congressman Henry Waxman and Congressman James Oberstar wrote a memorandum to then-President-Elect Obama detailing hundreds of Clean Water Act enforcement cases that the EPA shelved or downgraded, and dozens more where the legal mess forced the government to spend resources arguing about whether a particular waterbody was protected. Some of these cases included significant oil spills. The memorandum also explains how, as a result of the legal confusion, agency regulators are suffering from increased workloads, record backlogs, heightened frustration, and plummeting morale. The Nation’s waters, and in turn our public health, cannot withstand the current legal situation.

HARM 3. Billions of dollars in social costs

ENVIRONMENT ILLINOIS ("statewide, citizen-based environmental advocacy organization. Our professional staff combines independent research, practical ideas and tough-minded advocacy to overcome the opposition of powerful special interests and win real results for Illinois' environment"), 1 July 2008, Illinois Congressman & Environment Groups Urge Congress to Protect Great Lakes, <http://www.environmentillinois.org/newsroom/clean-water-news/clean-water-news/illinois-congressman--environment-groups-urge-congress-to-protect-great-lakes>

The loss of Clean Water Act protections for streams and wetlands would harm downstream waterways. These smaller waterways supply water, filter out pollution, trap sediment, control floods and provide some of Illinois’s most diverse habitat for fish, birds and other wildlife. “You don’t have to look far to see the impact of losing our wetland protections have had on the Midwest. Look at Iowa. Look at western Illinois. Streams and wetlands absorb and slow floodwaters. Losing that natural protection impacts us all in some pretty concrete ways—from the cost of food, to the billions in tax dollars that will be needed to fix the damage,” said Josh Mogerman of the National Resources Defense Council. “Now more than ever, Congress should affirm that Clean Water Act protections to our few remaining wetlands.”

HARM 4. Oil spills

Alexander B. Grannis (Commissioner, New York State Dept. of Environmental Conservation), 9 Apr 2008, written testimony to the US Senate Environment & Public Works Committee, Hearing on the Clean Water Restoration Act of 2007, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fcff6e42-acca-4e58-8ba9-578c643ac674>

Oil spills have caused extensive and expensive environmental damage in New York. Nationally, more than 9,000,000 gallons of gasoline escape into the environment annually during the course of transportation, storage, sale or use. Contaminated private and public drinking water wells in New York, as well as traditional navigable waters, have resulted from these spills. If the challenge by the oil companies is successful, fewer waters in New York would be afforded protection from oil spills and hazardous waste discharges under Section 311 of the Clean Water Act. New York would lose its ability, granted by the Oil Pollution Act of 1990, to file cost recovery claims with the federal government for oil spill clean ups undertaken in wetland areas. Such a decision would leave New York State with less money in its Oil Spill Fund to properly address the more than 20,000 active spills statewide. In just one New York watershed, the eastern shores of Lake Ontario, there are approximately 10,600 acres of wetlands, 65% of which are not adjacent to navigable waters. Therefore, if the oil companies prevail, pollution would be allowed into these waters with no remedy under the Clean Water Act.

OBSERVATION IV. You should adopt the following PLAN, to be implemented by any necessary constitutional means:

**Agency:** Congress and the President

**Mandate:** The "Clean Water Restoration Act" previously introduced but not passed in the 110th Congress will be enacted into law.

**Funding:** Existing budgets of existing agencies with no net increase in spending.

**Enforcement:** Existing federal agencies currently enforcing the Clean Water Act, including the EPA and the Justice Department.

**Timeline:** This plan takes effect 1 day after an Affirmative ballot

**Clarification:** The Affirmative may clarify this plan as needed throughout the round.

OBSERVATION V. The plan achieves SOLVENCY by clearing up the legal confusion and restoring protection to endangered waters

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

Congress must enact the Clean Water Restoration Act now to stop the bleeding and restore basic Clean Water Act protections to our waters. This legislation restores protections by:

* Removing the confusing term “navigable” from the Act;
* Making clear that “waters of the United States” means the water bodies protected prior to 2001; and
* Articulating the Congress’s broad constitutional authority to protect such waters.

Until Congress restores the Clean Water Act, the waters of this country are going to suffer irretrievable harm, the regulated community is going to experience unnecessary delays, and regulatory resources will be stretched to the breaking point. By enacting legislation to restore pre-2001 Clean Water Act protections, Congress would fix all of these problems and re-establish the Clean Water Act as the comprehensive water quality protection statute that Congress passed over a generation ago.

2A EVIDENCE: CLEAN WATER RESTORATION ACT

Text of Clean Water Restoration Act

<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2421>:

INHERENCY

*Rapanos* decision created cumbersome "significant nexus" rule about which waters are protected

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf) (brackets added)

The second blow came five years later in [the Supreme Court case of] *Rapanos [versus United States]*, when the court revisited the issue of which waters are covered by the law. *Rapanos* involved wetlands near to tributaries of traditionally navigable waters. Rather than providing clarity, the Supreme Court created further confusion, failing to reach any majority decision, in several opinions with fundamentally contrary rationales. A four-member plurality would protect only “relatively permanent waters” connected to traditionally navigable water bodies, as well as wetlands with a “continuous surface connection” to other protected waters. In a solo concurring opinion, Justice Anthony Kennedy would require that certain wetlands have a “significant nexus” to traditional navigable waters in order to be protected and gave little guidance as to what such a “nexus” requires, leaving the courts and the agencies to figure that out on a cumbersome case-by-case basis.

*Rapanos* decision renders water protections nearly meaningless

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

In particular, the *Rapanos* guidance strips categorical protections for tributaries of larger waters; presumes certain types of ephemeral streams and waters are no longer protected; creates a binding, unpredictable, and time and resource intensive case-by-case process for determining what is protected; and ignores science to interpret important and relatively protective aspects of Justice Kennedy’s approach in a manner that makes them nearly meaningless.

15,000 water bodies unprotected due to Supreme Court decisions

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

Further, these are only case studies; we estimate that federal agencies declared over 15,000 water bodies unprotected in the past eight years. Thus, the case studies in this report represent a small fraction of the thousands of waters that have lost federal protections, officially or unofficially, since the Supreme Court’s 2001 decision.

Bush Administration policies removed protection for isolated water bodies

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

To make matters worse, following both *SWANCC* and *Rapanos*, the Bush administration issued new policies instructing field staff how to apply the Supreme Court decisions. These documents made it significantly harder to protect various water bodies, including tributary streams, rivers, and wetlands. In 2003, following *SWANCC*, the administration essentially removed protection for non-navigable “isolated” water bodies, including prairie pothole wetlands, playa lakes, and vernal pools that are invaluable for wildlife habitat, groundwater recharge, and flood control. The U.S. House of Representatives specifically voted to reject the use of the agencies’ post-*SWANCC* policy in 2006, but it remains in effect to this day.

The *SWANCC* decision reduced the definition of "navigable waters"

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf) (brackets added)

In 2001 and 2006, the U.S. Supreme Court dealt a one-two punch to water quality. The first blow came when it decided *SWANCC* [Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers], a 5-4 ruling that certain isolated, intrastate ponds were not protected by the Clean Water Act, even though the Justice Department argued that the Act covers water bodies used as migratory bird habitat. The Supreme Court suggested that Congress’s use of the term “*navigable* waters” in the Act indicated an intent to restrict protections to waterways somehow related to navigable ones. The court fundamentally ignored the fact that Congress defined “navigable waters” broadly to mean the “waters of the United States,” and the Court similarly brushed aside its own prior decision saying that the word “navigable” was of “limited import.”

HARMS/SIGNIFICANCE

Alarming Impact: 20% of wetlands and 111 million Americans' drinking water affected

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

The impact *SWANCC, Rapanos,* and the agency directives have had on our water resources is alarming. The Environmental Protection Agency estimated that approximately 20 percent of the over 100 million acres of wetlands in the continental U.S. are geographically “isolated,” a troubling statistic when one considers that the agencies stopped protecting isolated, non-navigable intrastate water ways after *SWANCC*. Additionally, about 60 percent of the stream miles in the continental U.S. do not flow year-round; post-*Rapanos* interpretations directly threaten those kinds of streams. These waters not only serve as valuable wildlife habitat, store flood water, return water to aquifers, and filter pollutants, but they also provide some or all of the supply for drinking water systems serving roughly 111 million Americans.

In Illinois alone: 60% of wetlands, 150,000 acres, 823 polluting facilities, 1.6 million citizens' drinking water

ENVIRONMENT ILLINOIS ("statewide, citizen-based environmental advocacy organization. Our professional staff combines independent research, practical ideas and tough-minded advocacy to overcome the opposition of powerful special interests and win real results for Illinois' environment"), 1 July 2008, Illinois Congressman & Environment Groups Urge Congress to Protect Great Lakes, <http://www.environmentillinois.org/newsroom/clean-water-news/clean-water-news/illinois-congressman--environment-groups-urge-congress-to-protect-great-lakes>

U.S. EPA estimates that over half of Illinois streams are headwater or seasonal streams, the types of streams most in danger, and over sixty percent of Illinois wetlands, totaling over 150,000 acres, could also lose protection. Currently, at least 823 polluting facilities are located on at-risk streams and have their pollution limited by Clean Water Act permits which may no longer be required. EPA data indicate that over 1,600,000 Illinoisans receive drinking water from supplies fed at least in part by these streams.

Massive "dead zone" in the Gulf of Mexico

Justice Anthony Kennedy, US Supreme Court, 19 June 2006, Rapanos v. United States, concurring opinion, p. 29, [www.aswm.org/fwp/rapanos\_op.pdf](http://www.aswm.org/fwp/rapanos_op.pdf) (brackets added)

Important public interests are served by the Clean Water Act in general and by the protection of wetlands in particular. To give just one example, *amici* [friends of the court - outsiders who filed briefs in support of one of the sides in the dispute]here have noted that nutrient-rich runoff from the Mississippi River has created a hypoxic, or oxygen-depleted, “dead zone” in the Gulf of Mexico that at times approaches the size of Massachusetts and New Jersey. Brief for Association of State Wetland Managers et al. 21-23; Brief for Environmental Law Institute 23. Scientific evidence indicates that wetlands play a critical role in controlling and filtering runoff.

Oil spills - no enforcement action taken

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf) (brackets and ellipses in original)

A March 2008 internal EPA enforcement memo documented that over 200 oil spill enforcement actions across the country have been dropped or de-prioritized over just an 18 month period. This is likely just the tip of the iceberg, as an official in EPA’s Denver office warned in January 2008, “we literally have hundreds of OPA [Oil Pollution Act] cases in our “no further action” file due to the *Rapanos* decision. . . .”

Social costs from environmental damage if wetlands not protected

Alexander B. Grannis (Commissioner, New York State Dept. of Environmental Conservation), 9 Apr 2008, written testimony to the US Senate Environment & Public Works Committee, Hearing on the Clean Water Restoration Act of 2007, (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fcff6e42-acca-4e58-8ba9-578c643ac674>

In 2007, New York experienced a significant flooding in some of our communities, including Westchester, Rockland, Ulster and Orange Counties. The damages, just to public properties in Westchester County, totaled $38 million from floods caused by a nor'easter'. If damages from this one storm to public and private properties in all the affect[ed] counties were combined, they would easily reach into the hundreds of millions of dollars. In New York, we are concerned that, if small wetlands and streams are removed from protection under the Clean Water Act, increased flooding would be likely, and the financial losses would be dramatic.

Drinking water supplies threatened

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

Because of this “non-jurisdictional” decision, Newlin Gulch, a contributor to regional drinking water supplies, no longer enjoys Clean Water Act protections. If this pattern repeats across Colorado, the threat would be severe; according to EPA, over 3.5 million Coloradans get drinking water from sources fed by intermittent and ephemeral waters.

SOLVENCY

Congress should restore CWA protections to avoid losing a generation's progress in cleaning up US waters

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

Congress must reverse the damage done by the Supreme Court’s decisions and the agency policies that followed by restoring Clean Water Act protections that were in place prior to 2001. Without such action, a generation’s worth of progress in cleaning up our Nation’s waters may be lost. We cannot afford to return to the days of dirty water.

CWRA would restore the health and integrity of the nation's waters

Rep. Dan Lipinski (D-Illinois), quoted by ENVIRONMENT ILLINOIS ("statewide, citizen-based environmental advocacy organization. Our professional staff combines independent research, practical ideas and tough-minded advocacy to overcome the opposition of powerful special interests and win real results for Illinois' environment"), 1 July 2008, Illinois Congressman & Environment Groups Urge Congress to Protect Great Lakes, <http://www.environmentillinois.org/newsroom/clean-water-news/clean-water-news/illinois-congressman--environment-groups-urge-congress-to-protect-great-lakes>

"Pollution is not partisan and it knows no geographic boundaries between countries, between states, between cities, or between congressional districts," said Illinois Congressman Dan Lipinski (Western Springs), who sits on the House Transportation and Infrastructure Committee, which is expected to vote on the Clean Water Restoration Act in July. "Everyone has an interest in restoring the nation’s waterways, whether you want to swim, fish, boat, lie on the beach, or – most importantly – just have clean water to drink. That is why we must all work together to restore the health and integrity of the nation’s waters, and the Clean Water Restoration Act is an important step."

CWRA needed to protect the Great Lakes from toxic pollution

Max Muller (Program Director at Environment Illinois, a "statewide, citizen-based environmental advocacy organization. Our professional staff combines independent research, practical ideas and tough-minded advocacy to overcome the opposition of powerful special interests and win real results for Illinois' environment"), 1 July 2008, Illinois Congressman & Environment Groups Urge Congress to Protect Great Lakes, <http://www.environmentillinois.org/newsroom/clean-water-news/clean-water-news/illinois-congressman--environment-groups-urge-congress-to-protect-great-lakes> (brackets added)

“When BP proposed to expand its toxic pollution into Lake Michigan last summer, public outrage and congressional action stopped the pollution expansion in its tracks—and people throughout the region showed that they demand a higher standard of care for the Great Lakes,” said Muller. “But to truly protect our most cherished waters like the Great Lakes, Congress must pass this bill [Clean Water Restoration Act] to protect all of America’s Waters.”

Only Congress can fix the problems created by *Rapanos* and *SWANCC*

Natural Resources Defense Council, Sierra Club, and Southern Environmental Law Center, Dalal Aboulhosn, Tanja Bos, Josh Davis , Jon Devine, Jessica Ennis , Ed Hopkins, Joan Mulhern, Jim Murphy, Bill Sapp, April 2009, "Courting Disaster: How the Supreme Court Has Broken the Clean Water Act and Why Congress Must Fix It" [www.sierraclub.org/cleanwater/reports\_factsheets/2009-04-courting-disaster.pdf](http://www.sierraclub.org/cleanwater/reports_factsheets/2009-04-courting-disaster.pdf)

The agencies revised the *Rapanos* guidance in December 2008 and made it even less protective, wrongly interpreting long standing case law to make it more difficult to determine whether a water is “traditionally navigable,” a determination that impacts protection of both specific waters and waters in the upper reaches of watersheds. These confusing and unworkable directives put countless water resources at risk. They can be rescinded by the new administration — and should be. However, because *Rapanos* and *SWANCC* are interpretations of the Clean Water Act itself, the agencies responsible for administering the Clean Water Act cannot fix the problems created by these damaging decisions. Only Congress can do that.

Massive pollution was fixed in the past by the Clean Water Act

Justice John Paul Stevens, US Supreme Court, 19 June 2006, Rapanos v. United States, dissenting opinion, p. 41 [www.aswm.org/fwp/rapanos\_op.pdf](http://www.aswm.org/fwp/rapanos_op.pdf) (parentheses in original)

As I explained in *SWANCC*, Congress passed the Clean Water Act in response to wide-spread recognition-based on events like the 1969 burning of the Cuyahoga River in Cleveland- that our waters had become appallingly polluted. 531 U. S., at 174-175 (dissenting opinion). The Act has largely succeeded in restoring the quality of our Nation’s waters.

No "States' Rights" problem: States want federal CWA Restoration

Alexander B. Grannis (Commissioner, New York State Dept. of Environmental Conservation), 9 Apr 2008, written testimony to the US Senate Environment & Public Works Committee, Hearing on the Clean Water Restoration Act of 2007, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fcff6e42-acca-4e58-8ba9-578c643ac674>

While I only speak here on behalf of New York State, it is important to stress that the vast majority of the States recently expressed strong support for the long-standing definition of "waters of the United States" that was contained in these EPA and Army Corps regulations since 1975. Indeed, some 34 States and the District of Columbia joined an *amicus curiae* brief (attached) which supported this regulatory definition in proceedings before the U.S. Supreme Court during the controversial *Rapanos* matter.

States can't solve: Federal action prevents "race to the bottom" by States seeking economic advantages

Alexander B. Grannis (Commissioner, New York State Dept. of Environmental Conservation), 9 Apr 2008, written testimony to the US Senate Environment & Public Works Committee, Hearing on the Clean Water Restoration Act of 2007, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fcff6e42-acca-4e58-8ba9-578c643ac674>

It is essential to maintain a strong federal floor for water pollution programs throughout the country through the Clean Water Act. Otherwise, there could be a "race to the bottom" as financially hard-pressed States reduce environmental protections to obtain a perceived economic advantage. Our country's rivers, lakes, streams and wetlands depend on federal protections to guarantee that pollution does not poison or destroy these waters. It is not likely that alternative conservation programs or regulatory programs at the state or local level will provide adequate or appropriately broad surrogate protections should the jurisdiction of the Clean Water Act be reduced.

Text of the "Clean Water Restoration Act"

<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2421>:

A BILL

To amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the `Clean Water Restoration Act of 2007'.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.

(2) To clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(3) To provide protection to the waters of the United States to the fullest extent of the legislative authority of Congress under the Constitution.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Water is a unique and precious resource that is necessary to sustain human life and the life of animals and plants.

(2) Water is used not only for human, animal, and plant consumption, but is also important for agriculture, transportation, flood control, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(3) In enacting amendments to the Federal Water Pollution Control Act in 1972 and through subsequent amendment, including the Clean Water Act of 1977 (91 Stat. 1566) and the Water Quality Act of 1987 (101 Stat. 7), Congress established the national objective of restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States and recognized that achieving this objective requires uniform, minimum national water quality and aquatic ecosystem protection standards to restore and maintain the natural structures and functions of the aquatic ecosystems of the United States. Since the 1970s, the definition of `waters of the United States' in the regulations of the Environmental Protection Agency and the Army Corps of Engineers have properly established the scope of waters to be protected under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) in order to meet such national objective.

(4) Water is transported through interconnected hydrologic cycles, and the pollution, impairment, or destruction of any part of an aquatic system may affect the chemical, physical, and biological integrity of other parts of the aquatic system.

(5) Protection of intrastate waters, along with other waters of the United States, is necessary to restore and maintain the chemical, physical, and biological integrity of all waters in the United States.

(6) The regulation of discharges of pollutants into interstate and intrastate waters is an integral part of the comprehensive clean water regulatory program of the United States.

(7) Small and intermittent streams, including ephemeral, and seasonal streams, and their start reaches comprise the majority of all stream and river miles in the conterminous United States. These waters reduce the introduction of pollutants to larger rivers and streams, affect the life cycles of aquatic organisms and wildlife, and impact the flow of higher order streams during floods.

(8) The pollution or other degradation of waters of the United States, individually and in the aggregate, has a substantial relation to and effect on interstate commerce.

(9) Protection of the waters of the United States, including intrastate waters, is necessary to prevent significant harm to interstate commerce and sustain a robust system of interstate commerce in the future.

(10) Waters, including wetlands, provide protection from flooding, and draining or filling wetlands and channelizing or filling streams, including intrastate wetlands and streams, can cause or exacerbate flooding, placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on wetlands and other waters of the United States to filter water and recharge surface and subsurface drinking water supplies, protect human health, and create economic opportunity. Source water protection areas containing one or more small or intermittent streams provide water to public drinking water supplies serving more than 110,000,000 Americans.

(12) Millions of people in the United States enjoy recreational activities that depend on intrastate waters, such as waterfowl hunting, bird watching, fishing, and photography, and those activities and associated travel generate billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(13) Activities that result in the discharge of pollutants into waters of the United States are commercial or economic in nature. More than 40 percent, or 14,800, facilities with permits issued under the Federal Water Pollution Control Act, including industrial facilities and municipal sewage treatment systems, discharge into small or intermittent streams.

(14) States have the responsibility and right to prevent, reduce, and eliminate pollution of waters, and the Federal Water Pollution Control Act respects the rights and responsibilities of States by preserving for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution, and to establish standards and programs more protective of a State's waters than is provided under Federal standards and programs.

(15) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting species of fish, birds, and wildlife.

(16) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of protecting Federal land, including hundreds of millions of acres of parkland, refuge land, and other land under Federal ownership and the wide array of waters encompassed by that land.

(17) Protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect Federal land and waters from discharges of pollutants and other forms of degradation.

SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended--

(1) by striking paragraph (7);

(2) by redesignating paragraphs (8) through (24) as paragraphs (7) through (23), respectively; and

(3) by adding at the end the following:

`(24) WATERS OF THE UNITED STATES- The term `waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.'.

SEC. 5. CONFORMING AMENDMENTS.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended--

(1) by striking `navigable waters of the United States' each place it appears and inserting `waters of the United States';

(2) in section 304(l)(1) by striking `NAVIGABLE WATERS' in the heading and inserting `WATERS OF THE UNITED STATES'; and

(3) by striking `navigable waters' each place it appears and inserting `waters of the United States'.

SEC. 6. SAVINGS CLAUSE.

Nothing in this Act (including any amendment made by this Act) shall be construed as affecting the authority of the Secretary of the Army or the Administrator of the Environmental Protection Agency (as the case may be) under the following provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.):

(1) Section 402(l)(1), relating to discharges composed entirely of agricultural return flows.

(2) Section 402(l)(2), relating to discharges of stormwater runoff from oil, gas, and mining operations.

(3) Section 404(f)(1)(A), relating to discharges of dredged or fill materials from normal farming, silviculture, and ranching activities.

(4) Section 404(f)(1)(B), relating to discharges of dredged or fill materials for the purpose of maintenance of currently serviceable structures.

(5) Section 404(f)(1)(C), relating to discharges of dredged or fill materials for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches and maintenance of drainage ditches.

(6) Section 404(f)(1)(D), relating to discharges of dredged or fill materials for the purpose of construction of temporary sedimentation basins on construction sites.

(7) Section 404(f)(1)(E), relating to discharges of dredged or fill materials for the purpose of construction or maintenance of farm roads or forest roads or temporary roads for moving mining equipment.

(8) Section 404(f)(1)(F), relating to discharges of dredged or fill materials resulting from activities with respect to which a State has an approved program under section 208(b)(4) of such Act.

DEAL WITH THE DEVIL: THE CASE FOR ENDING DELEGATED RULE-MAKING

By Vance Trefethen

New York Law School Professor David Schoenbrod said it best in 2006:

“The bargain between Congress and the EPA is like the bargain that Faust struck with the Devil. In the legend, Faust is tired of simply being a learned man and wants to wield power. The Devil promises to give some of his power to Faust if Faust will relinquish his soul. In the same way, Congress has given some of its power (and responsibility) to the EPA, but the EPA, in participating in this arrangement, has sold its soul in the bargain.

[Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)]

Promising to end this deal with the devil, my partner and I will offer you a comparative advantage case in which we affirm: **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. William P. Cuningham (Ph.D. in Botany from the University of Texas), Dr. Mary Ann Cunningham (PhD in Geography at the University of Minnesota), and Dr. Barbara Woodworth (Ph.D. in Science Education from the University of Iowa), 2001, Environmental Science: A Global Concern, 7th Edition, McGraw Hill, <http://highered.mcgraw-hill.com/sites/0070294267/student_view0/glossary_e-l.html>

**“**Environmental Policy: The official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

OBSERVATION 2. INHERENCY

A. Congress delegates lawmaking power

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

In general, one thinks of the executive branch primarily as the collection of agencies, bureaus, and offices responsible for implementing laws passed by Congress. While this characterization captures important elements of the bureaucratic role, it is also critical to recognize the potent lawmaking power that many agencies possess and the impact they can have on U.S. society. As a result of congressional delegation of authority, agencies within the executive branch can have significant discretion in the implementation of public policy, and hence considerable ability to shape policy direction and effects.

B. The EPA legislates

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

The specific regulatory actions are evident daily in the Federal Register, the federal government's publication of executive actions and policies. For example, although the Safe Drinking Water Act was enacted to ensure the quality of drinking water, it is up to the EPA through rulemaking to set the National Primary Drinking Water Standards for different contaminants to ensure this quality. These are the actual legal requirements that must be met to ensure safe water quality.

C. Lobbyists delight

Prof Michael E. Kraft (Political Science and Public & Environmental Affairs and Environmental Studies, Univ. of Wisconsin-Green Bay) and Prof. Sheldon Kamieniecki (Dean of the Division of Social Sciences, Univ. of Calif.-Santa Cruz) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, (brackets added) <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

The three investigators [Clawson, Neustadt and Weller, 1998] conclude that "the disparity in power between business and environmentalists looms large during the legislative process, but it is enormous afterward" (p. 10). As they show, business often redirects its lobbying efforts toward the EPA (or a natural resource agency) after Congress has passed and the president has signed an environmental bill. It is therefore necessary to assess the role of business once the rulemaking process begins (Kerwin 2008).

We will do exactly that as we move to

OBSERVATION 3. FAILURES of the Status Quo

FAILURE 1. Business roadblocks. Business interests tie up regulatory action

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, (brackets added) <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Another recent example of limits placed on discretion was approval of the Data Quality Act referred to earlier. The law was approved as a rider to a large appropriations bill without any congressional debate. It was backed by business interests concerned with how information can be used (or misused) by executive agencies such as the EPA. The law directs the OMB [Office of Management & Budget] to ensure that information disseminated by the federal government is reliable (Weiss 2004, A1). In essence, the act is both an administrative and oversight tool that can be used to limit agency discretion. On the surface, the act appears to be an innocuous stipulation that encourages use of quality information. But as Weiss (2004, A1) observes, its interpretation "could tip the balance in regulatory disputes that weigh the interests of consumers and business." The law allows organizations to petition the government to stop action by calling into question the information and data being used by an agency. A strict interpretation can tie up regulatory actions for significant periods of time. While the petition process is open to all, historically over 80 percent of the significant petitions have been filed by business interests, and it appears that environmental actions are among those that are petitioned most frequently (Weiss 2004).

FAILURE 2. Congress runs for cover. When Congress can delegate, it avoids responsibility for solving environmental problems.

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, (brackets added) [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

So why did Congress not itself enact a rule to cut lead in the gasoline used by old cars [in the 1970s]? Because the lawmakers did not want the criticism that would have been heaped on them from all sides. Some voters would have wanted all the lead out right away; others would have complained about the increase in gas prices. Congress’s job is to shoulder responsibility, but the legislators instead opted for a solution that let them take credit for protecting health without having to make a controversial decision that might hurt them in the next election. The upshot is that lead came out of gasoline much more slowly than if Congress had made the rule itself. The delay led to most children in the United States experiencing blood lead levels in excess of the 10 micrograms per deciliter of blood (g/dL) that the Centers for Disease Control now define as the threshold of lead poisoning.

OBSERVATION 4. We offer the following PLAN

**Agency:** Congress and the President

**Mandates:**

**1.** Environmental rule-making authority by the EPA or any other executive branch agency will be revoked.

**2.** No environmental policy rule will go into effect until Congress enacts it.

**3.** Agencies will evaluate comments on proposed rules and publish and enforce final rules enacted by Congress.

**Funding:** Existing budgets of existing agencies using general federal revenues.

**Timeline:** Immediately upon an Affirmative ballot.

**Enforcement:** Federal courts will strike down any environmental rules adopted in violation of this law.

**And the Affirmative may clarify the plan in subsequent speeches.**

OBSERVATION 5. SOLVENCY & PLAN ADVOCACY: Prof. Schoenbrod and Supreme Court Justice Stephen Breyer advocate our plan and show how it works as Schoenbrod points out in 2005:

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

Supreme Court Justice Stephen Breyer pointed out in an article (written before he became a judge) that Congress could enact a statute requiring that all agencies submit laws for enactment through the legislative process (Breyer 1984). Congress never accepted Justice Breyer's idea, but we had a recent impromptu experiment with it. In 2003, a federal district court judge held that the Federal Trade Commission lacked authority to promulgate its "Do Not Call" law, which would allow people to opt out of annoying sales calls. The next day the House and the Senate passed legislation authorizing the program.

OBSERVATION 6. ADVANTAGES

ADVANTAGE 1. Business lobbying thwarted. Businesses are much less effective at stopping Congress than they are at stopping the agencies.

Prof Michael E. Kraft (Political Science and Public & Environmental Affairs and Environmental Studies, Univ. of Wisconsin-Green Bay) and Prof. Sheldon Kamieniecki (Dean of the Division of Social Sciences, Univ. of Calif.-Santa Cruz) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

The history of environmental policy suggests much the same pattern, particularly during the 1970s and 1980s when most of the major national laws, such as the Clean Air Act and Clean Water Act, were enacted or strengthened despite business opposition (Kraft 2007). The advances in environmental protection and natural resource conservation in the 1970s and 1980s were not lost in the 1990s or even into the 2000s (Vig and Kraft 2006). Business has been ineffective in repealing the major environmental laws even if it has been more successful in modifying their implementation in the executive agencies.

ADVANTAGE 2. More effective environmental regulation

Prof. Gary C. Bryner (Political Science, Brigham Young Univ.) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Although the clean air compromises have worked politically in Congress for decades, they have not been successful in reducing air pollution to safe levels (U.S. EPA 2005). The EPA has been caught in the vice of competing pressures, and has been set up for frequent policy failure because it has been unable to satisfy the expectations created by environmental laws. The most successful reductions in pollution have largely come the relatively few times when Congress has been willing to mandate specific emissions-reduction targets or other requirements, rather than giving the agency broad delegations of power.

ADVANTAGE 3. Faster solutions. Lives are saved when Congress becomes more responsive to public environmental concerns

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, (brackets added) [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

EPA data give some sense of the health consequences of leaving the lead in. The EPA projects that the reduction of lead exposure in 1980 alone achieved under the Clean Air Act averted 6,960 deaths, 3,090 cases of coronary heart disease, and 2,120 strokes. Moreover, some 20,100 children were spared from having their IQs reduced below 70 from lead exposure. But consider the additional benefits that would have been gained if Congress had itself enacted a rule on the leaded gasoline used by the 100 million old cars. Leaded gasoline would have gone down much more quickly, as illustrated hypothetically in Figure 1. Congress’s two-step dance to avoid responsibility killed and maimed people on the scale of American casualties in the Vietnam War.

Schoenbrod goes on in the same context:

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

What would have happened if, in 1970, Congress had not tried to mollify voters by leaving the lead rulemaking to the EPA? The legislators could not have flatly rebuffed the popular demand to protect the children. They would have had to enact a rule cutting lead in gasoline. That rule would have been a compromise, but it likely would have gotten rid of at least half of the lead over the next several years.

2A EVIDENCE: DELEGATION OF AUTHORITY BAN

INHERENCY

Agencies make regulations that have the effect of law

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

This exercise of agency discretion is especially notable in the implementation of regulatory policy, which typically involves the issuance of detailed regulations that have the effect of law.

A lot of environmental policy-making happens in the executive agencies

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Most of the research conducted on the role of interest groups in the policy process and journalistic accounts concentrate on how organizations get what they want from legislatures. As a result, much less is known about how groups participate in agency policymaking. This omission is unfortunate because much policymaking generally, and environmental policymaking in particular, occurs through the actions taken by executive agencies.

Supreme Court allows delegation under pretext that EPA isn’t making the laws

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

The Supreme Court today squares such delegation of lawmaking power with the US Constitution by claiming that Congress is making the laws and the EPA is only implementing them, but the justices know this is a pretext. They let Congress decide whether to delegate.

FAILURES

Lobbyists vigorously go after executive agencies

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Understanding delegation of authority and the role of the bureaucracy in making policy through the regulatory process is crucial in order to appreciate the role of interest-group and business activities in the making of environmental policy. Experienced interest groups, including businesses, recognize the policymaking role of the executive branch and, therefore, pursue lobbying activities much as they do with Congress. Indeed, one could say that congressional delegation of authority to the executive agencies has created a whole new venue for lobbying for those who lose their fight in Congress. Berry (1984) refers to this as "appeals court lobbying."

More opportunities for policy influence by lobbyists at agencies than with Congress

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Sophisticated groups are well aware that the enactment of statutes signals not the end of lobbying efforts but a new beginning. In fact, many more opportunities for policy influence arise once federal agencies are charged with implementation of congressional statutes. For example, while many interest groups actively sought to mold the Clean Air Act Amendments of 1990 as they moved through the legislative process, the resulting legislation required the EPA to develop hundreds of rules and regulations, the formulation of which could be, and was, subject to extensive lobbying by diverse groups.

Business groups mold the details of environmental laws

Prof. Gary C. Bryner (Political Science, Brigham Young Univ.) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

The Clean Air Act (CAA) provides a useful vehicle for examining in detail the role of business in congressional policymaking, and its ability to shape the policy agenda. More importantly, an assessment of how Congress has dealt with the CAA illuminates how business groups help to mold the details of environmental laws in ways that protect their interests and minimize adverse regulatory effects on business goals.

Executive agency lobbying by businesses is highly successful, even when lobbying Congress is ineffective

Prof Michael E. Kraft (Political Science and Public & Environmental Affairs and Environmental Studies, Univ. of Wisconsin-Green Bay) and Prof. Sheldon Kamieniecki (Dean of the Division of Social Sciences, Univ. of Calif.-Santa Cruz) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

The history of environmental policy suggests much the same pattern, particularly during the 1970s and 1980s when most of the major national laws, such as the Clean Air Act and Clean Water Act, were enacted or strengthened despite business opposition (Kraft 2007). The advances in environmental protection and natural resource conservation in the 1970s and 1980s were not lost in the 1990s or even into the 2000s (Vig and Kraft 2006). Business has been ineffective in repealing the major environmental laws even if it has been more successful in modifying their implementation in the executive agencies. Given strong public support for environmental policy, it should be difficult for business to win when the issues are salient and environmental groups are able to gain sufficient media attention to mobilize supporters. Despite such arguments and findings, business groups appear to be highly successful in getting what they want from policymakers.

Business successfully influences regulatory rule-making

Prof Michael E. Kraft (Political Science and Public & Environmental Affairs and Environmental Studies, Univ. of Wisconsin-Green Bay) and Prof. Sheldon Kamieniecki (Dean of the Division of Social Sciences, Univ. of Calif.-Santa Cruz) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Some studies of the history of environmental and natural resource policies (e.g., Cahn 1995; Gonzalez 2001) also argue that business and other elites have exercised disproportionate influence. Specific cases of contemporary business influence on policy decisions are not hard to find, whether favorable legislative stipulations that ease regulatory requirements or award generous subsidies to industry, or the promulgation of administrative rules that provide increased corporate access to natural resources on public lands (kamieniecki 2006; Kraft 2007; Lowry 2006).

Delegation creates vague mandates impossible to apply

Dr. Robert Levy PhD JD (Senior Fellow in Constitutional Studies, Cato Institute; former adjunct professor of law at Georgetown University; PhD in Business from American Univ.; JD from George Mason Univ. School of Law) 2008, Congress Should Reclaim Authority From Agencies, <http://www.cato.org/pub_display.php?pub_id=9526>

Consider one recent case, *Whitman vs. American Trucking Associations Inc.*, which asked whether Congress, in the Clean Air Act, could empower the Environmental Protection Agency to set air-quality standards. Congress directed the EPA to "protect the public health" with "an adequate margin for safety." The court of appeals ruled that Congress "failed to state intelligibly how much is too much." The Supreme Court, unfortunately, disagreed. What makes *American Trucking* so outrageous is that the so-called intelligible principle ("protect the public health" with "an adequate margin of safety") was logically impossible to apply. The pollutants in question were dangerous at any concentration above zero so there was no margin of safety. What's more, the pollutants occur naturally; the EPA could not have eliminated them if it wanted to.

EPA rulemaking fails – just protects politicians from responsibility

Impact: thousands die and millions suffer

Prof. Gary C. Bryner (Political Science, Brigham Young Univ.) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Congressional willingness to delegate responsibility to the EPA to make the hard choices required to reduce pollution and members' responsiveness to business demands for delayed implementation and reduced regulatory burdens have come at a price. Despite considerable progress in reducing air pollution, thousands of Americans continue to die from air pollution and millions suffer from the adverse health effects it causes.

Stealth rollbacks: Environmental policy gets reversed secretly without public awareness

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Because of these qualities of administrative policy change, the Bush administration has been able to rely heavily on "clarifications" to existing rules and reversal of rules from the Clinton administration that it opposed. It has benefited from congressional approval in 2000 of the little-known Data Quality Act, which greatly expands the opportunities for interest groups (especially business groups) to challenge the quality of the information used by agencies in developing rules (Andres 2006; Weiss 2004). Through these "under-the-radar" methods, the Bush administration has been highly effective in rolling back social regulation, including environmental policies. Most of these actions have not aroused much public or congressional opposition, presumably because media coverage has been minimal and the general public is unaware of the decisions.

SOLVENCY

EPA would save its soul if they returned rule-making power to Congress

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, (brackets added) [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

The EPA should propose a statute that calls for the following process: The agency would evaluate comments on a proposed rule and publish a final rule. The rule, however, would not go into effect until enacted by Congress and presented to the president. Justice Stephen Breyer has shown in detail how such a process could be structured to work expeditiously. Congress may not accept this proposal. But by coming clean, the EPA would at least have saved its soul.

Democracy upheld: Elected Congress should take responsibility for hard choices

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

Congress should make the rules — not necessarily in all the detail in the Code of Federal Regulation, but at a minimum with the basic choices, such as requiring the 90 percent emissions reduction for new cars. The EPA should have an important role in the rulemaking: providing Congress with technical information and draft statutes, filling in the details on the legislated rules, and enforcing them. But responsibility for the hard choices should fall on the elected members of Congress instead of being shifted to the agency. That is exactly where responsibility should fall in a democracy.

Congress would have to take responsibility for impossible tasks dumped on the EPA

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

The problem, in short, is Congress, not the EPA. Congress itself has gone through a learning process. It has made the Clean Air Act more realistic as time has gone by. Yet meanwhile it has piled new, equally impossible tasks on the EPA. The ultimate genesis of the problem is that we, the public, want a clean environment without the burdens of producing it. If it made the laws, Congress would have to tell us that it cannot be so.

Congress makes better and more honest policies when they make the rules themselves

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

The Clean Air Act calls upon the EPA to determine scientifically the levels at which various pollutants start to harm health. But the agency also must make a broad policy judgment: How much harm to health is acceptable in view of the costs to society of averting that harm? Yet, the agency must deny that it engages in such considerations when setting the ambient air quality standards. Everyone involved knows this is a lie. I knew it would be a lie when I urged the agency to adopt this position in the early 1970s. It was a lie that I wanted the agency to tell because I thought it would help protect children. I now know that the way to protect children would have been for Congress to come clean and make the federal pollution rules itself.

Legislative action achieves larger reductions in pollution than the EPA

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

Some of the largest reductions in pollution have come when legislators intervened to push pollution control at a much faster pace than the EPA had previously achieved. Examples include emission controls on new cars in 1970 and acid rain and hazardous air pollutants in 1990.

Congress has time to vote on environmental laws – no need to delegate

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

Lack of time is also no excuse for Congress to delegate its responsibility. In an average year the EPA now issues five "major" rules, officially defined as rules with benefits or costs greater than $100 million (Crews 2003). Our legislators can surely take the time to vote on five pollution-control laws per year. The EPA of course also issues many minor pollution laws, but these present no practical impediment to the legislators' taking responsibility. The number of minor laws would drop precipitously were Congress to limit federal involvement to those pollution-control issues truly requiring federal attention. The balance could be handled expeditiously, yet in a way that would leave the legislators responsible.

Congress has time: EPA only issues 5 major rules in an average year

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

Would Congress have enough time to vote on the pollution control rules? Yes. The EPA promulgates only five major rules in an average year.

DISADVANTAGE RESPONSES

“Insulated from politics” doesn’t make the EPA effective

Prof. David Schoenbrod (professor of law at New York Law School and senior fellow at the Cato Institute) Fall 2006, “The EPA’s Faustian Bargain” REGULATION magazine, [www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf](http://www.cato.org/pubs/regulation/regv29n3/v29n3-5.pdf)

The lead catastrophe casts doubt on the assumption upon which the EPA’s rulemaking power is based — that “only an expert agency insulated from politics can do the right thing.” The EPA was supposed to insulate environmental rules from politics. But it did not; it insulated the politicians from responsibility.

No loss of science: Congress would get information from scientists just like EPA does now

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

Science does not dictate uniquely correct environmental laws. If Congress made environmental laws, the legislators would require EPA scientists and policy analysts to provide them with the information about health effects and control technologies that they now provide to EPA lawmakers and would also require these officials to propose statutory language.

No loss of public participation if Congress makes the rules

Prof. David Schoenbrod (professor of law at New York Law School) December 2005 “Irresponsible Environmental Policy,” Property & Environment Research Center, <http://www.perc.org/articles/article754.php>

If Congress were the lawmaker, the public could be given an opportunity to comment on the agency's proposed recommendations as it now comments on proposed agency laws. There would thus be no loss in public participation. What would be lost is agency rationalization. And good riddance, because the elaborate rationalization needed for agency laws to survive judicial review slows the EPA's response to new science.

FIRST, DO NO HARM: THE CASE FOR REFORMING THE ENDANGERED SPECIES ACT

By Vance Trefethen

You don’t have to be an environmental extremist to agree that it seems like a bad thing when any species of God’s creation goes extinct. Congress, in its infinite wisdom, tried to reduce the frequency with which that sad event would happen by passing the Endangered Species Act in 1973. But like many occasions when the Federal government tries to “help,” the cure is worse than the disease. That’s why my partner and I today stand Resolved: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following definitions:

Environmental Policy:

Professor John McCormick (Professor of political science at Indiana University Purdue University Indianapolis, IUPUI), 1991, British politics and the environment,” p. 7 [Google Books]

“Environmental policy is defined as public policy concerned with governing the relationship between people and their natural environment.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

OBSERVATION 2. INHERENCY.

A. The Endangered Species Act regulates use of privately held land

Jessica Ferrell, (attorney specializing in environmental and natural resource litigation; Certificate in Environmental and Natural Resources Law), Late Fall 2007, “Logging on Private Land and the Endangered Species Act,” <http://www.abanet.org/genpractice/newsletter/lawtrends/07-latefall/realestate-ferrell.html>

In the Pacific Northwest, for instance, courts have enjoined public and private land clearing to protect the Northern Spotted Owl (“spotted owl”). Most recently, a federal district court in Washington issued a preliminary injunction under the ESA barring the Weyerhaeuser Company from logging its own land in Southwest Washington.

B. ESA fails at protecting species. This happens because the current approach involves 2 policies: “Listing” a species, and “Funding Recovery” for a species. The failures of “Listing” outweigh the benefits of “Funding Recovery.” Prof. Daniel K. Benjamin at Clemson University explains in September 2008:

Prof. Daniel K. Benjamin (economics; Clemson University) September 2008, “Species Protection,” TANGENTS, <http://www.perc.org/articles/article1079.php>

Ferraro, McIntosh, and Ospina (2007) find that the ESA has, in fact, failed to protect endangered species. Indeed, their evidence indicates that for a large majority of the species studied, listing under the ESA has actually harmed the species’ chances of recovery. Ferraro et al examine two different elements of the ESA’s operation: the impact of listing a species as being endangered, and the effects of species-specific government recovery expenditures. After taking both listing and spending into account, the authors find that the overall effect of the ESA has been to reduce listed species’ chances of recovery, although this negative effect is small. They go on to show that there are quite dramatic differences in outcomes depending on the level of spending on species recovery programs. For the 25 percent of the listed species that garner about 95 percent of all government recovery funding, the ESA seems to have produced improvements in the chances of recovery. But for the other 75 percent of species, those that are largely ignored by the funding process, the ESA has sharply reduced species’ viability, compared to unlisted species that are otherwise similar except for listing status. Thus, for most of the species studied, the ESA has had perverse consequences, reducing rather than enhancing survival chances.

OBSERVATION 3. The ESA causes HARMS

HARM 1. Habitat destruction. ESA creates incentives to destroy the habitats it was designed to protect.

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

Economists have been critical of the ESA’s perverse incentives for years. In the most basic terms, the act penalizes and thus discourages the creation and maintenance of species habitat on private land. According to University of Arizona economist Robert Innes, “the possibility of uncompensated takings gives landowners an incentive to develop their property early on in order to reduce the risk that it will later be appropriated for public use.” Such incentives have consequences. As Robert J. Smith wrote in *Regulation* 15 years ago, “The perverse incentive structure of the act accelerates destruction of the very habitat the act was designed to protect.”

HARM 2. Lost property values. When listed endangered species are discovered, property use is greatly restricted and its value drops.

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, community-based conservation, co-management of wildlife between private and public entities, markets and wildlife, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,” National Center for Policy Analysis, <http://www.ncpa.org/pub/st303>?

In the Pacific Northwest, the spotted owl was listed as an endangered species in 1990 due to habitat lost to logging. During and after the debate over its listing, however, logging on private lands increased markedly. According to the Service, small landowners resorted to “panic cutting” from fear of federal restrictions to protect the owls. For instance, Vincent Shaudys, a retired university professor, clearcut 24 acres of hemlock and fir in Washington state because there were spotted owls on three sides of his property and he was concerned they would take up residence on his land. There is also evidence that the spotted owl has caused large scale diminution of property values. A survey in three Washington counties found that the restrictions designed to protect spotted owls and other species had reduced property values by about 5 percent to 9 percent, for a total loss in land value of almost $700 million.

Seasholes goes on to say in the same context:

“For the entire state of Texas, the survey found that the ESA reduced the value of farmland and rangeland by 10 percent to 20 percent below what it otherwise would have been. The real estate brokers also predicted the average decline in land values over the next five years due to the Act would range from 10.3 percent for urban land to 27 percent for rural land on the transitional edge of urban land.”

HARM 3. Unlisted species are harmed. ESA provides disincentives for protection of unlisted species for fear that they will become listed and then bring with them burdensome federal regulations.

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, and the U.S. Endangered Species Act; master's degree in geography from the Univ of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,” National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

How the ESA Harms Unlisted Species. The ESA has even dissuaded landowners from reintroducing rare species that are not yet listed under the Act. For example, David Cameron's family owns a cattle and sheep ranch in Montana. Following the family's long tradition of wildlife conservation — his father reintroduced pronghorn antelope — David was eager to reintroduce grayling, a rare species of trout. The ranch had suitable stream habitat, but when Cameron learned the Service was considering listing the grayling, he abandoned the project due to fear over potential ESA imposed restrictions.

HARM 4. Humans die to save animals

Peyton Knight (at the time this was written, he was executive director of American Policy Center; currently director of environmental and regulatory affairs for the National Center for Public Policy Research) 21 March 2005, “The Endangered Species Act: Thirty years of Endangering People and Animals is Enough,” <http://www.americanpolicy.org/more/species.htm>

The Endangered Species Act does not discriminate. Just ask the family and friends of the four firefighters who were killed in 2001. Federal bureaucrats fiddled while the inferno around them burned. These four heroes were fighting the infamous Thirty Mile Fire in Washington’s Okanogan National Forest when the blaze bore down on them and encroached on their emergency fire shelters. Their only salvation was the nearby Chewuch River, which could supply water to helicopters for a flame-dousing airdrop. Oh, if it were only that easy. According to the Endangered Species Act, the Chewuch was home to a several endangered fish and, therefore, ladling water from the river might, could, possibly imperil a few of the little buggers. While paper pushers back East fretted over how to satisfy the ESA’s requirements, these four brave men and women were snuffed out by the deadly fire.

OBSERVATION 4. We offer the following PLAN to be implemented by any necessary constitutional means:

**Agency**: Congress and the President

**Mandates:**

**1.** All punitive and regulatory aspects of the Endangered Species Act are repealed.

**2.** All efforts to save endangered species shall be conducted in the following ways:

**a.** Fair-market compensation for restrictions on land-use and federal purchase of habitat lands

**b.** Funded cooperative efforts with states and local communities and land-owners on voluntary species recovery plans in the absence of federal sanctions or punitive measures.

**Funding:** Elimination of NASA budget increase and general federal revenues.

**Enforcement:** Federal courts will strike down any regulations not in compliance with the plan.

**Timing:** Immediately upon an Affirmative ballot.

**Clarification:** Affirmative speeches may clarify the plan as needed.

OBSERVATION 5. Experts recommend our plan because it SOLVES the harms.

A. We eliminate incentives for destruction and provide incentives for preservation

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the Univ of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3) (brackets in original)

There are several very good reasons to believe that a non-punitive, nonregulatory approach to endangered species conservation will work. First, a nonregulatory ESA would eliminate the perverse incentives for landowners to destroy habitat or avoid reintroducing species they fear might be listed under the Act. The cases of Ben Cone and David Cameron vividly illustrate these circumstances. Second, a nonregulatory ESA could look much like the U.S. Department of Agriculture's Conservation Reserve Program or Wetlands Reserve Program, under which the federal government pays farmers not to cultivate environmentally sensitive land. “I think this [the Conservation Reserve Program] really, really opened people's eyes to what could be achieved in a basically non-regulatory, voluntary program,” stated Mollie Beattie, then FWS director. “If there were an incentive to make the best habitat [for endangered and threatened species], we'd be miles ahead.”

B. Recovery programs work when separated from ESA listing regulations

Prof. Daniel K. Benjamin (economics; Clemson University) September 2008, “Species Protection,” TANGENTS, <http://www.perc.org/articles/article1079.php>

For the overwhelming majority of listed species—those that receive little funding for recovery—listing under the ESA markedly reduces the species’ chances of recovery, compared to their unlisted twins. For the 35 or so well-funded species, recovery chances have been enhanced, but it is recovery expenditures, not listing per se, that is doing the work.

C. Landowners will cooperate if the government stops regulating and starts compensating

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

A non-regulatory ESA would force the Service to negotiate in good faith and seek creative solutions instead of relying on the stick of regulations. Some landowners might be happy simply with an honorary award from the Secretary of Interior while others would need financial compensation. America's private landowners are ready, willing and able to conserve endangered species so long as they are not punished for doing so. Until then, they will be the reserve army of the unutilized and unappreciated, and America's imperiled wildlife and landowners will continue to suffer needlessly.

2A EVIDENCE: REFORM ENDANGERED SPECIES ACT

DEFINITIONS

The definition of “taking” endangered species is broad

US Chamber of Commerce, 2009, “Endangered Species Act,” <http://www.uschamber.com/issues/index/environment/endangeredspeciesact.htm>

**“**The ESA, which is jointly enforced by the U.S. Fish & Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), makes it illegal to "take" any threatened or endangered species without a permit. The FWS and NMFS use a broad definition of "take" to prohibit direct harm to any listed species and to prohibit the degradation of a species' significant habitat.”

Endandered Species Act is part of federal environmental policy

Peter Calthorpe (expert with 30 years experience in architecture, urban planning and development; was named one of 25 "innovators on the cutting edge" by Newsweek Magazine for his work redefining the models of urban and suburban growth in America; taught at Univ. of Calif.-Berkely, Univ. of Washington and Univ. of N.Carolina; appointed to the President’s Councils for Sustainable Development) and William Fulton, 2001, THE REGIONAL CITY, <http://books.google.com/books?id=qcwvvI0gfpoC&pg=PA92&lpg=PA92&dq=%22endangered+species+act%22+%2B+%22environmental+policy%22&source=bl&ots=dFAonbFpja&sig=Y4a8g3JLXgZc5mcA5-LB5_IEp6g&hl=en&ei=walQSouVD5eytwev4qCxBA&sa=X&oi=book_result&ct=result&resnum=4>

Compared with virtually all other federal programs that affect metropolitan growth patterns, the power of federal environmental policy is surprisingly strong. The Clean Air Act is probably the most pervasive environmental law because it dictates good air quality in our metropolitan areas, and therefore its requirements can have a major influence on transportation investments and growth-and-development patterns. The Endangered Species Act is the single strongest federal environmental law in existence, requiring strict protection of wildlife habitat, without exception, whenever a federally protected plant or animal species is present.

INHERENCY

ESA requires 1) federal agencies not to jeopardize wildlife; 2) no ‘taking’ of listed species;

*Environmental Protection Agency, Feb 2008, Summary of the Endangered Species Act,*

7 U.S.C. §136; 16 U.S.C. §460 et seq. , [www.epa.gov/lawsregs/laws/esa.html](http://www.epa.gov/lawsregs/laws/esa.html)

The Endangered Species Act (ESA) provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The U.S. Fish and Wildlife Service (FWS) of the Department of the Interior maintains a worldwide list which, as of Feb. 20, 2008, included 1574 endangered species (599 are plants) and 351 threatened species (148 are plants). Species include birds, insects, fish, reptiles, mammals, crustaceans, flowers, grasses, and trees. Anyone can petition FWS to include a species on this list. The law requires federal agencies, in consultation with the U.S. Fish and Wildlife Service and/or the U.S. National Oceanic and Atmospheric Administration Fisheries Service, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

¾ of endangered species rely on private land for habitat – and Status Quo conservation is failing

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

Most land — approximately two-thirds of the continental United States — is privately owned. The relative importance of such lands for the maintenance of species habitat and critical ecological functions is perhaps even greater. Over three fourths of those species currently listed as threatened or endangered under the ESA rely upon private land for some or all of their habitat, according to the U.S. Government Accountability Office. Without active conservation on private lands, meaningful ecological conservation cannot be achieved — and the available evidence suggests that it is failing.

Safe Harbor: Landowners NOT off the regulatory hook, and spillover effect creates problems for neighbors

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, community-based conservation, co-management of wildlife between private and public entities, markets and wildlife, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

Safe Harbors exempts landowners from the ESA's regulations for any additional endangered species they attract to their property as long as species numbers stay above the “baseline,” which is the population of species covered by the Safe Harbor at the time the agreement is signed. Landowners who sign a Safe Harbors agreement, however, are not off the regulatory hook for the species already on their land (their baseline). Furthermore, owners of adjacent or nearby property are subject to the full force of ESA regulations. By attracting endangered species to their land, landowners who sign Safe Harbor agreements could encourage species to spread to neighboring properties. This “spillover” effect has the potential to create significant problems for adjacent and nearby landowners.

Minor Repair Response: Reforms that don’t eliminate power over private property won’t work

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

Another type of proposed “reform” is to require the Service to use “sound science” to implement the ESA. Critics correctly point out that the federal government often uses flimsy evidence to justify listing species, as in the case of the Rydberg milk-vetch mentioned previously. To remedy problems like this, some have proposed amending the Act by requiring the government to utilize specific scientific criteria in listing and protecting species. The latest such effort is a bill in the Senate, S. 658. But this bill and all other sound science initiatives treat the symptom — the use of shoddy data — not the root cause, which is the law's power over private property. As long as the federal government is able to control the use of land and water without having to pay private landowners to do so, it will have few incentives to use valid data.

Minor Repair Response: Tax incentives won’t solve

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

Most recently, both houses of Congress have introduced companion bills (S. 700 in the Senate and H.R. 1422 in the House), both of which have broad bipartisan support, to provide tax credits for landowners who conserve endangered species. However, these bills and the Private Stewardship Grant Program do nothing to remove the perverse incentives caused by the ESA's penalties. Merely sprinkling a few incentives around cannot mask the enormous harm done by the Act's punitive structure.

Habitat Conservation Plans (HCP) – still force expensive costs on landowners

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HCPs require landowners to set aside some of their land for habitat for the endangered species or purchase “mitigation” land elsewhere. In exchange, the Service allows them to use the rest of their land for such activities as timber cutting and house construction. Yet HCPs advance the spread of federal zoning of private land, a function traditionally left to municipalities. HCPs also function like a protection racket, in which the federal government extracts expensive concessions from landowners by threatening them with ESA penalties unless they submit a Plan. Ben Cone signed an HCP and a Safe Harbor agreement of the type that the environmental lobby and the Service tout as evidence the ESA is flexible and landowner friendly. Yet Cone, like Toby Murray (see below in “no surprises”), is still angry that he had to spend a great deal of time and over $100,000 in order to recover the right to use his own land.

“No Surprises” policy doesn’t solve

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

On its face, no surprises seems like a good idea because it appears to provide landowners with regulatory certainty. Yet there are two fundamental problems with the policy. First, no surprises does not provide the ironclad regulatory certainty its proponents claim. If there is an “unforeseen circumstance” the federal government can invalidate an HCP and demand more land and/or money from the permittee. The circumstances can be varied, such as: If a species covered by the HCP experiences a population decline; if a species not covered by the HCP, but which exists on the land covered by the Plan, subsequently becomes a candidate for listing, or is, in fact, listed under the ESA; or if research conducted subsequent to the signing of the HCP shows that the Plan may be inadequate to accomplish its stated species conservation goals. The second problem with the no-surprises policy is that, like all HCPs, it is predicated on the fear of the ESA's ability to hinder land-use to gain the “voluntary” cooperation of landowners.

HARMS

Claim of 99% success for ESA is wrong: No evidence ESA is responsible for their continued existence

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, community-based conservation, co-management of wildlife between private and public entities, markets and wildlife, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

The more widespread variant of the extinction prevention argument is that almost all species listed under the ESA are not extinct. “[T]he law is a profound success,” claims the National Audubon Society. “According to the U.S. Fish and Wildlife Service, the ESA has prevented extinction for 99 percent of the species that are listed as endangered or threatened.” This claim is unsupportable. Due to the fact that imperiled species are by definition the most susceptible to extinction, statistically, some would have perished with or without the ESA's intervention. There is no valid data to support the claim that the ESA has stemmed the tide of extinction for listed species, much less that the Act is responsible for the continued existence of 99 percent of the listed species.

ESA perverse incentives penalize good stewardship and destroy habitat

R.J. Smith (Senior Fellow, National Center for Public Policy Research) 27 March 2006, “Capitol Hill Briefing Held on ESA's 'Perverse Incentives' Problem, <http://commonsblog.org/archives/000639.php>

"The ESA is bad for people and bad for species. Leading environmentalists, federal and state wildlife officials, and defenders of property rights have all agreed that the ESA is destructive of wildlife and habitat because its perverse incentives -- penalizing good private stewardship -- cause private landowners to be fearful of protecting endangered species," said panelist R.J. Smith, National Center Senior Fellow. "There has been wide agreement on this for over a decade. Yet few in Congress have demonstrated the courage and statesmanship to cut through this Gordian Knot and reform the ESA so that it will actually protect endangered species by protecting landowners. It's time for a change," added Smith.

Four deaths at the 30 Mile Fire caused by Endangered Species concerns

A. Forest Service using public relations spin

*James M. Taylor, Sept 2002, ENVIRONMENT & CLIMATE NEWS*, “Forest Service still spinning the Thirty Mile Fire,”

[www.heartland.org/publications/environment%20climate/article/10107/Forest\_Service\_still\_spinning\_the\_Thirty\_Mile\_Fire.html](http://www.heartland.org/publications/environment%20climate/article/10107/Forest_Service_still_spinning_the_Thirty_Mile_Fire.html)

A year after last July’s deadly Thirty Mile Fire, the U.S. Forest Service’s public relations spin continues.

B. Deaths were caused by delayed water helicopter, waiting for ESA clearance

*James M. Taylor, Sept 2002, ENVIRONMENT & CLIMATE NEWS*, “Forest Service still spinning the Thirty Mile Fire,”

[www.heartland.org/publications/environment%20climate/article/10107/Forest\_Service\_still\_spinning\_the\_Thirty\_Mile\_Fire.html](http://www.heartland.org/publications/environment%20climate/article/10107/Forest_Service_still_spinning_the_Thirty_Mile_Fire.html)

With the fire under control and the final water delivery due within the hour, the situation was deemed safe for the relatively inexperienced crew. However, the helicopter was delayed several hours while Forest Service officials debated the environmental ramifications of scooping water from the nearby Chewuch River. The river is home to endangered salmon and trout, and Forest Service officials feared scooping river water might accidentally scoop some fish as well. Forest Service officials debated using Chewuch River water until 2 p.m., when final approval was given. While Forest Service officials debated, the fire gained new life. The first delivery of water arrived around 3 p.m., too late to quench the rejuvenated fire. By 5:25 p.m. firefighters Tom Craven, 30, Devin Weaver, 21, Jessica Johnson, 19, and Karen Fitzpatrick, 18, had all died, seeking refuge in their fire tents, after flames cornered and then engulfed them in a narrow canyon.

C. Forest Service blames everyone else

*James M. Taylor, Sept 2002, ENVIRONMENT & CLIMATE NEWS*, “Forest Service still spinning the Thirty Mile Fire,”

[www.heartland.org/publications/environment%20climate/article/10107/Forest\_Service\_still\_spinning\_the\_Thirty\_Mile\_Fire.html](http://www.heartland.org/publications/environment%20climate/article/10107/Forest_Service_still_spinning_the_Thirty_Mile_Fire.html)

On September 26, 2001, the Forest Service issued a report blaming almost everyone and everything, including the firefighters themselves, for their tragic deaths. Just about the only thing exonerated by the Service was the Endangered Species Act and Forest Service procedures to debate the Act before taking water from rivers.

Lueck-Michael study: Landowners eliminate habitat to avoid ESA regulation

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

Providing habitat for a single red-cockaded woodpecker colony can cost up to $200,000 in foregone timber harvests. To avoid the loss, landowners at greatest risk of ESA-imposed restrictions were most likely to harvest their forestlands prematurely and reduce the length of their timber harvesting rotations. Cutting timber stands prematurely deprives red-cockaded woodpeckers of habitat because the birds only inhabit older trees. According to the Lueck-Michael study, the ultimate consequences were potentially significant, amounting to several thousand acres of lost woodpecker habitat, enough to provide habitat for between 25 and 76 red-cockaded woodpecker colonies. That is a significant habitat loss for a species dependent upon private land for its survival.

Zhang study: ESA has substantial negative effect on habitat conservation

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf> (ellipses and brackets in original)

[Daowei] Zhang found that “regulatory uncertainty and lack of positive economic incentives alter landowner timber harvesting behavior and hinder endangered species conservation on private lands.” Absent such uncertainty, “landowners choose among harvesting methods to maximize stumpage revenue … subject to constraints such as forest stand characteristics…, aesthetics, management objective, and tax liability.” The threat of regulatory prohibitions on timber activity under the ESA, however, alters landowners’ calculations. Zhang found that “a landowner is 25% more likely to cut forests when he or she knows or perceives that a red-cockaded woodpecker cluster is within a mile of the land than otherwise.” The threat of ESA regulation also increases the likelihood that a landowner would engage in clear-cutting when harvesting the timber, as opposed to a selective harvesting technique that may have less ecological impact. On that basis, Zhang concluded, “at least for the [woodpecker], the ESA has a strong negative effect on habitat,” and the effect appears to be “substantial.”

Landowners start clear-cutting when they learn an endangered species is nearby

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

In early 2006, landowners in Boiling Springs Lakes, N.C., began clear-cutting timber from their property after the U.S. Fish and Wildlife Service (FWS) announced that development could threaten local red-cockaded woodpecker populations. The FWS released a map showing clusters of the woodpecker in the area and announced plans to identify additional habitat for the endangered bird. That prompted landowners to grab their chainsaws to clear their property of the trees in which the woodpeckers make their homes before their land could be designated as endangered species habitat.

Landowners eliminate habitat to avoid burden of ESA regulations

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

The rampant clear-cutting in Boiling Springs Lakes was a predictable, if highly regrettable, consequence of the economic incentives the Endangered Species Act (ESA) creates for private landowners. Under Section 9 of the act, it is illegal for a private landowner to engage in activities that could “harm” an endangered species, including habitat modification, without first obtaining a federal permit. Knowing violations can lead to fines of up to $25,000 and even jail time. As a practical matter, the law requires private landowners to obtain permission from the FWS before modifying endangered species habitat on their own land. However, it is not illegal to modify land that might become endangered species habitat some day in the future, nor are landowners required to take affirmative steps to maintain endangered species habitat. So, in Boiling Springs Lakes as elsewhere, landowners seek to avoid the burden of the ESA by eliminating potential species habitat on their land.

Unfair burdens: Nation wants endangered species, but landowners must pay for it

Peyton Knight (director of environmental and regulatory affairs for the National Center for Public Policy Research) 27 March 2006, “Capitol Hill Briefing Held on ESA's 'Perverse Incentives' Problem, <http://commonsblog.org/archives/000639.php>

"While the Endangered Species Act has failed miserably at saving rare plants and animals, it has excelled in making life miserable for many in the human population," said Peyton Knight, director of environmental and regulatory affairs for the National Center, and a panelist. "ESA-related costs are paid in an inequitable way," added Knight. "Although Congress determined in 1973 that the preservation of endangered species was in the interest of the U.S. as a whole, Congress did not arrange for the nation as a whole to bear the costs of recovery. Instead, these costs are largely borne by the private landowners on whose property rare species are found, regardless of the ability of any particular landowner to bear these costs."

ESA discourages private conservation efforts

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,” National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

By contrast, landowners are not likely to put up nesting boxes to attract the spotted owl because ESA regulations would come with them. Three months after the owl was listed in 1990, Tom Cade — one of the world's foremost raptor experts and founder of the Peregrine Fund, the organization responsible for restoring the peregrine falcon to large parts of the lower 48 states through captive breeding and release of young birds — proposed captive breeding and release of the owls into nesting boxes because owls are relatively easy to breed and they readily accept boxes. Jack Ward Thomas, the U.S. Forest Service biologist in charge of the spotted owl who went on to become Chief of the Forest Service, quickly declined the offer. Even though captive breeding and nesting boxes held enormous promise, Thomas and the U.S. government were less interested in increasing the spotted owl population through innovative solutions than they were interested in using the owl as a tool to stymie timber harvesting.

Conservation Biology Study: ESA discourages landowners from cooperating with environmental researchers

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

The *Conservation Biology* study also found evidence that the ESA discourages private landowners from cooperating with environmental researchers. Specifically, it found that landowners would refuse to give biologists permission to conduct research on their land to assess mouse populations out of fear that land-use restrictions would follow the discovery of a mouse on their land. “Many landowners appeared to defend themselves against having their land-management options restricted by refusing to allow surveys for the Preble’s,” the Brook study reported. That is a grave concern because accurate data on species populations and their habitat are essential to successful conservation efforts. Not only is the esa discouraging landowners from maintaining habitat, but the act could be obstructing the accumulation of data about what species are in need of protection in the first place.

Uncompensated regulatory taking motivates landowners to destroy habitat

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, <http://www.ncpa.org/pub/st303>?

Uncompensated regulatory “taking” under the ESA creates a perverse incentive for landowners to do precisely what the law is intended to prevent. It turns endangered species into financial liabilities and landowners into their unwitting enemies. Predictably, landowners have taken actions to rid their property of endangered species; either directly, by killing them — known as “shoot, shove and shut-up” — or indirectly, by applying a “scorched earth” policy that makes actual or potential habitat unsuitable through such activities as plowing, prematurely cutting trees or clearing brush.

Study claiming ESA saves species is flawed

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, community-based conservation, co-management of wildlife between private and public entities, markets and wildlife, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

First, they contend that although some species that were listed are now extinct, far more would have perished without the ESA. One study claimed that but for the Act, 192 listed species now would be extinct, rather than the seven that had been delisted due to extinction at the time of the study's publication. However, this assertion is fundamentally flawed. It applies a very rough (and likely inappropriate) estimate of extinction rates for all species to those listed under the ESA. Despite this, ESA advocates have cited the study as evidence the Act works.

Accurate accounting of delisted species shows no ESA success

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

An Accurate Accounting of Delisted Species. As shown in Figure V, an accurate categorization of the delisted species is: Twenty-seven species have been removed due to data error — including the American alligator, which was delisted soon after it was listed because it was found to be abundant, clearly indicating it was never endangered and was improperly surveyed.

* Nine species were determined to be extinct.
* Five species were delisted due primarily to factors unrelated to the ESA including the ban on the pesticide DDT.
* Five species were delisted for a variety of other reasons including: private conservation; state, not federal, conservation efforts; and recovery in spite of harm done by the ESA.

The claim that “the longer species stay on ESA, the more likely they will improve” is based on flawed data

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Second, ESA proponents claim that the Act is responsible for the Service's characterization of the majority of listed species as “stable” or “improving.” The National Wildlife Federation claims that of the listed species whose status is known, 68 percent are stable or improving. The Federation also says, “The longer a species enjoys the Endangered Species Act's protections, the more likely it is that its condition will stabilize or improve.” However, these claims cannot be substantiated because they are based on invalid data. Every two years the Service sends out a questionnaire to the field biologists responsible for various species, asking them to categorize their species as improving, declining, stable or unknown. But the results are flawed in two basic ways. First, the data are not collected using any sort of standardized methodology that is replicable or that yields meaningful results. Second, data are not collected every year for all species.

Fish & Wildlife Service skews the data to make ESA look effective

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Sixth, the [Fish & Wildlife] Service skews the data by mistakenly assuming every species is declining at the time it is listed, and when some species are later categorized as stable or improving, it automatically credits the change to the ESA, overstating its effectiveness.

Bald Eagle not saved by ESA – it was saved by DDT ban

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

It is widely acknowledged that the ban on the pesticide DDT in 1972, not the passage of the ESA in 1973, is the paramount reason for the resurgence of the bald eagle, American and Arctic subspecies of the peregrine falcon, and the eastern brown pelican. The relationship between DDT and the reproductive health of these birds, including their decline and subsequent rebound, has been established by a large and authoritative body of peer-reviewed literature.

Alligator not saved by ESA: It was never endangered, and they knew it all along

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa; and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

More evidence that the alligator listing was a case of data error is that the species takes 10 years to reach sexual maturity; if the species were truly endangered in 1973, it would have taken at least 10 years for increased numbers of hatchlings to reach maturity. Thus, if alligators were endangered and their numbers increased due to the protection of the Act, the earliest it could have been delisted due to a population rebound was 1983. However, the Service allowed delisting to begin eight years earlier. The alligator was delisted over various portions of its range from 1975 to 1987. This is a clear indication that the agency knew the alligator was not endangered.

Fish & Wildlife Service mistakenly classified kangaroos as “recovered” – they were never endangered

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa; and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

When the Service finally delisted the kangaroos it admitted: “The white-tailed deer may be about as numerous in the United States as are the three kangaroos in Australia.” The agency had to have known this for the kangaroos' 21-year tenure on the list. Despite the fact that listing these kangaroos was clearly data error, the Service classifies them as recovered.

SOLVENCY

Non-regulatory ESA would work for animals: It works for plants today

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa, community-based conservation, co-management of wildlife between private and public entities, markets and wildlife, privatization of wildlife, private approaches to conservation in the United States and around the world, and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, <http://www.ncpa.org/pub/st303>?

Johnston's frankenia, a south Texas plant species, provides an instructive case study of how the ESA thwarts private conservation and how a non-regulatory ESA could work. Although the Fish and Wildlife Service had conducted only the most rudimentary surveys to determine the plant's overall population and trend, in 1984 it listed the frankenia as endangered due to its perceived small population (five sites totaling around 700 plants) and the belief that cattle grazing posed a threat. Then, in 1993, Gena Janssen, an energetic botanist with the Texas Parks and Wildlife Department, decided to take a closer look because the plant was rumored to be “everywhere.” Initially, “[t]he landowners were scared to say the least,” she said. “They were fearful of the ‘government' finding out they had endangered species on their property.” Janssen was eventually able to gain landowners' trust in large part because plants receive a much lower level of protection than animals. Unless an ESA-listed plant is protected by state law or the land is subject to a federal nexus, such as through a permit, the ESA's prohibitions on taking and harming species do not apply on private property. Hence, land-use control provisions do not apply. As a consequence, the Service is generally not able to use plants to threaten landowners with the ESA. Also, due to the Service's use of ESA penalties for animals, landowners in the frankenia's habitat were more comfortable dealing with a state employee. Through her hard work, Janssen discovered 53 populations totaling more than nine million plants and determined that cattle grazing was not a threat. In addition, she was able to persuade the 10 landowners who owned the 19 largest populations to sign voluntary conservation agreements with the Texas Parks and Wildlife Department. As a result, in 2003 the Service proposed delisting the frankenia.

The success conserving Johnston's frankenia in a region of the country known to be hostile to the ESA is testament to the Service's inability to use the plant as a means to control land-use. Had the frankenia been afforded the same protections as animals, it is very likely landowners would have quietly initiated a scorched earth campaign to rid their property of the plant. Fortunately, the Johnston's frankenia was saved from the ESA, not by it. If animals were granted the same regulatory status as plants, the success story of the frankenia could be repeated many times over. The goodwill of America's landowners toward wildlife is very evident in the cases of the frankenia, bison, wood duck and bluebird, and these success stories could be replicated all over the country. The overwhelming impediment is the ESA's penalties for animals.

Without regulation, Preble’s Meadow Jumping Mouse conservation would have improved

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

Without ESA regulation, the existence of the jumping mouse would have posed no economic threat to private landowners and the likely effect of the mouse’s listing would have been a a net increase in conservation efforts on private lands. Instead, the positive efforts of some landowners were “cancelled” by those who took negative actions in response to the act.

Non-regulatory ESA would promote creative solutions – and landowners would cooperate

Brian Seasholes (expert on a wide variety of issues related to wildlife, land use and property rights, including efforts to create property rights to wildlife in Southern Africa and the U.S. Endangered Species Act; master's degree in geography from the University of Wisconsin-Madison) 1 Sept 2007, “Bad for Species, Bad for People: What’s Wrong with the Endangered Species Act and How to Fix It,”National Center for Policy Analysis, [http://www.ncpa.org/pub/st303?](http://www.ncpa.org/pub/st303?pg=3)

A non-regulatory ESA would force the Service to negotiate in good faith and seek creative solutions instead of relying on the stick of regulations. Some landowners might be happy simply with an honorary award from the Secretary of Interior while others would need financial compensation. America's private landowners are ready, willing and able to conserve endangered species so long as they are not punished for doing so. Until then, they will be the reserve army of the unutilized and unappreciated, and America's imperiled wildlife and landowners will continue to suffer needlessly.

DISADVANTAGE RESPONSES

Few listed species recover – maybe not even 1 success story from ESA regulation

Prof. Jonathan H.Adler (law; at the Case Western Reserve University School of Law and director of the school’s Center for Business Law and Regulation), Winter 2008, “Anti-Conservation incentives,” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv30n4/v30n4-6.pdf>

Only a handful of species listed as endangered or threatened in the past three decades have “recovered,” according to the FWS, and it is debatable whether there has been a single “success” story as a result of the regulation of habitat modification on private land.

Studies of ESA effectiveness flawed: Didn’t study “what would have happened if the species had not been listed?”

Prof. Daniel K. Benjamin (economics; Clemson University) September 2008, “Species Protection,” TANGENTS, <http://www.perc.org/articles/article1079.php>

Prior studies of the impact of the ESA have been flawed by their failure to adequately address the question: What would have happened to a listed species had it not been listed? Ferraro et al have answered this question by matching each listed species with one or more unlisted species that are substantially identical to the listed one. They do this match in terms of scientific, political, and charismatic features influencing the decision to list. For example, a charismatic, critically endangered species located in a state whose inhabitants strongly favor environmental policies is matched with one or more unlisted species that have the same attributes. The authors then compare the performance of the listed species with the performance of their matched but unlisted “twins.”

Intended results don’t matter – actual results do

Peyton Knight (at the time this was written, he was executive director of American Policy Center; currently director of environmental and regulatory affairs for the National Center for Public Policy Research) 21 March 2005, “The Endangered Species Act: Thirty years of Endangering People and Animals is Enough,” <http://www.americanpolicy.org/more/species.htm>

Whatever intentions were behind the ESA when it was conceived in 1973 are of little consequence. *Intended* results mean nothing when compared to *actual* results.

AND JUSTICE FOR ALL: THE CASE FOR FIFTH AMENDMENT COMPENSATION

By Vance Trefethen

Rural Pennsylvania farmer Robert Brace is angry, and I don't blame him. With the knowledge and aid of the US Department of Agriculture, Brace installed a drainage system on 30 acres of his 134-acre farm. The Pittsburgh Post-Gazette in September 2006 reported what happened next. Quote:

"In 1987, two State Game Commission officers, on the farm to trap beavers that had dammed the creek, questioned whether the drainage work was allowed under the 1972 Clean Water Act. Later that year, Mr. Brace received letters from the U.S. Environmental Protection Agency, the Army Corps of Engineers and the U.S. Fish and Wildlife Service, informing him he had drained regulated wetlands, caused sedimentation in the creek and damaged steelhead trout spawning waters. They ordered him to restore the wetlands or face fines of up to $25,000 a day." *(Don Hopey (journalist), 3 Sept 2006, PITTSBURGH POST-GAZETTE, "Court rules laws on wetlands apply to family's farm,"* [*http://www.post-gazette.com/pg/06246/718361-85.stm*](http://www.post-gazette.com/pg/06246/718361-85.stm)*)*

Unquote. Brace agreed to comply with the clean-up order but asked the government to compensate him for the lost use of his land. His request was denied. Later in the same article, Brace makes the obvious point:(Quote) "I don't like thieves and I don't like thievery, and that's what the government is doing," said Mr. Brace, who has framed, autographed photos of President Bush and Vice President Dick Cheney on his office bookshelf. "What right does the government have to control my land? If I can't use it, we shouldn't be debating if I am entitled to compensation." (Unquote)

Believing that government should act justly, my partner and I will affirm **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION 1. Our DEFINITIONS

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental Policy: a government policy that explicitly intends to promote environmental protection, conservation, and rational use of natural resources.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

**Policy: “**a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions” (*Merriam-Webster's Online Dictionary, 2009,* [*www.merriam-webster.com/dictionary/policy*](http://www.merriam-webster.com/dictionary/policy)*)*

OBSERVATION II. The GOAL of the Affirmative case today will be to uphold JUSTICE better than the Status Quo. And the CRITERION for measuring progress toward that goal will be PROTECTION OF PRIVATE PROPERTY RIGHTS. Law Professor Steven J. Eagle at George Mason University in 2008 defines what we mean by justice and property rights and why this goal is important:

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (italics, brackets and ellipses in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The principal drafter of the Constitution, James Madison, declared that “[g]overnment is instituted to protect property of every sort; . . . This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.” In contemporary scholarship, property rights have been termed the “great focus” of the Framers, and the “guardian of every other right.”

OBSERVATION III. The Status Quo falls short of adequately protecting property rights. In its list of things the government is not allowed to do, the 5th Amendment says "nor shall private property be taken for public use, without just compensation." Unfortunately, when the government regulates someone's property to the point that they can't use it -- even though they haven't taken it away -- they have committed the injustice that the 5th Amendment was designed to prevent. We see this in 3 sub-points:

A. Regulation of wetlands violates the principles of the 5th Amendment when property owners are not compensated

Prof. William J. Mitsch (Distinguished Professor of Environment and Natural Resources, Ohio State Univ. ) and Prof. James G. Gosselink PhD (Professor Emeritus of Oceanography and Coastal Sciences and the Coastal Ecology Institute, School of the Coast and Environment, Louisiana State University), 2007, WETLANDS Fourth Edition, p. 485 [http://books.google.com/books?id=1cSKeTCi894C&pg=PA485&lpg=PA485&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22+%2B+2006+OR+2007+OR+2008+OR+2009&source=bl&ots=qpHEUWETIf&sig=6teguCuKKeI5NkaBRRMvRjw5gDs&hl=en&ei=atsFSszbMYjItgec49j7Bg&sa=X&oi=book\_result&ct=result&resnum=6#PPA485,M1](http://books.google.com/books?id=1cSKeTCi894C&pg=PA485&lpg=PA485&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22+%2B+2006+OR+2007+OR+2008+OR+2009&source=bl&ots=qpHEUWETIf&sig=6teguCuKKeI5NkaBRRMvRjw5gDs&hl=en&ei=atsFS)

One of the dilemmas of valuing and protecting wetlands is that the values accrue to the public at large but rarely to individual landowners who happen to have a wetland on their property. If government laws that protect wetlands or other natural resources lead to a loss of the use of that land by the private landowner, the restriction on that use has been referred to as a "taking" (denial of an individual's right to use his or her property). Many legal scholars believed that wetland and other land use laws could result in "takings" and thus be against the Fifth Amendment of the U.S. Constitution.

B. 75% of wetlands are on private property and 5th Amendment complaints are common

Robert Meltz (Legislative Attorney, American Law Division) and Claudia Copeland (Specialist in Resources and Environmental Policy, Resources, Science, and Industry Division), 28 Nov 2007, "The Wetlands Coverage of the Clean Water Act Is Revisited by the Supreme Court: Rapanos v. United States," Congressional Research Service, <http://ncseonline.org/NLE/CRSreports/07Dec/RL33263.pdf> (brackets added; parentheses in original)

The jurisdictional questions raised by *Rapanos* and *Carabell* presented the Supreme Court with a “perfect storm” of hot-button issues. First, there is the federalism matter: where do CWA [Clean Water Act] section 404 and the Constitution’s Commerce Clause draw the line between federal and state authority over wetlands? Second, there are property rights concerns. Some 75% of jurisdictional wetlands in the lower 48 states are on private property, with the result that protests from property owners denied section 404 permits (or subjected to unacceptable conditions on same) are often heard — sometimes in the courts through Fifth Amendment takings suits.

C. Landowners are expected to sacrifice their property for the public good without compensation

Prof. William Funk (Law professor at Lewis & Clark Law School, Portland Oregon), 2005, The Takings Clause of the Fifth Amendment, Center for Progressive Reform, <http://www.progressiveregulation.org/perspectives/takings.cfm>

Nonetheless, in these situations, the affected landowner often feels that the regulation unfairly asks the landowner to make a sacrifice on behalf of society generally. Such a landowner may sue for just compensation under the Takings Clause. Sometimes these suits are successful, and sometimes they are not, depending upon how the particular court weighs the relevant factors under the ad hoc balancing test.

OBSERVATION IV. INHERENCY: The Status Quo allows many uncompensated losses of private property

A. Subjective weighing of factors is used to determine whether compensation is paid

Prof. William Funk (Law professor at Lewis & Clark Law School, Portland Oregon), 2005, The Takings Clause of the Fifth Amendment, Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

Two Supreme Court decisions offer clear guidance on situations that will categorically constitute a taking. In one decision, the Court held that regulations that deprive a person of all ability to develop or utilize his or her property for any economic purposes goes too far and requires just compensation. Another line of Supreme Court cases establishes that if the government effects a permanent physical invasion of the person's property, for example by requiring the owner to allow public access to the property, this constitutes a taking. Absent one of these two circumstances, however, the Court has said that the question whether a regulation goes too far is a contextual, ad hoc determination that involves the weighing of a number of factors. Foremost among these factors is the magnitude of the regulation's economic impact and the degree to which it interferes with legitimate property interests.

B. Even 90% lost property value goes uncompensated

Supreme Court of the State of New York, Appellate Division: Second Judicial Department, 13 Feb 2008, Noghrey v. Town of Brookhaven, decision of the Court, <http://www.courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2008/D17980.pdf> (Note: A "Penn Central taking" is a regulatory "taking" that would be great enough to get Fifth Amendment compensation; "Eschewed" means "avoided". Brackets and parentheses in original)

While the United States Supreme Court has eschewed any set formula for determining whether a regulation constitutes a *Penn Central* taking (see *Tahoe-Sierra Preserv. Council, Inc., v. Tahoe Regional Planning Agency*, 535 US 302,326; *Palazzolo v Rhode Island,* 533 US 606,617), it has also indicated that such a taking requires a diminumtion in value which is "one step short of complete," citing as an example a 95% diminution in value (*Lucas v. South Carolina Coastal Council,* 505 US 1003, 1019 n8). The Court has further held that "a mere diminution in the value of property, however serious, is insufficient to demonstrate a taking" (*Concrete Pipe & Prod. v. Construction Laborers Pension Trust*, 508 US 602, 645). In making this statement, the Court cited cases in which a significant diminution in value was insufficient to support a Penn Central taking (see *Village of Euclid, Ohio v Ambler Realty Co*., 272 US 365 [approximately 75% diminution in value]; Hadacheck v Sebastien, 2239 US 394 [92.5% diminution]). Lower federal courts have likewise rejected *Penn Central* claims where the diminution in value caused by a regulation approached or exceeded 90% of the pre-regulation value"

OBSERVATION V. You should adopt the following PLAN, to be implemented by any necessary Constitutional means:

**Agency:** Congress will pass and the EPA will administer the plan.

**Mandates:**

**1.** Congress will require all Federal agencies to pay 5th Amendment just compensation for the lost use of any property in the U.S. before any federal environmental land-use regulations can be enforced upon that property.

**2.** Congress will set aside $1 billion per year adjusted for inflation for compensating landowners. Any regulatory actions that would exceed the budget will be null and void unless Congress chooses to pay just compensation by allocating additional funds.

**Enforcement**: through the Federal Courts. Any regulations in violation of this plan will be voided by the courts.

**Funding:** ...shall come from cutting the Corporation for National Community Service and General Federal Revenues.

**Timing:** The plan takes effect the day after an Affirmative ballot.

**And the Affirmative may clarify the plan in all speeches.**

OBSERVATION VI. The Plan achieves SOLVENCY by better upholding justice through 5th Amendment compensation

A. Congress should clear up the Court's confusion and uphold the original intent of the Takings Clause

Roger Pilon (Senior Fellow and Director, Center for Constitutional Studies, Cato Institute) 10 Feb 1995, testimony Before the Subcommittee on Constitution, Committee on Judiciary, United States House of Representatives, Protecting Private Property Rights from Regulatory Takings, <http://www.cato.org/testimony/ct-pi210.html>

Most regulations do not reduce the value of a person's property to zero or near zero. Rather, they reduce the value by 25 percent, 50 percent, or some other fraction of the whole. In those circumstances--the vast majority of circumstances--the owner gets nothing. Only if he is "lucky" enough to be completely wiped out by a regulation does he get compensation. Surely that is not what the Framers meant to happen when they wrote the Takings Clause. Plainly, the Court has gone about its business backwards. Rather than ask whether there has been a taking and then ask what the value of that taking is, the Court asks what the value of the loss is to determine whether there has been a taking. And it has done that because it has never set forth a well-thought-out theory of takings, one that starts from the beginning and works its way systematically to the end. It is just such a clear statement of the matter that Congress needs to provide.

B. Fairness Upheld: Cost of government action should be paid by taxpayers, not the landowner

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754> (brackets added; ellipses in original)

Moreover, since [quoting Supreme Court Justice William Brennan] “it is the public at large which enjoys the benefits of the government’s activities, and it is the public at large which is ultimately responsible for its administration…it is fairer to allocate any resulting financial loss to the inevitable costs of government borne by all the taxpayers, than to allow its impact to be felt solely by those whose rights…have been violated.” The same principles should apply when government deprives people of the right to use their property.

2A EVIDENCE: FIFTH AMENDMENT COMPENSATION

HARMS/SIGNIFICANCE

Definition of Property Rights

Michael Greve (leading expert on environmental issues and private property rights, lawyer/legal scholar, and executive director of the Center for Individual Rights in Washington DC) Oct 1994, Society for Range Management, Private Property Rights and Responsibilities of Rangeland Owners and Managers, “What Are the Issues?” <http://texnat.tamu.edu/symposia/out/page1.pdf>

What are property rights? The common law had a very simple and, at the same time, sophisticated answer: property rights come in bundles. They include rights to the acquisition, the use, and the disposal of your property as you see fit, provided only that you do not harm others.

Shouldn't matter if the landowner "knew" about the regulations

Timothy J. Nolan and Steven P. Aggergaard (attorneys), Mar/Apr 2004, AMERICAN BAR ASSOCIATION, "Get your hands off my depot!" <http://www.abanet.org/buslaw/blt/2004-03-04/nolan.shtml>

In a concurring opinion, Justice O'Connor expressed concern over any "windfall" that Palazzolo might receive from

winning damages related to land he knew was subject to regulation. Justice Scalia countered O'Connor's concern, asserting that if someone were to receive a "windfall" from an unconstitutional taking, it should be the landowner, not the government.

The excuse that the landowner knew about the regulations would effectively put an expiration date on the Takings Clause

Steven T. Miano (Partner and Co-Chair of the Environmental Practice Group at WolfBlock LLP law firm, Philadelphia; over 17 years experience in environmental law) 2004, American Bar Association, THE CLEAN WATER ACT HANDBOOK, (brackets added) [http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O\_twe0m8T5Bg&sa=X&oi=book\_result&ct=result&resnum=8#PPT157,M1](http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O_twe0m8T5Bg&sa=X&oi=book_re) ("title passed post enactment" means that the land was sold after the regulations were enacted, hence the new owner knew about the regulations when he bought the property)

The Court [in Palazzolo v. Rhode Island] refuted the state court's holding that a postregulation acquisition of title was fatal to the claim for deprivation of all economic use because the landowner was constructively on notice. While conceding that the right to improve property is subject to the reasonable exercise of state authority (including zoning and land-use restrictions), the Court held that the Takings Clause of the Constitution allows a landowner to "to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous to compel compensation." To hold otherwise, the Court stated, would give carte blanche to the state with respect to even the most unreasonable land-use restrictions, so long as the title passed post-enactment. The Court held that, to adopt the state court's interpretation would effectively "put an expiration date on the Takings Clause."

"Owner knew about the regulations" - would extinguish substantial property value without any recourse for the owner

Prof. William Funk (Law professor at Lewis & Clark Law School, Portland Oregon), 2005, The Takings Clause of the Fifth Amendment, Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

A particularly important issue that has been raised is whether a person who acquires property after the institution of the regulatory regime should have any claim whatsoever. Some argue that such a landowner should not, having acquired the property knowing the restrictions to which it was subject and presumably at a price that reflected those restrictions. Others argue that to eliminate any such claim would enable government effectively to extinguish substantial value of the property without any recourse for the owner.

"Property rights" include more than just physical ownership

Impact/Analysis: Taking away some rights to the use of property is a violation of property rights

Supreme Court Justice William Rehnquist, 26 June 1978, dissenting opinion in Penn Central Transportation Co. v. New York City, 438 U.S. 104 <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0438_0104_ZD.html> (brackets,parentheses, and ellipses in original)

And the Court has frequently emphasized that the term "property" as used in the Taking Clause includes the entire "group of rights inhering in the citizen's [ownership]." United States v. General Motors Corp., 323 U.S. 373 (1945). The term is not used in the 'vulgar and untechnical sense of the physical thing with respect to which the citizen exercises rights recognized by law. [Instead, it] . . . denote[s] the group of rights inhering in the citizen's relation to the physical thing, as [p143] the right to possess, use and dispose of it. . . . The constitutional provision is addressed to every sort of interest the citizen may possess.'

Property rights are more than just right to have: Includes right to use

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754>

Property rights are more than just the right to have things. They include the right to use land and other things to improve our lives and the lives of our families. As the Virginia Declaration of Rights put it, people have the right to “life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” But when government interferes with the right to use land, it takes away one of the most important “sticks” in the “bundle” of rights referred to as property.

No difference between regulation and eminent domain: property rights are the same

Prof. Abraham Bell (Univ of San Diego Law School), 2008, Bar-Ilan University Public Law and Legal Theory Working Paper No. 12-09, Should Decreases in Property Value Caused by Regulations Be Compensated?, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1288930>

For property rights economists than, there it is no difference between a government action that takes away all value in extracting rights from a mine by means of eminent domain, or one that takes away those same value extracting rights by means of what the law calls a regulation. For the property rights economists, in each case, the rights taken are property rights, and there is no reason to treat any of them as different in kind than the other.

INHERENCY

Big question left open by the Supreme Court: When does a regulation go "too far" and require compensation?

Prof. William Funk (Law professor at Lewis & Clark Law School, Portland Oregon), 2005, The Takings Clause of the Fifth Amendment, Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

Often when the government regulates the use of a person's property, the effect on the particular person is adverse. For example, when the government zones an area for residential use, the owner of a particular property might like to open a convenience store or dog kennel, which might bring a greater economic return than a residential structure. Until 1922, the Supreme Court did not consider such diminution of the value of a particular person's property incidental to a general regulation as raising an issue under the Takings Clause. In that year, however, in a celebrated opinion by Justice Oliver Wendell Holmes, the Court held that if a regulation went "too far," it could constitute a taking that would require just compensation by the government. Since that time the question has remained, how far is too far.

Most successful regulatory compensation claims require loss of 90% or more

Don Hopey (journalist), 3 Sept 2006, PITTSBURGH POST-GAZETTE, "Court rules laws on wetlands apply to family's farm," <http://www.post-gazette.com/pg/06246/718361-85.stm>)

According to the court, the requirement to maintain the wetlands diminished Mr. Brace's property value 14 percent. Most successful regulatory takings claims require that the value of the property in question be diminished by 90 percent or more.

Land owners lose the ability to use their land due to Clean Water Act regulations

Prof. William Funk (Law professor at Lewis & Clark Law School, Portland Oregon), 2005, The Takings Clause of the Fifth Amendment, Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

The debate in recent years over regulatory restrictions on the use of private property has frequently involved situations in which environmental laws interfere with a person's desire to develop undeveloped land. Typically, the problem under the environmental laws has arisen when a person wishes to develop undeveloped land, part of which, if developed, would result in violations of the Clean Water Act or the Endangered Species Act. For example, a developer might wish to subdivide and develop property for single family residences, where part of the property consists of wetlands and its development would destroy the wetlands. Under the Clean Water Act, the developer may not be able to build all the new homes he wished.

Current rules allow compensation only with physical invasion, removal of all economic use, or vague threshold of harm

Hannah Jacobs Wiseman, 16 September 2007 YALE LAW JOURNAL, “Partial Regulatory Takings: Stifling Community Participation Under the Guise of Kelo Reform,” <http://yalelawjournal.org/content/view/585/14/>

Current judicial Fifth Amendment doctrine generally finds a taking only when a government regulation causes physical invasion of private property, removes all economic and beneficial use of a property, or reaches the vague [threshold of harm to the landowner established by the *Penn Central* balancing test.](http://www.law.cornell.edu/supct/html/04-163.ZS.html) The legislative partial regulatory takings movement would radically change this doctrine by requiring governments to pay private landowners whenever a regulation diminished the value of their land, even partially.

As early as the 1870s, the Supreme Court identified the regulatory taking loophole

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754>

The obvious example of a taking of property for public use occurs when the government seizes the title to land through the power of eminent domain. But if the compensation requirement applied *only* to such cases, it would be easy for the government to evade it by letting people continue to *own* their land while diminishing the right to use and enjoy their property. As early as the 1870s, the U.S. Supreme Court sought to close this loophole when it declared that a circumstance would be “very curious and unsatisfactory” for courts to declare “that if the government refrains from the absolute conversion of real property to the uses of the public it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction without making any compensation, because, in the narrowest sense of that word, it is not *taken* for the public use.”

Progressive Era theories rejected Founders’ notions of individual liberty and property rights by claiming rights are manufactured by government

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754>

During the Progressive Era, intellectual leaders adopted radically different principles of government: they rejected the Founders’ notions of individual liberty and constitutional limitations and called for the government to take on a greatly expanded role over the economy and the use of private property. Three elements of Progressivism were especially important for the development of regulatory takings theory. First, Progressives rejected the idea of natural rights. In their view, rights were *not* part of the fundamental respect that everyone deserves as a consequence of his or her humanity; instead, rights were simply privileges granted to individuals by society, for society’s reasons. As historian Louis Menand explains, Progressives believed that “individual freedoms are manufactured to achieve group ends.”

SOLVENCY

Fairness and Justice are served when the public pays for public burdens

Supreme Court Justice Hugo Black, 1960, decision of the Court in Armstrong v. United States, 364 US 40, <http://supreme.justia.com/us/364/40/case.html>

The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Fairness & Justice: Landowners should not have to pay the cost of public projects

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754>

If property rights advocates remain clear about the importance of private property rights and the constitutional and moral right of property owners to be compensated for regulatory takings, Arizona could adopt a similar measure to ensure that citizens are not required individually to shoulder the cost of projects that “in all fairness and justice, should be borne by the public as a whole.” When, as in the *Wonders* case, government forces a property owner to leave 45 acres of land idle so as to preserve “native plants,” government should have to compensate the owner for taking this land in everything but name.

When government must pay for the cost of regulation, they will regulate less

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (brackets in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

In the case generally regarded as the foundation of regulatory takings law, *Pennsylvania Coal Co. v. Mahon*, Justice Holmes warned that “a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change” That certainly does not—at least in theory, preclude government from arrogating for its own use many private property rights in order to further important environmental goals. As a practical matter, though, “[t]he more often the government must pay for exercising control over private property, the less control there will be. That is the reality.”

DISADVANTAGE RESPONSE

If someone gets a “windfall” it should be the landowner, not the government

Timothy J. Nolan and Steven P. Aggergaard (attorneys), Mar/Apr 2004, AMERICAN BAR ASSOCIATION, "Get your hands off my depot!" <http://www.abanet.org/buslaw/blt/2004-03-04/nolan.shtml>

In a concurring opinion, Justice O'Connor expressed concern over any "windfall" that Palazzolo might receive from winning damages related to land he knew was subject to regulation. Justice Scalia countered O'Connor's concern, asserting that if someone were to receive a "windfall" from an unconstitutional taking, it should be the landowner, not the government.

Further suggested reading:

<http://books.google.com/books?id=li8XDbLL-0QC&pg=PA441&lpg=PA441&dq=%22regulatory+taking%22+%2B+percent&source=bl&ots=J64ayN6tFw&sig=AXi64iKpk2IK_WL6zlEy_nNDH8w&hl=en&ei=C7QISuvrOIyMtgfa8vWPBw&sa=X&oi=book_result&ct=result&resnum=3>

THE DEADLIEST CATCH: THE CASE FOR FISHING ITQs

By Vance Trefethen

Ocean ecosystems and human lives are threatened today by public policies that fail to recognize the obvious truth that when everyone owns something – no one owns it, and no one takes care of it. We will offer you a better system with comparative advantages over the Status Quo when you join us in affirming: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” **(**Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

ITQ – Individual Transferable Quotas:

National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 21 May 2009, “Ocean Quahog” <http://www.nmfs.noaa.gov/fishwatch/species/ocean_quahog.htm>

ITQ is a system that gives private property rights to fishermen by assigning a fixed share of the catch to each fisherman.

OBSERVATION 2. INHERENCY: We observe how the Status Quo is managing ocean fisheries in 3 sub-points.

A. Current TAC policy creates a mad scramble

Prof. Rebecca Bratspies (CPR Member Scholar; Associate Professor of Law, CUNY School of Law, New York) 10 July 2009, “Privatize the Seas? If Only Solving Overfishing Were so Easy” <http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB>

Today, fisheries managers set a "total allowable catch" (TAC) for open-access fisheries. A fishery is open until that TAC is reached. Not surprisingly, there is often a mad scramble to capture as large a share of fish as quickly as possible. Sometimes fisheries, like the pre-ITQ Alaskan halibut fishery, are only open for a few days, or even a few hours.

B. The Magnuson-Stevens Act. This Act regulates and subsidizes US fishing

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, <http://www.ncpa.org/pub/ba581>

America's primary response to overfishing was the 1976 Magnuson-Stevens Fisheries Conservation and Management Act, which created 200-mile coastal-water economic zones open only to Americans. It also established eight regional councils to formulate and implement fishery regulations to allow fisheries to recover, ensuring their availability for future generations. Each council drafts management plans that restrict the size of boats; the types of nets and/or traps; the length and timing of the fishing season; the areas open to fishing; and the amount of particular species that can be kept. The problem with these regulations, however, is that they do not affect the incentives for fishers to overfish. Pursuing their economic self-interest, fishers evade them:

* Prevented from fishing on some days, they make a greater effort on days fishing is allowed.
* Forced to use smaller boats, they use more of them, and when forced to use smaller nets, they use those nets more often.
* Forced to limit the number of fish they can bring back to harbor, they throw the smallest ones overboard before their return; in U.S. waters, 2.3 billion pounds of dead fish are thrown back into the ocean every year.
* Making matters worse, in order to alleviate the financial harm fishermen suffered from regulations, the government provided more subsidies, tax breaks and price supports.

OBSERVATION 3. These policies lead to several FAILURES

FAILURE 1. Undersea wasteland. American fisheries are rapidly being destroyed.

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, (brackets in original) <http://www.ncpa.org/pub/ba581>

American and world fisheries have entered a period of rapid and unprecedented decline: In the past 50 years, populations of large fish species - including tuna, swordfish, marlin, sharks, cod, halibut and flounder - have decreased 90 percent worldwide. A total of 98 species are overfished, according to the National Marine Fisheries Service; as a result, half of all U.S. fisheries and a quarter of the major fish stocks worldwide are in jeopardy of an abrupt, severe decline from which they may never recover. Fish stocks have collapsed in nearly one-third of all ocean fisheries, and all commercially valuable world fish stocks could completely collapse by 2048. [See the figure.] Unless something is done quickly, American waters may go from being the world's most abundant fisheries to a virtual undersea wasteland within just a few years.

FAILURE 2. Lost income for fishing families and communities

Carl Safina PhD (ecology from Rutgers Univ.; director of the Blue Ocean Institute) Summer 2009, University of Texas at Dallas, “A Future for U.S. Fisheries, ISSUES IN SCIENCE AND TECHNOLOGY, <http://www.issues.org/25.4/safina.html>

The nation must confront another reality as well. So many fisheries are so depleted that the only way to restore them will be to change the basic posture of regulations and management programs to one of recovery. Most fish populations could recover within a decade, even with some commercial fishing. But continuing to bump along at today’s depleted levels robs fishing families and communities of income and risks resource collapse.

FAILURE 3. Substantial safety risk.

John Bundy (president of Glacier Fish Company, Seattle; appointed by governor of the state of Washington and spent 9 years on the North Pacific Fisheries Management Council ), 9 July 2008, testimony before the UNITED STATES SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD, Fishing Vessel Safety, AFA Vessel Rebuild & Excessive Share Cap, and Pacific Cod Fishery Cooperative, <http://commerce.senate.gov/public/_files/FLLCoopBundyTestimony2.pdf>

Under the current fishery management plan, there is a “race for fish” resulting in substantial safety concerns, unnecessary waste of the fishery resource, and environmental consequences that could be avoided by cooperative harvest behavior. Because the fleet is over-capitalized, the total harvesting capacity is greater than the available quota of cod. This results in extremely short seasons with operators racing to maintain or increase their “share” of the catch within the short time allowed before the quota has been caught. We refer to this as the “Olympic system” because the incentives inherent in a common pool of fish causes vessel owners to concentrate their efforts and investments on catching and processing the maximum amount of cod that their vessels can handle in the shortest possible time. This practice requires vessel operators to take safety risks and naturally leads to waste. Under the “race for fish,” vessel operators must fish in weather conditions that jeopardize vessel safety.

OBSERVATION 4. We offer the following PLAN to be implemented by any necessary constitutional means:

**Agency:** Congress and the President will enact any necessary legislation. Oversight and regulations will be managed by the 8 regional councils already in existence under Magnuson-Stevens.

**Mandates:** The Magnuson-Stevens Act will be amended as follows:

**1.** Fisheries management policy in US ocean waters shall be changed to Individual Transferable Quotas for all species.

**2.** Shares permitting capture of a percentage of the Total Allowable Catch for each species will be publically auctioned. Shares are resalable on the open market thereafter.

**3.** The T.A.C. will be adjusted each year up or down based on input from marine biologists.

**4.** Regulations regarding methods, technologies, and times of fishing are repealed.

**5**. All Federal fishing subsidies are phased out over the next 5 years.

**Funding:** Existing budgets of the 8 regional councils, general federal revenues, and revenues from sale of ITQs.

**Enforcement:** …will be through the Coast Guard, the 8 regional councils, and any other existing means of enforcing existing fishing quotas. Violators will receive 1 year imprisonment without parole and confiscation of fishing boats and equipment.

**Timeline:** This plan takes effect July 1, 2010.

**And all Affirmative speeches may clarify the plan as needed.**

OBSERVATION 5. ITQ fishing policy produces multiple ADVANTAGES

ADVANTAGE 1. Economic efficiency and social responsibility

UN Food & Agriculture Organization (FAO), 9 Oct 2008, “US$50 billion lost by marine fishing each year,” <http://www.fao.org/newsroom/en/news/2008/1000931/index.html>

Strengthened fishing rights can provide fishers and fishing communities with incentives to fish in an economically efficient and socially responsible manner. Phasing out subsidies that enhance redundant fishing capacity and harvesting effort will improve efficiency.

ADVANTAGE 2. Dramatic improvement in the health of threatened fisheries

THE ECONOMIST (respected British news magazine) 18 Sept 2008, “Economies of scales,” <http://www.economist.com/opinion/displaystory.cfm?story_id=12262197>

Yet the powerful logic in favour of market-based mechanisms has been ignored, partly because the evidence has largely been anecdotal. Now a study of the world’s 121 fisheries managed by individual transferable quotas (ITQs), one form of market-based mechanism, has shown that they are dramatically healthier than the rest of the world’s fisheries (see [article](http://www.economist.com/opinion/displaystory.cfm?story_id=12253181)). The ITQ system halves the chance of a fishery collapsing. By giving fishermen a long-term interest in the health of the fishery, ITQs have transformed fishermen from rapacious predators into stewards and policemen of the resource. The tragedy of the commons is resolved when individuals own a defined (and guaranteed) share of a resource, a share that they can trade. This means that they can increase the amount of fish they catch not by using brute strength and fishing effort, but by buying additional shares or improving the fishery’s health and hence increasing its overall size.

ADVANTAGE 3. Safety improvements

ADVANTAGE 4. Better market conditions for fishermen

THE ECONOMIST (respected British news magazine), 18 Sept 2008, [www.economist.com/PrinterFriendly.cfm?story\_id=12253181](http://www.economist.com/PrinterFriendly.cfm?story_id=12253181)

The Alaskan halibut and king crab fisheries illustrate how ITQs can change behaviour. Fishing in these waters had turned into a race so intense that the season had shrunk to just two to three frantic days. Overfishing was common. And when the catch was landed, prices plummeted because the market was flooded. Serious injury and death became so frequent in the king crab fishery that it turned into one of America’s most dangerous professions (and spawned its own television series, “The Deadliest Catch”). After a decade of using ITQs in the halibut fishery, the average fishing season now lasts for eight months. The number of search-and-rescue missions that are launched is down by more than 70% and deaths by 15%. And fish can be sold at the most lucrative time of year—and fresh, so that they fetch a better price. In a report on this fishery, Dan Flavey, a fisherman himself, says some of his colleagues have even pushed for the quota to be reduced by 40%. “Most fishermen will now support cuts in quota because they feel guaranteed that in the future, when the stocks recover, they would be the ones to benefit,” he says.

2A EVIDENCE: FISHING ITQs

INHERENCY

2007 Magnuson-Stevens reforms not enough: Must have incentives to conserve

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, <http://www.ncpa.org/pub/ba581>

On January 12, 2007, President Bush signed a revised Magnuson-Stevens Act. Under the amended Act, once a fish stock is found to be depleted, overfishing must end within two-and-a-half years. Unfortunately, the Act does not address the key problem: the incentives for fishers to overfish. In order to use marine resources in a sustainable fashion, fishers must be given incentives to conserve.

Lack of ownership causes overexploitation of common resources

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.yalelawjournal.org/pdf/116-2/Lee.pdf>

Commons problems arise when it is difficult or impossible to deny access to a resource. The classic commons contains desirable natural resources and is an open access area, available for use by all. Commons are vulnerable to overexploitation because individuals have no way to capture the benefits of measured extraction and therefore are likely to destroy the resource by using it at unsustainable levels. For instance, over-fishing can destroy the population of commercially valuable fish in a given area. Because no fisherman owns a specific piece of the ocean, any one fisherman’s attempt to conserve fish would be defeated by competition from other fishermen, who would take the remaining fish. As H. Scott Gordon explained in 1954, “Wealth that is free for all is valued by none because he who is foolhardy enough to wait for its proper time of use will only find that it has been taken by another.”

Quotas and licenses won’t solve: Incentive to overfish and deplete the resources

Jonathan Harris and Dr. Anne-Marie Codur (PhD economics; specialist in sustainable development); Global Development and Environment Institute, 2008. "Economics of fisheries," Encyclopedia of Earth, Environmental Information Coalition, National Council for Science and the Environment, [www.eoearth.org/article/Economics\_of\_fisheries](http://www.eoearth.org/article/Economics_of_fisheries)

But under the 1982 Law of the Sea, agreed to under United Nations auspices, nations can claim territorial rights to many important offshore fisheries. They can then limit access to these fisheries by requiring fishing licenses. Fishing licenses can be sold for a set fee, or a limited number can be sold at auction. In effect, this establishes a price for access to the resource. Notice that we can also view this as internalizing a negative [externality](http://www.eoearth.org/article/Externality). Each fisher now has to pay a price for the effect that one extra boat has in depleting the resource. The economic signal sent by this price will result in fewer people entering the fishery. This approach, however, will not necessarily solve the problem of over-investment. Once a boat owner has paid for a license, there will be an incentive to obtain the maximum catch by adding new equipment such as sonar devices to track fish, bigger nets, and more powerful engines to travel further. There will also be an incentive to spend as much time as possible at sea, to get the maximum return for the investment in the license and equipment. If all fishers do this, the depletion problem might remain just as bad.

The “Tragedy of the Commons”: Lack of ownership = race to catch as much as possible

Prof. Robert N. Stavins ( Business and Government, Director of the Harvard Environmental Economics Program, and Chairman of the Environment and Natural Resources Faculty Group at Harvard University’s John F. Kennedy School of Government), 1 Apr 2009, “Using markets to make fisheries sustainable,” <http://www.grist.org/article/2009-04-01-markets-fisheries-sustainable/>

These individuals and companies are no more greedy than the rest of us, but because no one holds title to fish stocks in the open ocean, everyone races to catch as much as possible. Each fisherman receives the full benefit of aggressive fishing (that is, a larger catch), but none pay the full cost (an imperiled fishery for everyone). One fisherman’s choices have an effect on other fishermen (of this generation and the next), but in an open-access fishery—unlike a privately-held copper mine, for example—these impacts are not taken into account. What is individually rational adds up to collective foolishness, as the shared resource is over-exploited. This is the “tragedy of the commons.”

Current federal fisheries management is an expensive failure

Carl Safina PhD (ecology from Rutgers Univ.; director of the Blue Ocean Institute) Summer 2009, University of Texas at Dallas, “A Future for U.S. Fisheries, ISSUES IN SCIENCE AND TECHNOLOGY, <http://www.issues.org/25.4/safina.html>

Starting with the bad news, the federal government’s fisheries management remains primitive, simplistic, and, in important cases, ineffectual, despite a fund of knowledge and conceptual tools that could be applied. In many regions—New England and the Pacific Northwest, among others—failed management costs more than the receipts from fisheries. This does not suggest that management should be given up as a lost cause, leaving the industry in a free-for-all, although this strategy might, in fact, be cheaper and not much less effective.

FAILURES

Ocean fisheries are in decline – they all could collapse in 40 years

Prof. Daniel K. Benjamin PhD (economics, teaches at Clemson Univ.; senior fellow, Property & Environment Research Center) Dec 2008, “Save the Fisheries,” <http://www.perc.org/articles/article1102.php>

The world’s ocean fisheries are in decline. Since 1950, nearly 30 percent of all fisheries have collapsed, and some scientists project that in 40 years, all of the world’s fisheries could collapse. The problem, it is widely agreed, is a failure of humans to manage fisheries in a way that is consistent with both maximum economic benefit and longterm survival of ocean fish stocks.

Economic inefficiency

UN Food & Agriculture Organization (FAO), 9 Oct 2008, “US$50 billion lost by marine fishing each year,” <http://www.fao.org/newsroom/en/news/2008/1000931/index.html>

According to the report the bulk of losses occur in two main ways. First, depleted fish stocks mean that there are fewer fish to catch, and therefore the cost of finding and catching them is greater than it might be. Second, fleet overcapacity means that the economic benefits of fishing are dissipated due to redundant investment and operating costs.

SOLVENCY

ITQs transform fishermen from predators to stewards and policemen of the resource

THE ECONOMIST (respected British news magazine) 18 Sept 2008, “Economies of scales,” <http://www.economist.com/opinion/displaystory.cfm?story_id=12262197>

By giving fishermen a long-term interest in the health of the fishery, individual transferable quotas (ITQs) have transformed fishermen from rapacious predators into stewards and policemen of the resource. The tragedy of the commons is resolved when individuals own a defined and guaranteed share of a resource, a share that they can trade. This means that they can increase the amount of fish they catch not by using brute strength and fishing effort, but by buying additional shares or improving the fishery’s health and hence increasing its overall size.

How ITQs work: Buy and sell the right to catch a certain number of fish

Jonathan Harris and Dr. Anne-Marie Codur (PhD economics; specialist in sustainable development), Global Development and Environment Institute, 2008, "Economics of fisheries," Encyclopedia of Earth, Environmental Information Coalition, National Council for Science and the Environment, [www.eoearth.org/article/Economics\_of\_fisheries](http://www.eoearth.org/article/Economics_of_fisheries)

A possible policy response is the use of individual transferable quotas (ITQ’s). Like transferable emissions permits, ITQ’s impose a maximum limit on the quantity of fish that can be taken. Anyone purchasing such a permit can catch and sell a certain number of fish – or can sell the permit, and fishing rights, to someone else.

ITQs use economic efficiency to achieve ecological sustainability

Jonathan Harris and Dr. Anne-Marie Codur (PhD economics; specialist in sustainable development), Global Development and Environment Institute, 2008, "Economics of fisheries," Encyclopedia of Earth, Environmental Information Coalition, National Council for Science and the Environment, [www.eoearth.org/article/Economics\_of\_fisheries](http://www.eoearth.org/article/Economics_of_fisheries)

Assuming the quota limits can be enforced, the total catch from the fishery will not exceed a certain predetermined level. To determine the maximum sustainable yield level, policy-makers will need to consult marine biologists, who can estimate the sustainable level of fish population. Once ecological sustainability has been assured in this way, the permit market will promote economic efficiency – those who can fish most effectively will be able to outbid others to acquire the ITQ’s.

If ITQs had been implemented in 1970, fisheries collapse would have been cut by 2/3 today

Prof. Daniel K. Benjamin PhD (economics, teaches at Clemson Univ.; senior fellow, Property & Environment Research Center) Dec 2008, “Save the Fisheries,” <http://www.perc.org/articles/article1102.php>

The authors estimate that had ITQs been implemented in all fisheries beginning in 1970, the incidence of past collapse among fisheries would have been cut by two-thirds. Moreover, instead of watching fisheries collapse today, we would be seeing them getting healthier, even as they were supporting fishers and nourishing consumers. Most importantly, it appears that the power of ITQs to prevent and even reverse fishery collapse applies to species and ecosystems throughout the world.

Must remove subsidies and use property rights: Worked in 17 countries that have tried it

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, <http://www.ncpa.org/pub/ba581>

Even if subsidies are removed, the remaining fishermen will still have incentives to "race to fish" as long as they are competing for access to a resource they cannot own. Therefore, the second step is to replace the current command-and-control regulations with a system of property rights. To the extent feasible, government should treat fish in the same way it treats livestock - as private property. Privatization of marine resources has worked where it has been tried. Since the early 1980s, 17 countries have introduced some form of property rights, and in each case fish stocks and fishers' profits have improved significantly. One of the most popular approaches is creating tradable rights, or individual transferable quotas (ITQs), which entitle fishermen to a certain portion of the catch, often based on their past catch amounts. They can take or trade their quota, up to a government-set total allowable cap on the fish catch. For example:

* After introducing ITQs to Iceland's herring fisheries, the number of fishing vessels fell from 200 in 1980 to 30 by 1995; catches have fallen to sustainable levels, even as their value has risen dramatically.
* In 1984, Australia's blue fin tuna fisheries were near collapse; today they are the most profitable tuna fisheries in the Pacific, and property rights are used to manage 15 species.
* In 1986, New Zealand introduced ITQs to manage 30 species of fish, including blue fin tuna, abalone and lobster, each of which has recovered from near collapse.

Tradable shares solved fishing race and improved safety when tried with Alaskan halibut

Carl Safina PhD (ecology from Rutgers Univ.; director of the Blue Ocean Institute) Summer 2009, University of Texas at Dallas, “A Future for U.S. Fisheries, ISSUES IN SCIENCE AND TECHNOLOGY, <http://www.issues.org/25.4/safina.html>

The impact of tradable catch shares can be seen in experiences in several regions. In Alaska, where fisheries managers once kept a tight cap on the halibut catch, the fishing season shrank to two days annually because there were so many competing boats. After managers introduced tradable catch shares, the number of boats fell precipitously and the season effectively expanded to whenever the fishers wanted to work toward filling their shares. Safety improved markedly, and the halibut population remained robust.

Ending subsidies would eliminate incentives for inefficient fishing operations

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, <http://www.ncpa.org/pub/ba581>

Needed Policy: End Subsidies and Tax Breaks. The first step is to end subsidies and tax breaks that encourage overinvestment in commercial fisheries. Government should stop subsidizing fishermen's purchases of boats, fuel and other equipment. In addition, the government should end price supports that artificially increase the market value of fish. Ending subsidies would eliminate the incentive for inefficient businesses to keep building boats and hiring deck hands, and give them an incentive to operate more efficiently or look for employment elsewhere. It would help already efficient fishermen by reducing the number of less efficient competitors and by allowing them to expand their operations.

Tradable permits solved race to fish for Alaskan halibut, improved market conditions, made halibut stocks more sustainable

Gregg Easterbrook (senior editor) July/Aug 2009, THE ATLANTIC, “Privatize the Seas,” <http://www.theatlantic.com/doc/200907/ideas-seas>

A few years ago at the Double Musky Inn in Girdwood, Alaska, I had a halibut dinner so delicious, I can still taste that fish. Good restaurant? Yes, but even better fishery management. About a decade ago, the Alaskan halibut catch was switched from a system of “catch all you can” in a very short period, to a system of tradeable permits. Now halibut season does not happen over a few chaotic days marred by colliding boats and overlapping lines, followed by freezing of the fish and a price bust as everything hits the market at once. Instead, fishermen holding an assured right, which they won on the free market (to bid for a permit, go to [www.alaskabroker.com](http://www.alaskabroker.com" \t "outlink)), spread their work over many months. Thus halibut coming to the market are just-caught fresh, and the price of fish is less likely to soar and plunge. And halibut stocks, spared a concentrated onslaught of fishing boats, are more sustainable.

Iceland Example: ITQs made fishing more profitable and helped Iceland’s economy

Prof. Ragnar Arnason (Economics; Univ. of Iceland), 2007, “ICELAND’S ITQ SYSTEM CREATES NEW WEALTH,” Electronic Journal of Sustainable Development, <http://www.ejsd.org/public/journal_article/9>

Icelandic ITQs have become very valuable compared to other measures of the Icelandic economy. This value predominantly represents new wealth for the Icelandic economy. Before the introduction of the ITQ-system, the profitability of the fisheries was poor. Even more importantly, future profits of the fishery could not be captured in a marketable asset. The evidence strongly indicates that the new capital embedded in ITQs has, via financial intermediation, been multiplied and found its way into other industries. Many of these industries have been extremely successful, thus greatly adding to the initial economic impact of ITQs on the fisheries themselves. The new wealth embedded in the ITQs was created by the relatively simple expedient of defining private property rights in the extraction from common pool fish stocks. In other words, the introduction of the ITQ system constituted a certain, albeit limited, shift from collective to private ownership in fish resources. By creating a new form of capital, the ITQ-system in Iceland has greatly increased marketable wealth and, thus, seems to have contributed substantially to the country’s rapid economic growth.

Iceland Example: ITQs solved economic waste and created economic growth

Prof. Ragnar Arnason (Economics; Univ. of Iceland), 2007, “ICELAND’S ITQ SYSTEM CREATES NEW WEALTH,” Electronic Journal of Sustainable Development, <http://www.ejsd.org/public/journal_article/9> (brackets added)

Ocean fisheries offer of the most dramatic examples of economic waste caused by lack of private property rights in natural resources. The resulting loss of economic benefits in the global ocean fishery has been estimated to be around US$50 b[illio]n annually which is over half of its landed value. In the 1980s Iceland introduced quasi-property rights in her fisheries in the form of individual transferable harvesting quotas (ITQs). These ITQs, which are freely traded in the market, have become highly valuable. The ITQ values represent considerable new wealth in Iceland. There are indications that this new source of financial capital has induced economic growth in Iceland far beyond the fishery itself.

Tradable permits make fishing safer

Carl Safina PhD (ecology from Rutgers Univ.; director of the Blue Ocean Institute) Summer 2009, University of Texas at Dallas, “A Future for U.S. Fisheries, ISSUES IN SCIENCE AND TECHNOLOGY, <http://www.issues.org/25.4/safina.html> (In context, he’s talking about tradable fishing quotas)

By significantly reducing competition that breeds a race for fish, this approach offers several benefits. For one, it makes for safer fishing. Fishers who own shares know that they have the whole season to fill their quota regardless of what other boats are catching, so they are less likely to feel forced to head out in dangerous weather.

Privatization = Higher incomes for fishermen

H. Sterling Burnett PhD (former member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force ) 26 Feb 2007, “Ocean Fisheries: Common Heritage or Tragic Commons?” National Center for Policy Analysis, <http://www.ncpa.org/pub/ba581>

The United States extended property rights to Atlantic blue fin tuna, mid-Atlantic surf clams, Alaskan halibut and sablefish, and South Atlantic wreckfish; all four fisheries now have smaller fishing fleets, higher incomes for fishermen and larger, healthier fish stocks. Conclusion.Before the fisheries councils fully implement the revised Magnuson-Stevens Act, Congress should revisit the issue and fundamentally change the status of fish populations. When fishermen no longer have perverse incentives to deplete fish stocks, experience shows populations should rebound. Fisheries must no longer be seen as a commons to be plundered in a "race to fish," but rather as property to be conserved, enhanced and protected.

Costello & Gaines Study: ITQs halt the collapse of fisheries

THE ECONOMIST (respected British news magazine), 18 Sept 2008, [www.economist.com/PrinterFriendly.cfm?story\_id=12253181](http://www.economist.com/PrinterFriendly.cfm?story_id=12253181)

Christopher Costello and Steven Gaines (the biologist) of the University of California and John Lynham of the University of Hawaii assembled a database of the world’s commercial fisheries, their catches and whether or not they were managed with ITQs. As these fisheries were not chosen at random and without having any experimental control, they borrowed techniques from medical literature—known as propensity-score matching and fixed-effects estimation—to support their analysis. The first method compared fisheries that are similar in all respects other than the use of ITQs; the second averaged the impact of ITQs over many fisheries and examined what happened after the quotas were introduced. Whichever way they analysed the data, they found that ITQs halted the collapse of fisheries (and according to one analysis even reversed the trend). The overall finding was that fisheries that were managed with ITQs were half as likely to collapse as those that were not.

FAT-FREE DONUTS: THE CASE FOR CANCELING FUTUREGEN

By Vance Trefethen

Perhaps award winning writer Jeff Goodell said it best: "‘Clean coal’ is not an actual invention, a physical thing – it is an advertising slogan. Like ‘fat-free donuts’ or ‘interest-free loans.’"

(<http://www.coal-is-dirty.com/bio/jeff-goodell>)

Cutting through the propaganda and revealing the world as it truly is, my partner and I are happy to affirm: **That the United States Federal Government should significantly reform its environmental policy.**

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental Policy: a government policy that explicitly intends to promote environmental protection, conservation, and rational use of natural resources.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, http://www.merriam-webster.com/dictionary/significant)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, http://www.merriam-webster.com/dictionary/reform)

CCS: Carbon Capture & Storage

Jennie Stephens, Associate, Energy Technology Innovation Policy, Fall 2006, "Growing Interest in Carbon Capture and Storage (CCS) for Climate Change Mitigation", Belfer Center for Science & International Affairs, Kennedy School of Government, Harvard Univ. <http://belfercenter.ksg.harvard.edu/publication/823/growing_interest_in_carbon_capture_and_storage_ccs_for_climate_change_mitigation.html?breadcrumb=%2F>)

"CCS technology involves capturing the CO2 produced during fossil-fuel combustion and storing it in underground geologic reservoirs instead of emitting it into the atmosphere."

OBSERVATION 2. INHERENCY

A. Bush canceled FutureGen

Environment News Service, 31 Jan 2008, "Energy Secretary Scraps FutureGen Clean Coal Project," [www.ensnewswire.com/ens/jan2008/2008-01-31-03.asp](http://www.ensnewswire.com/ens/jan2008/2008-01-31-03.asp)

Energy Secretary Samuel Bodman sent America's clean coal program back to square one Wednesday when he tossed out the FutureGen low emissions coal gasification plant that the Bush administration has supported for the past five years. FutureGen is a public-private partnership between the U.S. Energy Department and the FutureGen Industrial Alliance, Inc, a non-profit consortium of 12 American and international energy companies.

B. Obama restarted FutureGen to promote Carbon Capture & Sequestration (CCS)

US Dept of Energy, 12 June 2009, “Secretary Chu Announces Agreement on FutureGen Project in Mattoon, IL” <http://www.energy.gov/news2009/7454.htm>

U.S. Secretary of Energy Steven Chu today announced an agreement with the FutureGen Alliance that advances the construction of the first commercial scale, fully integrated, carbon capture and sequestration project in the country in Mattoon, Illinois. "This important step forward for FutureGen reflects this Administration’s commitment to rapidly developing carbon capture and sequestration technology as part of a comprehensive plan to create jobs, develop clean energy and reduce climate change pollution.” said Energy Secretary Steven Chu.

C. $3.4 billion dollars for CCS

THE ECONOMIST (respected British news magazine), 5 Mar 2009, “The illusion of clean coal” <http://www.economist.com/opinion/displaystory.cfm?STORY_ID=13235041>

With the private sector sitting on its hands, Western governments are lavishing subsidies on CCS. Some $3.4 billion earmarked for CCS found its way into America’s stimulus bill.

OBSERVATION 3. HARMS

HARM 1. Catastrophic climate risk. Even small leakage of stored CO2 is a monstrous gamble with the future of the planet.

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html>

Leakage from underground sites will remain a perpetual threat, a major concern for all civilizations, a sword of Damocles hanging over the future. The size of the CCS CO2 hazardous waste disposal problem is staggeringly large. If 80% of the world's remaining coal were burned, at least 10 trillion tons of CO2 would be created. (If some of it were converted into liquid fuels or chemical feedstocks, the waste CO2 produced would be even larger.) Ten trillion tons of CO2 represents 10 times as much CO2 as was emitted worldwide during the entire 20th century. Anything more than the most trivial leakage could cause dangerous—even catastrophic—global warming. The Intergovernmental Panel on Climate Change (IPCC) has pointed out that leakage and fugitive emissions can be expected from all five parts of a CCS the system -- (1) capture; (2) pressurization and liquefaction; (3) transport; (4) injection; and (5) perpetual storage. If even a tenth of a percent of the CO2 were to leak from the system annually, the resultant buildup of global-warming gas in the atmosphere would reach dangerous levels, plausibly ruining the Earth as a place suitable for human habitation. At best, "clean coal" with CCS is a "monstrous gamble" with the future of planet Earth and all its inhabitants.

HARM 2. Localized death trap. A CO2 leak kills people and animals for miles around.

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

On a local scale, CO2 leakage from storage sites poses a threat to human health. CO2 is denser than air and therefore tends to pool in low-lying, poorly ventilated areas posing a hazard if it reaches levels higher than 3% by volume. This risk also applies to pipeline transport of CO2 through populated areas, raising critical issues with regard to route selection, overpressure protection, and leak detection. A natural example of the danger of CO2 leakage occurred in a volcanically active area at Lake Nyos in Cameroon in 1986. Large quantities of CO2 that had accumulated on the bottom of the lake were suddenly released, killing 1700 people and thousands of cattle over a range of 25 km.

HARM 3. Coal mining hazards. We see this in 3 sub-points:

A. CCS promotes coal over renewable alternatives

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html> (brackets added)

CCS [carbon capture & storage] will eliminate incentives for renewable energy. As noted above, CCS will eliminate incentives to develop renewable sources of energy. Every dollar spent on "clean coal" is a dollar that cannot be spent developing renewables. CCS will pull the investment rug out from under renewable energy.

B. CCS uses 10-40% more coal

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html>

CCS is a waste of both money and energy. CCS will increase the power needs of a typical coal plant by 10% to 40% -- meaning that 10% to 40% more coal must be mined, transported, and burned, producing 10% to 40% more wastes that must be managed. The destructive effects of coal mining are legion. Mine wastes present enormous long-term problems for current and future generations, and these costs are typically "externalized"—meaning passed along to the public and to our children.

C. Impact: Hurts the environment and coal miners

Dr. James Katzer (Executive Director, MIT Coal Energy Study Advisory Committee), 2007, Massachusetts Institute of Technology Center for Energy and Environmental Policy Research, THE FUTURE OF COAL, <http://web.mit.edu/coal/The_Future_of_Coal_Chapters_1-3.pdf>

Coal mining involves considerable environmental costs. The environmental effects of mining include water pollution and land disturbance as well as the release of another greenhouse gas, methane (CH4), which is entrained in the coal. Also, mining involves significant risk to the health and safety of miners.

OBSERVATION 4. We offer the following PLAN, to be implemented by any necessary constitutional means:

**Agency:** Congress, the President, and the US Dept. of Energy.

**Mandates:** 1) The FutureGen project and all other federal CCS projects will be canceled. 2) No operating licenses will be given to any CCS power plant in the US. 3) Funding will be redirected to research on renewable energy and energy efficiency.

**Enforcement:** …will be through the Dept. of Energy and the Dept. of Justice. Violations will be prosecuted by the Justice Dept. through normal means with penalties similar to existing crimes under existing law.

**Funding:** Existing budgets of existing agencies

**Timeline:**This plan takes effect immediately upon an Affirmative ballot.

**All Affirmative speeches may clarify the plan as needed.**

OBSERVATION 5. SOLVENCY. We end the coal nightmare. Our first plan advocate for canceling FutureGen is none other than the very same Energy Secretary Steven Chu, whom we quoted earlier proudly announcing the restart of FutureGen. That’s not what he used to say, as we see in this quote from the Chicago Tribune in January 2009:

[Jim Tankersley](http://archives.chicagotribune.com/writers/jim-tankersley) and [Joshua Boak](http://archives.chicagotribune.com/writers/joshua-boak), 8 Jan 2009, CHICAGO TRIBUNE, FutureGen coal plant in Mattoon may be revived, <http://archives.chicagotribune.com/2009/jan/08/business/chi-thu-mattoon-coal-power-futurjan08>

Obama championed FutureGen and similar coal projects in the Senate and on the campaign trail. But Chu, before his nomination, famously called coal his “worst nightmare” for alternative energy.

OBSERVATION 6. ADVANTAGES

ADVANTAGE 1. We stop wasting money. Our second plan advocate, economist Chris Edwards, points out in February 2009 that FutureGen is simply money down the drain.

Chris Edwards (B.A. and M.A. in economics; expert on federal and state tax and budget issues; former senior economist on the congressional Joint Economic Committee examining tax, budget, and entrepreneurship issues) 9 Feb 2009, “FutureGen Boondoggle,” Cato Institute, [www.cato-at-liberty.org/2009/02/09/futuregen-boondoggle/](http://www.cato-at-liberty.org/2009/02/09/futuregen-boondoggle/)

In 2007, the Department of Energy chose a single site for the project in Mattoon, Illinois. But after the project’s estimated cost started soaring, the department changed direction in 2008 and cancelled the Mattoon project. That was a good decision, but the government had still flushed $176 million down the drain.

Edwards goes on to say later in the same context

“The FutureGen project illustrates the near impossibility of making rational economic decisions with government subsidy projects. Even if a government agency were well-managed and made decisions based on sound cost-benefit analyses, projects become incredibly politicized. Now, with the stimulus bill, it looks like the Mattoon boondoggle has another lease on life.”

ADVANTAGE 2. We increase safety, reduce emissions, and apply cost-effective solutions

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

“Capture-ready” coalfired power plants pose a significant threat to the climate. To tackle the climate crisis, the world needs to reduce the amount of CO2 produced, not bury it underground and hope that it stays there. Dirty energy sources, such as coal, must be phased out while investments in sustainable energy solutions must be increased. Renewable energy and energy efficiency are safe, cost-effective solutions that carry none of the risks of CCS and are available now to cut emissions and save the climate.

2A EVIDENCE: CANCEL FUTUREGEN/CCS

DEFINITIONS

What is FutureGen?

Jacob P. Koshy (journalist), Live Mint (a publication of the WALL STREET JOURNAL in India),7 Mar 2008, "India may pull out of FutureGen as US mulls project scaleback," [www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html](http://www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html) (brackets added )

"The FutureGen project was conceived in 2003 as a public-private partnership to develop an environment-friendly 275MW [megawatt] thermal power plant in the US by 2012. The prototype would set future standards for similar plants that would produce hydrogen, in addition to electricity, and simultaneously capture the resulting carbon dioxide emissions and store it within the ground."

INHERENCY

FutureGen will keep growing

Sen. Richard Durbin (D-Illinois) quoted by US Dept of Energy, 12 June 2009, “Secretary Chu Announces Agreement on FutureGen Project in Mattoon, IL” <http://www.energy.gov/news2009/7454.htm> (brackets added)

"Since the Bush administration canceled the project a year and a half ago, the world and the economy have changed dramatically – so has the alliance," [Illinois Sen. Richard] Durbin said. "The alliance has lost and added new partners several times since it was first formed and as the project evolves over the next six months, I believe the FutureGen alliance will continue to grow in membership, in strength and in their partnership with the DOE [Dept of Energy]."

SIGNIFICANCE

FutureGen costs $1 billion

US Dept of Energy, 12 June 2009, “Secretary Chu Announces Agreement on FutureGen Project in Mattoon, IL” <http://www.energy.gov/news2009/7454.htm>

The Department of Energy’s total anticipated financial contribution for the project is $1.073 billion, $1 billion of which comes from Recovery Act funds for CCS research. The FutureGen Alliance’s total anticipated financial contribution is $400 million to $600 million, based on a goal of 20 member companies each contributing a total of $20 million to $30 million over a four to six year period.

CCS has risk slow CO2 leaks (= global warming) and rapid leaks (= local danger of fatalities)

by Barbara Freese (consultant specializing in coal and climate policy issues), Steve Clemmer (research director for the UCS Clean Energy Program) and Alan Nogee (director of the UCS Clean Energy Program), 2008, Union of Concerned Scientists, GLOBAL POWER IN A WARMING WORLD, [www.ucsusa.org/assets/documents/clean\_energy/Coal-power-in-a-warming-world.pdf](http://www.ucsusa.org/assets/documents/clean_energy/Coal-power-in-a-warming-world.pdf)

CCS technology comes with its own set of environmental and health risks, including the risk of slow leaks that would undermine its capacity for reducing global warming pollution. Rapid leaks of CO2, either from a storage site or pipeline, could pose a local danger since high concentrations of this gas can be fatal.

Leakage of stored CO2 creates multiple human and environmental risks

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

A number of leakage pathways could result in the migration of CO2 into the surrounding environment. They include leakage through or along injection wells, abandoned wells, undetected faults or those created by injecting CO2 at too high a pressure, corrosion of cap rocks and cement plugs used to seal injection wells and diffusion into shallower geologic formations. Potential consequences of leakage are equally broad. Releases of CO2 back into the atmosphere would undermine any climate benefit of geological storage; CO2 rising into the subsurface could negatively impact soil ecosystems, harming both flora and fauna; CO2 contamination of surface waters might negatively impact aquatic ecosystems; leakage into groundwater aquifers could degrade their quality by mobilising toxic metals and dissolving other minerals; and human health impacts are a concern should concentrations of CO2 reach levels higher than 3% by volume.

CCS has risk of: water contamination, human health risk, and induced seismicity (ground-shifting, earthquakes)

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

Perhaps the most critical questions relate to property rights and who is liable for the captured CO2, particularly once the respective CCS project stops operating. The answer will determine who pays for any damage caused by CCS. Potential risks include liability for (1) health effects and damage to ecosystems from surface leakage; (2) groundwater contamination, including pollution of drinking water; (3) induced seismicity; and (4) climate effects from increased greenhouse gas emissions through surface leakage.

Multiple environmental risks to CO2 storage

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

Environmental risks of geological CO2 storage include:

* Reservoir leakage: the slow, long-term release of CO2 from storage sites, for example through geological faults;
* Sudden catastrophic leakage: the large-scale release of CO2 from storage sites, for instance through failures of active or abandoned injection wells;
* Escape of CO2 and associated substances into shallow groundwater;
* Displacement of brines and mobilisation of toxic metals and organics moving upwards leading to contamination of potable water, overlying sediments, soils or seawater;
* Escape of other hazardous captured flue gases.

Perpetual storage of waste is beyond all human experience

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland; taught "Environmental Impact Analysis" and "Statistical Research Concepts and Methods" in the School of Architecture and Planning at University of New Mexico in Albuquerque where he was associate professor of planning; was project administrator of the Hazardous Waste Research Program in the School of Engineering/Applied Science at Princeton University), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html> ("severely" was misspelled in the original)

CO2 will have to remain buried underground forever. Humans have no experience engineering anything intended to last forever. Engineering projects expected to last "in perpetuity" fall in a realm beyond all human experience. How can we develop confidence that engineers can design systems that are robust and error-free that will endure in perpetuity? How can we ever settle the question, "What if the 'clean coal' engineers are wrong?" Is it plausible that the world's engineering community could make a colossal error? In 2005, the Intergovernmental Panel on Climate Change (IPCC) issued a report (24 Mbyte PDF) devoted to the subject of carbon capture and storage. In it, this blue-ribbon body of leading scientists and engineers described pumping CO2 into the oceans, creating a "lake" of CO2 on the ocean floor. Clearly, the IPCC considered ocean disposal a viable option. That was in 2005. Less than three years later, we know that ocean disposal of CO2 would be a catastrophic error because it would lower the pH of the oceans, severly disrupting the marine food web.

CCS wastes money and creates false sense of security about climate change

THE ECONOMIST (respected British news magazine), 5 Mar 2009, “The illusion of clean coal” <http://www.economist.com/opinion/displaystory.cfm?STORY_ID=13235041>

CCS is not just a potential waste of money. It might also create a false sense of security about climate change, while depriving potentially cheaper methods of cutting emissions of cash and attention—all for the sake of placating the coal lobby.

Localized death trap. CO2 leakage kills living things for miles around.

Peter Montague (co-directs the Environmental Research Foundation in Annapolis, Maryland), 7 Feb 2008, "THE G8 PLAN OF ACTION FOR CLIMATE CHANGE" <http://www.camp-site.info/letter.html>

CO2 burial does entail some serious risks of acute harm. CO2 is heavier than air and when the rare large CO2 release occurs, oxygen can be excluded from large areas, killing all living things for many miles around. Therefore, as with all hazardous waste facilities, siting has the potential to create environmental injustices. For example, the Sasol Corporation in South Africa has proposed to bury CO2 in neighboring Botswana—but the people of Botswana are wondering, why they have been chosen as a dump for hazardous waste CO2? No environmental justice standards and regulations been developed to deal with the host of unique new problems posed by capture, transport and burial of pressurized liquid CO2.

ADVANTAGES

Renewable energy technology will work – not CCS

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

Decades of technological progress have seen renewable energy technologies such as wind turbines, solar photovoltaic panels, biomass power plants and solar thermal collectors move steadily into the mainstream. The market for renewable energy is growing dramatically; in 2007 global annual investment in renewables exceeded US$100 billion. At the same time, there is enormous potential for reducing our consumption of energy, even while providing the same level of “energy services”. Many nations have recognised the potential of these true climate solutions and are pressing ahead with ambitious plans for energy revolutions within their borders. New Zealand plans to achieve carbon neutrality by midcentury. Renewable energy and energy efficiency, not CCS, are leading the way.

CCS diverts attention from real solutions: Spend the money on renewables and energy efficiency instead

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

The promise of CCS diverts attention away from sustainable energy solutions and risks locking the world into an energy future that fails to save the climate. Priority should be given to investments in renewable energy and energy efficiency which have the greatest potential to provide energy security and reduce emissions.

We stop political games that delay limits on coal emissions

Lisa Margonelli (Fellow, New America Foundation, award-winning journalist, expert in energy & environment), 24 June 2009, “While we were sneering, China was seizing ‘clean coal’” THE ATLANTIC, <http://correspondents.theatlantic.com/lisa_margonelli/2009/06/while_we_were_sneering_china_was_seizing_clean_coal.php>

In the US, clean coal has longer political legs more than economic ones, in part because of the way we play the politics of energy and greenhouse gases. America's Clean Coal experiment is [FutureGen](http://www.futuregenalliance.org/), a much talked-about coal plant which was supposed to sequester its carbon emissions. FutureGen, though, has always been a political creature, designed to delay limits on greenhouse gas emissions by coal fired power plants by promising a far off clean coal utopia. Here's an interesting [quote](http://www.nytimes.com/gwire/2009/05/18/18greenwire-china-bridges-climate-gap-between-coal-states-10572.html) from Kenneth Green at the American Enterprise Institute on Carbon Capture and Sequestration (CCS): "It's the universal fig leaf. For people who want to say they're not against coal when they really are, they hold up CCS. If CCS works, then coal is fine," Green said. "If you are a coal supporter, it lets you say to your coal people, 'I know you're going to get hit by cap and trade, but we're going to give you CCS. It's going to protect you, more or less.'" Even the Bush administration had a hard time keeping a straight face, and so they stopped signing the checks for FutureGen.

DISADVANTAGE RESPONSES

MIT Study: FutureGen is on the wrong path

Note: MIT advocates carbon sequestration, but says FutureGen is not a good way to achieve it

Disad response: Even if CCS were a good thing, FutureGen would not achieve it, so the disadvantages of “not getting CCS technology” are non-unique – they will happen if FutureGen continues because FutureGen won’t work.

Dr. James Katzer (Executive Director, MIT Coal Energy Study Advisory Committee), 2007, Massachusetts Institute of Technology Center for Energy and Environmental Policy Research, THE FUTURE OF COAL, <http://web.mit.edu/ceepr/www/publications/index.html>

The DOE Clean Coal program is not on a path to address our priority recommendations because the level of funding falls far short of what is required and the program content is not aligned with our strategic objectives. The flagship DOE project, FutureGen, is consistent with our priority recommendation to initiate integrated demonstration projects at scale. However, we have some concerns about this particular project, specifically the need to clarify better the project objectives (research vs. demonstration), the inclusion of international partners that may further muddle the objectives, and whether political realities will allow the FutureGen consortium the freedom to operate this project in a manner that will inform private sector investment decisions.

Disad Turn: Rushing ahead with CCS technology before it’s ready will actually lead to long delays in CCS implementation

Dr. James Katzer (Executive Director, MIT Coal Energy Study Advisory Committee), 2007, Massachusetts Institute of Technology Center for Energy and Environmental Policy Research, THE FUTURE OF COAL,

[*http://web.mit.edu/coal/The\_Future\_of\_Coal\_Chapters\_1-3.pdf*](http://web.mit.edu/coal/The_Future_of_Coal_Chapters_1-3.pdf)

All of these simulations assume that CCS will be available, and proven socially and environmentally acceptable, if and when more widespread agreement is reached on imposing a charge on CO2 emissions. This technical option is not available in this sense today, of course. Many years of development and demonstration will be required to prepare for its successful, large scale adoption in the U.S. and elsewhere. A rushed attempt at CCS implementation in the face of urgent climate concerns could lead to excess cost and heightened local environmental concerns, potentially leading to long delays in implementation of this important option.

Funding issues, scope and scale unclear – American Electric Power pulls out of FutureGen

Analysis/Impact: Since FutureGen won’t work, there are no disadvantages to eliminating it

David Mercer (journalist), 25 June 2009, ASSOCIATED PRESS ”2 FutureGen partners drop out of coal project,” <http://news.yahoo.com/s/ap/20090625/ap_on_bi_ge/us_futuregen_companies_withdraw>

AEP says it will leave the project by July 1, mentioning both uncertainty about its details and how much money the Columbus, Ohio-based utility would have to spend. "There's like a billion dollar shortfall between what the alliance originally agreed to fund and what we think it's going to cost," AEP spokeswoman Melissa McHenry said. "There's not a definitive message from the Department of Energy of what scope and scale the project" will be, she said. In reviving the project, the Department of Energy has said FutureGen's carbon removal and storage goals might have to be scaled back.

Power companies will not use Carbon Capture & Storage technology

THE ECONOMIST (respected British news magazine), 5 Mar 2009, “The illusion of clean coal” <http://www.economist.com/opinion/displaystory.cfm?STORY_ID=13235041>

But CCS is proving easier to talk up than to get going (see [article](http://www.economist.com/opinion/displaystory.cfm?story_id=13226661)). There are no big power plants using it, just a handful of small demonstration projects. Utilities refuse to make bigger investments because power plants with CCS would be much more expensive to build and run than the ordinary sort. They seem more inclined to invest in other low-carbon power sources, such as nuclear, solar and wind.

Legal liability blocks industry investment in CCS

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

Industry views liability as a barrier to wider deployment of CCS and is unwilling to fully invest in CCS unless it is protected from the risks associated with long-term CO2 storage. The risks are so great that many utilities are unwilling to make CO2 available for storage unless they are relieved of ownership upon transfer of the CO2 from the power station. Potential operators are urging that they only retain legal liability for permanently stored carbon for 10 years.

China doesn’t need US clean coal technology: China overtaking US in technology development

Peter Fairley (journalist), 17 Dec 2008, TECHNOLOGY REVIEW, published by Massachusetts Institute of Technology, “China Closes the Clean-Coal Gap, <http://www.technologyreview.com/energy/21887/>

China looks set to overtake the United States in the application of technologies to clean up coal-fired power generation, if several proposed projects come to fruition. GreenGen--a joint venture established by Chinese utilities--has broken ground on China's first integrated gasification combined cycle (IGCC) plant and signed agreements to build two more.

We don’t have time to wait for CCS to work

Jeff Goodell (journalist; contributing editor at Rolling Stone magazine and the author of "Big Coal: The Dirty Secret Behind America's Energy Future.") 26 Aug 2007, WASHINGTON POST, “KING COAL - What It Costs Us,” <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/24/AR2007082401206.html>

In the future, carbon dioxide might be captured from coal plants and pumped underground into abandoned oil wells or deep saline aquifers, but at the moment, these solutions are unproven and expensive. The coal industry is soaking up billions of dollars in tax breaks and subsidies to develop technology and study the problem. But according to climate scientists such as NASA's James Hansen, if we hope to have a chance of avoiding dangerous changes to Earth's climate, we don't have time to wait.

CCS will not be ready in time to save the climate

Emily Rochon; Dr. Erika Bjureby, Dr. Paul Johnston, Robin Oakley, Dr. David Santillo, Nina Schulz, Dr. Gabriela von Goerne, May 2008 “False Hope: Why carbon capture and storage won’t save the climate,” [www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf](http://www.greenpeace.org/raw/content/usa/press-center/reports4/false-hope-why-carbon-capture.pdf)

Carbon capture and storage (CCS) aims to reduce the climate impact of burning fossil fuels by capturing carbon dioxide (CO2) from power station smokestacks and disposing of it underground. Its future development has been widely promoted by the coal industry as a justification for the construction of new coal-fired power plants. However, the technology is largely unproven and will not be ready in time to save the climate.

BETTER SAFE THAN SORRY: THE CASE FOR GMO MORATORIUM

By Vance Trefethen

Some folks get upset when scientists test unknown chemicals on innocent animals who have no knowledge or consent. But there is something worse: Testing them on innocent humans, without their knowledge or consent. Because the Status Quo is doing just that with genetically modified crops, my partner and I urgently affirm: That the United States Federal Government should significantly reform its environmental policy. Today we will offer you a comparative advantage case that will prove to you how we can have a better policy that reduces a number of significant risks being taken in the Status Quo.

OBSERVATION 1. We offer the following DEFINITIONS

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Environmental Policy:

Professor John McCormick (Professor of political science at Indiana University Purdue University Indianapolis, IUPUI), 1991, British Politics and the Environment,” p. 7 [Google Books]

“Environmental policy is defined as public policy concerned with governing the relationship between people and their natural environment.”

GMOs:

World Health Organization, 2002, "20 QUESTIONS ON GENETICALLY MODIFIED (GM) FOODS" [www.who.int/foodsafety/publications/biotech/20questions/en/index.html](http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html)

Genetically modified organisms (GMOs) can be defined as organisms in which the genetic material (DNA) has been altered in a way that does not occur naturally. The technology is often called “modern biotechnology” or “gene technology”, sometimes also “recombinant DNA technology” or “genetic engineering”. It allows selected individual genes to be transferred from one organism into another, also between non-related species.

OBSERVATION 2. The BURDEN OF PROOF will shift.

The Affirmative begins the round with the burden to prove with evidence the need for change. We will meet that burden but we will go one step further. We will prove with evidence that the burden shifts to the Negative team concerning the threats to human health from Genetically Modified Organisms. Listen to Doctors Amy Dean and Jennifer Armstrong at the American Academy of Enivronmental Medicine in 2009:

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html) (quotes and parentheses in original; brackets added)

Another often used definition [of precuationary principle] originated from an environmental meeting in the United States in 1998 stating: "When an activity raises threats to the environment or human health, precautionary measures should be taken, even if some cause and effect relationships are not fully established scientifically. In this context, the proponent of an activity, rather than the public, should bear the burden of proof (of the safety of the activity)."

Judge, what this means is that after we present our initial case, the Negative team will have the burden to prove that GMOs are completely safe. If they fail to meet that burden, then an Affirmative ballot will be justified.

OBSERVATION 3. INHERENCY: The Status Quo promotes GMO despite having poor controls. We see this in three sub-points:

1. EPA testing is inadequate. GMOs with serious problems can pass EPA testing

Jeffrey M. Smith (Executive Director of Institute for Responsible Technology) 22 May 2007, Plant-Incorporated Protectants; Potential Revisions to Current Production Regulations, <http://www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm>

In 2005, when a pesticide producing GM pea was found to be potentially allergenic, the $2 million Australian project was canceled. If that pea had been subjected to only the EPA criteria used for such crops, it would have passed. The only reason its commercialization was halted was because they subjected it to advanced tests never used on approved GM foods. They blame an unexpected subtle change in added sugar chains for turning a harmless protein into a potentially deadly one. The EPA testing regime allows use of substitute bacteria-derived proteins that would *never* catch such a change. Ironically, a Monsanto rep claimed that the GM pea incident showed that the regulatory system was working, but failed to mention that none of the company’s approved products had been tested in the same way.

2. We "assume" GMO safety. The Status Quo assumes GMOs are safe because they look similar to existing products.

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#> (brackets added)

The United States has adopted a product-oriented approach, which assumes that the process of transferring genes from one species of plant, animal, or virus to another does not pose greater risks to human health and the environment than conventional plant breeding technologies such as hybridization. Consequently, genetically modified products are not subjected to stricter regulatory scrutiny than their conventional counterparts absent some tangible alteration in the physical characteristics and properties of the end product.

3. We promote GMOs abroad. The US pressures developing countries into accepting GMO.

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

The transgenic crops industry, with the help of the US government, is aggressively promoting its crop products worldwide (Lopez Villar et al., 2007). In 2003 the Bush administration filed an injunction against the World trade organization after the European Commission refused to accept transgenic food from the US (Becker and Barboza, 2003). Developing countries have been targeted by both biotechnology companies and the US government.

OBSERVATION 4. Lax regulation of GMOs produces several RISKS

RISK 1. Risks to human health.

Dr. Gregory Damato PhD 27 May 2009, “GM-Soy: Destroy the Earth and Humans for Profit,” NATURAL NEWS, <http://www.naturalnews.com/026334_soy_Roundup_GMO.html>

In addition to the toxicity of glyphosate, several animal studies have found several health issues directly related to the consumption of GM-soybean. Rabbits fed GM-soy were found to have altered enzymatic activity in their livers as well as a higher metabolic activity. Microscopic analyses of the livers of mice fed Roundup Ready soybeans revealed altered gene expression and structural and functional changes. Much of these changes reversed after the mice diet was switched to non-GM soy, indicating that GM soy was the culprit. Molecular geneticist Michael Antoniou, Ph.D., described that the findings "are not random and must reflect some 'insult' on the liver by the GM soy." Antoniou, who does human gene therapy research in King's College London, said that although the long-term consequences of the GM soy diet are not known, it "could lead to liver damage and consequently general toxemia". A study presented in December of 2005 by Dr. Ermakova found that rats fed a GM-soy flour diet had 56 percent of their offspring die at birth compared to only 8 percent in the control group.

RISK 2. Risks to food production in poor countries. Referring in context to the introduction of GM crops in Third World countries, Professor Carmen Gonzalez in 2007 said:

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

One of the primary concerns about GM crops is that they reinforce the monocultural production techniques introduced during the colonial era and reinforced by the Green Revolution and by structural adjustment. As explained in Part I, the displacement of indigenous crop varieties and biodiverse cultivation systems by monocultures increases vulnerability of crops to pests and disease, depletes the fertility of the soil, increases dependence on synthetic fertilizers and pesticides, increases the probability of catastrophic crop failure in the event of blight, and adversely affects human nutrition by reducing the variety of foods consumed. The cultivation of GM crops is thus inherently inconsistent with the biodiversity necessary to promote ecologically sustainable food production.

OBSERVATION 5. We offer the following PLAN to be implemented by any necessary constitutional means:

**Agency:** Congress and the President.

**Mandates:**

**1.** Moratorium on the release into the environment of any new genetically modified organisms.

**2.** Moratorium on the export, promotion, sale or donation of GMOs to foreign countries.

**3.** EPA will conduct research into the safety of all existing GMOs currently available in the USA. Those proven to be safe will be approved and exempted from the moratorium. Those found unsafe will be banned. The presumption of safety policy will be changed to a presumption of risk until proven safe.

**4.** Mandatory labeling of all products containing GMOs.

**Enforcement:** …through the EPA and the Justice Department. Fines and imprisonment equal to those for similar crimes under existing law.

**Funding:** …from cuts in the Housing Trust Fund and general federal revenues.

**Timing:** This plan takes effect 3 months after an Affirmative ballot.

**And all Affirmative speeches may clarify the plan as needed.**

OBSERVATION 6. We achieve the following ADVANTAGES

ADVANTAGE 1. A moratorium protects consumer health & safety.

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html)

With the precautionary principle in mind, because GM foods have not been properly tested for human consumption, and because there is ample evidence of probable harm, the AAEM asks:

* Physicians to educate their patients, the medical community, and the public to avoid GM foods when possible and provide educational materials concerning GM foods and health risks.
* Physicians to consider the possible role of GM foods in the disease processes of the patients they treat and to document any changes in patient health when changing from GM food to non-GM food.
* Our members, the medical community, and the independent scientific community to gather case studies potentially related to GM food consumption and health effects, begin epidemiological research to investigate the role of GM foods on human health, and conduct safe methods of determining the effect of GM foods on human health.
* For a moratorium on GM food, implementation of immediate long term independent safety testing, and labeling of GM foods, which is necessary for the health and safety of consumers.

ADVANTAGE 2. We stop an immoral human experiment

Mark Townsend (journalist), 1 Sept 2002, THE OBSERVER (British newspaper), “Blair urges crackdown on Third World profiteering” <http://www.guardian.co.uk/uk/2002/sep/01/politics.environment>

A rift between the UK and the US over genetically modified foods erupted last night when [British Prime Minister Tony] Blair's chief scientific adviser denounced the United States' attempts to force the technology into Africa as a 'massive human experiment'. In a scathing attack on President Bush's administration, Professor David King also questioned the morality of the US's desire to flood genetically modified foods into African countries, where people are already facing starvation in the coming months.

ADVANTAGE 3. The EPA upholds food security for consumers by taking back responsibility for testing

Jeffrey M. Smith (Former US National Institutes of Health scientist Candace Pert describes Mr. Smith as “the leading world expert in the understanding and communication of the health issues surrounding genetically modified foods”, Executive Director of Institute for Responsible Technology) 22 May 2007, Plant-Incorporated Protectants; Potential Revisions to Current Production Regulations, <http://www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm>

The EPA needs to be the consumers championIf your answer to any of these recommendations is that it is “Not my job,” than this is a problem that should be investigated above all others. The strange malady of passing on the responsibility to others has befallen too many regulatory agencies in regards to GMOs. And when it is traced back to see who is ultimately providing assurances, it often turns out to be the biotech companies offering assumptions that promote profits. As our consumer and environmental champions, abandon out-dated assumption-based regulations in favor of independently derived reliable data. Please regulate GMOs as if our lives depended on it. Our food security is at risk.

2A EVIDENCE: GMO MORATORIUM

TOPICALITY

GMOs are an “environmental justice” issue

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

This article contributes to the trade and environment literature and to the literature on environmental justice by reframing the dispute over GMOs as an environmental justice issue and by placing this controversy in the context of the historic and ongoing dispute between developed and developing countries over the rules governing trade in conventional agricultural products. The article argues that GMOs cannot be evaluated in clinical isolation from the larger controversies over agricultural trade and that environmental justice is a useful framework for integrating the environmental, human rights, and trade concerns raised by GMOs.

INHERENCY

GM crop safety data is lacking

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

Commenting on the lack of safety data on transgenic foods in the *Journal of Medicinal Food*, David Schubert, head of the Cellular neurobiology Laboratory at the Salk Institute in California, wrote in 2008: There are, in fact, no data comparing the food safety profiles of GM versus conventional breeding, and the ubiquitous argument that ‘since there is no evidence that GM products make people sick, they are safe’ is both illogical and false. There are, again, simply no data or even valid assays to support this contention. Without proper epidemiological studies, most types of harm will not be detected, and no such studies have been conducted (Schubert, 2008).

Agribusiness is experimenting with GMOs on the public in the US and abroad

Lori Wallach, (attorney; Director, Public Citizen’s Global Trade Watch Division) 11 May 2006, "Final WTO Tribunal Decision on GMO Policy Reaffirms Lower Panel: WTO Wades into Food Fight, but Stops Short of Ruling Against Underlying GMO Policy" (Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts) [www.citizen.org/pressroom/release.cfm?ID=2202](http://www.citizen.org/pressroom/release.cfm?ID=2202)

Today, half the world’s population lives in countries that require pre-market approval of GMOs. Even in the United States, where agribusiness has secured a deregulated market for GMOs and is conducting an open GMO experiment on the U.S. environment and U.S. consumers, there are three counties in California that ban all GMO crops. In the developing world, South Korea was once the No. 2 buyer of U.S. corn, but now buys GMO-free corn elsewhere. China now looks to Brazil for GMO-free soy. These are market losses for U.S. GMO producers based on choices by U.S. agribusiness to pursue the GMO strategy, which makes resorting to the WTO, a body allegedly promoting free markets, a perverse way to try to remedy bad market choices by some players.

Violation of international law to use World Trade Organization to force GMOs on unwilling nations

Lori Wallach, (attorney; Director, Public Citizen’s Global Trade Watch Division) 11 May 2006, "Final WTO Tribunal Decision on GMO Policy Reaffirms Lower Panel: WTO Wades into Food Fight, but Stops Short of Ruling Against Underlying GMO Policy" (Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts) [www.citizen.org/pressroom/release.cfm?ID=2202](http://www.citizen.org/pressroom/release.cfm?ID=2202)

Forcing unwanted GMOs on unwilling nations is not just stupid politics – it is a violation of international law. The Biosafety Protocol, adopted in 2000, protects the right of nations to regulate these products in the public interest. The best way for nations to greet this news from the WTO is to stand their ground and implement much-needed pre-market approval, safety testing, traceability and labeling programs.

US uses power and influence to promote GMOs in developing countries

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#> (brackets added)

Developing countries attempting to devise appropriate biotechnology regulation must contend with the economic power and influence of the United States and the EC [European Community]. Although the vast majority of GM crops are grown in the United States, Canada, Argentina, China, and South Africa, U.S. agribusiness has been promoting the cultivation of GMOs in the developing world. The United States has conditioned bilateral free trade agreements and development assistance on the acceptance of GMOs.

Biotech industry successfully lobbied to have GMOs non-regulated, despite FDA evidence of risk

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

The biotechnology industry lobbied to have foods derived from genetically engineered plants classified as no different from food from conventionally bred plants. This was known as the policy, or doctrine, of ‘substantial equivalence’. There was resistance, however, from scientists within the FDA to the policy of non-regulation and substantial equivalence of transgenic foods. A 2004 paper (Freese and Schubert, 2004) showed that there were internal FDA memos documenting an overwhelming consensus among the agency’s scientists that transgenic crops can have unpredictable, hard-to-detect side-effects – allergens, toxins, nutritional effects, new diseases. They had urged their superiors to require long-term studies. According to the authors of the paper, these communications were ignored.

FDA policy: Leave GMOs unregulated, untested

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

The biotechnology industry essentially won the battle for non-regulation of transgenic foods when in 1992 the FDA released a policy statement on transgenic foods via the US *Federal Register*, the standard protocol for setting federal regulatory policy:

‘The agency is not aware of any information showing that foods derived by these new methods differ from other foods in any meaningful or uniform way’ (57 Fr 22991 [1992-05-29]). The main elements of the regulatory framework are essentially voluntary. Companies that wish to release a genetically engineered food onto the market decide whether or not to consult with the federal agencies, and decide what scientific data to submit. The FDA does not test the products for safety (Mellon and Rissler, 2003). The regulators rely ‘almost exclusively on information provided by the biotech crop developer, and those data are not published in journals or subjected to peer review’ (Friends of the earth, 2004).

If we had studied GMOs when they came out, they would have been regulated or banned

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

In the early stages of the development of crop transgenics in the 1980s, thorough scientific scrutiny of this truly radical technology would likely, in this author’s opinion, have led to restrictions on cultivation and marketing of transgenic products, and may have resulted in non-approval altogether. A central factor in this failure has been the early influence of the biotechnology industry, better termed dominion, over the highest levels of the federal regulatory agencies, which led to a ‘hands-off’ policy regarding regulation of transgenic foods.

US allowed GMOs without study, and other countries follow our example

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

Instead of (actually in spite of, as discussed later) a period of scientific scrutiny early in the evolution of transgenic crops to determine their safety and integrity, these crops were given the green light, resulting in the investment of billions of dollars and thousands of professional careers worldwide. Many countries have either modeled their transgenic foods regulatory system partly or wholly on that of the US, or depended on the US regulatory system as a sanctioning entity for the approval of transgenic crops.

GMOs contaminate neighboring natural plants

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

Pollen migration and seed escape from grain transportation resulting in gene flow from transgenic crops to non-transgenic crops and to wild relatives of transgenic crops are issues of substantial concern (Chapela and Quist, 2001; Eastham and Sweet, 2002; Mellon and Rissler, 2003; Yoshimura et al., 2006; Caruso, 2007b; Heinemann, 2007; Dalton, 2008). Such transgene transfer and introgression has led to stable incorporation (six years) of herbicide resistance transgenes into wild or weedy relatives and to herbicide-resistant hybrid weeds (Légère, 2005; Warwick et al., 2007) as well as Bt-expressing hybrid plants in the wild (Vacher et al., 2004). Contamination of nontransgenic certified seed by transgenic seed in crops in which transgenic varieties have been developed is widespread in North America (Marvier and Van Acker, 2005). One study found that 32 out of 33 non-transgenic certified canola seed lots were contaminated with transgenic canola (Friesen et al., 2003).

Current system has inadequate testing for allergens or toxins in GMOs

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

A food product – for example, a wine grape, a fresh tomato, or a grain of wheat – can be seen as a ‘symphony’ of compounds that make up the potential gustatory and nutritive experience. In the case of transgenic foods, one or more of this collection of compounds may be ‘rogue’, novel, or misformed proteins, inadvertently produced in the transgenics process, and which may be allergenic or toxic, as discussed later in this paper. Under the current system of oversight, transgenic foods during the crop development and subsequent stages are inadequately checked for these compounds, and are dispensed in a system that is largely untraceable if there are health problems amongst consumers.

EPA testing is faulty and companies manipulate results

Jeffrey M. Smith (Former US National Institutes of Health scientist Candace Pert describes Mr. Smith as “the leading world expert in the understanding and communication of the health issues surrounding genetically modified foods”, Executive Director of Institute for Responsible Technology) 22 May 2007, Plant-Incorporated Protectants; Potential Revisions to Current Production Regulations, [www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm](http://www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm)

EPA also requires tests of the GM protein’s stability by measuring how quickly the protein is broken down in test tubes with digestive enzymes and acid. These studies, however, do not accurately predict what happens inside the human gut and cannot accurately distinguish between known allergens and non-allergens. In addition, companies manipulate results by using a stronger pH and more enzymes to breakdown their protein more quickly. Monsanto, for example, “used 2000 times the amount of pepsin by weight recommended in the WHO/FAO protocol,” and a pH of 1.2, rather than the recommended 2.0. The EPA’s Science Advisory Panel also concurred that “The normal population has a relative higher gastric value than the pH 1.2 or 1.5,” and that using lower values does “not mimic the physiological state.”

HARMS

Scientific evidence of environmental harm by GMOs is motivating some countries to regulate

Lori Wallach, (attorney; Director, Public Citizen’s Global Trade Watch Division) 11 May 2006, "Final WTO Tribunal Decision on GMO Policy Reaffirms Lower Panel: WTO Wades into Food Fight, but Stops Short of Ruling Against Underlying GMO Policy" (Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts) [www.citizen.org/pressroom/release.cfm?ID=2202](http://www.citizen.org/pressroom/release.cfm?ID=2202)

Scientific evidence of environmental harms caused by genetically engineered crops and the threat to human health posed by pharmaceuticals grown in food crops will not dissipate, and neither will concentrated efforts by concerned government officials to regulate these crops to protect biodiversity, ecosystems and human health. Trying to use the WTO to reverse this trend will only boomerang on the WTO.

GMOs have been proven to cause adverse health effects

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html)

There is more than a casual association between GM foods and adverse health effects. There is causation as defined by Hill's Criteria in the areas of strength of association, consistency, specificity, biological gradient, and biological plausibility.The strength of association and consistency between GM foods and disease is confirmed in several animal studies.Specificity of the association of GM foods and specific disease processes is also supported. Multiple animal studies show significant immune dysregulation, including upregulation of cytokines associated with asthma, allergy, and inflammation. Animal studies also show altered structure and function of the liver, including altered lipid and carbohydrate metabolism as well as cellular changes that could lead to accelerated aging and possibly lead to the accumulation of reactive oxygen species (ROS). Changes in the kidney, pancreas and spleen have also been documented.

2008 Study: GM corn causes infertility and damage to the immune system

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html)

A recent 2008 study links GM corn with infertility, showing a significant decrease in offspring over time and significantly lower litter weight in mice fed GM corn. This study also found that over 400 genes were found to be expressed differently in the mice fed GM corn. These are genes known to control protein synthesis and modification, cell signaling, cholesterol synthesis, and insulin regulation. Studies also show intestinal damage in animals fed GM foods, including proliferative cell growth and disruption of the intestinal immune system.

UK studies: GM soy causes sickness and death in test animals

Jeffrey M. Smith (Former US National Institutes of Health scientist Candace Pert describes Mr. Smith as “the leading world expert in the understanding and communication of the health issues surrounding genetically modified foods”, Executive Director of Institute for Responsible Technology) 22 May 2007, Plant-Incorporated Protectants; Potential Revisions to Current Production Regulations, <http://www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm> (brackets in original)

It is noteworthy that when a UK study revealed that soy allergies skyrocketed by 50% soon after GM soy was introduced there, the symptoms linked to soy consumption included many that are associated with glyphosate exposure. [The allergy study identified irritable bowel syndrome, digestion problems, chronic fatigue, headaches, lethargy, and skin complaints, including acne and eczema, all related to soy consumption. Symptoms of glyphosate exposure include nausea, headaches, lethargy, skin rashes, and burning or itchy skin. It is also possible that glyphosate’s breakdown product AMPA, which accumulates in GM soybeans after each spray, might contribute to allergies.] In another study on herbicide-tolerant Liberty Link corn, twice the number of chickens died, compared to those fed commercial non-GMO feed.

New wave of pharmaceutical GM crops may contaminate the food chain and pose grave health risk

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Moreover, plants carrying pharmaceutical and industrial traits, such as plants engineered to produce contraceptives, growth hormones, blood thinners, industrial enzymes, and vaccines, represent the next wave of GM crops. The transfer of transgenes from industrial and biopharmaceutical crops to food crops may contaminate the food chain and pose grave human health and environmental risks.

GM crop risks: Superweeds, resulting in environmental damage and higher costs to farmers

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Other risks associated with GM crops are the transfer of genes from GM crops to conventional crops (genetic pollution) and the development of herbicide-resistant or insect-resistant superweeds. One possibility is that GM crops may themselves become weeds. For example, herbicide-tolerant cotton seeds left in the fields from the previous season’s crop may germinate in the current wheat crop, thus necessitating the application of a more potent weed-killer. Another possibility is that GM crops might transfer transgenes conferring herbicide resistance or insect resistance to other plants, which could then become superweeds immune to herbicides or to insect predators. The ecological consequences of creation and dissemination of such superweeds within the farm and into the broader environment are difficult to predict. The control of superweeds immune to the most commonly used herbicides might require the use of more toxic herbicides, resulting in greater environmental harm and higher costs to farmers.

GM crops lead to herbicide resistance

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

A comprehensive review of the literature on GM crops published in 2007 by Friends of the Earth International (FOEI) concluded that the cultivation of GM crops in the United States has resulted in a significant increase in herbicide use. One of the reasons for greater herbicide use was the evolution of herbicide resistance by weeds, which forced farmers to apply other, more toxic herbicides. The authors of the FOEI study suggest that the steep increase in the number of weeds resistant to Monsanto’s herbicide Roundup is a direct consequence of the increased and more frequent use of Roundup associated with the cultivation of Roundup-resistant soybeans, cotton, and corn. Thus, far from reducing herbicide use, the introduction of herbicide tolerant crops appears to have increased both the quantity and the toxicity of the herbicides applied.

Bt resistance developing: Organic and poor farmers will be impacted

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

A related concern about GM crops is that the widespread cultivation of Bt resistant crops might likewise accelerate the development of Bt resistance in insects and result in the use of greater quantities of more toxic insecticides. The development of Bt resistance will diminish the utility of Bt not only for farmers growing Bt-resistant crops but for neighboring farmers who use microbial Bt as a natural insecticide on conventional crops. Organic farmers and poor farmers in developing countries who cannot afford synthetic pesticides are those likely to be most affected. Consequently, developing countries considering the adoption of Bt-resistant crops should carefully evaluate the socioeconomic implications of potential acceleration of Bt resistance in insects.

GM crops worsen poverty among small farmers in poor countries

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Third, small farmers who incur debt in order to purchase the expensive seeds and chemical inputs run the risk of bankruptcy if yields fluctuate or if output prices decline. Fourth, even poor farmers who do not purchase GM seeds may nevertheless incur substantial economic losses if the GM seeds boost the yields of wealthy farmers and depress agricultural commodity prices. Fifth, GM crops may exacerbate rural poverty by enabling large-scale producers to reduce the use of manual labor (for example, by using herbicide-tolerant crops to reduce the need for manual weeding). In developing countries, where labor is abundant, the labor-saving benefits of GM seeds will likely accrue to large commercial farmers at the expense of landless laborers and small farmers who supplement their income through part-time employment on large commercial farms. Finally, if GM crops contaminate non-GM crops, farmers in developing countries who export their crops to countries that restrict GM products (such as EC member countries) could suffer enormous financial losses. In short, GM crops pose significant socioeconomic risks to small farmers.

GM crops = low yields, financial losses, mounting debts, risk of catastrophic food supply disruption

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

The adoption of GM seeds also raises a variety of risks associated with the corporate domination of the food supply. Farmers who purchase seeds produced by the biotechnology industry may suffer financial losses because these seeds may not be suitable for local conditions, such as drought and salinity. In Brazil and Paraguay, for example, many farmers experienced disappointing harvests and faced mounting debt when their GM soybean crops performed worse than conventional varieties during drought conditions. Regrettably, the proprietary nature of GM seeds limits the ability of farmers to modify and adapt these seeds to unique local requirements. Furthermore, as farmers become less self-reliant and increasingly dependent on seeds and chemical inputs manufactured by the agrochemical industry, many will lose the cultural knowledge and skills required to grow subsistence crops using traditional methods. This loss of skills and cultural knowledge threatens to undermine the cultural integrity of local and indigenous communities and to expose these communities to catastrophic supply disruptions or onerous debt if input prices increase or output prices decline.

GM crops = harm to beneficial soil organisms. Impact: environmental damage + serious unknown risks

Prof. [Carmen G. Gonzalez (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=476828)Seattle University - School of Law) 2007, [Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007](\l%20) "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Similarly, if the cultivation of GM crops by farmers in developing countries harms beneficial soil organisms, those most affected are likely to be farmers who rely on such soil organisms to maintain soil fertility because they cannot afford or do not want to use chemical fertilizers. The disruption of natural pest control and the reduction of soil fertility will depress agricultural production. Agrochemical use is likely to increase in order to replenish soil fertility and to combat pests—with resulting harm to human health and the environment. In sum, the GM crops that promise to diminish agrochemical use may in fact increase the use of chemical pesticides and synthetic fertilizers by accelerating herbicide resistance and insecticide resistance, by harming the predators of target species and by harming beneficial soil organisms. GM crops also introduce novel risks, such as the transfer of transgenes to conventional crops with uncertain but potentially serious consequences.

Lost economic opportunity. Weak regulation of GMOs creates problems in the marketplace.

Jasmin Melvin (journalist) 5 Dec 2008, REUTERS news service, "Increased oversight of GMO crops needed-US GAO" <http://www.reuters.com/article/idUSN0547754020081206>

The U.S. Department of Agriculture, U.S. Food and Drug Administration and U.S. Environmental Protection Agency regulate GMO crops. "As pointed out by GAO, the three regulatory agencies still do not adequately coordinate their regulation of the food safety or environmental consequences of these crops," the Center for Science in the Public Interest, a nonprofit health advocacy group, said. Each agency contends that the unapproved GMO crops that were released have not caused any harmful effects to people, animals or the environment. But, the releases have led to food recalls and lost trade opportunities that economists estimate cost producers millions of dollars, the GAO said. "When unapproved genetically engineered crops are detected in the food and feed supply, food safety concerns rise, markets are disrupted and consumer confidence falls," said Democratic Sen. Tom Harkin of Iowa in a statement. Republican Sen. Saxby Chambliss of Georgia agreed that unapproved GMO crops in the market is a problem requiring swift action. "We must do all we can do to enhance the effectiveness of oversight functions so the technology continues to be available as new products are introduced," he said in a statement. Crop developers are subject to periodic inspections, but the GAO says the Agriculture Department lacks the resources to inspect every site and the EPA has not made inspections a priority.

Genetically engineered crops are not the same as natural breeding

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html)

Natural breeding processes have been safely utilized for the past several thousand years. In contrast, "GE crop technology abrogates natural reproductive processes, selection occurs at the single cell level, the procedure is highly mutagenic and routinely breeches genera barriers, and the technique has only been used commercially for 10 years."

SOLVENCY

Plan Advocate: EPA should investigate GM crops, stop relying on companies’ claims

Jeffrey M. Smith (Former US National Institutes of Health scientist Candace Pert describes Mr. Smith as “the leading world expert in the understanding and communication of the health issues surrounding genetically modified foods”, Executive Director of Institute for Responsible Technology) 22 May 2007, Plant-Incorporated Protectants; Potential Revisions to Current Production Regulations, <http://www.seedsofdeception.com/Public/MediaCenter/TestimonytoEPA-May2007/index.cfm>

We know of numerous changes to nutrient and toxin levels in GM crops, both experimental and commercialized, which may of themselves cause harm to consumers and the environment. For example, the stems of *Bt* corn varieties MON 810 and *Bt* 11(as well as Roundup Ready soybeans) have markedly increased levels of lignin (by 20%). Lignin is produced through a complex series of steps, which also create other important plant constituents. Since lignin has increased, the amount of other related compounds in its biosynthetic pathway may have also changed. These include “rotenone, a plant-produced insecticide that may cause Parkinson’s disease.” Should the EPA ignore changes in the levels of this compound just because the FDA does? I hope not. I strongly urge the EPA to take responsibility for addressing the impact of these changes, even though it has traditionally been the FDA that has officially abdicated that responsibility. Even if the EPA continues to overlook the direct impacts of altered compounds, it *must* take these into account when assessing their interaction with the plant-produced toxin. Thus, EPA should usher in the use of modern detection methods to analyze the full changes in the RNA, protein and metabolic profiles of GM crops, rather than allowing companies to use obsolete and insensitive technologies to characterize their creations.

Plan Advocate: European Community requires testing and labeling of GMOs

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#> (brackets added)

By contrast, the EC [European Community] has adopted a process-oriented approach, which assumes that genetically altered products may pose novel or unique human health and environmental risks as a consequence of genetic modification. Genetically altered products are therefore subject to a premarketing approval process involving extensive risk evaluation and public input. In addition, genetically modified products must bear a label indicating the presence of GMOs and must be traceable through the production and distribution chain via an elaborate information tracking system.

DA RESPONSES

Developing world hunger caused by poverty, not lack of food

Impact: Increasing food production won’t solve

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

First, hunger in the developing world is a function of poverty rather than food scarcity. In the last several decades, global food production has far outpaced population growth, and many developing countries experiencing chronic malnutrition are net food exporters. People go hungry because they are poor—because they lack the means with which to purchase or grow food. Efforts to tackle undernourishment must therefore focus on poverty reduction rather than merely boosting food production.

Thousands of tests show no increase in yield of GM crops

Bt corn is the only exception and its yield was increased by traditional breeding improvements

Dr Amy Dean, D.O. and Dr Jennifer Armstrong, M.D, statement reviewed and approved by the Executive Committee of the American Academy of Environmental Medicine, 8 May 2009, "Genetically Modified Foods" [www.aaemonline.org/gmopost.html](http://www.aaemonline.org/gmopost.html)

Also, because of the mounting data, it is biologically plausible for Genetically Modified Foods to cause adverse health effects in humans. In spite of this risk, the biotechnology industry claims that GM foods can feed the world through production of higher crop yields. However, a recent report by the Union of Concerned Scientists reviewed 12 academic studies and indicates otherwise: "The several thousand field trials over the last 20 years for genes aimed at increasing operational or intrinsic yield (of crops) indicate a significant undertaking. Yet none of these field trials have resulted in increased yield in commercialized major food/feed crops, with the exception of Bt corn."However, it was further stated that this increase is largely due to traditional breeding improvements.

Giving food to poor countries undermines local farmers and makes hunger worse

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Second, poverty and undernourishment are predominantly concentrated in rural areas in the developing world. Despite the global trend toward urbanization, some seventy-five percent of the developing world’s poor reside in rural communities. The majority are small farmers whose livelihoods depend on marketing their agricultural products. Consequently, the provision of free or low cost food to developing countries through aid or trade may exacerbate hunger by depressing food prices and undermining the livelihoods of small farmers.

GMOs will not reduce poverty – they’re bad for small farmers

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

Based on the foregoing analysis, it is unlikely that the introduction of the most commonly commercialized GM crops in developing countries will reduce poverty, promote food security, and enhance the well-being of small farmers. On the contrary, GM crops are likely to be structurally biased against small farmers due to the high cost of the seeds and inputs, the intellectual property protections, and the increasing unavailability (in the aftermath of structural adjustment) of subsidized credit, extension services, and other government-funded programs to provide small farmers with technical and financial assistance.

GM crops don’t boost food production: Yields are either lower or at most equal to non-GMO

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

While GM crops have the potential to enhance agricultural productivity, there is widespread consensus that GM crops, unlike their Green Revolution counterparts, have not to date boosted food production.159 Studies suggest that yields are either lower than or at most equivalent to non-GM varieties.

“Golden Rice” success story: Actually had several problems

Prof. Carmen G. Gonzalez (Seattle University - School of Law) 2007, Georgetown International Environmental Law Review (GIELR), Vol. 19, 2007 "Genetically Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986864#>

The proponents of biotechnology claim that Golden Rice can address the problem of Vitamin A deficiency, a condition that kills one million children each year and produces over fourteen million cases of eye damage in pre-school children in developing countries. However, critics of biotechnology have raised several important concerns in the context of Golden Rice that are relevant to all genetic modifications designed to enhance nutritional quality. First, it is unclear whether malnourished individuals consume sufficient fat to metabolize the beta-carotene in Golden Rice and convert it to Vitamin A. Second, the yellow color of the rice may cause it to be rejected for cultural reasons.166 Third, Vitamin A deficiency is a symptom of diminished crop and dietary diversity. Rather than genetically altering the rice consumed by the poor, it might be preferable to address the underlying problem by introducing multi-cropping in rice fields in order to encourage rice farmers to cultivate leafy green vegetables that provide Vitamin A and a whole range of other micronutrients.

GMO crop yields are not higher, and sometimes a lot lower, than normal crops

Don Lotter Ph.D. (Agroecology from the Univ of California Davis; post-doctoral work on organic crop systems at Rodale Institute in Pennsylvania; teaches at Imperial Valley College, Santa Monica College, and Univ of California Davis) Dec 2008, “The Genetic Engineering of Food and the Failure of Science – Part 1: The Development of a Flawed Enterprise” International Journal of Sociology of Agriculture and Food (peer-reviewed professional publication) <http://www.ijsaf.org/archive/16/1/lotter1.pdf>

Contrary to popular belief, yields of the major transgenic crops have been shown to be no higher than and sometimes significantly below those of non-transgenic crops, with net returns and profits commonly lower (Myerson, 1997; Qaim and Zilberman, 2003; Benbrook, 2004; Josta et al., 2008). The incentive for using transgenic crops is reported to be ‘the convenience effect’ of reducing labor costs, with the greatest cost reductions on larger farms (Seedquest, 2000; Fernandez-Cornejo, J. and W. McBride. 2002; Lopez Villar et al., 2007).

CHEMICAL WARFARE: THE CASE FOR THE KID-SAFE CHEMICAL ACT

by Michael Bixby

Scott Streater, journalist with the Dallas STAR-TELEGRAM, said it best in 2006:

“Picture this scenario: You own the Wonderful Chemical Co., and you have developed a new compound that when added to dishwasher detergent promises to help make plates remarkably clean every time. You want to put it on the market as quickly as possible. Lucky for you, the federal approval process for new chemicals is suited to companies like yours. All you have to do is apply to the Environmental Protection Agency's new-chemicals program, an overworked corner of the agency that handles an average of about 142 applications a month. Staff members have 90 days to review your application and determine whether the chemical poses a risk to human health or the environment. You're not required to test your chemical for health effects unless evidence already exists of potential harm. You do not have to develop computer models that demonstrate what happens to your chemical once it enters the environment, how long it stays in the air or soil or whether it could get into people. And if problems are discovered after it is in widespread use, it's up to the EPA to prove that your chemical is to blame.” (*Scott Streater (Staff Reporter) 3 December 2006, “Regulatory System Called into Question” Star-Telegram (Dallas TX newspaper)* [*http://coeh.berkeley.edu/docs/news/2006-12-03\_startelegram.pdf*](http://coeh.berkeley.edu/docs/news/2006-12-03_startelegram.pdf)*)*

This description represents the chemical environmental policy in place today in the United States and it is why we stand resolved: that the United States Federal Government should significantly change its environmental policy.

1) Definitions

**Significant**: important; important in effect or meaning (Princeton University’s Wordnet 3.0 Dictionary, <http://wordnetweb.princeton.edu/perl/webwn?s=significant>)

**Environmental policy:** The official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency. (*Dr. William P. Cuningham (Ph.D. in Botany from the University of Texas), Dr. Mary Ann Cunningham (PhD in Geography at the University of Minnesota), and Dr. Barbara Woodworth (Ph.D. in Science Education from the University of Iowa), 2001, Environmental Science: A Global Concern, 7th Edition, McGraw Hill,* [*http://highered.mcgraw-hill.com/sites/0070294267/student\_view0/glossary\_e-l.html*](http://highered.mcgraw-hill.com/sites/0070294267/student_view0/glossary_e-l.html)*)*

2) Inherency: The state of the Status Quo with regard to chemicals in our environment

A. The TSCA is weak.

In 1976, the TSCA (Toxic Subtances Control Act) revolutionized our environmental policy in the United States; however, this law has 3 serious weaknesses

1. Thousands of Chemicals were “grandfathered” into the system
2. Little or no testing of new chemicals
3. Chemical regulation is rare. We see all 3 of these in the following evidence from…

Reproductive Health Technologies Project (Independent, non-profit public health advocacy group; they work on preventing birth defects and infertility) 2008 “Environmental Health Legislative Proposals” <http://www.rhtp.org/fertility/vallombrosa/documents/2008-09EHPolicyProposals.pdf>

With its passage in 1976, TSCA declared “safe” some 62,000 chemicals already in use, with little or no data to support such a declaration. Since enactment, another 20,000 chemicals have entered the stream of commerce with little or no data to support their safety. In the 30 years since TSCA was enacted, EPA has banned only five chemicals.

B. The American Medical Association says we need the Kid-Safe Chemical Act

Reproductive Health Technologies Project (Independent, non-profit public health advocacy group; they work on preventing birth defects and infertility) 2008 “Environmental Health Legislative Proposals” <http://www.rhtp.org/fertility/vallombrosa/documents/2008-09EHPolicyProposals.pdf>

In June of 2008, the American Medical Association’s House of Delegates passed a resolution calling upon the US government to reform its chemicals policy and restructure TSCA. The pre-market testing regimens that the Food and Drug Administration currently uses for pharmaceuticals and the data requirements for chemicals that are part of the European Union’s REACH (Registration, Evaluation, Authorization and Restriction of Chemical substances) provide models for what new comprehensive chemical policy can be. A vehicle for reform was recently introduced in Congress: The Kid Safe Chemical Act, introduced in the Senate by Senator Lautenberg and in the House by Representatives Solis and Waxman.

3) Harms. Lack of environmental chemical reform is causing significant harms

HARM 1) Diseases and Deaths

Environmental Working Group (non-profit environmental advocacy organization) 2009, “Letter to Senators Lauterberg, Solis, Boxer and Waxman” Signed by 60 Private Organizations including The Sierra Club and Citizens for Environmental Justice [www.ewg.org/files/EWG-KSCALetter-signedorganizations.pdf](http://www.ewg.org/files/EWG-KSCALetter-signedorganizations.pdf)

*TSCA* is so deficient as a public health statute that EPA was unable to ban asbestos using the law, even though asbestos is perhaps the most potent cancer causing substance ever introduced into commerce and kills about 10,000 people per year. In the more than 30 years since *TSCA* was passed, EPA has evaluated the safety of just 200 out of 80,000 chemicals, and banned only five. The human race is now polluted with hundreds of industrial chemicals with little or no understanding of the consequences. Babies are born pre-polluted with as many as 300 industrial chemicals in their bodies when they enter the world. Testing by the Environmental Working Group has identified 455 chemicals in people and, again, no one has any idea if these exposures are safe. We are at a tipping point where the pollution in people is increasingly associated with a range of serious diseases and conditions from childhood cancer, to autism, ADHD, learning deficits, infertility, reproductive disorders and birth defects. Yet, even as our knowledge about the link between chemical exposures and human disease grows, the government has almost no authority to protect people from even the most hazardous chemicals on the market.

HARM 2) $54 billion in health care costs

Dr. Philip J. Landrigan (M.D. and Professor and Chair Mount Sinai School of Medicine), Dr. Clyde B. Schechter (M.D. and Associate Professor at Albert Einstein College of Medicine), Dr. Jeffrey M. Lipton (M.D., Ph.D. Professor of Pediatrics at Albert Einstein College of Medicine) Dr. Marianne C. Fahs (Ph.D., MPH, Professor at CUNY, specialist in public health economics), and Joel Schwartz (The Health Policy Research Center, New School for Social Research), July 2002 “Environmental Pollutants and Disease in American Children” Environmental Health Perspectives [www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF](http://www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF)

In summary, diseases of toxic environmental origin make an important and insufficiently recognized contribution to total health care costs among children in the United States. The costs of these diseases currently amount to $54.9 billion annually, approximately 2.8% of the total annual cost of illness in the United States.

4) The Plan. To supply what’s missing in the Status Quo and solve for the harms, we offer the following plan:

**Agency**: Congress and the President

**Mandates**: The Kid-Safe Chemicals Act of 2008 shall be enacted into law.

The main features of the bill are:

**1.** Requirement of credible safety data on chemicals from the manufacturers

**2.** Shift the burden to demonstrate safety onto the chemicals industry, allowing the EPA to determine if the burden has been met.

**3.** Authorize the EPA to require additional testing as new science and testing methods emerge

**4.** Establish a Center for Disease Control biomonitoring program to assess human exposure to toxic chemicals

**5.** Creation of a publicly accessible database on chemical hazards.

**6.** Incentives for the development of safer alternatives through “green chemistry”

**Funding**: from general federal revenues.

**Enforcement**: the Environmental Protection Agency, the Center for Disease Control & Prevention and any other necessary agencies.

**Timing:** 30 days after an affirmative ballot. And the affirmative team reserves the right to further explain this plan as needed.

5) Solvency: KSCA removes harmful chemicals from the market

Healthy Child, Healthy World, 20 May 2008, “Kids Safe Chemicals In Congress” Quoting Dr. Daryl Ditz (Ph.D. in Engineering and Public Policy from Carnegie Mellon University and Senior Policy Advisor for Chemicals Program at the Center for Int’l Environmental Law)<http://healthychild.org/blog/comments/kids_safe_chemicals_act_back/>

After years of apathy and inaction by the U.S. government, Congress is awakening to the pervasive health impacts from dangerous chemicals,*“ according to Daryl Ditz, at the nonpartisan Center for International Environmental Law. “*The Kid Safe Chemicals Act would help weed out the worst chemicals, reward companies that offer safer products, and help to regain U.S. leadership on this global problem.

6) Advantages. It is important to note that the KSCA was modeled upon the EU’s legislation “REACH”

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

The KSCA attempted to bring the TSCA more in line with REACH requirements.

Because of this, we can look at the empirical evidence on the impacts of REACH.

Advantage 1: Improved Public Health

Mark Schapiro (editorial director of the nonprofit Center for Investigative Reporting, Author of the Book “Exposing A Toxic U.S. Policy”), October 2007 “Toxic Inaction: Why Poisonous, Unregulated Chemicals End up in our Blood” Harpers Magazine

Critics of stricter chemical regulations have long contended that the price of compliance would be far too steep. But the E.U. estimated that REACH would cost European chemical manufacturers about $4 billion over fourteen years—a figure that amounts to less than 1 percent of their combined yearly revenue. The E.U. further calculated that these expenses would be repaid many times over by the resulting health benefits. According to their [European Union] figures, REACH would prevent some 4,500 occupational cancer cases each year and reduce European health-care costs from ailments related to chemical exposure by $69 billion over the next three decades. Moreover, by establishing what will be the first open, actually free market in chemicals, in which informed consumers will be able to make decisions as to what risks they are willing to take, REACH promotes new research into the development of safer chemicals. Chemists have already come up with substitutes for some of the most problematic toxic chemicals on the market, and the E.U. estimates that its environmental initiatives have spawned billions of dollars in “green” industries and technologies.

Advantage 2: Economic savings

Dr. Joseph DiGangi (Ph.D., Senior Scientist at the Environmental Health Fund),1 Sept 2004 “Reach and the Long Arm of the Chemical Industry” Multinational Monitor

The European Union estimates the direct cost of REACH to be approximately $4 billion; or less than 0.1 percent of EU chemical industry sales. The indirect costs of the proposal have been estimated at approximately $15 billion to $30 billion. Though not easily quantified, the monetary benefits of REACH have also been estimated. The European Union estimates approximately $20 billion to $50 billion in savings, taking into account only occupational health benefits. By expanding the health benefits of REACH to the general public--but not taking into account environmental benefits--the World Wildlife Fund estimates approximately $180 billion in net health benefits, over and above the costs of implementation.

Judge, In conclusion, the Kid-Safe Chemical Act represents a step toward accountability in our environmental policy. By acting now, we can create a safer future for everyone with an Affirmative ballot at the end of today’s debate.

2A EVIDENCE: KID-SAFE CHEMICAL ACT

TOPICALITY

“Environmental Policy”: KSCA deals with the EPA and the environment

Andy Igrejas (Environmental Health Campaign Manager at Pew, policy analyst and coalition coordinator at the Environmental Health Fund) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts, <http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf>

On May 20th, 2008, Senator Frank Lautenberg (D-NJ), Representative Hilda Solis (D-CA) and Representative Henry Waxman (D-CA) introduced the Kid-Safe Chemicals Act (H.R.6100/S.3040). The legislation would overhaul the Toxic Substances Control Act (TSCA) to protect our most vulnerable populations from harmful chemicals and improve EPA’s ability to safeguard public health and the environment.

”Significantly change”: KSCA = radical change

MCS America (consumer awareness group), July 2008 “Chemical Legislation: Kid Safe Chemical Act” <http://mcs-america.org/July2008pg1617.pdf>

It’s high time for radical changes in the way chemicals are regulated in the United States! The Kid Safe Chemical Act holds the potential to be this much needed change.

INHERENCY

Chemical manufacturers prevent reform, maintain status quo

Professor Wendy E. Wagner (J.D. from and Masters in Environmental Studies from Yale, Professor of Law University of Texas, former Pollution Control Coordinator with the Department of Agriculture), 2008 “Using Competition-Based Regulation to Bridge the Toxics Data Gap” INDIANA LAW JOURNAL <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1090090>

While such a counterproductive regulatory scheme would seem at first blush to be a perfect candidate for public-spirited reform, the political system is poorly equipped to redress the perverse incentives for chemical ignorance. The highest stakes participants in toxics policy are the chemical manufacturers and, not surprisingly, they have become well-organized and fortified against reform of a statute that they find quite congenial to their interests. The diffuse public, whose views are loosely represented by a few public interest groups, cannot begin to match this strong manufacturer block with a vested interest in the status quo.

Passage of KSCA unlikely

Samuel Loewenberg (public policy & business journalist, and former MacCracken Fellow in the doctoral program in American Studies at New York University), September 20-26, 2008 “US To Debate Tightening Legislation on Safety of Chemicals” THE LANCET (a British Medical Journal) (Marty Durbin: Vice-President of Federal Affairs at ACC, Managing Director of Legislative Affairs at the ACC, former Legislative Assistant for members in both the U.S. Senate and House) [brackets added]

[Marty] Durbin [of the American Chemistry Council] said he was skeptical that the children's chemical reform bill would pass in its current form, even with the success of the consumer and health groups on phthalates.

35% of Asthma, 10% of cancer, and 20% of neurobehavioral disorders caused by toxins

Malcolm D. Woolf (Masters of Public Administration and Public Policy, and a J.D. from Virginia, Former Staff Director of the Natural Resources Committee of the National Governors Association, Former Minority Counsel to the U.S. Senate Environment and Public Works Committee, o-Chair, Maryland Energy Administration) May 2006 “Sound Chemicals Management: Why Modernization of the U.S. Toxic Substances Law is Good for Public Health and Business” Sustainable Development Law & Policy <http://vlex.com/vid/modernization-toxic-substances-good-335508>

The real question of course is - how safe are we? Some medical researchers estimate that environmental toxins cause up to 35 percent of asthma cases, ten percent of cancer cases, and twenty percent of neurobehavioral disorders in children and contribute to respiratory disorders, cancer, infertility, and heart disease in adults.

Obama won’t increase regulatory burden on chemicals industry

Kara Sissel, December 2008, “Regulatory Challenges: Policies in Transition” Chemical Week [www.chemweek.com/envirotech/environment/Regulatory-Challenges\_15742.html](http://www.chemweek.com/envirotech/environment/Regulatory-Challenges_15742.html)

The U.S. chemical industry was somewhat apprehensive about the possibility of increased regulatory costs under an Obama administration, but Obama's recent economic team appointments have helped assuage some of those concerns, says ACC president and CEO Cal Dooley. Obama has named Timothy Geithner as Treasury Secretary, and Lawrence Summers as the head of the National Economic Council. "These individuals are historically pragmatic and centrist in their approach, which instills confidence that the administration will be one we can work with," Dooley says. "We are reasonably confident that the Obama administration will, to a certain degree, mimic the approach of President Clinton," who was sensitive about maintaining the competitiveness of the U.S. manufacturing industry, he says.

Current information reporting programs not enough

Scott Streater (Staff Reporter), December 3, 2006, “Regulatory System Called into Question” Dallas, TX Star-Telegram <http://coeh.berkeley.edu/docs/news/2006-12-03_startelegram.pdf>

That information, some of it already available on the EPA's Web site, is more than enough, said Russell, the American Chemistry Council official. "It's just simply not accurate to say that information doesn't exist on these chemicals," he said. But Auer concedes that the information is limited to basic screening data, not in-depth research on longterm health effects. Jane Houlihan, vice president of research at the Environmental Working Group, a national advocacy organization, said, "It's better than nothing. But is it what we need in order to know whether these chemicals are safe? Absolutely not.

Neither Congress nor EPA fixing problems

GAO (United States Government Accountability Office) Report to Congress January 2009 “High Risk Series: An Update” <http://www.gao.gov/new.items/d09271.pdf>

Neither Congress nor EPA has implemented the most important recommendations aimed at providing EPA with the information needed to support its assessments of industrial chemicals. Without greater attention to EPA’s efforts to assess toxic chemicals, the nation lacks assurance that human health and the environment are adequately protected.

KSCA never made it out of committee

David Brownfield (J.D.), 2008 “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via Lexis-Nexis)

Unfortunately, the KSCA never made it out of committee. The TSCA remains intact as passed in 1976, and the EPA remains limited in its ability to control the manufacture of chemical substances in the U.S.

Industry opposes chemical regulation reform

Sarah Bayko (J.D. Univ. of South Carolina School of Law 2006) Spring 2006 “Reforming the Toxic Substances Control Act to Protect America’s Most Precious Resource” Southeastern Environmental Law Journal (accessed via Lexis-Nexis)

Another reason to expect significant opposition from the chemical lobby is the lobby's behavior during the formulation of the European Union's (EU) newly adopted program, REACH (Registration, Evaluation, and Authorization of Chemicals), to reform chemical regulation. Adopted in 2005, REACH, like the KSCA, gives industry a greater responsibility for showing the safety of chemicals and it mandates the review of existing chemicals. A House Government Reform report reveals that the chemical industry in the United States persuaded the Bush Administration to lobby EU nations to oppose REACH.

No testing required & no incentive under TSCA

Professor Wendy E. Wagner (J.D. from and Masters in Environmental Studies from Yale, Professor of Law University of Texas, former Pollution Control Coordinator with the Department of Agriculture) January 2009 “Does the precautionary principle make us safer?: Pro” CQ Researcher

The regulation of chemicals in the United States epitomizes what can go wrong when a legal system adopts a non-precautionary approach. Under the Toxic Substances Control Act (TSCA), manufacturers are not required to do any pre- or post-market testing on their chemicals unless mandated by the Environmental Protection Agency. At the same time, there are few to no rewards under the act for producing safer or better-tested chemicals, at least with regard to latent hazards.

If manufacturers do test, they put themselves at competitive disadvantage

Professor Wendy E. Wagner (J.D. from and Masters in Environmental Studies from Yale, Professor of Law University of Texas, former Pollution Control Coordinator with the Department of Agriculture) January 2009 “Does the precautionary principle make us safer?: Pro” CQ Researcher

In fact, chemical manufacturers that do voluntarily test their chemicals may put themselves at a competitive disadvantage: They not only produce evidence that can be used against them by regulators and plaintiffs' attorneys but also dedicate resources to testing that are unlikely to be recouped in sales — either because the testing reveals unwelcome risks or because the positive results cannot be validated readily by consumers or investors.

TSCA “non-precautionary” approach means untested chemicals

Professor Wendy E. Wagner (J.D. from and Masters in Environmental Studies from Yale, Professor of Law University of Texas, former Pollution Control Coordinator with the Department of Agriculture) January 2009 “Does the precautionary principle make us safer?: Pro” CQ Researcher

The TSCA's non-precautionary approach is partly to blame for the resulting ignorance about the long-term safety of most chemicals and for the lack of incentives to develop safer, "greener" chemicals. Over the 30-year-plus history of the legislation, EPA has required testing for fewer than 200 chemicals. Most of the remaining 75,000 chemicals produced during that period are essentially unrestricted and unreviewed with regard to their health and environmental impacts.

No safety testing

Liz Szabo, August 5, 2008 “Toxic plastic toys could go the way of dinosaurs” USA Today <http://www.usatoday.com/money/industries/retail/2008-08-04-toxic-plastics-main_N.htm>

Few of the more than 80,000 chemicals now in use have ever been tested for safety, according to the bill's sponsors, who include Sen. Frank Lautenberg, D-N.J., and Rep. Henry Waxman, D-Calif. The Environmental Protection Agency has required testing of only 200, they say.

Safety testing is either inconsistent or non-existent

Dr. Jody A. Roberts (Ph.D. and an M.S. in science and technology studies from Virginia Tech, Gordon Cain Fellow at CHF [Chemical Heritage Foundation] and Program Manager for Environmental History and Policy CHF), 2009 “Collision Course? Science, Law, and Regulation in the Emerging Science of Low Dose Toxicity” Villanova Environmental Law Journal (accessed via lexis-nexis)

Pre-market screening, as Cranor correctly points out, is inconsistent at best, and non-existent at worst. Current laws also cover only a small fraction of the chemicals actually produced for market use. Producers are required to submit information outlining possible toxicological effects to the government before these chemicals reach the market. Yet, because there is no legal limit to the amount of information that must be produced and turned over to the regulatory agency, most chemicals lack data of any significance.

Chemicals grandfathered in with no health data

Dr. Jody A. Roberts (Ph.D. and an M.S. in science and technology studies from Virginia Tech, Gordon Cain Fellow at CHF [Chemical Heritage Foundation] and Program Manager for Environmental History and Policy CHF), 2009 “Collision Course? Science, Law, and Regulation in the Emerging Science of Low Dose Toxicity” Villanova Environmental Law Journal (accessed via lexis-nexis)

Further complicating the matter, is the fact that the vast majority of these chemicals were grandfathered into the U.S. regulatory system, which yields virtually no health data now or in the future.

EPA does not routinely assess chemical risks under TSCA

GAO (United States Government Accountability Office) Report to Congress, January 2009, “High Risk Series: An Update” <http://www.gao.gov/new.items/d09271.pdf>

GAO has also reported that EPA’s assessments of industrial chemicals under TSCA provide limited information on health and environmental risks. TSCA generally places the burden of obtaining information about the roughly 80,000 chemicals already on the U.S. market on EPA, rather than on the companies that produce the chemicals. The act requires EPA to demonstrate that certain health or environmental risks are likely before it can require companies to further test their chemicals. As a result, EPA does not routinely assess the risks of the industrial chemicals that are already in use. For the approximately 700 new chemicals introduced into commerce annually, chemical companies provide EPA with certain information in premanufacture notices, and EPA can ban or limit their use if this information is inadequate. Although 85 percent of the notices lack any health or safety test data, EPA does not often use its authority to obtain more information.

EPA has inadequate information

GAO (United States Government Accountability Office) Report to Congress, January 2009, “High Risk Series: An Update” <http://www.gao.gov/new.items/d09271.pdf>

The Environmental Protection Agency (EPA) lacks adequate scientific information on the toxicity of many chemicals that may be found in the environment—as well as on tens of thousands of chemicals used commercially in the United States. Scientific information on the toxicity of chemicals is needed to, among other things, support effective and informed decision making on whether EPA should establish controls to protect the public under such environmental laws as the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act (TSCA). EPA’s inadequate progress in assessing toxic chemicals significantly limits the agency’s ability to fulfill its mission of protecting human health and the environment.

EPA makes assumptions or relies on inaccurate industry data

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund**) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts, [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

The EPA doesn’t have a clear picture of what chemicals Americans are exposed to and in what concentrations. It makes assumptions about exposure – or relies on industry information- that can be inaccurate.

Regulatory priorities set by media attention, not actual threats

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund)** 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts <http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf>

With limited information, the government often prioritizes chemicals based on informal criteria, like media attention, that may not reflect the most urgent threats.

TCSA fails on multiple levels: No safety data, not enough time for review, not enough testing

Dr. Leonardo Trasande (Assitant Professor at Mount Sinai School of Medicine, MD, MPP, Co-Director of the Children’s Environmental Health Center), September 16, 2008, “The Urgent Need for Federal Policy Interventions to Prevent Diseases of Environmental Origin in American Children” Testimony to U.S. Senate Environment and Public Works Committee, <http://www.mountsinai.org/img/vgn_lnk/Regular%20Content/File/Patient%20Care/Children/Trasande_EPW_testimony%20FINAL%20091408.pdf>

The Toxic Substances Control Act (TSCA) still fails to reflect children's unique vulnerability and ensure that chemicals are safe before they are allowed to be introduced into our environment. The current regulatory approval system for chemicals grandfathered in 62,000 chemicals, essentially approving them with little or no safety data. EPA has only 60 days to review new chemicals for their safety, and as a result between one and three thousand new chemicals are introduced each year with little or no safety data. Of the 3,000 most highly used chemicals, fewer than half have any toxicity testing data and fewer than one-fifth have been tested for their impact on developing children.

TCSA is largely ineffective

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009, “Teething on Toxins” Fordham Environmental Law Review (accessed via lexis-nexis)

Toxic Substances Control Act (TSCA) was enacted by Congress in 1976 to "regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances." For "chemical substances" within TSCA's regulatory reach, but also possibly regulated by other statutes, EPA must also first make a determination that it is in the public interest to protect against a risk under TSCA as opposed to under another Federal law (or laws) that it administers. TSCA's regulatory reach is also restricted with the specific exclusion of certain chemical substances, including cosmetics and components of cosmetics. TSCA regulates the manufacture, use, and disposal of other chemicals that pose a significant risk of injury to the environment and human health. However, TSCA creates such burdensome factual and evidentiary requirements that it has proven largely ineffective.

Most chemicals untouched by TCSA

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009, “Teething on Toxins” Fordham Environmental Law Review (accessed via lexis-nexis)

Under TSCA, chemical companies must only notify EPA of their intent to manufacture or import new chemicals and to provide any testing, environmental and health effects data that is available. However, EPA estimates that most pre-manufacture notices do not include test data of any kind, and only about 15 percent include health or safety test data - such as acute toxicity of skin and eye irritation data. Chemical companies are not required to develop and submit toxicity information to EPA unless the agency first promulgates a testing rule. Except for chemicals produced in high volumes and posing a substantial risk of exposure, TSCA provides the EPA with authority to impose testing requirements on chemicals only if the EPA can demonstrate by substantial evidence that the existing data are "insufficient" to assess the chemical and the EPA has a "more than theoretical" basis to suspect that the chemical "may present" a risk or hazard. Finalizing test rules can take 2 to 10 years and require the expenditure of substantial resources. The costly and time consuming burden of obtaining data is on EPA, not the chemical companies. EPA assesses production volume and exposure using the pre-manufacture notices; however, chemical company estimates of a production volume and anticipated uses do not generally have to be amended accept in the few cases where EPA promulgates a rule determining that a use of a chemical constitutes a significant new use. EPA has authority to promulgate rules which require chemical companies to submit lists or copies of any existing health and safety rules to EPA. Chemical companies must also to report any information to EPA that reasonably supports a conclusion that a chemical presents a substantial risk of injury to health or the environment. However, EPA has required testing of fewer than 200 of the 62,000 chemicals in commerce when EPA began reviewing chemicals under TSCA in 1979.

Chemicals are approved quickly with no testing

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

Each year two thousand to three thousand new chemicals are submitted to the Environmental Protection Agency (EPA) for review before manufacture. Eighty percent of all applications to manufacture new chemicals are approved without any health or safety data. About eighty percent of those are approved within three weeks. Of the 2,800 chemicals that are produced in quantities greater than one million pounds per year in the United States, only forty-three percent have been tested for their potential human toxicity. Only seven percent have been studied for their possible effects on development. "Americans tend to think that products are safe because they are in the market and must somehow have passed government regulation." In reality, the risks to humans are largely unknown, and the U.S. regulation's lack of testing requirements are a large part of the problem.

Current system is reactive, waiting for damage to be done

Scott Streater (Staff Reporter), December 3, 2006, “Regulatory System Called into Question” Dallas Star-Telegram <http://coeh.berkeley.edu/docs/news/2006-12-03_startelegram.pdf>

The Toxic Substances Control Act, implemented in 1976, dictates how new chemicals are approved and regulated. It also says chemicals must not pose an "unreasonable risk to health or the environment." But the definition of "unreasonable risk" is vague, and it's up to the EPA to do the costly research to show that a chemical poses a risk. People have to be dropping like flies, critics say, before federal regulators can limit or ban the use of a chemical. That's the opposite of what most scientists would consider a comprehensive chemicals policy, said Michael Wilson, a research scientist with the Center for Occupational and Environmental Health at the University of California, Berkeley. "You sort of wait for the airplanes to fall out of the air before you design an air traffic system.

EPA Assessments inefficient putting the public at risk

GAO (United States Government Accountability Office) Report to Congress, January 2009, “High Risk Series: An Update” <http://www.gao.gov/new.items/d09271.pdf>

Although dioxin is a known cancer-causing chemical to which humans are regularly exposed by eating such dietary staples as meats, fish, and dairy products, actions to protect the public will likely be delayed until the assessment is complete. Since EPA estimates that the assessment process for complex chemicals such as dioxin could take 6 to 8 years to complete, the public in the meantime will likely remain at risk. Other toxic chemicals with widespread human exposure whose assessments have been in progress for 10 or more years include formaldehyde, trichloroethylene, and tetrachloroethylene.

Under TSCA, EPA has huge barriers to protecting public safety

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund**) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts, [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

Even where there is information that suggests a chemical is harmful, the EPA faces formidable legal and administrative barrier**s** before taking action to protect public health and the environment. Since TSCA was enacted 32 years ago, only 8 chemicals have been banned under its authority.

No available information for vast majority of chemicals

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund)** 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts, [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

There is no publically available health and safety information for the vast majority of chemicals. Government, industry, and even consumers are often in the dark when trying to identify problem chemicals or use safer ones.

EPA Fails to ban bad chemicals

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009, “Teething on Toxins” Fordham Environmental Law Review(accessed via lexis-nexis)

After obtaining test data, TSCA places the burden of proof on EPA to show that a chemical poses an "unreasonable risk" before EPA can act to regulate its production or use. The substantial evidence rule applies. The test here is the same as that under the FHSA. The requirement that the risk be "unreasonable" involves a balancing test. "The regulation may issue if the severity of the injury that may result from the product, factored by the likelihood of the injury, offsets the harm the regulation itself imposes upon manufacturers and consumers." EPA must also choose the least burdensome requirement that will protect adequately against the risk. EPA's failed attempt to ban asbestos, a known carcinogen, exposes the difficulty of satisfying the statutory prerequisites.

HARMS

Chemicals disrupt endocrine system, increasing cancer and other dysfunctions

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009,“Teething on Toxins” Fordham Environmental Law Review(accessed via lexis-nexis)

The overall impact of endocrine disrupting chemicals is unknown. There is evidence to suggest that endocrine disrupting chemicals may be related to increased rates of breast, prostate, and testicular cancer, among other health problems including reduced fertility, birth defects, endometriosis (a disease of the uterus), malformed reproductive organs, glandular dysfunction, and neurological disorders. Today, 1 in 8 women are diagnosed with breast cancer. For men, the risk of prostate cancer is 1 in 6. In the United States, a woman's lifetime risk of breast cancer has nearly tripled during the past four decades, with less than 10% of cases occurring in women with a genetic predisposition for the disease. Prostate cancer rates have more than doubled in a generation, rising 4.4 percent a year between 1973 and 1992. The incidence has declined since 1992, but it is still 2.5 times its 1973 rate. Prostate cancer is the most common cancer among U.S. men, and the second most lethal.

Chemical BPA known to cause serious health risks

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009, “Teething on Toxins” Fordham Environmental Law Review(accessed via lexis-nexis)

An expert panel sponsored in 2006 by the National Institutes of Health, the U.S. EPA, and Commonweal (a non-profit health and environmental research group) explained that recent trends in human diseases relate to adverse effects observed in experimental animals exposed to low doses of BPA. As specific examples, the panel noted: the increase in prostate and breast cancer, uro-genital abnormalities in male babies, a decline in semen quality in men, early onset of puberty in girls, metabolic disorders including insulin resistant (type 2) diabetes and obesity, and neurobehavioral problems such as attention deficit hyperactivity disorder (ADHD). The panel also expressed concern that fetuses and children may be particularly susceptible to BPA exposure and that irreversible developmental effects may not become apparent until long after the exposure.

Dangerous chemicals are in people’s bodies everywhere

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

A 2002 study, led by Mount Sinai School of Medicine in New York, found an average of ninety-one industrial compounds, pollutants, and other chemicals in the blood and urine of nine volunteers. The people tested did not work with chemicals, nor did they live near industrial facilities. The researchers found a total of 167 chemicals. Of those, seventy-six cause cancer in humans or animals, ninety-four are toxic to the brain and nervous system, and seventy-nine cause birth defects or abnormal development.

Toxic chemicals everywhere in environment & human body

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

Although TSCA was progressive at the time, it never seemed to fulfill its purpose. The regulation lacked the strength to cause any meaningful changes in the chemical industry. As a result, toxic chemicals are everywhere in the environment and the human body. In the late 1990s the European Union (EU) saw this as a problem, and responded by enacting a new regulatory framework.

Release of toxic chemicals linked to cancer rates statistically significantly

Trisha Holtzclaw (Instructor at Univ. West Florida, M.S. from the University of Texas) and Javier Leung (M.A. in Instructional Technology and M.A. in Educational Leadership), Fall 2007, “Linking Cancer Incidence & Mortality Rates With Chemical Release by Florida County” University of West Florida <http://www.javierleung.com/sub/docs/fall07/Final%20Report.pdf>

The SPSS correlation model showed that the relationship between toxic chemical release and cancer mortality was 0.130 with a significance of 0.306 and with 65 total cases. The SPSS correlation model showed that the relationship between chemical release and cancer incidence was 0.702 with a significance of 0.00 and with a total of 65 cases. The correlation result between toxic chemical release and cancer incidence is considered statistically significant.

Impact of no testing and no EPA regulation: Health problems in children

Erik D. Olson (Director of Chemical and Food Safety Programs at the Pew Charitable Trusts, former deputy staff director and general counsel of the Senate Committee on the Environment and Public Works, former Senior Attorney for the Natural Resources Defense Council), March 29, 2009, Abstract from “Translating Science to Policy” [www.mailman.columbia.edu/ccceh/conference-material/abstracts032909.pdf](http://www.mailman.columbia.edu/ccceh/conference-material/abstracts032909.pdf)

Mounting evidence confirms that certain pesticides and toxic chemicals in consumer products can cause a variety of health problems in children, including cancer, impaired brain development, and disruption of reproductive development. Experts including the National Academy of Sciences and the Government Accountability Office (GAO), Congress’ nonpartisan investigative arm, have noted serious flaws in our regulatory system for toxic chemicals. For example, most chemicals—even many of those widely used in consumer products—have not undergone basic toxicity testing or regulatory reviews to demonstrate their safety. Even when chemicals are found to present health hazards to children, the Environmental Protection Agency often has been unable to take effective regulatory action.

Economic costs of toxic chemicals (Methodology & conservatism of estimate)

Dr. Philip J. Landrigan (M.D. and Professor and Chair Mount Sinai School of Medicine), Dr. Clyde B. Schechter (M.D. and Associate Professor at Albert Einstein College of Medicine), Dr. Jeffrey M. Lipton (M.D., Ph.D. Professor of Pediatrics at Albert Einstein College of Medicine) Dr. Marianne C. Fahs (Ph.D., MPH, Professor at CUNY, specialist in public health economics), and Joel Schwartz (The Health Policy Research Center, New School for Social Research), July 2002, “Environmental Pollutants and Disease in American Children” Environmental Health Perspectives, [www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF](http://www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF)

In this study, we aimed to estimate the contribution of environmental pollutants to the incidence, prevalence, mortality, and costs of pediatric disease in American children. We examined four categories of illness: lead poisoning, asthma, cancer, and neurobehavioral disorders. To estimate the proportion of each attributable to toxins in the environment, we used an environmentally attributable fraction (EAF) model. EAFs for lead poisoning, asthma, and cancer were developed by panels of experts through a Delphi process, whereas that for neurobehavioral disorders was based on data from the National Academy of Sciences. We define environmental pollutants as toxic chemicals of human origin in air, food, water, and communities. To develop estimates of costs, we relied on data from the U.S. Environmental Protection Agency, Centers for Disease Control and Prevention, National Center for Health Statistics, the Bureau of Labor Statistics, the Health Care Financing Agency, and the Practice Management Information Corporation. EAFs were judged to be 100% for lead poisoning, 30% for asthma (range, 10–35%), 5% for cancer (range, 2–10%), and 10% for neurobehavioral disorders (range, 5–20%). Total annual costs are estimated to be $54.9 billion (range $48.8–64.8 billion): $43.4 billion for lead poisoning, $2.0 billion for asthma, $0.3 billion for childhood cancer, and $9.2 billion for neurobehavioral disorders. This sum amounts to 2.8 percent of total U.S. health care costs. This estimate is likely low because it considers only four categories of illness, incorporates conservative assumptions, ignores costs of pain and suffering, and does not include late complications for which etiologic associations are poorly quantified. The costs of pediatric environmental disease are high, in contrast with the limited resources directed to research, tracking, and prevention.

30% of asthma environmentally related

Dr. Philip J. Landrigan (M.D. and Professor and Chair Mount Sinai School of Medicine), Dr. Clyde B. Schechter (M.D. and Associate Professor at Albert Einstein College of Medicine), Dr. Jeffrey M. Lipton (M.D., Ph.D. Professor of Pediatrics at Albert Einstein College of Medicine) Dr. Marianne C. Fahs (Ph.D., MPH, Professor at CUNY, specialist in public health economics), and Joel Schwartz (The Health Policy Research Center, New School for Social Research), July 2002, “Environmental Pollutants and Disease in American Children” Environmental Health Perspectives, [www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF](http://www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF)

To estimate the fraction of asthma that may be associated with toxic exposures in the environment, a panel of experts in environmental and pulmonary medicine first estimated the proportion of asthma episodes attributable to all extragenetic causes. Then within that broad range, they specifically examined the fraction that could be attributed to toxic exposures of human origin in the environment. Household allergens from pets, insects, and molds were not included within the panel’s definition of environment; nor were secondhand cigarette smoke, infections, or climatic factors. Only outdoor, nonbiologic pollutants from sources potentially amenable to abatement, such as vehicular exhaust and emissions from stationary sources, were considered. Using this definition, the panel estimated that 30% of acute exacerbations of childhood asthma (range 10–35%) are environmentally related.

Many neurobehavioral disorders caused by exposure to toxics

Dr. Philip J. Landrigan (M.D. and Professor and Chair Mount Sinai School of Medicine), Dr. Clyde B. Schechter (M.D. and Associate Professor at Albert Einstein College of Medicine), Dr. Jeffrey M. Lipton (M.D., Ph.D. Professor of Pediatrics at Albert Einstein College of Medicine) Dr. Marianne C. Fahs (Ph.D., MPH, Professor at CUNY, specialist in public health economics), and Joel Schwartz (The Health Policy Research Center, New School for Social Research), July 2002, “Environmental Pollutants and Disease in American Children” Environmental Health Perspectives, [www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF](http://www.ehponline.org/members/2002/110p721-728landrigan/EHP110p721PDF.PDF)

An expert committee convened by the U.S. National Academy of Sciences (NAS) estimated in 2000 that 3% of neurobehavioral disorders in American children are caused directly by toxic environmental exposures and that another 25% are caused by interactions between environmental factors, defined broadly, and genetic susceptibility of individual children.

Human health harmed

Reproductive Health Technologies Project, September 2008, “Reproductive Health and the Environment: Kid-Safe Chemicals Act (KSCA) of 2008” [www.rhtp.org/fertility/vallombrosa/documents/KSCAFactSheet-FinalSept08.pdf](http://www.rhtp.org/fertility/vallombrosa/documents/KSCAFactSheet-FinalSept08.pdf)

An emerging body of evidence indicates that environmental toxins are negatively affecting male and female fertility and are contributing to increased numbers of poor birth outcomes. Moreover, these chemicals are implicated in a host of other reproductive health problems such as early puberty, endometriosis, and increased rates of cervical and breast cancer. The effects are especially disturbing in lower-income and minority communities where there is a heightened risk of exposure to hazardous chemicals at work and in the home.

SOLVENCY/ADVANTAGES

Testing standards must be expanded

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring, 2009, “Teething on Toxins” Fordham Environmental Law Review(accessed via lexis-nexis)

Without a clear and conservative definition of "safe," and adequate testing and labeling standards, the U.S. regulatory system is creating an unacceptable burden on the unknowing consumer. In the context of non-essential consumer products where there is a significant potential for a toxic exposure, some cause for concern ought to be enough to restrict use of the chemical pending further study as to its safety. Testing standards are especially important in face of the current disincentives for industry to engage in testing considering, cost, time, and potential litigation and reporting requirements. The long delay from exposure to injury and the difficulty of linking latent adverse effects with the product and its manufacturer create a situation where the market is not likely to discriminate between a tested and an untested product. We must also require that the testing be done by independent companies. Congress, in the recent CPSC Reform Act, recognized this need for mandatory third party testing for children's products, but as discussed above, only in the limited context where there is a Consumer Product Safety Commission rule, ban, standard, or regulation already in place. We must now expand this standard.

KSCA informs the public on chemicals safety

Andy Igrejas (Environmental Health Campaign Manager at Pew, policy analyst and coalition coordinator at the Environmental Health Fund) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

The Kid-Safe Chemicals Act specifies the minimum health and safety information that must be generated for all chemicals (Sec. 506). It requires that information be turned over to the government and makes more of it available for businesses, scientists, and the public (Sec 512 and 513).

Chemicals must be proven to be safe

Andy Igrejas (Environmental Health Campaign Manager at Pew, policy analyst and coalition coordinator at the Environmental Health Fund) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

The Kid-Safe Chemicals Act puts the burden of proof on chemical manufacturers to demonstrate that their chemicals are safe for the most vulnerable subpopulation – usually children (Sec 504). Chemicals that cannot meet this standard are banned, though individual uses may be allowed if they can be shown to meet the safety standard (Sec 507).

Bio-monitoring in KSCA improves health risk assessments

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund**) 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts, [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

The Kid-Safe Chemicals Act uses bio-monitoring – the science of detecting chemicals in human blood, tissue, and urine – to inform EPA’s work (Sec. 506 (d)). Since 2000, the Centers for Disease Control and Prevention (CDC) has conducted a national bio-monitoring program that has shown that the majority of Americans are carrying multiple industrial chemicals in their bodies. The legislation explicitly links EPA’s work to this program to take some of the guesswork out of human health risk assessment.

Prioritization & elimination of most harmful chemicals

Andy Igrejas (Environmental Health Campaign Manager at Pew, **policy analyst and coalition coordinator at the Environmental Health Fund)** 2009 “The Kid-Safe Chemicals Act: Protecting the Most Vulnerable” The Pew Charitable Trusts [www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf](http://www.iceh.org/pdfs/LDDI/2009PolicyTraining/Kid-SafeFactSheet.pdf)

The Kid-Safe Chemicals Act prioritizes chemicals that children are exposed to prenatally. Under the bill the CDC will analyze umbilical cord blood for any hazardous chemicals that have been detected in other bio-monitoring studies. Any chemicals found in the cord blood are fast-tracked for removal from the market, though the EPA Administrator can allow them to remain if their safety can be demonstrated (Sec. 505).

EU Similar reform: Economic savings

David Brownfield (J.D.), 2008,“Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

The World Wildlife Fund (WWF) estimated that REACH could save as much as $ 180 billion in public health costs even after the implementation costs are subtracted. Even at $ 180 billion, the WWF study authors felt this was an underestimate because it did not account for environmental benefits.

EU Legislation: Reduces cancer

David Brownfield (J.D.), 2008,“Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

The EU conducted an impact assessment that estimated the direct costs of REACH to be $ 4 billion which comes to less than one tenth of one percent of annual EU chemical sales. The EU study also estimated that REACH could prevent as many as 4,500 occupational cancer cases each year. Additionally, the study revealed that REACH could reduce chemical exposure related health care costs by as much as $ 69 billion over the next thirty years.

Empirical Evidence: Regulatory action can work to protect public health

Erik D. Olson (Director of Chemical and Food Safety Programs at the Pew Charitable Trusts, former deputy staff director and general counsel of the Senate Committee on the Environment and Public Works, former Senior Attorney for the Natural Resources Defense Council), March 29, 2009, Abstract from “Translating Science to Policy” [www.mailman.columbia.edu/ccceh/conference-material/abstracts032909.pdf](http://www.mailman.columbia.edu/ccceh/conference-material/abstracts032909.pdf)

Recent experience with the Food Quality Protection Act of 1996, which while imperfect has reduced allowable levels of certain pesticides in foods and in some cases in the environment, has demonstrated that regulatory actions can help to protect children. Peer-reviewed published literature by investigators from the Columbia Center for Children’s Environmental Health working in collaboration with WE ACT for Environmental Justice, and data collected by other researchers, demonstrates that public health benefits can be achieved by effective regulatory intervention.

KSCA provides necessary protections

Christopher Gavigan (Author and CEO at Healthy Child, Healthy World, former ecology and sciences professor in the Bay Area and Los Angeles), October 31, 2008, "The Change" Our Children Need: REACHing for Kid Safe Chemicals” The Huffington Post [www.huffingtonpost.com/christopher-gavigan/the-change-our-children-n\_b\_139305.html](http://www.huffingtonpost.com/christopher-gavigan/the-change-our-children-n_b_139305.html)

This sweeping legislation gives government the power to protect its citizens, gives people the power to make informed decisions, gives manufacturers an incentive to find safer substitutes, and gives future generations an opportunity to be born without 200 industrial chemicals in their blood. This change is long overdue.

DISAD RESPONSES

Cost to industry not extreme

Rachael Rawlins (J.D., Faculty Fellow at the Center for Sustainable Development, Lecturer at the Univ. of Texas), Spring 2009 “Teething on Toxins” Fordham Environmental Law Review (accessed via lexis-nexis)

The cost to industry may not be extreme. The European cosmetic proposal discussed the fact that REACH is going to ease access to information on chemicals as 70% of all cosmetic ingredients are going to be affected by its registration/information obligation as they are produced in quantities greater than 1 ton per year.

No increased cost: Companies already paying increased costs to comply with EU REACH legislation

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

One key difference between these examples and chemical exports is that REACH will completely block the import of chemicals that fail to meet its standards. Because of the significant losses that U.S. companies could incur, many of them are already working on compliance. Large manufacturers such as Dow Chemical Company are hiring in-house employees to help work on REACH. The U.S. Department of Commerce is reaching out to small and medium sized firms to make sure they can stay in the market. The Department of Commerce wants to make sure they understand what is needed to comply with REACH. Although the intensive data requirements of REACH may cause some chemicals to drop out of the EU market, most will comply to avoid the loss of such a large market.

Once manufacturers make these changes, reform of the TSCA or even additional U.S. regulations might be more easily implemented.”

U.S. companies already incurring some of the same costs

David Brownfield (J.D.), 2008, “Taking Stock of Sustainable Development at 20” Pacific McGeorge Global Business & Development Law Journal (accessed via lexis-nexis)

REACH could decrease resistance to new regulations by lessening the resistance of the U.S. chemical companies. Once the U.S. chemical companies spend the money to comply with REACH, they may be less resistant to U.S. reform. The U.S. companies will likely comply with REACH due to the nearly $ 14 billion in annual chemical exports to the EU. Past failures to comply with foreign standards have come at high costs the chemical industry is not likely to repeat.

NO MAN IS AN ISLAND: THE CASE FOR RATIFYING THE KYOTO PROTOCOL

by Josh Craddock

In the 1990s, the United States led on the world stage to formulate the Kyoto Protocol which would reduce global greenhouse gas emissions. When the agreement was finally negotiated and completed however, Pres. Clinton signed the treaty – and then refused to send it to the Senate for ratification. Because of the negative consequences that our country faces because of this lack of ratification, and the comparative advantages to be gained by it, we stand firmly Resolved: that the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1: DEFINITIONS

**Significant: “**of a noticeably or measurably large amount.” *(Merriam-Webster’s Online Dictionary, 2009)*

**Reform:** “to put an end to (an evil) by enforcing or introducing a better method or course of action.” *(Merriam-Webster’s Online Dictionary, 2009)*

**Environmental Policy:** “the official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency.” *(McGraw Hill Higher Education, 2003)*

**Policy:** “a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body” *(Merriam-Webster’s Online Dictionary, 2009* [*www.merriam-webster.com/dictionary/policy*](http://www.merriam-webster.com/dictionary/policy))

Kyoto Protocol:

The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change. The major feature of the Kyoto Protocol is that it sets binding targets for 37 industrialized countries and the European community for reducing greenhouse gas (GHG) emissions. These amount to an average of five per cent against 1990 levels over the five-year period 2008-2012. *(United Nations Framework Convention on Climate Change official website, “Kyoto Protocol,” no date, accessed 26 July 2009,* [*http://unfccc.int/kyoto\_protocol/items/2830.php*](http://unfccc.int/kyoto_protocol/items/2830.php)*)*

Now that we know what the resolution means, let's look at the United State's current environmental policy regarding the Kyoto Protocol in:

OBSERVATION 2: INHERENCY

1. The US hasn’t ratified Kyoto, and new negotiations are paralyzed

BRYAN WALSH, “Study: A Fairer Way to Cut Global CO2 Emissions,” TIME Magazine, July 7, 2009, <http://www.time.com/time/health/article/0,8599,1908953,00.html>

“At the end of the year, governments from around the world will meet in Copenhagen hopefully to hammer out a new treaty — the successor to the Kyoto Protocol, which expires in 2012 — to reduce global greenhouse-gas emissions. Their lack of time aside, diplomats face a very large, very immovable hurdle on the way to a new Kyoto. Developed countries like the U.S., which refused to ratify the original treaty, are responsible for most of the CO2 in the atmosphere — and more than a century of industrialization has helped make them rich — which would indicate that they should shoulder the lion's share of future emissions reductions. But fast-growing developing nations like China, which has already passed the U.S. as the world's top carbon emitter, will be responsible for the majority of future emissions, so any global treaty that completely exempted them would be worthless. That debate — or standoff, really — has all but paralyzed global climate-change negotiations over the past several years.”

2. US Ratification of Kyoto is a pre-requisite for any new agreement

Elizabeth Kolbert, “Global Warning,” The New Yorker, December 12, 2005, <http://www.newyorker.com/archive/2005/12/12/051212ta_talk_kolbert>

“America’s failure to ratify Kyoto is widely viewed as a scandal. The Administration’s effort to block a post-Kyoto agreement has received less attention, but is every bit as dangerous. Without the participation of the United States, no meaningful agreement can be drafted for the post-2012 period, and the world will have missed what may well be its last opportunity to alter course.”

Now let’s look at the consequences of our current policy in:

OBSERVATION 3: FAILURES and missed opportunities in the Status Quo. These are the things we’re missing because we have failed to ratify Kyoto.

FAILURE 1. International Isolation: Failure to ratify Kyoto isolates the US politically

Rachel Krech (BS Environmental Science at Cornell College), “Anti-Americanism and America’s National Interest” Associated Content, October 13, 2008, <http://www.associatedcontent.com/article/1085775/why_didnt_the_us_sign_the_kyoto_treaty_pg4.html?cat=47>

“Dr. Anil Markandya, Nobel Peace Prize winner and professor of Economics and International Development, made the statement earlier this year that the U.S. basically has two choices: either become a full member of the Kyoto Treaty or "risk political isolation on the world stage."”

IMPACT: Hindered ability to obtain support on international security issues

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), co-chair of the Iraq Study Group, member of the FBI Director’s Advisory Board, the Defense Secretary’s National Security Study Group, and the US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, October 31, 2002, [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

“The U.S. should not dismiss this growing resentment to its hegemony and the way it uses power. While it may do little to constrain immediate U.S. policy objectives, this new form of anti-Americanism is a serious threat to long-term U.S. interests for several reasons: Anti-Americanism hinders our ability to obtain support on international security issues, such as the war on terrorism and the proliferation of WMD. The long and protracted debate in the UN Security Council could be an indicator of what is to come. There are two issues at the UN right now – Iraq, and American power. Opposition to a muscular resolution is as much a symptom of international distrust of the United States as it is objection to regime-change in Iraq. If the current pattern continues, it will be harder and harder for the U.S. to gain support for its initiatives in the UN. Global resentment could lead to a weakening of support for the war on terrorism. Al Qaeda is in over eighty countries around the world – we absolutely need global cooperation in law enforcement, intelligence, military operations, and financial monitoring to turn the tide against international terrorists. Developing resentment of American policies could hinder these efforts and restrict basing and over-flight rights for the American military.”

FAILURE 2. Trade Travesty: WTO Law allows punitive trade measures against the US for refusing to sign Kyoto

Jagdish Bhagwati (University Professor at Columbia University, Senior Fellow in International Economics at the Council on Foreign Relations, former Director General of GATT (1991-93)) and Petros C. Mavroidis (University Professor at Columbia University, PhD in International Trade, formerly worked in the WTO's legal division), “Is action against US exports for failure to sign Kyoto Protocol WTO-legal?” World Trade Review, 2007, vol. 6, issue 02, pages 299-310 [ellipses in original]

“The shrimp-turtle decision … is a dangerous ruling because of the possibility, which bothered the authors of the 1991 GATT report on trade and the environment, that it opens up a Pandora’s box. Consider that this finding applies fully to the United States, which has failed to sign the Kyoto Protocol on global warming, whereas almost all other nations have. The United States is therefore producing traded products using PPMs that other nations can claim damage to the environment.”

IMPACT: EU action would affect more than $4 billion of transatlantic trade

Jagdish Bhagwati (University Professor at Columbia University, Senior Fellow in International Economics at the Council on Foreign Relations, former Director General of GATT (1991-93)) and Petros C. Mavroidis (University Professor at Columbia University, PhD in International Trade, formerly worked in the WTO's legal division), “Is action against US exports for failure to sign Kyoto Protocol WTO-legal?” World Trade Review, 2007, vol. 6, issue 02, pages 299-310

“The European Union has at least one option (domestic instruments) that it can use with substantial confidence that it is not violating its WTO obligations when punishing countries that have not adhered to the disciplines of the Kyoto Protocol. Over 4 billion dollars of transatlantic trade would have been affected, had the European Union decided to exercise its rights under the WTO. As for the political rationale for an EU action, this clearly lies in the hope that the reaction of the United States to this ‘gaiatsu’ (foreign pressure) would be to ratify the Kyoto Protocol.”

Judge, it’s clear that something needs to change. Therefore, we offer:

OBSERVATION 4: The PLAN (to be implemented by any necessary Constitutional means).

**Mandate: Kyoto Ratification.** The United States will ratify the Kyoto Protocol, bringing the country into full compliance with the treaty’s standards for greenhouse gas emissions.

**Agency and Enforcement:** The President, Congress, and the Environmental Protection Agency.

**Funding:** will come from General Federal Revenues.

**Timeline:** This plan will take effect immediately upon an affirmative ballot.

**Legislative Intent:** The Affirmative team has the right to clarify this plan in further speeches.

Now let's look at how ending this harmful unilateral environmental policy will create distinct benefits with:

OBSERVATION 5: COMPARATIVE ADVANTAGES

1. Improved international cooperation, praise and status

Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

“The Kyoto mechanism, in addition to substantive incentives, also represents social incentives. Violating the mechanism would exert international pressure and harm the relevant nation’s reputation, as demonstrated by the effect of the widespread condemnation within the international community of the US withdrawal from the Kyoto mechanism, which put pressure on the US to adopt a more cooperative stance. Respecting the mechanism gains a nation international praise, improving its image and elevating its status, as the examples of Russia, Japan, Argentina, and China clearly demonstrate.”

2. We answer the environmental emergency and reap economic benefits

Reuters news service, 19 March 2004, “UN to Russia: Ratify Kyoto!,” <http://www.wired.com/politics/law/news/2004/03/62737>

Bush's father, ex-President George Bush, signed up for the climate change Convention at a 1992 Earth Summit in Rio de Janeiro and told delegates "we must leave this earth in better condition than we found it." But the World Resources Institute, a Washington-based research group, says global warming is worsening due to increasing use of fossil fuels such as oil to coal. "We are quickly moving to the point where the damage will be irreversible," said Jonathan Pershing, director of the Institute's Climate, Energy and Pollution program. Many environmentalists say that global warming is the biggest long-term threat to life on earth. Rising temperatures may drive thousands of species to extinction, trigger more floods or droughts and sink low-lying islands as icecaps melt. Klaus Toepfer, the head of the U.N. Enviroment Program, urged the United States and opponents of Kyoto in Russia to reconsider their belief that Kyoto is an economic straitjacket. "The Kyoto protocol is not a recipe for economic disaster," he said. "In the long run, it is likely to generate prosperity and financial savings rather than economic suicide." He said insurer Munich Re estimated that economic losses as a result of mainly climate-related disasters totaled $65 billion in 2003. And he said one study showed air pollution in Britain alone cost $5 billion a year, mainly in health bills.

Thank you and I now stand open for Cross-Examination.

2A EVIDENCE: RATIFY THE KYOTO PROTOCOL

INHERENCY

Senate won’t ratify Kyoto in Status Quo

Letha Tawney (climate change policy analyst specializing in adaptation to climate impacts in the US and overseas and the international negotiation; Masters in Public Administration from the Harvard Kennedy School of Government ), 10 Mar 2009, “The Kyoto Protocol: Not a Yogurt,” <http://www.emeraldarc.com/?p=244>

All of the discussion about the Adaptation Fund, which was a simultaneous victory and disappointment in Poznan exists under the Kyoto Protocol. Rumors of the Protocol’s demise seem to be greatly exaggerated. Yet, it is widely muttered in hallways that the US will not join the Kyoto Protocol, even with an Administration that is making climate change, and even an international climate deal, a priority. There are a couple of key stumbling blocks to the US ratifying the Kyoto Protocol. First, it would require a 2/3 majority in the Senate, just like any other treaty. It’s quite clear there are not 67 votes at this point, though the situation is better than it was in 1997, when just before the Kyoto Protocol was finalized the Senate voted 95-0 against any deal that included key elements of the Kyoto Protocol.

The barrier to Kyoto ratification is a lack of political will

Elliot Diringer (Vice President for International Strategies at the Pew Center on Global Climate Change, former Deputy Assistant to the President and Deputy Press Secretary, served as Senior Policy Advisor and as Director of Communications at the Council on Environmental Quality, and a Nieman Fellow at Harvard University, where he studied international environmental law and policy), “Looking Beyond Kyoto: A U.S. Perspective,” Pew Center on Global Climate Change, 2 June 2004, <http://www.pewclimate.org/press_room/speech_transcripts/beyondkyoto.cfm>

“A point that emerged over and over again: The basic challenge we face is building political will. In material terms, of course, the challenge is technological – nothing less, actually, than a global technological revolution. This revolution must be carried out in the marketplace, because only markets can mobilize the resources and ingenuity that are needed. But the markets won’t do this on their own. The direction – the imperative – must come from government. And that requires political will.”

US responsible for ¼ of global warming emissions

Canadian Broadcasting Corporation, CBC News, 14 Feb 2007, “Kyoto Protocol FAQs,” <http://www.cbc.ca/news/background/kyoto/>

For the record, when the Kyoto Protocol went into effect Feb. 16, 2005, 141 countries had ratified it, including every major industrialized country – except the United States, Australia and Monaco. The U.S. is responsible for about a quarter of the emissions that have been blamed for global warming.

Global warming is happening faster than ever

Canadian Broadcasting Corporation, CBC News, 14 Feb 2007, “Kyoto Protocol FAQs,” <http://www.cbc.ca/news/background/kyoto/> (brackets added)

Past reports from the organization have examined the changes in the previous century. In a 2001 report, the IPCC [UN Intergovernmental Panel on Climate Change] said the average global surface temperature had risen by about 0.6 degrees since 1900, with much of that rise coming in the 1990s – likely the warmest decade in 1,000 years. The IPCC also found that snow cover since the late 1960s has decreased by about 10 per cent and lakes and rivers in the Northern Hemisphere are frozen over about two weeks less each year than they were in the late 1960s. Mountain glaciers in non-polar regions have also been in "noticeable retreat" in the 20th century, and the average global sea level has risen between 0.1 and 0.2 metres since 1900. Simply put, the world is getting warmer and the temperature is rising faster than ever.

Most climatologists agree greenhouse gases are causing climate change – only vocal minority disagree

Canadian Broadcasting Corporation, CBC News, 14 Feb 2007, “Kyoto Protocol FAQs,” (ellipses in original) <http://www.cbc.ca/news/background/kyoto/>

While scientists tend to agree that the earth is warming, not all agree that rising greenhouse gas emissions are the culprits. A vocal minority say the earth's climate warms and cools in long cycles that have nothing to do with greenhouse gases. Some dispute the data concerning rising sea levels and rising temperatures. Others dispute the projections, which are based on computer models. But again, those views are those of a minority. Most climatologists agree that global warming is causing unprecedented climate change…and that things will get worse unless something is done.

SIGNIFICANCE

Climate change risk: Ecosystem collapse = $33 trillion impact

Pavan Sukhdev, Study Leader,European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The treatment of climate change by the Stern Review surfaced an issue which had been widely recognized but not tackled squarely: how to assess a roll of the dice, when one of the outcomes is the end of civilization as we know it? This dilemma also applies to assessing the risks of ecosystem collapse. The difficulty was highlighted when one academic study (Costanza et al. 1997) estimated the economic value of ecosystem services at US$33 trillion (compared to US$ 18 trillion for global GDP). This result was criticized on the one hand for being far too high, but on the other hand for being “a significant underestimate of infinity.”

Kyoto necessary architecture for any new climate change agreements

Ministry for the Environment, “The Kyoto Protocol,” Government of New Zealand, 20 March 2008, [www.mfe.govt.nz/issues/climate/international/kyoto-protocol.html](http://www.mfe.govt.nz/issues/climate/international/kyoto-protocol.html)

“The Protocol provides the essential architecture for any new international agreement or set of agreements on climate change. The first commitment period of the Kyoto Protocol expires in 2012. By then, a new international framework needs to have been negotiated and ratified which can deliver on new emission reduction targets.”

US Unilateral Stance Invites International Condemnation

Prof. Christian Reus-Smit (Professor and Head of the Department of International Relations at the Australian National University), “The Politics of International Law,” Cambridge University Press, 2004, pages 100-101

“President Bush junior chose to resolve the paradox of hegemony by asserting the US’s role as a great power by adopting a unilateral posture *vis-a-vis* the negotiations. Moreover, the unilateral posture has come at a heavy price insofar as it has attracted considerable condemnation not only from many parties to the negotiations but also from US civil society and global civil society. The weight of shared international understandings and expectations of legitimate conduct, stemming from the treaty negotiations (and associated debates within civil society), seems to be clearly *against* the US (and Australia) on this issue.”

Unilateral action hurt US image

Dr. Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

“The leaders of Brazil, New Zealand, Canada, the Philippines, Morocco, and other nations made public attacks on the US’s unilateral act of refusing to accept the Kyoto Protocol. Even in the United Kingdom, a long-time supporter of the US and its partner in a special relationship, various opinion-makers and political figures criticized the US’s action as seriously damaging to world-wide environmental protection efforts.”

Failure to ratify Kyoto isolates the US politically

Rachel Krech (BS Environmental Science at Cornell College), “Why Didn't the U.S. Sign the Kyoto Treaty?” Associated Content, 13 Oct 2008, <http://www.associatedcontent.com/article/1085775/why_didnt_the_us_sign_the_kyoto_treaty_pg4.html?cat=47>

“Dr. Anil Markandya, [Nobel Peace Prize](http://www.associatedcontent.com/topic/34667/nobel_prize.html) winner and professor of Economics and International Development, made the statement earlier this year that the U.S. basically has two choices: either become a full member of the Kyoto Treaty or "risk political isolation on the world stage."”

Anti-Americanism and resentment caused by Kyoto withdrawal

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), co-chair of the Iraq Study Group, member of the FBI Director’s Advisory Board, the Defense Secretary’s National Security Study Group, and the US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, 31 Oct 2002 [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

“A second form of anti-Americanism can be seen in the growing global resentment to American power. This anti-Americanism is not just a trait of the political fringe – it has become part of the mainstream political culture in Europe, and is gaining momentum in places like Japan and South Korea. What are the Causes of Resentment? The three main sources of this growing tension are 1) the Bush’s administration’s proclivity to “go it alone” in international affairs, 2) the style that the U.S. uses in conducting its foreign policy, and 3) the use of American military power. All of these have to do with the manner in which the U.S. is viewed as a hegemonic power in the world. Unilateralism as a Source of Resentment. Most of our friends and allies feel that international institutions, treaties, and multilateral action best serve global interests and security. The U.S. sees many international institutions and agreements as a constraint on America’s freedom of action and a threat to U.S. sovereignty. The Bush administration argues that freedom of action will better enable it to root out terror, protect global stability and security, and spread democracy, free markets and human rights. Europe feels that American hostility to multilateral efforts undermines international law and order. Oft-cited examples of American unilateralism are: American withdrawal from the Kyoto Protocol and the International Criminal Court. The Style of American Foreign Policy as a Source of Resentment. Much of the world views the U.S. as arrogant and bellicose in its foreign policy. They resent the manner in which we pursue our “go it alone” strategy – often withdrawing from international agreements without presenting alternatives, or pursuing security policies without consulting allies. Examples of this style include: American withdrawal from the I.C.C. The U.S. made a number of threats after withdrawing from the I.C.C., including the withdrawal of American peacekeepers and the cessation of bilateral military aid to countries that did not support American prohibitions on the power of the court. Legitimate American concerns were overshadowed by what appeared to be a relentless American effort to undermine the authority and legitimacy of the court. American withdrawal from the Kyoto Protocol on global warming. After withdrawing from Kyoto, the Bush administration failed to present a viable policy alternative.”

More difficult to stop WMD proliferation

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), member of US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, 31 Oct 2002, [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

“Resentment will make it more difficult to stem the proliferation of WMD. The U.S. cannot stop proliferation on its own. Other countries must monitor their dual-use technology, abide by international restrictions on certain WMD, and put pressure on countries that seek WMD. We may find that countries will be less willing to cooperate if the U.S. does not abide by treaties, and does not seek multilateral solutions. The current situation in North Korea illustrates this – Japan and South Korea have been angered by U.S. policy on the Korean peninsula, and are now not toeing the U.S. line to pressure North Korea to disarm.”

More difficult to solve global issues

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), member of US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, 31 Oct 2002, [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

“Resentment will make it harder to get cooperation on global issues. Most of the key issues of the twenty-first century will be global in nature: environmental degradation, global warming, migration, the drug trade, and epidemic disease. If we alienate our friends and allies we will be less effective in addressing these problems to protect U.S. interests.”

Risk of losing unipolarity and challenge of US power

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), member of US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, 31 Oct 2002, [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

So far, no coalition has emerged to “balance” U.S. power because other nations believe the U.S. represents their interests. Growing global resentment could change that and encourage nations to coalesce against the U.S. Emerging centers of power around the globe. While there is currently no other “superpower”, a developing China and India, and an increasingly integrated Europe represent potential challenges to American hegemony. It is in the U.S. and the global interest for us to pursue relations with these emerging centers of power based on common interests, peace and cooperation, not resentment and hostility.”

If US continues down SQ path, national interests will be damaged

Lee H. Hamilton (President and director of the Woodrow Wilson International Center for Scholars and director of The Center on Congress at Indiana University, former US Representative from the state of Indiana, Vice-Chair of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), member of US Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil), “Why Didn't the U.S. Sign the Kyoto Treaty?” The Woodrow Wilson International Center for Scholars, 31 Oct 2002, [www.wilsoncenter.org/about/director/docs/Hamilton\_antiamer.doc](http://www.wilsoncenter.org/about/director/docs/Hamilton_antiamer.doc)

“If the U.S. continues to alienate international institutions and allies, U.S. interests will be damaged in the long-run and we will not address the root causes of terrorism. The U.S. will not get the kind of world it wants if we conceive of our interests narrowly and are indifferent to the concerns of others. If we want others to want what we want, we have to include them and convince them that we share mutual interests. The U.S. is – and should be – a benign superpower. Our power and influence overseas rests on the idea that we stand for and seek a better world. There has been a growth in democracy and the American economic model, and many more countries are inclined to be sympathetic to the U.S. than there were 30 years ago. We should take advantage of this moment instead of squandering it. If the U.S. perceives itself as the lone opponent of “evil” in the world then we will indeed end up alone. If we instead articulate a form of global cooperation based on the American values of free trade, democracy, the rule of law, security, and human rights, then the U.S. will maintain its leadership while serving its own and the world’s interests.”

The EU could ban ALL US products to coerce Kyoto signing

Prof. Jagdish Bhagwati (University Professor at Columbia University, Senior Fellow in International Economics at the Council on Foreign Relations, former Director General of GATT (1991-93)) and Prof. Petros C. Mavroidis (University Professor at Columbia University, PhD in International Trade, formerly worked in the WTO's legal division), “Is action against US exports for failure to sign Kyoto Protocol WTO-legal?” World Trade Review, 2007, vol. 6, issue 02, pages 299-310

“The EU could impose a sales ban of all products produced in a Kyoto-unfriendly manner. The legal analysis remains the same as the choice between a fiscal domestic and a non-fiscal domestic measure is practically identical. It could also be the case that the EU imposes a carbon tax only on products originating in countries that have not enacted a similar carbon tax in order to implement the Kyoto Protocol. Once again the legal analysis is the same since, at the end of the day, the EU will be treating in a like manner like goods (i.e. Kyoto-friendly goods), assuming of course that one accepts that Kyoto friendliness is the defining characteristic for likeness.”

Failure to ratify risks trade disruptions

Rachel Krech (BS Environmental Science at Cornell College), “Why Didn't the U.S. Sign the Kyoto Treaty?” Associated Content, October 13, 2008, [www.associatedcontent.com/article/1085775/why\_didnt\_the\_us\_sign\_the\_kyoto\_treaty\_pg4.html?cat=47](http://www.associatedcontent.com/article/1085775/why_didnt_the_us_sign_the_kyoto_treaty_pg4.html?cat=47)

Additionally, the U.S.'s failure to ratify Kyoto has caused issues with other countries. Norway, for example, has considered cutting off its supply of oil to the U.S.

If the embargo went to WTO Dispute Settlement, it would create more international cynicism

Prof. Jagdish Bhagwati (University Professor at Columbia University, Senior Fellow in International Economics at the Council on Foreign Relations, former Director General of GATT (1991-93)) and Prof. Petros C. Mavroidis (University Professor at Columbia University, PhD in International Trade, formerly worked in the WTO's legal division), “Is action against US exports for failure to sign Kyoto Protocol WTO-legal?” World Trade Review, 2007, vol. 6, issue 02, pages 299-310 (brackets in original)

“Not doubting that the US could be targeted for trade action because of its failure to ratify the Kyoto Protocol, the analysis then moved to the politics of such trade action: ‘We would in effect be talking about a virtual embargo, as most products use energy in their manufacture! The United States is protected only by its size and its ability as a hegemon to browbeat other nation-states into not passing such legislation [or using executive to take the trade action]. But that leaves a gaping incoherence and cynicism in the world at the inherent asymmetry and injustice of a WTO Dispute Settlement Mechanism that implicitly, even if perhaps un-wittingly, favors the powerful.’”

Delay is disaster for the environment

Elizabeth Kolbert, “Global Warning,” The New Yorker, December 12, 2005, <http://www.newyorker.com/archive/2005/12/12/051212ta_talk_kolbert>

“If we don’t get a serious program in place for the long term in this post-Kyoto phase, we will simply not make it,” Michael Oppenheimer, a climate scientist at Princeton, told reporters last month. “We will be crossing limits which will basically produce impacts that are unacceptable.” Such is the nature of global warming that the problem is always further along than it seems. The kinds of changes that are now becoming evident—the rise in sea levels, the thawing of permafrost, the acidification of the oceans, the acceleration of ice streams—mean that much larger changes are rapidly approaching. To continue to delay is not to put off catastrophe but, rather, to rush toward it.

SOLVENCY

Several means available under Kyoto for reducing emissions

Canadian Broadcasting Corporation, CBC News, 14 Feb 2007, “Kyoto Protocol FAQs,” <http://www.cbc.ca/news/background/kyoto/>

Emission targets can be met several ways. The most obvious way is to actually reduce greenhouse gas emissions – more fuel-efficient cars, fewer coal-fired power plants. But Kyoto also allows for three other mechanisms. Countries can buy emissions credits from countries that don't need them to stay below their emissions quotas. A country can also earn emissions credits through something called joint implementation, which allows a country to benefit by carrying out something like a reforestation project in another industrialized country or "economy in transition." There's also what's called a clean development mechanism that encourages investment in developing countries by promoting the transfer of environmentally-friendly technologies.

Plan Advocate: The US public. Strong US majority supports Kyoto ratification

World Public Opinion, “Global Warming,” Program on International Policy Attitudes at the University of Maryland, 2005, <http://www.americans-world.org/digest/global_issues/global_warming/gw2.cfm#top>

“A strong majority of Americans have indicated their support for the Kyoto Treaty. In June 2005, PIPA simply asked “based on what you know, do you think the U.S. should or should not participate in the Kyoto agreement to reduce global warming.” A strong majority of 73% favored participation. This was up a bit from September 2004, when only 65% favored it. Only 16% in June 2005 and September 2004 opposed participation.”

Reduced risk of climate catastrophe. Plan Advocate Judge Richard Posner begins by saying in 2004:

Richard Posner (Judge, US Court of Appeals, 7th Circuit), 19 Dec 2004, “Global Warming,” <http://www.becker-posner-blog.com/archives/2004/12/global_warming.html>

The Kyoto Protocol could certainly be improved, but on balance I think it is a step in the right direction -- if the United States ratifies it, which it has thus far refused to do.

Posner goes on to explain later in the same context how Kyoto would create the economic incentives needed to reduce climate change risk:

Richard Posner (Judge, US Court of Appeals, 7th Circuit), 19 Dec 2004, “Global Warming,” <http://www.becker-posner-blog.com/archives/2004/12/global_warming.html> (“Younger Dryas” is a reference to a natural sudden climate change that many scientists believe happened around 11,000 BC.)

Because of the enormous complexity of the forces that determine climate, and the historically unprecedented magnitude of human effects on the concentration of greenhouse gases, the possibility that continued growth in that concentration could precipitate --and within the near rather than the distant future -- a sudden warming similar to that of the Younger Dryas cannot be excluded. Indeed, no probability, high or low, can be assigned to such a catastrophe. It may be prudent, therefore, to try to stimulate the rate at which economical substitutes for fossil fuels, and technology both for limiting the emission of carbon dioxide by those fuels when they are burned in internal-combustion engines or electrical generating plants, and for removing carbon dioxide from the atmosphere, are developed. This can be done, in part anyway, by stiff taxes on carbon dioxide emissions. Such taxes give the energy industries, along with business customers of them such as airlines and manufacturers of motor vehicles, a strong incentive to finance R&D designed to create economical clean substitutes for such fuels and devices to “trap” emissions at the source, before they enter the atmosphere. Given the technological predominance of the United States, it is important that these taxes be imposed on U.S. firms, which they would be if we ratified the Kyoto Protocol and by doing so became bound by it.

Informed public supports Kyoto ratification

World Public Opinion, “Global Warming,” Program on International Policy Attitudes at the University of Maryland, 2005, [www.americans-world.org/digest/global\_issues/global\_warming/gw2.cfm#top](http://www.americans-world.org/digest/global_issues/global_warming/gw2.cfm#top)

“Among those who say they do know a fair amount about Kyoto support has been found to be high. A September 2002 Harris poll asked those who had read, seen, or heard about the international agreements that would require countries to limit their emissions of carbon monoxide and their greenhouse gases (52% of the sample), whether they approved of "the international agreements in Kyoto and Bonn which would require countries to limit their emissions of carbon monoxide and other greenhouse gases."—Seventy-three percent approved while 20% disapproved.”

Kyoto “loophole” is now closed

NEW SCIENTIST magazine, “Kyoto Protocol 'loophole' has cost $6 billion,” 9 Feb 2007, <http://www.newscientist.com/article/dn11155-kyoto-protocol-loophole-has-cost-6-billion.html>

“A loophole in an important part of the Kyoto Protocol has cost nearly $6 billion, suggests new research. The loophole will now be closed, say officials. The problem relates to the Clean Development Mechanism (CDM). This scheme allows investors in countries that have Kyoto Protocol targets to buy carbon credits by investing in projects that reduce emissions in developing countries. The credits are essentially permits to pollute in their own countries.”

No more “perverse incentives”

NEW SCIENTIST magazine, “Kyoto Protocol 'loophole' has cost $6 billion,” 9 Feb 2007, <http://www.newscientist.com/article/dn11155-kyoto-protocol-loophole-has-cost-6-billion.html>

“Senior officials at the United Nations Framework Convention on Climate Change (UNFCCC) say there will be no "perverse incentives" to build new refrigerant plants simply to get credits linked to HFC 23s. Halldor Thorgeirsson, the director of sustainable development mechanisms at the UNFCCC claims: "The idea of easy money is out of proportion." And he says the loophole is now closed and that new HFC 23 facilities will no longer be eligible for CDM credits.”

China is active in meeting Kyoto reduction goals because of social benefits

Dr. Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

Although the Kyoto Protocol imposes no emission reduction goals on China, China does not take this as an excuse to shirk its obligations. When, in the spirit of compromise between developed and developing nations, the Kyoto Protocol stipulated emission reduction goals for developed nations, it also stipulated corresponding obligations for China and other developing nations. They included supplying detailed emissions inventories, information reports, and national emission reduction plan drafts; strengthening and protecting carbon sinks; developing technologies in relevant fields; and providing education and training. Entry into the Protocol has brought to China, whose emissions volume increases daily, new pressures, challenges, and operational costs. China, however, smoothly ratified the Protocol, and also announced on its own initiative that after achieving the status of a moderately developed nation, it would earnestly consider committing to emission reduction obligations. It is clear, therefore, that a positive international image and the ability to gain more diplomatic support are major influences on China’s considerations of its position on climate change. China consciously uses this issue to improve its international image.

China’s action on emissions leaves the US isolated

Yingling Liu (China Program Manager at the Worldwatch Institute, M.A. in International Relations from Yale University), “China Calls on the U.S. to Join Kyoto Protocol,” World Watch Institute, 1 December 2005, <http://www.worldwatch.org/node/144>

A Chinese official urged the U.S. government to join the Kyoto Protocol and cut its emissions of carbon dioxide in an interview with the [Associated Press](http://hosted.ap.org/dynamic/stories/C/CANADA_CLIMATE_CHANGE?SITE=WRKO&SECTION=HOME&TEMPLATE=DEFAULT) on Wednesday. China is the world’s second largest emitter of carbon dioxide, and its new assertiveness on the issue leaves the United States, the world’s largest emitter, even more isolated.

Without US/China participation, post-Kyoto agreement almost sure to fail

New York Times, “Climate Trap,” 15 June 2009, <http://www.nytimes.com/2009/06/16/opinion/16tue2.html?_r=1>

Without the enthusiastic participation of China — and, of course, the United States — negotiations in December in Copenhagen aimed at writing a new global agreement to replace the expiring 1997 Kyoto Protocol are almost sure to fail.

ADVANTAGES

Adhering to Kyoto results in international esteem, image, and status

Dr. Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

“Popularity, respect, friendship, and other intangible social goals are as important to states as to individuals. Consequently, the Kyoto mechanism, in addition to material incentives, also offered added social incentives to compliance. Violating or abandoning the mechanism would create international pressure and a loss of national prestige; respecting the mechanism, on the other hand, promised international praise, an improved national image and higher status.”

Countries who ratify Kyoto win substantive and intangible compensations

Dr. Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

“Other major greenhouse gas emitters, in distinct contrast to the US, ratified the Kyoto Protocol, assumed the relevant obligations, and won widespread international commendation. The Protocol, therefore, in addition to its substantive incentives, offered intangible compensation in the form of international prestige and status. The value of this social compensation is not easily quantifiable, but is indeed a main aspect of nations’ strategic interests, not least because it gives access to the selective incentives for entry into the Protocol.”

DISADVANTAGE RESPONSES

China has economic growth and emissions reductions

Yingling Liu (China Program Manager at the Worldwatch Institute, M.A. in International Relations from Yale University), “China Calls on the U.S. to Join Kyoto Protocol,” World Watch Institute, December 1, 2005, <http://www.worldwatch.org/node/144>

“Sun [Guoshun, director of the Department of Treaty and Law at the Chinese Ministry of Foreign Affairs] also said in the interview that China's GDP had risen fourfold from 1980 to 2000, while its energy consumption only doubled, showing the efforts by the Chinese government to mitigate greenhouse gas emissions. He also noted that China has pledged to raise its energy efficiency by 20 percent between 2006 and 2010.”

Cutting emissions would not hurt the US economy

Robert Repetto (PhD, Professor in the Practice of Economics and Sustainable Development at Yale University, former senior fellow at the World Resources Institute, former associate professor of population and economics in the School of Public Health at Harvard University). "Reducing Carbon Emissions Could Help, Not Harm, U.S. Economy." Yale School of Forestry & Environmental Studies, Yale University, September 19, 2008, <http://environment.yale.edu/news/5624>

“As Congress prepares to debate new legislation to address the threat of climate change, opponents claim that the costs of adopting the leading proposals would be ruinous to the U.S. economy, The world’s leading economists who have studied the issue say that’s wrong. Even under the most pessimistic assumptions, U.S. Gross Domestic Product would still grow by 2.4 percent per year, reaching $23 trillion by 2030 even if emissions are reduced by 40 percent below projected business-as-usual trends, compared to historical growth rates of 3 percent a year over recent decades. Under the most favorable assumptions, economic growth would rise slightly above 3 percent a year.”

France reduced carbon without any effect on economic growth

**[Alexander Golub](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=357772" \o "View other papers by this author" \t "_blank)** (Environmental Defense), **[Anil Markandya (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=202870" \o "View other papers by this author" \t "_blank)**University of Bath - Department of Economics & International Development) and Dominic Marcellino, “ Modeling Environment-Improving Technological Innovations Under Uncertainty,” “Does the Kyoto Protocol cost too much and create unbreakable barriers?” 2008 [http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=\_AUQ3Ib\_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs\_EM4r4NbmQ6PgG&sa=X&oi=book\_result&ct=result&resnum=4](http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=_AUQ3Ib_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs_EM4r4NbmQ6PgG&sa=X&oi=book_resul)

Some countries, like France, have achieved a much greater rate of decarbonization during the latter part of the last century without any noticeable effect on their growth rates; in the case of France, this was achieved through the construction of nuclear power plants that supply approximately 75 percent of her electricity.

With emissions trading the economic impact of Kyoto compliance is 20% of 1.3% of GDP

**[Alexander Golub](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=357772" \o "View other papers by this author" \t "_blank)** (Environmental Defense), **[Anil Markandya (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=202870" \o "View other papers by this author" \t "_blank)**University of Bath - Department of Economics & International Development) and Dominic Marcellino, “ Modeling Environment-Improving Technological Innovations Under Uncertainty,” “Does the Kyoto Protocol cost too much and create unbreakable barriers?” 2008 [http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=\_AUQ3Ib\_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs\_EM4r4NbmQ6PgG&sa=X&oi=book\_result&ct=result&resnum=4](http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=_AUQ3Ib_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs_EM4r4NbmQ6PgG&sa=X&oi=book_resul)

Second, the costs fall considerably when the target can be met with emissions trading – for the US, for example, the average estimated costs across eight studies of the 2010 target were 1.3 percent of GDP with no trade in emissions, but they fall by more than half when trade was permitted among Annex I countries and fell to 20 percent of the “no-trade” figure with global trading in emissions. The reasons for the differences in cost are clear – with emissions trading, countries with high emissions reductions costs can buy reductions from countries with lower costs, making for an overall reduction in costs. At the same time the low cost countries benefit from the sale of the emissions, reducing their overall costs of compliance.

Britain and Germany had economic growth in the 1990s while following Kyoto

**[Alexander Golub](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=357772" \o "View other papers by this author" \t "_blank)** (Environmental Defense), **[Anil Markandya (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=202870" \o "View other papers by this author" \t "_blank)**University of Bath - Department of Economics & International Development) and Dominic Marcellino, “ Modeling Environment-Improving Technological Innovations Under Uncertainty,” “Does the Kyoto Protocol cost too much and create unbreakable barriers?” 2008 [http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=\_AUQ3Ib\_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs\_EM4r4NbmQ6PgG&sa=X&oi=book\_result&ct=result&resnum=4](http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=_AUQ3Ib_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs_EM4r4NbmQ6PgG&sa=X&oi=book_resul)

Although there is limited experience with countries operating under a Kyoto-type constraint, there are some data since 1990 that demonstrate how countries that committed to reducing carbon emissions have performed. In particular, two countries, Germany and the UK, reduced emissions over the period 1990-2000, by 11 percent and 3 percent respectively. At the same time, they have achieved real GDP growth over that decade of 20 and 29 percent respectively.

Net Benefits: Reducing GHG and finding out you were wrong is better than not-reducing GHG and finding out you were wrong

Impact/Analysis:

If it turns out GHGs aren’t so bad, in the future the programs to reduce them can always be cancelled. However, if we do nothing now and it turns out later that GHGs are bad, it will be too late to do anything – the programs can’t be ramped up that fast -- and the impacts will occur. If there’s any uncertainty, the best course of action is to reduce GHGs now and wait for better data later.

(GHG=greenhouse gases)

[Alexander Golub](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=357772" \o "View other papers by this author" \t "_blank) (Environmental Defense), [Anil Markandya (](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=202870" \o "View other papers by this author" \t "_blank)University of Bath - Department of Economics & International Development) (brackets added; misspelling in original) 2008 [http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=\_AUQ3Ib\_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs\_EM4r4NbmQ6PgG&sa=X&oi=book\_result&ct=result&resnum=4](http://books.google.com/books?id=MgrUPE9eMp8C&dq=%22Modeling+Environment-Improving+Technological+Innovations+Under+Uncertainty+%22&printsec=frontcover&source=bl&ots=_AUQ3Ib_Dl&sig=tEMxPGn1oEgwU6kdMEOqaHx3eaI&hl=en&ei=EuhsSs_EM4r4NbmQ6PgG&sa=X&oi=book_resul)

We do not know how serious the climate impacts of a “business-as-usual” GHG [greenhouse gas] emissions scenario will be but we can be fairly sure that this uncertainty will reduce over time. If it turns out that the problem is less serious that [than] we had thought, then some of [the] investment on mitigation will have been wasted. But if it turns out to be more serious than our average view of likely outcomes today, we will regret not having taken more action. There is, however, an asymmetry between the two outcomes: a stringent program of action initiated today can be cancelled if the outcome indicates a less serious problem but a lax program today cannot be ramped up in the same way. This is because future GHG concentration targets become increasingly narrow as we allow the build up of GHGs.

Further reading: Information about the Kyoto Protocol, including the entire text, can be found here:

<http://unfccc.int/kyoto_protocol/items/2830.php>

APPALACHIAN APOCALYPSE: THE CASE FOR ENDING MOUNTAINTOP REMOVAL COAL MINING

By Vance Trefethen

Journalist John McQuaid said it best in Smithsonian Magazine in January 2009. Quote:

“I've reported on devastation around the world—from natural disasters such as [Hurricane Katrina](file://localhost/topics%3fkeyword=Hurricane+Katrina), to wars in [Central America](file://localhost/topics%3fkeyword=Central+America) and the [Middle East](file://localhost/topics%3fkeyword=Middle+East), to coastlines in [Asia](file://localhost/topics%3fkeyword=Asia) degraded by fish farming. But in the sheer audacity of its destruction, mountaintop coal removal is the most shocking thing I've ever seen. Entering a mountaintop site is like crossing into a war zone.” *(John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains,"* [*http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=2*](http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=2)*)*

Unquote. Please join us today in ending the Appalachian Apocalypse as we affirm: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following definitions:

Environmental Policy:

Dr. William P. Cuningham (Ph.D. in Botany from the University of Texas), Dr. Mary Ann Cunningham (PhD in Geography at the University of Minnesota), and Dr. Barbara Woodworth (Ph.D. in Science Education from the University of Iowa), 2001, Environmental Science: A Global Concern, 7th Edition, McGraw Hill, <http://highered.mcgraw-hill.com/sites/0070294267/student_view0/glossary_e-l.html>

**“**Environmental Policy: The official rules or regulations concerning the environment adopted, implemented, and enforced by some governmental agency.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Mountain top removal coal mining:

ENVIRONMENT NEWS SERVICE, 15 June 2009, "Obama Mountaintop Coal Mining Plan Disappoints Appalachian Advocates, , <http://www.ens-newswire.com/ens/jun2009/2009-06-15-091.asp>

Mountaintop removal coal mining involves blasting with explosives to remove up to 1,000 vertical feet of mountaintop to expose underlying coal seams. Tons of waste rock are dumped into mountain streams, filling the valleys below.

OBSERVATION 2. INHERENCY: Obama approves mountain top removal projects.

Tom Hamburger and Peter Wallsten (journalists), 2 June 2009, CHICAGO TRIBUNE, “Controversial Coal Mining Method Gets Obama's OK” <http://www.commondreams.org/headline/2009/06/02-4>

With the election of Barack Obama, environmentalists expected to see the end of the "Appalachian apocalypse" -- their name for exposing coal deposits by blowing the tops off of whole mountains. But in recent weeks, the Obama administration has quietly decided to open the way for at least two dozen more "mountaintop removal" projects. The decision to clear a path for the controversial projects was never officially announced, but instead conveyed in a letter this month to a West Virginia congressman and coal ally, Democratic Rep. Nick Rahall. The letter said that the Environmental Protection Agency would not block 42 of 48 mine projects that it had reviewed so far, including some of the most controversial mountaintop mines.

OBSERVATION 3. Significant HARMS are occurring

HARM 1. Natural resource destruction. 1.4 million acres and hundreds of miles of streams

Prof. Melissa Ahern (Pharmacotherapy, Washington State University at Spokane), Prof. Michael Hendryx (Dept of Community Medicine, W. Virginia Univ.), "Mortality in Appalachian Coal Mining Regions: The Value of Statistical Life Lost," published by Association of Schools of Public Health, quoted by Ken Ward Jr. (journalist), 20 June 2009, "Coal's costs outweigh benefits, WVU study finds" CHARLESTON GAZETTE (W. Virginia newspaper), <http://www.wvgazette.com/News/200906200170>

"Natural resources such as forests and streams have substantial economic value when they are left intact, and mining is highly destructive of these resources," the study says. "For example, Appalachian coal mining permanently buried 724 stream miles between 1985 and 2001 through mountaintop removal mining and subsequent valley fills, and will ultimately impact more than 1.4 million acres. "Coal generates inexpensive electricity, but not as inexpensive as the price signals indicate because those prices do not include the costs to human health and productivity, and the costs of natural resource destruction."

HARM 2. 300 million gallons of sludge

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

Mountaintop sites also create slurry ponds—artificial lakes that hold the byproducts of coal processing and that sometimes fail. In 2000, a slurry impoundment in Kentucky leaked into an underground mine and from there onto hillsides, where it enveloped yards and homes and spread into nearby creekbeds, killing fish and other aquatic life and contaminating drinking water. The EPA ranked the incident, involving more than 300 million gallons of coal slurry, one of the worst environmental disasters in the southeastern United States.

HARM 3. Degraded quality of life

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf)

In response, a surface mining technique commonly referred to as “mountaintop mining” has become increasingly prevalent in the Appalachian region. Although its scale and efficiency has enabled the mining of once-inaccessible coal seams, this mining practice often stresses the natural environment and impacts the health and welfare of surrounding human communities. Streams once used for swimming, fishing, and drinking water have been adversely impacted, and groundwater resources used for drinking water have been contaminated. Some forest lands that sustain water quality and habitat and contribute to the Appalachian way of life have been fragmented or lost. These negative impacts are likely to further increase as mines transition to less accessible coal resources within already affected watersheds and communities.

HARM 4. Toxic air & water pollution

Dr. James Hansen (Adjunct Professor, The Earth Institute at Columbia University, New York; NASA scientist famous for bringing climate change to public attention in the 1980s) 29 June 2009, “A Plea To President Obama: End Mountaintop Coal Mining,” <http://www.worldchanging.com/archives/010073.html>

Mountaintop removal also poisons water supplies and pollutes the air with coal and rock dust. Coal ash piles are so toxic and unstable that the Department of Homeland Security has declared that the location of the nation’s 44 most hazardous coal ash sites must be kept secret. They fear terrorists will find ways to spill the toxic substances. But storms and heavy rain can do the same. A recent collapse in Tennessee released 100 times more hazardous material than the Exxon-Valdez oil spill.

OBSERVATION 4. We offer the following PLAN, to be implemented by any necessary constitutional means

**Agency:** Congress, the President, the Environmental Protection Agency and the Army Corps of Engineers

**Mandate:** Congress will vote to direct the EPA and the Corps of Engineers to deny all permits for mountain top coal removal**.**

**Funding:** Existing budgets of existing agencies through general federal revenues.

**Enforcement:** Violations shall be punished with the same penalties as similar crimes under existing law.

**Timeline:** This plan takes effect immediately upon an Affirmative ballot.

**Clarification:** All Affirmative speeches may clarify the plan as necessary.

OBSERVATION 5. We have SOLVENCY and Plan Advocacy.

A. We end the Appalachian apocalypse

Robert F. Kennedy Jr. (senior attorney for the Natural Resources Defense Council), 9 July 2009, ATLANTA JOURNAL CONSTITUTION, “Mountaintop coal mining is looting W.Va.” <http://www.ajc.com/services/content/printedition/2009/07/09/kennedyed0709.html>

Mountaintop removal coal mining is the worst environmental tragedy in American history. When will the Obama administration finally stop this Appalachian apocalypse? If ever an issue deserved President Barack Obama’s promise of change, this is it.

B. There will be enough coal for the future without wrecking our environment

Sen. Lamar Alexander (R-Tenn.), quoted by journalist Halimah Abdullah, 26 June 2009, “Lawmakers, activists battle over mountaintop removal coal mining,” McClatchey-Tribune Information Services, [www.physorg.com/news165226200.html](http://www.physorg.com/news165226200.html)

"The administration's decision will bring tighter scrutiny, but it is still important to pass the Cardin-Alexander legislation that would prohibit blowing off the tops of mountains and putting the waste in our streams," said Alexander, a committee member. "Coal is an essential part of our energy future, but it is not necessary to destroy our environment in order to have enough of it."

C. We restore the human rights of coal mining’s many victims

Institute for Southern Studies, June 2009, “Mountaintop removal is a human rights issue” <http://southernstudies.org/2009/06/mountaintop-removal-is-a-human-rights-issue.html>

The day's most urgent voice belonged to [Maria] Gunnoe (in photo), a resident of West Virginia's coalfields and this year's winner of the Goldman Environmental Prize. She told of how she began organizing against mountaintop removal after the mountain hollow where she has lived her entire life was flooded by a mining operation in 2003 -- an incident that literally washed away about five acres of her land. She described the incessant blasting going on around people's homes, the resulting poor air quality and the polluted water from the valley fills. She also talked about the job loss for miners associated with mountaintop removal, pointing out that there were 150,000 mining jobs in the state in 50 years ago but less than 15,000 today. "Mountaintop removal is absolutely not about jobs," Gunnoe said. "Mountaintop removal is a human rights issue. Myself and my children have a right as U.S. citizens to clean water, and that right is being taken away from us in West Virginia."

2A EVIDENCE: END MOUNTAINTOP REMOVAL COAL MINING

INHERENCY

Federal courts rule in favor of coal industry in Appalachia

Andrew C. Revkin, 13 Feb 2009, “Coal Industry Wins a Round on Mining,” NEW YORK TIMES, <http://www.nytimes.com/2009/02/14/science/earth/14mountain.html>

The latest in a series of federal court rulings on mountaintop coal mining in Appalachia came down firmly on the side of the coal industry on Friday. The ruling, by the United States Court of Appeals for the Fourth Circuit, in Richmond, Va., overturned a 2007 decision that supported environmentalists’ claims that the Army Corps of Engineers had improperly issued permits for several such mining operations.

Landmark federal court case could open floodgate of new mines

Andrew C. Revkin, 13 Feb 2009, “Coal Industry Wins a Round on Mining,” NEW YORK TIMES, <http://www.nytimes.com/2009/02/14/science/earth/14mountain.html>

Jennifer Chavez, a lawyer at Earthjustice, an environmental law firm that is a plaintiff in the case, called the decision “a landmark in a bad way,” that could unleash a burst of new mining. “There’s a big backlog of permits, something like 80 or 90, we hear from our partners in West Virginia,” Ms. Chavez said. “We’re afraid there’s going to be just a floodgate opening.”

Obama’s position on mountaintop mining: Good intentions but still sacrificing Appalachian communities

ENVIRONMENT NEWS SERVICE, 15 June 2009, "Obama Mountaintop Coal Mining Plan Disappoints Appalachian Advocates, , <http://www.ens-newswire.com/ens/jun2009/2009-06-15-091.asp>

The Obama administration's new interagency plan to regulate mountaintop removal coal mining met with mixed reactions from Appalachian community advocates. The [agreement](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf) signed Thursday between officials from the U.S. Environmental Protection Agency, the Department of Interior, and the Army Corp of Engineers aims to reduce the environmental impacts of mountaintop coal mining in the six Appalachian states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. "While the administration's announcement demonstrates some good intentions, particularly in their emphasis on green jobs in Appalachia, they are seeking compromise on an issue that is continuing the Bush administration legacy of sacrificing Appalachian Mountain communities," said Willa Mays, executive director of the advocacy group Appalachian Voices.

Obama administration is not stopping mountaintop removal mining

Joan Mulhern, (senior legislative counsel at the law firm Earthjustice) 15 June 2009, "Obama Mountaintop Coal Mining Plan Disappoints Appalachian Advocates, ENVIRONMENT NEWS SERVICE, <http://www.ens-newswire.com/ens/jun2009/2009-06-15-091.asp>

"We are disappointed that the people of Appalachia and their community watersheds will continue to be the sacrificial lamb for our nation's dependence on coal. Despite the strength of the Clean Water Act and the clear direction that perennial and intermittent streams cannot be buried and destroyed, mountaintop removal mining will continue unabated. The valleys, streams, forests, mountains and communities of Appalachia are facing a bleak future indeed. "We hope that at some point soon the Obama administration will actually do something to stop mountaintop removal before more of Appalachia is permanently destroyed," said Mulhern.

West Virginia politicians are allied with the coal industry

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," [www.smithsonianmag.com/science-nature/36176804.html](http://www.smithsonianmag.com/science-nature/36176804.html)

West Virginia's political establishment has been unwavering in its support for the coal industry. The close relationship is on display every year at the annual West Virginia Coal Symposium, where politicians and industry insiders mingle. This past year, [Gov. Joe Manchin](http://www.smithsonianmag.com/topics?keyword=Joe+Manchin) and [Senator Jay Rockefeller](http://www.smithsonianmag.com/topics?keyword=Jay+Rockefeller) addressed the gathering, advocating ways to turn climate-change legislation to the industry's advantage and reduce its regulatory burdens. "Government should be your ally, not your adversary," Manchin told coal-industry representatives.

HARMS

11.5% of forests in 4 states and 1000 miles of streams will be destroyed by 2012

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

Since the mid-1990s, coal companies have pulverized Appalachian mountaintops in West Virginia, [Kentucky](file://localhost/topics%3fkeyword=Kentucky), [Virginia](file://localhost/topics%3fkeyword=Virginia) and [Tennessee](file://localhost/topics%3fkeyword=Tennessee). Peaks formed hundreds of millions of years ago are obliterated in months. Forests that survived the last ice age are chopped down and burned. The [Environmental Protection Agency](file://localhost/topics%3fkeyword=U.S.+Environmental+Protection+Agency) estimates that by 2012, two decades of mountaintop removal will have destroyed or degraded 11.5 percent of the forests in those four states, an area larger than [Delaware](file://localhost/topics%3fkeyword=Delaware). Rubble and waste will have buried more than 1,000 miles of streams.

Mining fills valleys and destroys rich ecosystems

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Valley fills associated with surface coal mining can destroy forests, habitat, and other important ecosystems. The southern Appalachians are among the richest ecosystems in the United States. They represent a bounty of timber, wildlife, and recreational assets that deserve their world-wide recognition. The forests of this area have been described as the largest remaining contiguous temperate deciduous forest in the world. One area of roughly 13,000 square miles centered in western Virginia contains 144 imperiled species, many of which rely on the region’s rivers and streams.

Leakage from coal ponds contaminates water sources

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

Mountaintop mining waste contains chemical compounds that otherwise remain sealed up in coal and rock. Rainwater falling on a valley fill becomes enriched with heavy metals such as lead, aluminum, chromium, manganese and selenium. Typically, coal companies construct filtration ponds to capture sediments and valley-fill runoff. But the water flowing out of these ponds isn't pristine, and some metals inevitably end up flowing downstream, contaminating water sources.

Mountaintop removal causes immense, irreversible impacts, and there is no credible way to mitigate

Dr Margaret A. Palmer PhD (Univ of Maryland Center for Environmental Science; 25 years experience, environmental scientist with expertise on stream ecosystems and restoration ecology) 22 June 2009, US Senate Committee on Environment & Public Works, Subcommittee on Water & Wildlife, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66fea6d0-9bce-4a9b-be47-aa264a471a89>

The impacts of mountaintop removal with valley fills (MTVF) are immense and irreversible, and there are no scientifically credible plans for mitigating these impacts. The process involves complete deforestation of a mountain summit, followed by blasting it with explosives to remove hundreds of meters of the mountain that cover the coal seam. The rocks and other ‘overburden’ are then pushed into valleys surrounding the site where they fill small streams.

Soil replacement does not fix streams destroyed by valley fill

Dr Margaret A. Palmer PhD (Univ of Maryland Center for Environmental Science; 25 years experience, environmental scientist with expertise on stream ecosystems and restoration ecology) 22 June 2009, US Senate Committee on Environment & Public Works, Subcommittee on Water & Wildlife, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66fea6d0-9bce-4a9b-be47-aa264a471a89>

Mining however removes hundreds of feet of soil, rock, and dead and living plant material. Even if the surface soils are stored and returned to the summit, the paths along which groundwater previously flowed to streams have been obliterated – the summit and its organic-rich layers of soils which harbor ecologically important communities of bacteria, fungi, and burrowing insects are no longer intact stratigraphically. In fact, water reaching the streams that are left at the bottom of valley fills comes from the fill itself which, as I describe later, is so polluted that entire groups of organisms can no longer live in it.

Selenium water contamination causes sickness and death

Dr Margaret A. Palmer PhD (Univ of Maryland Center for Environmental Science; 25 years experience, environmental scientist with expertise on stream ecosystems and restoration ecology) 22 June 2009, US Senate Committee on Environment & Public Works, Subcommittee on Water & Wildlife, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66fea6d0-9bce-4a9b-be47-aa264a471a89>

Selenium (Se) and water quality. The water quality of streams below mountaintop removal mining sites is a serious issue, because when Se enters the aquatic food web it can reach levels that are toxic to fish and wildlife, such as birds. Selenium occurs naturally in coal. It is leached out from coal and overburden that fills valleys when they are exposed to air and water. Professor Dennis Lemly of Wake Forest University, who is a world expert on selenium and its ecological impacts, has completed numerous studies and a white paper he wrote on the topic was submitted as part of this hearing. I refer you to this paper for details, but describe the seriousness of the issue very briefly here. Because selenium can be bioaccumulated in the tissue of organisms, even small quantities in the water can lead to major problems for organisms: as you move up the food chain, Se is concentrated more and more and can cause severe abnormalities, death, or reproductive failure (Fig. 5). We know that this is a major problem in Appalachian streams impacted by mountaintop mining, because a major environmental impact study was completed in 2005 by four federal agencies and the West Virginia DEP (EPA 2005). Over 1200 stream segments were examined, finding that the valley fills used for waste disposal are a primary source of selenium contamination. Because of the size and placement of these fills, selenium leaching and associated pollution of downstream aquatic habitats, left untreated, will continue in perpetuity.

Mountaintop mining = 10% of all coal in the USA; 40% of coal mined in W.Virginia and Kentucky

Andrew C. Revkin, 13 Feb 2009, “Coal Industry Wins a Round on Mining,” NEW YORK TIMES, <http://www.nytimes.com/2009/02/14/science/earth/14mountain.html>

The mining association says that mountaintop mining in Appalachia produces about 10 percent of all coal mined in the United States and 40 percent of the coal mined in West Virginia and Kentucky.

Mountaintop removal is only 7% of the nation’s coal – but catastrophic impacts

Dr. James Hansen (Adjunct Professor, The Earth Institute at Columbia University, New York; NASA scientist famous for bringing climate change to public attention in the 1980s) 29 June 2009, “A Plea To President Obama: End Mountaintop Coal Mining,” <http://www.worldchanging.com/archives/010073.html>

[Mountaintop removal, which provides a mere 7 percent of the nation’s coal](http://www.e360.yale.edu/content/feature.msp?id=2150" \t "new), is done by clear-cutting forests, blowing the tops off of mountains, and then dumping the debris into streambeds — an undeniably catastrophic way of mining. This technique has buried more than 800 miles of Appalachian streams in mining debris and by 2012 will have serious damaged or destroyed an area larger than Delaware.

Burning coal is bad: Climate change, air pollution, devastating effect on human health

Dr. James Hansen (Adjunct Professor, The Earth Institute at Columbia University, New York; NASA scientist famous for bringing climate change to public attention in the 1980s) 29 June 2009, “A Plea To President Obama: End Mountaintop Coal Mining,” <http://www.worldchanging.com/archives/010073.html>

The science is clear. Burning all fossil fuels will destroy the future of young people and the unborn. And the fossil fuel that we must stop burning is coal. Coal is the critical issue. Coal is the main cause of climate change. It is also the dirtiest fossil fuel — air pollution, arsenic, and mercury from coal have devastating effects on human health and cause birth defects.

“Stream Creation” (coal industry’s method for replacing streams destroyed by valley fill) never works

Dr Margaret A. Palmer PhD (Univ of Maryland Center for Environmental Science; 25 years experience, environmental scientist with expertise on stream ecosystems and restoration ecology) 22 June 2009, US Senate Committee on Environment & Public Works, Subcommittee on Water & Wildlife, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66fea6d0-9bce-4a9b-be47-aa264a471a89>

Due to the mountaintop removal and valley fill activities, all of the natural water flow paths, the landscape topography, the vegetative inputs to streams, the riparian soil and the streambed biogeochemistry are different or totally absent. There is not a single case in which a channel built in this manner has resulted in a healthy stream with the biota and functions of un-impacted headwater streams. No study has ever produced any evidence that created streams at these sites have hydrological and ecological dynamics that are similar to the high gradient headwater streams they are meant to replace. Stream creation is simply outside the current scope of accepted science.

Mining with valley fill causes permanent impacts and repair strategies don’t work

Dr Margaret A. Palmer PhD (Univ of Maryland Center for Environmental Science; 25 years experience, environmental scientist with expertise on stream ecosystems and restoration ecology) 22 June 2009, US Senate Committee on Environment & Public Works, Subcommittee on Water & Wildlife, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66fea6d0-9bce-4a9b-be47-aa264a471a89>

In conclusion, Mr. Chairman and fellow Senators, mountaintop removal mining with valley fills causes permanent environmental impacts. The mountain summits that are removed to reach the coal may not have the same shape or height they previously did, the streams that are buried when rocks and dirt are dumped over the side of the mountain into the valleys below are gone forever, and there is no evidence to date that mitigation actions can compensate for the lost natural resources and ecological functions of the headwater streams that are destroyed. Further, the water quality impacts from the mining and valley fills permeate downstream such that many streams not directly touched by the mining activities are biologically impaired. Selenium levels measured in streams below valley fills are as high at levels known to cause major deformities, toxicity, or reproductive failure in fish. Conductivity levels in some streams below valley fills are like seawater. Fish in rivers and reservoirs below fills have deformities and reproductive failures due to selenium exposure. Scientific studies in well respected journals document these impacts, and there is not a single study in the peer-reviewed literature providing evidence that streams created for mitigation replace the functions and structures of natural headwater streams.

SOLVENCY & PLAN ADVOCACY

Must stop annihilation of mountains and people

Maria Gunnoe (Coal field resident and Organizer in the affected communities for the Ohio Valley Environmental Coalition) 25 June 2009, testimony before the Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, “The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia,” <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=9441e93e-4061-4489-846a-b3a22d2ba3e3>

We have the opportunity to stop the annihilation of mountains and people by mountaintop removal and to change the history of energy in this country. We are at a cross roads. We must put all special interest aside and follow what we know to be best for all of our future generations. Stop the attack on Appalachia’s water supply and the people it sustains.

Stop mountaintop removal: Coal left in the ground is useful, removal is a shameful abomination

Dr. James Hansen (Adjunct Professor, The Earth Institute at Columbia University, New York; NASA scientist famous for bringing climate change to public attention in the 1980s), 26 June 2009, “A plea to President Obama - end mountaintop coal mining” [www.guardian.co.uk/environment/2009/jun/26/network-coal](http://www.guardian.co.uk/environment/2009/jun/26/network-coal)

Coal left in the ground is useful. It holds up the mountains, which, left intact, are an ideal site for wind energy. In contrast, mountaintop removal and strip mining of coal is a shameful abomination. Mining jobs have shrunk to a small fraction of past levels. With clean energy, there could be far more, green-energy jobs, and the government could support the retraining of miners, to a brighter, cleaner future. Politicians may have to make concessions on what is right for what is winnable. But as a scientist and a citizen, I believe the right course is very clear: The climate crisis demands a moratorium on new coal-fired power plants that do not capture and safely dispose of all emissions. And mountaintop removal, providing only a small fraction of our energy, should be permanently prohibited.

DISADVANTAGE RESPONSES

Human cost of Appalachian coal mining outweighs economic benefits

Ken Ward Jr. (journalist), 20 June 2009, "Coal's costs outweigh benefits, WVU study finds" CHARLESTON GAZETTE (W. Virginia newspaper), <http://www.wvgazette.com/News/200906200170>

Writing with co-author Melissa Ahern of Washington State University, [Michael] Hendryx reports that the coal industry generates a little more than $8 billion a year in economic benefits for the Appalachian region. But, Hendryx and Ahern put the value of premature deaths attributable to the mining industry across the Appalachian coalfields at -- by one of their most conservative estimates -- $42 billion. "The human cost of the Appalachian coal mining economy outweighs its economic benefits," they wrote.

Coal mining costs 5 times more than it gives to Appalachia

Ken Ward Jr. (journalist), 20 June 2009, "Coal's costs outweigh benefits, WVU study finds" CHARLESTON GAZETTE (W. Virginia newspaper), <http://www.wvgazette.com/News/200906200170>

Coal mining costs Appalachians five times more in early deaths as the industry provides to the region in jobs, taxes and other economic benefits, according to a groundbreaking new study co-authored by a West Virginia University researcher. In the latest in a series of papers, WVU researcher Michael Hendryx questions the idea that coal is good for West Virginia and other Appalachian communities, and recommends that political leaders consider other alternatives for improving the region's economy and quality of life.

Alternative jobs programs are being set up in Appalachia

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Collaborative efforts such as the Clinch/Powell Memorandum of Understanding between EPA’s Mid-Atlantic and Southeast Regions, the Commonwealth of Virginia, and the State of Tennessee, and supported by OSM, attempt to address important broad-scale watershed issues. The Mid-Atlantic Highlands Action Program is another collaborative initiative designed to protect and restore ecological services while providing green jobs. The program has been endorsed by the Governors of Virginia, West Virginia, Pennsylvania, and Maryland and could be retooled and chartered to manage the environmental and economic issues facing this part of Appalachia. Building on these existing programs, Federal agencies are also looking to help provide clean energy jobs and to target economic recovery activities in Appalachia in order to help diversify and strengthen the Appalachian regional economy. As part of the agencies’ recent Memorandum of Understanding, EPA and other Federal agencies – coordinating with the Council on Environmental Quality – will be working with appropriate regional, state, and local entities to help stimulate clean energy and green jobs development. This initiative will encourage better coordination among existing Federal economic recovery efforts in Appalachia.

Mountaintop coal isn’t solving poverty in W. Virginia

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

West Virginia is the nation's third-poorest state, above only [Mississippi](http://www.smithsonianmag.com/topics?keyword=Mississippi) and [Arkansas](http://www.smithsonianmag.com/topics?keyword=Arkansas) in per capita income, and the poverty is concentrated in the coal fields: in Ansted's [Fayette County](http://www.smithsonianmag.com/topics?keyword=Fayette+County), 20 percent of the population lives below the poverty line, compared with 16 percent in the state and 12 percent nationwide. For decades, mining has been the only industry in dozens of small West Virginia towns. But mountaintop coal removal, because of the toll it takes on the natural surroundings, is threatening the quality of life in communities that the coal industry helped build. And mountaintop removal, which employs half as many people to produce the same amount of coal as an underground mine, doesn't bring the same benefits that West Virginians once reaped from traditional coal mining.

India can shift to nuclear energy instead of coal

Lakhvinder Singh ( senior research fellow at the Institute for Far Eastern Studies in Seoul, is president of the Indo-Korean Policy Forum) 10 Sept 2008 THE KOREA TIMES, India-US Nuclear Deal, <http://www.koreatimes.co.kr/www/news/opinon/2008/09/198_30848.html>

Currently most of India's energy needs are met through conventional energy. With the India-U.S. nuclear pact, India will be able to shift towards nuclear energy and its demand for coal, crude and natural gas could decline considerably.

REFINED TASTE: THE CASE FOR OIL REFINERY DEREGULATION

By Vance Trefethen

Environmental extremists ride in cars to airports and fly on jet planes to attend conferences to condemn the oil industry, not even noticing the irony. If they had their way, they’d shut down every oil refinery, and sadly they’re having their way. The current environmentalist assault on our nation’s oil refineries compels my partner and me to affirm: That the United States Federal Government should significantly reform its environmental policy.

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

OBSERVATION 2. INHERENCY: We look at the current environmentalist assault on oil refineries.

A. No new refineries since 1976. This is due to environmental lobbying and regulation

Richard M. Salsman (president of InterMarket Forecasting Inc., an investment forecasting and consulting firm in Durham NC) 26 Mar 2005, “Environmentalists Kill and Maim Dozens in Texas: How Environmental Regulations Reduce Safety and Productivity in the Energy Industry,” CAPITALISM MAGAZINE, <http://www.capmag.com/article.asp?ID=4177>

Fact: not a single new oil and gas refinery has been built in the U.S. since 1976; the last one built was in Garyville, Louisiana that year. Worse, today there are 54% fewer oil and gas refineries in the U.S. (149) than there were in 1981 (321). Why? Not only have environmentalists lobbied government to block new refinery construction; they've also lobbied to have refineries decommissioned. Moreover, environmental regulations have materially raised the cost of operating refineries, making many of them unprofitable.

B. Unnecessary regulations since 1990 are to blame

Ben Lieberman (Certified Public Accountant, Lawyer, specialist in energy and environmental issues, is a Senior Policy Analyst at The Heritage Foundation's Roe Institute for Economic Policy Studies ) 5 June 2006, Congress Should Streamline Regulatory Impediments to Refinery Expansions (brackets and parentheses in original) [www.heritage.org/research/EnergyandEnvironment/wm1112.cfm](http://www.heritage.org/research/EnergyandEnvironment/wm1112.cfm)

Part of the reason that capacity is so tight is costly and time-consuming regulations affecting refinery operations. Most stem from the Clean Air Act and became much more stringent after that statute’s 1990 rewrite. According to the Federal Trade Commission, “[E]nvironmental laws and regulations have required substantial and expensive refinery upgrades, particularly over the past 15 years.” The need for these additional environmental measures is questionable, given that air pollution from refineries and other sources was already in sharp decline before they were enacted. Nonetheless, the existing statutory requirements and Environmental Protection Agency (EPA) rules remain in place, and the EPA continues to promulgate new rules.

OBSERVATION 3. This causes several HARMS

HARM 1. Prosperity and security threatened.

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

However, at present, a "refining bottleneck," broadly speaking, threatens to cause a continued and politically manufactured run-up of gasoline prices. Those who want to push fossil fuels above the average person's reach can probably succeed by discouraging the building of refineries and synthesizing plants. Opponents of carbon fuels, by promoting ever-tightening regulation, can probably drive motor-fuel prices much higher than they are at present. The economic repercussions are potentially devastating to the prosperity and even the security of the United States and the rest of the world.

HARM 2. Billions of dollars wasted.

Ben Lieberman (Certified Public Accountant, Lawyer, specialist in energy and environmental issues, is a Senior Policy Analyst at The Heritage Foundation's Roe Institute for Economic Policy Studies ) 5 June 2006, Congress Should Streamline Regulatory Impediments to Refinery Expansions [www.heritage.org/research/EnergyandEnvironment/wm1112.cfm](http://www.heritage.org/research/EnergyandEnvironment/wm1112.cfm)

By some estimates, as much as 25 percent of capital outlays in the refining sector goes to environmental regulatory compliance. This investment, several billion dollars annually, is money that is spent maintaining existing capacity, rather than expanding it. And not only do these costly regulations siphon resources away from refinery expansions, but they also make those expansions more expensive and protracted.

HARM 3. Accidental deaths & injuries at refineries.

Richard M. Salsman (president of InterMarket Forecasting Inc., an investment forecasting and consulting firm in Durham NC) 26 Mar 2005, “Environmentalists Kill and Maim Dozens in Texas: How Environmental Regulations Reduce Safety and Productivity in the Energy Industry,” CAPITALISM MAGAZINE, <http://www.capmag.com/article.asp?ID=4177>

How do these facts relate to accidents, deaths and injuries at refineries? A steadily-declining number of refineries, coupled with an ever-growing demand for the products of refineries, means companies must push their plants to the limit; many today operate at 95% of capacity, well above the norm for industry in general. That leaves little time for the maintenance, repair or upgrade of existing plants. This necessarily leads, in turn, to less-safe equipment and less-safe operations. Obviously, more regulation and more fines cannot possibly solve this problem. They caused it.

OBSERVATION 4. We offer a PLAN

Congress will pass and the President will sign any necessary legislation to accomplish our **mandates:**

**1. Regulations repealed**. All environmental regulations on US oil refineries and synthesizing plants enacted in 1990 or later are repealed.

**2. Strict liability.** Any environmental harms caused by any petroleum refinery or synthesizing plant relating to any activity unregulated by this plan will be subject to lawsuits for damages at common law under the rule of strict liability.

**3. Loser pays.** In any lawsuit filed to block the construction of a new or expanded refinery, the loser of the suit will pay all court costs for the winning side.

To summarize our new policy: We repeal the regulations that are hampering the operation and construction of refineries. Instead of regulating refineries to death, we will let them operate in a freer environment but with the warning that they can be sued for any damage their pollution causes to anyone for any reason.

**Funding** will be money saved by eliminating enforcement efforts on repealed laws and general federal revenues.

**Enforcement** will be through the federal courts. Any rules contrary to our mandates will be struck down by the courts.

This plan takes effect 30 days after an Affirmative ballot, and all Affirmative speeches may clarify the plan as needed.

OBSERVATION 5. ADVANTAGES

ADVANTAGE 1. Reduced crude oil prices.

Relaxed environmental regulations increase refining capacity and bring down the price of crude oil. This happens because new refineries previously blocked by regulation will come on line and process the less-desirable grades of crude oil that many refineries today can’t handle. When that happens, demand for the better grade of crude will drop, and the price will go down. Professor Marxsen explains in March 2008:

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html> (brackets added)

Bernard Gwertzman, a consulting editor for the Council on Foreign Relations and a former editor and correspondent for the New York Times, asked [former director of the U.S. Treasury's Office of Domestic Energy Policy Philip] Verleger in a 2006 interview how a relaxation of environmental regulations could bring down the price of crude oil if inadequacy of refining capacity drove it up to begin with. Verleger elaborated on one of the mechanisms of the refining constraint by explaining that many of the existing refineries cannot meet present regulations without buying "sweet" (low-sulfur) crude from which they can refine gasoline without much work. Only a subset of U.S. refineries has made the huge investments that enable them to meet regulatory requirements while processing less-desirable grades of crude, and they strongly oppose politically a relaxation of regulatory requirements that would reduce the profits from their investment in sophisticated refining equipment. Verleger emphasized that the demand for sweet light crude is growing explosively because refinery capacity to process less-desirable feedstock is inadequate. A larger population of refineries that can obtain motor fuel from a spectrum of inferior feedstocks would alleviate much of the rise in the price of both sweet light crude and gasoline at the pumps. So would a larger population of refineries that can get more gasoline from a barrel of sweet light crude.

ADVANTAGE 2. Centuries of inexpensive gasoline.

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

The expansion of industries that make gasoline from the lower-value constituents of crude oil and from tar sands, oil shale, coal, and natural gas would expand the world's supply of motor fuel and halt the rise of both gasoline and crude-oil prices, perhaps even pushing motor-fuel prices down substantially. A sufficient expansion of fossil-energy-converting facilities would almost certainly prolong the era of relatively inexpensive gasoline for centuries.

ADVANTAGE 3. Property rights restored. We stop environmental activists from shifting the cost of their hatred of the oil industry onto others.

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” (brackets added) [www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html](http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html)

John Bratland observes that command-and-control regulation facilitates indirect intervention by people who actually suffer little or no real damage from the exercise of petroleum producers' legitimate property rights (2004, 532). The instigators of this "political externality" problem (527) ignore the trade-off between development of valuable petroleum-supply capabilities and a realistic valuation of environmental amenities. The political process empowers rudimentary "general animosity toward the petroleum industry" (532), which is "vented as adversarial political pressure brought to bear on the legislative and regulatory organs of government." Most important, [economist with the U.S. Department of the Interior in Washington, John] Bratland emphasizes, the people inflicting regulatory restrictions through the political process bear little or none of the opportunity costs that such restrictions impose (527, 532). They get a "free ride" (532), in contrast to property owners who bear the costs of such political activism. Bratland proposes, as a major part of the solution, that intervention be limited to "strict liability," whereby property owners such as petroleum refiners must pay only for actual damages to property of others or for damages to their persons.

ADVANTAGE 4. Reduced costs by reducing frivolous lawsuits

Newt Gingrich (former Speaker of the House of Representatives), 24 Apr 2009, testimony before the House subcommittee on Energy & Commerce, “Gingrich’s Remarks to the House E&C Committee,” <http://www.realclearpolitics.com/articles/2009/04/24/gingrich_house_energy_commerce_transcript_96182.html>

Enact real litigation reform for companies building refineries or expanding capacity. A loser-pays rule in litigation would help cut down on frivolous lawsuits dramatically. In the case of Arizona Clean Fuels, this kind of reform could have prevented a lawsuit that cost it some $500,000 in legal expenses, forcing it to change locations to escape the debilitating financial and time delays. The case was later dismissed by a district court judge who called the lawsuit "frivolous" and lacking in merit. Lawsuits are a huge problem for refinery projects, and we can't expect more to be built as long as lawsuits can hold up projects for years at a time and frustrate efforts to finance new refineries.

ADVANTAGE 5. We uphold freedom and stop environmentalists from sacrificing man to nature.

Prof. Brian P. Simpson (economics; National University in La Jolla, Calif.), 3 June 2008, “The Real Culprit of Our Gasoline Woes: Environmentalists” CAPITALISM MAGAZINE, [www.capmag.com/article.asp?ID=5195](http://www.capmag.com/article.asp?ID=5195)

To expand the production of oil and gasoline, we must prevent environmentalists from sacrificing man to nature. We must protect the moral right of oil companies to explore for, drill for, transport, and refine oil. Producing oil and gasoline are enormously complex tasks and cannot be performed while being strangled by regulations and other restrictions. One needs the freedom to think and act on the judgment of one's mind to engage in any process of production. The production of oil and gasoline are no exceptions.

2A EVIDENCE: OIL REFINERY DEREGULATION

HARMS

25% of the capital outlays go toward environmental regulatory compliance

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Ben Lieberman (2006), a senior policy analyst at the Heritage Foundation, contends that as much as 25 percent of total capital outlays in the refining sector are devoted to environmental regulatory compliance. Ever-changing specifications for reformulated gasoline and low-sulfur diesel frustrate refiners' efforts to achieve maximum volumetric efficiency during peak demand periods and further reduce the return on an investment in a new refinery (Shackouls 2004, I-18).

Threat of economic collapse. Turning the environmentalists’ apocalyptic fears around, Professor Craig Marxsen in 2008 points out where the real threat is:

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

The real threat of economic collapse, however, springs from the fright-induced failure to invest in refining and fuel-synthesizing capacity. Belief in the catastrophists' collapse hypothesis thus itself threatens to bring real catastrophe to our modern industrial world.

EPA extorts money by threatening refineries

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html> (brackets added)

Thirty-six refineries in nineteen states settled these actions for the most part with negotiated consent decrees that involved millions of dollars for remedial expenditures and additional millions for payment of fines. The consent decrees typically remained in force for years. [Environmental engineer Jerry] Hill notes that such actions against refiners "have made them subject to additional standards and regulatory supervision without the typical rule-making process." He describes settlements as "giving the EPA joint dominion with several owners in the daily operation of a number of refineries" (2002, 76). Affected refineries account for about one-third of U.S. capacity. Fines ranging up to $10 million went to the U.S. government, with a sizeable portion going to the regulatory agency involved. Hill's report is not a polemic to sway public opinion, but only a descriptive article in the trade journal Hydrocarbon Processing. To an industry outsider, however, the account raises suspicion of an abuse of regulatory authority for the purpose of obtaining, by extortion, nearly unqualified pledges of compliance with bureaucrats' dictates that are unbounded by statutory limitations.

Breakdowns & fires due to constantly running at capacity

Supplies vulnerable to natural disasters

Prof. Andrew Bernstein PhD (philosophy; Marist College) 2 June 2006, Orlando Business Journal, “Bush and Congress Should Lift Environmental Restrictions on Energy Production,” [www.aynrand.org/site/News2?page=NewsArticle&id=12623&news\_iv\_ctrl=1021](http://www.aynrand.org/site/News2?page=NewsArticle&id=12623&news_iv_ctrl=1021)

Further, in large measure due to environmental restrictions, America has not built a new oil refinery for more than 25 years, meaning a diminished ability to refine crude oil into gasoline, diesel, jet fuel, heating oil, and other petroleum products. Our refineries run at capacity constantly, making repairs difficult, leaving them more susceptible to breakdowns and fires, and--with most centered in the Gulf of Mexico--leaving the country's supply of refined oil vulnerable to such natural disasters as Katrina.

Regulations raise the price of gasoline

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Regulatory discouragement of investment in refining capacity seems already to have added much more than eleven cents to the price of a gallon of gasoline and may add several dollars per gallon more in coming years. In contrast to gasoline taxes, past decades of harassment by command-and-control regulation attempts to achieve carbon control by means analogous to spiking trees in order to save forests by wrecking sawmills. Although petroleum company officers may perceive what is causing them serious harm, motorists and nearly all others are suffering a substantial externality paid for at the pumps that they do not appear to understand. The public is so bamboozled by the fighters of global warming that it almost seems to regard the destruction of refining capacity as a good thing.

Refining capacity constraint causes huge increase in oil prices

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Philip K. Verleger Jr., a former director of the U.S. Treasury's Office of Domestic Energy Policy, is one of the nation's most renowned energy authorities and has frequently testified before Congress as an expert on energy commodity markets. He notes that a refining-capacity constraint for the most part caused the huge increases in crude-oil prices since the spring of 2004, in contrast to OPEC actions that had previously driven up crude prices from about $10 per barrel in 1999 to about $35 in early 2004 (2006, 17-18, 58). U.S. refining capacity fell from 19 million barrels per day in 1981 to 15 million barrels per day by 1994 (Economic Report of the President 2006, 241). Expansion of existing refineries' output subsequently pushed capacity up to 17 million barrels per day by 2004, and imports of refined petroleum products increased from 11 percent of consumption in 1993 to 15 percent in 2004 (Economic Report of the President 2006, 241, 243).

Discouragement of refinery investment causes gas prices to rise

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

As demand for refined output grows, the industry wastes more input as unconverted outputs of low value, such as asphalt. Expanded utilization of U.S. distillation refinery equipment appears to have offset any recent expansion of conversion-refinery capacity. U.S. Department of Energy (2007) figures show that total U.S. refinery yields for gasoline have exhibited a mild downward trend since 2001. The trend line for the average U.S. refinery has gone from near 47 percent finished motor gasoline per barrel of crude oil in January 2001 to near 46 percent in March 2007. Discouragement of future investment in conversion-refinery equipment will cause the price of gasoline to rise by ensuring that yields do not rise and that cheaper feedstocks cannot provide an increasing amount of gasoline output.

Regulations cause refinery plant closures

Jessica Resnick-Ault (journalist), 14 Jan 2009, WALL STREET JOURNAL [www.kellogg.northwestern.edu/faculty/mazzeo/htm/sp\_files/021209/(2)%20Green%20Legislation/Articles/carbonregulationfuture\_wsj\_jan\_2009.pdf](http://www.kellogg.northwestern.edu/faculty/mazzeo/htm/sp_files/021209/(2)%20Green%20Legislation/Articles/carbonregulationfuture_wsj_jan_2009.pdf)

Companies able to invest to keep up with changing regulations are likely to be the most successful, said Kevin Book, an analyst with FBR Capital Markets Corp., an Arlington, Va., investment bank and brokerage. "I think there's an advantage in terms of modernity to having the capital available to make these efficiency improvements," he said. Companies that are unable to keep up may be forced to retire their plants, in a repeat of the raft of U.S. refinery closures that followed implementation of amendments to the Clean Air Act in the 1990s. "You had a round of refinery closures, where plants were deemed uneconomic," said Ann Kohler, an analyst with New York investment bank Caris & Co. Refineries with a combined capacity of more than 1.6 million barrels a day closed between 1988 and 2002, largely due to an inability to comply with environmental regulations. This represents about 10% of today's total refining capacity. "The same would hold if you're looking at another round of the industry going through significant investment to meet regulatory requirements."

Environmentalist obstruction blocks plentiful, affordable gasoline

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

The earth is hardly exhausting the resources to make abundant, affordable gasoline. The technology to make gasoline, even when oil wells run dry, already exists. Rising gasoline prices will automatically set the stage, so that synthesizing gasoline from a wide variety of source materials will become increasingly profitable. However, the enjoyment of plentiful gasoline may not be in our future in spite of its feasibility. Political interference with the construction and operation of refineries and synthesizing plants places the world at the mercy of those who believe they must deprive humankind of cheap fossil fuels. Their persistent obstruction of the construction and expansion of petroleum refineries has already proved capable of contriving a mild energy crisis.

Minor incidents boost gasoline prices; Major events send prices skyrocketing

Ben Lieberman (Certified Public Accountant, Lawyer, specialist in energy and environmental issues, is a Senior Policy Analyst at The Heritage Foundation's Roe Institute for Economic Policy Studies ) 5 June 2006, Congress Should Streamline Regulatory Impediments to Refinery Expansions [www.heritage.org/research/EnergyandEnvironment/wm1112.cfm](http://www.heritage.org/research/EnergyandEnvironment/wm1112.cfm)

Domestic gasoline output and gasoline imports together are barely adequate even under the best of circumstances, and the lack of spare refining capacity leaves little margin for error. This is especially true during the high-demand summer months. In fact, there is so little cushion that even minor incidents that knock a single refinery offline can boost prices nationwide. More major events—such as Hurricane like Katrina, which impacted 14 percent of refining capacity—can send prices skyrocketing.

Environmentalists want to sacrifice man to nature by blocking production of oil and gasoline

A. Global warming is just the latest excuse

Prof. Brian P. Simpson (economics; National University in La Jolla, Calif.), 3 June 2008, “The Real Culprit of Our Gasoline Woes: Environmentalists” CAPITALISM MAGAZINE, [www.capmag.com/article.asp?ID=5195](http://www.capmag.com/article.asp?ID=5195)

Some might think that environmentalists oppose the use of fossil fuels to avoid global warming. However, environmentalists have opposed the production of oil and gasoline since the 1960s, long before they began rationalizing such opposition with the global warming argument. Furthermore, if global warming was the reason for their opposition to fossil fuels, they would be staunch advocates of nuclear and hydroelectric power. But they oppose these more fiercely than they oppose the use of fossil fuels.

B. It’s really about sacrificing man to nature. Simpson continues later in the same context:

Prof. Brian P. Simpson (economics; National University in La Jolla, Calif.), 3 June 2008, “The Real Culprit of Our Gasoline Woes: Environmentalists” CAPITALISM MAGAZINE, [www.capmag.com/article.asp?ID=5195](http://www.capmag.com/article.asp?ID=5195) (ellipses in original)

If avoiding global warming is not their goal, what is? We need merely listen to environmentalists to find out. David Graber, a research biologist at the National Park Service, stated, "We are not interested in the utility of a particular species, or free-flowing river, or ecosystem, to mankind. They have intrinsic value, more value--to me--than another human body, or a billion of them." Environmentalist author Michael Ableman stated, "The assumption that by buying anything, whether green or not, we're solving the problem is a misperception. Consuming is a significant part of the problem . . . ." Adam Kolton of the Alaska Wilderness League stated, "Drilling the wildest place in America is objectionable no matter how it's packaged." The message is clear, environmentalists want to stop production to sacrifice man to nature. If environmentalists are not stopped, the results will be devastating to mankind.

INHERENCY

Apocalyptic environmentalism drives opposition to petroleum refining

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Nor does the world face an imminent apocalypse from carbon dioxide "pollution." Substantial projected costs per capita from carbon dioxide emissions remain so remote that virtually zero discount rates are required to give them more than modest present values today. The imminent pollution crisis foretold in The Limits to Growth has proved to be a phantom. Ironically, gasoline prices are rising for the most part because of a belief in an almost self-fulfilling doomsday forecast. Devotees of the collapse hypothesis have helped propel a regulatory campaign to discourage investment in petroleum-refining capacity, naively hoping both to head off exhaustion of fossil resources and to prevent an alleged global-warming crisis they fear will come after the lifetimes of people now living.

EPA actively regulating refineries

US Environmental Protection Agency, 2008, “Compliance and Enforcement Annual Results FY2008: Air Enforcement Case Highlights” [www.epa.gov/compliance/resources/reports/endofyear/eoy2008/2008enfairhighlights.html](http://www.epa.gov/compliance/resources/reports/endofyear/eoy2008/2008enfairhighlights.html)

Since March 2000, EPA has entered into 22 settlements with U.S. companies that refine nearly 87 percent of the Nation’s petroleum refining capacity. These “global” settlements (i.e., a comprehensive, multi-issue company-wide Consent Decree) cover 96 refineries in 28 states and on full implementation will result in annual emissions reductions of more than 86,000 tons of nitrogen oxides (NOx) and more than 245,000 tons of sulfur dioxide (SO2). Since meeting the primary goal of covering 85% of the refining industry in fiscal year 2007, EPA has actively continued to engage the remaining refiners that have not yet resolved violations, to ensure a “level playing field” throughout this sector.

Obama wants to raise refinery regulations

Jim Efstathiou Jr. (journalist), 2 July 2009, Bloomberg News, “Exxon, Valero Face New Curbs On Cancer-Causing Gases,” <http://www.bloomberg.com/apps/news?pid=20601130&sid=aRHl__xeTUHk>

President [Barack Obama](http://search.bloomberg.com/search?q=Barack+Obama&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1) is considering new curbs on U.S. oil refineries whose gas emissions pose a cancer risk to hundreds of thousands of people living near the plants, setting up a potential conflict with companies over the cost of new regulations. The White House suspended a [ruling](http://www.epa.gov/ttncaaa1/t3/fr_notices/petrefin_ats_fa_011609.pdf" \t "_blank) signed by President [George W. Bush](http://search.bloomberg.com/search?q=George+W.+Bush&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1) four days before he left office that found refiners were adequately controlling benzene and other cancer- causing gases, said [Cathy Milbourn](http://search.bloomberg.com/search?q=Cathy+Milbourn&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1), a spokeswoman at the [U.S. Environmental Protection Agency](http://www.environmentamerica.org/" \t "_blank).

2005 refinery incentives never amounted to much

Tom Doggett (journalist), 15 June 2007, REUTERS news service, “US law to spur new oil refineries a bust so far,” [www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html](http://www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html) (brackets added)

Guy Caruso, who heads the federal Energy Information Administration, said the incentives in the 2005 law to encourage new refineries never amounted to much anyway. He said while profits from making gasoline are high at the moment, it is the fear of what may happen in the years ahead that affects refinery construction decisions today.

Regulatory harassment drives refineries out of business

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

The potential for regulatory harassment may make refiners with less-than-extraordinary prospective profits unwilling to remain in business in coming years. In a 2002 report, Jerry Hill, principal environmental engineer at Bechtel's Houston office, illustrates what had then become a strategy emphasized by the Environmental Protection Agency (EPA). The EPA's Office of Enforcement and Compliance Assurance had increased its focus on petroleum refineries, and inspection teams made a number of detailed audits, each spending many days searching for violations of federal and state pollution regulations. These armies of fault-finding inspectors compiled and submitted to the U.S. Justice Department and filed in district federal courts long lists of alleged violations of pollution laws.

Government intervention constrains the petroleum-refining industry

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Government interventions have constrained the petroleum-refining industry for decades. A 2004 U.S. Department of Energy National Petroleum Council report documents a variety of impediments to expansion of refining capacity. Not a single new-site refinery has been built in the United States since the mid-1970s (Shackouls 2004, I-19). From 1981 to 2002, the average return on equity for petroleum companies was 11.3 percent, and the S&P 500 average was 12.2 percent (I-14). The return on capital employed in refining and marketing was only 5.3 percent, compared with a return on capital of 7.7 percent for the industry as a whole (I-14). The low returns reportedly derive from significant regulatory-driven investments that yield no return, combined with the highly competitive nature of the business (I-16). Building a new refinery involves a huge investment and is therefore subject to tremendous losses from any delays. Environmental regulation--including New Source Review enforcement and National Ambient Air Quality Standards--and uncertainties generated by waivers, exceptions, and amendments to regulations create strong disincentives for investment in new refineries (I-6).

No new refineries since 1976, but gasoline demand is rising

Prof. Mark J. Perry PhD (economics; Univ. of Michigan, Flint), 2 June 2008, “No New Oil Refineries since 1976,” <http://mjperry.blogspot.com/2008/06/no-new-oil-refineries-since-1976.html>

A new oil refinery has not been built in the United States since 1976. During that time, our gasoline use has increased over 25%. The nation's 149 existing refineries have been running at maximum capacity trying to meet record demand and, as a result, not only do we import oil, we actually have to import 10% of our daily gasoline from refineries overseas.

Environmentalists have the upper hand, block all new refineries

Prof. Mark J. Perry PhD (economics; Univ. of Michigan, Flint), 2 June 2008, “No New Oil Refineries since 1976,” <http://mjperry.blogspot.com/2008/06/no-new-oil-refineries-since-1976.html>

But getting an oil refinery built is next to impossible, hence the 30-year construction drought. There will always be environmental activists who fight any new proposed refinery, regardless of where it might be located and how environmentally safe it is. And our environmental rules give them the upper hand.

Expanding existing refineries not enough: We still produce less gasoline than in 1981

Richard M. Salsman (president of InterMarket Forecasting Inc., an investment forecasting and consulting firm in Durham NC) 26 Mar 2005, “Environmentalists Kill and Maim Dozens in Texas: How Environmental Regulations Reduce Safety and Productivity in the Energy Industry,” CAPITALISM MAGAZINE, <http://www.capmag.com/article.asp?ID=4177>

To their great credit, refiners have tried to offset the immense harm done by environmentalist restrictions in recent decades and have worked hard to provide consumers with oil and gas by getting the most they can out of a shrinking number of facilities. In many cases the capacity and productivity of the dwindling number of refineries have been increased; whereas in 1981 the average refinery produced 60,000 barrels of gasoline per day, today the average refinery produces 113,000 barrels per day. Yet despite this near-doubling of productivity – made possible by great feats of science and engineering – overall, 10% less gasoline today is refined per day in the U.S. (16.8 million barrels) compared to 1981 (18.6 million barrels).

Common law suits in Status Quo don’t work when refineries comply with regulations

Monique Harden, Nathalie Walker (attorneys, co-founders of Advocates for Environmental Human Rights), and Vernice Miller-Travis (executive director of Groundwork USA, a network of independent nonprofit environmental organizations), 2007, “Bringing Human Rights Home: Portraits of the movement,” [http://books.google.com/books?id=eyDQEt3tKoEC&pg=RA2-PA275&lpg=RA2-PA275&dq=%22tort%22+%2B+refineries+%2B+regulation+%2B+2008+OR+2009&source=bl&ots=ZfLxwyO9Px&sig=uR5uM7YVLvi8l1L7MutuJNCML8w&hl=en&ei=iFROSsO\_IYqYtgex2eSjBA&sa=X&oi=book\_result&ct=result&resnum=6](http://books.google.com/books?id=eyDQEt3tKoEC&pg=RA2-PA275&lpg=RA2-PA275&dq=%22tort%22+%2B+refineries+%2B+regulation+%2B+2008+OR+2009&source=bl&ots=ZfLxwyO9Px&sig=uR5uM7YVLvi8l1L7MutuJNCML8w&hl=en&ei=iFROSsO_IYqYtgex2eSjBA&sa=X&oi=book_result&ct=result&res)

For example, an oil refinery may be in full compliance with the law, but because the law is woefully inadequate, the refinery is entitled under the law to release millions of pounds of toxic pollution on an annual basis, regardless of the fact that the refinery would operate in close proximity to a residential area, regardless of the fact that other facilities in the area are already emitting massive amounts of pollution, and regardless of the fact that the refinery would emit pollutants, as other facilities in the area already do, that are not regulated at all.

SOLVENCY

Could build 19 new refineries with the money spent on environmental compliance

Richard M. Salsman (president of InterMarket Forecasting Inc., an investment forecasting and consulting firm in Durham NC) 26 Mar 2005, “Environmentalists Kill and Maim Dozens in Texas: How Environmental Regulations Reduce Safety and Productivity in the Energy Industry,” CAPITALISM MAGAZINE, <http://www.capmag.com/article.asp?ID=4177>

It has been estimated that today it would take seven years, 800 permits and $2.5 billion to build a new refinery; nearly half of that cost is due entirely to the arbitrary and unnecessary costs imposed by environmentalists and their obstructionism. The National Petrochemical and Refiners Association reports that environmentalist-related costs have totaled $47 billion over the past decade; that's enough to have built 19 new refineries (even at today's bloated cost of $2.5 billion per unit), or 13% more refineries than exist in the U.S. today.

Need strict liability and property rights and stop the regulatory-induced energy crisis

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

A more serious potential economic crisis caused by rising motor-fuel prices, in contrast, does not spring from pollution or resource exhaustion, but from the catastrophists' mistaken belief in what has become their almost self-fulfilling prophecy (see Marxsen 2003). Through the political system, they have promoted regulatory actions that are discouraging the investment that would otherwise have prevented today's worsening refining bottleneck. Obstruction of investments in gasoline refineries, achieved by regulatory interventions, is probably a more significant threat to the affordability of gasoline than any approaching exhaustion of gasoline's fossil sources. Reestablishment of refiners' reasonable property rights and adoption of strict liability as the major instrument for controlling carbon dioxide and refinery pollution might end what otherwise may become an ever-worsening, regulatory-induced "energy crisis."

Strict liability lawsuits for environmental liability provide incentives to reduce harms

*Prof. Keith Hylton (Boston Univ School of Law), March 2008, "The Economic Theory of Nuisance Law and*

Implications for Environmental Regulation," CASE WESTERN RESERVE LAW REVIEW, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112631>

In an advanced economy, the traditional nuisance test will operate in a manner that results in strict liability in probably the vast majority of cases in which there is a serious environmental injury. The exceptional cases are: (1) those in which there is no serious environmental injury that distinguishes the nuisance generator from any number of other background activities, and (2) those in which the external benefits of the source exceed the external harms. The traditional test permits courts to reach different conclusions in these cases, depending on the strength of the evidence and the circumstances of the location. Moreover, this approach provides incentives for nuisance generators to find locations in which external harms are insignificant.

Just a few new refineries would be enough to solve

Prof. Mark J. Perry PhD (economics; Univ. of Michigan, Flint), 2 June 2008, “No New Oil Refineries since 1976,” <http://mjperry.blogspot.com/2008/06/no-new-oil-refineries-since-1976.html>

For the wealthiest, most powerful nation in the world this is a ridiculous situation that will only get worse as our insatiable demand for gasoline keeps growing and refinery capacity falls further behind in the coming years. Just a few new refineries would alleviate the problem and help keep our gas prices lower and steadier.

Expanded refining capacity would reduce price of crude oil and gasoline

Prof. Craig Marxsen PhD (economics; Univ of Nebraska-Kearney), 22 March 2008, “Politically Contrived Gasoline Shortage,” <http://www.articlearchives.com/energy-utilities/oil-gas-industry-oil-processing/376080-1.html>

Expanded refining capacity in the form of "conversion refineries," which get more gasoline per barrel of crude, would increase the supply of gasoline and reduce the demand for crude at the same time, causing the price of crude (and hence the price of gasoline) to fall. Conversion refineries employ topping, hydroskimming, catalytic cracking, hydrocracking, olefin conversion, and coking processes to eliminate the production of low-value residual products. Fully two-thirds of output from a conversion refinery can take the form of unleaded gasoline, with jet fuel, liquefied petroleum gas, low-sulfur diesel fuel, and a small amount of coke constituting the rest of the output. Massive investment is required to bring conversion refineries and other sophisticated fuel-producing capital into existence, and command-and-control regulation discourages such investment.

Environmentalists need restraint, fines and lawsuits imposed on them

Richard M. Salsman (president of InterMarket Forecasting Inc., an investment forecasting and consulting firm in Durham NC) 26 Mar 2005, “Environmentalists Kill and Maim Dozens in Texas: How Environmental Regulations Reduce Safety and Productivity in the Energy Industry,” CAPITALISM MAGAZINE, <http://www.capmag.com/article.asp?ID=4177>

The restraint we need today is not restraint on oil companies (let alone more restraint); that approach has been tried – and it's been both deadly and economically costly. What we need is restraint on the destructive environmentalists and their lap-dogs at the EPA. If lawsuits are to be filed and fines imposed, let them be filed and imposed on the real enemies of production and safety: the environmentalists.

DISADVANTAGE RESPONSES

Plan Advocate: Refinery regulations should be rolled back

DA Response: Rollback would not jeopardize air quality

Ben Lieberman (Certified Public Accountant, Lawyer, specialist in energy and environmental issues, is a Senior Policy Analyst at The Heritage Foundation's Roe Institute for Economic Policy Studies ) 5 June 2006, “Congress Should Streamline Regulatory Impediments to Refinery Expansions,” [www.heritage.org/research/EnergyandEnvironment/wm1112.cfm](http://www.heritage.org/research/EnergyandEnvironment/wm1112.cfm)

To be sure, substantive regulatory changes would be well justified. For example, the costly and environmentally unnecessary New Source Review program creates massive costs and delays for refinery expansions, accomplishes little for air quality, and in some instances is counterproductive, leading to higher levels of pollution. Unreasonable deadlines in EPA’s new ozone standards will create operational problems for many refineries and should be modified. Overall, there is ample room to prune or discard many refinery regulations that are outdated, redundant, unnecessarily complex, or overly time consuming. Many could be cut back, and these changes would not jeopardize air quality.

New refineries are clean

Prof. Mark J. Perry PhD (economics; Univ. of Michigan, Flint), 2 June 2008, “No New Oil Refineries since 1976,” <http://mjperry.blogspot.com/2008/06/no-new-oil-refineries-since-1976.html>

The opposition to building new refineries ignores the dramatic technological improvements that have been made since an oil refinery was last constructed here in 1976. New, clean refineries emit far less pollution than older refineries, with new scrubbers and design changes that dramatically reduce sulfur and other emissions. And at the same time our ability to model and map emission characteristics and distribution lets us choose the best locations for new facilities – where they will have the least possible impact on people and the environment.

Univ. of Texas benzene study: Not just refineries – they included chemical plants and roadways

Kristina W. Whitworth, Elaine Symanski (Division of Epidemiology and Disease Control, University of Texas School of Public Health, Houston) and Ann L. Coker (Department of Obstetrics and Gynecology, University of Kentucky, Lexington) November 2008, ENVIRONMENTAL HEALTH PERSPECTIVES, “Childhood Lymphohematopoietic Cancer Incidence and Hazardous Air Pollutants in Southeast Texas,” 1995–2004, [www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2592281](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2592281)

Given the limitations of the current literature regarding the potential association between childhood cancer incidence and ambient HAPs, we conducted an ecologic study in southeastern Texas to determine whether census tracts with the highest estimated levels of benzene and 1,3-butadiene have higher incidence rates of childhood lymphohematopoietic cancer compared with census tracts with the lowest estimated levels. Central to this study area is Harris County, home of the Houston Ship Channel and a vast number of petroleum and chemical industries operating in its borders (Sexton et al. 2007). Additionally, the study area includes the city of Houston, a large metropolitan area covered by a dense network of roadways. Given the presence of both point and mobile sources of exposure to benzene and 1,3-butadiene, Harris and surrounding counties provided an ideal location to further study potential childhood cancer risks associated with levels of benzene and 1,3-butadiene in ambient air.

BURY THE KRYPTONITE: THE CASE FOR REFINANCING SUPERFUND

By Vance Trefethen

In 1980, Congress responded to the nation’s growing awareness of thousands of hazardous, and often hidden toxic waste sites in America by passing legislation that came to be known as Superfund. The fund would pay for clean-up of toxic sites and for litigation against the polluters who caused them. It worked great – until the taxes that paid for Superfund were allowed to expire at the end of 1995. Urgently recognizing the dangers of toxic waste to our communities and families, my partner and I stand **Resolved: That the United States Federal Government should significantly reform its environmental policies.**

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.”

Superfund:

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from Love Canal. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) [www.besafenet.com/media/docs\_media/superfund.pdf](http://www.besafenet.com/media/docs_media/superfund.pdf)

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) created Superfund. The law directed EPA to respond to any releases of hazardous substances into the environment and any toxic releases that pose an imminent and substantial danger to public health, or a substantial threat of a release. EPA can do emergency removal actions to immediately contain or remove toxic wastes at a site or comprehensive removal actions to fully clean up a site.

OBSERVATION 2. INHERENCY

A. The "Fund" is empty. Congress allowed Superfund taxes to expire

Meline MacCurdy (attorney specializing in environmental litigation, environmental permitting, and review of facilities in the Pacific Northwest. She has particular experience with state and federal cleanup laws.), 22 Apr 2009, "Reinstatement of Superfund Tax Proposed in Congress, Presumed in President Obama’s Budget," Marten Law Group, <http://www.martenlaw.com/news/?20090422-superfund-tax-reinstated>

Until 1996, a collection of three excise taxes levied on petroleum and chemical companies and a special income tax on corporate profits provided the primary source of revenue for EPA’s Superfund branch to clean up so-called “orphan sites.” Congress last reauthorized the Superfund Tax in 1990, it expired at the end of 1995, and, as a result, the Super “fund” dwindled to essentially nothing by 2003.

B. Superfund deficits hinder effectiveness

Meline MacCurdy (attorney specializing in environmental litigation, environmental permitting, and review of facilities in the Pacific Northwest. She has particular experience with state and federal cleanup laws.), 22 Apr 2009, "Reinstatement of Superfund Tax Proposed in Congress, Presumed in President Obama’s Budget," Marten Law Group, <http://www.martenlaw.com/news/?20090422-superfund-tax-reinstated>

Since 1995, increased contributions from the general fund of the U.S. Treasury have been necessary to compensate for the loss of tax revenue. Despite annual appropriations of over $1.3 billion, the Superfund was essentially depleted by fiscal year 2003. EPA contends that the Superfund deficit has significantly hindered its ability to act at many sites. Although the Superfund budget has operated in the black since fiscal year 2006, estimates suggest that it will be difficult for appropriations from the U.S. Treasury to meet the needs of the Superfund program, particularly in light of the current economic climate.

OBSERVATION 3. HARMS

HARM 1: Toxic Soup. Thousands of toxic sites threaten millions of people

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

The assertion that long-neglected Superfund sites are not harming anybody and can safely be neglected is ludicrous. Indeed, if the people who advance this legend believe it to be true, we would have a more honest debate if we discussed whether we could safely wind down Superfund, ending the program within some fixed timeline. No one wants to go there, and for good reason. Thousands of uncontrolled federal and state Superfund sites plague communities across the nation. Our report offers a snapshot of these conditions. Most of the 50 sites we studied are located in heavily populated urban or suburban neighborhoods. Many have languished on the Superfund National Priorities List for two decades. Often no more than holes in the ground, they leak toxic soups comprised of hundreds of chemicals into the air, soil, or water, including PCBs, creosote, lead, polycyclic aromatic hydrocarbons, chromium, copper, zinc, cadmium, arsenic, mercury, and trichloroethylene. The sites sit atop aquifers used for drinking water, leak toxic chemicals into rivers and streams used for swimming and recreation, contaminate soil where children play with hazardous wastes, and in one particularly tragic and egregious case, provide the foundation for an apartment building that is still occupied. Millions of people live in the census tracts where the sites are located, including hundreds of thousands of children.

HARM 2. Clean-up Curtailed. Environmental clean-up is significantly curtailed

[Richard Revesz](http://energy.nationaljournal.com/contributors/Revesz.php), (Dean, New York University School of Law) 4 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

The money in Superfund gives EPA the bargaining leverage to enforce those incentives—if firms refuse to clean up a site, then EPA can use the Superfund to pay for the cleanup, and then sue parties to recoup the cost. Without that money, EPA is a paper tiger. It’s power to swoop in, clean up the site, and go after the responsible parties is significantly curtailed.

HARM 3: Unfair to taxpayers. Taxpayers pay what polluters should be paying for clean-up

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) <http://www.besafenet.com/media/docs_media/superfund.pdf>

Furthermore, some large Fortune 500 corporations are declaring bankruptcy to avoid the cost of cleaning up their site and walking away. American taxpayers are then left holding an enormous cleanup bill which is paid for by Superfund, a program funded entirely with taxpayer dollars. There is only one solution–Congress must reinstate the polluter pays fees. Without corporate fees to replenish Superfund, there is simply not enough money to do the critical job of cleaning up hundreds of toxic waste sites. Given the poor economic climate, it is unfair to expect the American taxpayers to pay for 100% of the annual costs of this program. Corporate polluters must once again contribute to the costs of cleaning up these contaminated sites.

OBSERVATION 4. We do just that by enacting our PLAN

**Agency:** Congress and the President

**Mandate:** Congress reinstates the Superfund taxes that expired at the end of 1995, with all collected revenues dedicated to Superfund.

**Enforcement:** Through the IRS and the Justice Department

**Funding:** From the reinstated Superfund taxes

**Timing:** Immediately upon an Affirmative ballot

**And all Affirmative speeches may clarify the Plan as needed.**

OBSERVATION 5. SOLVENCY: The Superfund Tax will generate $17 billion over 9 years

Meline MacCurdy (attorney specializing in environmental litigation, environmental permitting, and review of facilities in the Pacific Northwest; experience with state and federal cleanup laws.), 22 Apr 2009, "Reinstatement of Superfund Tax Proposed in Congress, Presumed in President Obama’s Budget," Marten Law Group, <http://www.martenlaw.com/news/?20090422-superfund-tax-reinstated>(brackets in original)

President Obama’s proposed 2010 budget supports reinstating the Superfund Tax, and presumes that it will generate $17.2 billion in revenue from fiscal year 2011 through 2019. The White House proposal states that “[t]he 2010 Budget proposes to reinstate excise taxes that expired in 1995 and will collect over $1 billion to clean up the Nation’s most toxic, contaminated sites within the Superfund program.”

OBSERVATION 6. We achieve the following ADVANTAGES

ADVANTAGE 1. Clean-ups funded. There will be enough money to clean up hundreds of toxic waste sites

ADVANTAGE 2. Taxpayer relief. The unfair tax burden is shifted back to polluters, where it belongs

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal) <http://www.besafenet.com/media/docs_media/superfund.pdf>

Superfund faces new threats as more money is needed to clean up sites impacted by hurricanes, tornadoes and flooding, while bankrupt polluters continue to try to unload their cleanup costs on the program. At the same time, decreased funding and the Superfund slowdown have resulted in increased toxic exposures and health threats to communities across America. Stable and equitable funding is long overdue for this critically important pollution prevention program. It is time for Congress to reinstate the polluter pays fees. Without industry fees to replenish Superfund, there is simply not enough money to do the critical job of cleaning up hundreds of toxic waste sites and the American taxpayers are unfairly burdened by paying 100% of the annual costs.

ADVANTAGE 3. Faster response. Superfund responds quickly to toxic release incidents

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal) [www.besafenet.com/media/docs\_media/superfund.pdf](http://www.besafenet.com/media/docs_media/superfund.pdf)

To pay for these cleanups, the law created a Trust Fund of approximately $1.6 billion for site cleanups where a polluter cannot be located, or is bankrupt or refuses to take action. The Superfund Trust Fund was financed by four fees and court awards from polluters responsible for hazardous releases. The financing enabled EPA to prevent future toxic disasters by quickly responding to toxic releases and then recovering expenses from the polluter. Under the U.S. common law, polluter liability must be determined before any action can be taken. The advantage of Superfund was that it provided EPA with the money to address a health-threatening toxic waste dump first and recover the costs from the polluter later.

ADVANTAGE 4. Strong Incentives. We provide strong incentives to avoid future toxic incidents

[Richard Revesz](http://energy.nationaljournal.com/contributors/Revesz.php), (Dean, New York University School of Law) 4 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

In the end, Superfund liability plays an extremely important role in giving companies the right incentives to properly handle toxic substances. Cleaning up sites is important, but equally important is ensuring that fewer toxic sites are created in the future. Even if few Superfund cleanups ever happened, the threat of the Superfund hammer coming down would give firms plenty of reasons to stay on the straight and narrow. And that is reason enough to keep the Superfund funded.

2A EVIDENCE: REFINANCE SUPERFUND

DEFINITION

History of Superfund

US Environmental Protection Agency, (last updated) 3 June 2009, "Laws, Policy and Guidance," SUPERFUND, <http://www.epa.gov/superfund/policy/index.htm>

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, known as Superfund, was enacted to address abandoned hazardous waste sites in the U.S. The law has subsequently been amended, by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

INHERENCY

Advocates would have a tough time getting Congress to reinstate Superfund tax

Raju Chebium (journalist),1 Mar 2009, Gannett News, (brackets added) [www.mycentraljersey.com/article/20090301/NEWS/903010320/1003/RSS01](http://www.mycentraljersey.com/article/20090301/NEWS/903010320/1003/RSS01)

Reviving the tax has proven impossible under former Presidents Bill Clinton, a Democrat, and George W. Bush, a Republican. [Sen. Frank] Lautenberg [D-NJ] has acknowledged that advocates will have a tough time getting the tax measure through Congress, even with Democratic majorities.

Cleanup stalled at countless sites: Companies are waiting for government to make them do it

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health,

<http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

As for the assertion that responsible parties are shouldering the large majority of the burden for cleaning up Superfund sites, we confront yet another half-truth. At sites where cleanup orders were issued well before today’s enforcement doldrums, responsible parties are moving cleanup along, often at a clip faster than government-funded cleanups. But at countless other sites, some of the nation’s most prominent corporations have backed off their obligations, apparently waiting for federal and state enforcement officials to come compel them to address their responsibilities.

Inherency: “Compassion fatigue” reduces public outrage over toxic dumps

Harms: Little has changed below the surface – toxic stews continue to spread

Plan Advocate: Prof. Steinzor and Center for Progressive Reform

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

More than any other environmental program, Superfund is a victim of compassion fatigue and political doublespeak. The federal government and responsible parties have dragged their feet on cleanup for so long that it has been impossible for the public at large to maintain the level of outrage that propelled the birth of the program in 1980 and Congress’ decision to increase Superfund resources six-fold in 1986. In many locations, cosmetic changes have been made – rusting barrels have been removed from the surface and vegetation has reemerged on what were moonscapes 20 years ago. Beneath the surface, though, little has really changed. The toxic stews continue to circulate, moldering and spreading, adding chemicals to aquifers, rising to the surface of the soil as the land freezes and thaws, and releasing methane and other volatile gases. For the sake of those living in the census tracts containing the 50 sites detailed in this report, as well as the untold other people living near hazardous waste sites across the country, CPR [Center for Progressive Reform (CPR) is an organization of 45 academics who specialize in the legal, economic, and scientific issues that surround federal regulation to protect public health, natural resources, and worker safety] urges this Committee to support the reinstatement of Superfund taxes and continue its rigorous oversight of the implementation of this vital program.

Only 20% of sites have been cleaned up

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), and Margaret Clune (J.D., policy analyst with Center for Progressive Reform), June 2006,The Toll of Superfund Neglect - Toxic Waste Dumps & Communities at Risk, http://www.progressivereform.org/articles/Superfund\_061506.pdf

Once a site requires no additional cleanup activities, it may be deleted from the NPL [National Priorities List]. Of the 1,553 sites that had been added to the NPL as of April 2006, only 309, or 20 percent, had been deleted.

Companies declare bankruptcy to avoid clean-up responsibility

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) http://www.besafenet.com/media/docs\_media/superfund.pdf (ellipses in original)

This is exactly what the American Smelting and Refining Company (Asarco) appears to be doing. In 2005, Asarco filed for Chapter 11 reorganization starting a process that could result in the largest, most environmentally significant bankruptcy in America's history. The Asarco bankruptcy will impact an estimated 90 communities where there are 75 contaminated sites in 21 states, including 20 Superfund sites, and 95,000 asbestosis claimants, and numerous other claimants seeking redress for illnesses and other damages, as well as the federal government. When Asarco declared bankruptcy, it cited environmental liabilities as a primary cause. The federal Government Accountability Office (GAO) warned that the bankruptcy could set a precedent for companies seeking to shift the cost of their environmental liabilities to the taxpayers. The GAO report stated “Federal bankruptcy law, like corporate law, presents … significant challenges to EPA’s efforts to hold bankrupt and other financially distressed businesses responsible.”

Just a legend that EPA has all the money it needs – in fact, funding has steadily lowered

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6

Agencies in charge of such efforts did not come to Congress demanding fewer resources as these challenges became more daunting, as EPA now does. This bizarre development brings us to the third legend: EPA has all the money it needs to complete cleanup. The broad-based industry taxes that support the program expired in 1995. President Clinton asked Congress to extend them every year he was in office, and every year, the Congress refused the request. The Bush Administration opposes extension of the tax and has made up chronic shortfalls by drawing on general taxpayer revenues and steadily lowering annual appropriations. In FY 2003, EPA ran through all the money left over from the years when the program was supported by industry taxes and the program has been exclusively supported by general revenues ever since.

Superfund is in trouble

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

The truth is that Superfund’s creators intended it to be a three-legged stool: 1. systematic identification and prioritization of abandoned toxic waste sites all over the country that require cleanup; 2. creation of a multi-billion dollar fund supported by industry taxes to both prime the pump for cleanup and pay for so-called “orphan” sites; and 3. strict, joint, and several liability that gives responsible parties that created the sites compelling incentives to clean them up and allows government to recover most of the money spent upfront. Over the last several years, EPA’s political leadership has sawed the first leg in half, removed the second leg, and left the third leg to rot to its core. No wonder the program is in trouble.

Not enough resources, wrong people are paying, and crucial tasks left undone

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

Not only are the wrong people paying to support a program that is starved for resources, crucial tasks are increasingly left undone. In constant dollars, revenues appropriated for the Superfund program now stand at levels 40 percent lower than the amounts Congress specified when it last reauthorized the program in 1986.

EPA funding cuts block state cleanup action

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

As any businessperson knows, it takes money to make money. Not only are there hundreds of sites at the federal level that need investigation so cleanup plans can be made, thousands of additional sites have ended up in the states’ laps. Even if they wanted to, EPA and the states cannot go to court to demand responsible party cleanups without first completing these investigations and writing cleanup plans and, without more money, they have little hope of cleaning up orphan sites where no responsible party is available. Yet EPA has precipitously cut the funding for states to do the technical analysis necessary to determine what should be done about these hazards. The result is that the sites are swept out of sight, getting worse and worse as their public health and environmental implications are buried in a sea of mind-numbing, “don’t-worry-be-happy” EPA statistics.

HARMS

Crucial tasks are left undone and public health hazards are hidden

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

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Hurricanes caused widespread toxic contamination but very little money to deal with it

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) <http://www.besafenet.com/media/docs_media/superfund.pdf>

In the Gulf Coast region alone, 56 Superfund sites were impacted by hurricanes from 2004 to 2008, as shown in Table 1. Texas and Louisiana have been hit the hardest. This region is one of the most heavily industrialized and polluted areas in the nation, and contains thousands of facilities that store, produce and release highly toxic substances including hundreds of chemical plants and petrochemical facilities. Hurricane forces and floodwaters have stirred up industrial and household toxic chemicals, oil and pesticides and dispersed them across the region. The full extent of these toxic releases will take years to understand and even longer to clean up. The spread of toxic contamination from hurricane-impacted Superfund sites requires testing and cleanup, but there is very little money allocated in EPA’s budget to address such weather-related events.

Example of sickness and death from Superfund site: Libby, Montana

Andrew Schneider (Journalist), 12 Mar 2008, “W.R. Grace to pay record Superfund fine - But $250 million may fall well short of Libby, Mont., cleanup cost” SEATTLE POST-INTELLIGENCER, (brackets added) [www.seattlepi.com/national/354633\_libby12.html](http://www.seattlepi.com/national/354633_libby12.html)

The EPA has been on the scene in the tiny northwestern Montana community since November 1999, arriving three days after the P-I first reported that hundreds of miners and their family members had died or were sickened by exposure to asbestos fibers released from Grace mine on Zonolite Mountain. The newspaper reported on hundreds of Grace documents that showed the company knew its ore was dangerous and that miners, who were being sickened and killed by it, were never warned of the hazard. A research arm of the Centers for Disease Control and Prevention that conducted the nation's largest environmental health study found that close to 20 percent of the 5,500 residents tested had lung abnormalities. All of them had lived, worked or played in Libby before Grace closed the mine in 1990. Earlier this year, physicians monitoring the situation in Libby told the P-I [Seattle Post-Intelligencer, the local newspaper] that neither reports of new cases of illness nor asbestos-related deaths have peaked.

SOLVENCY & PLAN ADVOCACY

Restoring Superfund taxes solves the unfair burden on taxpayers

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) <http://www.besafenet.com/media/docs_media/superfund.pdf>

Superfund was founded on the principle that those companies most closely associated with creating toxic waste sites and generating hazardous waste should bear the financial burden of cleaning them up. American taxpayers are unfairly bearing the full burden of paying for abandoned site cleanups. It is essential that industry fees are reinstated to replenish the ailing Superfund and get it back on the cleanup track. We can solve the problem by restoring the stable funding source of polluter pays fees which were the financial backbone of Superfund for more than 20 years. They included assessments on crude oil, chemical feedstock, imported chemical derivatives and a corporate environmental income tax.

Superfund creates strong incentives to make sure waste is properly managed

[Richard Revesz](http://energy.nationaljournal.com/contributors/Revesz.php), (Dean, New York University School of Law) 4 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

Underlying the Superfund program is the “polluter pays principle.” According to this principle, it is the responsibility of the polluter, not the public, to pay for the cleanup of improperly handled toxic waste. This principle is embodied in the Superfund law (the Comprehensive Environmental Response, Compensation, and Liability Act) through a system of strict, joint and several liability. This system of liability creates very clear lines of responsibility: The companies that handle, transport, and dispose of toxic substances are all on the hook. The resulting strong incentives to avoid being associated with a Superfund site mean that they all act as the “Superfund police” to make sure that waste is properly dealt with.

Plan Advocate Richard Frandsen: “Strong need” for funding – Superfund cleanups have dropped rapidly

Bret Schulte (journalist), 14 Feb 2007, “Democrats Seek Superfund Tax,” US NEWS & WORLD REPORT, <http://www.usnews.com/usnews/news/articles/070214/14superfund.htm>

At a private lunch sponsored by the D.C. Bar Association yesterday afternoon, Richard Frandsen, counsel to the House Committee on Energy and Commerce, described a "very strong need for additional funding" of the Superfund program, and he predicted the tax "will be proposed again" this session, with the House Ways and Means Committee taking the lead.

Bettina Poirier, staff director to the Senate Environment and Public Works Committtee, concurred and suggested that the new budget may be a vehicle for addressing the change. Poirier noted that Superfund cleanups have dropped "very rapidly." The Superfund program cleaned up an average of 86 sites per year in the 1990s, but the number has fallen by about half in recent years. Democrats blame President Bush's decision not to reinstate the Superfund tax, which collected money primarily from oil and gas companies to clean up toxic sites.

Plan Advocate Jeff Tittel: Superfund needs the money to speed up progress at hundreds of toxic sites

John M. Broder (Journalist), 25 Apr 2009, “Without Superfund Tax, Stimulus Aids Cleanups,” NEW YORK TIMES, [www.nytimes.com/2009/04/26/science/earth/26superfund.html](http://www.nytimes.com/2009/04/26/science/earth/26superfund.html)

Jeff Tittel, director of the New Jersey Sierra Club, said the elimination of the Superfund tax had undermined the program by slowing progress at hundreds of orphan toxic dumps across the country. “We need the money,” Mr. Tittel said. “Some of these sites are just sitting there, with chemicals leaching into groundwater and toxic dust blowing around.”

Superfund authorizes EPA response and cleanup of toxic sites

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. [www.besafenet.com/media/docs\_media/superfund.pdf](http://www.besafenet.com/media/docs_media/superfund.pdf)

Administered by the federal Environmental Protection Agency (EPA) in cooperation with states and tribal governments, Superfund provides broad authority for the government to respond to chemical emergencies, such as toxic spills and fires, and to clean up sites. Superfund was created because toxic dumps were causing threats to human health, massive fish kills, wildlife destruction, air pollution, and contaminating drinking water supplies.

Plan Advocate Sen. Frank Lautenberg: We must restore the “polluter pays” principle

John M. Broder (Journalist), 25 Apr 2009, “Without Superfund Tax, Stimulus Aids Cleanups,” NEW YORK TIMES, [www.nytimes.com/2009/04/26/science/earth/26superfund.html](http://www.nytimes.com/2009/04/26/science/earth/26superfund.html)

“The money we provided in the recovery package for Superfund sites in New Jersey and nationwide is critical for putting people to work cleaning up polluted sites to protect the health of our communities,” said Senator Frank R. Lautenberg, Democrat of New Jersey, who is sponsoring legislation to restore the Superfund tax. “Ultimately, however, it should be polluters that pay for these cleanups, not taxpayers, which is why we will work to restore the ‘polluter pays’ principle.”

Plan Advocate Lois Gibbs: “Polluter pays” creates powerful disincentive against toxic dumping

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) <http://www.besafenet.com/media/docs_media/superfund.pdf>

The Center for Health, Environment & Justice (CHEJ), Environment America, Sierra Club and hundreds of state and local environmental, health and community groups have waged a campaign to refinance Superfund over the years. CHEJ Executive Director Lois Gibbs was a leader of the successful community fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls, NY which led to the creation of the Federal Superfund in 1980. After years of delay, Ms. Gibbs urges policymakers to take action on this critical environmental health problem. “Congress should restore the hazardous waste fees on polluting industries and enable Superfund to move forward and respond to new toxic threats. The core principle of the Superfund program is that polluters, not taxpayers, should pay to clean up these deadly toxic waste sites. In addition to providing funding, the polluter pays principle creates a powerful disincentive against the reckless dumping of toxic waste*.*”

DISADVANTAGE RESPONSES

Superfund Taxes are not burdensome and corporations are not already paying their fair share

Prof. Rena Steinzor (Univ of Maryland School of Law, has worked on Superfund legislation and litigation for 25 years), 17 Oct 2007, Testimony before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee regarding Oversight Hearing on the Federal Superfund Program’s Activities to Protect Public Health, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2f7cffe9-81dc-4f52-b45d-7fd26f1f2bc6>

The fourth legend is that Superfund taxes are too onerous and corporate responsible parties are already paying their fair share through cleanups ordered by past consent decrees. Glossing over the implications of these missing resources, EPA and industry representatives argue that the Superfund tax would amount to double dipping against these responsible parties. The truth is that before they expired in 1995, Superfund taxes raised revenues of approximately $1.5 billion annually, or $4 million daily, from taxes on crude oil and chemical feedstocks and through a broad-based corporate tax. As the following chart shows, annual Superfund tax revenues amount to 1.79 percent of the 2006 profits of just six of the nation’s largest oil and petrochemical companies. The CEO salaries of these six companies alone would cover almost six weeks of missing revenues.

Oil companies excluded from clean-up liability

[Frances Beinecke](http://energy.nationaljournal.com/contributors/Beinecke.php), (President, Natural Resources Defense Council) 4 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

It is important to remember that the “polluter pays” tax was enacted as part of a legislative compromise that excluded oil companies from liability for clean-up under Superfund. The industry has likely been spared hundreds of millions of dollars in clean-up costs as a result (and been exceedingly profitable in the meantime).

DECENT BURIAL: THE CASE FOR YUCCA MOUNTAIN

By Vance Trefethen

The problem is growing every day, and it involves some of the most toxic and dangerous substances known to man. President Obama recently decided to cancel work on the solution, and that’s why my partner and I stand **Resolved: That the United States Federal Government should significantly reform its environmental policies.**

OBSERVATION 1. We offer the following DEFINITIONS

Environmental Policy:

Dr. Natalia Mirovitskaya [editor] (PhD from the Russian Academy of Sciences in Economics and Visiting Professor of Environmental Policy at Duke University), and Dr. William L Ascher [editor] (PhD in Political Science from Yale and Professor of Government and Economics at Claremont McKenna College) 2001, The Guide to Environmental Policy and Sustainable Development, Duke University Press, p. 186 [Google Books]

“Environmental policy includes regulations to prohibit or limit pollution and resource depletion; incentives policies (including tax measures) to encourage environmental improvements to discourage pollution and depletion, and direct environmental efforts to clean up, protect, or restore ecosystems.”

**Significant:** “having or likely to have influence or effect” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/significant>)

**Reform:** “to put or change into an improved form or condition” (Merriam-Webster Online Dict., 2009, <http://www.merriam-webster.com/dictionary/reform>)

Yucca Mountain:

US Dept of Energy, Office of Civilian Radioactive Waste Management, 2009, "Yucca Mountain Repository," <http://www.ocrwm.doe.gov/repository/index.shtml>

The U.S. Department of Energy began studying Yucca Mountain, Nevada, in 1978 to determine whether it would be suitable for the nation's first long-term geologic repository for spent nuclear fuel and high-level radioactive waste. Currently stored at 121 sites around the nation, these materials are a result of nuclear power generation and national defense programs. The Department of Energy has submitted an application to the Nuclear Regulatory Commission for a license to build the repository. Yucca Mountain is located in a remote desert on federally protected land within the secure boundaries of the Nevada Test Site in Nye County, Nevada. It is approximately 90 miles northwest of Las Vegas, Nevada.

OBSERVATION 2. INHERENCY: President Obama canceled Yucca Mountain

Daniel Whitten (journalist), 26 Feb 2009, "Obama Rejects Nuclear Waste Site After 20-Year Fight," Bloomberg news service, <http://www.bloomberg.com/apps/news?pid=20601072&sid=a8vjuGJCg4ao&refer=energy>

President [Barack Obama](http://search.bloomberg.com/search?q=Barack+Obama&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1) won’t let nuclear waste be stored at Yucca Mountain in Nevada, rejecting the project after 20 years of planning at a cost of at least $9 billion. Obama and Energy Secretary [Steven Chu](http://search.bloomberg.com/search?q=Steven+Chu&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1) “have been emphatic that nuclear waste storage at [Yucca Mountain](http://www.ocrwm.doe.gov/ym_repository/about_project/history.shtml) is not an option, period,” said department spokeswoman Stephanie Mueller.

OBSERVATION 3. HARMS

HARM 1: Billions of dollars in government legal liability

Daniel Whitten (journalist), 26 Feb 2009, "Obama Rejects Nuclear Waste Site After 20-Year Fight," Bloomberg news service, <http://www.bloomberg.com/apps/news?pid=20601072&sid=a8vjuGJCg4ao&refer=energy> (brackets added)

“If they terminate the license, it’s likely that that will constitute a full breach of the contract, which could potentially cost $100 billion,” [nuclear energy industry consultant Ed] Davis said. Nuclear-power consumers have paid $29.6 billion into a fund intended for Yucca Mountain construction. Jerry Stouck, an attorney for some utilities in the dispute, said courts have so far awarded more than $1 billion to utility companies. The government has to “either pay damages forever or find something to do with the waste,” Stouck said.

HARM 2. Air pollution

A. Stopping Yucca Mountain reduces nuclear energy and increases fossil fuel plants

[Jack Spencer](file://localhost/about/staff/jackspencer.cfm) (research fellow in nuclear energy, [Thomas A. Roe Institute for Economic Policy Studies](file://localhost/About/Departments/roe.cfm)) and Garrett Murch (Deputy Director of House Relations) 9 June 2008, "Road to Clean Air Runs Through Yucca Mountain," Heritage Foundation, [www.heritage.org/press/commentary/ed060908c.cfm](http://www.heritage.org/press/commentary/ed060908c.cfm)

Opposition to Yucca has made building nuclear plants much more difficult. By hamstringing America's energy options, obstructionist politicians are forcing fossil fuel plant construction when utilities might have chosen to build emissions-free nuclear.

B. Nuclear energy avoids millions of tons of pollution

[Jack Spencer](file://localhost/about/staff/jackspencer.cfm) (research fellow in nuclear energy, [Thomas A. Roe Institute for Economic Policy Studies](file://localhost/About/Departments/roe.cfm)) and Garrett Murch (Deputy Director of House Relations) 9 June 2008, "Road to Clean Air Runs Through Yucca Mountain," Heritage Foundation, [www.heritage.org/press/commentary/ed060908c.cfm](http://www.heritage.org/press/commentary/ed060908c.cfm)

"According to the Nuclear Energy Institute, had America's reactors not been operating, approximately 48 million tons of sulfur dioxide, 19 million tons of nitrogen oxides and 8.7 trillion tons of carbon dioxide would have been emitted since 1995. In other words, by obstructing Yucca and, thus, nuclear power, these politicians, well-intentioned though they may be, are causing the very pollution they claim to deplore. This should outrage America."

C. Impact: Diseases, health care costs, and deaths

Dr. Gideon Polya (Australian scientist; published 130 works in a 4 decade scientific career, most recently a huge

*pharmacological reference text "Biochemical Targets of Plant Bioactive Compounds") 14 June 2008, "*Pollutants from coalbased electricity generation kill 170,000 people annually*"* [*www.green-blog.org/2008/06/14/pollutants-from-coal-basedelectricity-generation-kill-170000-people-annually/*](http://www.green-blog.org/2008/06/14/pollutants-from-coal-basedelectricity-generation-kill-170000-people-annually/) *(brackets and parentheses in original)*

Tiny particles of sulfur and nitrogen from coal burners lodge deep in our lungs, causing as many as 30,000 premature deaths per year, according to the most up-to-date [study by EPA consultant Abt Associates](http://www.appvoices.org/index.php?/site/voice_stories/the_true_costs_of_coal_new_study_adds_them_up/issue/541)“. According to Janet Larsen of The Earth Policy Institute it is 25,100 [2004]: “By moving beyond coal, the United States could avoid a legacy of smog-filled skies, acid rain, polluted waterways, contaminated fish, and scarred landscapes. This could each year save some [25,000 lives](http://www.earth-policy.org/Updates/Update42.htm), reduce respiratory and cardiovascular illnesses, avert potential neurological damage for 630,000 babies, and erase a health care bill of over $160 billion”. 49% of US electricity of 4,065 TWh is from coal i.e. 1,991 TWh (2006: Sources: [Wikipedia](http://en.wikipedia.org/wiki/Electricity%20generation) and [EIA](http://www.eia.doe.gov/cneaf/electricity/epa/epat1p1.html)) indicating 49,153 [2006] ”annual coal-based electricity deaths” as compared to 71,887 “total annual fossil fuel-based electricity deaths”.

HARM 3: Risk to community economic development

Savannah River Site Community Reuse Organization (SRSCRO; Dept of Energy-designated non-profit organization directed by business, government and academic leaders charged with developing and implementing a comprehensive strategy to diversify the economy of the five-county region of Ga. and S.C. near Savannah River nuclear facility) Oct 2007 “CSRA Region’s Role in Nuclear Renaissance Requires Successful and Timely Long-Term Waste Solutions” <http://www.srscro.org/downloads/Yucca%20Mountain.pdf>

If the proposed repository at Yucca Mountain is not completed and operated as planned, the Savannah River Site will become a *de facto* long-term repository for high-level defense waste materials planned for shipment to Yucca Mountain. Congress and the Department of Energy will have reneged on their pledge to transfer these waste materials to a permanent storage facility, and the five-county region surrounding SRS [Savannah River Site] may pay a price in perpetuity in lost economic development opportunities stemming from an inevitable and unenviable reputation as a “permanent nuclear waste dumping ground.” In addition, the absence of a suitable repository will jeopardize future operations of electric utilities in Georgia and South Carolina that operate commercial nuclear power plants for production of electricity.

OBSERVATION 4. We offer the following PLAN:

**Agency:** Congress and the President

**Mandates:**

**1.** Yucca Mountain nuclear waste storage facility will be restored to its original operating plan and funding levels

**2.** Yucca Mountain will be authorized to hold 250,000 metric tons of nuclear waste.

**Funding:** Yucca's existing funding process, the Nuclear Waste Fund mentioned in Harm 1.

**Enforcement:** By the President, the Dept. of Energy and the Justice Department under existing laws applicable to the Yucca facility.

**Timeline:** Immediately upon an Affirmative ballot.

**And all Affirmative speeches may clarify the plan as needed.**

OBSERVATION 5. ADVANTAGES

ADVANTAGE 1. Protecting public health and safety from nuclear waste

US Dept of Energy, Office of Civilian Radioactive Waste Management, 2009, Yucca Mountain Repository, [www.ocrwm.doe.gov/repository/index.shtml](http://www.ocrwm.doe.gov/repository/index.shtml)

After over 20 years of research and billions of dollars of carefully planned and reviewed scientific field work, the Department of Energy has found that a repository at Yucca Mountain brings together the location, natural barriers, and design elements most likely to protect the health and safety of the public, including those Americans living in the immediate vicinity, now and long into the future.

ADVANTAGE 2. Hi-tech jobs. Yucca would expand high-paying jobs in Nevada.

[Jack Spencer](file://localhost/about/staff/jackspencer.cfm) (research fellow in nuclear energy, [Thomas A. Roe Institute for Economic Policy Studies](file://localhost/About/Departments/roe.cfm)) and Garrett Murch (Deputy Director of House Relations) 9 June 2008, "Road to Clean Air Runs Through Yucca Mountain," Heritage Foundation, [www.heritage.org/press/commentary/ed060908c.cfm](http://www.heritage.org/press/commentary/ed060908c.cfm)

The debate needs to shift to the potential that Yucca provides Nevada. It's a valuable resource that could be leveraged to attract high-paying, long-term jobs. The reality is that a nuclear resurgence will require a broad industrial and technological expansion. It is about enriching uranium, fabricating fuel, recovering valuable resources from spent fuel and recycling it and researching and developing new technologies.

ADVANTAGE 3. Cleaner air. The road to cleaner air runs through Yucca Mountain

[Jack Spencer](file://localhost/about/staff/jackspencer.cfm) (research fellow in nuclear energy, [Thomas A. Roe Institute for Economic Policy Studies](file://localhost/About/Departments/roe.cfm)) and Garrett Murch (Deputy Director of House Relations) 9 June 2008, "Road to Clean Air Runs Through Yucca Mountain," Heritage Foundation, [www.heritage.org/press/commentary/ed060908c.cfm](http://www.heritage.org/press/commentary/ed060908c.cfm)

"Renewable" energy, such as wind and solar, simply cannot affordably meet the 40 percent increase in electricity demand that America will face over the next 25 years. No politician seriously can oppose nuclear power while advancing a clean-air agenda and expect the lights to stay on. Ultimately, the road to cleaner air must run through Yucca Mountain. The choice, then, is clear. Nuclear energy, carbon dioxide or the lights go out. What's it gonna be?

2A EVIDENCE: YUCCA MOUNTAIN

INHERENCY

Obama wants to continue nuclear power but cancel Yucca Mountain

Reuters News Service, 7 May 2009, "Obama budget seeks end to Yucca nuclear waste dump," <http://www.reuters.com/article/pressReleasesMolt/idUSTRE5464A020090507>

The Obama administration said Thursday it wanted to officially terminate the Yucca Mountain nuclear storage waste site and instead spend $197 million to phase out the project and "explore alternatives" for nuclear waste disposal. "All funding for development of the (Yucca Mountain) facility would be eliminated, such as further land acquisition, transportation access, and additional engineering," the administration said in its proposed government budget for the 2010 spending year that begins this October 1. In its budget proposal, the White House said President [Barack Obama](http://www.reuters.com/news/globalcoverage/barackobama) believes "that nuclear power is -- and likely will remain -- an important source of electricity for many years to come and that how the Nation deals with the dangerous byproduct of nuclear reactors is a critical question that has yet to be resolved."

Yucca Mountain project is officially dead

Keith Johnson (energy & environment Wall Street Journal reporter) 26 Feb 2009, "Nuclear Waste: Yucca Mountain's Scrapped - So What Now?" WALL STREET JOURNAL blog, <http://blogs.wsj.com/environmentalcapital/2009/02/26/nuclear-waste-yucca-mountains-scrapped-so-what-now/>

The Obama budget had a wink for Colombian novelist Gabriel Garcia Marquez and his “Chronicle of a Death Foretold”—Yucca Mountain is now officially dead, after agonizing on its deathbed for years. [The draft budget removes funding](http://www.whitehouse.gov/omb/assets/fy2010_new_era/Department_of_Energy.pdf) for the planned nuclear-waste storage facility in Nevada, which has been 20 years and more than $9 billion in the making. A Department of Energy spokeswoman [told Bloomberg](http://www.bloomberg.com/apps/news?pid=20601072&sid=a8vjuGJCg4ao&refer=energy) that President Obama and Energy Secretary Steven Chu “have been emphatic that nuclear waste storage at Yucca Mountain is not an option, period.”

HARMS

Postponing Yucca Mountain increases legal damages

*Matthew Wald (journalist), 17 Feb 2008, "As nuclear waste languishes, expense to government rises," NEW YORK TIMES NEWS SERVICE,* [*http://www.boston.com/news/nation/washington/articles/2008/02/17/as\_nuclear\_waste\_languishes\_expense\_to\_government\_rises/*](http://www.boston.com/news/nation/washington/articles/2008/02/17/as_nuclear_waste_languishes_expense_to_government_rises/)

But the damage number is rising. If the repository that the government is trying to develop at Yucca Mountain, near Las Vegas, could start accepting waste at the date now officially projected, in 2017, the damages would run about $7 billion, according to Edward F. Sproat III, director of the Office of Civilian Radioactive Waste Management.

Each year of delay adds $500 million to legal liability for failure to open Yucca Mt

Edward F. Sproat III (Director of Office of Civilian Radioactive Waste Management, the Dept of Energy agency that operates Yucca Mt.) 7 Mar 2007, testimony before the Subcommittee of the Committee on Appropriations, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS FOR FISCAL YEAR 2008, [www.gpo.gov/fdsys/pkg/CHRG-110shrg11069104266/html/CHRG-110shrg11069104266.htm](http://www.gpo.gov/fdsys/pkg/CHRG-110shrg11069104266/html/CHRG-110shrg11069104266.htm)

For each year beyond 2017 the repository opening is delayed, the Department estimates that U.S. taxpayers' potential liability to contract holders will increase by approximately $500 million per year. This will be in addition to the estimated current potential liability of approximately $7 billion.

Scrapping Yucca means billions in legal liability – and Obama has no alternative

Max Schulz (Senior Fellow, Manhattan Institute for Policy Research; Senior Policy Advisor and Director of Speechwriting for United States secretaries of energy Samuel Bodman and Spencer Abraham ) 10 March 2009, “If Not Yucca, Then Where for Waste?” INVESTORS BUSINESS DAILY, <http://www.manhattan-institute.org/html/miarticle.htm?id=4333>

If the federal government completely scraps Yucca without providing an alternative, it could be on the hook for billions of dollars in liabilities to utilities. The challenge facing Obama is fashioning a credible alternative. However, the Obama administration has seemed unaware of the need to provide one. Pressed by wary senators at a recent congressional hearing to explain Obama's approach as his budget starves Yucca Mountain, Energy Secretary Steven Chu admitted there is no plan. Chu promised only to convene a blue-ribbon commission to investigate the matter, saying he hoped it would turn in recommendations by year-end. That's not good enough, and it demonstrates a lack of seriousness on the part of an administration that claims to have made energy issues a top priority.

Taxpayers must pay $500 million per year for delays to Yucca Mountain

Matthew Wald (journalist), 17 Feb 2008, "As nuclear waste languishes, expense to government rises," NEW YORK TIMES NEWS SERVICE, (brackets added) [www.boston.com/news/nation/washington/articles/2008/02/17/as\_nuclear\_waste\_languishes\_expense\_to\_government\_rises/](http://www.boston.com/news/nation/washington/articles/2008/02/17/as_nuclear_waste_languishes_expense_to_government_rises/)

If the repository opens in 2020, the damages would come to about $11 billion, he [Edward F. Sproat] said, and for each year beyond that, about $500 million more. "The rate-payer has paid for it," said Michael Bauser, the associate general counsel of the Nuclear Energy Institute, the industry's trade group. "The Department of Energy hasn't done it, and now the taxpayer is paying for it a second time."

Using nuclear energy means we have an obligation to safely dispose of waste

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

Countries that have derived benefits from nuclear-generated electricity have an obligation to future generations to safely and securely dispose of nuclear waste. In the United States, the government is legally bound to remove this waste from reactor sites and store it in permanent repositories. Delays in storing spent nuclear fuel in a permanent repository have already resulted in lawsuits with financial penalties.

Further growth of nuclear energy requires building waste repository

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

More than fifty years of commercial nuclear energy use has left the world with a legacy of tens of thousands of tons of highly radioactive waste that will last for tens of thousands of years. If nuclear power production expands substantially in the coming decades, the amount of waste requiring safe and secure disposal will also significantly increase. Although several countries are exploring various long-term disposal options, no country has begun to store waste from commercial power plants in permanent repositories. Industry officials generally believe that further growth of nuclear energy depends on establishing these repositories.

SOLVENCY / ADVANTAGES

Waste storage facility is key to successful increase in nuclear power in the US

Rep. Ralph Hall (R-TX; ranking minority member, House Committee on Science & Technology), 17 June 2009. TECHNOLOGY KEY TO NUCLEAR RENAISSANCE, <http://gop.science.house.gov/PressRoom/Item.aspx?ID=166>

The Science and Technology Committee today heard from a panel of expert witnesses who discussed the benefits and risks associated with nuclear waste recycling, reprocessing and storage and the research, development and demonstration needed to address the technical challenges and policy objectives of a nuclear waste management strategy that could include recycling spent nuclear fuel. All of the witnesses agreed that if domestic nuclear power is going to expand, the U.S. government needs to have a strategy to manage growing volumes of spent nuclear fuel. “I believe that finding some sort of a solution of how to handle our used nuclear fuel is critical to the continued successful contribution of nuclear energy to our country’s electric generation,” said Rep. Vernon Ehlers (R-MI), the Committee’s Vice Ranking Member. “As the industry is facing a resurgence in the interest to build new nuclear plants, the issue of nuclear waste is prevalent -- even more so with the decision by the Obama Administration to abandon a permanent repository at Yucca Mountain, Nevada after over 20 years of research and billions of dollars of carefully planned and reviewed scientific field work.”

Nuclear is the only option for avoiding the worst risks of global climate change

Prof. Richard K. Lester (director of the MIT Industrial Performance Center and professor of nuclear science and engineering at MIT ) 21 Oct 2008, “Clearing the path toward a nuclear renaissance” BOSTON GLOBE, [www.boston.com/bostonglobe/editorial\_opinion/oped/articles/2008/10/21/clearing\_the\_path\_toward\_a\_nuclear\_renaissance/](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/10/21/clearing_the_path_toward_a_nuclear_renaissance/)

The reality is that the world has little chance of avoiding the worst risks of global climate change unless we build many more nuclear power plants. Nuclear power has a unique place in the global climate-change debate. It is the only carbon-free energy source that is already contributing on a large scale and that is also expandable with few inherent limits.

Deep underground isolation keeps radioactive waste safe

US Dept of Energy, Office of Civilian Radioactive Waste Management, 2009, What are spent nuclear fuel and high-level radioactive waste? <http://www.ocrwm.doe.gov/fact/What_are_snf_and_hlrw.shtml>

As long as nuclear waste remains in a solid form and is properly shielded, it will not harm people or contaminate the environment — and over time it produces less and less radiation. The idea behind deep geologic disposal, therefore, is to keep the waste as dry and isolated as possible, for as long as possible, so that its radiation can diminish to safe levels. Isolated in a deep underground repository, the waste would not be subject to the many environmental factors that on the earth’s surface would cause it to break down into radioactive particles that could be dispersed by air or water into the accessible environment.

Underground storage is the best long-term solution for radioactive waste

US Dept of Energy, Office of Civilian Radioactive Waste Management, 2009, What are spent nuclear fuel and high-level radioactive waste? <http://www.ocrwm.doe.gov/fact/What_are_snf_and_hlrw.shtml> (italics in original)

After analyzing these options, most scientists agree that disposal in an underground repository is the best long-term solution for safely managing highly radioactive wastes. This opinion is reflected in a 1990 report from the National Research Council of the National Academy of Sciences, which states that there is “a worldwide scientific consensus that deep geological disposal, the approach being followed by the United States, is the best option for disposing of highly radioactive waste.” In 2001, the National Research Council again reaffirmed that conclusion: “Geologic disposal remains the only scientifically and technically credible long-term solution available to meet the need for safety without reliance on active management.”

Yucca Mt can hold 4 to 9 times the current legal limit (77,000 metric tons)

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

According to some technical analyses, the current legislative limit of 77,000 metric tons appears arbitrary. For example, Secretary of Energy Samuel W. Bodman has requested that the allowed storage capacity be determined by the physical capacity of the mountain, estimated to exceed 120,000 metric tons of waste. In addition, according to an Electric Power Research Institute study, Yucca Mountain could hold at least four times the legislative limit and possibly nine times that limit, allowing that site to store “all the waste from the existing U.S. nuclear power plants, but also waste produced from a significantly expanded U.S. nuclear power plant fleet for at least several decades.”

Federal nuclear energy fee creates funding for Yucca Mt.

*Office of Civilian Radioactive Waste Management, US Dept. of Energy, 2009, "Budget and Funding,"*

<http://www.ocrwm.doe.gov/budget/index.shtml>

Customers who use nuclear power pay for the disposal of spent fuel. The federal government collects a fee of one mil (one-tenth of a cent) per kilowatt-hour of nuclear-generated electricity from utilities. This money goes into the Nuclear Waste Fund. As of December 31, 2008, payments and interest credited to the Fund totalled $29.6 billion. The Department of Energy receives money from the Nuclear Waste Fund through congressional appropriations.

Nuclear energy is profitable, clean and green

Alan J. Steinberg (Regional Administrator of Region 2 of the EPA during the administration of former President George W. Bush) 15 Feb 2009, Obama, Corzine, and the Politics of Nuclear Energy <http://www.politickernj.com/alan-steinberg/27387/obama-corzine-and-politics-nuclear-energy>

Nuclear power generates no greenhouse gases and absolutely negligible amounts of soot, smog, and any other air pollutants. Although the cost of constructing a nuclear power plant is high, the ultimate operation of such a facility is most profitable, given the relatively low cost of nuclear fuel. Europe has already opted for the nuclear energy option - in fact, France now generates 80 per cent of its energy through nuclear power. In short, nuclear energy is ***green,*** both in terms of the economy and the environment***.***

We’re on the verge of a nuclear energy renaissance

James A. Lake (associate laboratory director for the nuclear program at the Idaho National Laboratory and was president of the American Nuclear Society in 2000-2001) 9 May 2008, U.S. Department of State's Bureau of International Information Programs, “The Renaissance Of Nuclear Energy” <http://www.america.gov/st/env-english/2008/May/20080520182724WRybakcuH0.2896387.html>

We stand at the verge of a renaissance of nuclear energy, founded in the continued safe and economical operation of America's 103 nuclear power plants and signaled by the expected near-term announcements of several orders for new nuclear power plants to be constructed and operated in the next 10 years. In the longer term, our national laboratories are working with the nation's universities, U.S. industry, and the international community to develop the next generation of advanced nuclear power systems, which will be even more economical, safer, and sustainable with a closed fuel cycle that burns up substantially more of the nuclear fuel to extract much more of its energy potential while minimizing the quantities of nuclear waste.

Public supports nuclear power and US is on the verge of resuming nuclear plant construction

James A. Lake (associate laboratory director for the nuclear program at the Idaho National Laboratory and was president of the American Nuclear Society in 2000-2001) 9 May 2008, U.S. Department of State's Bureau of International Information Programs, “The Renaissance Of Nuclear Energy” <http://www.america.gov/st/env-english/2008/May/20080520182724WRybakcuH0.2896387.html>

Public trust in the operation of nuclear power plants has steadily improved with better understanding of the economic and environmental benefits and with improved safety performance. Some polls show that 70 percent of Americans favor continued operation of the existing plants, and more than 50 percent support building new plants. Today, 440 nuclear power plants generate 16 percent of the world's electricity needs. Aggressive new nuclear plant construction programs have begun, particularly in East Asian countries, Russia, and India. The United States itself is on the verge of resuming construction of new nuclear power plants, a process that has been dormant for more than 25 years. This is the beginning of the third era, the renaissance of nuclear energy.

Nuclear is cost-competitive and safe

James A. Lake (associate laboratory director for the nuclear program at the Idaho National Laboratory and was president of the American Nuclear Society in 2000-2001) 9 May 2008, U.S. Department of State's Bureau of International Information Programs, “The Renaissance Of Nuclear Energy” <http://www.america.gov/st/env-english/2008/May/20080520182724WRybakcuH0.2896387.html>

Throughout the 1980s, the nuclear electric utilities completed many of the remaining plants, brought them on line, and devoted their attention to improving cost effectiveness and operations performance, which simultaneously improved safety. By the mid-to-late 1990s, the 103 nuclear power plants in the United States were producing 20 percent of America's electricity at a cost that made them highly competitive with those fired by coal and other fuels—less than 2 cents per kilowatt- hour. Furthermore, their safety performance has improved by more than a factor of 10, to a point where nuclear power is a leader in industrial safety performance today.

Next-generation nuclear power being developed: Cleaner, less waste, more proliferation-resistant

James A. Lake (associate laboratory director for the nuclear program at the Idaho National Laboratory and was president of the American Nuclear Society in 2000-2001) 9 May 2008, U.S. Department of State's Bureau of International Information Programs, “The Renaissance Of Nuclear Energy” <http://www.america.gov/st/env-english/2008/May/20080520182724WRybakcuH0.2896387.html>

In 2001, the U.S. government issued a new National Energy Policy (NEP) that set the nation on a course to expand the use of nuclear energy in the near term by making more efficient the processes of obtaining extensions of licenses to operate existing nuclear plants and of obtaining licenses to build new nuclear facilities. The NEP further sought to encourage nuclear energy use through the development, demonstration, and deployment of next-generation nuclear power technologies. Importantly, it aimed at achieving this goal through research and development of advanced fuel cycles that might prove to be cleaner, more efficient, less waste intensive, and more proliferation resistant than a single-use nuclear fuel, which requires geologic disposal of the used fuel.

DA Turn: Radioactive terrorism risk

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

Yucca Mountain in Nevada, the site slated for a permanent geologic repository, has not received approval to store this waste. Even if the license application is approved within the next few years, the Department of Energy does not anticipate starting to store waste there until 2017, and, more realistically, not before 2020. Meanwhile, spent fuel is accumulating in pools at nuclear power plants, increasing the risk of radioactive release from sabotage or attack at these facilities. A recent U.S. National Academy of Sciences study has concluded that “successful terrorist attacks on spent fuel pools, though difficult, are possible.” Zirconium cladding provides a protective barrier around the spent fuel, but the cladding could catch fire under some attack scenarios. According to the National Academy study, “If an attack leads to a propagating zirconium cladding fire, it could result in the release of large amounts of radioactive materials.”

3000 shipments of spent nuclear fuel have already occurred without any radioactive release

American Society of Mechanical Engineers (ASME is a not-for-profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences throughout the world) 8 Feb 2007, Speaker at ASME/IEEE Conference to Discuss the Yucca Mountain Rail Project (brackets added) <http://www.asme.org/about/>

“The walls of the casks enclosing the nuclear material are constructed of metal more than a foot in thickness,” explains [manager of the Nevada Rail Project Eugene C.] Allen. “We believe the containments provide a stable environment for the material within, even in the very unlikely case of a train derailment.” According to DOE estimates, 23 years will be required to transport and deposit all of this country’s spent nuclear fuel, with trains as long as 12 cars in length moving back and forth between Yucca Mountain and the electric utilities. Since the early 1960s, the U.S. has conducted more than 3,000 shipments of spent nuclear fuel, without any release of radioactive material into the environment.

Chernobyl caused only a few fatalities

DA Turn: Hysteria and fear of radiation caused 200,000 abortions

Donald W. Miller Jr. MD, (cardiac surgeon and Professor of Surgery at the University of Washington in Seattle ) 14 Apr 2004 “Advantages of Nuclear Power,” <http://www.lewrockwell.com/miller/miller13.html>

With 442 nuclear power plants operating in 32 countries for a cumulative 10,000 reactor-years of commercial operation, Chernobyl, in the former Soviet Union, is the onlyaccident in the history of nuclear power where any radiation-related fatalities have occurred. In that accident (in 1986) radioactivity from part of the reactor’s overheated core escaped into the atmosphere. Acute radiation sickness affected 134 employees and 28 died. An estimated 70 extra cases of thyroid cancer occurred in children as a result of the accident, which could have been prevented by timely ingestion of potassium iodide. Otherwise, no increase in the incidence of other cancers occurred (despite dire predictions, based on the linear no-threshold hypothesis, that 110,000 new cancers would occur due to radioactive fallout from the accident). [Chernobyl’s real victims](http://www.techcentralstation.com/012402M.html) were 200,000 pregnant women in Europe who, caught up in a wave of radiophobic hysteria, feared that their fetuses would be damaged by radiation from the fallout and had their pregnancies terminated. Low dose radiation does not cause genetic defects, and fetuses exposed to radiation from Chernobyl that were not aborted developed normally and did not have any increased incidence of congenital abnormalities or genetic defects.

Nuclear safety: Chernobyl can’t happen anywhere else, and 3 Mile Island had no injuries or deaths

Donald W. Miller Jr. MD, (cardiac surgeon and Professor of Surgery at the University of Washington in Seattle ) 14 Apr 2004 “Advantages of Nuclear Power,” <http://www.lewrockwell.com/miller/miller13.html>

Chernobyl is unique. That kind of accident will not happen in any other nuclear power plants because all the reactors currently in operation around the world are placed inside a containment building (Chernobyl was not). The reactor core meltdown at Three Mile Island in 1979, which happened when its core cooling system failed, also produced a lot of radiation; but the containment building the reactor was housed in kept it from being released into the atmosphere, and there were no injuries or deaths.

AFFIRMATIVE BRIEF: FUNDING SOURCES

By Vance Trefethen

General Federal Revenues: $2.6 trillion

US House of Representatives, Committee on the Budget, 24 Apr 2008, Frequently Asked Questions about the Federal Budget, <http://budget.house.gov/budget_facts/2008_0424faq.pdf>

According to CBO [Congressional Budget Office] projections, the federal government will collect $2.6 trillion in revenues in 2008 from various sources.

Cancel FDA budget increase: $511 million

US House of Representatives, Committee on the Budget, ”Summary and Analysis of the President’s Detailed Fiscal Year 2010 Budget Request” 15 May 2009 <http://budget.house.gov/doc-library/FY2010/05.15.09_Presidents_Budget_Analysis.pdf>

The budget proposes a program level of $3.2 billion for FDA, which is a $511 million increase (19.2 percent) above the 2009 level -- the largest increase ever requested for FDA. The total funding level consists of an appropriation of $2.4 billion, $687 million in existing user fees, and $141 million in proposed discretionary user fees. To address the challenges of protecting our nation’s food supply, the budget proposes $259 million in additional resources (33.0 percent above 2009 level) for food safety to increase FDA’s focus on prevention and to improve oversight and enforcement activities.

Unfreeze (let grow) the Estate Tax: $171 billion over 10 years

US House of Representatives, Committee on the Budget, ”Summary and Analysis of the President’s Detailed Fiscal Year 2010 Budget Request” 15 May 2009 <http://budget.house.gov/doc-library/FY2010/05.15.09_Presidents_Budget_Analysis.pdf>

The budget proposes freezing the estate tax at its 2009 levels – a $3.5 million exemption for individuals and 45 percent top tax rate. The ten-year cost of this policy is $171.1 billion.

Taxing carried interest as ordinary income: $23.5 billion over 10 years

US House of Representatives, Committee on the Budget, ”Summary and Analysis of the President’s Detailed Fiscal Year 2010 Budget Request” 15 May 2009 <http://budget.house.gov/doc-library/FY2010/05.15.09_Presidents_Budget_Analysis.pdf>

Taxing Carried Interest as Ordinary Income — The President’s budget proposes taxing partnership interests designated as “services partnership interests” as ordinary income, a proposal that would raise $23.5 billion over ten years.

Eliminate Oil & Gas Subsidies: $31.5 billion over 10 years

US House of Representatives, Committee on the Budget, ”Summary and Analysis of the President’s Detailed Fiscal Year 2010 Budget Request” 15 May 2009 <http://budget.house.gov/doc-library/FY2010/05.15.09_Presidents_Budget_Analysis.pdf>

Eliminate Oil and Gas Subsidies **—** The President’s budget proposes repealing a number of tax subsidies for domestic and offshore oil and gas production for a savings of $31.5 billion over ten years.

Cancel NASA budget increase: $2.4 billion

Office of Management & Budget, 2009, Fiscal Year 2010 Budget, National Aeronautics and Space Administration, [www.whitehouse.gov/omb/assets/fy2010\_new\_era/National\_Aeronautics\_and\_Space\_Administration.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era/National_Aeronautics_and_Space_Administration.pdf)

Provides $18.7 billion for the National Aeronautics and Space Administration. Combined with the $1 billion provided to the agency in the American Recovery and Reinvestment Act of 2009, this represents a total increase of more than $2.4 billion over the 2008 level.

Housing Trust Fund: $1 billion

Office of Management & Budget, 2009, Fiscal Year 2010 Budget, Dept. of Housing & Urban Development, [www.whitehouse.gov/omb/assets/fy2010\_new\_era/Department\_of\_Housing\_and\_Urban\_Development.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era/Department_of_Housing_and_Urban_Development.pdf)

The Housing Trust Fund was originally authorized in the Housing and Economic recovery Act of 2008, with a dedicated funding stream from assessments on Fannie Mae and Freddie Mac. However, given their financial difficulties, the Federal Housing Finance Agency has indefinitely suspended these assessments. The Budget restores funding for the Housing Trust Fund by requesting $1 billion to finance the development, rehabilitation, and preservation of affordable housing for very low income residents.

Cancel the Corporation for National Community Service: $1.13 billion

Office of Management & Budget, 2009, Fiscal Year 2010, Corporation for National and Community Service, [www.whitehouse.gov/omb/assets/fy2010\_new\_era/Corporation\_for\_National\_and\_Community\_Service.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era/Corporation_for_National_and_Community_Service.pdf)

The President’s Budget proposes $1.13 billion for CNCS, an increase of $261 million from the 2009 likely enacted level, to give more Americans the opportunity to serve and to build the capacity of the nonprofit sector to find innovative solutions to social problems.

NEGATIVE BRIEF: ALTERNATIVE ENERGY – Good

By Jared Rixstine

HARMS

Reverse Plan Advocate: US needs “Bold Campaign” for clean energy

Mark Muro (fellow and director of policy at the Metropolitan Policy Program at the Brookings Institution. He is a co-author of the Brookings report, “[Energy-Innovation Institutes: A Step toward America's Energy Sustainability](http://www.brookings.edu/~/media/Files/rc/reports/2009/0209_energy_innovation_muro/0209_energy_innovation_muro_full.pdf" \t "_blank).”) and Teryn Norris (project director at the Breakthrough Institute, a Oakland, Calif.-based think tank that, among other issues, focuses on making the transition to a clean-energy economy.) 30 April 2009“To Make Clean Energy Cheaper, U.S. Needs Bold Research Push” Yale Environment 360 –of the Yale School of Forestry and Environmental Studies <http://e360.yale.edu/content/feature.msp?id=2146> [Brackets Added]

[Energy Secretary Steven]Chu has it right. The task is clear: To renew the U.S. economy, respond to global climate change, foster the nation’s energy security, and help provide the energy necessary to sustainably power global development, America must transform its outdated energy policy. Innovation and its commercialization must move to the center of energy system reform. The nation must move urgently to develop and harness a portfolio of clean energy sources that are affordable enough to deploy on a mass scale throughout the U.S. and the world. In short, we must make clean energy cheap. Today, the U.S. needs a similarly bold campaign to enlist America’s universities, laboratories, and companies in solving one of the most complex and important problems — the transition to a clean-energy economy — that the nation has ever faced.

ADVANTAGES RESPONSE:

Ethanol good for farmers

Christopher Doering (of Reuters News) January 13 2009 “Ethanol Good for U.S. Agriculture: Poll” Reuters News (Thomson Reuters is the world's largest international multimedia news agency) <http://uk.reuters.com/article/idUKTRE50C5QO20090113>

“U.S. farmers believe overwhelmingly that ethanol has been good for American agriculture, believing the renewable fuel has boosted their bottom line, a straw poll conducted by Reuters showed on Tuesday. Anything that creates an additional demand for your product you have to consider a positive," said Hal Swaney, a corn, soybean and livestock farmer in Missouri.”

Ethanol has helped build dozens of factories across the country

Alexei Barrionuevo, Simon Romero, and Michael Janofsky (All of the New York Times) June 25, 2006 “Boom in Ethanol Reshapes Economy of Heartland” New York Times <http://www.nytimes.com/2006/06/25/business/25ethanol.html>

Dozens of factories that turn corn into the gasoline substitute ethanol are sprouting up across the nation, from Tennessee to Kansas, and California, often in places hundreds of miles away from where corn is grown.

Ethanol Bonanza has generated more than a 100% profit in less than two years

Alexei Barrionuevo, Simon Romero, and Michael Janofsky (All of the New York Times) June 25, 2006 “Boom in Ethanol Reshapes Economy of Heartland” New York Times [www.nytimes.com/2006/06/25/business/25ethanol.html](http://www.nytimes.com/2006/06/25/business/25ethanol.html)

Once considered the green dream of the environmentally sensitive, ethanol has become the province of agricultural giants that have long pressed for its use as fuel, as well as newcomers seeking to cash in on a bonanza. The modern-day gold rush is driven by a number of factors: generous government subsidies, surging demand for ethanol as a gasoline supplement, a potent blend of farm-state politics and the prospect of generating more than a 100 percent profit in less than two years.

Example of Small Town that has been helped immensely by the Ethanol Rush

Alexei Barrionuevo, Simon Romero, and Michael Janofsky (All of the New York Times) June 25, 2006 “Boom in Ethanol Reshapes Economy of Heartland” New York Times <http://www.nytimes.com/2006/06/25/business/25ethanol.html>

Even in the small town of Hereford, in the middle of the Texas Panhandle's cattle country and hundreds of miles from the agricultural heartland, two companies are rushing to build plants to turn corn into fuel. As a result, Hereford has become a flashpoint in the ethanol boom that is helping to reshape part of rural America's economic base. Despite continuing doubts about whether the fuel provides a genuine energy saving, at least 39 new ethanol plants are expected to be completed over the next 9 to 12 months, projects that will push the United States past Brazil as the world's largest ethanol producer. "These projects are bringing 100 new jobs to our town," said Don Cumpton, Hereford's director of economic development and a former football coach at the high school. "It's not as if Dell computer's going to be setting up shop here. We'd be nuts to turn something like this down."

Nuclear energy has failed in the past

Susan Q. Stranahan (covered the Three Mile Island accident for The Inquirer and has written often about nuclear issues) March 29, 2009 “Nuclear Power still offers no safe bets – waste disposal and reactor designs are problematic” The Philadelphia Inquirer <http://www.philly.com/inquirer/currents/20090329_Nuclear_power_still_offers_no_safe_bets.html>

Thirty years ago, the nation was coming off a crippling energy crisis, rooted in our dependence on foreign oil. At the time, nuclear power held out the promise of limitless, cheap, reliable power supplies. Then, early in the morning of March 28, 1979, a thunderous burst of steam echoed over the Susquehanna River. The nuclear promises went up in smoke, too. Today, as the ailing United States again searches for cheap, dependable, and environmentally benign sources of energy, the self-burnished nuclear industry is back at the table, touting a nuclear renaissance and promoting itself as the answer to our needs. How short is our memory?

Nuclear power: Nowhere to put the waste

Susan Q. Stranahan (covered the Three Mile Island accident for The Inquirer and has written often about nuclear issues) March 29, 2009 “Nuclear Power still offers no safe bets – waste disposal and reactor designs are problematic” The Philadelphia Inquirer <http://www.philly.com/inquirer/currents/20090329_Nuclear_power_still_offers_no_safe_bets.html>

Especially problematic is the issue that has haunted nuclear power since Day One: Waste disposal. Despite all the talk about 30 new reactors, there is no place to put the spent fuel those plants would spew out - waste that remains dangerous for thousands of years. Actually, there is no place to put the tons of waste produced by the nation's 103 operating reactors - and the prospects of finding a home for that have dimmed considerably in recent weeks.

Obama canceled Yucca Mountain nuclear waste storage – so nowhere to store waste

Susan Q. Stranahan (covered the Three Mile Island accident for The Inquirer and has written often about nuclear issues) March 29, 2009 “Nuclear Power still offers no safe bets – waste disposal and reactor designs are problematic” The Philadelphia Inquirer <http://www.philly.com/inquirer/currents/20090329_Nuclear_power_still_offers_no_safe_bets.html>

The Obama administration has eliminated almost all funding for Yucca Mountain, the controversial and costly ($8 billion so far, and counting) site designated 22 years ago as the permanent repository for spent reactor fuel. Absent its completion, spent fuel currently is stored at the reactors themselves, although some facilities no longer have space for more. By most accounts, Yucca Mountain will never open. Thus, we are no closer to a waste repository than we were 30 years ago.

Nuclear Energy “high stake gamble”

Susan Q. Stranahan (covered the Three Mile Island accident for The Inquirer and has written often about nuclear issues) March 29, 2009 “Nuclear Power still offers no safe bets – waste disposal and reactor designs are problematic” The Philadelphia Inquirer <http://www.philly.com/inquirer/currents/20090329_Nuclear_power_still_offers_no_safe_bets.html>

Come to think of it, nuclear power is not our energy salvation; it is still a high-stakes gamble.

DISADVANTAGES

1. Market Failure and Negative Externalities. Externalities are side effects from economic activity that are not accounted for in market prices. Pollution is a Negative Externality – it happens as a side effect from other market transactions but it is not accounted for in the price and there is no market incentive to reduce it.

The Economist (respected British news magazine; premier online source for the analysis of world business and current affairs) 2009 “The Economist Research Tools – Economic Terminology – Externality” Adapted from “Essential Economics” Published by Profile Books, [www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality](http://www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality)

Externality **-** An economic side-effect. Externalities are costs or benefits arising from an economic activity that affect somebody other than the people engaged in the economic activity and are not reflected fully in [PRICES](http://www.economist.com/research/Economics/alphabetic.cfm?term=price#price). For instance, smoke pumped out by a factory may impose clean-up costs on nearby residents; bees kept to produce honey may pollinate plants belonging to a nearby farmer, thus boosting his crop. Because these costs and benefits do not form part of the calculations of the people deciding whether to go ahead with the economic activity they are a form of [MARKET FAILURE](http://www.economist.com/research/Economics/alphabetic.cfm?term=marketfailure#marketfailure), since the amount of the activity carried out if left to the free market will be an inefficient use of resources. If the externality is beneficial, the market will provide too little; if it is a cost, the market will supply too much.

Pollution happens because of externalities: No market incentive to reduce it

Prof. Susan J. Buck PhD (Economics, UNC-Greensboro), “Understanding environmental administration and law,” 2005, <http://books.google.com/books?id=gB1Blm2Ec2EC&pg=PA119&lpg=PA119&dq=externalities+%2B+pollution+%2B+justify&source=bl&ots=K9juSY5udd&sig=1LoyvEyBK7zH9XfEEFX46TNxxYY&hl=en&ei=TpBvSreOBYvUMue8yd4I&sa=X&oi=book_result&ct=result&resnum=4>

Two economic factors that distort the operation of a free market are externalities and free-riders. Simply put, externalities are spillover effects that have an impact on individuals or groups that have not contributed to the project. For example, a factory may dump pollutants into the air, harming the health of local residents. The factory saves the cost of pollution control, but these costs are then borne by others who are external to the factory (both figuratively and literally). Thus the costs of polluting activities are not borne by those who reap the benefits, and polluters have no economic incentives to reduce pollution.

Status Quo policy justified: Government intervention is justified as solution to Negative externalities.

Externalities can be reduced through regulation, tax or subsidy

The Economist (respected British news magazine; premier online source for the analysis of world business and current affairs) 2009 “The Economist Research Tools – Economic Terminology – Externality” Adapted from “Essential Economics” Published by Profile Books, [www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality](http://www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality)

Externalities can be reduced through [REGULATION](http://www.economist.com/research/Economics/alphabetic.cfm?term=regulation#regulation), a tax or subsidy, or by using property rights to force the market to take into account the [WELFARE](http://www.economist.com/research/Economics/alphabetic.cfm?term=welfare#welfare) of all who are affected by an economic activity. The [SUPPLY](http://www.economist.com/research/Economics/alphabetic.cfm?term=supply#supply) of public goods can be ensured by compelling everybody to pay for them through the tax system.

Market failures justify government intervention

Aggrey Bigala (Dept of Economics, Finance, and Office Systems Management, Alabama A&M Univ.), 1 Apr 2003, “Government intervention in a market economy,” JOURNAL OF THE ALABAMA ACADEMY OF SCIENCE, [www.articlearchives.com/economy-economic-indicators/economic-news/944163-1.html](http://www.articlearchives.com/economy-economic-indicators/economic-news/944163-1.html)

However, market economies are not without inequities and failures. These failures and inequities sometimes call for and lead to government intervention. The failures include the existence of monopolies (failure of competition), public goods, incomplete markets, externalities, lack of access to information, business cycles, unemployment, and inflation. The government intervention in a market economy can be justified based on the need for addressing the market failures.

Impact: Environmental damage is caused by uncorrected externalities

The Economist (respected British news magazine; premier online source for the analysis of world business and current affairs) 2009 “The Economist Research Tools – Economic Terminology – Externality” Adapted from “Essential Economics” by Michael Bishop, [www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality](http://www.economist.com/research/Economics/alphabetic.cfm?LETTER=E#externality)

Much of the damage done to the environment may be a result of externalities. An [EXTERNALITY](http://www.economist.com/research/Economics/alphabetic.cfm?term=externality#externality) can arise when people engaged in economic activity do not have to take into account the full costs of what they are doing. For instance, car drivers do not have to bear the full cost of making their contribution to global warming, even though their actions may one day impose a huge financial burden on society.

2. Greenhouse gases and climate destabilization

A. Link: AFF cancels Alternative Energy

B. Brink + Uniqueness: Increased energy demand would be met by clean fuel initiatives under Status Quo policy

U.S. Department of Energy 2009 “Energy Sources” <http://www.energy.gov/energysources/index.htm>

Energy is the vital force powering business, manufacturing, and the transportation of goods and services to serve the American and world economies. Energy supply and demand plays an increasingly vital role in our national security and the economic output of our nation. It is not surprising that the United States spends over 500 billion dollars annually on energy. As America's need for energy grows, the Department of Energy is meeting the challenge by establishing clean fuel initiatives to make the most of traditional fossil fuels while investing in cutting edge research to develop sustainable sources such as fusion and to employ hydrogen (an energy carrier like electricity) which can be produced from diverse, domestic sources and greatly reduce our dependence on imported oil.

Analysis: All that would be left is fossil fuel

The piece of evidence above clearly states that as America’s need for energy grows the DOE will meet it by using clean fuel initiatives and making the most of traditional fossil fuels. If the affirmative case is passed, then the clean fuel initiatives would be removed and all that would be left of the US energy pursuits is fossil fuels.

C. Link: Oil causes global warming

Michael Hawthorne (reporter for the Chicago Tribune) February 12, 2008 “Refinery pollution may soar Midwest Projects Would Increase Emission Up To 40%”Chicago Tribune <http://www.chicagotribune.com/news/chi-greenhouse_12feb12,0,7430874.story>

Expansion plans at the BP refinery in Whiting would boost the facility's greenhouse-gas emissions to 5.8 million tons a year, the company told the Tribune. That would be equivalent to adding 320,000 cars to the nation's highways. While greenhouse gases from the tailpipes of cars get the most attention, the refineries that keep cars and trucks running also contribute to global warming. Fuel must be burned to make gasoline from oil, generating carbon-dioxide pollution. The huge increases in greenhouse gases are a largely hidden consequence of an industry wide trend to buy more Canadian crude.

**Analysis:** This piece of evidence clearly states that increasing the size of oil refineries and increasing the use of oil is going to increase greenhouse gas emissions and thereby increase global warming.

D. Link: Greenhouse Gas Emissions raise the temperature of earth and ‘destabilize the climate’

CNN News April 29, 2007 “Scientists: Humans ‘very likely’ cause global warming” <http://www.cnn.com/2007/TECH/science/02/02/climate.change.report/>

Fossil fuels like methane and carbon dioxide trap heat near the surface, a process known as the greenhouse effect. The greenhouse effect is a natural phenomenon, but human activities, like the burning of fossil fuels, can pour enormous volumes of these gases into the atmosphere, raising the planet's temperature and destabilizing the climate.

E. Impact: Greenhouse gas emissions harm the world: droughts and floods

Sharon Begley (of Newsweek magazine – additional credentials at end of brief ) August 13, 2007 “The Truth About Denial” Newsweek www.newsweek.com/id/32482

Sen. Barbara Boxer had been chair of the Senate's Environment Committee for less than a month when the verdict landed last February. "Warming of the climate system is unequivocal," concluded a report by 600 scientists from governments, academia, green groups and businesses in 40 countries. Worse, there was now at least a 90 percent likelihood that the release of greenhouse gases from the burning of fossil fuels is causing longer droughts, more flood-causing downpours and worse heat waves, way up from earlier studies.

F. Impact: More global warming = species extinction and human deaths

Dr. Gideon Polya 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" <http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/>

It is already clear from declining agricultural production due to drought and massive storm surge disasters in India, Bangladesh, Burma and the US that global warming is already impacting on global avoidable mortality.Greenhouse gas pollution – mostly due to carbon dioxide (CO2) from fossil fuel burning – is driving global warming and attendant species extinctions, droughts, sea level rise, decreased agricultural production and increased human death.

3. Coal pollution

Link: Cancel alternative energies = more fossil fuels. Cross-apply Disad 2B card.

Impact #1: Coal = death

49,153 coal based deaths per year in US; 71,887 total annual fossil fuel-based electricity deaths

Dr. Gideon Polya 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" <http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/> [Brackets and parentheses in original]

49% of US electricity of 4,065 TWh is from coal i.e. 1,991 TWh (2006: Sources: Wikipedia and EIA) indicating 49,153 [2006] ”annual coal-based electricity deaths” as compared to 71,887 “total annual fossil fuel-based electricity deaths”.

Impact #2: Lost advantages of moving beyond coal: saved lives, reduced illness, sick babies, $160 billion health care costs

Dr. Gideon Polya 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" <http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/>

“The US “annual coal-based electricity deaths” have been estimated at 30,000 [2002]: “Coal-burning air pollution harms human heath in several different ways. Tiny particles of sulfur and nitrogen from coal burners lodge deep in our lungs, causing as many as 30,000 premature deaths per year, according to the most up-to-date study by EPA consultant Abt Associates“. According to Janet Larsen of The Earth Policy Institute it is 25,100 [2004]: “By moving beyond coal, the United States could avoid a legacy of smog-filled skies, acid rain, polluted waterways, contaminated fish, and scarred landscapes. This could each year save some 25,000 lives, reduce respiratory and cardiovascular illnesses, avert potential neurological damage for 630,000 babies, and erase a health care bill of over $160 billion”.”

Already, there have been 170,000 deaths across the globe due to coal use

Dr. Gideon Polya 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" <http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/> [Brackets Added]

However the above analysis shows that there is a horrendous reality ALREADY of about 170,000 deaths annually throughout the world from the effects of coal-based electricity generation and as many as 0.3 million deaths annually from pollutants from fossil fuel-based electricity generation in general – a huge death toll that cannot be ignored. Please tell everyone you can.

Impact #3: Significant environmental impact from power plants and coal mining

Ananth P. Chikkatur and Ambuj D. Sagar (Belfer Center for Science and International Affairs, Kennedy School of Government, Harvard University) Dec 2007, "Cleaner Power in India: Towards a Clean-Coal-Technology Roadmap" <http://belfercenter.ksg.harvard.edu/files/Chikkatur_Sagar_India_Coal_Roadmap.pdf>

Coal-based power plants significantly impact the local environment. Direct impacts resulting from construction and ongoing operations include:

• flue gas emissions – particulates, sulfur oxides, nitrous oxides, and other hazardous chemicals

• pollution of local water streams, rivers and ground water from effluent discharges and percolation of hazardous materials from the stored flyash

• degradation of land used for storing flyash

• noise pollution during operation

The indirect impacts result mainly from coal mining, which includes degradation and destruction of land, water, forests, habitats, and societies. In addition to the impact of the coal-power plants, there is also the much larger issue of the environmental and social impact of coal mining.

4. Peak Oil

A. Link: Aff cancels alternatives and increases oil consumption. See Disadvantage 2 – Increase Greenhouse Gas Emissions Link #2B.

B. Link: Peak oil is coming – cheap oil is ending

C. Brink: Without significant cultural reform, severe consequences will follow

Bart Anderson (energy bulletin co-editor) June 16, 2009 “Peak Oil Primer – What is Peak Oil?” Energy Bulletin **(**[EnergyBulletin.net](http://EnergyBulletin.net) is a clearinghouse for information regarding the peak in global energy supply. We publish news, research and analysis concerning: Energy production statistics, models, projections and analysis articles which provide insight into the implications of peak oil**)** <http://www.energybulletin.net/primer>

Peak oil is the simplest label for the problem of energy resource depletion, or more specifically, the peak in global oil production. Oil is a finite, non-renewable resource, one that has powered phenomenal economic and population growth over the last century and a half. The rate of oil 'production', meaning extraction and refining (currently about 84 million barrels/day), has grown almost every year of the last century. Once we have used up about half of the original reserves, oil production becomes ever more likely stop growing and begin a terminal decline, hence 'peak'. The peak in oil production does not signify 'running out of oil', but it does mean the end of cheap oil, as we switch from a buyers' to a sellers' market. For economies leveraged on ever increasing quantities of cheap oil, the consequences may be dire. Without significant successful cultural reform, severe economic and social consequences seem inevitable.

D. Impact: Relying on “markets only” will result in oil crash – very bad times for our grandchildren

Prof. David Goodstein (physics, Calif. Institute of Technology), 2004, CalTech News, THE END OF THE AGE OF OIL, <http://www.fromthewilderness.com/free/ww3/111704_end_oil.shtml>

What all this suggests is that if we accept the economists’ solution and just let the marketplace do its thing as we make use of all the fossil fuel we can, we’ll start running out of *all* fossil fuels by the end of this century. So, what does the future hold? Well, for one thing, there will be an oil crisis very soon. Whether that means it has already begun or won’t happen until later in this decade or sometime in the next decade, I don’t know. In my view, the numbers are not dependable enough for us to say. However, while the difference between those estimates may be very important to us, it’s of no importance at all on the timescale of human history. Either we, our children, or perhaps our grandchildren, are in for some very, very bad times. If we turn to all the other fossil fuels and burn them up as fast as we can, they will all probably start to run out by the end of the 21st century. Assuming that our planet remains habitable after such a vast consumption binge, we will have to invent a way to live without fossil fuels.

CREDENTIALS

Sharon Begley

Sharon Begley, widely known for her ability to break down complex scientific theories and write about them in simple prose, returned to Newsweek in March 2007 from the Wall Street Journal, where she wrote the "Science Journal" column for five years. In her new capacity at Newsweek, she writes a bi-weekly column, essays and cover stories as well as contributing to Newsweek.com.

She won a first place award from NYABJ for her "How Your Brain Looks at Race" column and won The Genesis Award for Outstanding Written Word for "The Extinction Trade." The award, given by the Humane Society of the United States, recognizes artists, writers, entertainers and journalists who contribute their time and talent to raise awareness of the plight and suffering of animals. Begley's "We Fought Cancer and Cancer Won" is a 2009 finalist for a National Magazine Award in the Public Interest category.

Before leaving NEWSWEEK, Begley had been a senior editor since December 1996. She had been a senior writer for Newsweek's science coverage since January 1990. She joined the magazine as an editorial assistant in Science in 1977, and was promoted to assistant editor in January 1979, associate editor in 1980 and then general editor in 1983. During her career at Newsweek, Begley wrote a myriad of cover stories. And she wrote another one, after being back at the magazine just two weeks, "The Evolution Revolution" (3/19/07).

NEGATIVE BRIEF: ANWR

by Leanne Livingston

HARMS/SIGNIFICANCE

United States not heavily dependent on Arab oil

Energy Information Administration (Official Energy Statistics from the U.S. Government) “Energy In Brief,” April 23, 2009 <http://tonto.eia.doe.gov/energy_in_brief/foreign_oil_dependence.cfm>

Some may be surprised to learn that almost 50% of U.S. crude oil and petroleum products imports came from the Western Hemisphere (North, South, and Central America and the Caribbean including U.S. territories) during 2006. We imported only 16% of our crude oil and petroleum products from the Persian Gulf countries of Bahrain, Iran, Iraq, Kuwait, Qatar, Saudi Arabia, and United Arab Emirates.

Oil price impact on the economy has diminished – maybe was never that big anyway

Janet L. Yellen, (President of Federal Reserve Bank of San Francisco) 27 February 2009, Presentation to the 2009 U.S. Monetary Policy Forum conducted by the University of Chicago Booth School of Business and Brandeis International Business School, <http://www.frbsf.org/news/speeches/2009/0227.html>

But it is important to emphasize that a significant body of recent research instead suggests that the measured effect of oil price shocks has diminished over the last several decades. Over a decade ago, Hooker (1996) showed that the effect of oil price shocks had diminished since the early 1980s and subsequent research has verified this finding. In fact, this influential research has shifted the academic debate concerning oil shocks, with some authors now questioning whether such shocks were ever actually as important as was believed in the 1970s (Barsky and Kilian, 2004, Bernanke, Gertler, Watson, 1997) and others investigating what structural changes in the economy may have diminished the impact of such shocks (Blanchard and Gali, 2007). It seems to me that a change in the conduct of monetary policy following the experience of the 1970s has probably caused inflation expectations to become better anchored, explaining why recent oil shocks have inflicted relatively little damage on the economy.

INHERENCY

Lower U.S. Petroleum Imports Expected in the Future

Energy Information Administration (Official Energy Statistics from the U.S. Government) “Energy In Brief,” April 23, 2009 <http://tonto.eia.doe.gov/energy_in_brief/foreign_oil_dependence.cfm> (brackets added)

The Energy Information Administration (EIA) projects U.S. crude oil and petroleum products imports will decline from 12.1 MMbd [million barrels per day] in 2007 to 8.3 MMbd in 2030 . Growth in total U.S. petroleum consumption is expected to remain relatively flat out to 2030. Meanwhile, The increase in U.S. crude oil production in the Gulf of Mexico and elsewhere, combined with increasing biofuel and coal-to-liquids (CTL) production, is expected to reduce the need for imports over the longer term. U.S. petroleum import dependence is projected to fall from 58% in 2007 to 41% by 2030.

SOLVENCY

Even substantial fall in oil revenue would not affect terrorists' capabilities

Keith Crane (Director, Environment Energy & Economic Development Program) 2009, RAND Corporation (nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world) [www.rand.org/pubs/monographs/2009/RAND\_MG838.pdf](http://www.rand.org/pubs/monographs/2009/RAND_MG838.pdf)

The importance of donations from individuals and charities in oil-rich Middle Eastern states for financing al Qaeda and its affiliates has declined as terrorist groups have increasingly turned to crime to finance their attacks. Moreover, the costs of perpetrating a terrorist attack are so small ($15,000 to $500,000) that even a substantial fall in Middle Eastern oil revenues would not affect al Qaeda’s ability to raise sufficient funds to finance its operations.

It’s a global market: Reduction of imports won’t change price of oil within the US

Keith Crane (Director, Environment Energy & Economic Development Program) 2009, RAND Corporation (nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world) [www.rand.org/pubs/monographs/2009/RAND\_MG838.pdf](http://www.rand.org/pubs/monographs/2009/RAND_MG838.pdf)

Moreover, even if total U.S. imports were cut sharply, the price of oil in the United States would still be determined by global, not national, shifts in supply and demand. A large, extended reduction in the global supply of oil would trigger a sharp rise in the price of oil and lead to a sharp fall in economic output in the United States, no matter how much or how little oil the United States imports.

ANWR drilling would do little to ease world oil prices

U.S. and World News Report, Thursday, “Arctic Drilling Wouldn’t Cool High Oil Prices,” June 25, 2009, <http://www.usnews.com/articles/news/national/2008/05/23/arctic-drilling-wouldnt-cool-high-oil-prices.html>

Drilling for oil beneath the pristine tundra of the Arctic National Wildlife Refuge would do little to ease world oil prices, the federal government's energy forecasters said in a new report issued in a week that saw oil surpass $130 per barrel for the first time.

ANWR = Little impact on oil prices

U.S. and World News Report, Thursday, “Arctic Drilling Wouldn’t Cool High Oil Prices,” June 25, 2009, <http://www.usnews.com/articles/news/national/2008/05/23/arctic-drilling-wouldnt-cool-high-oil-prices.html>

But the U.S. Energy Information Administration, an independent statistical agency within the Department of Energy, concluded that new oil from ANWR would lower the world price of oil by no more than $1.44 per barrel\and possibly have as little effect as 41 cents per barrel\and would have its largest impact nearly 20 years from now if Congress voted to open the refuge today.

It would take ten years for oil production to commence in ANWR

U.S. and World News Report, Thursday, “Arctic Drilling Wouldn’t Cool High Oil Prices,” June 25, 2009, <http://www.usnews.com/articles/news/national/2008/05/23/arctic-drilling-wouldnt-cool-high-oil-prices.html>

If Congress approved development in 2008, it would take 10 years for oil production to commence, EIA said. With production starting, then, in 2018, EIA said the most likely scenario is that oil would peak at 780,000 barrels per day in 2027 and decline to 710,000 barrels per day in 2030. Currently, the United States consumes about 20 million barrels of oil per day.

ANWR production tiny: OPEC could neutralize price impact

U.S. and World News Report, Thursday, “Arctic Drilling Wouldn’t Cool High Oil Prices,” June 25, 2009, <http://www.usnews.com/articles/news/national/2008/05/23/arctic-drilling-wouldnt-cool-high-oil-prices.html>

EIA said its projection is that ANWR oil production would amount to 0.4 percent to 1.2 percent of total world oil consumption in 2030. The figure is low enough that Organization of the Petroleum Exporting Countries could neutralize any price impact by decreasing supplies to match the additional production from Alaska, EIA noted.

ANWR would only slightly reduce import dependence and cost

*Associate Press, “Study: ANWR oil would have little impact*

Heavy reliance on foreign imports would continue, agency finds” March 16, 2004, MSNBC <http://www.msnbc.msn.com/id/4542853/>

Opening an Alaska wildlife refuge to oil development would only slightly reduce America’s dependence on imports and would lower oil prices by less than 50 cents a barrel, according to an analysis released Tuesday by the Energy Department.

Miniscule impact: 2/3 imported oil with ANWR – 70% imported without it

*Associate Press, gStudy: ANWR oil would have little impact*

Heavy reliance on foreign imports would continue, agency findsh March 16, 2004, MSNBC <http://www.msnbc.msn.com/id/4542853/>

The report, issued by the Energy Information Administration, or EIA, said that if Congress gave the go-ahead to pump oil from Alaskafs Arctic National Wildlife Refuge, the crude could begin flowing by 2013 and reach a peak of 876,000 barrels a day by 2025. But even at peak production, the EIA analysis said, the United States would still have to import two-thirds of its oil, as opposed to an expected 70 percent if the refugefs oil remained off the market.

Additional domestic production is not enough to overcome increased demand

Associate Press, “Study: ANWR oil would have little impact Heavy reliance on foreign imports would continue, agency finds” March 16, 2004, MSNBC <http://www.msnbc.msn.com/id/4542853/>

But even the additional domestic production would not be enough to overcome increased demand, meaning continued heavy reliance on imports, the EIA said. Currently, the United States imports about 56 percent of the oil it consumes.

ANWR= Little impact on oil prices

Associate Press, gStudy: ANWR oil would have little impact Heavy reliance on foreign imports would continue, agency findsh March 16, 2004, MSNBC <http://www.msnbc.msn.com/id/4542853/>

With the 876,000 barrels the refuge could provide a day, the reliance on imports would drop to 66 percent of domestic consumption, the EIA analysis said. The study said it would likely have little impact on world oil prices \ perhaps reducing the price by 30 to 50 cents a barrel if prices were in the $27-a-barrel range.

Oil in the region is limited and scattered and is not worth the economic risk

Cosmo Catalano, “ANWR Drilling an Economic and Environmental Dead End,” October 27, 2008, Matter Network (Matter Network is a rich-media network dedicated to creating, aggregating, and syndicating actionable news and information about the clean technology and sustainability revolutions.) (brackets added) <http://featured.matternetwork.com/2008/10/anwr-drilling-an-economic-environmental_2268.cfm>

But even discounting the obvious problem of securing 800 miles of pipe, drilling in the wildlife refuge is unlikely to yield much of a benefit to consumers. [Amory] Lovins [one of the cofounders of the independent Rocky Mountain Institute] characterizes oil supply in the region as "limited and scattered," and notes that extraction wouldn't begin until 2018 at the earliest. Factoring in the skyrocketing cost of on-shore drilling―up some 564 percent between 2000 and 2005―and the recent volatility of the oil market, expanding drilling operations into ANWR hardly seems worth the economic risk, either.

Security risk: ANWR oil would use Trans-Alaska Pipeline – extremely vulnerable

Cosmo Catalano, “ANWR Drilling an Economic and Environmental Dead End,” October 27, 2008, Matter Network (Matter Network is a rich-media network dedicated to creating, aggregating, and syndicating actionable news and information about the clean technology and sustainability revolutions.) (brackets added) <http://featured.matternetwork.com/2008/10/anwr-drilling-an-economic-environmental_2268.cfm>

For Lovins, who led a [Pentagon-co-sponsored study](http://move.rmi.org/oilendgame" \t "_blank) into the theoretical elimination of US oil use by the 2040s, the most obvious shortcoming of tapping the refuge for oil is security. While technically within the borders of the United States, and thus "domestic," oil from ANWR would still be thousands and thousands of miles away from the vast majority of US markets. The only connection between the two is the Trans-Alaska Pipeline System, an aging, corroded structure that [ex-CIA Director James Woolsey called "indefensible"](http://64.233.169.104/search?q=cache:nuJOCCpKTskJ:www.natcapsolutions.org/publications_files/CSM_Mar02.pdf+The+Army+has+found+TAPS+indefensible&hl=en&ct=clnk&cd=1&gl=us" \t "_blank) and that has been shut down in the past by saboteurs as unsophisticated as [drunks with rifles](http://nachofoto.com/photo-of-Trans-Alaska-Pipeline-Shot-By-A-Drunk-A4d899e1a4451" \t "_blank).

DISADVANTAGES

1. Environmental damage

A. Link: Drilling would compromise wilderness values

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

On the other side, many believe developing oil would irrevocably compromise the area’s wilderness values – defined as an area “untrammeled by man.” Some counter that the area has already been affected by man: there are a few remains of DEWLINE construction and a capped oil well in the 1002 area.

Brink: ANWR is one of the last protected Arctic environments

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), gReport for Congress; Acrtic National wildlife Refuge: background and Issues,h May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

However, the apparently hostile nature of the area belies its national and international significance as an ecological reserve. It protects a virtually undisturbed, nearly complete spectrum of arctic ecosystems, and is one of the last places north of the Brooks Range that remains legally closed to development.

C. Impact: Land, animals and plants are displaced or disturbed

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Changes in the ecosystem could result from several facets of oil development. Major intrusions would include large requirements for water and gravel; and the displacement and disturbance of land, animals, and plants by pipelines, roads, airstrips, and other infrastructure. There is particular concern for caribou migration routes; calving and insect relief areas; migratory bird nesting and staging; effects of air and water pollutants; and direct and indirect effects of human presence. In addition, because of mixed ownership in the area, problems arise in how to establish and enforce controls on development.

D. Impact: Air pollution, waste streams

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Exploration and development activities would alter the existing physical environment. For example, oil field operations would result in air pollution emissions. There would be need for large amounts of water for drilling and ancillary activities, including construction of roads, drill pads, and airstrips. There likely would be impacts from both the mining and use of gravel as part of some of these activities. Exploration and development also would result in the generation of several types of waste streams, both from industrial operations and domestic wastes, requiring disposal. At issue are the individual and cumulative effects of such alterations and the ability of the natural environment to recover and be reclaimed when oil-related activities have ceased.

Environmental Disadvantage Rebuttal evidence:

Drilling would affect more than the “2000 acres” commonly claimed

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), gReport for Congress; Acrtic National wildlife Refuge: background and Issues,h May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Opponents argue that the 2,000 acres would be spread across the entire 1002 area, is achievable only if one fails to count some major facilities, and is misleading in any case, since effects of the area covered by gravel may extend well beyond even a broadly defined footprint. Limitation of the footprint has begun to be a major point of congressional debate.

Even careful development would lead to lasting changes in the environment

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Critics, however, are concerned about environmental effects of routine operations in the fragile 1002 environment, as well as the possibility of leaks and spills of various contaminating substances, and whether adequate safeguards would be adopted and enforced by regulators. Moreover, critics argue that even careful development would lead to lasting changes in the fragile arctic environment.

h. Compromises wildlife and environmental values

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), gReport for Congress; Acrtic National wildlife Refuge: background and Issues,h May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Also of concern are the effects of possible spinoff development both in Kaktovik, an Alaska Native settlement and Distant Early Warning Line (DEWLINE) station on Barter Island just off the coast, and on other Native lands within the Refuge. Kaktovik could be a staging area for oil operations. Such development could compromise wildlife and other environmental values.

Questionable whether the land can be restored to pre-development conditions

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), “Report for Congress; Acrtic National wildlife Refuge: background and Issues,” May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Whether strict statutory and regulatory controls and strong government enforcement could protect wildlife values to the satisfaction of those opposing development is open to question. (Wilderness values, by definition, would be compromised if full development occurred.) But for the long term, an equally important question is whether, after oil production ceased, the area could be and should be restored as nearly as possible to pre-development conditions.

Impacts would last many decades after activity ceases

M. Lynne Corn (Specialist in Natural Resources, Science, and Industry Division), gReport for Congress; Acrtic National wildlife Refuge: background and Issues,h May 15, 2003, Congressional Research Service <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9459:1>

Assuming eventual dissipation of industrial presence, would the area eventually revert to something of its former condition? New data exist to show that such an intensive presence could last many decades after activity ceases. Complete removal of all infrastructure seems unlikely, and resulting water flow patterns might not even make it desirable. The short growing season and low precipitation make complete revegetation of disturbed areas uncertain. Recovery of animal populations and species diversity would depend on viable populations close enough to restock the area or site, and possibly explicit controls limiting future presence so that the site or area can recover. If Congress decides to open ANWR, it may include rehabilitation requirements.

1. False sense of security, leading to Oil Crash

A. Link: Drilling ANWR creates a false sense of security and sets back conservation and alternative energy efforts. Commenting on a Senate vote in 2005 that would have approved ANWR drilling, Pennsylvania Environmental Protection Secretary Kathleen McGinty said:

Pennsylvania Environmental Protection Secretary Kathleen McGinty, 17 March 2005, DEP Secretary Responds to U.S. Senate Vote Allowing Drilling in ANWR, <http://www.depweb.state.pa.us/energytech/cwp/view.asp?A=3&Q=492411>

"This is a tragically bad decision for America," Environmental Protection Secretary Kathleen A. McGinty said. "Far from ensuring economic and energy security, sacrificing ANWR will increase our already dangerous dependence on oil. The fact is this: We cannot drill our way to energy security. We can, however, invent our way to independence: Harness the sun and wind; gasify liquid coal; encourage farmers to grow biomass energy. The Senatefs actions provide a false sense of security. It is a setback for clean energy and conservation efforts. America should be inventing the energy resources of the future --- putting our people to work and cleaning up our environment at the same time, rather than further putting our lives at the mercy of dictators and despots."

B. Link: Peak oil is coming – cheap oil is ending

C. Brink: Without significant cultural reform, severe consequences will follow

Bart Anderson (energy bulletin co-editor) June 16, 2009 gPeak Oil Primer – What is Peak Oil?h Energy Bulletin **(**EnergyBulletin.net is a clearinghouse for information regarding the peak in global energy supply. We publish news, research and analysis concerning: Energy production statistics, models, projections and analysis articles which provide insight into the implications of peak oil**)** <http://www.energybulletin.net/primer>

Peak oil is the simplest label for the problem of energy resource depletion, or more specifically, the peak in global oil production. Oil is a finite, non-renewable resource, one that has powered phenomenal economic and population growth over the last century and a half. The rate of oil 'production', meaning extraction and refining (currently about 84 million barrels/day), has grown almost every year of the last century. Once we have used up about half of the original reserves, oil production becomes ever more likely stop growing and begin a terminal decline, hence 'peak'. The peak in oil production does not signify 'running out of oil', but it does mean the end of cheap oil, as we switch from a buyers' to a sellers' market. For economies leveraged on ever increasing quantities of cheap oil, the consequences may be dire. Without significant successful cultural reform, severe economic and social consequences seem inevitable.

D. Impact: Ignoring peak oil and continuing to use all we can will result in a very bad world for our grandchildren

Prof. David Goodstein (physics, Calif. Institute of Technology), 2004, CalTech News, THE END OF THE AGE OF OIL, <http://www.fromthewilderness.com/free/ww3/111704_end_oil.shtml>

What all this suggests is that if we accept the economists solution and just let the marketplace do its thing as we make use of all the fossil fuel we can, wefll start running out of *all* fossil fuels by the end of this century. So, what does the future hold? Well, for one thing, there will be an oil crisis very soon. Whether that means it has already begun or wonft happen until later in this decade or sometime in the next decade, I donft know. In my view, the numbers are not dependable enough for us to say. However, while the difference between those estimates may be very important to us, itfs of no importance at all on the timescale of human history. Either we, our children, or perhaps our grandchildren, are in for some very, very bad times. If we turn to all the other fossil fuels and burn them up as fast as we can, they will all probably start to run out by the end of the 21st century. Assuming that our planet remains habitable after such a vast consumption binge, we will have to invent a way to live without fossil fuels.

NEGATIVE BRIEF: E-WASTE / BASEL CONVENTION

By Vance Trefethen  
 (Phillip Mayer contributed much of the evidence in this brief)

INHERENCY

EPA imposes fines

Karamagi Rujumba (Writer for the Pittsburgh Post-Gazette) June 2009 “EPA accuses electronics recycler of violation” Pittsburgh Post-Gazette [www.post-gazette.com/pg/09162/976693-28.stm](http://www.post-gazette.com/pg/09162/976693-28.stm)

Last year, the EPA filed a $32,500 complaint against Jet Ocean Technologies of Chino, Calif., for failing to notify the agency of a cathode ray tube export shipment the company had made in violation of federal hazardous waste laws.

EPA takes E-Waste seriously

Karamagi Rujumba (Writer for the Pittsburgh Post-Gazette) June 2009 “EPA accuses electronics recycler of violation” Pittsburgh Post-Gazette [www.post-gazette.com/pg/09162/976693-28.stm](http://www.post-gazette.com/pg/09162/976693-28.stm)

"EPA takes proper and safe management of electronic waste seriously, which is why we have opened an investigation of EarthEcycle for violations of the Resource Conservation and Recovery Act," said a statement issued through agency spokesman Dave Ryan yesterday.

EPA enacted safety regulations on CRT exports

Karamagi Rujumba (Writer for the Pittsburgh Post-Gazette) June 2009 “EPA accuses electronics recycler of violation” Pittsburgh Post-Gazette [www.post-gazette.com/pg/09162/976693-28.stm](http://www.post-gazette.com/pg/09162/976693-28.stm)

The EPA enacted new regulations in 2007 requiring exporters shipping cathode ray tubes to another country for recycling to notify the agency. The company would also have to receive written consent from the receiving country before shipments of electronics could be made.

EPA Stepped Up Enforcement - responded to GAO report

Nathaniel Gronewold (Writer for the New York Times) and Greenwire (Leading Source for coverage of environmental and energy policy and markets) June 2009 “Some See E-Waste Crisis Trailing Switch to Digital TV” The New York Times, [www.nytimes.com/gwire/2009/06/15/15greenwire-some-see-e-waste-crisis-trailing-switch-to-dig-81110.html](http://www.nytimes.com/gwire/2009/06/15/15greenwire-some-see-e-waste-crisis-trailing-switch-to-dig-81110.html)

EPA has stepped up controls on illegal e-waste exports after a 2008 report by the Government Accountability Office chided the agency for lax enforcement.

Private organization has developed an e-Stewards Certification Program to help business with e-waste disposal

Environmental Leader (A daily trade publication keeping corporate executives fully informed about energy, environmental and sustainability news) June 2009 Environmental Leader “Electronics Recycling Certification May Halt Unethical Practices” [www.environmentalleader.com/2009/06/17/electronics-recycling-certification-may-halt-unethical-practices/](http://www.environmentalleader.com/2009/06/17/electronics-recycling-certification-may-halt-unethical-practices/)

In a move to help businesses ensure that they are ethically recycling their obsolete electronics, the ANSI-ASQ National Accreditation Board (ANAB) now offers electronics recyclers and others including asset management and refurbishing operations national certification to the e-Stewards Certification Program developed by the Basel Action Network (BAN). ANAB, the U.S. accreditation body for management systems, will provide oversight of third-party certification bodies that become accredited to conduct audits and issue certificates of conformance to electronic recyclers that successfully demonstrate they meet the requirements of the e-Stewards Standard.

States are regulating e-waste recycling

Andrew K. Burger (journalist), 3 Jan 2008, “A Recycled Laptop’s Journey, Part 1: Exporting Toxic Waste, TECH NEWS WORLD, (parentheses in original) [www.technewsworld.com/story/hardware/61023.html?wlc=1247012220](http://www.technewsworld.com/story/hardware/61023.html?wlc=1247012220) (parentheses in original)

Legislative impetus is now coming to head in the U.S. Twenty-three states introduced electronics recycling bills in 2007. "It's actually being adopted faster than I thought it would -- three states over three years (2004-2006); (in 2007) five states adopted producer take-back laws for e-waste," Schneider noted."Electronics is really the cutting edge of producer take-back programs in the U.S. Because five bills passed, and in such diverse places -- California, Texas, Connecticut, Minnesota and North Carolina -- this year it became clear that's the way we're going," she continued.

E-Stewards Standard Promotes Responsible Disposal

Environmental Leader (A daily trade publication keeping corporate executives fully informed about energy, environmental and sustainability news) June 2009 Environmental Leader “Electronics Recycling Certification May Halt Unethical Practices” <http://www.environmentalleader.com/2009/06/17/electronics-recycling-certification-may-halt-unethical-practices/>

“The e-Stewards Standard provides a means to respond to the need for responsible disposal of electronics waste, and ANAB’s oversight of the certification program is intended to build confidence and value for consumers,” said Randy Dougherty, ANAB vice president, in a statement.

Technology companies are responding to pressure from environmental groups – the strategy is working

Bryan Walsh (Writer for TIME Magazine) January 2009 “E-Waste Not” TIME [www.time.com/time/magazine/article/0,9171,1870485,00.html](http://www.time.com/time/magazine/article/0,9171,1870485,00.html)

In the meantime, green groups are pressuring electronics manufacturers to take responsibility for the afterlife of their products. The strategy is working. By reducing toxic metals like mercury and using fewer small pieces of aluminum and glass, companies like Apple now design their laptops to be more easily recycled. Sony has pledged to work only with recyclers that pledge not to export e-waste. And Dell, which since 2004 has offered free recycling for its products (customers arrange shipping online), recently announced an in-store recycling program with Staples. To confirm that its recyclers are really recycling, Dell uses environmental-audit firms to check up on its partners.

Dell bans the export of e-waste

Dell, May 12, 2009, “Dell Takes Strong Stance Against Exporting E-Waste,” <http://content.dell.com/us/en/corp/d/press-releases/2009-05-12-export-policy.aspx>

“Dell today became the first major computer manufacturer to ban the export of non-working electronics to developing countries as part of its global policy on responsible electronics disposal. Dell’s electronics disposition policy now exceeds requirements of the Basel Convention, which bans the export of certain electronic waste based on its material or chemical composition. By expanding its definition of electronic waste to include all non-working parts or devices, irrespective of material composition, Dell aims to help prevent the unauthorized dumping of electronic waste in developing countries by requiring that equipment be tested and certified as “working” prior to export.”

Dozens of recyclers have cleaned up their act

Julie Schmit (journalist), 30 Dec 2008, USA TODAY, “USA’s trashed TVs, computer monitors can make toxic mess,” <http://www.usatoday.com/money/industries/environment/2008-12-29-environmental-toxic-waste-watchdogs_N.htm> (brackets added)

Since August, when the Government Accountability Office released a blistering investigative report declaring that exported U.S. e-waste was often disposed of unsafely in countries such as China and India, BAN [Basel Action Network] has received pledges from dozens of electronics recyclers that they won't export. It also has won more support for its ambitious plan to set standards for recyclers so that customers can identify the environmentally responsible ones. Meanwhile, more companies of all kinds — fearful of being exposed as global polluters — are auditing recyclers to make sure they don't export refuse from electronics to poorer countries.

**Receiving countries can regulate: China refused shipments**

Tom Zeller Jr. (Journalist), 31 May 2009, "Few Rules for Recycling Electronics," NEW YORK TIMES, <http://www.ban.org/ban_news/2009/090531_few_rules.html> (brackets added)

BAN [Basel Action Network] also suggests that Mr. Nixon’s shipments might have run afoul of local and international guidelines binding the recipient nations, as well as rules, adopted two years ago by the U.S. Environmental Protection Agency, governing the international movement of cathode-ray tubes — found in many old monitors and television sets. China, the group noted, turned back Mr. Nixon’s shipments when notified that they were on their way.

MINOR REPAIR: Better monitoring & enforcement of existing law

US should enforce the OECD rules

Cross-apply under Inherency: OECD rules already require US to prohibit hazardous waste export

Basel Action Network, June 2008, "The US Must Ratify the Entire Basel Convention (or not at all)" <http://www.ban.org/Library/BP02_June_2008.pdf>

The US claim becomes even more dubious once it is realized that the United States *already* has the internationally imposed legal authority and obligation to apply most of the obligations of the original 1989 Basel Convention by virtue of a legally binding OECD decision passed in 1986. But they have failed to do so! This legally binding OECD decision (C(86)64(Final)), which requires Prior Informed Consent (PIC) for all hazardous wastes, and prohibits exports if there is reason to believe that the wastes will not be handled in an environmentally sound manner, has *never* been properly implemented into US national law.

Closer monitoring would solve and protect benefits of recycling trade

Tom Zeller Jr. (Journalist), 31 May 2009, "Few Rules for Recycling Electronics," NEW YORK TIMES, <http://www.ban.org/ban_news/2009/090531_few_rules.html> (brackets added)

He [recycler Nixon] said he supports the spirit of groups like BAN and the Basel Convention but that in their specifics, they throttle a lucrative market that brings work and useful electronics to people that might not otherwise have access. The solution, he says, is to monitor more closely foreign companies that purchase and move the equipment downstream, to ensure that it is being handled properly. “We should maintain our moral and legal prowess,” Mr. Nixon said, “but we shouldn’t limit our ability to do world trade.”

HARMS/SIGNIFICANCE

Dangerous substances have been reduced or eliminated from electronics:

Lead: Cut in half

Mercury: Only small amount used

Brominated Flame Retardants: Phased out

Cadmium: No longer used

Environmental Protection Agency, 2009, Wastes - Resource Conservation - Common Wastes & Materials – eCycling [www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported](http://www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported)

**What are the substances of potential concern in electronics?** Lead, mercury, cadmium and brominated flame retardants are among the substances of concern in electronics. These substances are included in the products for important performance characteristics, but can cause problems if the products are not properly managed at end of life. **Lead** is used in glass in TV and PC cathode ray tubes as well as solder and interconnects; older CRTs typically contain on average 4 lbs of lead (sometimes as much as 7 lbs in older CRTs), while newer CRTs contain closer to 2 lbs of lead. **Mercury** is used in small amount in bulbs to light flat panel computer monitors and notebooks. **Brominated flame retardants** are widely used in plastic cases and cables for fire retardancy; the more problematic ones have been phased out of newer products but remain in older products. **Cadmium** was widely used in ni-cad rechargeable batteries for laptops and other portables. Newer batteries (nickel-metal hydride and lithium ion) do not contain cadmium.

Electronics are <2% of solid waste – most are disposed in landfills

Environmental Protection Agency, July 2008, "FACT SHEET: MANAGEMENT OF ELECTRONIC WASTE IN THE UNITED STATES " <http://www.epa.gov/waste/conserve/materials/ecycling/docs/fact7-08.pdf>

Although used electronics represent less than two percent of the municipal solid waste stream, if we continue to replace old or outdated electronic equipment at our current rate that percentage will likely grow. In 2005, used or unwanted electronics amounted to approximately 1.9 to 2.2 million tons. Of that, about 1.5 to 1.8 million tons were primarily disposed in landfills, and only 345,000 to 379,000 tons were recycled.

Volume of e-waste is small and soil tests find EPA estimates are exaggerated

Stephanie Condon (journalist), 18 Sept 2008, CNET News, Congress eyes restrictions on exporting e-waste, <http://news.cnet.com/8301-13578_3-10044759-38.html>

Faleomavaega claimed that the impending switch to digital-television broadcasting, scheduled for February 2009, could render millions of CRT televisions obsolete. (In reality, the DTV converter box works fine with analog televisions. Another option is for a broadcast TV viewer to sign up to receive cable or satellite TV on their old-fashioned CRTs.) While it's true that some materials used in manufacturing can be health hazards, the volume of e-waste is relatively small. EPA data show that it represents less than a 10,000th of the more than 30 million tons of solid waste produced by the United States each day. In addition, the EPA has sometimes been overly pessimistic. One 2003 study performed by researchers Timothy Townsend and Yong-Chul Jang of the University of Florida tested soil from 11 actual landfills that included color TVs, monitors, and circuit boards. They found that concentrations of lead that were less than 1 percent of that which the EPA's computer models had predicted.

Risk is Exaggerated, and Anecdotes are Overblown

Cross-Apply under Solvency: Poor countries will still have dumps with people digging in them

Dr. Angela Logomasini (PhD in Politics from the Catholic University of America and Director of Risk and Environmental Policy at the Competitive Enterprise Institute) May 2009 OpenMarket.org “EWaste Recylcing Bans: Wasting Opportunity” <http://www.openmarket.org/2009/05/20/ewaste-recycling-bans-wasting-opportunity/>

The other question is whether shipping these wastes to other nations is creating an environmental waste disposal nightmare. Environmentalists say that nations leave this waste to pile up, pollute rivers and eventually poison people. No doubt, there are tragic cases around the world associated with terrible waste management, but it’s not just computers. We too had open dumps at less prosperous times in history. As we grew richer, we cleaned them up and found better, safer ways to manage our trash. Developing nations have problems managing all sorts of waste, including their own. If computers are in the dumps, poor people will inevitability will dig out the valuable parts to sell so they can feed their families. Surely, there are risks–as there are with harvesting other wastes in open dumps. Still greens exaggerate the risks associated with electronics and focus only on the worst cases.

E-Waste Toxicity is Overstated

Professor Eric Williams (An an assistant professor in the Department of Civil and Environmental Engineering in Arizona State University's Ira A. Fulton School of Engineering and the School of Sustainability) January 2008 Arizona Republic News “Safe Recycling of e-waste is a priority” <http://www.azcentral.com/arizonarepublic/local/articles/0125greencolumn0125.html>

Are toxic substances in electronics really a health threat? Many environmental organizations believe so. Greenpeace published a report "Missed Call: Iphone's Hazardous Chemicals," claiming that the Iphone is a toxic and environmentally irresponsible product. The Greenpeace argument runs like this: "Substance A is toxic" and "Product B contains substance A" thus "B is a toxic product." This argument is appealing in its simplicity. But apply the same logic to other products and virtually everything around us is toxic (including peanut butter, which contains the carcinogen aflatoxin).

E-Waste Benefits Recipient Countries, such as China

Cameron Black (J.D. Candidate at University of Hawaii at Manoa William S. Richardson School of Law who holds a Bachelor of Science in Environmental Health and Safety) 2008 ExpressO “Shanghaied? How the Commercial Value of Electronic Waste has Deterred Efforts to Regulate its Movement from the United States to China: The Resulting Impact on the Chinese Economy and Environment” <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=cameron_black>

Many Chinese officials recognize the black market trade of eWaste exportation from U.S. to China does not benefit the U.S. alone; reusable ‘production’ materials – steel, other ferrous metals, precious metals, non-ferrous metals, and plastics – are reclaimed, remanufactured, and employed towards China’s industrial development.

Used computers bring important economic and education benefits to developing countries

Professor Eric William’s (An an assistant professor in the Department of Civil and Environmental Engineering in Arizona State University's Ira A. Fulton School of Engineering and the School of Sustainability) January 2008 Arizona Republic News “Safe Recycling of e-waste is a priority” <http://www.azcentral.com/arizonarepublic/local/articles/0125greencolumn0125.html>

Others argue for a blanket ban on exports. This misses important sustainability issues. A sustainable product system should address how to best meet environmental, economic and social objectives. Many of the computers people are using in the developing world are purchased used. Used markets provide inexpensive access to information technology, which is important for economic development and education in developing countries. The reuse and recycling industry also provides jobs both abroad and domestically.

SOLVENCY

Charity Loophole

Ajay Kanth (Writer for the Express Buzz) February 2009 Basel Action Network “E-waste flowing on charity tag” <http://www.ban.org/BAN_NEWS/2009/090211_ewaste_flowing_on_charity_tag.html>

In the wake of Union Government’s ban on import of hazardous waste into the country, the US and the UK are resorting to charity routes to dump huge quantity of used computers and its peripherals in the country. According to the latest data, around 600 tonnes of e-waste entered the country in the last six months under the guise of charitable purpose.

E-Waste Labeled as Scrap Metal or Donations

Jan Krikke (A Journalist, who writes about Asian Technology) January/February 2008 I.T. Professional “Recycling e-Waste: The Sky is the Limit” <http://dsonline.computer.org/portal/cms_docs_itpro/itpro/homepage/2008/itpro_article.pdf>

Unscrupulous recycling companies charge up to $20 for each PC collected for disposal and ship them to China, India, or Africa, often labeled as charity donations or scrap metal.

Recyclers can’t Recover Costs, Too Expensive

Grant Gross (correspondent for IDG News Service) April 2008 InfoWorld “E-Waste recycling faces several challenges, critics say” <http://www.infoworld.com/t/business/e-waste-recycling-faces-several-challenges-critics-say-931>

One of the concerns facing legitimate recyclers is the cost of collecting and transporting discarded electronics, added Eric Harris, director of government and international affairs for the Institute for Scrap Recycling Industries, a trade group representing recyclers. Some electronic equipment, including CRTs (cathode ray tubes) found in some TV sets and computer monitors, costs more to recycle than recyclers can recover, Harris added. There's also limited interest in plastic from electronic devices because of the processing costs, he said.

U.S. Lacks Recycling Plants (and it’s 10 times cheaper to ship overseas than to process in US)

U.S.-China Media Brief (An online media tool developed by UCLA's Asian American Studies Center) 2008 U.S.-China Media Brief “America’s Role and Responsibility” [www.aasc.ucla.edu/uschina/env\_americasrole.shtml](http://www.aasc.ucla.edu/uschina/env_americasrole.shtml)

America also exports much of its electronic waste (old TVs, iPods, computers), some of it hazardous, to China for recycling, partly because there are no facilities in the U.S. that fully recycle all e-waste components, and partly because EPA reports show that it is ten times cheaper to export e-waste than to process it in the U.S. (China exports so much to the U.S. that tankers that would otherwise go back empty are now filled with e-waste).

Foreign Brokers buy E-Waste and Export it Themselves

Cameron Black (J.D. Candidate at University of Hawaii at Manoa William S. Richardson School of Law who holds a Bachelor of Science in Environmental Health and Safety) 2008 ExpressO “Shanghaied? How the Commercial Value of Electronic Waste has Deterred Efforts to Regulate its Movement from the United States to China: The Resulting Impact on the Chinese Economy and Environment” <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=cameron_black>

The demand for used electronics in China far exceeds that in the United States. As a result of this demand, many businesses, schools, government agencies, and authorized recyclers in the United States are solicited by foreign brokers looking to purchase their obsolete computers and televisions. Under the guise of recycling and reuse, dealers accumulate massive quantities of unwanted electronics in the U.S. through solicitation, auctions, eBay, or other surplus outlets, and resell them to brokers with intentions to export illicitly. It is apparently an industry maxim that if a broker contacts you offering to purchase used electronics, especially when informed they do not function properly, chances are it is being purchased for export overseas.

Exporters Circumvent Laws because E-Waste is Profitable

Cameron Black (J.D. Candidate at University of Hawaii at Manoa William S. Richardson School of Law who holds a Bachelor of Science in Environmental Health and Safety) 2008 ExpressO “Shanghaied? How the Commercial Value of Electronic Waste has Deterred Efforts to Regulate its Movement from the United States to China: The Resulting Impact on the Chinese Economy and Environment” <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=cameron_black>

Electronic waste exporters are willing to circumvent national and international eWaste export regulations when the profits are so high, and the risks of getting caught are so low.

E-Waste is Mixed in with Legitimate Exports

Cameron Black (J.D. Candidate at University of Hawaii at Manoa William S. Richardson School of Law who holds a Bachelor of Science in Environmental Health and Safety) 2008 ExpressO “Shanghaied? How the Commercial Value of Electronic Waste has Deterred Efforts to Regulate its Movement from the United States to China: The Resulting Impact on the Chinese Economy and Environment” <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=cameron_black>

In addition, nonfunctional electronic materials are mixed with reusable electronic materials and other legitimate recyclables, such as scrap metal, further camouflaging their movement

Basel Convention President says: Basel Convention has not slowed toxic waste trafficking

Adianto Simamora, 24 June 2008, "U.S. urged to ratify toxic treaty," JAKARTA POST, <http://www.thejakartapost.com/news/2008/06/24/us-urged-ratify-toxic-treaty.html>

Indonesian State Minister for the Environment Rachmat Witoelar, who is also the Basel Convention president, said illegal toxic waste trafficking did not show any sign of slowing since the adoption of the Basel Convention. "The problem today is much more difficult to untangle due to the globalization of trade and significant increase in hazardous waste from industrialization and economic development," he said.

Numerous problems block effectiveness of Basel Convention

Hira Jhamtani and Lutfiyah Hanim, Daily News (Sri Lanka) 1 July 2008, Toxic waste export harder to control, despite Basel Convention <http://www.ban.org/ban_news/2008/080701_harder_to_control.html>

The ninth meeting of the Conference of Parties (COP 9) to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal was from June 23 to 27 in Bali, Indonesia. Like many multilateral environment agreements, the Convention faces problems including lack of funding, implementation, and inadequate capacity among developing countries to tackle hazardous wastes.The Indonesian Minister for the Environment, Rachmat Witoelar in his opening speech said that after 16 years of entry into force, the Basel Convention is a mature environmental agreement but the problem of illegal transboundary movement of hazardous waste has not shown a sign of lessening. In fact, he said, it is more difficult to tackle due to globalisation and the increase in industrial waste.

Basel advocate admits: Basel Convention isn’t stopping foreign waste dumping

Jim Puckett (Basel Action Network; Puckett is an advocate for the Basel Convention), 26 June 2008, “World Forum on Waste Management for Human Health and Livelihood,” Basel Convention 9th Conference of the Parties, Nusa Dua, Bali <http://www.ban.org/Library/080626_ban_speech_cop9_global_forum.html>

And so while the intent here is to expound on the role the Convention has to play in achieving the Millennium Development Goals, we are faced with the ugly truth that the Basel Convention has been unable to even accomplish the basic pre-requisite step of addressing the inequities and exploitation made possible by globalization which the Millennium Development Goals were meant to address. We have not even fulfilled our mandate to end one of the most egregious, immoral form of injustice visited upon developing countries from hazardous waste. We have been unable, in 13 years, to realize a decision adopted twice by consensus, one which the public in every land entirely fully supports and indeed which most of the world believes has already been accomplished.

Basel Convention lacks enforcement

Cameron Black (J.D. Candidate at University of Hawaii at Manoa William S. Richardson School of Law who holds a Bachelor of Science in Environmental Health and Safety) 2008 ExpressO “Shanghaied? How the Commercial Value of Electronic Waste has Deterred Efforts to Regulate its Movement from the United States to China: The Resulting Impact on the Chinese Economy and Environment” <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=cameron_black>

While liability may be clear, the sanctions for violating the Basel Convention are inadequate to deter the continuation of such profitable trade. Article 11 of the Basel convention sets forth the definition of “Illegal Traffic”, including lack of notice and consent, nonconformance with recordkeeping documents, and deliberate illegal dumping. The Convention, however, lacks any enforcement provisions. Party nations must take initiative to implement their own unilateral legal, administrative, or other policies to enforce Convention provisions.

$10-$30 to properly recycle a computer or TV

Catherine Komp, May 11, 2006, “Barely Regulated, E-waste Piles Up in the US, Abroad,” The New Standard, <http://newstandardnews.net/content/index.cfm/items/3154> [brackets added]

"I talk with hundreds of recyclers around this country and they all say the same thing which is you cannot responsibly process this waste stream without charging or without having some sort of revenue coming in," said [Sarah] Westervelt [e-waste program coordinator with the Basel Action Network an international environmental organization], adding that it costs between $10 to $30 to properly recycle each computer or TV.”

3 billion units of consumer electronics to be scrapped in rest of this decade (Do the Math: $30-$90 billion to recycle?)

Green Plug (A green products company), 2008, “Green CE: Factoids,” <http://www.greenplug.us/PressKit/Green_Plug_CE_Factoids-09.pdf>

“During all of 2007, 304 million discarded TVs, cell phones, computer products and computer peripherals ‐‐ such as printers, scanners and fax machines ‐‐ found their way to landfills across the nation, according to EPA figures. The weight of those discarded items totaled at least 2.25 million tons. With the current growth and obsolescence rates of the various categories of consumer electronics, somewhere in the neighborhood of 3 billion units will be scrapped during the rest of this decade, or an average of about 400 million units a year. (International Association of Electronics Recyclers Industry Report, 2006).”

61 million PCs sold in the US (Do the Math $1.8 billion to $610 million future costs to recycle?)

Green Plug (A green products company), 2008, “Green CE: Factoids,” <http://www.greenplug.us/PressKit/Green_Plug_CE_Factoids-09.pdf>

“Manufacturers shipped almost 230 million PCs worldwide in 2006. *(IDC Worldwide Quarterly PC Tracker, December 2006)* PCs sold in the U.S.: 61,100,000, 24 percent of worldwide total. *(Gartner Inc.)”*

14-20 million PCs thrown out each year in US (Do the Math: $600 million to $140 million annual cost to recycle just PCs)

Green Plug (A green products company), 2008, “Green CE: Factoids,” <http://www.greenplug.us/PressKit/Green_Plug_CE_Factoids-09.pdf>

“In the US alone, some 14 to 20 million PCs are thrown out every year. *(Basel Conference, United Nations Environment Programme [UNEP], 2006)”*

DISADVANTAGES

1. Poor Peoples’ Livelihoods Destroyed

Link: As much as 80% of e-waste is sent overseas

Office of US Senator Sherrod Brown, September 17, 2008, “Brown Calls for National E-Waste Export Ban,” <http://brown.senate.gov/newsroom/press_releases/release/?id=496c4f64-3b24-41b8-8a74-a718767bf6d7>

“According to the Commerce Department, as much as percent of - collected for recycling is sent overseas.”

Link: Provides a Job for Very Poor

Dr. Vandana Prakash (Environmental Policy Expert and PhD in Public Administration from the University of Southern California) October 2008 Eco Worldly “E-Waste Menace” <http://ecoworldly.com/2008/10/31/e-waste-menace-part-1-think-local-act-global/comment-page-1/>

The complex, global nature of e-waste needs to be addressed head-on. Globalized recycling provides a livelihood to the very poor people and in some cases the authorized e-waste recycler is able to make a neat profit.

Impact: Alternatives are much worse (prostitution)

Dr. Angela Logomasini (PhD in Politics from the Catholic University of America and Director of Risk and Environmental Policy at the Competitive Enterprise Institute) May 2009 OpenMarket.org “EWaste Recylcing Bans: Wasting Opportunity” <http://www.openmarket.org/2009/05/20/ewaste-recycling-bans-wasting-opportunity/>

In any case, it’s not clear that all these materials are recycled overseas in terrible and dangerous conditions. But as New York Times reporter Nicholas D. Kristof explains very well, even jobs under what we call “sweatshop conditions” are a luxury compared to the “jobs” people must take when those opportunities don’t exist. Where jobs are lacking, many people survive by digging for items in open dumps. Kristof notes: “Talk to these families in the dump, and a job in a sweatshop is a cherished dream, an escalator out of poverty.” In many places, the other option for a young woman is a life of prostitution.

2. Good Recycling Countries Punished

Banning Indiscriminately Punishes Countries with Legitimate Recycling Methods

USA Today June 2008 “U.N. Says Lack of Resources Hampers Toxic Waste Flow” <http://www.usatoday.com/news/world/2008-06-25-toxic-waste_N.htm>

Opponents including the United States said the ban would be unfair to developing countries that have established environmentally sound recycling industries. They said a country's capacity to handle the waste rather than its level of development should determine whether it can import the materials.

3. Increased pollution. If electronic products aren’t recycled, we waste energy and pollution creating new units

Environmental Protection Agency, 2009, Wastes - Resource Conservation - Common Wastes & Materials – eCycling [www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported](http://www.epa.gov/waste/conserve/materials/ecycling/faq.htm#exported)

**What are the environmental benefits of reusing and recycling e-waste?** Electronic products are made from valuable resources, such as precious and other metals, plastics, and glass, all of which require energy to mine and manufacture them. Reusing and recycling these materials from end-of-life electronics conserves our natural resources and avoids air and water pollution, as well as greenhouse gas emissions that are caused by manufacturing new products. **What environmental benefits do we get from recycling cell phones?** Recycling your cell phone helps protect the environment in a number of ways. Cell phones are made from valuable resources such as precious metals, copper, and plastics —all of which require energy to mine and process. Recovering these materials by recycling avoids the need to mine and process new materials, which in turn, conserves our natural resources, and avoids air and water pollution and greenhouse gas emissions. For example, if the 100 million cell phones ready for end of life management in 2006 had been recycled, we would have saved enough energy to power approximately 19,500 US households with electricity for one year.

NEGATIVE BRIEF: BIODIVERSITY CONVENTION

By Vance Trefethen

INHERENCY

1. It irritates Friends of the Earth, but free markets have incentive and are already doing biodiversity conservation

Mario Osava (journalist), InterPress News Service, 26 Mar 2006, <http://ipsnews.net/news.asp?idnews=32680>

[Univ. of Puerto Rico economist Joseph] Vogel added that the important contributions that economists would make to the debates on the Convention are missing, and argued that more specialists on the economy are needed in the discussions. According to Karen Nansen, with Friends of the Earth Uruguay, the negotiations are following the current trend of privatisation of natural and biological resources, in accordance with a market logic, rather than environmental concerns or the rights of local communities and indigenous peoples. Living organisms are already being patented, while seeds and water are increasingly falling under the control of transnational corporations, and even conservation of biodiversity is occurring more and more in privately-owned areas. And this "commodification of life" is being imposed in national laws through free trade treaties, she complained.

2. No barrier: Countries announce wildlife protected zones at CBD meeting

Impact/Analysis

Inherency: Status Quo can conserve biodiversity without US membership in CBD

Inherency: These actions are internal actions by two countries. What difference does it make if they announce it at the CBD conference? There’s no barrier to doing these conservation projects without CBD and just announcing it somewhere else.

DPA News Agency, 31 May 2008, Biodiversity Conference Ends with Mixed Results, (brackets added) [www.dw-world.de/dw/article/0,,3375755,00.html](http://www.dw-world.de/dw/article/0,,3375755,00.html)

Brazilian Environment Minister Carlos Minc announced four new protected areas, three of them in the Amazon Basin and stressed his commitment to zero net deforestation by 2020. And Environment Minister Jose Endundo Bononge said DRC planned a huge new conservation area of up to 15 billion hectares -- or the size of Greece.

3. Technology will solve any future mass extinction

Dr. Patrick J. Michaels (PhD ecological climatology; Distinguished Senior Fellow in the School of Public Policy at George Mason University; research professor of Environmental Sciences at University of Virginia for thirty years) 13 Jan 2004, “A Massive Extinction of Logic,” <http://www.cato.org/pub_display.php?pub_id=2495>

Perhaps most egregious, this work makes what the famed agronomist Paul Waggoner has called the "dumb people" assumption: that people won't adapt to changing conditions. In fact, we have been preserving diversity artificially, in parks and zoos, for centuries. In addition, the amount of "artificial" genetic diversity is rising dramatically with the technology of modern genetics. It is difficult to imagine, decades from now, that these technologies would not be applied to ameliorate a prospective massive extinction.

4. No barrier: Countries can already use Patenting and Geographical Indications Acts

Dr. Abdul Haseeb Ansari, (law, International Islamic University of Malaysia) Jan 2008, BIODIVERSITY, CONSERVATION, LAW + LIVELIHOODS, IUCN Academy of Environmental Law, [http://books.google.com/books?id=kGtLgVBkY04C&pg=PA147&lpg=PA147&dq=biodiversity+%2B+genetically+modified&source=bl&ots=-5V3uVEELh&sig=w7aCr2yhHhl5kdcDXdpDpwSR5fM&hl=en&ei=VWRySsXNIoWsMYbwkbEM&sa=X&oi=book\_result&ct=result&resnum=9#v=onepage&q=biodiversity%20%2B%20genetically%20modified&f=false](http://books.google.com/books?id=kGtLgVBkY04C&pg=PA147&lpg=PA147&dq=biodiversity+%2B+genetically+modified&source=bl&ots=-5V3uVEELh&sig=w7aCr2yhHhl5kdcDXdpDpwSR5fM&hl=en&ei=VWRySsXNIoWsMYbwkbEM&sa=X&oi=book_result&ct=result&resnum=9#v=onepage&q=biodiversity)

In view of this, it is suggested that patenting should protect all medicinal plants, including the bintangor tree of Sarawak, Malaysia, that has bright prospects of curing HIV/AIDS. So to facilitate this, states, including Malaysia, are amending their existing patent laws to widen their scope. In order to protect plants or animals found in a particular region and that benefit people of the area, there are provisions in the international patenting scheme that prevent them from being patented in other countries. For this purpose, states rich in biodiversity, including Malaysia, have legislated Geographical Indications Acts. The object of these Acts is to facilitate the registration of plants and animals found in that country.

SOLVENCY

1. Despite legal definitions, Bio Diversity has no coherent definition or measurement

Analysis/Impact: Consequences for law and policy:

Harms: Can’t measure it = can’t determine location or significance of the harms

Solvency: Can’t define it = can’t write a coherent law or policy to protect it

Prof. Dan Tarlock (Prof. of Law at Chicago-Kent College of Law) and Andrew Zabel (practices law in Seattle, focues on environmental issues for tribal, municipal and corporate clients) Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, [http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf\_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book\_result&ct=result&resnum=5](http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=)

The science of biodiversity assessment continues to evolve but not always in ways that make it easy to apply the findings to actual efforts to conserve biodiversity. Article 2 of the Convention on Biological Diversity defines biodiversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems." Despite this broad legal definition, biodiversity remains an artificial construct with no coherent meaning. Scientists continue to struggle both to define and to measure biodiversity. These scientific debates have important consequences for law and policy. For example, if two or more species perform the same ecological function, do we conserve the individual species or the function?

2. Richest biodiversity is in developing countries

Analysis/Impact: “Advantages of biodiversity” evidence will not apply to AFF plan because AFF can only fiat US action. If most of the biodiversity is in Third World countries, it’s not covered by AFF plan, thus no solvency.

Pavan Sukhdev, Study Leader, European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report, <http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

The evidence is clear. The consequences of biodiversity loss and ecosystem service degradation – from water to food to fish – are not being shared equitably across the world. The areas of richest biodiversity and ecosystem services are in developing countries where they are relied upon by billions of people to meet their basic needs. Yet subsistence farmers, fishermen, the rural poor and traditional societies face the most serious risks from degradation. This imbalance is likely to grow.

3. Two aspects of the Convention (ABS and technology transfer) are failing

Genetic resource benefit sharing (ABS) negotiations are a waste of time

Technology transfer has been forgotten

Mario Osava (journalist), InterPress News Service, 26 Mar 2006, <http://ipsnews.net/news.asp?idnews=32680> referring in context to negotiations at the “Conference of the Parties to the Convention on Biological Diversity”

Negotiating access to genetic resources is "just a waste of time, and will not produce any benefit for humanity," said Costa Rican activist Silvia Rodríguez with the Barcelona-based GRAIN, an international non-governmental organisation that promotes the sustainable management and use of agricultural biodiversity based on people's control over genetic resources and local knowledge. Rodríguez, an expert on international treaties, said it has not yet been determined how "the fair and equitable distribution of the benefits" arising from the use of genetic resources can be defined, and pointed out that even a more concrete aspect of access to biodiversity, technology transfer, has not been fulfilled and has virtually been forgotten by the participants in the COP8.

ABS is doomed to failure

Mario Osava (journalist), InterPress News Service, 26 Mar 2006, <http://ipsnews.net/news.asp?idnews=32680>

An international regime to regulate access and benefit-sharing (ABS) is doomed to failure because it is based on false premises and fails to take into account basic economic principles, argue some of the participants in the Mar. 20-31 Conference of the Parties to the Convention on Biological Diversity (COP8), in the southern Brazilian city of Curitiba. Others, meanwhile, reject it on the argument that it would involve the "privatisation" of goods and knowledge that are the common heritage of humanity. With respect to the way the ABS regime is being negotiated, economist Joseph Vogel, from the University of Puerto Rico-Río Piedras, said that "for years, I have predicted that it will not work out."

4. All talk no action: Biofuels, timber, genetically modified trees – disagreements and more studies proposed

DPA News Agency, 31 May 2008, Biodiversity Conference Ends with Mixed Results, (brackets added) [www.dw-world.de/dw/article/0,,3375755,00.html](http://www.dw-world.de/dw/article/0,,3375755,00.html)

[UN Convention on Biodiversity conference president German Environment Minister Sigmar] Gabriel said that while there had been no substantive agreement on the controversial issue of biofuels, a work programme on the issue had been set up for the two years leading to the Nagoya conference. Bildunterschrift: Greenpeace said no progress had been made here, with Brazil "resisting binding rules to prevent the destruction of tropical forests that occurs to make way for biofuel plantations." The differences between major biofuel producers, like Brazil, and major oil producers was made clear, with Libya and Qatar highlighting the rise in world food prices, which they attributed, at least in part, to using land for biofuel production. Gabriel made a special point of thanking Arab oil producers for their "extreme flexibility." Environmental groups were particularly critical of the lack of agreement on banning the trade in illegally logged timber, even though Gabriel claimed there had been progress in the shape of a call to countries for greater action. On the planting of genetically modified trees, Gabriel said there was agreement that there had to be a "thorough risk analysis" before they were used.

DISADVANTAGES

1. Government intervention & Property Rights

A. Link: Laws must regulate entire ecosystems to achieve biodiversity

B. Link: Private property rights will yield to public values

Statement of the Third Colloquium of the IUCN [International Union for Conservation of Nature] Academy of Environmental Law (“Macquarie Statement”), 14 July 2005, [http://books.google.com/books?id=kGtLgVBkY04C&pg=PA147&lpg=PA147&dq=biodiversity+%2B+genetically+modified&source=bl&ots=-5V3uVEELh&sig=w7aCr2yhHhl5kdcDXdpDpwSR5fM&hl=en&ei=VWRySsXNIoWsMYbwkbEM&sa=X&oi=book\_result&ct=result&resnum=9#v=onepage&q=biodiversity%20%2B%20genetically%20modified&f=false](http://books.google.com/books?id=kGtLgVBkY04C&pg=PA147&lpg=PA147&dq=biodiversity+%2B+genetically+modified&source=bl&ots=-5V3uVEELh&sig=w7aCr2yhHhl5kdcDXdpDpwSR5fM&hl=en&ei=VWRySsXNIoWsMYbwkbEM&sa=X&oi=book_result&ct=result&resnum=9#v=onepage&q=biodiversity)

Further, environmental law must develop and put into effect the legal tools that will turn established and evolving scientific and policy recommendations into enforceable norms, institutions and procedures. At a global level, this must build on the established principle of common but differentiated responsibilities. The establishment and maintenance of protected areas on a national, regional or global basis can play an important role in protecting endangered species and preserving biodiversity by conserving ecosystems and natural habitats on which species depend. Recognizing the complex interdependencies of living organisms in ecosystems, efforts to preserve biodiversity must emphasize a broad ecosystem approach, rather than focusing primarily on preventing extinction on a species-by-species basis or park-by-part basis. As globalization spreads concepts of private property, it is important that concepts of property law be reconceptualized to ensure the protection of public values and to prevent the destruction of the economy of nature and the environmental services that ecosystems provide.

C. Link: Biodiversity in the US means the Endangered Species Act – which conflicts with private property rights

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

The causes of the "biodiversity crisis" are many, but can be traced primarily to habitat loss and the introduction of invasive species, both resulting from the expanding reach of a globalizing human society. Ecologists and environmental scientists regularly point to the loss of biodiversity around the globe as a leading environmental threat to society. Policy makers have struggled to address the biodiversity problem. In the United States, the primary mechanism for preventing extinction is the Endangered Species Act, passed on the heels of two ineffective statutory precedents in 1973. Yet the Endangered Species Act (ESA) has struggled in its efforts at conservation for a plethora of reasons, most importantly its conflicts with private property.

D. Link: American land owners will not lightly give up their traditional property rights

**Analysis:** The traditional John Locke view of ownership of property as a right that no one can take away – this is engrained in American thought. We are not used to considering “social” obligations, however they might be defined, and Americans will resist such theories. Land owners will not go along voluntarily with a plan that tells them they should give up some of their property rights for the good of saving some species. For the AFF plan to work, they’ll have to forcibly take away people’s property rights. Note that these comments are in the context of an article on “protecting biodiversity,” so they are specific to the plan.

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

Unfortunately Freyfogle and his peers appear to underestimate the normative power of Lockean values in American society. There is an element of wishful thinking in this particular line of thought: that exhorting others to view property in a new light will be sufficient to bring about change. In actuality, the Lockean view of ownership is deeply entrenched in our culture and resistant to academic interference. While Sax (1983: 495) acknowledges that the changes he proposes “will not be easily assimilated in American thought,” and Freyfogle (2003: 109) admits “the law of ownership does more than reflect a set of values, it helps instill them and carries them on,” both authors nevertheless exude optimism about the coming .economy of nature.” However, there is little empirical work to suggest that fomenting a revolution in property values is a plausible strategy for policy makers--indeed, recent controversies over eminent domain in the 2005 *Kelo* decision indicate the continued strength of the Lockean perspective.

E. Impact: Property rights are the basis of justice and of every other right

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (italics, brackets and ellipses in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The principal drafter of the Constitution, James Madison, declared that “[g]overnment is instituted to protect property of every sort; . . . This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.” In contemporary scholarship, property rights have been termed the “great focus” of the Framers, and the “guardian of every other right.”

2. Biodiversity Turn: Markets protect the environment better than governments

A. Link: Widespread government ecosystem intervention. Cross-apply DA 1-A card above.

B. Link: Businesses are conserving biodiversity

Environment News Service, 31 Mar 2008, “Making Biodiversity Conservation Pay Off,” <http://www.ens-newswire.com/ens/mar2008/2008-03-31-01.asp>

One biodiversity business that is growing quickly is bioprospecting, the search for new compounds, genes and organisms in the wild. The report suggests the sector could be worth as much as US$500 million by 2050. "For businesses to conserve biodiversity it must ultimately become more profitable to protect nature and use natural resources sustainably, rather than ignore or destroy it," says Sachin Kapila, group biodiversity adviser at Shell International and a co-author of the report. Titled "Building Biodiversity Business," the report says some businesses that were historically responsible for the loss of biodiversity now are starting to lead the way by protecting biodiversity. For instance, markets for organic agriculture and sustainably-harvested timber are growing at double-digit rates. And there is an increasing demand for climate mitigation services, such as the protection of forests and wetlands to absorb carbon dioxide, the report finds. "There are numerous pro-biodiversity business opportunities that can generate significant profits as well as benefits for nature," says Dr. Joshua Bishop, IUCN's senior adviser on economics and the environment and a co-author of the report.

C. Link: Regulatory approach opposes market approaches to conservation

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (brackets in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

Much of the pressure for the adoption of statutory rules for environmental protection stems from the view that the common law, bottom up, system of enforcing individual property rights in environmental amenities is inadequate. According to Dean Huffman, “[t]he idea of free market environmentalism is particularly distressing for orthodox environmentalists, because for them it is environmentally correct to believe that markets and the wealth they produce are the source of many, if not most, environmental problems.”

D. Link: Expanded government control crowds out private solutions to environmental issues

[Fred L. Smith Jr.](http://www.thefreemanonline.org/author/fred-l-smith-jr/) (president of the Competitive Enterprise Institute) June 2004 [The Progressive Era’s Derailment of Classical-Liberal Evolution](http://www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/), [www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/](http://www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/)

Traditional societies evolved some sophisticated procedures for managing environmental issues. The key question is: Why, as wealth increased and allowed this greater appreciation of environmental values, didn’t new institutions evolve that would have empowered individuals to express their changing preferences? The answer, I believe, lies in the undermining of the classical-liberal evolutionary process that occurred during the Progressive Era. Progressives believed that markets and private property slowed progress, and that collective management of resources would more surely advance the public interest. Thus they blocked the extension of private property to resources that had not yet been privatized (indeed, in the case of the electromagnetic spectrum and some arid western lands, rolling back fledgling homesteading efforts). Progressives also transformed the rule of law, making it more utilitarian, more willing to ignore individual values to advance the “common good.” Social concerns trumped individual rights. Earlier common-law defenses of individual property rights that might have encouraged economic development along more environmentally sensitive paths were weakened or abandoned.

E. Impact: Eco-socialism will fail – market alternatives must be used instead

[Fred L. Smith Jr.](http://www.thefreemanonline.org/author/fred-l-smith-jr/) (president of the Competitive Enterprise Institute) June 2004 [The Progressive Era’s Derailment of Classical-Liberal Evolution](http://www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/), [www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/](http://www.thefreemanonline.org/featured/the-progressive-eras-derailment-of-classical-liberal-evolution/)

We must repair the impoverished state of our institutional framework for addressing the environmental concerns that we all share. To fail in this task is to risk further losses of economic liberty. Eco-socialism is even more complex than traditional socialism. It will fail. Our challenge is to ensure that as this occurs, a free-market alternative is available and is understood.

3. Biodiversity Turn: Greater enforcement = destruction of species habitat

A. Link: Biodiversity in the US = Endangered Species Act. See DA 1-C card above.

B. Uniqueness: Enforcement of ESA is weakened in the Status Quo.

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

In addition, the law’s existing "ferocity" on private property is actually an inhibition to enforcement. Because the ESA leaves very little room for leniency depending on circumstances, a decision to sanction landowners sometimes seems too harsh. Officials and citizens alike are disinclined to impose harsh sanctions on others, and will frequently go to great lengths to avoid giving them (Stone 2002). Ostrom (2000) has shown that a lack of graduated and flexible sanctions makes enforcement challenging in many resource management settings, while Farrier (1995: 395) points out that “regulatory agencies faced with making case-by-case decisions on permissible land use are more likely to compromise where they have something to offer as a palliative for decisions that bear harshly on individuals” In other words, regulators would be more likely to hand out sanctions and enforce the ESA as intended, ironically, if the law were less strict and more flexible in its punishments.

C. Brink: Bio Diversity will require widespread government ecosystem regulation. See DA 1-A card.

D. Impact: ESA contains perverse incentives that destroy biodiversity

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

In addition, it has been shown that Section 9 of the ESA creates perverse incentives for landowners, encouraging them to destroy potential habitat before it becomes occupied by protected species. This has become known informally as the “scorched earth” technique of land management, preventing the creation of any habitat on one’s property at all costs (Bean 2002). Evidence for such behavior is not just anecdotal: In a remarkable study involving the red-cockaded woodpecker (RCW) in North Carolina, Lueck and Michael (2003) found that landowners with potential forest habitat for the RCW were significantly more likely to harvest their land as the trees approached the age (greater than 80 years old) where they could serve as woodpecker habitat. Thus, as they conclude (2003: 30), “the ESA might actually cause a long run reduction in the habitat and population of a listed species” and succeed at achieving the exact opposite of its intended outcome -- even when it is fully enforced and properly funded. This implies that “hammering harder” (or even "hammering smarter," as some suggest) is not going to solve the biodiversity crisis of conservation on private property.

EVOLUTION KRITIK: Convention on Biological Diversity is based on evolutionary theory of species origins

Convention on Biological Diversity official web site, 2007, “Sustaining Life on Earth” <http://www.cbd.int/convention/guide.shtml>

Biological diversity - or biodiversity - is the term given to the variety of life on Earth and the natural patterns it forms. The biodiversity we see today is the fruit of billions of years of evolution, shaped by natural processes and, increasingly, by the influence of humans. It forms the web of life of which we are an integral part and upon which we so fully depend.

INTRINSIC VALUE KRITIK:

A. Link: Affirmative plan contains no balancing of human needs, comforts or lives compared to biodiversity

B. Link: Nature in and of itself is the standard of value.

George Reisman (Professor Emeritus of economics at Pepperdine Univ.), 17 Nov 2006, [Standards of Environmental Good and Evil: Why Environmentalism Is Misanthropic](http://blog.mises.org/archives/005910.asp), http://blog.mises.org/archives/005910.asp

The environmentalists call the construction of houses evil because, as I say, their standard of value is very different. Instead of taking human life and well-being as their standard of value, they take *nature in and of itself* as their standard of value. Nature, they say, has *intrinsic value,* i.e., value in and of itself, apart from all connection with human life and well-being. Thus, in their view, hillsides and empty land, as they exist in a state of nature, together with their wildlife, have intrinsic value. And it is those alleged intrinsic values that are harmed by development and construction. In other words, the harm the environmentalists complain about in such cases is harm only from a non-human, indeed, *anti-human* perspective.

C. Impact: “Intrinsic value” view of nature leads to disregard of human life

George Reisman (Professor Emeritus of economics at Pepperdine Univ.), 17 Nov 2006, [Standards of Environmental Good and Evil: Why Environmentalism Is Misanthropic](http://blog.mises.org/archives/005910.asp), http://blog.mises.org/archives/005910.asp

The doctrine of intrinsic value is present in such statements as the North Slope of Alaska is “a sacred place” that should never be given over to oil rigs and pipelines. It is present in such statements as, “There is a need to protect the land not just for wildlife and human recreation, but just to have it there.” It is present in all instances in which forests, rivers, canyons, hillsides, or any other natural formation is presented as automatically deserving to be preserved, irrespective of its value in being put to use by human beings. And, of course, it is present in all the numerous cases in which human life or well-being have been sacrificed for the sake of the preservation of this or that species of animal or plant. Such cases range from the sacrifice of the property rights of human beings for the sake of snail darters and spotted owls, to the sacrifice of untold millions of actual human lives. This last has occurred as the result of the resurgence of malaria because the use of DDT was prohibited in order to preserve the alleged intrinsic value of some species of birds.

NEGATIVE BRIEF: CARBON TAX

HARMS

1. CO2 disaster predictions are unlikely to happen

Dr. Patrick J. Michaels (PhD in ecological climatology; a Distinguished Senior Fellow in the School of Public Policy at George Mason University ; research professor of Environmental Sciences at University of Virginia for thirty years) 27 Feb 2008, “Carbon Copies,” (brackets added) [www.cato.org/pub\_display.php?pub\_id=9242](http://www.cato.org/pub_display.php?pub_id=9242)

But we hear over and over that if we don't "do" something serious about carbon dioxide emissions in the next eight years (a conveniently presidential number), we are condemning ourselves to an unmitigated climate disaster, as much of Greenland's ice crashes into the sea, raising sea level as much as 20 feet. That's about as likely as a bill limiting CO2 emissions in Kansas putting a detectable dent in global warming.

2. No net global warming since 2000

Dr. Patrick J. Michaels (PhD in ecological climatology; a Distinguished Senior Fellow in the School of Public Policy at George Mason University ; research professor of Environmental Sciences at University of Virginia for thirty years) 27 Feb 2008, “Carbon Copies,” (brackets added) [www.cato.org/pub\_display.php?pub\_id=9242](http://www.cato.org/pub_display.php?pub_id=9242)

Since 1979, satellites have been measuring lower atmospheric temperatures around the globe. In the last 12 months, they show that the earth's mean temperature has dropped by 1.13ºF. Thus, in one year, that natural variability is four times greater than the amount of warming that would be prevented if the entire industrialized world adopted the original Kansas statute. The satellite temperature surveys also show there has been no net global warming since 2000.

SOLVENCY

1. Carbon tax failed in Denmark: Jobs lost and only 10% reduction in greenhouse gases

Maureen Bader (British Columbia director of the Canadian Taxpayers Federation), 14 Mar 2008, “With a carbon tax, will B.C. repeat the mistakes that Denmark made?” <http://www.canada.com/theprovince/news/editorial/story.html?id=2754232b-e1ee-4fa4-82fa-c7d070674958>

Denmark imposed "revenue neutral" carbon taxes on non-business energy consumption in 1991. Between 1994 and 1998, they added 30 per cent to government revenues. Then, in 1996, Denmark hit industrial producers with a $15 per tonne carbon tax, initially neutralized by cuts in payroll taxes. What happened? By 1998, manufacturers started shutting their doors due to high energy prices, and overall Danish carbon tax revenues started to fall. At the same time, the cost of government programs rose significantly. The government's solution, incredibly, was to subsidize electricity to select manufacturers and raise income taxes. The debacle led to a new government that promised a tax freeze, followed by a tax reduction -- including those taxes on energy. Did all this hardship reduce Denmark's per capita greenhouse-gas emissions? Yes. Overall, they fell by a whopping 10 per cent. But the country's manufacturing employment dropped by 25 per cent!

2. Carbon tax does not ensure emissions will fall

[International Emissions Trading Association](http://www.environmental-expert.com/STSE_resultEach.aspx?cid=23865&idprofile=10948) (a non-profit business organization created in June 1999 to establish a functional international framework for trading in greenhouse gas emission reductions) 9 Mar 2009, “**Why emissions trading is more effective than a carbon tax, says IETA”** [www.environmental-expert.com/resultEachPressRelease.aspx?cid=23865&codi=46357](http://www.environmental-expert.com/resultEachPressRelease.aspx?cid=23865&codi=46357)

While a carbon tax ensures an increase in energy prices, it does not ensure that emissions will be reduced to the necessary level. Some emissions could fall, but the overall level is likely to rise under a carbon tax.

3. Carbon tax effects on global warming are tiny

Dr. Patrick J. Michaels (PhD in ecological climatology; a Distinguished Senior Fellow in the School of Public Policy at George Mason University ; research professor of Environmental Sciences at University of Virginia for thirty years) 27 Feb 2008, “Carbon Copies,” (brackets added) [www.cato.org/pub\_display.php?pub\_id=9242](http://www.cato.org/pub_display.php?pub_id=9242)

Based upon a widely accepted formula originated at the U.S. National Center for Atmospheric Research in Boulder, Colorado, if the entire United States adopted the original Kansas [carbon tax] legislation, it would prevent a total of 0.11 degrees F of global warming *per century*. Read that again, because it's not a typo: Eleven one-hundredths of a degree in 100 years.

4. Can’t identify the price of carbon to establish a tax rate

[International Emissions Trading Association](http://www.environmental-expert.com/STSE_resultEach.aspx?cid=23865&idprofile=10948) (a non-profit business organization created in June 1999 to establish a functional international framework for trading in greenhouse gas emission reductions) 9 Mar 2009, “**Why emissions trading is more effective than a carbon tax, says IETA”** [www.environmental-expert.com/resultEachPressRelease.aspx?cid=23865&codi=46357](http://www.environmental-expert.com/resultEachPressRelease.aspx?cid=23865&codi=46357)

The true price of carbon is not yet known, and cannot be identified to create a tax rate.

DISADVANTAGES

1. Net benefits: Carbon tax above $2 = more cost than benefit

Jerry Taylor (served on several congressional advisory bodies and has testified frequently on Capitol Hill regarding various energy and environmental policy matters. He is the author or coauthor of numerous Cato policy studies addressing energy taxes, the oil market, electricity regulation, energy efficiency, renewable energy, sustainable development, and trade and the environment) November 2008, [The “Fairly Impeccable” Case for (Revenue Neutral) Carbon Taxes](http://www.cato-at-liberty.org/2008/11/12/the-fairly-impeccable-case-for-revenue-neutral-carbon-taxes/), CATO INSTITUTE, <http://www.cato-at-liberty.org/2008/11/12/the-fairly-impeccable-case-for-revenue-neutral-carbon-taxes/>

So, are the benefits that might flow from a carbon tax (defined at the monetarized value of the temperature reductions that might follow) greater than the costs of the same? Energy economist Richard Tol’s [review of the published economic literature](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V2W-4CJCVJ8-2&_user=3061873&_rdoc=1&_fmt=&_orig=search&_sort=d&view=c&_version=1&_urlVersion=0&_userid=3061873&md5=67fe725c4c081d254e0b4dd265316562) suggests that the monetarized damages that follow from a ton of carbon emissions at the margin (if mean estimates of future climate change from the IPCC are to be believed) likely works out to about $2. Hence, if a carbon tax is set above $2 dollars, it will may very well deliver more social costs than benefits.

2. $7 trillion economic loss by 2029 and 800,000 jobs/year lost

Ben Lieberman J.D. (attorney; Senior Policy Analyst for Energy and Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation) and [Nicolas Loris](http://www.heritage.org/about/staff/nicolasloris.cfm) (Research Assistant, Thomas A. Roe Institute for Economic Policy Studies) 23 April 2009 “Five Reasons the EPA Should Not Attempt to Deal with Global Warming” <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

Since 85 percent of the U.S. economy runs on fossil fuels that emit carbon dioxide, imposing a cost on CO2 is equivalent to placing an economy-wide tax on energy use. The Heritage Foundation's Center for Data Analysis study of the economic effects of carbon dioxide cuts found cumulative gross domestic product (GDP) losses of $7 trillion by 2029 (in inflation-adjusted 2008 dollars), single-year GDP losses exceeding $600 billion in some years (in inflation-adjusted 2008 dollars), energy cost increases of 30 percent or more, and annual job losses exceeding 800,000 for several years. Hit particularly hard is manufacturing, which will see job losses in some industries that exceed 50 percent.

3. Diversion of resources: Using money today to solve an insignificant future problem takes resources away from today’s urgent problems

Dr. Indur Goklany (was a delegate for the United States to the Intergovernmental Panel on Climate Change and to the team negotiating the UN Framework Convention on Climate Change), 5 Feb 2008, “What to Do about Climate Change,” <http://www.cato.org/pub_display.php?pub_id=9125>

Hence, climate change is unlikely to be the world's most important environmental problem of the 21st century. Analysis using both the Stern Review and the fast-track assessment reveals that notwithstanding climate change, for the foreseeable future, human and environmental well-being will be highest under the "richest-but-warmest" scenario and lower for the poorer (lower-carbon) scenarios. The developing world's future wellbeing should exceed present levels by several-fold under each scenario, even exceeding present wellbeing in today's developed world under all but the poorest scenario. Accordingly, equity-based arguments, which hold that present generations should divert scarce resources from today's urgent problems to solve potential problems of tomorrow's wealthier generations, are unpersuasive.

4. Lost opportunities for Adaptation.

This disadvantage happens when the Affirmative’s plan focuses our attention and money on “mitigating” (reducing or solving) for climate change, when instead we should be spending that time and attention on “adapting” to climate change -- if and when it happens, let’s adapt our society to be prepared for it. We will show that adaptation is a better strategy than mitigation, and therefore we miss the benefits of the Adaptation strategy when we follow the Mitigation strategy promoted by the Affirmative team.

A. Link: Aggressive reduction of greenhouse gases wrongly assumes that mitigation is better than adaptation. We’re making the wrong choice when we choose mitigation over adaptation.

Dr. Indur Goklany (former delegate for the United States to the Intergovernmental Panel on Climate Change and to the team negotiating the UN Framework Convention on Climate Change) 1 Mar 2007, “Adaptation and sustainable development will yield greater benefits than Kyoto Protocol targets” FRASER INSTITUTE, <http://www.fraserinstitute.org/newsandevents/news/4170.aspx>

"Calls for aggressive curtailment of greenhouse gases in the near-term wrongly assume that there is no greater environmental problem in the 21st century than climate change, and that adverse impacts of climate change would be more efficiently and effectively reduced through mitigation rather than adaptation," Goklany said.

B. Link: Mitigation will distract from Adaptation. Cross-apply “Diversion of resources” in Disad 3 above.

C. Impacts: Adaptation is more likely to deliver benefits than mitigation. Impact is lost social benefits from adaptation.

Dr. Indur Goklany (former delegate for the United States to the Intergovernmental Panel on Climate Change and to the team negotiating the UN Framework Convention on Climate Change) 1 Mar 2007, “Adaptation and sustainable development will yield greater benefits than Kyoto Protocol targets” FRASER INSTITUTE, <http://www.fraserinstitute.org/newsandevents/news/4170.aspx>

“Adaptation allows us to selectively capture the positive aspects of climate change while reducing the negative. While the impacts of global warming are uncertain, there is no doubt that malaria, hunger, water stress, and coastal flooding are real and urgent problems here and now,” Goklany said. “Focused adaptation is more likely to deliver benefits than mitigation such as greenhouse gas reductions, and deliver those benefits sooner rather than later.”

NEGATIVE BRIEF: EPA REGULATING GREENHOUSE GASES – GOOD IDEA

By Vance Trefethen

SIGNFICANCE

1. No massive business closures: EPA is only going to regulate big sources of CO2

Mark Clayton (journalist), 17 Apr 2009, “Carbon emissions pose danger, EPA finds,” CHRISTIAN SCIENCE MONITOR,(ellipses and brackets in original) <http://features.csmonitor.com/environment/2009/04/17/carbon-emissions-pose-danger-epa-finds/>

Environmentalists dismiss as “scare tactics” the claims that myriad businesses will be shuttered and the minutia of daily life will be regulated as a result of the EPA action. “There are a number of scare stories out there…, the premise of which is that if EPA does anything under any part of the Clean Air Act, it will necessarily have to do everything everywhere to any imaginable source of carbon dioxide,” said David Doniger, policy director for the Natural Resources Defense Council, in a telephone briefing with reporters April 14. “That’s just not true.” Scare claims, he says, “did not convince the Supreme Court and should not convince anyone [that CO2 regulation] is going to go beyond the big central sources.”

2. The battle is over: Human-induced climate change is a fact and we have to take action

[William J. Antholis](http://www.brookings.edu/experts/antholisw.aspx), (Managing Director, The Brookings Institution; worked on foreign security and economic policy at the National Security Council and the State Department) and Bryan K. Mignone ( Director of Research, Energy Security Initiative; former staff member on the U.S. Senate Committee on Energy and Natural Resources) 2 Dec 2008, How Obama Should Confront Climate Change, <http://www.brookings.edu/opinions/2008/1202_climate_change_antholis.aspx?rssid=antholisw>

Indeed, over the past decade, the evidence for human-induced climate change has become one of the most widely accepted scientific findings of our time. Inhofe and Coburn are like soldiers climbing out of caves to fight a war that their generals long ago surrendered. Most of the old battlefields are deserted. In 2002, the infamous Global Climate Coalition “deactivated” (according to its website), thanks in part to the loss of key energy and auto company supporters. In a telling example of how quickly things changed, an Exxon-Mobil representative now says: “We know enough now — or, society knows enough now — that the risk is serious and action should be taken.” That was John McCain’s position, too, as well as that of a growing number of Republicans and most major energy and auto companies.

3. Harms of greenhouse gases justify EPA regulation

Vera P. Pardee (Senior Attorney, Center for Biological Diversity; non-profit environmental organization dedicated to the protection of imperiled species, their habitats, and the environment through science, policy, and environmental law. The Center has over 200,000 members and online activists throughout the United States.) 13 July 2009, (brackets added) “Re: Standards of Performance for Coal Preparation and Processing Plants; Proposed Rule, 74 Fed. Reg. 25304 (May 27, 2009); EPA Docket ID No. EPA-HQ-OAR-2008-0260” [www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809f5eb0](http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809f5eb0)

However, even assuming *arguendo* [for the sake of argument] that promulgating NSPS [New Source Performance Standards] for pollutants from stationary sources were discretionary, then EPA should exercise such discretion in favor of setting NSPS for greenhouse gases and other climate-forcing pollutants for sources that emit them, as the enormous and dire consequences of global warming are now beyond scientific dispute.

4. US emits 21% world total energy-related CO2 emissions

Energy Information Administration, US Dept. of Energy, 3 Dec 2008, “Emissions of Greenhouse Gases Report “ [www.eia.doe.gov/oiaf/1605/ggrpt/](http://www.eia.doe.gov/oiaf/1605/ggrpt/)

In EIA’s 2006 emissions inventory report, total U.S. energy-related carbon dioxide emissions in 2005 (including nonfuel uses of fossil fuels) were estimated at 5,982 MMT. With the 2005 world total for energy-related carbon dioxide emissions estimated at 28,051 MMT, U.S. emissions were about 21 percent of the world total (see Table 3 below).

DISADVANTAGES

1. Missed Global leadership. We must act now on greenhouse gases to lead India and China on the sustainable economic and environmental path.

A. Brink: Obama must act quickly to solidify global goodwill and prove we can curb greenhouse gases

[William J. Antholis](http://www.brookings.edu/experts/antholisw.aspx), (Managing Director, The Brookings Institution; worked on foreign security and economic policy at the National Security Council and the State Department) and [Nigel Purvis](http://www.brookings.edu/experts/purvisn.aspx) (Nonresident Brookings Scholar on Environment and Development, [Foreign Policy](http://www.brookings.edu/foreign-policy.aspx); vice president of The Nature Conservancy and deputy assistant secretary of state for Oceans, Environment and Science; currently the President of [Climate Advisers](http://www.climateadvisers.com/) and a visiting scholar at [Resources for the Future](http://www.rff.org/Researchers/Pages/ResearchersBio.aspx?ResearcherID=1201).) 27 Jan 2009, “The Case for a Climate Protection Authority” <http://www.brookings.edu/opinions/2009/0127_climate_change_antholis_purvis.aspx?rssid=antholisw>

Obama must quickly solidify the global goodwill that greeted the November election. His mettle will be tested in December, when the international community is scheduled to gather in Copenhagen, Denmark, to negotiate a replacement for the 1997 Kyoto Protocol. To reclaim global leadership, the United States must show the world proof that it has the political will to curb greenhouse gases.

B. Link: Developing countries want US leadership – they won’t reduce their emissions until we do

Richard Black (Environment correspondent), 17 Apr 2009, BBC NEWS, "Obama to regulate 'pollutant' CO2" <http://news.bbc.co.uk/2/hi/science/nature/8004975.stm>

Developing countries have asked for the US to show leadership on climate. Many are not prepared to curtail their own emissions without firm indications that the US is willing to make significant reductions.

C. Link: Engagement with China and India will lead to effective agreement on climate change

William J. Antholis, (Managing Director, The Brookings Institution; worked on foreign security and economic policy at the National Security Council and the State Department) and Bryan K. Mignone ( Director of Research, Energy Security Initiative; former staff member on the U.S. Senate Committee on Energy and Natural Resources) 2 Dec 2008, How Obama Should Confront Climate Change, <http://www.brookings.edu/opinions/2008/1202_climate_change_antholis.aspx?rssid=antholisw>

The U.S. must take the first step in order to demonstrate leadership, but it also must make clear to other major emitters that they, too, must act. The U.S. should make climate change a central part of its strategic dialogue with China and a part of its partnership with India. Such engagement will lessen concerns over domestic competitiveness and ultimately lead to a more inclusive and effective agreement.

D. Link: China and India must agree to curb emissions to sustain economic growth

Keith Johnson (Journalist), 28 Apr 2009, “Clinton: Want Growth?” WALL STREET JOURNAL (brackets added) <http://blogs.wsj.com/environmentalcapital/2009/04/28/clinton-want-growth-save-the-climate/>

Basically, she [Secretary of State Hilary Clinton] said that curbing greenhouse-gas emissions is more than just compatible with economic growth—it is a necessary condition for sustained growth, above all for the developing world. That’s a key point because the need for decades more of heady growth is the main reason China (and India) object to curbs on their greenhouse-gas emissions. [Ms. Clinton said](http://www.state.gov/secretary/rm/2009a/04/122240.htm): “As I have told my counterparts from China and India, we want your economies to grow. We want people to have a higher standard of living. We just hope we can work together in a way to avoid the mistakes that we made that have created a large part of the problem that we face today. And it will be harder, not easier, if we fail to meet the challenge of climate change for all countries, particularly developing countries, to continue the growth rates that they need to sustain the increase in standard of living that they’re looking for.” That might be a reference to what climate change could do to [certain parts](http://online.wsj.com/article/SB124082388923058747.html) of the world, especially southeast Asia. But it sounds a lot like an echo of [the argument](http://www.nytimes.com/2009/04/26/opinion/26friedman.html?_r=1) made by Tom Friedman: Essentially, the real “tax” on future growth comes when your energy supplies are held hostage to price volatility and unfriendly countries, not from Congress. Green growth that moves away from fossil fuels lays the foundation not just for sustainability, but for sustainable growth.

E. Impact: China & India’s economic growth directly reduces world poverty

Larry Elliott (journalist), 16 Apr 2007, “World poverty reduced by growth in India and China,” THE GUARDIAN (British newspaper) <http://www.guardian.co.uk/business/2007/apr/16/china.india>

Spectacular growth in China and India has pushed the number of people around the world living on less than a dollar a day below the 1 billion level, but masks entrenched poverty in Africa and Latin America, the World Bank said yesterday. Reporting an 80-million drop in extreme poverty in the two years to 2004, the Bank said the improvement was entirely due to the rapid expansion in Asia's two most populous countries.

2. Oil Dependence

A. Link: EPA greenhouse gas regulations move us toward clean energy future

Craig Holt Segall (Environmental Law Fellow, Sierra Club) writing on behalf of 21 conservation organizations, 23 June 2009, letter to EPA Administrator Jackson in public comments on EPA endangerment finding for greenhouse gases, [EPA-HQ-OAR-2009-0171-3414.1](http://www.regulations.gov/fdmspublic/custom/jsp/search/searchresult/docketDetail.jsp" \o "EPA-HQ-OAR-2009-0171-3414.1), (brackets in original) [www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863](http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863)

The President spoke of a clean energy future where “[w]e will harness the sun and the winds and the soil to fuel our cars and run our factories,” built upon a strong and interlocking foundation of innovation and sustainability. Now, EPA is acting to move us towards that future by determining that six greenhouse gases – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – constitute air pollution endangering public health and welfare, and by further determining that “combined emissions from new motor vehicles and new motor vehicle engines of four of these greenhouse gases – carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons contribute to this air pollution.” These determinations are deeply rooted in decades of scientific research, and empower EPA to take action.

B. Link: Petroleum alternatives needed

National Governors Association (Founded in 1908, the National Governors Association is the collective voice of the nation's governors and one of Washington, D.C.'s most respected public policy organizations. Its members are the governors of the 50 states, three territories and two commonwealths), 2008, “Securing A Clean Energy Future – The Challenges,” [www.nga.org/portal/site/nga/menuitem.751b186f65e10b568a278110501010a0/?vgnextoid=32c0dd9ebe318110VgnVCM1000001a01010aRCRD&vgnextchannel=92ebc7df618a2010VgnVCM1000001a01010aRCRD](http://www.nga.org/portal/site/nga/menuitem.751b186f65e10b568a278110501010a0/?vgnextoid=32c0dd9ebe318110VgnVCM1000001a01010aRCRD&vgnextchannel=92ebc7df618a2010VgnVCM1000001a01010aRCRD)

The U.S. uses more than 7.6 billion barrels of petroleum a year-more than 60 percent of it imported from other countries. In 2006 alone, the transportation sector accounted for more than two thirds of total U.S. oil consumption. In addition to making our economy more vulnerable to price volatility, this reliance on foreign oil jeopardizes U.S. energy security by making the country dependent on unstable regions of the world. Resolving these issues will require finding ways to reduce petroleum use in transportation through greater efficiency and increasing domestic production of alternative fuels.

C. Brink: We must act quickly to reduce energy dependence and regulate greenhouse gases

[William J. Antholis](http://www.brookings.edu/experts/antholisw.aspx), (Managing Director, The Brookings Institution; worked on foreign security and economic policy at the National Security Council and the State Department) and [Nigel Purvis](http://www.brookings.edu/experts/purvisn.aspx) (Nonresident Brookings Scholar on Environment and Development, [Foreign Policy](http://www.brookings.edu/foreign-policy.aspx); vice president of The Nature Conservancy and deputy assistant secretary of state for Oceans, Environment and Science; currently the President of [Climate Advisers](http://www.climateadvisers.com/) and a visiting scholar at [Resources for the Future](http://www.rff.org/Researchers/Pages/ResearchersBio.aspx?ResearcherID=1201).) 27 Jan 2009, “The Case for a Climate Protection Authority” <http://www.brookings.edu/opinions/2009/0127_climate_change_antholis_purvis.aspx?rssid=antholisw>

The longer we wait to reduce our energy dependence and stabilize the Earth’s climate, the more we put our economy, security and environment at risk. From a political standpoint, acting quickly is also essential. Domestically, the president’s public approval and congressional majorities may never be as high. And the fragile consensus that has emerged among environmentalists and many businesses for regulating greenhouse gases could fade if the economy continues to worsen.

D. Impact: Oil leads to trillions of dollars in economic impact + recessions

US Dept of Energy, 2008 “Reduce Oil Dependence Costs,” <http://www.fueleconomy.gov/FEG/oildep.shtml>

Most of the world's oil reserves are concentrated in the Middle East, and about two-thirds are controlled by OPEC members. Oil price shocks and price manipulation by OPEC have cost our economy dearly—about $1.9 trillion from 2004 to 2008—and each major shock was followed by a recession.

3. Climate change

A. Link: EPA greenhouse gas regulations move us toward clean energy future (Cross-apply DA 2-A card)

B. Link: US Greenhouse gas reductions needed

National Governors Association (Founded in 1908, the National Governors Association is the collective voice of the nation's governors and one of Washington, D.C.'s most respected public policy organizations. Its members are the governors of the 50 states, three territories and two commonwealths), 2008, “Securing A Clean Energy Future – The Challenges,” [www.nga.org/portal/site/nga/menuitem.751b186f65e10b568a278110501010a0/?vgnextoid=32c0dd9ebe318110VgnVCM1000001a01010aRCRD&vgnextchannel=92ebc7df618a2010VgnVCM1000001a01010aRCRD](http://www.nga.org/portal/site/nga/menuitem.751b186f65e10b568a278110501010a0/?vgnextoid=32c0dd9ebe318110VgnVCM1000001a01010aRCRD&vgnextchannel=92ebc7df618a2010VgnVCM1000001a01010aRCRD)

There is significant scientific consensus that accumulating greenhouse gas emissions in the earth's atmosphere are causing temperatures to rise, leading to a host of potential-and possibly already occurring-detrimental outcomes for the natural and human environment. The U.S. is responsible for one-quarter of the world's greenhouse gas emissions. The transportation and electricity sectors are the largest sources of U.S. CO2 emissions, accounting for almost 75 percent. With emissions projected to grow into the future, reducing emissions from these sectors will require aggressive, innovative efficiency efforts and greater use of cleaner energy sources.

C. Brink: We must act quickly to reduce energy dependence and regulate greenhouse gases (Cross-apply DA 2-C card)

D. Impact: Climate-related death & disease + billions of dollars in costs

Western Climate Initiative (WCI includes seven U.S. states and four Canadian provinces as well as several observer states and provinces from across the U.S., Canada and Mexico that are working together to reduce greenhouse gas emissions) 23 June 2009, Western Climate Initiative Comments on the Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act (Docket ID No. EPA-HQ-OAR-2009-0171) <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863>

We strongly support the EPA finding that high atmospheric concentrations of greenhouse gases endanger the public health and welfare of current and future generations. Our states and provinces are already experiencing higher temperatures and changes in precipitation patterns and water availability, resulting in a range of impacts and costs: - Public health challenges are increasing. Heat waves, in particular those with night-time warming, have been increasing in recent decades. California experienced a two-week heat wave in July 2006 that led to more than 140 deaths directly attributable to heat exposure and unprecedented nighttime temperatures. There will be more heat- and air pollution-related deaths from more extreme heat events, and increasing and new diseases as the ranges of vectors expand. In Ontario, heat waves may be a contributing factor in about 20% of the 6,000 annual premature deaths attributed to air pollution and this could more than double by the 2050s. In King County of Washington State, 132 additional deaths between May and September are projected annually by 2020 due to worsened air quality caused by climate change. Climate-related health costs in Washington are projected to increase by $1.3 billion dollars per year by 2020, and $4.4 billion dollars per year by 2080.

NEGATIVE BRIEF: COMMON LAW

By Vance Trefethen

INHERENCY

1. A. Regulatory policies provide environmental protection that Common Law can't

B. Common Law can be used along with regulatory policy

Prof. Sean Coyle PhD (University College, London), Prof. Karen Morrow LLM (Swansea University School of Law) 2004, The philosophical foundations of environmental law [http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book\_result&ct=result&resnum=8](http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book_result&ct=result&resnum) (note that "welfare-oriented" in this context means something aimed at the general well-being of society and has nothing to do with governments giving away money to the poor)

Notwithstanding such difficulties, it is often (correctly) believed that regulatory regimes can articulate and pursue policies and welfare-oriented strategies which are incapable of expression within the dispute-orientated confines of the common law. Such observations contribute considerably to the view that environmental protection can only emerge as a distinctive concern within the sphere of a statutory regime. Yet even within the context of such a regime, the common law is not redundant as an instrument of environmental regulatoin.

2. No Barrier: Environmental common law lawsuits are rising in Status Quo

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

While the enactment of federal and state environmental legislation since the 1970s might have been expected to reduce the amount of common law public nuisance litigation, “public nuisance actions have continued to play an important role in the area of environmental protection.” The number of environmental nuisance cases filed in state court has risen from 50 during the 1960s to 184 during the 1990s, and the number of federal cases during the same period have risen from 7 to 178.

3. No Barrier: State Common Law water pollution claims can still be made

Prof. Clifford Rechtschaffen (director of the environmental law program at Golden Gate Univ. School of Law) and Prof. Denise Antolini (Univ. of Hawaii, Richardson School of Law) 2007, Creative Common Law Strategies for Protecting the Environment, (brackets added) <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP5,M1>

Six years later [after the Milwaukee case], in International Paper Co. v. Oullette, the Court held that the CWA also preempted state common law nuisance claims for trans-state water pollution brought under the law of the receiving state. However, Ouellette and other post-Milwaukee II cases made clear that state common law claims based on the law of the "source state" were preserved as a viable remedy.

4. No Barrier: Some State and Federal common law claims can still be made

Prof. Clifford Rechtschaffen (director of the environmental law program at Golden Gate Univ. School of Law) and Prof. Denise Antolini (Univ. of Hawaii, Richardson School of Law) 2007, Creative Common Law Strategies for Protecting the Environment, <http://books.google.com/books?id=j7YOQQIed0EC&pg=PA134&lpg=PA134&dq=CWA+%2B+%22Common+law%22&source=bl&ots=bwcsMTCDJW&sig=OhmcwlkMnzOpBWxUUi3jayNP924&hl=en&ei=Muj8Sab9Cs-Ltge-yfnFCg&sa=X&oi=book_result&ct=result&resnum=8#PPP5,M1>

Thus, if a federal legislative scheme directly addresses an issue--for example if a permit has been issued pursuant to federal law governing the polluting activity--federal common law claims will be preempted. On the other hand, if federal regulation does not directly address a polluting activity, such as nonpoint water pollution or carbon dioxide emissions contributing to global warming (a subject covered by Matthew Pawa in Chapter 5), federal common law claims arguably are not preempted. As noted above, the courts generally have allowed state common law claims to continue as a viable remedy despite the federal and state statutory schemes in place to address the same issues. The determination of whether state common law claims are preempted also is statute-specific, depending on legislative intent and the particular language used in the relevant statute.

HARMS/SIGNIFICANCE

1. Regulating pollution does not interfere with property rights

Prof. Sean Coyle PhD (University College, London), Prof. Karen Morrow LLM (Swansea University School of Law) 2004, The philosophical foundations of environmental law [http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book\_result&ct=result&resnum=8](http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book_result&ct=result&resnum)

Take the example of emissions: though environmental regulation of emissions and polluting activities certainly serves to curtail the conduct of industry, it does not, on the whole, interfere with the traditional property rights of industrialists as such. Instead the law has been used at least partially to internalise the undesirable externalities of pollution by imposing the costs of addressing the problem on those creating it.

No consensus on definition of property rights

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

Given the importance of property rights in economics, it might be expected that there would be some consensus in economic theory about what property rights are. But no such consensus exists [Cole and Grossman 2002, p. 317].

Landowners need to accept public ecological needs as an obligation of land ownership

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

Instead, perhaps surprisingly, there is an opposite trend toward fostering *new ideas* of ownership upon society and landowners alike. In his eloquent book *The Land We Share* (2003:8), for instance, Eric Freyfogle boldly argues that “private ownership is in need of fundamental change if it is going to serve America well in the 21st century.” The problem for Freyfogle is that America’s Lockean notion of property excludes a “broader sense of value” or “greater ecological awareness.” Expanding on the earlier ideas of Joseph Sax (1993) (and even C. B. Macpherson (1977)), Freyfogle insists that landowners must adopt a more *ecological* vision of property that recognizes the malleable nature of private rights in the face of compelling public needs like environmental protection. Under this approach, environmentally sound land use becomes an obligation of private ownership rather than a praiseworthy act deserving compensation. In sum, landowners need to change their outlook and accept “a revitalized property system in which landowners are expected to use their land in gentler and more communally responsive ways” (2003: 211).

2. Massive reduction in pollution with regulatory-based policies

Prof. Robert V. Percival (Univ. of Maryland School of Law), 2004, Review of "Chasing the Wind" by Nora Morag-Levine, <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/Morag-Levine104.htm>

In fact, Congress has incorporated technology-based mandates in nearly every federal pollution control law, and they have spawned substantial reductions in pollution. The Oil Pollution Act's double-hull requirement has been a dramatic success both domestically and internationally. The Clean Water Act employs technology-based standards as the primary tool for controlling water pollution, and they have produced massive reductions in such pollutants. While water pollution understandably is beyond the scope of this book, the Clean Water Act's experience with technology-based standards demonstrates that American suspicion of civil law style interventions has not prevented extensive use of technology-based approaches.

SOLVENCY

1. Weak enforcement incentives

**Impact/Analysis:** Common Law requires one person to take the time and effort to gather the information, hire a lawyer and file a lawsuit. But the benefits (if he wins) will go out to the entire community or even the whole state or other states. Thus, all the people affected by the pollution will have an incentive to wait for someone else to file the lawsuit. Everyone will get the benefits, but one person will have to bear the costs, so no one has adequate incentive to do it. It's the same problem that would occur if you asked people how much they would be willing to pay for national defense. Since the military protects the entire country simultaneously, each individual would have an incentive to wait and let others pay. That's why the government has to take the initiative and tax people to provide national defense regardless of what each individual wants.

Prof. Keith Hylton (Boston Univ School of Law), March 2008, "The Economic Theory of Nuisance Law and Implications for Environmental Regulation" CASE WESTERN RESERVE LAW REVIEW, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112631>

The decentralization inefficiencies of private enforcement are well known and need only brief mention here. Because environmental interferences injure a large number of victims at the same time, enforcement of environmental regulations provides a public good, in the sense that many people share in the benefits of enforcement. Thus, enforcement of environmental law suffers from the weaknesses inherent in the provision of public goods, in the sense that enforcement incentives are too weak relative to the benefits of enforcement. The same problem is observed quite obviously in the area of national defense. Unless a government provides the benefit, individuals are likely to have weak incentives to invest in national defense.

2. Costs of common law mechanisms are prohibitive

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

That said, there are several general objections to the protection of environmental rights through the common law. One is that the costs of protecting individual environmental rights through common law mechanisms are prohibitive in our complex society, so that prophylactic statutes and sweeping presumptions must be employed.

3. Regulation is better: Common Law inadequate to control pollution

Prof. Robert V. Percival (Univ. of Maryland School of Law), 2004, Review of "Chasing the Wind" by Nora Morag-Levine, <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/Morag-Levine104.htm>

The common law requires plaintiffs to prove that particular sources of pollution have caused them significant harm, a task that is rarely easy except when pollution from a single, particularly noxious source causes visible damage. Common law courts initially performed a kind of zoning function by encouraging such sources, including copper smelters and alkali works, to locate away from residential areas. However, particularized proof of causal injury became more difficult as the number of sources and pollutants multiplied with the growth of industrial activity. Even if plaintiffs could overcome the daunting hurdle of proving causal injury, courts often refused to require abatement of the pollution if the source shown to cause harm was of considerable economic value. Environmental legislation ultimately was adopted because the common law by itself proved inadequate to control burgeoning pollution problems.

Environmental problems are too big to be solved by common law

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/james_huffman/2>

By the time laws relating to human impacts on the natural environment came to be called environmental law in the 1970s, the common law version had been largely abandoned in favor of increasingly centralized regulation. Not only was common law nuisance relegated to the dustbin as a means of dealing with environmental problems, it was generally agreed not to be up to the task in a modern, complex, technological world. Late 20th century environmental problems like air and water pollution, hazardous waste and toxic substances, wildlife habitat and species preservation required the expertise, resources and vast powers of the highest levels of government. It was widely agreed that the piecemeal methods of the common law could not make a dent in the pervasive environmental problems facing the nation and the planet.

4. Mix of strategies, not just one, is most likely to protect human health and the environment

Prof. Robert V. Percival (Univ. of Maryland School of Law), 2004, Review of "Chasing the Wind" by Nora Morag-Levine, <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/Morag-Levine104.htm>

Legislators are adopting new approaches to regulation, such as the Emergency Planning and Community Right-to-Know Act, which now requires companies to provide the public with information annually on emissions of hundreds of toxic chemicals. This information has empowered citizen groups to pressure sources of air pollution to reduce their emissions voluntarily, an approach that has not yet been emphasized in Europe. The use of a rich mix of regulatory approaches is likely to do a better job of protecting human health and the environment than reliance on any one single strategy.

5. Uncertain standards: Common law leads to confusing lawsuits over what constitutes an environmental harm or benefit

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=james_huffman> (brackets added; “Private nuisance” is a common law suit against a neighbor for damages flowing from the neighbor’s property, as advocated by the Affirmative team)

If the closing of **A**’s motel results in a loss of business at **B**’s adjacent café, is **A** liable in nuisance for making **B** worse off? Surely not, though it is the withdrawal of a benefit. Perhaps the difference is that storm surge protection can be said to be a “natural” benefit while café business is merely business. But what if the pollinating bees in the example above are drawn to an alfalfa field rather than a native forest and the alfalfa field is plowed under to make room for a shopping center. Are those pollination services natural or merely business? These questions and thousands more await lawyers if Professor Ruhl persuades legislatures and courts to embrace an expanded doctrine of private nuisance. If the harm-benefit distinction has been abandoned, as Justice Scalia’s suggests in *Lucas,* perhaps a natural-nonnatural distinction, for which there is some precedent, can be made to give nuisance law some definition while accommodating the protection of ecosystem services. But even then property owners will face the uncertainties inherent in the balancing of interests called for by the Restatement [of Torts].

DISADVANTAGES

1. Regulation is better than Common Law at preventing pollution from starting in the first place

2. Regulation produces better uniformity of environmental quality than random litigation

Prof. Sean Coyle PhD (University College, London), Prof. Karen Morrow LLM (Swansea University School of Law) 2004, The philosophical foundations of environmental law [http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book\_result&ct=result&resnum=8](http://books.google.com/books?id=SftfJGXjdUQC&pg=PA180&lpg=PA180&dq=%22water+pollution%22+%2B+regulation+%2B+%22property+rights%22&source=bl&ots=jHu08Sw2m5&sig=Kb5xE2KRVX1FtbxDIfeQKkW2LAA&hl=en&ei=BNb9SajbJZS9twed8pWjDQ&sa=X&oi=book_result&ct=result&resnum) (brackets added)

In principle, statutory regulation of polluting enterprises and activities offered manifold advantages over the earlier, and inevitably more particularised, common law approach. The most significant innovation that a regulatory approach offered was its proactive nature: by requiring that emissions be prevented or minimised, such regimes largely served to prevent pollution problems, including nuisances, from arising in the first place. They also offered a uniformity of approach, and were not dependent on actions based around private property rights and the lotter [random outcome] of litigation in delivering basic environmental quality in the public interest.

3. Property Rights Turn: Environmentalists will use Common Law to undermine property rights protection

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/james_huffman/2>

After several decades of general agreement among environmental law scholars and environmentalists that the common law is inadequate to meet the challenges of environmental protection, a few scholars have taken a second look at common law remedies in recent years. Simple pragmatism explains some of this newborn interest in the common law, while for others there has been at least some acceptance of the efficiency arguments made by free market environmentalists since the 1970s. But for the most part the fledgling environmentalist case for revival of common law remedies is rooted in a belief that a reinvigorated common law will further weaken constitutional protections of property rights that might otherwise stand in the way of command and control regulation.

4. Avoiding the “Takings Clause.”

A. Link: Lawsuits can call it “public nuisance” instead of police power (regulation) – but now they don’t have to compensate under the 5th Amendment

**Analysis:** The Supreme Court decision Lucas v. S.C. says that when the government regulates a property so heavily that its economic value is destroyed, they must pay compensation to the land owner for the loss: Unless – the common law rules of “nuisance” (using property in such a way that causes damage to others) would also have prohibited the same activity that the regulations are prohibiting. Someone who wants environmental regulations enacted can file a lawsuit at common law and have the activity declared a “public nuisance,” and get it stopped. If it destroys all the economic value of the property – too bad, there was no regulatory taking, so no Fifth Amendment compensation.

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=james_huffman> (ellipses and brackets in original)

Although the *Just* court made reference to the police power rather than nuisance, there remains little to distinguish public nuisance from the police power, except that the courts will play a central role in defining what public interests will be constituted as public rights and, therefore, limitations on private rights. Eric Freyfogle recognizes this advantage of public rights talk over public interest talk in arguing that environmentalists should counter the individual rights claims of property owners with claims of “the rights of citizens generally to enjoy a healthy environment.” Carol Rose has “been arguing for some time that we need a more robust language of ‘public rights’ in the United States . . . [to] bolster the sense that public claims and decisions command respect along with private ones.” Whether public rights claims are asserted in the context of public nuisance, public trust, custom or any other of the litany of “categorical defenses” identified by Blumm and Ritchie, the point is that they can serve as a trump in 5th amendment takings claims. That is not, says Ruhl, his primary objective, but it is nonetheless the “Trojan horse” on which he will happily ride in quest of ecosystem service protection.

Some common law environmentalists will use it to lawsuit away property value without compensation.

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=james_huffman>

But for most environmentalists nuisance law remained the province of the lunatic fringe, at least until a few people took a look back at Justice Scalia’s opinion in *Lucas v. South Carolina Coastal Council* and saw an opportunity. The opportunity they saw did not reflect a realization that the common law is, after all, a promising means for environmental protection. Rather what they found buried in Scalia’s *Lucas* opinion is the opportunity to evade the nettlesome problem of the takings clause. Justice Scalia held that a total loss of economic value resulting from regulation constituted a categorical taking, unless background principles of state property law would independently preclude the uses now prohibited by regulation. Or to state the matter differently, if state property law, including the common law of nuisance, precluded all economic uses of particular properties, present day regulations enforcing such limits will not constitute unconstitutional takings of private property, notwithstanding the resulting total diminution in economic value.

Impact: Fairness & Justice : Cost of government action should be paid by taxpayers, not the landowner

Timothy Sandefur, Staff Attorney, Pacific Legal Foundation, 13 June 2006, Playing the Takings Game: How Government Regulates Away Property Rights, <http://www.goldwaterinstitute.org/article/1754> (brackets added; ellipses in original)

Moreover, since [quoting Supreme Court Justice William Brennan] “it is the public at large which enjoys the benefits of the government’s activities, and it is the public at large which is ultimately responsible for its administration…it is fairer to allocate any resulting financial loss to the inevitable costs of government borne by all the taxpayers, than to allow its impact to be felt solely by those whose rights…have been violated.” The same principles should apply when government deprives people of the right to use their property.

5. Democracy: Legislatures should do environmental regulation, not unelected judges

Prof. James L. Huffman (Lewis & Clark Law School), 2007 "Beware of Greens in Praise of the Common Law,” <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=james_huffman>

If “public rights” is just another term for public interest, or a way of identifying particularly important public interests, why should the courts have any role in determining what those public interests are? As evidenced by the wide array of often conflicting claims to represent the public interest emanating from a multitude of self-described public interest groups, the community interest is by no means self evident. It is therefore not surprising that, in the democratic states sharing the common law tradition, the annoyances and inconveniences of historic public nuisance law have for a century or more been largely the concern of legislative regulation. Surely the legislature, even with its many failings, is a better source for the community interest than is a single, often unelected, judge. What then, other than the prospect of trumping the takings clause, is the case for relying on public nuisance to do what can already be done in the name of the police power? Notwithstanding the Restatement and the encouragement of Professor Ruhl and others, the courts would do best to leave regulation of public nuisances to legislatures, but not, as Carol Rose urges, in the name of the common law. Leaving the regulation of public nuisances to the police power and the legislature would be a bit of common law evolution consistent with the constitutional separation of powers and reflective of what most courts have done for more than a century, though it would remove such regulations from the convenient cover of “background principles.”

NEGATIVE BRIEF: CLEAN WATER RESTORATION ACT

By Vance Trefethen

INHERENCY

1. Confusion is clearing: Courts are upholding CWA jurisdiction in questionable cases following *Rapanos* and *SWANCC*

Jon Kusler PhD, (attorney, master's degree in water resources management, PhD in water and land-use planning, Founder & Executive Director, Association of State Wetland Managers, Inc.) September-October 2007, Wetland News, ADDITIONAL LEGAL SUPPORT FOR FEDERAL CLEAN WATER ACT JURISDICTION, <http://www.aswm.org/fwp/federal_cwa_1007.pdf>

August and September were good months for wetlands and waters in the federal courts. The judges in five federal decisions upheld Clean Water Act jurisdiction in contexts in which jurisdiction had been questionable in light of the U.S. Supreme Court Rapanos and SWANCC decisions. The five decisions are not binding upon courts in other Districts or other Circuits. But the cases are, nevertheless, important precedents in this muddled area of law. They represent a growing consensus among the courts concerning the interpretation of Rapanos including the positions of the plurality, Justice Kennedy, and the dissent.

2. Limited scope IS the original intent of the CWA - broader scope would be unconstitutional

Randall Smith (Cattle Producer, Glen, Montana; Montana Stock Grower’s Association; National Cattlemen’s Beef Association), 9 Apr 2008, testimony before the US Senate Committee on Environment & Public Works, "Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fe352be9-6780-4d9b-90f5-52167c13f93d>

With passage of the Clean Water Act in 1972, Congress acknowledged Constitutional limits and granted the federal government broad, but not unlimited, jurisdiction over our Nation’s waters. There can be no clearer indication of Congressional intent with regard to the limits of federal jurisdiction than the fact that Congress used the term “navigable” repeatedly when establishing those limits and drafting and passing the CWA in 1972. If the term “navigable” meant nothing, the term would not have been used throughout the law. It is clear that Congress did not intend the CWA to regulate all waters of the United States. Rather, the stated goal of the CWA is to eliminate the discharge of pollutants into the Nation’s “navigable” waters. Thus, Congress deliberately kept in place the constitutionally mandated system under which the states have “virtually plenary” authority to regulate intrastate, non-navigable waters.

3. Supreme Court guidance is sufficient for agencies to create rules to protect wetlands

Jon Kusler (Association of State Wetland Managers) and Prof. Pat Parenteau (Vermont Law School), 2006, "Discussion Paper: RAPANOS v. UNITED STATES - Significant Nexus and Waters Subject to the Clean Water Act Jurisdiction," <http://www.aswm.org/fwp/aswm_paper.pdf> (brackets added)

[Supreme Court Justice Anthony] Kennedy's opinion leaves open a number of questions and requires, at least for now, a burdensome case-by-case determination of jurisdiction except where adjacency is involved. But his opinion is a strong endorsement of the Riverside Bayview approach to determining nexus, and he has at least provided a rough blueprint for how the agencies, if properly motivated, could craft a rule that would designate large categories of wetlands and other waters as meeting the nexus requirement.

4. States can do it: States have strict water programs in place – no need for more Federal intervention

Randall Smith (Cattle Producer, Glen, Montana; Montana Stock Grower’s Association; National Cattlemen’s Beef Association), 9 Apr 2008, testimony before the US Senate Committee on Environment & Public Works, "Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fe352be9-6780-4d9b-90f5-52167c13f93d>

An individual unfamiliar with U.S. water regulation might interpret Senator Feingold’s justifications to mean that states have skirted their responsibilities or are incapable of protecting their waters. Nothing could be further from the truth! States have very strict programs in place to protect their waters. To remove the word “navigable” from the CWA [Clean Water Act] would take state authority away and give it to the federal government, violate the U.S. Constitution, contravene expressed Congressional intent, and subject cattle producers to unprecedented and unwarranted federal regulatory intrusion into their private business operations. Such a vast expansion of federal control must not be allowed. The federal-state partnership embodied in the CWA must be preserved.

SOLVENCY

1. Lack of planning for regional differences = no progress toward the goal of clean water

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e> (brackets added)

Our counties would like to have certainty in the jursdictional process and overall in the Clean Water Act. However, we also recognize that a one-size-fits-all system will not work. Geographical features differ widely across this nation. Any federal plan needs to take into account these regional differences and plan accordingly with flexibility. Unfortunately, this bill [Clean Water Restoration Act] as written does not bring us any closer to the goal of clean water.

2. CW Restoration won't clear up the legal wrangling -- brings more lawsuits, not less

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e> (brackets added; parentheses in original)

As wrtten, the [Clean Water Restoration] bill leaves more questions than answers. This bill does nothing to bring about clean water; it only dooms us to more legal wrangling at the federal level and uncertainty at the local level. It will lead to more lawsuits over the interpretation of limits, not less. The sponsors of the bill state that its purose is to restore historic protections for waters (prior to the 2001 SWANCC decision). That is a difficult to believe when the bill does nothing more than removes words from the original act. Restoring by rewriting is a new concept. However, the truth is, since the CWA passed in 1972, the determination of what is "navigable" or jursdictional has changed through the years because of the lack of clear language and agency rulemakng.

CWRA = more lawsuits and more confusion

Sen. James M. Inhofe (R-Oklahoma), 9 Apr 2008, Hearing: Full Committee hearing entitled, “Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Statement&Statement_ID=a0e0a960-ed6f-44ce-85b6-bacc7d040287>

As I’ve said before, the federal government owes it to the American public and individual property owners, including the millions of homeowners across the country, to have a clean, concise and constitutional definition of “waters of the United States .” The Clean Water Restoration Act does not meet any of these goals and will simply result in more lawsuits and more confusion.

3. CWRA will do nothing to improve water quality

Sen. James M. Inhofe (R-Oklahoma), 9 Apr 2008, Hearing: Full Committee hearing entitled, “Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Statement&Statement_ID=a0e0a960-ed6f-44ce-85b6-bacc7d040287>

Finally, advocates of this bill [Clean Water Restoration Act] assert it as the save-all for clean water, but it will likely do nothing to improve overall water quality. Increasing federal bureaucracy and requiring property owners to go through a lengthy permitting process for activities that may affect a puddle on their private land hardly constitutes protecting our nation’s water.

DISADVANTAGES

1. Delayed or blocked public works projects

A. Link: Affirmative broadens the jurisdiction of the Clean Water Act

B. Link: CWA permits are expensive and time-consuming

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e>

When a project is deemed jursdictional, that means the project requires a federal CWA permit. In my experience, these are cumbersome, expensive, and time-consuming to obtain.

C. Impacts

Impact #1. Homes flooded

Impact #2. Increased taxpayer costs for public works projects

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e> (parentheses in original; brackets added; the "404 permit program" is the licensing system that is imposed when wetland is determined to be under the jurisdiction of the Clean Water Act -- you have to get a "404 permit" to do anything with that land. Expanding the jurisdiction of the CWA means more land falls under the 404 program.)

While a broad interpretation [of the Clean Water Act] would affect counties on many different levels, no more so than in the Army Corps of Engineers 404 permit program. There could be a limitless possibility of future federal permits required to do things such as construct a new driveway or simply cross a swale [a depressed area of land] on an individual's property. Counties are responsible for a number of manmade ditches, such as culverts, storm chanels and road-side ditches. Currently, they face tremendous challenges getting permits approved in a timely maner. My experience is that most permits get denied the first time and the total length is closer to 12 months than it is to 3 months. This is very different than the time frames being quoted by the bill's sponsors. This is very problematic when debris clogs storm channels, which in turn floods homes. The county then deals with angry residents who don't understand why the county has to wait for 404 permit approval before they can clean the channel out. Just over the weekend, the Associated Press highlighted one such project in Findley, Ohio that the Army Corp of Engineers stated will take five years for them to study, make permitting determinations, and provide any relief at an estimated cost of $93 milion (Akon (Ohio) Beacon Joural, Thursday Apr 03, 2008).

2. Blocked pesticide spraying

A. Link: CWAR Act would add more burdens to the Army Corps of Engineers

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e> (brackets added; the "404 permit program" is the licensing system that is imposed when wetland is determined to be under the jurisdiction of the Clean Water Act -- you have to get a "404 permit" to do anything with that land. Expanding the jurisdiction of the CWA means more land falls under the 404 program.)

Additionally, the Army Corps of Engineers who oversees the 404 permit program is already significantly behind in processing permits. All this bill [CWA Restoration Act] would do is increase the number of projects that are deemed jursdictional, while increasing the Corps' burden. This is folly.

B. Impact: West Nile Virus

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e>

One such example centers on the spraying of pesticides. Let's say that there has been an outbreak of West Nile Virus and the county has to quickly respond by spraying mosquito breeding grounds to kill the larva. Under this bill, technically, the spraying would be a point source affecting the waters. The county would have to wait for a permit before it could spray, leaving its citizens further at risk. Far-fetched? Not anymore. Due to the Ninth Circuit's Talent decision, municipalities and private landowners in Washington state are required to get permits for spraying activities that have the potential to flow into streams, wetlands, lakes, constrcted drainage systems (including ditches), or other waters.

3. Slower environmental response times: States are faster than the Federal government

David Brad (County Sanitary Engineer, Madison County, Ohio) 9 Apr 2008, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTY ENGINEERS, THE CLEAN WATER RESTORATION ACT OF 2007, statement BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORK COMMITTEE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a2c00e59-0e48-4a33-abd6-0c83a13c527e>

To classify "intrastate" waters as "waters of the U.S.," will eliminate the current separation between the state and federal governent, bringing the federal governent into local land use decisions. Federal preemption of state and local law presents a very serious challenge to our constitutional system of federalism. By preempting state and local laws, you reduce the ability of state and local governents to do their job effectively. If a local governent has been preempted, then its ability to respond quickly is taken away.

4. Benefits are minimal and outweighed by disastrous impact on agriculture

Randall Smith (Cattle Producer, Glen, Montana; Montana Stock Grower’s Association; National Cattlemen’s Beef Association), 9 Apr 2008, testimony before the US Senate Committee on Environment & Public Works, "Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fe352be9-6780-4d9b-90f5-52167c13f93d>

There must be hundreds of millions of isolated, intrastate pools, ponds, and depressions filled with water on an intermittent basis, drainage and irrigation ditches, artificially irrigated areas, stock ponds, mud puddles, sloughs, and damp spots located on farm and ranch lands that are nowhere near any navigable waters, and provide very little if any environmental value. Surely, Senator Feingold understands and agrees that not all waters are the same in terms of their environmental function and value. To think that Senator Feingold intends to force farmers and ranchers to get section 404 permits whenever a cow or a plow affect one of these environmentally-insignificant waters is nothing less than shocking. Such an expansion of federal jurisdiction boggles the mind, is unwarranted, irrational, is not in the national interest, and would be disastrous for U.S. agriculture.

5. Property rights are violated

Link: Braoder scope of CWA would put unacceptable burden on private property

Randall Smith (Cattle Producer, Glen, Montana; Montana Stock Grower’s Association; National Cattlemen’s Beef Association), 9 Apr 2008, testimony before the US Senate Committee on Environment & Public Works, "Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fe352be9-6780-4d9b-90f5-52167c13f93d>

It is not unreasonable, nor surprising, that the U.S. Supreme Court has extended CWA jurisdiction to some non-navigable waters, as discussed in the *SWANCC* and *Rapanos* decisions. In addition to expanding the reach of federal jurisdiction beyond truly navigable waters, the cases also provide a reasoned and thoughtful view of the limits of federal jurisdiction. Without such limits, federal jurisdiction would be boundless and would place an undue and unacceptable burden on the private property of cattle producers and others.

Link: CWRA would take away private property rights

Randall Smith (Cattle Producer, Glen, Montana; Montana Stock Grower’s Association; National Cattlemen’s Beef Association), 9 Apr 2008, testimony before the US Senate Committee on Environment & Public Works, "Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fe352be9-6780-4d9b-90f5-52167c13f93d> (brackets added)

S. 1870 [Clean Water Restoration Act] would result in the imposition of huge financial burdens on farmers and ranchers, would take away private property rights to the productive use of their land, and would do little to better our environment. It is one thing to regulate navigable waters and wetlands that have a “significant nexus” to those waters, because they have true environmental value. It is another thing to regulate every wet area simply because it is wet, regardless of the fact that these areas provide very little if any environmental value.

Link: Big impact on property owners - even regulating rain from home roof gutters!

Sen. James M. Inhofe (R-Oklahoma), 9 Apr 2008, Hearing: Full Committee hearing entitled, “Legislative Hearing on S. 1870, the Clean Water Restoration Act of 2007" <http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Statement&Statement_ID=a0e0a960-ed6f-44ce-85b6-bacc7d040287>

In 1972, the framers of the Clean Water Act chose to tie federal regulatory jurisdiction to the term “navigable waters,” limiting jurisdiction under the Commerce Clause. By striking any reference of “navigable” from the law, this bill [Clean Water Restoration Act] will expand the federal reach under the Act far beyond what the authors intended. In other words, by striking any reference to the Commerce Cause, all waters – regardless of size or significance, and importantly, any activities affecting all waters – could be regulated by the federal government until the courts determine the federal reach was unconstitutional. For example, individual property owners could have a small depression in their field or yard that can collect water after a good rain. If this bill passes, those waters become jurisdictional and all activities that could affect that depression or the waters in that depression must be permitted under section 404. Further, homeowners could potentially need national pollutant discharge elimination system permits (NPDES) for storm water running off their property or from the gutters on their roofs.

Impact: Property Rights are the guardian of every other human right

Prof. Steven J. Eagle (George Mason Univ. School of Law), 2008, Case Western Reserve Law Review, " THE ROLE OF THE COMMON LAW IN DEFINING AND PROTECTING THE ENVIRONMENT: A PROLEGOMENON", (italics, brackets and ellipses in original) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103984&rec=1&srcabs=1124487>

The principal drafter of the Constitution, James Madison, declared that “[g]overnment is instituted to protect property of every sort; . . . This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.” In contemporary scholarship, property rights have been termed the “great focus” of the Framers, and the “guardian of every other right.”

NEGATIVE BRIEF: DELEGATED RULE-MAKING – Good

By Vance Trefethen

INHERENCY

1. Congress and the President put limits on agency power

Prof. Scott R. Furlong (Polit. Science and Public & Environmental Affairs, Univ. of Wisconsin-Green Bay) 2007 Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

While delegation of authority provides the executive-branch agencies with the ability to make policy, Congress and the president continually develop mechanisms to limit the discretion that unelected agency officials have in making policy. These mechanisms, such as administrative procedures, not only limit the procedural and substantive decisions made within the agencies, but also provide a way for represented interests to become involved in the administrative process.

2. Ballot box solves: Congress is still accountable, no need to end delegation

Prof. Mathew D. McCubbins PhD (Political Science, University of California, San Diego) 1999, “Abdication or Delegation? - Congress, the Bureaucracy, and the Delegation Dilemma” <http://mccubbins.ucsd.edu/ARTe5.PDF>

Delegation, while problematic in its outcomes, is not equivalent to the abdication of Congress's law making authority. Congress and its members always incur some costs— both personal and institutional—to make delegation to the executive branch accountable to them. Often, there are segments of the society, perhaps even comprising a majority, who dislike the policies implemented. Federal agencies are creatures of their environment and are subject to the limitations of their creation. Questions of policy, then, are more rightly directed at Congress. The ability to change public policy resides in the ballot box, not in the re-invention of the non-delegation doctrine or the dismantling of the federal bureaucracy.

MINOR REPAIR: Use the Hammer.

“Hammer” provisions solve for business lobbying obstructions (if such a thing really exists) and solves agency delay by setting a statutory default regulation that takes effect after a fixed period of time unless the agency comes up with something better. It preserves the advantages of agency action while solving for obstruction and delays. Congress already has the power to do this, so there is no need for any “policy change.”

A. Hammer provisions set defaults that take effect unless an agency regulates

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

Another problem with a statute that compels action but does little to define its content is the risk that deferential judicial review of a challenged regulation will fail to identify and reverse agency decisions that stray from congressional intent. One way for Congress to address these problems is to use "hammer" provisions. These provisions afford an agency a specified time within which to take regulatory action. If the agency does not act within that time, a regulatory result set forth in the statute automatically goes into effect. Alternatively, the statute itself may prescribe a substantive result that remains in effect unless and until the agency takes action, within bounds set forth in the statute, to change the initial statutory landscape.

B. Advantages: Hammers speed up action and take advantage of agency scientific expertise

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

The benefit of using hammer provisions to establish default rules in the absence of agency action is that they reverse the normal incentives of regulated entities (and agencies solicitous of their interests or otherwise hostile to the statutes they administer) to delay in issuing regulations. The threat of having to live with statutory default rules, particularly if they are onerous, can spur both the agency and regulated entities to move expeditiously to meet statutory deadlines. The hammer mechanism also acknowledges that agencies may have greater expertise than legislators and their staffers. If the statutory default rule reflects a misunderstanding of the factual context or policy implications involved, the agency can correct legislative errors by overriding the statutory default rules. As a result, hammers combine some of the benefits (and avoid some of the downsides) of coercive and ministerial statutes. Congress should consider including hammers in climate change legislation.

HARMS

1. Regulatory authority delegated because Congress doesn’t have the scientific expertise to do it

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

The EPA must identify the best available technology for a particular industry and calculate the performance-based results that the identified technology is capable of achieving. Industry is then free to comply by using the identified technology or any other means it prefers that allow more efficient compliance. Many of these matters are probably better left to administrative discretion than congressional direction. The typical explanation for delegating the task of formulating the specifics of regulatory programs to administrative agencies relates to institutional competence. Congress historically has "concluded that an agency staffed by people with expertise in some specialized field would be able to do a better job than Congress in issuing rules of conduct in the agency's area of expertise." There are many issues for which it makes sense to rely on administrative expertise to identify optimal regulatory design questions, particularly in light of the broad range of activities that contribute to climate change and the extensive range of scientific disciplines that are relevant to different aspects of dealing with it.

2. Delegated rule-making authority is not a constitutional violation

Nothing in the Constitution limits the power to delegate authority to others

Supreme Court Justice John Paul Stevens, 27 Feb 2001, ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, <http://www.law.cornell.edu/supct/html/99-1257.ZC1.html>

My view is not only more faithful to normal English usage, but is also fully consistent with the text of the Constitution. In Article I, the Framers vested “All legislative Powers” in the Congress, Art. I., §1, just as in Article II they vested the “executive Power” in the President, Art. II, §1. Those provisions do not purport to limit the authority of either recipient of power to delegate authority to others.

Nothing unconstitutional about agency rulemaking authority

Supreme Court Justice John Paul Stevens, 27 Feb 2001, ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, <http://www.law.cornell.edu/supct/html/99-1257.ZC1.html>

It seems clear that an executive agency’s exercise of rulemaking authority pursuant to a valid delegation from Congress is “legislative.” As long as the delegation provides a sufficiently intelligible principle, there is nothing inherently unconstitutional about it.

Not some new thing: Delegation has been going on since the very beginning of our nation

Prof. Mathew D. McCubbins PhD (Political Science, University of California, San Diego) 1999, “Abdication or Delegation? – Congress, the Bureaucracy, and the Delegation Dilemma” <http://mccubbins.ucsd.edu/ARTe5.PDF>

Since the establishment of the federal government, a large number and wide variety of executive branch organizations have been created to implement and execute laws. These range from independent commissions, to agencies, to cabinet departments, to national institutes; each possesses its own rules and routines, and each is responsible for a unique set of policies. Moreover, from the very beginning of the Republic, Congress has relied upon executive branch officials to fill in the details of legislation at their discretion.

3. No business lobby dominance: Businesses aren’t unified on policy issues + Other interest groups have influence too

Prof Michael E. Kraft (Political Science and Public & Environmental Affairs and Environmental Studies, Univ. of Wisconsin-Green Bay) and Prof. Sheldon Kamieniecki (Dean of the Division of Social Sciences, Univ. of Calif.-Santa Cruz) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, [*http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book\_result&ct=result&resnum=4*](http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4)

According to Berry (1999,6), "most of those who have studied interest groups have concluded that there is a persistent dominance by business." Yet he finds that this was not the case during the three sessions of Congress he studied. He correctly observes that business is not unified on every policy issue and that since the 1960s the general interest group population has become larger, broader, more diverse, and increasingly influential. Indeed, Smith (2000) reports that business has been unified only on a relatively small number of bills since the 1950s.

SOLVENCY

1. Rapidly changing research leads to policy-making delay (Impact: problems don’t get addressed)

Better to let agencies use flexible response as new information emerges

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

The pace of scientific discoveries and analyses concerning the causes of, effects of, and techniques for addressing climate change has been breathtaking in recent years. As one federal district court explained, recent climate change research has revealed "the rapidity of evolution of measurable changes in climate instability and evince[d] a growing consensus that human-caused [GHG] emissions must be curtailed more rather than less and sooner rather than later." The rapid advances in scientific knowledge about climate change and how to deal with it have implications for the design of environmental regulatory programs. Bounded rationality ensures that environmental policymakers will make mistakes because key relevant information is not available to them, they do not yet understand its implications, or the circumstances that initially justified a particular regulatory approach have changed. Relying on uncertainty as a reason to avoid making mistaken decisions is a prescription for endless delay. But regulation should be crafted to allow agencies to shift tactics if the initial rules produce results that are inconsistent with the purposes of regulation, unnecessarily inefficient, or unfair, provided any new approach conforms to fundamental legislative objectives.

Scientific undertainty justifies delegation of regulatory discretion: Policymakers lack key information they need

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

The pervasiveness of scientific uncertainty, which is perhaps the single most defining characteristic of environmental law, provides even stronger support for the delegation of regulatory discretion. Environmental policymakers (including legislators and agency officials) often operate within the rubric of "bounded rationality," as their efforts to understand the implications of key choices are impaired by the unavailability of key information.

2. Complexity: Congress can’t specify every detail – must leave discretion to agencies.

Prof. Michael Uhlmann (Political Science, Claremont Graduate Univ.), 2005, HERITAGE GUIDE TO THE CONSTITUTION, <http://books.google.com/books?id=-_8N3UeXeesC&pg=PA230&lpg=PA230&dq=Congress+%2B+delegate+%2B+agencies+%2B+complex&source=bl&ots=kYVxYx0EVO&sig=q6xwmAdB1pjSpBNKXS9cmZrGalo&hl=en&ei=WA9GStm5Gd2wtgfOjaWYAQ&sa=X&oi=book_result&ct=result&resnum=4>

In a complex society, Congress cannot specify every detail of legislative policy. Room must be left for the exercise of discretionary judgment, which means that legislative delegation is inevitable if Congress decides to regulate many subjects extensively. The separation-of-powers principle, however, necessarily limits the extent to which Congress may delegate its legislative authority.

DISADVANTAGES

1. Environmental goal failure

A. Link: Congress waters down legislation under political pressure – environmental goals fail

Prof. Gary C. Bryner (Political Science, Brigham Young Univ.) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Each time a sweeping new environmental law has been proposed, business has aggressively lobbied against the measure, arguing it will lead to a loss of jobs, increases in prices, and other economic disruptions. Congress typically does not retreat from the ambitious goals set in these laws. Rather it responds to business demands in other ways. It adjusts the details of legislation, such as extending deadlines for compliance, providing for business influence in the administrative rulemaking process, and authorizing limited enforcement resources to agencies, which minimizes disruption of business operations. The paradox results from conflicting demands on members of Congress. They are caught between strong public support for ambitious goals that promise to secure public health and environmental quality and strong business opposition to provisions that might harm economic growth and employment. It is no surprise that the policies resulting from such cross-pressures fall short of achieving their goals.

B. Impact: More pollution

Prof. Gary C. Bryner (Political Science, Brigham Young Univ.) 2007, Business and Environmental Policy - Corporate Interests in the American Political System, <http://books.google.com/books?id=H42pGSh8IIYC&pg=PA128&lpg=PA128&dq=delegation+congress+power+environment&source=bl&ots=Ck8Ob3XuOu&sig=1cwgX2DoYRJ4PindVD7UfsJF-YA&hl=en&ei=rfZDSoRSx8G3B5WWuL0C&sa=X&oi=book_result&ct=result&resnum=4>

Utility industry officials were successful in convincing members of Congress that voters' utility bills would increase if new plants were forced to clean up, and congressional fears of being blamed for high energy prices kept these old, dirty power plants operating long after they could have been replaced by cleaner, more efficient plants.

2. Slower response to environmental problems: Administrative process is faster responding to new information

**Prof. Robert L. Glicksman (Law, Univ. of Kansas), 2007 NORTHWESTERN UNIV. LAW REVIEW,** Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy, [http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn\*down](http://www.law.northwestern.edu/lawreview/colloquy/2008/5/#fn*down)

It is no secret that the legislative process typically works slowly, sometimes excruciatingly so. The administrative process is also often cumbersome. But the administrative process is typically more capable of responding expeditiously to new information than the legislative process is. This is particularly true if the authorizing statute requires certain risk management techniques and prohibits others, such as cost-benefit analysis.

NEGATIVE BRIEF: ENDANGERED SPECIES ACT

By Vance Trefethen

HARMS

1. ESA successful: 99% of listed species are still with us

Andrea Thompson (journalist), 28 Aug 2008, Changes to Endangered Species Act Called Bad Science, US NEWS & WORLD REPORT, (brackets added; parentheses in original) [www.usnews.com/articles/science/environment/2008/08/28/changes-to-endangered-species-act-called-bad.html](http://www.usnews.com/articles/science/environment/2008/08/28/changes-to-endangered-species-act-called-bad.html)

Some of the act's major successes at recovering populations of endangered animals include the bald eagle, grizzly bear, gray wolf, and American alligator. (Species covered under the act don't just include familiar charismatic birds and mammals, but also invertebrates and plants.) Of the species that have been placed on the list, 99 percent are still with us, [campaign manager with the Natural Resources Defense Council Melissa] Waage said.

1300 Biologists say: ESA saves species from extinction

Union of Concerned Scientists quoting letter signed by 1300 biologists, Apr 2009, A Letter from Biologists on Strengthening Science in the Endangered Species Act, [www.ucsusa.org/scientific\_integrity/solutions/big\_picture\_solutions/2009-esa-scientists-letter.html](http://www.ucsusa.org/scientific_integrity/solutions/big_picture_solutions/2009-esa-scientists-letter.html)

The Endangered Species Act is one of our most important environmental laws because of its reliance on robust scientific analysis. According to a May 30, 2005 article in Science, less than one percent of listed species have gone extinct since 1973, while 10 percent of candidate species still waiting to be listed have suffered that fate. A more recent comprehensive analysis demonstrates that listed species tended toward recovery more than not and the more thoroughly the Endangered Species Act was applied the better they did. In addition to the hundreds of species that the Endangered Species Act has protected from extinction, listing has contributed to population increases or the stabilization of populations for at least 35 percent of listed species, and perhaps significantly more, as well as the recovery of such signature species as the peregrine falcon.

2. Center for Biological Diversity Study: The longer a species is listed under ESA, the more likely it is to recover

Maryann Mott (journalist) 18 Apr 2005, [National Geographic News](http://news.nationalgeographic.com/), "U.S. Endangered Species Act Works, Study Finds," (brackets in original) <http://news.nationalgeographic.com/news/2005/04/0418_050418_endangered.html>

The longer an animal or plant species is protected under the U.S. Endangered Species Act, the more likely it is to recover, a new study says. The finding contradicts recent criticism that the act has returned too few species to full health. Researchers Martin Taylor, Kieran Suckling, and Jeffrey Rachlinski compared population trends of 1,095 listed species with three related factors: how long the species were listed, whether their habitat had been protected, and whether specific recovery plans were in place. Overall, the study found that the Endangered Species Act (ESA) is effective, said Suckling, co-author of the study and policy director of the Center for Biological Diversity in Tucson, Arizona. The report is published in the April issue of the journal *BioScience.* "We were able to identify three aspects that contribute to the act's success: recovery plans, critical habitat [protection], and the listing itself," he said. "Each of those has an independent contribution, and therefore we need to do more of those things."

3. Recovery of “only” 15 animals does not prove failure of ESA

Maryann Mott (journalist) 18 Apr 2005, [National Geographic News](http://news.nationalgeographic.com/), "U.S. Endangered Species Act Works, Study Finds," (brackets added) <http://news.nationalgeographic.com/news/2005/04/0418_050418_endangered.html>

Not everyone agrees that the ESA successfully preserves and protects wildlife. Critics argue that recovery of only 15 animals in 32 years indicates failure. [ESA researcher Kieran] Suckling counters that the statistic is not a good measure of the act's effectiveness. "That would be like walking into an emergency room and saying, 'Look, everyone is sick. This hospital must be a failure.'"

Claims of 1% success rate for ESA are illogical and ignore big gains short of full recovery

Kieran Suckling, (Policy Director, Center for Biological Diversity; a nonprofit conservation organization with more than 18,000 members dedicated to the protection of endangered species and their habitat through science, policy, education and law) Feb 2006, Measuring the Success of the Endangered Species Act: Recovery Trends in the Northeastern United States, (parentheses in original) [www.esasuccess.org/reports/northeast/ne\_species/study/Measuring-the-Success-of-the-ESA.pdf](http://www.esasuccess.org/reports/northeast/ne_species/study/Measuring-the-Success-of-the-ESA.pdf)

Critics of endangered species conservation have seized on the fact that only 14 of the 1,350 species have been removed from the endangered species list due to recovery. This is variously described as a one or zero percent success rate. While full recovery and delisting are obviously important, it is illogical to hold them up as a primary, or even a remotely adequate, measure of the Act’s success. Such a rationale declares all improvement short of complete recovery a failure. Under this measure, the spectacular increase in bald eagle numbers (417 pairs in the Lower 48 in 1963 grew to 7,280 in 2003; 21 in the Northeast in 1967 grew to 562 in 2005) would be declared a failure, as would the increases in the shortnose sturgeon (12,669 Hudson River spawning fish in 1979 grew to 56,708 in 1994-1996) and the Atlantic piping plover (550 pairs in 1986 grew to 1,423 in 2004).

4. Critics miss the important question: Are species increasing or decreasing under ESA?

Kieran Suckling, (Policy Director, Center for Biological Diversity; a nonprofit conservation organization with more than 18,000 members dedicated to the protection of endangered species and their habitat through science, policy, education and law) Feb 2006, Measuring the Success of the Endangered Species Act: Recovery Trends in the Northeastern United States, [www.esasuccess.org/reports/northeast/ne\_species/study/Measuring-the-Success-of-the-ESA.pdf](http://www.esasuccess.org/reports/northeast/ne_species/study/Measuring-the-Success-of-the-ESA.pdf)

Opinions abound on whether and to what degree the Act has accomplished its goals. Most are politically driven, some are anecdotal, and a few attempt to wring long-term implications from short-term data. None, however, ask or answer the questions most fundamental to measuring the Act’s effectiveness: Are species increasing or decreasing in number since being placed on the endangered species list? Are they progressing toward recovery in a timeline consistent with their federal recovery plans? In this report we present population trend data, recovery plan reviews, and narrative accounts for all endangered species that historically or currently occur in eight northeastern states: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey. We find that the Endangered Species Act has been remarkably successful in the region.

5. Key measurements show ESA successful

Kieran Suckling, (Policy Director, Center for Biological Diversity; a nonprofit conservation organization with more than 18,000 members dedicated to the protection of endangered species and their habitat through science, policy, education and law) Feb 2006, Measuring the Success of the Endangered Species Act: Recovery Trends in the Northeastern United States, <http://www.esasuccess.org/reports/northeast/ne_species/study/Measuring-the-Success-of-the-ESA.pdf>

**Measures of Success**:

● Preventing extinction: 100% successful

● Stabilizing and moving species toward recovery: 93% successful

● Meeting recovery timelines: approximately 82% successful

**Time Needed for Recovery:**

● On average, federal recovery plans expected recovery to take 42 years, while species have been listed for an average of only 24 years.

● Only 11 federal recovery plans expected recovery by 2005. In practice, nine species were downlisted, under review, formally proposed, or completely delisted due to achieving recovery by 2005.

6. “Unknown” status doesn’t mean a species is failing

Kieran Suckling, (Policy Director, Center for Biological Diversity; a nonprofit conservation organization with more than 18,000 members dedicated to the protection of endangered species and their habitat through science, policy, education and law) Feb 2006, Measuring the Success of the Endangered Species Act: Recovery Trends in the Northeastern United States, <http://www.esasuccess.org/reports/northeast/ne_species/study/Measuring-the-Success-of-the-ESA.pdf>

Nine species (=17%) were scored as “unknown” due to lack of adequate data. It is important to note that “unknown” is a measure of survey adequacy and effort, not conservation status. Some critics of the Endangered Species Act have misleadingly combined large unknown scores with small declining scores in order to create the false impression that large numbers of species have “negative” trends. There is no indication that the “unknown” species in our data set are more imperiled or doing more poorly than those with known scores. Indeed, several of them have fairly large populations and are likely unknown because wildlife agencies are directing their resources toward more precarious species.

7. ESA doesn’t distort markets, it corrects them

Prof. Kirsten Sheeran PhD (Associate Professor of Economics at St. Mary's College of Maryland) 21 Aug 2008, "Endangered Species Act Redux" <http://www.commondreams.org/archive/2008/08/21>

The Endangered Species Act is unfortunately just one example of increasing pressure to change our nation's most significant environmental laws in ways that benefit developers and property owners at the expense of the public at large. Increasingly, the mainstream environmental economics perspective has been labeled as environmental extremism. Its policy recommendations are dismissed as market distorting, rather than what they are - market correcting.

Market failure is an appropriate subject of congressional regulation

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.yalelawjournal.org/pdf/116-2/Lee.pdf>

In its concern with preserving fair competition and nationwide markets, “the Supreme Court’s dormant commerce clause jurisprudence might be said to embrace a pro-competition stance, consistent with the ideology and goals of the neoclassical economics framework, in which law sees its primary role as intervening to correct for market failure.” Thus, while dormant Commerce Clause cases do not speak directly to the constitutional limits on congressional powers, they do suggest that market failures are an appropriate subject of congressional regulation. In sum, the idea that Congress can regulate certain market failures has been a background principle in cases decided during all eras of Commerce Clause jurisprudence.

ESA regulations are economically and constitutionally justifiable

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.yalelawjournal.org/pdf/116-2/Lee.pdf>

While the comprehensive scheme approach helps identify the relevant activity, a court would still need to determine whether there is a rational basis for finding that this class of activity substantially affects interstate commerce. This is the point at which a court would undertake the economic inquiry and at which the market failure analysis becomes relevant. Under the narrow market failure approach, a court should find that a statute regulates economic activity if the statute corrects a market failure by regulating the behavior of commercial actors in the marketplace. The ESA would survive this inquiry. Congress enacted the ESA in response to findings that the extinction of particular species was due to economic growth without regard to conservation. The market failure described by these findings is the divergence between the social costs and individual costs of economic growth—Congress found that commercial actors placed too little value on endangered species. This market failure can be explained as a problem of externalities. A developer whose activity eliminates a particular species receives all of the profit of the development but bears only a fraction of the social cost of eliminating the species. The remaining cost is an externality that is imposed on society at large. The ESA internalizes this externality by mandating that commercial actors increase the value that they place on listed species. Thus, the precise economic activity regulated by the ESA is the cost-benefit analysis in which developers assign to species loss a lower value than that assigned to it by society at large.

ESA is an economic regulation to correct market failure

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.yalelawjournal.org/pdf/116-2/Lee.pdf>

If commercial actors were prevented from taking endangered species but private actors were not, there would be immense pressure for individual landowners to “shoot, shovel and shut up,” in the hope that this would make their land more attractive to developers. In order to make regulation of governmental and commercial actors effective, Congress might well have thought it needed to regulate more broadly to prevent noncommercial species takes from undermining the regulatory goal. As a historical matter, the legislative history of the ESA shows that the need for comprehensive legislation was in fact one of the key reasons that Congress enacted the statute. Ultimately, then, the market failure analysis supports upholding the ESA as constitutionally permissible Commerce Clause legislation. This approach explains how the ESA is economic regulation, and, in combination with the comprehensive scheme analysis applied in *Raich*, it supports upholding the statute as applied to both commercial and noncommercial actors.

8. Evidence for “shoot, shovel and shut up” is mostly anecdotal

(Anecdotal = based on a few stories people have heard but not actual measurements or studies)

Prof. Kirsten Sheeran PhD (Associate Professor of Economics at St. Mary's College of Maryland) 21 Aug 2008, "Endangered Species Act Redux" [www.commondreams.org/archive/2008/08/21](http://www.commondreams.org/archive/2008/08/21)

Upon discovering endangered wildlife on their property, landowners allegedly adopt a "shoot, shovel, and shut-up" strategy since the penalties for damaging that species' habitat once it is discovered are so severe. While evidence for this strategy appears to be mostly anecdotal, its revelatory of the antagonism between private property owners and government wildlife agencies.

9. ESA not the cause of firefighters’ deaths at Okanogan National Forest (the 30 Mile Fire)

Erika Trautman (journalist), 22 Oct 2001, HIGH COUNTRY NEWS, “ESA didn’t kill firefighters,” <http://www.hcn.org/issues/213/10801>

As flames sped through Okanogan National Forest on July 10, ground dispatchers delayed a helicopter water-drop because they were unsure whether siphoning water from the Chewuch River would violate the Endangered Species Act. That afternoon, four firefighters died (HCN, 7/30/01: Tragedy re-ignites wildfire debate). But an investigative report, released on Sept. 26 by the Forest Service, says the delay was a minor, "influencing" factor in the tragedy. The report found poor management decisions, inadequate safety considerations, failure to deploy fire-protection shelters in appropriate places and environmental conditions to be more important, "causal" factors.

“30 Mile Fire” deaths were caused by mechanical problems and poor procedures

US Forest Service, 16 Oct 2001, Thirtymile Fire Information, Accident Investigation Factual Report as amended 10/16/2001, <http://www.fs.fed.us/fire/safety/investigations/30mile/30mile_report-C.pdf>

In spite of the ready availability of water, relatively little water was applied to the fire during the initial attack phase. This was largely due to operational problems with pumps and hoses, as well as delays in availability of a Type III helicopter.

Significant People Findings

* The fatalities and injuries all occurred during fire shelter deployment. Failure to adequately anticipate the severity and timing of the burnover, and failure to utilize the best location and proper deployment techniques contributed to the fatalities and injuries.
* Leadership, management, and command and control were all ineffective due to a variety of factors, such as the lack of communication and miscommunication, fatigue, lack of situational awareness, indecisiveness, and confusion about who was in control.
* Two civilians were involved in the entrapment due to a failure to properly close a potentially hazardous area.

INHERENCY

1. Safe Harbor Agreements save species and protect landowners from regulation

Land Trust Alliance (organization dedicated to the effectiveness and sustainability of the nation's land trusts and their use of conservation easements; has approximately 1.5 million people as supporters and members of land trusts) 5 Mar 2009, “Safe Harbor: Good for Spotted Owls, Good for Landowners” <http://www.landtrustalliance.org/community/west/conservation-headlines/safe-harbor-good-for-spotted-owls-good-for>

Safe Harbor Agreements are used to promote conservation of endangered and threatened species on privately owned land. They encourage landowners to foster wildlife habitat on their property without fear that doing so might expose them to increased restriction on future use of their land under the terms of the federal Endangered Species Act. “This Safe Harbor Agreement is an innovative example of how a private landowner and the U.S. Fish and Wildlife Service can work together to bring about meaningful and lasting conservation changes,” says Ren Lohoefener, Director of the USFWS Pacific Southwest Region. “This SHA with the Pacific Forest Trust can be a model for other landowners and timber companies in Northern California. Under this agreement, timber can continue to be harvested, but it will be done so in a way that will ultimately grow more habitat for Northern Spotted Owls.”

How “Safe Harbor” works: Rewards landowners who do the right things

Environmental Defense Fund, posted 9 Jan 2006 updated 16 May 2008, “Safe Harbor,” [www.environmentaldefence.org/page.cfm?tagID=87](http://www.environmentaldefence.org/page.cfm?tagID=87)

Thus if landowners were simply to restore wildlife habitats on their property, and those habitats became homes to endangered animals, they might find themselves in a predicament. A landowner might, for example, have to apply for a permit to cut the stand of trees he planted, to drain the wetland he created, or to convert the prairie he restored into productive cropland. Rewarding landowners who do the right things A Safe Harbor agreement avoids dilemmas like these. It assures landowners that if they do what they have agreed to do (e.g., plant the stand of trees, create the wetland, or restore the prairie), they won't incur any new restrictions on the use of the land if their actions result in endangered species taking up residence. That is, they are free to develop that land, even if endangered species have shown up there in the meantime.

Safe Harbor may not solve all property-rights problems, but it does solve the important ones

Environmental Defense Fund, posted 9 Jan 2006 updated 16 May 2008, “Safe Harbor,” [www.environmentaldefence.org/page.cfm?tagID=87](http://www.environmentaldefence.org/page.cfm?tagID=87)

All sorts of landowners are taking part in these easy-to-negotiate agreements, including farmers, forest landowners, resort owners, and even residential and corporate landowners. Together, they are making hundreds of thousands of acres of privately owned land available to America's disappearing wildlife and are doing so without new government regulations. While Safe Harbor agreements are not appropriate in every situation nor will they solve every problem faced by landowners whose property is home to endangered species. But they can solve some important ones and, in doing so, assure landowners that their continued stewardship won't lead to land-use restrictions.

2. CCAA: Candidate Conservation Agreements with Assurances

Prof. Federico Cheever (Univ of Denver Sturm College of Law) and Ward Scott (recent graduate of Univ. of Denver College of Law) Jan 2009, AGENDA FOR A SUSTAINABLE AMERICA, Environmental Law Institute, <http://books.google.com/books?id=8VPTfncyAs8C&pg=PA37&lpg=PA37&dq=convention+%2B+biodiversity+%2B+U.S.+%2B+should+ratify+%2B+Dernbach+%2B+3007+OR+2008+OR+2009&source=bl&ots=tzsyUIF9iQ&sig=U0BJCEwM7nFZNVwDjRyf_HAGSd4&hl=en&ei=Qh9jSvWPCoGHtgeRjoH5Dw&sa=X&oi=book_result&ct=result&resnum=5>

A CCAA applies to species that may be candidates for protection under the ESA and attempts to encourage private landowners to mitigate “threats to the covered species so as to nullify the need to list them as threatened or endangered under the Act.” Owners agree to protect and enhance existing populations and habitats of candidate species; in return, the government agrees not to increase the level of ESA regulation on the property for the duration of the agreement, including circumstances where the species may become listed.

3. The God Squad can exempt projects from ESA if economic benefits outweigh the harm of species loss

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.accessmylibrary.com/coms2/summary_0286-29433923_ITM>

First, 1978 amendments to section 7 created the Endangered Species Committee, a "God Squad" with the power to exempt projects from the ESA when the economic benefits of the project clearly outweigh the harm of the species loss. Second, Congress changed section 4 to allow the Secretary to consider economic impact when deciding whether to designate an area as a critical habitat. Thus, while still requiring private and public actors to recognize the social value of preserving endangered species, the ESA now contains mechanisms for weighing this social value against more immediate economic concerns.

4. Dept. of the Interior issued new ESA response regulations after the Okanogan/30Mile fire

Erika Trautman (journalist), 22 Oct 2001, HIGH COUNTRY NEWS, “ESA didn’t kill firefighters,” <http://www.hcn.org/issues/213/10801> (brackets added)

After the [Okanogan National Forest] fire, the Department of the Interior issued a memorandum clarifying wildfire policy under the Endangered Species Act: "No constraints for protection of endangered species or their habitat will be considered if they place firefighters in danger. Firefighter safety comes first on every fire, every time."

5. Resolution of property use compensation is best left to courts

Suzanne O’Neill (President, Colorado Wildlife Federation), 5 Nov 2005, “Endangered Species Act,” <http://coloradowildlife.org/hot-topics/Endangered-Species-Act.html> (brackets added)

**Taxpayers Subsidy for Forgone Development Profits** The bill would require the USFWS [US Fish & Wildlife Service] and NMFS [National Marine Fisheries Service] either to abandon enforcement of the ESA or to compensate developers for any portion of their proposed development that the agency determines would violate the ESA. In other words, the USFWS or NMFS would have to pay for any private land takings, even if the majority of a project could be built and is highly profitable. The resolution of a taking of private lands is best left to the courts.

SOLVENCY

1. Privatized conservation efforts unlikely to work on large scale

Prof. Kirsten Sheeran PhD (Associate Professor of Economics at St. Mary's College of Maryland) 21 Aug 2008, "Endangered Species Act Redux" [www.commondreams.org/archive/2008/08/21](http://www.commondreams.org/archive/2008/08/21) (brackets added; parentheses in original)

The opposition [to reintroduction of endangered wolves] posed a serious obstacle to re-introduction efforts, until the Defenders of Wildlife (DOW), a non-profit environmental organization, established a private fund to compensate ranchers for any documented loss of their livestock to wolves. Ranchers reluctantly agreed to this program, and the howl of wolves can once again be heard throughout Yellowstone valley. Free market environmentalists have applauded this strategy as one that successfully merged the interests of both ranchers and environmentalists. Indeed, it is hard to criticize the success of the re-introduction efforts and the positive role monetary incentives may have played in removing political opposition to the program. Free market environmentalists would like us to believe that the program can be replicated in other areas where large predator re-introductions have been proposed (e.g. grizzly bears in Washington State). But it remains unlikely that this program can be replicated on a scale large enough to satisfy our needs and demands for wildlife protection.

2. Excessive cost – taxpayers can’t buy all the property that needs to be protected

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

More generally, the staggering costs of many recent acquisitions indicate the limits of the acquisition approach: recent purchases in areas like Redwoods National Park or the Headwaters forest have run into the hundreds of millions of dollars for relatively modest parcels, at rates greater than $70,000 *per acre*. While not every habitat will achieve the value of old growth redwoods, it is abundantly clear that however appealing the notion, we cannot buy it all (Fairfax et al. 2005).

3. The “Holdout Problem” – some landowners won’t cooperate

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

Acquisition policies frequently confront the “holdout problem”: private landowners who refuse to sell their properties, even after many others have sold. This is problematic because hold outs break up contiguous habitat areas and migration corridors (Parkhurst and Shogren 2005). In another example of perverse incentives, holdouts also free ride on larger conservation efforts that actually increase the value of their own properties (Elmendorf 2003). As the Fish and the Wildlife Service makes strides toward returning a conservation area to nature, remaining private landowners benefit from living in a pristine nature conserve that may decrease the incentive for them to leave. Even if USFWS could afford to buy it all, in other words, not all property is likely to be for sale.

DISADVANTAGES

1. Taxpayer rip-offs: Land developers will generate dubious compensation claims

Suzanne O’Neill (President, Colorado Wildlife Federation), 5 Nov 2005, “Endangered Species Act,” <http://coloradowildlife.org/hot-topics/Endangered-Species-Act.html>

We all must be mindful that in this current proposal it would be taxpayers' money that would pay a developer to refrain from harming a listed species. If this requirement remains in the legislation, it is almost certain that some unscrupulous developer will propose a project that he knows cannot gain ESA clearance merely to obtain taxpayer financing for his speculative plan.

2. Environmental harm

Link: Cross-apply Harm #7 and Solvency #1 – ESA corrects market failure and markets won’t save endangered species

Link: Reliance on free markets leads to disastrous environmental outcomes

Mollie Lee, 1 Nov 2006, YALE LAW JOURNAL, “Environmental economics: a market failure approach to the commerce clause” <http://www.yalelawjournal.org/pdf/116-2/Lee.pdf>

Instead of reinventing the wheel, courts should draw on the rich literature of environmental economics, which explains how rational economic decision-making can lead to disastrous environmental outcomes. From an economic perspective, environmental damage can often be explained as the inefficient use of environmental goods due to market failure.

Brink: Biodiversity loss is increasing and we must act now to stave it off

Impact: Conservation of species is essential for human survival

Paul Eccleston (journalist), 12 Sept 2007, “Red List of endangered species - wildlife disappearing as never before,” THE TELEGRAPH (British newspaper), [www.telegraph.co.uk/earth/wildlife/3306508/Red-List-of-endangered-species---wildlife-disappearing-as-never-before.html](http://www.telegraph.co.uk/earth/wildlife/3306508/Red-List-of-endangered-species---wildlife-disappearing-as-never-before.html) (brackets added)

[Julia Marton-Lefèvre, Director General of the IUCN/World Conservation Union said:] "The rate of biodiversity loss is increasing and we need to act now to significantly reduce it and stave off this global extinction crisis. This can be done, but only with a concerted effort by all levels of society." Jane Smart, Head of IUCN's Species Programme, said: "We need to know the precise status of species in order to take the appropriate action. The Red List does this by measuring the overall status of biodiversity, the rate at which it is being lost and the causes of decline. "Our lives are inextricably linked with biodiversity and ultimately its protection is essential for our very survival. As the world begins to respond to the current crisis of biodiversity loss, the information from the Red List is needed to design and implement effective conservation strategies - for the benefit of people and nature." Dr Mark Wright, chief scientist at WWF-UK, said: "We're at code red. The plight of the world's species is a mirror on the state of the planet. Species are under enormous pressure as we systematically destroy their habitat or over-exploit them for our increasingly demanding lifestyles. We urgently need to reverse this trend and start living within the planet's natural resources - not just for the well-being of threatened species but also for our own."

3. Costly and unjust: Paying landowners to do what they should be doing anyway

Leigh Raymond and Andrea Olive (Purdue Univ. Dept of Political Science). June 2006, Protecting Biodiversity on Private Property: The Role of Landowner Norms and Beliefs, <http://www.cpsa-acsp.ca/papers-2006/Raymond-Olive.pdf>

Nor are incentives without their own drawbacks. They can be costly and sometimes unnecessary. Incentives may be especially problematic when framed as “compensation” for landowners, thereby allowing them to “externalize the problem and deny that they have any responsibility for the conservation of biodiversity” (Farrier 1995). Essentially, in the worst case incentives may pay landowners to do what they should be doing anyway -- or what they would already do for free (Raymond and Fairfax 2002). Also, there is the concern that incentives will gradually become the norm, leading landowners to expect to be compensated and/or rewarded for any conservation effort they might make on private land.

NEGATIVE BRIEF: FIFTH AMENDMENT COMPENSATION

By Vance Trefethen

HARMS/SIGNIFICANCE

1. Flawed assumptions: Liberty is not the only value – conservation, ecosystem health and other values must be considered. “Takings” compensation claims are failing because the fundamental assumptions are flawed

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Libertarians view property value as landowner created, whereas that value is usually due more to the character of the neighborhood, surrounding improvements, the health of the land itself, and tax policy. For libertarians, liberty is the paramount value, but there are other competing and cherished values like conservation and ecosystem health. Libertarian property undermines conservation and ecosystems by fragmenting landscapes, increasing transboundary problems, and inhibiting protection of resources like wildlife that require landscape-scale coordination. Libertarian property’s equation of property with development rights also ignores the fact that development often interferes with neighbors’ quiet enjoyment rights. The flawed assumptions underlying libertarian property explain why it has never been broadly accepted by the courts. Consequently, takings claimants have seldom succeeded in obtaining judicially ordered compensation due to alleged overregulation.

Property rights are not absolute: Created by the state and they evolve over time

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Libertarian property has been out of the mainstream because it is based on several flawed assumptions. Libertarians see property in static terms, with fixed boundaries and clearly defined rights. But, in fact, property rights are created and evolve over time to meet a society’s felt necessities; one’s development rights are less dependent on landowner boundaries than the character of the neighborhood. For libertarians, property rights are individualistic bulwarks against the Leviathan state; some even maintain that property rights are pre-political in nature. Yet property rights are created by the state, to serve community ends, and depend upon state enforcement.

No consensus on what property rights are

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

Given the importance of property rights in economics, it might be expected that there would be some consensus in economic theory about what property rights are. But no such consensus exists [Cole and Grossman 2002, p. 317].

2. “Development rights” are not property rights and are not in the Constitution

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

It is worth pausing to consider why libertarian property would appeal to the voters of the early twenty-first century. One reason may be that its message is deceptively simple: to allegedly restore individual property rights, which the federal and most state constitutions protect against “takings” for public use without payment of “just compensation.” What is meant by property rights, however, is hardly ever explained. There seems to be a subliminal libertarian message that property rights equate to development rights, and that regulation—or at least some kinds of regulation—limiting a landowner’s right to develop is impermissible without constitutionally required compensation. This version of libertarian thought was not part of the intent of the either the U.S. or Oregon constitutional framers. Moreover, the Supreme Court found no regulatory takings until 1922, and both that Court and the Oregon Supreme Court have largely rejected regulatory takings allegations ever since.

“Development rights” as property rights have never been accepted in Anglo-American law

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Moreover, its premise that development rights are fundamental property rights has never been accepted as dominant in Anglo-American law. Development rights have always been cabined by the maxim of *sic utere tuo ut non laedas*—the “do no harm” rule. As Chief Justice Lemuel Shaw of the Supreme Judicial Court of Massachusetts memorably phrased it over a century-and-a-half ago: We think it is a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth…is derived directly or indirectly

3. Nothing "taken": Property owners knew about the environmental restrictions when they bought the property

Steven T. Miano (Partner and Co-Chair of the Environmental Practice Group at WolfBlock LLP law firm, Philadelphia; over 17 years experience in environmental law) 2004, American Bar Association, THE CLEAN WATER ACT HANDBOOK, [http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O\_twe0m8T5Bg&sa=X&oi=book\_result&ct=result&resnum=8#PPT157,M1](http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O_twe0m8T5Bg&sa=X&oi=book_re)

In *Good v. United States*, the property owner sought to develop property containing wetlands, and the court concluded that the property owner's expectations that he would be able to develop the property were not reasonable in light of wetlands protection constraints and Endangered Species Act concerns. *Good* may therefore stand for the proposition that if a property owner is aware of restrictive regulations prior to purchase and during investment in the property, there is no reasonable investment-based expectation and therefore no compensable taking. In *Forest Properties v. United States*, the court found that the permit denial did not significantly interefere with investment-backed expectations, in part because the property owner still was able to profitably develop a majority of the 62-acre property. In *Broadwater Farms Joint Venture v. United States*, the court found no taking where the developer was precluded from developing 12 of 27 lots because the developer's investment-backed expectations were not reasonable where it had both constructive and actual knowledge of wetlands laws at the time it purchased the property.

4. No Constitutional rights lost: Regulation is not "taking" of property

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco) , 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The text of the Takings Clause is quite narrow. By its terms, the Clause applies only when property is "taken" by the government. Although the Constitution does not define the term "taken," it most naturally refers to a physical appropriation (or expropriation) of property. In other words, the text of the Takings Clause does not readily suggest application to mere restrictions on the use of property. If you tell a child not to play with a ball in the house, you have regulated the use of the ball, but you have not taken the ball away.

No Constitutional rights lost: The Founders only intended physical "taking" -- not regulation -- to be compensated

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco) , 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The Framers' original understanding of the Takings Clause was consistent with its narrow plain meaning. Even Justice Scalia, generally regarded as sympathetic to takings claims, recognizes that the ratifying generation and several succeeding generations read the Clause as applying only to actual dispossessions of property.

5. Nothing “taken”: Property rights don’t include the right to create a nuisance

Professor Bill Funk (Lewis & Clark Law School in Portland, Oregon) 2005, “The Takings Clause of the Fifth Amendment” Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

An initial question is whether the regulation interferes with a legitimate property right or whether the regulation merely reflects a "background understanding" of the limits of one's property right. For example, because one's property right does not include the right to interfere unreasonably with another person's property right - the definition of a private nuisance - a regulation that merely codifies that background understanding cannot go too far. The regulation deprives the person of nothing to which he has a right.

6. Conflict of property rights: Water regulations are a legitimate protection of public property

Prof. Daniel H. Cole (Indiana Univ. Law School), 2002, POLLUTION AND PROPERTY, [http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV\_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo\_TbDA&sa=X&oi=book\_result&ct=result&resnum=6#PPA171,M1](http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo_TbDA&sa=X&oi=book_result&ct=result&resnum)

Among the more interesting features of the *Just* ruling is Justice Hallows's response to Justice Holmes's famous assertion in *Pennsylvania Coal*, that "a strong desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the damage": 'This observation refers to the improvement of the public condition, the securing of a benefit not presently enjoyed and to which the public is not entitled. The shore land zoning ordinance preserves nature, the environment, and natural resources as they were created and to which the people have a present right.'

7. Defending public property: In most cases no compensation should be required

Prof. Daniel H. Cole (Indiana Univ. Law School), 2002, POLLUTION AND PROPERTY, [http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV\_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo\_TbDA&sa=X&oi=book\_result&ct=result&resnum=6#PPA171,M1](http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo_TbDA&sa=X&oi=book_result&ct=result&resnum)

Takings are conventionally understood as government-imposed restrictions on preexisting private property rights. But this is myopic. A cursory examination of actual takings cases reveals that disputes arise when existing public and private property rights collide. In many, if not most, takings cases, the government is not just imposing on private property rights but attempting to vindicate public property rights, for which no compensation should be required.

8. Many of the compensation claims are weak – granting compensation for any regulation is too broad

Professor Bill Funk (Lewis & Clark Law School in Portland, Oregon) 2005, “The Takings Clause of the Fifth Amendment” Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

Many of these cases, however, involve situations in which the property owner's actions would cause a real harm to the environment. In some cases, these harms might be of sufficient magnitude to constitute a nuisance, thus eliminating any claim for compensation. But even when the harm does not rise to the level of a nuisance, the equitable claim for compensation by a land owner who wishes to take action harming the environment may be exceptionally weak because of the modest nature of his legitimate expectations and the limited diminution of value. Thus, any statutory amendment that would grant compensation whenever there is any adverse effect from a government regulation paints much too broadly.

9. If regulation hadn’t taken effect, common law would have done the same thing – with no compensation

Seth Jaffe (attorney; partner at Foley Hoag; recognized by Chambers USA, The Best Lawyers in America and Massachusetts SuperLawyers as a leading practitioner in environmental compliance and related litigation) 17 June 2009, “Next Battle in the Property Rights War?” [www.lawandenvironment.com/tags/nuisance/](http://www.lawandenvironment.com/tags/nuisance/)

On the other hand – to note the obvious – since the 1960s, across the gamut of environmental police power issues, use of statute and regulation has overtaken reliance on the common law. For some reason, however, constitutional jurisprudence has not caught up with reality on the ground. The whole idea of the common law is that it is flexible and changes over time. Is there any doubt that, had there ***not*** been an explosion of environmental statutes and regulations, there would have been an explosion in the development of the common law of nuisance? It seems near certain that courts would have identified numerous additional uses of property over the past 40 years that would now be considered nuisances. Why should the same regulatory outcome require compensation if taken pursuant to statute or regulations, but not if it occurs as a result of judge-made common law?

DISADVANTAGES

1. Unjust windfall profits at public expense

John D. Echeverria, Environmental Policy Project, Georgetown University Law Center, Nov 1997, <http://www.law.georgetown.edu/gelpi/current_research/documents/RT_Pubs_Law_WhyTakingsMatters.pdf>

The point is illustrated by the recent New York Court of Appeals case Basile v. Town of Southampton. An investor purchased an 11.5 acre lot in 1980 for $88,500, knowing that a prior owner had obtained authorization to subdivide this and surrounding property with the understanding that this particular lot, which contained extensive wetlands, would not be developed. When several years later the town proceeded to purchase the property for $117,500, the investor claimed that, absent the regulations, the 11.5 acres could be divided into 9 lots and sought $1,000,000 in payment for the “lost” development potential. In short, the investor claimed, as a matter of constitutional right, not merely a small return on his investment, but a greater than ten-fold increase. While the court ultimately rejected the argument, similar claims might prevail under different circumstances, especially if the idea of regulatory takings is accepted broadly.

2. Separation of powers violation

A. Link: Thousands of compensation claims will occur. Everyone is going to claim that every regulation is a "taking" and they'll claim that their compensation, if any, isn't enough, when the mindset of the Affirmative plan is enacted.

Example: It happened in Oregon under “Measure 37” – a voter-initiated law requiring compensation for enforcement of state land use restrictions

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

The pro-Measure 37 campaign focused its argument on fairness and simplicity, concentrating on the theme that government should pay for what it takes. The simplicity of the campaign’s message was encapsulated in the measure’s ballot title, which proponents succeeded in having the secretary of state approve without opposition: “Government must pay owners, or forgo enforcement, when certain land use restrictions reduce property value.”

Measure 37 resulted in thousands of claims for compensation + hundreds of lawsuits

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Since its passage, Measure 37 has produced thousands of claims for compensation, hundreds of lawsuits, and ceaseless controversy. As of April 2007, Oregonians had filed approximately 7,560 Measure 37 claims, covering over 750,000 acres and seeking over $10.4 billion in compensation.

B. Link: Courts should not intervene in legislative and executive branch land-use regulatory policy

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco) , 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The Takings Clause does not entitle the courts to make land use policy. The wisdom and efficacy of zoning and other forms of land use regulation have traditionally been, and remain, the province of the legislative and executive/administrative branches of government. While the courts need to ensure that land use controls comport with the Constitution, judicial review should not be used simply to second-guess legislative or administrative policy judgments. Under the checks and balances of our constitutional system, the courts should interfere with land use regulation by co-equal branches of government only in the most extreme circumstances.

C. Brink/Uniqueness: Federal courts do not want to handle land-use disputes

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco) , 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf> (the internal quotes inside this evidence are quotes from Federal court decisions)

Many judges, perhaps the very judges inclined to be sympathetic to the claims of property owners, might well chare the countervailing concern that federal courts should tread lightly on local land use issues. See, e.g. *Dodd v. Hood River County*, 136 F. 3d 1219, 1230 (9th Cir. 1998) ("The Courts of Appeals were not created to be 'the Grand Mufti of local zoning boards.' ") (quoting *Hoehne v. County of San Benito*, 870 F.2d 529, 539 (9th Cir. 1989)), cert. denied, 119 S. Ct. 278 (1998); *Sylvia Dev. Corp. v. Calvert County*, 48 F. 3d 810, 828 (4th Cir. 1995) ("Resolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts.");

D. Impact: Separation of powers is essential to human rights in the US Constitution

Jery Taylor (DIRECTOR OF NATURAL RESOURCE STUDIES, THE CATO INSTITUTE) 12 Sept 1996, testimony before the SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW, COMMITTEE ON THE JUDICIARY on THE ROLE OF CONGRESS IN MONITORING ADMINISTRATIVE RULEMAKING <http://www.cato.org/testimony/ct-jt091296.html>

The separation of legislative, executive, and judicial powers is the central principle of our Constitution's architecture. This structural principle, according to legal scholar Rebecca Brown, is "a vital part of a constitutional organism whose final cause is the protection of individual rights." Indeed, it was because the powers of the federal government were both enumerated and separated that most of the delegates to the Constitutional Convention thought that individual liberty could be preserved without a Bill of Rights.

3. Unjust to poor communities. Poor communities lose an important tool to avoid undesirable land uses within their neighborhood when regulatory processes are taken away

Hannah Jacobs Wiseman, 16 September 2007 YALE LAW JOURNAL, “Partial Regulatory Takings: Stifling Community Participation Under the Guise of Kelo Reform, <http://yalelawjournal.org/content/view/585/14/>

In Florida, for example, city governments [decided to not enact various development restrictions, zoning revisions, and conservation measures following the passage of a partial regulatory takings act.](http://www.olemiss.edu/orgs/SGLC/MS-AL/takings.htm) Governmental inaction or waiver of regulations leaves residents of neighborhoods in a difficult position. The governmental land use planning process through zoning and similar measures provides an important venue for participation in community planning. Without these laws, residents may have to develop their own alternatives to land use planning if they wish to influence the character of their community. Wealthy communities can more easily launch campaigns and sponsor private neighborhood associations, or potentially pay off the landowners proposing unwanted land uses (though they may still face collective action problems). Although some lower-income communities have recently been successful in leading [grassroots campaigns to combat poorly planned placement of undesirable land uses within their community,](http://yalelawjournal.org/2007/09/16/wiseman.html) the official opportunities for participation and enforcement offered by land use regulations are an important tool for them. And partial regulatory takings legislation threatens to take away this important tool.

NEGATIVE BRIEF: INDIVIDUAL FISHING QUOTAS (IFQs/ITQs)

By Vance Trefethen

Definition: IFQ is a form of ITQ – ITQs are IFQs that you can re-sell

Impact: IFQ evidence applies to ITQs because ITQs are a form of IFQ

South Atlantic Fishery Management Council, Dec 2006, IFQs/ITQs – An Overview <http://www.safmc.net/Portals/6/SocioEcon/IFQs/IFQfactsheet_eng.pdf>

An Individual Fishing Quota (IFQ) is commonly described as a fishery management program that allows an individual or entity the privilege to harvest a percentage of the Total Allowable Catch (TAC). For our purposes, TAC would likely refer to the commercial quota. An Individual Transferable Quota (ITQ) describes an IFQ program that allows individual quota to be *transferred* from one person or entity to another.

INHERENCY

1. New Magnuson-Stevens rules have taken effect recently to end overfishing by 2011

Lee Crockett, Director of Federal Fisheries Policy, Pew Environment Group March 2009 “A Rule to End Overfishing in the United States” [www.endoverfishing.org/resources/ACL\_Final\_Rule-New-England.pdf](http://www.endoverfishing.org/resources/ACL_Final_Rule-New-England.pdf)

In January 2007, President Bush signed legislation reauthorizing and strengthening the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the law that governs fishing in federal ocean waters. This new law strengthens the role of science in fisheries management. On June 9, 2008, the National Marine Fisheries Service (NMFS) proposed a new rule to enhance the use of science-based management to end overfishing and restore depleted fish populations. On January 16, 2009, NMFS published the final rule creating a framework for fishery managers to establish annual catch limits, based on the best available science, in order to end overfishing in U.S. ocean waters by 2011. This new rule represents an important step forward in fisheries management.

SOLVENCY

1. Despite reforms, the Gulf of Alaska is still under pressure

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

The fisheries in the Gulf of Alaska face pressure from several sources. Vessels (or firms) said to have benefited from rationalization programs in other fisheries are alleged to be directing heightened effort at the Gulf (despite so-called sideboard provisions in other rationalization schemes). Vessels and firms that have been excluded from previously rationalized fisheries are thought to be ‘spilling over’ into the Gulf. Within the Gulf, there is tension between various sectors of the industry. Latent pressure on the Gulf will not go away.

2. British Columbia experience: No stewardship incentives - ITQs promote leasing not ownership

Ecotrust Canada (nonprofit whose purpose is to build the [conservation economy](http://www.ecotrust.ca/about/conservationeconomy) in coastal British Columbia; promoting innovation and providing services for communities, First Nations and enterprises to green and grow their local economies), 2008, “A cautionary tale about ITQ fisheries,” [www.ecotrust.ca/fisheries/cautionarytale](http://www.ecotrust.ca/fisheries/cautionarytale) (brackets added)

ITQs promote leasing, not ownership. It is often stated that ITQs provide fishermen with “a secure asset, which confers stewardship incentives” (Costello, 2008). By owning a financial stake in a fishing quota, fishermen have an incentive to maintain the value of this “secure asset” through responsible fishing practices. That’s the theory. In reality, ITQs have not promoted ownership by active fishermen in BC [British Columbia, Canada]. Rather, ITQs have promoted absentee ownership and quota leasing. Once vessel owners are gifted their initial quota, many subsequently retire or cease to be active fishermen. Instead of fishing, these “armchair fishermen” earn income from the proceeds of quota lease fees.

3. No support for the theory that IFQ “property rights” ensure good stewardship

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

Rationalization experiments using IFQs have also been justified on the grounds that if those who fish have “property rights” (allegedly what the IFQ represents) they will then quite automatically become good stewards of the resource. There is no plausible support for this presumption. To believe a claim of stewardship – leaving fish in the water to grow and perhaps reproduce for the benfit of future stock enhancement – requires assurance on the part of this far-sighted steward that those fish (or their abundant progeny) will be there next season (or any other future season).

Stewardship has nothing to do with ownership

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

The basic flaw in attributing stewardship to “owning IFQs” is that stewardship has nothing to do with ownership, and everything to do with attitudes and expectations. Both private owners and public owners exhibit varying degrees of stewardship toward nature. Some owners and government agencies are good stewards, some are not. There is no magic remedy in terms of promoting stewardship. The talk of ownership as a necessary precondition to stewardship is simply a diversion that deflects attention away from the very real distributional struggle involved when government entities endow some with public wealth and disenfranchise others.

4. ITQs don’t solve for greed and overcapacity in the fishing industry

Prof. Rebecca Bratspies (CPR Member Scholar; Associate Professor of Law, CUNY School of Law, New York) 10 July 2009, “Privatize the Seas? If Only Solving Overfishing Were so Easy” [www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB](http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB)

I question the assumption, though, that private ownership will convert fisherfolk into stewards of the long-term health of the fishery. As the recent financial collapse has shown, merely having a market with clear private ownership rights does not protect against short-sightedness, misvaluation and greed—all of which come into play when we talk about overfishing. All ITQs do is remove the economic incentive to catch the full TAQ immediately—they do nothing to address the more structural problems that bedevil fisheries management decisions: the political aspect of nominally scientific resource management decisions and overcapacity in the fishing industry.

Consolidation of fishing fleet does not assure sustainable fishing

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

In addition to the social dislocation of consolidation programs, there is a biological dimension. It is not automatic that a consolidated fleet will solve the concern for sustainable fish stocks. If consolidation is extreme, and if monitoring and enforcement budgets are cut on the presumption that an IFQ fishery is immune to overfishing, it could mean that only those activities advocated by the newly concentrated industry will receive political support. This can be problematic for sustainable fisheries [Edwards, 1994].

Private ownership doesn’t prevent natural resource extinction

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

But there remains a fundamental theoretical flaw in the idea that a sole owner will be a good steward. If a sole owner has a strong incentive to maximize annual income over a particular series of year (seasons), there is nothing in private ownership that will protect a natural resource being driven to extinction so that the proceeds of harvest can be spent or invested in some other activity. This well-known phenomenon has been clearly documented in the economics literature [Clark, 1973; Page, 1978; Smith, 1968].

5. ITQs aren’t the answer: Self-regulation is required to save fisheries, but unlikely to happen under ITQ

Prof. Rebecca Bratspies (CPR Member Scholar; Associate Professor of Law, CUNY School of Law, New York) 10 July 2009, “Privatize the Seas? If Only Solving Overfishing Were so Easy” [www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB](http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB)

The accusation is correct—fisheries are poorly managed, but I seriously doubt that ITQs are the answer. There are simply too many boats chasing too few fish. The argument that ITQs will result in lower fishing pressure depends heavily on the assumption that as the industry consolidates in the hands of “efficient producers,” those producers will voluntarily retire a portion of their shares. This assumption of producer self-regulation is entirely speculative, and to my mind unlikely. The recent financial crisis is enough to give anyone pause about the ability of markets to self-regulate. Instead, we are likely to see near-monopoly catch share holders seeking to bend the TAC calculation to their short-term economic interests. This will happen against a backdrop of technical advances that facilitate fishing pressures undreamt of in the past, with immense floating fish processing factories decimating entire fish stocks in one go. It is hard to see how creating a market for trading catch shares will solve this problem.

6. ITQs are meaningless because fishing goes into international zones

Prof. Rebecca Bratspies (CPR Member Scholar; Associate Professor of Law, CUNY School of Law, New York) 10 July 2009, “Privatize the Seas? If Only Solving Overfishing Were so Easy” [www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB](http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB)

Fisheries present an unusual set of challenges that make it extremely difficult to have effective regulatory oversight. Regulators have clearly defined geographies of authority but fish do not cooperate by staying in one place. Many fisheries straddle Exclusive Economic Zones (EEZs – waters under the effective control of a coastal state) and the high seas (you may remember that Spain and Canada almost went to [**war**](http://en.wikipedia.org/wiki/Turbot_War) over precisely this issue in the 1990s), rendering ITQs meaningless. The Alaskan Pollock fishery, for example, spans the so-called Bering Sea Donut Hole—a region of the high seas in an area otherwise within the EEZs of the United States, Canada and Russia. Other fisheries straddle the EEZs of more than one state, making decisions about TAC and catch share into international agreements.

7. No incentive for conservation under IFQs: Someone else will catch the fish that is conserved

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

It is impossible for IFQs automatically to instill far-sightedness on the part of any holder of an IFQ as long as there are other IFQ holders able to benefit from the forbearance of others. After all, what is to prevent others from taking the fish that one individual decides to leave in the water so that it can grow and reproduce? There is only one way to instill the sort of stewardship that IFQ proponents seem to have in mind – make a single fishing firm the sole owner of the entire stock. In this setting, the fishing firm that leaves fish in the water is assured that those fish (and their progeny) will be there in the future. This does not, of course, guarantee that the sole owner will be able to find those fish – or their more abundant progeny – next year.

8. Poaching and overfishing – even under ITQs – caused fishery collapse in British Columbia

Ecotrust Canada **(**nonprofit whose purpose is to build the [conservation economy](http://www.ecotrust.ca/about/conservationeconomy) in coastal British Columbia; promoting innovation and providing services for communities, First Nations and enterprises to green and grow their local economies)**,** 2008, “A cautionary tale about ITQ fisheries**,”** [www.ecotrust.ca/fisheries/cautionarytale](http://www.ecotrust.ca/fisheries/cautionarytale)

A final example is BC’s abalone fishery. In 1979, ITQs were introduced in this fishery, but poor monitoring led to poaching and over-fishing by licensed harvesters. The fishery collapsed and has remained closed since 1990. In this case, ITQs obviously did not guarantee proper monitoring and strict enforcement.

DISADVANTAGES

Bycatch and discarding.

“Bycatch” is catching a different species of fish that you weren’t fishing for – they get thrown away. “High-grading” means throwing away a small fish you caught already in favor of a bigger one of the same species you caught later, so that you stay within your quota for total fish caught.

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

High grading and discarding, in which lower-valued (perhaps smaller) fish are thrown back, dead or alive, is an important problem in IFQ programs. Recall that IFQ programs do not alter an objective of harvesters – to make sure that their quotas are filled with the most valuable fish available at the lowest possible outlay of time and money. This central fact renders certain durable behaviors detrimental to conservation [Alverson, Freeberg, Murawski, and Pope, 1994]. Indeed, the evidence suggests that incentives to discard or high grade are quite high in IFQ programs [Vestergaard, 1996]. This means that the management agency will be obliged to increase its budget for monitoring and enforcement – thus undermining one of the major assertions about the benefits of IFQ fisheries. The danger here, again, is unrecorded bycatch [Baulch and Pascoe, 1992].

A. Link & Example: Bycatch and discarding went up in the Pollock fish industry

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

Rationalization of the pollock fleet initially resulted in decreased bycatch through cooperative behavior and significant improvements in product utilization. However, it is our understanding that the Pollock fleet has recently produced record levels of salmon bycatch. Moreover, high grading and associated discarding has apparently increased significantly in the rationalized crab fisheries, largely due to the incentive created by the coupling of market preferences with the more relaxed pace of the rationalized fishery.

Impact: Endangered species destruction. ITQs make the bycatch problem worse

Prof. Rebecca Bratspies (CPR Member Scholar; Associate Professor of Law, CUNY School of Law, New York) 10 July 2009, “Privatize the Seas? If Only Solving Overfishing Were so Easy” [www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB](http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB)

This is not even to mention bycatch—the dirty little secret of the fishing industry. At least [half a million endangered marine mammals](http://bycatch.env.duke.edu/publicationsandreports/Read2006.pdf) and an unknown number of endangered sea turtles die every year as bycatch as well. By most estimates, at least [40% of every catch is discarded as bycatch](http://assets.panda.org/downloads/bycatch_paper.pdf)—fish other than the target species. ITQs are likely to exacerbate this problem because it creates a powerful incentive for fishing boats to discard not only unwanted or uncommercial fish, but also any fish potentially subject to someone else’s share.

2. Increased market risk and exposure

Ecotrust Canada (nonprofit whose purpose is to build the [conservation economy](http://www.ecotrust.ca/about/conservationeconomy) in coastal British Columbia; promoting innovation and providing services for communities, First Nations and enterprises to green and grow their local economies), 2008, “A cautionary tale about ITQ fisheries,” [www.ecotrust.ca/fisheries/cautionarytale](http://www.ecotrust.ca/fisheries/cautionarytale)

Third, in terms of market forces, ITQs can help fishermen respond better to the market by giving them flexibility to deliver catches when demand and prices are high. However, many fishermen lease quota in pre-season agreements, locking themselves into lease rates per pound. In some fisheries, 60 to 75 percent of the landed value goes to paying quota lease fees. If fish prices drop or fuel costs rise, their profits could disappear. As a result, quota leasing can actually increase fishermen’s risk and exposure to changing market forces.

3. Unemployment: IFQ programs are designed to drive some fishers out of business

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

Consolidation is, therefore, not an unfortunate or unintended side-effect of rationalization. Consolidation is the reason why IFQ programs have been introduced. After all, the term “to rationalize” often means to bring more efficient procedures to bear on an industry. To ”rationalize” often means “to transform.” In fisheries, the transformation has been in terms of excluding the “less efficient” firms. Thus, consolidation cannot be a surprise [Grafton, 1996; Eythorsson, 1996]. It was also understood that consolidation would displace skippers, crew and processing workers. Consolidation was further understood to induce a change in the demand for fishery support services. However, the literature in fisheries economics has presented consolidation as a good thing – even for those who are excluded. It is confidently claimed that once these “inefficient” (low producing) participants are out of fishing they are then free to find work elsewhere –as carpenters, electricians, school teachers. Interestingly, it now seems that many in Alaska – allegedly liberated from a life of hard work and depressed incomes, and thus free to make more money elsewhere – are not as happy as some confident economists predicted they would be.

4. “Efficiency” turn: ITQs reduce competition

A. Link: Quota share sales result in smaller fishing fleets

*Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of*

Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

It may be argued that existing participants could sell off a portion of their quota shares and thus create an entry opportunity for a new vessel(s). If, in fact, this behavior was widespread it could be argued that true competition had indeed been introduced. The answer to this is an empirical question, and existing data suggests that the trend is towards smaller rather than larger fleets [NOAA, 2007].

B. Impact: Reduced competition reduces efficiency, lowers wages, raises prices on fish

*Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of*

Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

A market economy demands – indeed relies upon – competitive entry for the simple reason that this opportunity for others to enter and compete is the driving force that keeps all owners alert, and therefore all firms efficient. A closed class of firms induces managerial lassitude, offers some scope for putting downward pressure on wages and salaries paid to employees, and offers the chance to put upward pressure on the prices of product delivered to the next step in the commodity chain.

Additional Evidence: “Improved efficiency” means permanently stopping some folks from fishing and creates quasi-monopoly profits

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf) (in context, “rationalization” refers to the privatization programs being tested in Alaskan fisheries, as opposed to the free-for-all open commons policy)

An explicit goal for each rationalization program was to increase profitability through the exit of some vessels (considered by proponents of rationalization as small and/or “inefficient”), followed by quota stacking on the more “efficient” vessels remaining in each fishery. It was understood that increasing the profitability of some vessels would require the concentration of fishing effort and landings on fewer vessels. This profound distributional impact has always been masked by vague talk of improving the “efficiency” of the fishery. Unfortunately, the concept of “efficiency” in economics is far more complex than it may seem. What is clear however is that rationalization advocates have known that it would not be politically convenient to promote rationalization schemes on the grounds that by evicting some participants, and then limiting future entry, the incomes of those who remained in a fishery would most certainly increase over time. Moreover, if stocks remain good, those incomes would begin to entail what economists call “quasi-monopoly rents.” That is, without the possibility of entry into rationalized fisheries – except by purchasing quota from an existing participant – the number of participants becomes locked in. There is a profound economic difference between one participant merely replacing an existing participant, and new (additional) entrants being allowed in to compete away the quasi-monopoly rents accruing to a closed class of firms. Replacing one vessel for another does nothing to create competition among protected participants.

5. Safety turn: ITQs create incentives for risky behavior

A. Incentive to fish during bad weather

Ecotrust Canada (nonprofit whose purpose is to build the [conservation economy](http://www.ecotrust.ca/about/conservationeconomy) in coastal British Columbia; promoting innovation and providing services for communities, First Nations and enterprises to green and grow their local economies), 2008, “A cautionary tale about ITQ fisheries,” [www.ecotrust.ca/fisheries/cautionarytale](http://www.ecotrust.ca/fisheries/cautionarytale)

ITQs offer fishermen market incentives to engage in risky behaviour. Fish prices are often higher in winter months when less fresh fish is on the market due to bad weather. Fishermen may plan their annual fishery to take advantage of the increased prices, thereby exposing crews to the dangers of foul weather. This is particularly true if fishing vessels must lease a lot of quota which tightens their financial margins. Vessels may also stay at sea in bad weather to keep down the costs of fuel and dockside monitoring.

B. Cost-cutting by using fewer and less experienced crew – leads to accidents

Ecotrust Canada (nonprofit whose purpose is to build the [conservation economy](http://www.ecotrust.ca/about/conservationeconomy) in coastal British Columbia; promoting innovation and providing services for communities, First Nations and enterprises to green and grow their local economies), 2008, “A cautionary tale about ITQ fisheries,” [www.ecotrust.ca/fisheries/cautionarytale](http://www.ecotrust.ca/fisheries/cautionarytale)

More seriously, the high cost of buying and leasing ITQs bleeds income away from working fishermen, causing boats to go out with inexperienced or insufficient crewmen, which can lead to accidents. At a 2007 Fish Safe BC workshop, “quota fisheries issues” and “too few crew on vessels” were identified as two weaknesses, among many, that need to be addressed to improve fishing safety. In BC, the Groundfish Development Authority has received reports that trawl “vessel owners, in order to keep costs down, are sending their vessels to sea with three-man crews instead of four. This is a major safety concern that crew members believe is a contributing factor in the loss of several vessels in the past few years.” A trawl industry study confirmed this practice: “Traditional four-man boats are sometimes manned with three, primarily as a means of improving per-person incomes. Neither vessel owners nor crewmen believe that this trend is in the best interests of safe operations.”

HARMS/SIGNIFICANCE

1. Flawed assumptions: Liberty is not the only value – conservation, ecosystem health and other values must be considered. “Takings” compensation claims are failing because the fundamental assumptions are flawed

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Libertarians view property value as landowner created, whereas that value is usually due more to the character of the neighborhood, surrounding improvements, the health of the land itself, and tax policy. For libertarians, liberty is the paramount value, but there are other competing and cherished values like conservation and ecosystem health. Libertarian property undermines conservation and ecosystems by fragmenting landscapes, increasing transboundary problems, and inhibiting protection of resources like wildlife that require landscape-scale coordination. Libertarian property’s equation of property with development rights also ignores the fact that development often interferes with neighbors’ quiet enjoyment rights. The flawed assumptions underlying libertarian property explain why it has never been broadly accepted by the courts. Consequently, takings claimants have seldom succeeded in obtaining judicially ordered compensation due to alleged overregulation.

Property rights are not absolute: Created by the state and they evolve over time

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Libertarian property has been out of the mainstream because it is based on several flawed assumptions. Libertarians see property in static terms, with fixed boundaries and clearly defined rights. But, in fact, property rights are created and evolve over time to meet a society’s felt necessities; one’s development rights are less dependent on landowner boundaries than the character of the neighborhood. For libertarians, property rights are individualistic bulwarks against the Leviathan state; some even maintain that property rights are pre-political in nature. Yet property rights are created by the state, to serve community ends, and depend upon state enforcement.

No consensus on what property rights are

Prof. Daniel W. Bromley (Professor of Applied Economics, Univ. of Wisconsin-Madison) and Seth Macinko (Univ of Rhode Island). 31 Oct 2007, “Rethinking Fisheries Policy in Alaska: Options for the Future,” prepared at the request of the Alaska Dept of Fish & Game, [www.fishsec.org/downloads/1237996615\_49271.pdf](http://www.fishsec.org/downloads/1237996615_49271.pdf)

“Given the importance of property rights in economics, it might be expected that there would be some consensus in economic theory about what property rights are. But no such consensus exists [Cole and Grossman 2002, p. 317].

2. “Development rights” are not property rights and are not in the Constitution

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

It is worth pausing to consider why libertarian property would appeal to the voters of the early twenty-first century. One reason may be that its message is deceptively simple: to allegedly restore individual property rights, which the federal and most state constitutions protect against “takings” for public use without payment of “just compensation.” What is meant by property rights, however, is hardly ever explained. There seems to be a subliminal libertarian message that property rights equate to development rights, and that regulation—or at least some kinds of regulation—limiting a landowner’s right to develop is impermissible without constitutionally required compensation. This version of libertarian thought was not part of the intent of the either the U.S. or Oregon constitutional framers. Moreover, the Supreme Court found no regulatory takings until 1922, and both that Court and the Oregon Supreme Court have largely rejected regulatory takings allegations ever since.

“Development rights” as property rights have never been accepted in Anglo-American law

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, (ellipses in original; sic utere tuo ut non laedas =“use your property as not to injure that of another’s”) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Moreover, its premise that development rights are fundamental property rights has never been accepted as dominant in Anglo-American law. Development rights have always been cabined by the maxim of *sic utere tuo ut non laedas*—the “do no harm” rule. As Chief Justice Lemuel Shaw of the Supreme Judicial Court of Massachusetts memorably phrased it over a century-and-a-half ago: We think it is a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth…is derived directly or indirectly

3. Nothing "taken": Property owners knew about the environmental restrictions when they bought the property

Steven T. Miano (Partner and Co-Chair of the Environmental Practice Group at WolfBlock LLP law firm, Philadelphia; over 17 years experience in environmental law) 2004, American Bar Association, THE CLEAN WATER ACT HANDBOOK, [http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O\_twe0m8T5Bg&sa=X&oi=book\_result&ct=result&resnum=8#PPT157,M1](http://books.google.com/books?id=A7-fnhYyN8wC&pg=PT154&lpg=PT154&dq=%22Fifth+Amendment%22+%2B+%22wetlands%22+%2B+compensation+%2B+%22Clean+Water+Act%22&source=bl&ots=PWnK4IrAD1&sig=VwsJPSDQnNUc8GXkMhp2nsseeVc&hl=en&ei=xdQFSryEA-O_twe0m8T5Bg&sa=X&oi=book_re)

In Good v. United States, the property owner sought to develop property containing wetlands, and the court concluded that the property owner's expectations that he would be able to develop the property were not reasonable in light of wetlands protection constraints and Endangered Species Act concerns. Good may therefore stand for the proposition that if a property owner is aware of restrictive regulations prior to purchase and during investment in the property, there is no reasonable investment-based expectation and therefore no compensable taking. In Forest Properties v. United States, the court found that the permit denial did not significantly interefere with investment-backed expectations, in part because the property owner still was able to profitably develop a majority of the 62-acre property. In Broadwater Farms Joint Venture v. United States, the court found no taking where the developer was precluded from developing 12 of 27 lots because the developer's investment-backed expectations were not reasonable where it had both constructive and actual knowledge of wetlands laws at the time it purchased the property.

4. No Constitutional rights lost: Regulation is not "taking" of property

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco), 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The text of the Takings Clause is quite narrow. By its terms, the Clause applies only when property is "taken" by the government. Although the Constitution does not define the term "taken," it most naturally refers to a physical appropriation (or expropriation) of property. In other words, the text of the Takings Clause does not readily suggest application to mere restrictions on the use of property. If you tell a child not to play with a ball in the house, you have regulated the use of the ball, but you have not taken the ball away.

No Constitutional rights lost: The Founders only intended physical "taking" -- not regulation -- to be compensated

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco), 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The Framers' original understanding of the Takings Clause was consistent with its narrow plain meaning. Even Justice Scalia, generally regarded as sympathetic to takings claims, recognizes that the ratifying generation and several succeeding generations read the Clause as applying only to actual dispossessions of property.

5. Nothing “taken”: Property rights don’t include the right to create a nuisance

Professor Bill Funk (Lewis & Clark Law School in Portland, Oregon) 2005, “The Takings Clause of the Fifth Amendment” Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

An initial question is whether the regulation interferes with a legitimate property right or whether the regulation merely reflects a "background understanding" of the limits of one's property right. For example, because one's property right does not include the right to interfere unreasonably with another person's property right - the definition of a private nuisance - a regulation that merely codifies that background understanding cannot go too far. The regulation deprives the person of nothing to which he has a right.

6. Conflict of property rights: Water regulations are a legitimate protection of public property

Prof. Daniel H. Cole (Indiana Univ. Law School), 2002, POLLUTION AND PROPERTY, [http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV\_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo\_TbDA&sa=X&oi=book\_result&ct=result&resnum=6#PPA171,M1](http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo_TbDA&sa=X&oi=book_result&ct=result&resnum)

Among the more interesting features of the *Just* ruling is Justice Hallows's response to Justice Holmes's famous assertion in *Pennsylvania Coal*, that "a strong desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the damage": 'This observation refers to the improvement of the public condition, the securing of a benefit not presently enjoyed and to which the public is not entitled. The shore land zoning ordinance preserves nature, the environment, and natural resources as they were created and to which the people have a present right.'

7. Defending public property: In most cases no compensation should be required

Prof. Daniel H. Cole (Indiana Univ. Law School), 2002, POLLUTION AND PROPERTY, [http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV\_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo\_TbDA&sa=X&oi=book\_result&ct=result&resnum=6#PPA171,M1](http://books.google.com/books?id=jRjhKPF6Bb8C&pg=PA165&lpg=PA165&dq=%22John+Humbach%22+%2B+environment+%2B+taking+%2B+compensation&source=bl&ots=t2cCrGV_Kj&sig=CMXHXKRiwcmVGc2B4x0aiCcWfXM&hl=en&ei=9ukVSrimBtTgtgeMo_TbDA&sa=X&oi=book_result&ct=result&resnum)

Takings are conventionally understood as government-imposed restrictions on preexisting private property rights. But this is myopic. A cursory examination of actual takings cases reveals that disputes arise when existing public and private property rights collide. In many, if not most, takings cases, the government is not just imposing on private property rights but attempting to vindicate public property rights, for which no compensation should be required.

8. Many of the compensation claims are weak – granting compensation for any regulation is too broad

Professor Bill Funk (Lewis & Clark Law School in Portland, Oregon) 2005, “The Takings Clause of the Fifth Amendment” Center for Progressive Reform, [www.progressiveregulation.org/perspectives/takings.cfm](http://www.progressiveregulation.org/perspectives/takings.cfm)

Many of these cases, however, involve situations in which the property owner's actions would cause a real harm to the environment. In some cases, these harms might be of sufficient magnitude to constitute a nuisance, thus eliminating any claim for compensation. But even when the harm does not rise to the level of a nuisance, the equitable claim for compensation by a land owner who wishes to take action harming the environment may be exceptionally weak because of the modest nature of his legitimate expectations and the limited diminution of value. Thus, any statutory amendment that would grant compensation whenever there is any adverse effect from a government regulation paints much too broadly.

9. If regulation hadn’t taken effect, common law would have done the same thing – with no compensation

Seth Jaffe (attorney; partner at Foley Hoag; recognized by Chambers USA, The Best Lawyers in America and Massachusetts SuperLawyers as a leading practitioner in environmental compliance and related litigation) 17 June 2009, “Next Battle in the Property Rights War?” [www.lawandenvironment.com/tags/nuisance/](http://www.lawandenvironment.com/tags/nuisance/)

On the other hand – to note the obvious – since the 1960s, across the gamut of environmental police power issues, use of statute and regulation has overtaken reliance on the common law. For some reason, however, constitutional jurisprudence has not caught up with reality on the ground. The whole idea of the common law is that it is flexible and changes over time. Is there any doubt that, had there ***not*** been an explosion of environmental statutes and regulations, there would have been an explosion in the development of the common law of nuisance? It seems near certain that courts would have identified numerous additional uses of property over the past 40 years that would now be considered nuisances. Why should the same regulatory outcome require compensation if taken pursuant to statute or regulations, but not if it occurs as a result of judge-made common law?

DISADVANTAGES

1. Unjust windfall profits at public expense

John D. Echeverria, Environmental Policy Project, Georgetown University Law Center, Nov 1997, <http://www.law.georgetown.edu/gelpi/current_research/documents/RT_Pubs_Law_WhyTakingsMatters.pdf>

The point is illustrated by the recent New York Court of Appeals case Basile v. Town of Southampton. An investor purchased an 11.5 acre lot in 1980 for $88,500, knowing that a prior owner had obtained authorization to subdivide this and surrounding property with the understanding that this particular lot, which contained extensive wetlands, would not be developed. When several years later the town proceeded to purchase the property for $117,500, the investor claimed that, absent the regulations, the 11.5 acres could be divided into 9 lots and sought $1,000,000 in payment for the “lost” development potential. In short, the investor claimed, as a matter of constitutional right, not merely a small return on his investment, but a greater than ten-fold increase. While the court ultimately rejected the argument, similar claims might prevail under different circumstances, especially if the idea of regulatory takings is accepted broadly.

2. Separation of powers violation

A. Link: Thousands of compensation claims will occur. Everyone is going to claim that every regulation is a "taking" and they'll claim that their compensation, if any, isn't enough, when the mindset of the Affirmative plan is enacted.

Example: It happened in Oregon under “Measure 37” – a voter-initiated law requiring compensation for enforcement of state land use restrictions

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

The pro-Measure 37 campaign focused its argument on fairness and simplicity, concentrating on the theme that government should pay for what it takes. The simplicity of the campaign’s message was encapsulated in the measure’s ballot title, which proponents succeeded in having the secretary of state approve without opposition: “Government must pay owners, or forgo enforcement, when certain land use restrictions reduce property value.”

Measure 37 resulted in thousands of claims for compensation + hundreds of lawsuits

Prof. Michael C. Blumm (Lewis & Clark Law School) and Erik Grafe (Lewis & Clark Law School) 2007 “Enacting Libertarian Property: Oregon's Measure 37 and Its Implications” Denver University Law Review, Vol. 85, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005255>

Since its passage, Measure 37 has produced thousands of claims for compensation, hundreds of lawsuits, and ceaseless controversy. As of April 2007, Oregonians had filed approximately 7,560 Measure 37 claims, covering over 750,000 acres and seeking over $10.4 billion in compensation.

B. Link: Courts should not intervene in legislative and executive branch land-use regulatory policy

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco) , 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf>

The Takings Clause does not entitle the courts to make land use policy. The wisdom and efficacy of zoning and other forms of land use regulation have traditionally been, and remain, the province of the legislative and executive/administrative branches of government. While the courts need to ensure that land use controls comport with the Constitution, judicial review should not be used simply to second-guess legislative or administrative policy judgments. Under the checks and balances of our constitutional system, the courts should interfere with land use regulation by co-equal branches of government only in the most extreme circumstances.

C. Brink/Uniqueness: Federal courts do not want to handle land-use disputes

Prof. Douglas T. Kendall (Univ. of Virginia Graduate Planning Program, attorney, Executive Director Community Rights Counsel (CRC)), Timothy J. Dowling (attorney, Chief Counsel at CRC, formerly with US Dept of Justice division of Environment & Natural Resources) and Andrew W. Schwartz (Deputy City Attorney for the City and County of San Francisco), 2000, TAKINGS LITIGATION HANDBOOK, <http://www.theusconstitution.org/upload/filelists/248_Chap1.pdf> (the internal quotes inside this evidence are quotes from Federal court decisions)

Many judges, perhaps the very judges inclined to be sympathetic to the claims of property owners, might well chare the countervailing concern that federal courts should tread lightly on local land use issues. See, e.g. *Dodd v. Hood River County*, 136 F. 3d 1219, 1230 (9th Cir. 1998) ("The Courts of Appeals were not created to be 'the Grand Mufti of local zoning boards.' ") (quoting *Hoehne v. County of San Benito*, 870 F.2d 529, 539 (9th Cir. 1989)), cert. denied, 119 S. Ct. 278 (1998); *Sylvia Dev. Corp. v. Calvert County*, 48 F. 3d 810, 828 (4th Cir. 1995) ("Resolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts.")

D. Impact: Separation of powers is essential to human rights in the US Constitution

Jery Taylor (director of natural resource studies, the cato institute) 12 Sept 1996, testimony before the SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW, COMMITTEE ON THE JUDICIARY on THE ROLE OF CONGRESS IN MONITORING ADMINISTRATIVE RULEMAKING <http://www.cato.org/testimony/ct-jt091296.html>

The separation of legislative, executive, and judicial powers is the central principle of our Constitution's architecture. This structural principle, according to legal scholar Rebecca Brown, is "a vital part of a constitutional organism whose final cause is the protection of individual rights." Indeed, it was because the powers of the federal government were both enumerated and separated that most of the delegates to the Constitutional Convention thought that individual liberty could be preserved without a Bill of Rights.

3. Unjust to poor communities. Poor communities lose an important tool to avoid undesirable land uses within their neighborhood when regulatory processes are taken away

Hannah Jacobs Wiseman, 16 September 2007 YALE LAW JOURNAL, “Partial Regulatory Takings: Stifling Community Participation Under the Guise of Kelo Reform, <http://yalelawjournal.org/content/view/585/14/>

In Florida, for example, city governments [decided to not enact various development restrictions, zoning revisions, and conservation measures following the passage of a partial regulatory takings act.](http://www.olemiss.edu/orgs/SGLC/MS-AL/takings.htm) Governmental inaction or waiver of regulations leaves residents of neighborhoods in a difficult position. The governmental land use planning process through zoning and similar measures provides an important venue for participation in community planning. Without these laws, residents may have to develop their own alternatives to land use planning if they wish to influence the character of their community. Wealthy communities can more easily launch campaigns and sponsor private neighborhood associations, or potentially pay off the landowners proposing unwanted land uses (though they may still face collective action problems). Although some lower-income communities have recently been successful in leading [grassroots campaigns to combat poorly planned placement of undesirable land uses within their community,](http://yalelawjournal.org/2007/09/16/wiseman.html) the official opportunities for participation and enforcement offered by land use regulations are an important tool for them. And partial regulatory takings legislation threatens to take away this important tool.

NEGATIVE BRIEF: FUTUREGEN / CARBON CAPTURE & STORAGE – Good

By Vance Trefethen

HARMS

FutureGen is good: Zero emissions coal generated power

WASHINGTON POST, 16 Feb 2008, "The Demise of FutureGen," [www.washingtonpost.com/wpdyn/content/article/2008/02/15/AR2008021503186.html](http://www.washingtonpost.com/wpdyn/content/article/2008/02/15/AR2008021503186.html)

PRESIDENT BUSH announced in 2004 and then continually promoted a public-private venture he hoped would usher in an era of clean coal and be a cornerstone of U.S. efforts to address global warming. The FutureGen plant would have created electricity by stripping coal of harmful carbon dioxide and pumping the gas underground. The result would be power generation with zero greenhouse gas emissions.

Urgent need to develop CCS technology and restore FutureGen

Bill Reid (managing editor), March 2008, COAL NEWS (coal industry trade publication), "DOE Reneges on Support for FutureGen," (brackets added) [www.coalnews.net/images/pdf/CoalNews\_0308.pdf](http://www.coalnews.net/images/pdf/CoalNews_0308.pdf)

Around the world, there is an exceedingly urgent need to develop and commercialize CCS technologies, and it was intended that the FutureGen project do just that. We believe that no other project can prove this technology more quickly and thoroughly than FutureGen, the world’s premier leading project to advance near-zero emission coal plant technology. The coal industry must again unite in its efforts to convince DOE that the FutureGen project must continue. Without a doubt, America and the rest of the world needs FutureGen.

No other technology in the world will be ready as fast as FutureGen: Ready by 2012

FutureGen Alliance CEO Michael Mudd, quoted by Bill Reid (managing editor), March 2008, COAL NEWS (coal industry trade publication), "DOE Reneges on Support for FutureGen," [www.coalnews.net/images/pdf/CoalNews\_0308.pdf](http://www.coalnews.net/images/pdf/CoalNews_0308.pdf)

"There is an urgent need to develop and commercialize CCS technologies. No other project in the world can prove the technology more quickly than FutureGen. With a new round of competition, contracting and environmental review, new projects would not come online until 2015 at the earliest. The current FutureGen program can be operational by 2012. Why throw that away and start over?

Clean coal is feasible and fundamental to fighting global warming

Keith Johnson, 9 May 2008, WALL STREET JOURNAL, "Clean Coal: Black Gold or Fool’s Gold?" (brackets added) <http://blogs.wsj.com/environmentalcapital/2008/05/09/clean-coal-black-gold-or-fools-gold/>

Australia is a perfect example of how environmental evangelism doesn’t have to be at odds with a future for coal. The country, a recent signatory of the Kyoto Protocol, has suddenly become a climate-change cheerleader, yet figuring out how to keep coal viable is a national obsession. Dr. [Ross] Garnaut [climate change advisor to the Australian government] said this week, after the Greenpeace report came out, that clean coal will be a reality in just over a decade and will be fundamental to fighting global warming.

FutureGen would be the cleanest fossil-fuel power plant in the world

Tim Mitchell (journalist), 30 Jan 2008, “No future for FutureGen?” Champaign NEWS-GAZETTE (Illinois newspaper), <http://www.news-gazette.com/news/local/2008/01/30/no_future_for_futuregen>

FutureGen was expected to become the cleanest fossil fuel-fired power plant in the world. FutureGen planned to employ coal gasification (a method to convert coal into gas) already used at power plants in Terre Haute, Ind., and Tampa, Fla. But instead of sending the resulting carbon dioxide gas into the atmosphere, causing environmental concerns, FutureGen would have piped the carbon dioxide a mile beneath the Earth's surface, where the gas would naturally dissipate over hundreds of years.

Coal is indispensible: alternatives will not replace it

Dr. James Katzer (Executive Director, MIT Coal Energy Study Advisory Committee), 2007, Massachusetts Institute of Technology Center for Energy and Environmental Policy Research, THE FUTURE OF COAL, <http://web.mit.edu/coal/The_Future_of_Coal_Summary_Report.pdf>

Carbon-free technologies, chiefly nuclear and renewable energy for electricity, will also play an important role in a carbon-constrained world, but absent a technological breakthrough that we do not foresee, coal, in significant quantities, will remain indispensable.

CCS is the critical enabling technology to allow coal to be used without CO2 emissions

Dr. James Katzer (Executive Director, MIT Coal Energy Study Advisory Committee), 2007, Massachusetts Institute of Technology Center for Energy and Environmental Policy Research, THE FUTURE OF COAL, <http://web.mit.edu/coal/The_Future_of_Coal_Summary_Report.pdf>

We conclude that CO2 capture and sequestration (CCS) is the critical enabling technology that would reduce CO2 emissions significantly while also allowing coal to meet the world’s pressing energy needs.

CO2 pipelines are safe

National Grid (international electricity and gas company and one of the largest investor-owned energy companies in the world) 2009, “Some Key Facts About Carbon Capture and Storage (CCS)” [www.nationalgrid.com/corporate/About+Us/climate/CCS2/Key+Facts.htm](http://www.nationalgrid.com/corporate/About+Us/climate/CCS2/Key+Facts.htm)

Transporting carbon dioxide via pipelines is an established technology, with approximately 5,600km of long-distance carbon dioxide pipelines around the world. The majority are in the US and Canada and are used for CO2-Enhanced Oil Recovery (EOR)\*. The oldest pipeline is the 1972 Canyon Reef pipeline, which carries five million tonnes of carbon dioxide annually from gas processing plants in Texas. The largest pipeline is the Cortez pipeline, which can transport over 30 million tonnes of carbon dioxide annually over a distance of more than 800km. The safety record of carbon dioxide pipelines up to 2006 showed carbon dioxide has a lower rate of leakage per kilometre compared to gas pipelines, with no recorded injuries. External monitoring for leaks and visual inspections can mitigate risks. Use of Pipeline Inspection Gauges, known as “PIGS”, or distributed fibre optic sensors, can detect potential leakage from damage, corrosion or the failure of valves or welds.

CO2 can be stored safely underground in oil and gas formations

Pennsylvania Dept of Conservation & Natural Resources, Oct 2008, FACT SHEET, Carbon Capture and Geologic Sequestration (CCS) <http://www.dcnr.state.pa.us/info/carbon/documents/geo-seq-fact-sheet-0209.pdf> (brackets added)

With proper engineering design and monitoring, these same geologically sealed [oil and natural gas] formations should also safely store manmade CO2. Pennsylvania has extensive experience with natural gas storage, where gas is injected underground during the summer and then recovered to heat homes in the winter. That geological and engineering experience and understanding of where natural gas storage has been safe and successful can be applied to safely storing CO2.

Multiple options for storing CO2

Royal Society of Chemistry (largest organisation in Europe for advancing the chemical sciences), 15 Feb 2006, “Can we bury our carbon dioxide problem?” [www.rsc.org/ScienceAndTechnology/Policy/Bulletins/Issue3/CarbonDioxide.asp](http://www.rsc.org/ScienceAndTechnology/Policy/Bulletins/Issue3/CarbonDioxide.asp)

Several options for carbon dioxide storage are being considered. Most of these involve pumping the gas underground or undersea into sites such as depleted or depleting oil and gas fields, deep saline aquifers and unmineable coal seams. The techniques developed for extracting oil and gas mean that we already have much of the necessary technology to do this. Deep ocean storage has also been suggested which involves releasing carbon dioxide into the ocean at depths below 3,000m where it will be denser than water. Another possibility would be to return the carbon to a solid phase, known as mineral carbonisation. Reacting carbon dioxide with magnesium or calcium oxide would form mineral carbonates.

CO2 is widely used today and risks are known and managed today

Pennsylvania Dept of Conservation & Natural Resources, Oct 2008, FACT SHEET, Carbon Capture and Geologic Sequestration (CCS) <http://www.dcnr.state.pa.us/info/carbon/documents/geo-seq-fact-sheet-0209.pdf>

CO2 is widely used, transported, and stored in industrial settings, and regulations engineering, and procedural protocols governing that use are well-developed. Associated hazards are well-known and routinely managed. Local health, safety, and environmental risks of geological storage would in fact be less than the risks of current activities such as natural gas storage due to the fact that CO2 is not toxic, flammable, or explosive.

Leakage would be rare and manageable

Pennsylvania Dept of Conservation & Natural Resources, Oct 2008, FACT SHEET, Carbon Capture and Geologic Sequestration (CCS) <http://www.dcnr.state.pa.us/info/carbon/documents/geo-seq-fact-sheet-0209.pdf>

Public health could be impacted if an extremely large volume of CO2 leaked over a very short period of time, remained concentrated due to weather and/or terrain conditions, and reached a populated surface area. This would be a truly exceptional set of circumstances. If leakage from a well was detected, methods are available to seal the well quickly. Stopping a leakage from a fault or fracture may be more difficult; a better approach is to monitor the underground movement of CO2 and detect leakage long before it reaches the surface. Such early detection can be used to stop the project or lower the injection pressure to stop leakage.

DISADVANTAGES

1. Loss of clean coal technology sharing with India

A. Link: Clean coal technology development and sharing are delayed or denied. Referring to Pres. Bush’s decision to cancel FutureGen:

Jacob P. Koshy (journalist), Live Mint (a publication of the WALL STREET JOURNAL in India),7 March 2008, "India may pull out of FutureGen as US mulls project scaleback," (parentheses and ellipses in original; brackets added) [www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html](http://www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html)

The companies, however, are not pleased. In a statement on 3 March, they said, "...the department’s (DoE) proposal to restructure FutureGen fails to recognize the scale of the (environmental) challenge that this nation, and indeed the world, is facing. It delays technology development and integrated demonstration of commercial scale CCS [carbon capture & storage] by five years or more. It backs away from a non-profit partnership that has been created to act in the public benefit and broadly share its technical results throughout the world. It rebuffs the participation of international companies (and countries) that are critical to the ultimate deployment of clean coal technology around the world; and it undermines the reliability of the US department of energy as a partner."

B. Link: India wanted FutureGen technology to fight coal pollution

Jacob P. Koshy (journalist), Live Mint (a publication of the WALL STREET JOURNAL in India),7 March 2008, "India may pull out of FutureGen as US mulls project scaleback," [www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html](http://www.livemint.com/2008/03/06231204/India-may-pull-out-of-FutureGe.html)

Though largely an American initiative, India was keen to acquire an insight into a host of untried, futuristic technologies that could be employed in its coal plants, too. India is dependent on coal as a fuel source, also a major source of polluting greenhouse gases.

C. Link: India wants and would use FutureGen clean coal technology

Kandula Subramaniam (journalist) 14 Dec 2007 INDIAN EXPRESS, "Share clean coal tech with us, India tells US," [www.indianexpress.com/news/Share-clean-coal-tech-with-us,-India-tells-US/250112/](http://www.indianexpress.com/news/Share-clean-coal-tech-with-us,-India-tells-US/250112/)

India, which is expected to source a significant portion of its energy requirement from coal-based power plants over the next few years, has asked the US to share with it the technology behind the FutureGen project, which aims at developing the first-ever coal-based power plant with near zero emissions. While the US is pioneering the work in the billion dollar project, and is bringing in bulk of the funds, India too joined the FutureGen club in 2006, which has even China as a member. Apart from sharing of intellectual property, it is learnt that India has even specified that the role of the inter-governmental committee, of which India is a part, should be re-oriented from being "advisory" to providing "direction" to the FutureGen project. Confirming India’s demand for sharing of intellectual property, Union Power secretary Anil Razdan said: "We would like this technology to be given to us at the same cost of the presently available technology, which, we would be using for our power generation," he told The Indian Express.

D. Impact: Lack of clean coal in India poses a major environmental threat

Carin Zissis, 23 Oct 2007, "India’s Energy Crunch," COUNCIL ON FOREIGN RELATIONS (a nonpartisan and independent membership organization; convenes meetings at which government officials, global leaders, and CFR members debate major foreign-policy issues; think tank that is home to the world’s most prominent scholars of international affairs), [www.cfr.org/publication/12200/indias\_energy\_crunch.html](http://www.cfr.org/publication/12200/indias_energy_crunch.html)

Coal accounts for more than half of the country’s energy consumption. The poor quality of Indian coal, coupled with a lack of infrastructure to clean it, poses a major environmental threat.

E. Impact: 11,000 deaths in India from coal pollution

Dr. Gideon Polya (Australian scientist; published 130 works in a 4 decade scientific career, most recently a huge pharmacological reference text "Biochemical Targets of Plant Bioactive Compounds") 14 June 2008, "Pollutants from coalbased electricity generation kill 170,000 people annually" [www.green-blog.org/2008/06/14/pollutants-from-coal-basedelectricity-generation-kill-170000-people-annually/](http://www.green-blog.org/2008/06/14/pollutants-from-coal-basedelectricity-generation-kill-170000-people-annually/)

However a major reality that is generally ignored is the death toll associated with pollutants other than CO2 generated by fossil fuel burning, notably carbon monoxide, sulphur dioxide, particulates, volatile organic components, nitrogen oxides and heavy metals such as mercury. As outlined below an upper limit of about 0.3 million people die avoidably each year in the world due to the effects of toxic pollutants from fossil fuel burning.

Dr. Polya goes on later in the same source to quantify the impact of coal-generated electricity in India, saying:

Dr. Gideon Polya (Australian scientist; published 130 works in a 4 decade scientific career, most recently a huge pharmacological reference text "Biochemical Targets of Plant Bioactive Compounds") 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" [www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/](http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/) (brackets added)

It is useful to compare the above figures from the "Anglo" countries with those for the World and the major non-European Developing countries China and India using data from the US Energy Information Administration, the World Coal Institute and the Pew Centre on Climate Change (see: http://pewclimate.org/…/coalfacts.cfm). Thus the "total annual fossil fuel-based electricity deaths" for India, China and the World can be estimated to be 13,319, 47,477 and 282,945, respectively. In India 69% of electricity is from coal i.e. 456.5 TWh/y [trillion watt-hours per year] corresponding to 11, 276 "annual coal-based electricity deaths".

Additional Evidence:

Nuclear won’t help India much: It’s slow, expensive, and is only 3% of total consumption

Carin Zissis, 23 Oct 2007, "India’s Energy Crunch," COUNCIL ON FOREIGN RELATIONS (a nonpartisan and independent membership organization; convenes meetings at which government officials, global leaders, and CFR members debate major foreign-policy issues; think tank that is home to the world’s most prominent scholars of international affairs), [www.cfr.org/publication/12200/indias\_energy\_crunch.html](http://www.cfr.org/publication/12200/indias_energy_crunch.html)

With fourteen nuclear power plants run by state-owned companies, nuclear energy accounts for just 3 percent of India’s energy consumption. New Delhi hopes to boost this sector through a deal allowing U.S. companies to sell equipment, nuclear fuel, and reactors to India. However, even with a U.S.-India agreement, large scale expansion of the nuclear energy sector will likely take decades because of slow implementation and the relatively higher expense when compared to other forms of energy.

Coal power generation = air pollution and global climate change

Ananth P. Chikkatur and Ambuj D. Sagar (with Belfer Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University), Nikit Abhyankar and N. Sreekumar (with Prayas Energy Group, Pune, India), 2007, ENERGY POLICY, "Tariff-based incentives for improving coal-power-plant efficiencies in India" published by Belfer Center for Science & International Affairs, <http://belfercenter.ksg.harvard.edu/files/Chikkatur_etal_Enrgy_Plcy_2007_published.pdf>

However, the increased use of coal in power generation also has negative impacts. In addition to the environmental and social consequences of coal mining, coal-based power generation contributes significantly to local (and regional) air pollution through the emission of particulates, sulfur oxides, and nitrogen oxides in stack flue gases, and water pollution through release of waste heat and effluents. On a global scale, the coal power sector is the single largest contributor to the emissions of carbon dioxide (CO2) (IEA, 2005), which has been identified as the primary culprit in the human influence on the global climate (IPCC, 2001).

2. Global warming

A. Link: Clean Coal is essential and FutureGen is the prototype for clean-coal plants around the world

Rebecca Smith and Stephen Power (journalists), 2 Feb 2008, "Illinois: After Washington Pulls Plug on FutureGen, Clean Coal Hopes Flicker," WALL STREET JOURNAL, <http://www.climateark.org/shared/reader/welcome.aspx?linkid=92346>

Members of the FutureGen alliance, consisting of a dozen or so coal companies and utilities from around the world, said they will take their case directly to Congress. "This is not the end game," said Michael Morris, chief executive of American Electric Power Co., a leading member of the FutureGen Industrial Alliance. "Clean coal is essential." The plant "was to have been the prototype for the next generation of clean-coal plants around the world," said Scott Smith, AEP's representative on the FutureGen board. Its technology would have been shared with consortium members, including China's largest coal-burning utility, China Huaneng Group, which has been criticized for its CO2 emissions.

B. Link: Canceling FutureGen hurts developing countries – delays CCS by at least 10 years

Peter Fairley, 1 Apr 2009, TECHNOLOGY REVIEW, published by Massachusetts Institute of Technology, “Hope for FutureGen and Clean Coal,” <http://www.technologyreview.com/business/22375/page1/>

Worse still, the report cites a 2007 memo by Department of Energy staff arguing that cancelling FutureGen would disproportionately affect developing countries: "Without FutureGen, the availability of affordable coal-fueled CCS plants would be delayed at least 10 years."

C. Link: Without carbon dioxide capture, coal is a climate disaster

Steven Mufson and Blaine Harden (journalists), 20 Mar 2008, WASHINGTON POST, "Coal Can't Fill World's Burning Appetite," [www.washingtonpost.com/wp-dyn/content/article/2008/03/19/AR2008031903859\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/19/AR2008031903859_pf.html)

Expensive or not, coal is almost always dirtier to burn than are other fossil fuels. Although its use accounts for a quarter of world energy consumption, it generates 39 percent of energy-related carbon dioxide emissions. Climate change concerns could lead to legislation in many countries imposing higher costs on those who burn coal, forcing utilities and factories to become more efficient and curtail its use. Climatologists warn that without technology to capture and store carbon dioxide emissions, burning more coal would be disastrous.

D. Brink: Failure to start building CCS now means the technology may come too late

Matthew L. Wald (journalist), 30 May 2008, NEW YORK TIMES, <http://petroleum.berkeley.edu/patzek/Harmful/Materials/nyt_05_31_2008b.htm>

Perhaps worse, in the last few months, utility projects in Florida, West Virginia, Ohio, Minnesota and Washington State that would have made it easier to capture carbon dioxide have all been canceled or thrown into regulatory limbo. Coal is abundant and cheap, assuring that it will continue to be used. But the failure to start building, testing, tweaking and perfecting carbon capture and storage means that developing the technology may come too late to make coal compatible with limiting global warming. “It’s a total mess,” said Daniel M. Kammen, director of the Renewable and Appropriate Energy Laboratory at the University of California, Berkeley.

E. Impact: Coal-based energy causes death and destruction from global warming

Dr. Gideon Polya (Australian scientist; published 130 works in a 4 decade scientific career, most recently a huge pharmacological reference text "Biochemical Targets of Plant Bioactive Compounds") 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" [www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/](http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/)

It is already clear from declining agricultural production due to drought and massive storm surge disasters in India, Bangladesh, Burma and the US that global warming is already impacting on global avoidable mortality. "The report found that the "true cost" of coal-based electricity was 4-5 times the "market price" depending upon whether one valued a human life at $4 million or $5 million." Greenhouse gas pollution – mostly due to carbon dioxide (CO2) from fossil fuel burning – is driving global warming and attendant species extinctions, droughts, sea level rise, decreased agricultural production and increased human death.

3. Damaged international relations

A. Link: Canceling FutureGen = damaged relations with China, India, S. Korea and Australia

Peter Fairley, 1 Apr 2009, TECHNOLOGY REVIEW, published by Massachusetts Institute of Technology, “Hope for FutureGen and Clean Coal,” <http://www.technologyreview.com/business/22375/page1/>

On the other hand, international politics may favor the rebirth of FutureGen. In particular, getting developing countries such as China and India to commit to carbon caps is a major goal for the U.S. in the global negotiations governments hope to conclude in Copenhagen this December to define a successor to the Kyoto Protocol on greenhouse-gas emissions. The Bush administration's abrupt cancellation of FutureGen without notifying China, India, South Korea, and Australia--partners on the project--damaged relations with these countries, according to a report on FutureGen issued last month by Democrats serving on the House Science and Technology Committee.

B. Link: We lose influence with China and India on the environment

Peter Fairley, 1 Apr 2009, TECHNOLOGY REVIEW, published by Massachusetts Institute of Technology, “Hope for FutureGen and Clean Coal,” <http://www.technologyreview.com/business/22375/page1/>

Tony Lodge, an energy analyst and fellow at the [Centre for Policy Studies](http://www.cps.org.uk/" \t "_blank) in London, calls the cancellation of FutureGen short-sighted. He is equally critical of a decision by the U.K. government to restrict the use of its own CCS demonstration to coal-station retrofits. "If leading coal-burning economies like the U.S. and the U.K. are to influence coal-hungry countries such as India and China, then they must match their words with action," says Lodge. "Support and development of FutureGen would be a significant start."

C. Link: Developing countries want US leadership – they won’t reduce their emissions until we do

Richard Black (Environment correspondent), 17 Apr 2009, BBC NEWS, "Obama to regulate 'pollutant' CO2" <http://news.bbc.co.uk/2/hi/science/nature/8004975.stm>

Developing countries have asked for the US to show leadership on climate. Many are not prepared to curtail their own emissions without firm indications that the US is willing to make significant reductions.

D. Link: Engagement with China and India will lead to effective agreement on climate change

William J. Antholis, (Managing Director, The Brookings Institution; worked on foreign security and economic policy at the National Security Council and the State Department) and Bryan K. Mignone ( Director of Research, Energy Security Initiative; former staff member on the U.S. Senate Committee on Energy and Natural Resources) 2 Dec 2008, How Obama Should Confront Climate Change, <http://www.brookings.edu/opinions/2008/1202_climate_change_antholis.aspx?rssid=antholisw>

The U.S. must take the first step in order to demonstrate leadership, but it also must make clear to other major emitters that they, too, must act. The U.S. should make climate change a central part of its strategic dialogue with China and a part of its partnership with India. Such engagement will lessen concerns over domestic competitiveness and ultimately lead to a more inclusive and effective agreement.

E. Link: China and India must agree to curb emissions to sustain economic growth

Keith Johnson (Journalist), 28 Apr 2009, “Clinton: Want Growth?” WALL STREET JOURNAL (brackets added) <http://blogs.wsj.com/environmentalcapital/2009/04/28/clinton-want-growth-save-the-climate/>

Basically, she [Secretary of State Hilary Clinton] said that curbing greenhouse-gas emissions is more than just compatible with economic growth—it is a necessary condition for sustained growth, above all for the developing world. That’s a key point because the need for decades more of heady growth is the main reason China (and India) object to curbs on their greenhouse-gas emissions. [Ms. Clinton said](http://www.state.gov/secretary/rm/2009a/04/122240.htm): “As I have told my counterparts from China and India, we want your economies to grow. We want people to have a higher standard of living. We just hope we can work together in a way to avoid the mistakes that we made that have created a large part of the problem that we face today. And it will be harder, not easier, if we fail to meet the challenge of climate change for all countries, particularly developing countries, to continue the growth rates that they need to sustain the increase in standard of living that they’re looking for.” That might be a reference to what climate change could do to [certain parts](http://online.wsj.com/article/SB124082388923058747.html) of the world, especially southeast Asia. But it sounds a lot like an echo of [the argument](http://www.nytimes.com/2009/04/26/opinion/26friedman.html?_r=1) made by Tom Friedman: Essentially, the real “tax” on future growth comes when your energy supplies are held hostage to price volatility and unfriendly countries, not from Congress. Green growth that moves away from fossil fuels lays the foundation not just for sustainability, but for sustainable growth.

F. Impact: China & India’s economic growth directly reduces world poverty

Larry Elliott (journalist), 16 Apr 2007, “World poverty reduced by growth in India and China,” THE GUARDIAN (British newspaper) <http://www.guardian.co.uk/business/2007/apr/16/china.india>

Spectacular growth in China and India has pushed the number of people around the world living on less than a dollar a day below the 1 billion level, but masks entrenched poverty in Africa and Latin America, the World Bank said yesterday. Reporting an 80-million drop in extreme poverty in the two years to 2004, the Bank said the improvement was entirely due to the rapid expansion in Asia's two most populous countries.

4. Loss of species and habitats

Jamey Dunn, May 2009, “Clearing the air” ILLINOIS ISSUES, Univ. of Illinois at Springfield, [Center for State Policy and Leadership](http://cspl.uis.edu/" \t "_blank) , <http://illinoisissues.uis.edu/archives/2009/05/coal.html> (first brackets in original, second brackets added)

“At the end of the day, we have two choices. [Carbon dioxide] is either going to be vented, and we know what the consequences of venting it are, or we can store it.” According to [director of the coal transition project for the Clean Air Task Force John] Thompson, solar and wind power technologies will not be reliable enough to meet America’s demands in the near future. He says research should be dedicated to renewable energy and to cleaning up existing energy sources, creating a diverse energy portfolio while emitting the least amount of greenhouse gas possible. “If we don’t do that, everything the environmental movement has achieved over the last 100 years goes out the window. All the species and habitats we have protected will be at risk from the temperature increase,” he says.

Impact: Biodiversity has huge health and economic benefits – or losses if we lose it

*Pavan Sukhdev, Study Leader,**European Commission, Ninth Conference of the Parties to the Convention on Biological Diversity, May 2008, The Economics of Ecosystems and Biodiversity – Interim Report,*

<http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf>

People have known the medicinal value of certain plants for thousands of years and biodiversity has helped our understanding of the human body. So ecosystems provide huge health benefits, and thus economic benefits. The corollary is that losing biodiversity incurs potentially huge costs, and our knowledge of these is growing.

NEGATIVE BRIEF: GENETICALLY MODIFIED ORGANISMS (GMO) – Good

By Vance Trefethen

HARMS

1. Net profit of Bt cotton more than doubled and pesticide use declined in India

Dr. Camille Gonsalves, Director of Public Affairs, Monsanto India, “The success of Bt cotton in India”, 26 January 2007 [www.scidev.net/en/agriculture-and-environment/editor-letters/the-success-of-bt-cotton-in-india.html](http://www.scidev.net/en/agriculture-and-environment/editor-letters/the-success-of-bt-cotton-in-india.html) (brackets added, parentheses in original)

A recent study commissioned by the Indian Institute of Management in Ahmedabad has reported that the net profit per hectare to farmers from Bt cotton cultivation has more than doubled. Another key finding was that spraying against the bollworm was reduced in fields planted with Bt cotton by an average of four to five sprays, which translates into a saving of Rs [Rupees] 1137 (about US$25) per acre.

GMOs increase yields, reduce pesticides, save costs, help the environment

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

Rapid LMO [Living Modified Organisms] adoption is driven by strong economic incentives. Adopters generally enjoy substantial benefits from increased yields, lower production risks, reduced use of chemical pesticides, savings in management, labor, and capital equipment, as well as environmental and economic gains from reduced tillage and other synergistic production practices.

GMOs safe: No biodiversity harm, no butterfly harm, no corn transgenes, no bee harms

Dr. C Kameswara Rao (over 40 years of academic experience in botanical sciences, particularly phyto-chemistry, plant diversity, databases of medicinal plants and computer applications in plant systematics. He was the Chairman of the Department of Botany, and the Department of Sericulture at the Bangalore University, Foundation for Biotechnology Awareness and Education, Bangalore India) 28 Nov 2008, “Impact of Modern Biotechnology on Biodiversity,” [www.plantbiotechblog.com/2008/11/impact-of-modern-biotechnology-on-biodiversity.html](http://www.plantbiotechblog.com/2008/11/impact-of-modern-biotechnology-on-biodiversity.html)

Activists persistently projected GE [genetic engineering] technology as a serious threat to biodiversity and the environment. Three issues are commonly raised in this context: a) Bt corn pollen are harmful to [Monarch butterflies](http://www.pnas.org/cgi/content/abstract/98/21/11937" \t "_blank), b) corn transgenes have introgressed into [native corn varieties in Mexico](http://www.pnas.org/cgi/content/abstract/102/35/12338?ck=nck" \t "_blank) and c) Bt pollen are responsible for [bee Colony Collapse Disaster (CCD)](http://www.fbae.org/Channels/Views/bee_colony_collapse_disaster_was.htm" \t "_blank) in North America and Europe. All these claims have been challenged and disproved by the scientific community.

Many Studies show: No difference in GMO safety nor nutritional value compared to normal foods

GERHARD FLACHOWSKY (Institute of Animal Nutrition, Federal Agricultural Research Centre (FAL), Braunschweig, Germany) , ANDREW CHESSON (College of Medical and Life Sciences, School of Biological Sciences, University of Aberdeen, Aberdeen, Scotland, UK), and KAREN AULRICH (Institute of Organic Farming, Federal Agricultural Research Centre (FAL), Trenthorst, Germany), Feb 2005, “Animal nutrition with feeds from genetically modiﬁed plants” Archives of Animal Nutrition 59(1): 1 – 40, (brackets added) <http://gmopundit.blogspot.com/2008/06/safety-safety-safety-and-more-gm-food.html>

During the last few years many studies have determined the nutrient value of GM feeds compared to their conventional counterparts and some have additionally followed the fate of DNA and novel protein. The results available to date are reassuring and reveal no signiﬁcant differences in the safety and nutritional value of feedstuffs containing material derived from the so-called 1st generation of genetically modiﬁed plants (those with unchanged gross composition) in comparison with non-GM varieties. In addition, no residues of recombinant DNA or novel proteins have been found in any organ or tissue samples obtained from animals fed with GMP [genetically modified plants].

INRA Study: Animal testing shows no difference between normal and GMO plants

Prof. Aimé Aumaitre (INRA: Institut National de la Recherche Agronomique/French National Institute for Agronomic Research), 2003, “Safety assessment and feeding value for pigs, poultry and ruminant

*animals of pest protected (Bt) plants and herbicide tolerant (glyphosate, glufosinate) plants: interpretation of experimental results observed worldwide on GM plants” SCIENTIFIC ASSOCIATION OF ANIMAL PRODUCTION,* [*http://www.aspajournal.it/archivio/pdf\_2004/2\_2004/articolo-01.pdf*](http://www.aspajournal.it/archivio/pdf_2004/2_2004/articolo-01.pdf)

For the duration of the experiments adapted to the species, feed intake, weight gain, milk yield and nutritional equivalence expressed as feed conversion and/or digestibility of nutrients have never been affected by feeding animals diets containing GT [genetically transformed] plants. In addition, in all the experimental animals, the body and carcass composition, the composition of milk and animal tissues, as well as the sensory properties of meat are not modified by the use of feeds derived from GT plants. Furthermore, the health of animals, their physiological characteristics and the survival rate are also not affected. The presence of rDNA and derived proteins can be recognized and quantified in feeds in the case of glyphosate resistant soybean and canola and in the case of insect protected maize. However, rDNA has never been recovered either in milk, or in liver, spleen and muscles tissues of animals, or in rumen bacteria. On the basis of these data, it can be suggested that *in vivo* tests on high producing animals are necessary and sufficient to evaluate the safety and the nutritional value of new GT plants.

INRA Study: Animals fed Bt corn had no deleterious (harmful) effects

Animals fed glyphosate-resistant food: no difference in performance

Prof. Aimé Aumaitre (INRA: Institut National de la Recherche Agronomique/French National Institute for Agronomic Research), 2003, “Safety assessment and feeding value for pigs, poultry and ruminant

*animals of pest protected (Bt) plants and herbicide tolerant (glyphosate, glufosinate) plants: interpretation of experimental results observed worldwide on GM plants” SCIENTIFIC ASSOCIATION OF ANIMAL PRODUCTION,* [*http://www.aspajournal.it/archivio/pdf\_2004/2\_2004/articolo-01.pdf*](http://www.aspajournal.it/archivio/pdf_2004/2_2004/articolo-01.pdf)

Whole plants of different Bt maize containing the expressed protein and fed successively up to 216 days to ruminants had no deleterious effect on feed intake, nutritional equivalence and average daily gain on the one hand in steers, and on the other hand on milk production and composition and body score of high producing dairy cows (Table 5). Similarly, feed issued from GM plants and their derivatives have been tested in farm animals in the case of plants tolerant to specific herbicides. The results of a total of 23 experiments conducted on broiler chickens, pigs, fattening steers, growing lambs or adult rams and dairy cows have been summarized in Table 6. The nutritional equivalence of glyphosate resistant maize grain or whole maize silage expressed as metabolizable energy corrected for zero nitrogen balance (MEN) in poultry or as feed conversion ratio or milk production in dairy cows, respectively has always been demonstrated. Soybean, cotton or canola resistant to glyphosate fed to appropriate animals as raw seeds or meals after oil extraction were also nutritionally equivalent to their parental counterpart. Similar comparative experiments have been performed with kernels of maize resistant to glufosinate fed to pigs and adult rams. Digestible trials also demonstrated nutritional equivalence between feed derived from modified and control plants (Table 6). Recently, an experiment conducted on swine fed diets containing glyphosate tolerant wheat for 100 days have shown similar performance to that of pigs fed diets containing non-transgenic control wheat (Peterson et al., 2003).

Insect Resistant (IR) corn raised yields, added $3.6 billion in farm income

PG Economics Limited (provider of advisory and consultancy services to agriculture and other natural resource-based industries. Our specific areas of [specialisation](http://www.pgeconomics.co.uk/expertise.htm) are plant biotechnology, agricultural production systems, agricultural markets and policy. The Company's two directors are Peter Barfoot and Graham Brookes who formed PG Economics in 1999. Both have worked at senior positions in agricultural consultancy and technology businesses) 2006, Biotech crops: the real impacts 1996-2006 – yields, <http://www.pgeconomics.co.uk/pdf/GM_crop_yield_arial.pdf>

IR corn traits have contributed an extra $3.63 billion worth of farm income for those farmers using the technology over the 1996-2006 period. Almost all of this derived from yield gains. As well as these quantifiable direct impacts on yield, production and profitability, there have been other important, indirect impacts, notably reduced production risk, convenience, reduced exposure of farmers and farm workers to insecticides and improved crop quality.

Extra yields of GMO foods has fed hundreds of millions of people

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In terms of contribution to feeding the world’s population, the additional production arising from biotech crops (1996-2006) has contributed enough energy (in kcal terms) to feed 467 million people for one year (equal to 40% of the energy requirement of India’s population2). The contribution of additional protein and fat was enough to meet the requirements of 1.3 billion and 449 million people respectively. As a significant proportion of these crops and their derivatives are used for industrial or animal feed purposes, the more likely contribution3 of the additional production arising from biotech crops to meeting global food requirements, since 1996, has been to provide sufficient energy to meet the requirements of about 310 million people for a year (similar to the annual requirement of the combined populations of Indonesia and Vietnam). The more likely contribution of additional protein and fat has been enough to meet the requirements of 920 million and 390 million people respectively.

Biotech crops have boosted production of soybeans, corn, cotton and canola

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Biotech crops, through two main traits of insect resistance and herbicide tolerance have, since 1996, added important volumes to global production of corn, cotton, canola and soybeans (Figure 1). Since 1996, biotech traits have added 53.3 million tonnes and 47.1 million tonnes respectively to global production of soybeans and corn. The technology has also contributed an extra 4.9 million tonnes of cotton lint and 3.2 million tonnes of canola.

Union of Concerned Scientists report on low yields of GMOs is flawed: admits yields went up

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*Is inconsistent:* the UCS document claims in the executive summary that ‘*GE (genetic engineering) has done little to increase overall yields.* The headline to the release also says *‘failure to yield*’, yet the detailed content of the report shows the opposite and subsequently acknowledges that GM insect resistant corn has increased (operational) yields in the US. The UCS report also states that *‘now that transgenic crops have been grown in the US for more than a decade, there is a wealth of data on yield under real world conditions*’. This gives the reader the impression that the paper is drawing on such research to come to its conclusions. Yet the vast majority of references cited in the report are of crop trials, not studies of real world experiences of commercial farmers using GM technology

Union of Concerned Scientists report on low yields of GMOs is flawed: ignores crops that went up

PG Economics Limited (provider of advisory and consultancy services to agriculture and other natural resource-based industries. Our specific areas of [specialisation](http://www.pgeconomics.co.uk/expertise.htm) are plant biotechnology, agricultural production systems, agricultural markets and policy. The Company's two directors are Peter Barfoot and Graham Brookes;. Both have worked at senior positions in agricultural consultancy and technology businesses) 17 Apr 2009 Union of Concerned Scientists report on GM crop performance is misleading <http://www.pgeconomics.co.uk/pdf/UCSresponseapr2009.pdf>

*Misleads by examining issues from a narrow crop perspective*. The UCS report focuses only on soybeans and corn, yet ignores the two other crops in which GM traits are widely used; cotton and canola. GM trait use in these crops has resulted in higher operational yields for most users, increased production and improved standards of living for those farmers using the technology (including US farmers). For example, the average operational yield impact of GM insect resistant (GM IR) cotton technology (1996-2006) has been +11.1% across all global users.

INHERENCY

US government requires safety testing of GMOs

Katherine Bourzac, 5 Nov 2007, “Crops That Shut Down Pests’ Genes,” MIT Technology Review, <http://www.technologyreview.com/biomedicine/19659/page1/>

The U.S. government does not require the labeling of foods containing genetically modified organisms, but it does require safety testing. [Fred Gould](http://www.cals.ncsu.edu/entomology/gould/" \t "_blank), professor of agriculture at North Carolina State University, says that because the new crops produce what's effectively a pesticide, they would be regulated by the U.S. Environmental Protection Agency. Such foods must be tested both in animals and through exposure to what Gould calls "reconstituted human stomach juices."

SOLVENCY

1. Labeling requirement difficult: No mechanism for easy identification

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

But the same institutions and physical assets that facilitate the efficient movement and trade of crops make the kind of biosafety labeling required by the BSP [Bio Safety Protocol] challenging. Today’s global agricultural commodity system, which has been built around anonymous exchanges and continuous commingling and blending of crops, provides no immediate mechanism for easy identification of a cargo’s origin or its DNA makeup.

2. Lots of other countries are using and exporting GMOs

Impact/Analysis: Can’t solve for Developing World GMOs by only stopping US exports

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

In this context, much of the adoption of LMOs [Living Modified Organisms; same as GMO] has taken place in the same key crops and countries that dominate global production and trade (see Figure 1). Excluding Europe, all major crop-producing and exporting countries have commercially introduced one or more LMOs in their production systems. And, for commercial LMO crops, adoption has occurred at unprecedented rates, often covering more than 80 percent of the available acreage in just a few years.

DISADVANTAGES

1. Hunger in India

A. Link: India needs biotechnology to obtain more food

Indian Minister of External Affairs Pranab Kumar Mukherjee, April 2008 <http://indianembassy.ru/indiachronicle/apr08/infotech.html>

The growing size of our population, and economic growth and prosperity, have led to consumption and life-style changes. By 2020, we are estimated to require 340 million tonnes of food grains. This is a challenge for our scientists, planners and administrators. We need to tap into the resources of developed countries, to usher in our second Green Revolution, harnessing contemporary tools like bio-technology, water conservation and rain harvesting techniques and other steps which are environmental-friendly and economically sustainable. The SAARC Regional Food Bank and the India-US Agriculture Knowledge Initiative are steps in this direction, and we need to follow up with further similar arrangements.

B. Brink: India on the edge of food riots

Laurie Goering (journalist), 13 April 2008, CHICAGO TRIBUNE, “Global crisis grows as food prices soar” [www.chicagotribune.com/business/chi-food-prices-global-crisis-story,0,3603827.story](http://www.chicagotribune.com/business/chi-food-prices-global-crisis-story,0,3603827.story)

To support his family of six, Raju sells plastic packets of chilled water to commuters on a New Delhi roadside. Like many Indians, he normally spends more than half of his monthly income to buy food. But over the past year, as world food prices have soared and inflation began creeping up, the rice, lentils and wheat his family needs have begun to take as much as 70 percent of his meager monthly salary of $77. With the other 30 percent of the family's income committed to rent, they have had to give up buying vegetables―meat and milk have never been affordable―and will simply have to go hungry if prices rise any further. "We're barely managing," said the 36-year-old, who goes by only one name. With India's inflation hitting 7 percent, "I don't see any improvement coming," he said. "There will be riots if this gets worse."

C. Impact: Eliminating hunger essential to political stability, democracy, human rights, peace and security

Jacques Diouf (Director-General of the Food and Agricultural Organization of the UN) Fall 2006, “Statement by the Director-General,” <ftp://ftp.fao.org/unfao/bodies/cfs/j8605e.doc>

“Above all, the eradication of hunger and poverty is essential to secure political stability and social consent, to ensure the exercise of democratic and basic human rights, to have good governance and to establish peace and security.”

2. Hunger in Africa

A. Link and Brink: 50% increase in world food supply is needed, science is under attack, and available land is shrinking

NORMAN BORLAUG (Nobel prize in 1970 for his work in agricultural technology) and JIMMY CARTER (former President) 14 October 2005 WALL STREET JOURNAL "Food for Thought," <http://online.wsj.com/article/SB112925672577868494.html?mod=todays_us_opinion>

It took around 10,000 years for the world's farmers to reach their current production of nearly six billion gross tons of food, consumed virtually in its entirety by 6.4 billion people annually. Within 50 years, we will have to increase this amount by at least another 50% -- to nine billion tons. Most likely we will have to achieve this feat on a shrinking agricultural land base, and with most of the production increases occurring in those countries where it is to be consumed. However, agricultural science is increasingly under attack by groups and individuals who, for political rather than scientific reasons, are campaigning to limit advances, especially in new fields such as genetic modification (GM) through biotechnology

B. Impact: Millions will die without biotechnology

NORMAN BORLAUG (Nobel prize in 1970 for his work in agricultural technology) and JIMMY CARTER (former President) 14 October 2005 WALL STREET JOURNAL "Food for Thought," <http://online.wsj.com/article/SB112925672577868494.html?mod=todays_us_opinion>

Because there are so many hungry and suffering people, particularly in Africa, attacks on science and biotechnology are especially pernicious. Africa is facing a pandemic scourge of HIV/AIDS, malaria, and other diseases, a 30-year period of continuous degradation in soil fertility, frequent droughts and a burgeoning population. This set of converging circumstances can lead to a human catastrophe in Africa on a scale the world has never seen. We know it is coming. We have the knowledge to avert it. If we put it off, solving it later will mean the acute suffering -- and even death -- of millions of innocents who could have been spared such a tragedy.

3. Hunger and Disease everywhere: World health, nutrition and environmental sustainability depend on GMOs

A. Brink: We need solution to world food problem quickly

Prof. Sapna K. Deo (Assistant Professor of Bioanalytical Chemistry in the Department of Chemistry & Chemical Biology at the Indiana University-Purdue University Indianapolis; author and co-author of over 55 scientific publications and several patents) and Stephanie Bachas-Daunert (undergraduate student in Civil and Environmental Engineering at Princeton University) 2008, “Should genetically modified foods be abandoned on the basis of allergenicity?” ANALYTICAL AND BIOANALYTICAL CHEMISTRY, <http://resources.metapress.com/pdf-preview.axd?code=9h3117647t100683&size=largest>

Plagued with not only world hunger issues but also the plummet in world food stocks, a viable solution to the world’s food problems is required and quickly, to ensure the safety and sustainability of future generations.

B. Link and Impact: GMOs can solve many problems – Immense humanitarian impact

Prof. Sapna K. Deo (Assistant Professor of Bioanalytical Chemistry in the Department of Chemistry & Chemical Biology at the Indiana University-Purdue University Indianapolis; author and co-author of over 55 scientific publications and several patents) and Stephanie Bachas-Daunert (undergraduate student in Civil and Environmental Engineering at Princeton University) 2008, “Should genetically modified foods be abandoned on the basis of allergenicity?” ANALYTICAL AND BIOANALYTICAL CHEMISTRY, <http://resources.metapress.com/pdf-preview.axd?code=9h3117647t100683&size=largest>

Biotechnology, and genetic engineering in particular, has the potential to positively impact billions of lives; as Prime Minister Singh aptly highlighted, the proliferation of genetically modified rice can help the 780 million people suffering from hunger worldwide. In addition to potentially reducing world hunger, genetic modification provides solutions to many of the United Nations’ Millennium Development Goals, such as the following: combating infectious diseases, reducing child mortality, improving maternal health, improving child nutrition, and ensuring environmental sustainability. In short, the humanitarian profits of utilizing biotechnology are immense.

4. Higher food prices, even on non-GMO food – due to testing requirements

Testing for the presence of modified organisms costs between $936,000 and $4.3 million per 25,000 metric tons

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf>

With an average cargo size of 25,000 metric tons of corn, vessels are sampled multiple times in set time intervals as the grain flows into the holds. A representative sub-sample of approximately 5 lbs. is sent to a laboratory for testing. From that, 10 grams of homogenized ground corn are tested for LMO content. Under this sampling approach, the laboratory testing costs for one cargo of corn for exports range between $936,000 and $4,356,000, with the highest costs incurred when quantification of the LMOs is necessary (see Table 2). The relevance of the test results, of course, depends on whether the tested samples are representative of the content of the various vessels. Using 5 lbs. (or 10 grams that are actually tested) to accurately represent the contents of a 25,000 metric ton cargo might be a stretch.

NEGATIVE BRIEF: KID-SAFE CHEMICAL ACT

TOPICALITY:

KSCA is Chemical Policy

Kara Sissel, December 2008, “Regulatory Challenges: Policies in Transition” Chemical Week <http://www.chemweek.com/envirotech/environment/Regulatory-Challenges_15742.html>

The act, if passed, would be a major shift in U.S. chemical policy, which currently requires regulators to prove that a substance is not safe before it can be banned.

INHERENCY

1. Lawsuits solve for consumer product safety

Gary C. Eto (attorney, Torrance, Calif.), 2009, **“**Lawyers Save Human Lives and Prevent Injuries,” <http://www.garyeto.com/civil/tort-reform.html>

The use of lawsuits to compel improvements in product safety has historical underpinnings as a fundamental concept dating back to centuries - old common law, and the U.S. civil justice system. All industries need incentives to improve their practices and the safety of their products. It has been an American tradition that such incentive comes from the imminent possibility of litigation. Beginning in the 1960's, a series of lawsuits against the automobile industry led to dramatic improvements in [automobile safety features](http://www.garyeto.com/auto/electronic-stability.html). Lawsuits have resulted in safer cars with seatbelts and airbags. Litigation has also been brought to advance policies concerning such matters as tobacco, gun violence, and lead paint.

2. Companies already voluntarily testing

Jennifer Weeks (M.A. in Political Science from UNC, M.A. in Environmental Policy from Harvard, former Senior Policy Analyst, Northeast States for Coordinated Air Use Management, and former Senior Research Associate at Harvard University), January 23, 2009 “Regulating Toxic Chemicals” [CQ Researcher]

Under a program called the High Production Volume (HPV) Challenge, launched in 1998, chemical companies are voluntarily testing about 2,800 chemicals that are produced or imported in quantities of at least 1 million pounds per year and providing the information to EPA. About 1,400 data sets have been completed to date.

3. Manufacturers already go “above and beyond” to test chemicals

Liz Szabo, August 5, 2008 “Toxic plastic toys could go the way of dinosaurs” USA Today <http://www.usatoday.com/money/industries/retail/2008-08-04-toxic-plastics-main_N.htm>

Manufacturers already go "above and beyond" government requirements and voluntarily use independent auditors to test chemicals*,* says Tiffany Harrington of the American Chemistry Council. Its members are committed to making sure chemicalsare safer for people and the environment, she says.

4. Chemicals already tested

Scott Streater (Staff Reporter), December 3, 2006, “Regulatory System Called into Question” Star-Telegram, <http://coeh.berkeley.edu/docs/news/2006-12-03_startelegram.pdf>

Industry leaders say the EPA already has an effective system, the High Production Volume Challenge. It's a voluntary program in which companies have agreed to gather and submit hazard data for chemicals of which more than 1 million pounds a year are manufactured in or imported into the U.S. The program will ultimately yield information about some 2,200 chemicals, said Charles Auer, director of the EPA's Office of Pollution Prevention & Toxics. That information, some of it already available on the EPA's Web site, is more than enough, said Russell, the American Chemistry Council official.

5. REACH (European testing requirement) solves: US companies will react to REACH and get rid of bad chemicals

Scott Streater (Staff Reporter), December 3, 2006, “Regulatory System Called into Question” Star-Telegram, <http://coeh.berkeley.edu/docs/news/2006-12-03_startelegram.pdf>

If data submitted by U.S. manufacturers show potential health hazards no one knew of before, that would put tremendous pressure on chemical companies to develop cleaner alternatives, said Esty, the Yale Center director. "I suspect that chemicals that are found to be unacceptably toxic based on European testing will be withdrawn from the U.S. market as well," he said. "I suspect that the presence of tort lawyers looking for opportunities to bring cases would make it untenable to continue to sell any chemicals that had, in effect, flunked European testing.

SOLVENCY

1. KSCA Allows for toxics to remain in environment

Carolyn Raffensperger (MA, JD, Executive Director), Dr. Ted Schettler (MD, MPH, Science Director) and Dr. Joseph H. Guth, (JD, PhD, and Legal Director), 21 June 2008, [Letter to Frank Lautenberg, Hilda Solis, and Henry Waxman] “The Kid-Safe Chemicals Act of 2008” Science & Environmental Health Network <http://www.sehn.org/pdf/SEHN-KSCA%20comments.pdf>

As the centerpiece of its approach for controlling hazardous chemicals in commerce, KSCA applies a specific “safety standard” separately to each individual chemical. As it is defined in the Act, this safety standard requires not that each chemical be absolutely safe, but only that it, taken alone, presents no more than a specified level of threat. Thus, subject only to this safety standard, an unlimited number of chemicals that are capable of causing cancer, reproductive harm, neurological harm and virtually every other form of damage to human health and the environment will be permitted by KSCA to remain in commerce, to be present in products used by all members of our society (including children), and to be disseminated into the environment. The limitation of this approach to managing chemicals is that it does not take account of the cumulative impact on human health and the environment of the tens of thousands of chemicals in global commerce.

2. Laboratory test data has only limited value for estimating human diseases

Prof. Janet Currie PhD (economics; Columbia Univ.) and Johannes F. Schmieder, May 2009, “Fetal Exposures to Toxic Releases and Infant Health” <http://www.econ.columbia.edu/currie/Papers/TRI_paper_aea_Jan9.pdf>

Laboratory data on toxicity may be of limited value given that tests are typically conducted on animals, and do not take human behaviors (such as staying inside on high pollution days) into account. Moreover, it is quite difficult to draw a relationship between a disease such as cancer and toxic exposures in a particular location given that cancer develops over a long period, and people are mobile.

3. Harmful chemicals will still make it onto the market

Carolyn Raffensperger (MA, JD, Executive Director), Dr. Ted Schettler (MD, MPH, Science Director) and Dr. Joseph H. Guth, (JD, PhD, and Legal Director), 21 June 2008, [Letter to Frank Lautenberg, Hilda Solis, and Henry Waxman] “The Kid-Safe Chemicals Act of 2008” Science & Environmental Health Network [www.sehn.org/pdf/SEHN-KSCA%20comments.pdf](http://www.sehn.org/pdf/SEHN-KSCA%20comments.pdf)

Finally, implementation of the safety standard established by the Act, like implementation of any technical legal test, will always be subject to uncertainty and error. Inevitably, chemicals will erroneously be permitted on the market even though they would not in fact meet the safety standard if more were known about them.

4. KSCA can be misinterpreted

Carolyn Raffensperger (MA, JD, Executive Director), Dr. Ted Schettler (MD, MPH, Science Director) and Dr. Joseph H. Guth, (JD, PhD, and Legal Director), 21 June 2008, [Letter to Frank Lautenberg, Hilda Solis, and Henry Waxman] “The Kid-Safe Chemicals Act of 2008” Science & Environmental Health Network [www.sehn.org/pdf/SEHN-KSCA%20comments.pdf](http://www.sehn.org/pdf/SEHN-KSCA%20comments.pdf)

KSCA requires the chemical industry to produce a minimum publicly available data set for all chemicals in commerce as a condition for placing or keeping them on the market. While we strongly support this requirement, we are nevertheless concerned that as written KSCA may be susceptible to other interpretations and thus may not make this requirement ironclad.

5. KSCA Does not take advantage of technological advancements

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

Unfortunately, the Kid Safe Chemicals Act, as proposed in June of 2007, does not take advantage of current technology and trends in toxicological testing. Minimal appropriations and considerations are given to methods that would reduce animal use, and the act is primarily based on the existing testing paradigm. Minimal discussion is dedicated to the development of human-based *in vitro* methods, and none is given to high-throughput or molecular methods.

6. Similar legislation fails to work

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

A brief examination of the goals of the KSCA reveals that, while laudable, they cannot be accomplished by legislation alone. This fact is upheld by the experience of the EPA’s EndocrineDisruptor Screening Program: After ten years of effort and millions of dollars spent on validation studies, the EPA has not yet regulated a single potential endocrine disruptor.

7. Assessments cannot be made in a timely manner under KSCA

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

Currently, the EPA’s Office of Pollution, Prevention, and Toxics—the office that would be charged with implementing this legislation—reviews about 1000 pre-manufacture notices each year. Since the KSCA legislates more data collection than even current conventional pesticides are subject to, it is unclear how the assessments will be made in a timely manner.

8. KSCA Testing Impossible; not enough facilities in the world

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

“The generation of all of these data using current toxicology tests is not feasible. For example, using the current method, a single two-generation reproductive toxicity study takes a minimum of two years, $380,000, and 2,600 rats to perform. There are simply not enough laboratories in the world to conduct all the testing prescribed by the KSCA. The KSCA dramatically expands the depth and breadth of current industrial chemical testing requirements, without providing the scientific or logistical foundation to accomplish such an expansion.”

MINOR REPAIR: Give EPA more resources

Nancy Seewald (Associate Editor of Regulatory Issues at Chemical Week), May 26, 2008 “Bill Aims to Overhaul U.S. Chemical Policy” Chemical Week [www.chemweek.com/envirotech/regulatory/Bill-Aims-to-Overhaul-U-S-Chemical-Policy\_12091.html](http://www.chemweek.com/envirotech/regulatory/Bill-Aims-to-Overhaul-U-S-Chemical-Policy_12091.html)

Congress should instead focus on providing EPA with sufficient resources to carry out existing mandates, Socma says. EPA and industry should continue to share the burden of **chemical** testing and risk management, it adds.

DISADVANTAGES

1. Unfair burden to small businesses

Kara Sissel, April 13, 2009, “SOCMA Advocates Only Limited Changes to TSCA” Chemical Week (brackets added) [www.chemweek.com/sections/regulatory/Socma-Advocates-Only-Limited-Changes-to-TSCA\_18228.html](http://www.chemweek.com/sections/regulatory/Socma-Advocates-Only-Limited-Changes-to-TSCA_18228.html)

Socma [Society of Chemical Manufacturers and Affiliates] says that the 1976 Toxic Substances Control Act (TSCA) needs to be modified but maintains that a complete overhaul would be "overly burdensome" to small- and mid-size companies. "While we fully recognize TSCA's shortcomings, we urge critics to carefully examine how it could be improved and better implemented without disturbing the delicate balance between protection of human health and the environment and the sustainment of a vital industry and its customers," says Socma president Joe Acker.

Increase offshoring

Nancy Seewald (Associate Editor of Regulatory Issues at Chemical Week), May 26, 2008, “Bill Aims to Overhaul U.S. Chemical Policy” Chemical Week [www.britannica.com/bps/additionalcontent/18/32515247/Bill-Aims-to-Overhaul-US-Chemical-Policy](http://www.britannica.com/bps/additionalcontent/18/32515247/Bill-Aims-to-Overhaul-US-Chemical-Policy)

The legislation "overreaches in its efforts to impose a new approach" to the regulatory process, Socma says. Comparing the bill to the European Union's Registration, Evaluation, and Authorisation of Chemicals (Reach) law, Socma president Joe Acker says its "focus creates a regulatory burden that only punishes good actors and may only encourage more business offshore." The bill "ignores the fact that many products in commerce are not manufactured in the U.S. any longer, falling under regulatory regimes that provide poor oversight, making due diligence a difficult proposition for U.S. firms," Acker says.

Economics Brink: Chemicals are central to U.S. Economy

Jennifer Weeks (M.A. in Political Science from UNC, M.A. in Environmental Policy from Harvard, former Senior Policy Analyst, Northeast States for Coordinated Air Use Management, and former Senior Research Associate at Harvard University), January 23, 2009, “Regulating Toxic Chemicals” CQ Researcher

Chemicals are central to the economy and to many products that Americans associate with modern living. They underpin a $637 billion industry in the United States and generated over $135 billion in export revenues as of 2006. Innovations in chemistry have contributed to technical advances such as composite materials for vehicles, stronger adhesives, faster microprocessors for computers and recyclable plastics.

KSCA increases offshoring

Kara Sissel, April 13, 2009, “SOCMA Advocates Only Limited Changes to TSCA” Chemical Week <http://www.chemweek.com/sections/regulatory/Socma-Advocates-Only-Limited-Changes-to-TSCA_18228.html>

A sweeping overhaul, such as that outlined by the proposed Kids Safe Chemical Act, would delay the introduction of new products and hasten the move to offshore manufacturing, Acker says. Industry groups testified at recent Congressional hearings on TSCA that the Kids Safe act would be unnecessary (CW, March 2, p. 10).

Impact: Jobs lost.

Linda Levine (specialist in labor economics, Domestic Social Policy Division, Congressional Research Service) 2 May 2005, "Offshoring (a.k.a. Offshore Outsourcing) and Job Insecurity Among U.S. Workers" <http://fpc.state.gov/documents/organization/46688.pdf>

Domestic outsourcing and offshore outsourcing result in job losses for those employees who no longer are required to produce the goods and services that their employers decided to purchase. Some displaced workers must seek jobs in other fields because the domestic firms that specialize in providing outsourced functions do so more efficiently than their former employers. Others who lose their jobs to domestic outsourcing can continue to perform similar work — perhaps for lower wages and fewer benefits — by finding jobs in the industries now supplying goods and services to their exemployers (e.g., as workers on the payrolls of temporary help agencies rather than manufacturers). Thus, a key difference between domestic and offshore outsourcing is that none of the jobs that are contracted out remain available to U.S. workers when employers send the work to companies located overseas.

1. Regulatory excess & abuse

2. Chemicals could be banned unfairly and too broadly

Samuel Loewenberg (public policy & business journalist, and former MacCracken Fellow in the doctoral program in American Studies at New York University), September 20-26, 2008, “US To Debate Tightening Legislation on Safety of Chemicals” The Lancet (a British Medical Journal)

The chemical industry opposes the precautionary principle on the grounds that it could cause chemicals to be banned unfairly and overly broadly. Instead, say lobbyists, US regulators should try to control the riskiest chemicals, rather than "throwing the baby out with the bath water", said Marty Durbin of the American Chemistry Council, the Washington lobby for chemical manufacturers.

The “Precautionary Principle” opens door to arbitrary regulatory abuse

Dr. Gary Marchant (Professor of Law Arizona State University, Ph.D. in Genetics, J.D. from Harvard, Masters in Public Policy from Harvard), January 2009 “Does the precautionary principle make us safer?: Con” CQ Researcher

Second, available interpretations of the PP offer no clear guidance on key questions, such as what manufacturers must do to satisfy the PP and how costs are factored in. Without answering these fundamental questions, the PP opens the door to arbitrary decisions motivated by political bias, protectionism and other inappropriate motives, rather than objective scientific evidence of risk.

1. Increased prices

Jennifer Weeks (M.A. in Political Science from UNC, M.A. in Environmental Policy from Harvard, former Senior Policy Analyst, Northeast States for Coordinated Air Use Management, and former Senior Research Associate at Harvard University), January 23, 2009, “Regulating Toxic Chemicals” CQ Researcher

Regulating chemicals in consumer products more stringently would affect chemical companies and manufacturers that use those chemicals to make retail goods. Chemical toxicity testing is expensive, and many business leaders say that substitutes for widely used materials like BPA will be more expensive and could produce inferior products.

2. Increased animal harm & cost with no benefits

3. Cross apply under solvency: Can’t be sure that the test data will aid human health

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

One of the new data requirements added to the KSCA is to assess effects caused by low-dose exposures. Existing animal tests are not suitable for assessing low doses of chemicals; low-dose effects are best seen and measured using *in vitro* techniques (Anderson 2009). Modifications could be made to existing animal tests for example by using many more animals and requiring lifetime-length studies beginning while animals are *in utero*, both of which would exponentially increase the cost, time and suffering associated with testing, and still would not ensure that low dose effects would be seen. In addition, the results of such studies will give no more confidence in extrapolating to human health effects than current test designs, and regulators will be hamstrung, as they are now, by data with uncertain value.

4. Enormous Tax Burden

Dr. Catherine Willett (PhD, Senior Science Policy Advisor for People for the Ethical Treatment of Animals) and Kristie Sullivan (MPH in Toxicology, Scientific and Policy Advisor for Physicians Committee for Responsible Medicine), 2009, “PROTECTING CHILDREN FROM HARMFUL CHEMICALS” Physicians Committee for Responsible Medicine [www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf](http://www.pcrm.org/resch/anexp/KSCA%20white%20paper.pdf)

The KSCA calls for a safety determination of priority chemicals immediately and of all other chemicals by 2020. Since it is thought that there are about 60,000 to 80,000 chemicals in commerce, EPA would have to review approximately 5,400-7,400 chemicals each year (22 each day), at heavy expense to the taxpayer.

Impact 1. Higher taxes hurt wages, weaken the economy, and cost jobs

Dr Shanea Watkins ( Ph.D in Public Policy, Policy Analyst in Empirical Social Studies at The Heritage Foundation's Center for Data Analysis). 11 March 2008, The House Budget Resolution: Tax Hikes Would Harm Economy, Taxpayers [www.heritage.org/research/Budget/wm1844.cfm](http://www.heritage.org/research/Budget/wm1844.cfm)

Higher taxes, particularly on capital, cause the level of private investment to fall, thereby slowing productivity improvements and weakening the earning capacity of households. Wages and business earnings, which are closely tied to productivity, would fall as well. As a result of the tax increases implicit in the House budget resolution, Americans could also see their personal income decrease by an average of $1,767 due to a weaker economy. Moreover, the budget resolution could damage employment growth, causing about one million fewer jobs to be created, and could lower economic output by more than $100 billion compared to what it would have been; the average cost to congressional districts could be 2,191 lost jobs and $247 million in economic output.

Impact 2. Higher deficits will bring higher taxes, if AFF uses deficits to pay for the increased spending. Cross-apply Impact 1 above: Higher taxes are bad.

Jacqueline Thorpe (journalist), 23 Sept 2008, "Paulson must weigh bailout against inflation worries," Financial Post, [www.financialpost.com/most\_popular/story.html?id=821887](http://www.financialpost.com/most_popular/story.html?id=821887)

However, the dramatic increase in funding requirements has sparked several worries: that the U.S. will have to raise taxes to help defray the cost; that it will need to issue debt at higher rates for the market to absorb the glut of supply; or that it will allow inflation to take off to make the debt appear smaller. The last worry may seem far-fetched in a global economy that punishes those that pursue inflationary policies. Yet many believe the United States allowed inflation to soar in the 1970s to help offset the cost of the Vietnam War. "Higher deficits can only bring higher taxes and higher inflation can only bring higher interest rates," said Jeff Rubin, chief economist at CIBC Worlds Markets in an economic forecast yesterday. A recent study commissioned by the Indian Institute of Management in Ahmedabad has reported that the net profit per hectare to farmers from Bt cotton cultivation has more than doubled. Another key finding was that spraying against the bollworm was reduced in fields planted with Bt cotton by an average of four to five sprays, which translates into a saving of Rs [Rupees] 1137 (about US$25) per acre.

GMOs increase yields, reduce pesticides, save costs, help the environment

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

Rapid LMO [Living Modified Organisms] adoption is driven by strong economic incentives. Adopters generally enjoy substantial benefits from increased yields, lower production risks, reduced use of chemical pesticides, savings in management, labor, and capital equipment, as well as environmental and economic gains from reduced tillage and other synergistic production practices.

GMOs safe: No biodiversity harm, no butterfly harm, no corn transgenes, no bee harms

Dr. C Kameswara Rao (over 40 years of academic experience in botanical sciences, particularly phyto-chemistry, plant diversity, databases of medicinal plants and computer applications in plant systematics. He was the Chairman of the Department of Botany, and the Department of Sericulture at the Bangalore University, Foundation for Biotechnology Awareness and Education, Bangalore India) 28 Nov 2008, “Impact of Modern Biotechnology on Biodiversity,” [www.plantbiotechblog.com/2008/11/impact-of-modern-biotechnology-on-biodiversity.html](http://www.plantbiotechblog.com/2008/11/impact-of-modern-biotechnology-on-biodiversity.html)

Activists persistently projected GE [genetic engineering] technology as a serious threat to biodiversity and the environment. Three issues are commonly raised in this context: a) Bt corn pollen are harmful to [Monarch butterflies](http://www.pnas.org/cgi/content/abstract/98/21/11937" \t "_blank), b) corn transgenes have introgressed into [native corn varieties in Mexico](http://www.pnas.org/cgi/content/abstract/102/35/12338?ck=nck" \t "_blank) and c) Bt pollen are responsible for [bee Colony Collapse Disaster (CCD)](http://www.fbae.org/Channels/Views/bee_colony_collapse_disaster_was.htm" \t "_blank) in North America and Europe. All these claims have been challenged and disproved by the scientific community.

Many Studies show: No difference in GMO safety nor nutritional value compared to normal foods

GERHARD FLACHOWSKY ( Institute of Animal Nutrition, Federal Agricultural Research Centre (FAL), Braunschweig, Germany) , ANDREW CHESSON (College of Medical and Life Sciences, School of Biological Sciences, University of Aberdeen, Aberdeen, Scotland, UK), and KAREN AULRICH (Institute of Organic Farming, Federal Agricultural Research Centre (FAL), Trenthorst, Germany), Feb 2005, “Animal nutrition with feeds from genetically modiﬁed plants” Archives of Animal Nutrition 59(1): 1 – 40, (brackets added) <http://gmopundit.blogspot.com/2008/06/safety-safety-safety-and-more-gm-food.html>

During the last few years many studies have determined the nutrient value of GM feeds compared to their conventional counterparts and some have additionally followed the fate of DNA and novel protein. The results available to date are reassuring and reveal no signiﬁcant differences in the safety and nutritional value of feedstuffs containing material derived from the so-called 1st generation of genetically modiﬁed plants (those with unchanged gross composition) in comparison with non-GM varieties. In addition, no residues of recombinant DNA or novel proteins have been found in any organ or tissue samples obtained from animals fed with GMP [genetically modified plants].

INRA Study: Animal testing shows no difference between normal and GMO plants

Prof. Aimé Aumaitre (INRA: Institut National de la Recherche Agronomique/French National Institute for Agronomic Research), 2003, “Safety assessment and feeding value for pigs, poultry and ruminant animals of pest protected (Bt) plants and herbicide tolerant (glyphosate, glufosinate) plants: interpretation of experimental results observed worldwide on GM plants” SCIENTIFIC ASSOCIATION OF ANIMAL PRODUCTION, <http://www.aspajournal.it/archivio/pdf_2004/2_2004/articolo-01.pdf>

For the duration of the experiments adapted to the species, feed intake, weight gain, milk yield and nutritional equivalence expressed as feed conversion and/or digestibility of nutrients have never been affected by feeding animals diets containing GT [genetically transformed] plants. In addition, in all the experimental animals, the body and carcass composition, the composition of milk and animal tissues, as well as the sensory properties of meat are not modified by the use of feeds derived from GT plants. Furthermore, the health of animals, their physiological characteristics and the survival rate are also not affected. The presence of rDNA and derived proteins can be recognized and quantified in feeds in the case of glyphosate resistant soybean and canola and in the case of insect protected maize. However, rDNA has never been recovered either in milk, or in liver, spleen and muscles tissues of animals, or in rumen bacteria. On the basis of these data, it can be suggested that *in vivo* tests on high producing animals are necessary and sufficient to evaluate the safety and the nutritional value of new GT plants.

INRA Study: Animals fed Bt corn had no deleterious (harmful) effects

Animals fed glyphosate-resistant food: no difference in performance

Prof. Aimé Aumaitre (INRA: Institut National de la Recherche Agronomique/French National Institute for Agronomic Research), 2003, “Safety assessment and feeding value for pigs, poultry and ruminant animals of pest protected (Bt) plants and herbicide tolerant (glyphosate, glufosinate) plants: interpretation of experimental results observed worldwide on GM plants” SCIENTIFIC ASSOCIATION OF ANIMAL PRODUCTION, <http://www.aspajournal.it/archivio/pdf_2004/2_2004/articolo-01.pdf>

Whole plants of different Bt maize containing the expressed protein and fed successively up to 216 days to ruminants had no deleterious effect on feed intake, nutritional equivalence and average daily gain on the one hand in steers, and on the other hand on milk production and composition and body score of high producing dairy cows (Table 5). Similarly, feed issued from GM plants and their derivatives have been tested in farm animals in the case of plants tolerant to specific herbicides. The results of a total of 23 experiments conducted on broiler chickens, pigs, fattening steers, growing lambs or adult rams and dairy cows have been summarized in Table 6. The nutritional equivalence of glyphosate resistant maize grain or whole maize silage expressed as metabolizable energy corrected for zero nitrogen balance (MEN) in poultry or as feed conversion ratio or milk production in dairy cows, respectively has always been demonstrated. Soybean, cotton or canola resistant to glyphosate fed to appropriate animals as raw seeds or meals after oil extraction were also nutritionally equivalent to their parental counterpart. Similar comparative experiments have been performed with kernels of maize resistant to glufosinate fed to pigs and adult rams. Digestible trials also demonstrated nutritional equivalence between feed derived from modified and control plants (Table 6). Recently, an experiment conducted on swine fed diets containing glyphosate tolerant wheat for 100 days have shown similar performance to that of pigs fed diets containing non-transgenic control wheat (Peterson et al., 2003).

Insect Resistant (IR) corn raised yields, added $3.6 billion in farm income

PG Economics Limited (provider of advisory and consultancy services to agriculture and other natural resource-based industries. Our specific areas of specialisation are plant biotechnology, agricultural production systems, agricultural markets and policy. The Company's two directors are Peter Barfoot and Graham Brookes who formed PG Economics in 1999. Both have worked at senior positions in agricultural consultancy and technology businesses) 2006, Biotech crops: the real impacts 1996-2006 – yields, <http://www.pgeconomics.co.uk/pdf/GM_crop_yield_arial.pdf>

IR corn traits have contributed an extra $3.63 billion worth of farm income for those farmers using the technology over the 1996-2006 period. Almost all of this derived from yield gains. As well as these quantifiable direct impacts on yield, production and profitability, there have been other important, indirect impacts, notably reduced production risk, convenience, reduced exposure of farmers and farm workers to insecticides and improved crop quality.

Extra yields of GMO foods has fed hundreds of millions of people

PG Economics Limited (provider of advisory and consultancy services to agriculture and other natural resource-based industries. Our specific areas of specialisation are plant biotechnology, agricultural production systems, agricultural markets and policy. The Company's two directors are Peter Barfoot and Graham Brookes who formed PG Economics in 1999. Both have worked at senior positions in agricultural consultancy and technology businesses) 2006, Biotech crops: the real impacts 1996-2006 – yields, <http://www.pgeconomics.co.uk/pdf/GM_crop_yield_arial.pdf>

In terms of contribution to feeding the world’s population, the additional production arising from biotech crops (1996-2006) has contributed enough energy (in kcal terms) to feed 467 million people for one year (equal to 40% of the energy requirement of India’s population2). The contribution of additional protein and fat was enough to meet the requirements of 1.3 billion and 449 million people respectively. As a significant proportion of these crops and their derivatives are used for industrial or animal feed purposes, the more likely contribution3 of the additional production arising from biotech crops to meeting global food requirements, since 1996, has been to provide sufficient energy to meet the requirements of about 310 million people for a year (similar to the annual requirement of the combined populations of Indonesia and Vietnam). The more likely contribution of additional protein and fat has been enough to meet the requirements of 920 million and 390 million people respectively.

Biotech crops have boosted production of soybeans, corn, cotton and canola

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Biotech crops, through two main traits of insect resistance and herbicide tolerance have, since 1996, added important volumes to global production of corn, cotton, canola and soybeans (Figure 1). Since 1996, biotech traits have added 53.3 million tonnes and 47.1 million tonnes respectively to global production of soybeans and corn. The technology has also contributed an extra 4.9 million tonnes of cotton lint and 3.2 million tonnes of canola.

Union of Concerned Scientists report on low yields of GMOs is flawed: admits yields went up

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*Is inconsistent:* the UCS document claims in the executive summary that ‘*GE (genetic engineering) has done little to increase overall yields.* The headline to the release also says *‘failure to yield*’, yet the detailed content of the report shows the opposite and subsequently acknowledges that GM insect resistant corn has increased (operational) yields in the US. The UCS report also states that *‘now that transgenic crops have been grown in the US for more than a decade, there is a wealth of data on yield under real world conditions*’. This gives the reader the impression that the paper is drawing on such research to come to its conclusions. Yet the vast majority of references cited in the report are of crop trials, not studies of real world experiences of commercial farmers using GM technology

Union of Concerned Scientists report on low yields of GMOs is flawed: ignores crops that went up

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*Misleads by examining issues from a narrow crop perspective*. The UCS report focuses only on soybeans and corn, yet ignores the two other crops in which GM traits are widely used; cotton and canola. GM trait use in these crops has resulted in higher operational yields for most users, increased production and improved standards of living for those farmers using the technology (including US farmers). For example, the average operational yield impact of GM insect resistant (GM IR) cotton technology (1996-2006) has been +11.1% across all global users

INHERENCY

US government requires safety testing of GMOs

Katherine Bourzac, 5 Nov 2007, “Crops That Shut Down Pests’ Genes,” MIT Technology Review, <http://www.technologyreview.com/biomedicine/19659/page1/>

The U.S. government does not require the labeling of foods containing genetically modified organisms, but it does require safety testing. [Fred Gould](http://www.cals.ncsu.edu/entomology/gould/" \t "_blank), professor of agriculture at North Carolina State University, says that because the new crops produce what's effectively a pesticide, they would be regulated by the U.S. Environmental Protection Agency. Such foods must be tested both in animals and through exposure to what Gould calls "reconstituted human stomach juices."

SOLVENCY

1. Labeling requirement difficult: No mechanism for easy identification

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

But the same institutions and physical assets that facilitate the efficient movement and trade of crops make the kind of biosafety labeling required by the BSP [Bio Safety Protocol] challenging. Today’s global agricultural commodity system, which has been built around anonymous exchanges and continuous commingling and blending of crops, provides no immediate mechanism for easy identification of a cargo’s origin or its DNA makeup.

2. Lots of other countries are using and exporting GMOs

Impact/Analysis: Can’t solve for Developing World GMOs by only stopping US exports

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf> (brackets added)

In this context, much of the adoption of LMOs [Living Modified Organisms; same as GMO] has taken place in the same key crops and countries that dominate global production and trade (see Figure 1). Excluding Europe, all major crop-producing and exporting countries have commercially introduced one or more LMOs in their production systems. And, for commercial LMO crops, adoption has occurred at unprecedented rates, often covering more than 80 percent of the available acreage in just a few years.

DISADVANTAGES

1. Hunger in India

A. Link: India needs biotechnology to obtain more food

Indian Minister of External Affairs Pranab Kumar Mukherjee, April 2008 <http://indianembassy.ru/indiachronicle/apr08/infotech.html>

The growing size of our population, and economic growth and prosperity, have led to consumption and life-style changes. By 2020, we are estimated to require 340 million tonnes of food grains. This is a challenge for our scientists, planners and administrators. We need to tap into the resources of developed countries, to usher in our second Green Revolution, harnessing contemporary tools like bio-technology, water conservation and rain harvesting techniques and other steps which are environmental-friendly and economically sustainable. The SAARC Regional Food Bank and the India-US Agriculture Knowledge Initiative are steps in this direction, and we need to follow up with further similar arrangements.

B. Brink: India on the edge of food riots

Laurie Goering (journalist), 13 April 2008, CHICAGO TRIBUNE, “Global crisis grows as food prices soar” [www.chicagotribune.com/business/chi-food-prices-global-crisis-story,0,3603827.story](http://www.chicagotribune.com/business/chi-food-prices-global-crisis-story,0,3603827.story)

To support his family of six, Raju sells plastic packets of chilled water to commuters on a New Delhi roadside. Like many Indians, he normally spends more than half of his monthly income to buy food. But over the past year, as world food prices have soared and inflation began creeping up, the rice, lentils and wheat his family needs have begun to take as much as 70 percent of his meager monthly salary of $77. With the other 30 percent of the family's income committed to rent, they have had to give up buying vegetables―meat and milk have never been affordable―and will simply have to go hungry if prices rise any further. "We're barely managing," said the 36-year-old, who goes by only one name. With India's inflation hitting 7 percent, "I don't see any improvement coming," he said. "There will be riots if this gets worse."

C. Impact: Eliminating hunger essential to political stability, democracy, human rights, peace and security

Jacques Diouf (Director-General of the Food and Agricultural Organization of the UN) Fall 2006, “Statement by the Director-General,” <ftp://ftp.fao.org/unfao/bodies/cfs/j8605e.doc>

“Above all, the eradication of hunger and poverty is essential to secure political stability and social consent, to ensure the exercise of democratic and basic human rights, to have good governance and to establish peace and security.”

2. Hunger in Africa

A. Link and Brink: 50% increase in world food supply is needed, science is under attack, and available land is shrinking

NORMAN BORLAUG (Nobel prize in 1970 for his work in agricultural technology) and JIMMY CARTER (former President) 14 October 2005 WALL STREET JOURNAL "Food for Thought," <http://online.wsj.com/article/SB112925672577868494.html?mod=todays_us_opinion>

It took around 10,000 years for the world's farmers to reach their current production of nearly six billion gross tons of food, consumed virtually in its entirety by 6.4 billion people annually. Within 50 years, we will have to increase this amount by at least another 50% -- to nine billion tons. Most likely we will have to achieve this feat on a shrinking agricultural land base, and with most of the production increases occurring in those countries where it is to be consumed. However, agricultural science is increasingly under attack by groups and individuals who, for political rather than scientific reasons, are campaigning to limit advances, especially in new fields such as genetic modification (GM) through biotechnology

B. Impact: Millions will die without biotechnology

NORMAN BORLAUG (Nobel prize in 1970 for his work in agricultural technology) and JIMMY CARTER (former President) 14 October 2005 WALL STREET JOURNAL "Food for Thought," <http://online.wsj.com/article/SB112925672577868494.html?mod=todays_us_opinion>

Because there are so many hungry and suffering people, particularly in Africa, attacks on science and biotechnology are especially pernicious. Africa is facing a pandemic scourge of HIV/AIDS, malaria, and other diseases, a 30-year period of continuous degradation in soil fertility, frequent droughts and a burgeoning population. This set of converging circumstances can lead to a human catastrophe in Africa on a scale the world has never seen. We know it is coming. We have the knowledge to avert it. If we put it off, solving it later will mean the acute suffering -- and even death -- of millions of innocents who could have been spared such a tragedy.

3. Hunger and Disease everywhere: World health, nutrition and environmental sustainability depend on GMOs

A. Brink: We need solution to world food problem quickly

Prof. Sapna K. Deo (Assistant Professor of Bioanalytical Chemistry in the Department of Chemistry & Chemical Biology at the Indiana University-Purdue University Indianapolis; author and co-author of over 55 scientific publications and several patents) and Stephanie Bachas-Daunert (undergraduate student in Civil and Environmental Engineering at Princeton University) 2008, “Should genetically modified foods be abandoned on the basis of allergenicity?” ANALYTICAL AND BIOANALYTICAL CHEMISTRY, <http://resources.metapress.com/pdf-preview.axd?code=9h3117647t100683&size=largest>

Plagued with not only world hunger issues but also the plummet in world food stocks, a viable solution to the world’s food problems is required and quickly, to ensure the safety and sustainability of future generations.

B. Link and Impact: GMOs can solve many problems – Immense humanitarian impact

Prof. Sapna K. Deo (Assistant Professor of Bioanalytical Chemistry in the Department of Chemistry & Chemical Biology at the Indiana University-Purdue University Indianapolis; author and co-author of over 55 scientific publications and several patents) and Stephanie Bachas-Daunert (undergraduate student in Civil and Environmental Engineering at Princeton University) 2008, “Should genetically modified foods be abandoned on the basis of allergenicity?” ANALYTICAL AND BIOANALYTICAL CHEMISTRY, <http://resources.metapress.com/pdf-preview.axd?code=9h3117647t100683&size=largest>

Biotechnology, and genetic engineering in particular, has the potential to positively impact billions of lives; as Prime Minister Singh aptly highlighted, the proliferation of genetically modified rice can help the 780 million people suffering from hunger worldwide. In addition to potentially reducing world hunger, genetic modification provides solutions to many of the United Nations’ Millennium Development Goals, such as the following: combating infectious diseases, reducing child mortality, improving maternal health, improving child nutrition, and ensuring environmental sustainability. In short, the humanitarian profits of utilizing biotechnology are immense.

4. Higher food prices, even on non-GMO food – due to testing requirements

Testing for the presence of modified organisms costs between $936,000 and $4.3 million per 25,000 metric tons

Prof. Nicholas Kalaitzandonakes (Professor of Agribusiness and director of the Economics and Management of Agrobiotechnology Center (EMAC) at the University of Missouri-Columbia) Summer 2006, “Cartagena Protocol: A New Trade Barrier?” REGULATION magazine, <http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf>

With an average cargo size of 25,000 metric tons of corn, vessels are sampled multiple times in set time intervals as the grain flows into the holds. A representative sub-sample of approximately 5 lbs. is sent to a laboratory for testing. From that, 10 grams of homogenized ground corn are tested for LMO content. Under this sampling approach, the laboratory testing costs for one cargo of corn for exports range between $936,000 and $4,356,000, with the highest costs incurred when quantification of the LMOs is necessary (see Table 2). The relevance of the test results, of course, depends on whether the tested samples are representative of the content of the various vessels. Using 5 lbs. (or 10 grams that are actually tested) to accurately represent the contents of a 25,000 metric ton cargo might be a stretch.

NEGATIVE BRIEF: RATIFYING KYOTO PROTOCOL – Bad

by Josh Craddock

INHERENCY

1. Much of the US is already in compliance with Kyoto standards

ClimateBiz, “More Than 900 U.S. Mayors Agree to Kyoto Climate Goals,” November 25, 2008, <http://www.climatebiz.com/news/2008/11/25/more-than-900-us-mayors-agree-kyoto-climate-goals>

“The mayors of Savannah, Ga., Lake Placid, N.Y., and Redondo Beach, Calif., have agreed to reduce greenhouse gas emissions in their cities 7 percent below 1990 levels, pushing the number of mayors committing to meet the goals of the Kyoto Protocol past 900. Mayors of New Egypt, N.J. and Springfield, Ill. also signed the [U.S. Conference of Mayors Climate Protection Agreement](http://www.usmayors.org/climateprotection/about.htm) recently, which aims to reduce emissions 80 percent below 1990 levels by 2050. All told, the mayors signed onto the agreement represent more than 81 million Americans.”

2. Democracy at work: grassroots action to address climate change

ClimateBiz, “More Than 900 U.S. Mayors Agree to Kyoto Climate Goals,” 25 November 2008, <http://www.climatebiz.com/news/2008/11/25/more-than-900-us-mayors-agree-kyoto-climate-goals>

“A perceived lack of leadership at the federal level led to the creation of the U.S. Conference of Mayors Climate Protection Agreement. Seattle Mayor Nickels helped to launch it in 2005 with 141 mayors signing the agreement at the time. There are now 902 mayors from cities in 50 states, the District of Columbia and Puerto Rico that have signed on.”

3. Steel industry is surpassing Kyoto requirements voluntarily

Environmental Leader, “CO2 Cuts in U.S. Steel Industry Surpass Kyoto Protocol,” 21 Jan 2009, <http://www.environmentalleader.com/2009/01/21/co2-cuts-in-us-steel-industry-surpass-kyoto-protocol/>

“The U.S. Steel industry has reduced its energy intensity per ton of steel shipped by about 33 percent since 1990 - an improvement on the 29-percent reduction reported in 2006, [according](http://www.steel.org/AM/Template.cfm?Section=20091&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=28699) to the American Iron and Steel Institute (AISI). The results far surpass the mere 7 percent reduction (1990-2012) called for in the Kyoto Protocol, the institute observes.”

4. Action on climate change must come from the bottom up

Elliot Diringer (Vice President for International Strategies at the Pew Center on Global Climate Change, former Deputy Assistant to the President and Deputy Press Secretary, served as Senior Policy Advisor and as Director of Communications at the Council on Environmental Quality, and a Nieman Fellow at Harvard University, where he studied international environmental law and policy), “Looking Beyond Kyoto: A U.S. Perspective,” Pew Center on Global Climate Change, 2 June 2004, <http://www.pewclimate.org/press_room/speech_transcripts/beyondkyoto.cfm>

“Climate is not simply an environmental issue but fundamentally one of economics and development. And it is in part a matter of recognizing that a multilateral approach cannot succeed by attempting solely to remold countries’ behavior from the top down. It must at the same time recognize and reflect national circumstances from the bottom up.”

SOLVENCY

1. Kyoto won’t affect global temperatures

[Jerry Taylor (Director Natural Resource Studies, The Cato Institute)](http://findarticles.com/p/search/?qa=Jerry%20Taylor), “Should the U.S. sign the Kyoto Protocol?” New York Times, March 25, 2002, <http://findarticles.com/p/articles/mi_m0BUE/is_12_134/ai_n18613488/>

“Even if global warming is as bad as some environmentalists think, the Kyoto Protocol would not produce the desired effect. Computer simulations show it would only reduce global temperatures by a tiny fraction of 1 degree Fahrenheit by 2050. This is not enough to justify the enormous cost.”

Impact on climate change negligible: 0.02 degrees

Dr S. Fred Singer PhD (professor emeritus of environmental sciences at the University of Virginia and president of the Science and Environmental Policy Project), “U.S. Fighting off Kyoto Restrictions,” Environment & Climate News, The Heartland Institute, April 2005, <http://www.heartland.org/policybot/results/16813/US_Fighting_off_Kyoto_Restrictions.html>

Even supporters of the protocol concede that if it is carried out without cheating, its goal of cutting emissions of greenhouse gases to 5 percent below the 1990 level by 2012 would reduce the calculated temperature rise in 2050 by a virtually undetectable 0.02 degrees Celsius. That's two one-hundredths of a degree Celsius. No wonder Friends of the Earth calls the Kyoto Protocol "woefully inadequate." Even if the United States and Australia were to ratify and implement the measure, the temperature decrease would be an insignificant 0.05 degrees Celsius.

2. Copenhagen offers nothing new

Bjorn Lomborg (adjunct professor at the Copenhagen Business School), “Another empty Kyoto Protocol,” The Australian, 14 May 2009, www.theaustralian.news.com.au/story/0,25197,25475544-7583,00.html

Leaders met again in Kyoto in 1997 and promised even stricter carbon cuts by 2010, yet emissions keep increasing and Kyoto has done virtually nothing to change that. What is most tragic is that when leaders meet in Copenhagen this December, they will embrace more of the same solution: promises of even more drastic emission reductions that, once again, are unlikely to be fulfilled. Measures that consistently over-promise and underachieve at vast cost do not win hearts and minds in the best of times, and this is manifestly not the best of times.

Copenhagen = more meaningless talk

Bjorn Lomborg (adjunct professor at the Copenhagen Business School), “Another empty Kyoto Protocol,” The Australian, 14 May 2009, <http://www.theaustralian.news.com.au/story/0,25197,25475544-7583,00.html>

The saddest thing about the global warming debate is that nearly all of the protagonists - politicians, campaigners and pundits - know that the old-style agreement that is on the table for Copenhagen will have a negligible effect on temperatures. Unless we change direction and make our actions realistic and achievable, it is already clear that the declarations of success in Copenhagen will be meaningless. We will make promises. We will not keep them. And we will waste another decade. Instead, we must challenge the orthodoxy of Kyoto. We can do better.

3. We don’t need a successor to Kyoto

Bronwen Maddox, “Why Kyoto will vanish into hot air,” The Times Online, 29 November 2005, <http://www.timesonline.co.uk/tol/news/world/article597635.ece>

“The best way forward now is not a "successor" to Kyoto, which covers the years until 2012. Another treaty that attempted to set fixed targets for cutting emissions could be economically very damaging — in the unlikely event that countries ever reached agreement. The better answer is in the plethora of bargains between a handful of rich and poor countries, which some are already exploring. It is also in the development of new technology to combat global warming, and in deals to spread these quickly to poorer countries. Some of these new suggestions for life after Kyoto have come from the US, China and India, which all found Kyoto unpalatable. For just that reason, they are more valuable than son-of-Kyoto would be.”

4. Countries get around the Kyoto rules: Buy credits, collapse the economy, or just don’t follow the rules

Dr S. Fred Singer PhD (professor emeritus of environmental sciences at the University of Virginia and president of the Science and Environmental Policy Project), “U.S. Fighting off Kyoto Restrictions,” Environment & Climate News, The Heartland Institute, April 2005, <http://www.heartland.org/policybot/results/16813/US_Fighting_off_Kyoto_Restrictions.html>

Cheating on a large scale is permitted, however. It is called "emissions trading" or, more properly, buying unused emission rights. Britain, France, and Germany may be on target now (though only because the base year was chosen as 1990), but they won't be by 2012. They will have to buy permits from Russia, which has plenty of credits for sale. Russia, after all, successfully demonstrated how to cut emissions--just collapse the economy. Japan, Italy, Spain, and most of Europe are already not meeting their emission targets. There is no chance they will be in compliance by 2012.

5. Kyoto mechanisms are difficult to implement

Leslie Evans (journalist) quoting Marco Verweij (senior research fellow at the Max Planck Project Group on Common Goods), “Kyoto Protocol Said to Harm Effort to Stop Global Warming--But There Is Something Better,” UCLA International Institute, 23 May 2002, [www.international.ucla.edu/article.asp?parentid=1900](http://www.international.ucla.edu/article.asp?parentid=1900)

The Kyoto Protocol is extremely difficult to implement. "It is costly and involves moral hazards." There are three implementation mechanisms: (A) Trade in permits to emit greenhouse gases. (B) Joint implementation mechanism. (C) Clean development mechanism. The trading system has allocated permits to some 42 governments among those endorsing the Protocol. "The total value of the permits allocated comes to more than US$2 trillion. If you are not meeting your target, you can go on the market and buy units from governments that have met their targets. The allocation was decided on in the early 1990s, based on the expected industrialization rates of the particular countries. This was very difficult to predict, the future economic growth of particular countries."

6. Too expensive: Kyoto can’t solve unless we spend at least $550 trillion

Leslie Evans (journalist) quoting Marco Verweij (senior research fellow at the Max Planck Project Group on Common Goods), “Kyoto Protocol Said to Harm Effort to Stop Global Warming--But There Is Something Better,” UCLA International Institute, May 23, 2002, <http://www.international.ucla.edu/article.asp?parentid=1900>

“The Kyoto Protocol does not do much to reduce the costs of combating climate change. "One estimate is that it will take $550 trillion dollars minimum and perhaps twice that as a maximum." There are no mechanisms under the Kyoto Protocol to make this cheaper. "The trading system was advocated by the Clinton administration and the Europeans rejected it. When Bush pulled out, the Europeans agreed to accept the credit trades. There is very mixed evidence that trading systems are an effective way to achieve goals."”

7. Doomed by Lack of public support

A. Link: Public opinion isn’t worried about Global Warming

Bjorn Lomborg (adjunct professor at the Copenhagen Business School), “Another empty Kyoto Protocol,” The Australian, 14 May 2009, [www.theaustralian.news.com.au/story/0,25197,25475544-7583,00.html](http://www.theaustralian.news.com.au/story/0,25197,25475544-7583,00.html)

Global warming has become the lowest-priority policy problem among Americans, according to a new Pew survey. Another Pew survey shows that China, the biggest emitter, cares even less. Just 24 per cent of Chinese regard global warming as a very serious problem, making China the least concerned country.

B. Impact: Kyoto must be supported by public opinion to succeed

VANESSA GERA (Associated Press Writer), “US hopes to avoid repeat of Kyoto Protocol,” FOX News, 27 March 2009, <http://www.foxnews.com/wires/2009Mar27/0,4670,EUGermanyUSClimateTalks,00.html> [brackets added]

“"We need to be guided on this internationally by a combination of science and pragmatism," he [Climate change envoy Todd Stern who was the chief U.S. negotiator at the Kyoto Protocol talks] said. "It does not serve anyone to do a week-kneed compromise that doesn't move us in the direction that the science is telling us we need to go. By the same token, it doesn't serve anybody to have an agreement that is scientifically pristine and perfect and which cannot be supported by our public back home," Stern added.”

DISADVANTAGES

1. Fulfilling Kyoto obligations would cost 4 million US jobs

Dr Chen Gang (Ph.D. in International Relations, Research Fellow at the East Asian Institute, National University of Singapore), “The Kyoto Protocol and the Logic of Collective Action,” Chinese Journal of International Politics, Oxford University, Vol. 1, Number 4, 2007, pages 525-557

“The cost to the US of fulfilling its obligations, for instance, could exceed 4% of its GDP and result in the loss of 4 million job opportunities. Taken as a whole, developing nations’ emission reduction costs are lower than those of the developed nations, but large discrepancies in cost also exist among them.”

2. Cost to fulfill Kyoto obligations would be 4% of the entire economy each year

[Jerry Taylor (Director Natural Resource Studies, The Cato Institute)](http://findarticles.com/p/search/?qa=Jerry%20Taylor), “Should the U.S. sign the Kyoto Protocol?” New York Times, March 25, 2002, <http://findarticles.com/p/articles/mi_m0BUE/is_12_134/ai_n18613488/>

“Reducing the amount of greenhouse gases we put into the atmosphere by the amount stipulated in the Kyoto Protocol would cost more than 4 percent of the entire American economy each year, according to the federal Energy Information Administration. That's about the size of the current defense budget--and is a sum larger than the cost of all our current environmental regulations combined.”

3. Increased Dependence on Foreign Oil

Link:Carbon limits could increase dependence on foreign oil

Dr Margo Thorning (senior vice president and chief economist with the American Council for Capital Formation and director of research for its public policy think tank; also serves as the managing director of the International Council for Capital Formation) 29 June 2004, (brackets added) “Dr Margo Thorning on the economic impact of the McCain-Lieberman Climate Stewardship Act” <http://www.globalwarming.org/2004/06/29/dr-margo-thorning-on-the-economic-impact-of-the-mccain-lieberman-climate-stewardship-act/>

S.2028 [McCain-Lieberman carbon emissions reduction bill] might well increase dependence on foreign oil since producing domestically will become even more costly due to the need for producers to pay for the right to emit carbon as they produce oil, gas and coal.

Impact 2: Foreign oil funds terrorism

Phillip H. Gordon (Senior Fellow, Energy Security, Brookings Institute), 12 May 2006, “An Improbable Cure for Oil Addiction”, The Financial Times, [www.brookings.edu/opinions/2006/0512globalenvironment\_gordon.aspx](http://www.brookings.edu/opinions/2006/0512globalenvironment_gordon.aspx)

Perhaps most importantly, our failure to move decisively away from a dependence on oil and the subsequent high oil prices that failure produces means that we are funding both sides in the war on terror. Many of the extra dollars we spend on energy goes to countries such as Saudi Arabia, which funds the Madrassas that teach extremist Islam in Pakistan, and Iran, which finances Hezbollah. Even friendly Qatar is giving $50m out of the oil revenues it received from us to Hamas.

4. Higher energy prices and job losses

Dr S. Fred Singer PhD (professor emeritus of environmental sciences at the University of Virginia and president of the Science and Environmental Policy Project), “U.S. Fighting off Kyoto Restrictions,” Environment & Climate News, The Heartland Institute, April 2005, (brackets added) [www.heartland.org/policybot/results/16813/US\_Fighting\_off\_Kyoto\_Restrictions.html](http://www.heartland.org/policybot/results/16813/US_Fighting_off_Kyoto_Restrictions.html)

“The cost [of Kyoto] to participating nations is huge and will be reflected in higher energy prices, which ultimately will result in job losses and other negative effects on their economies. Additional costs will come in the form of emissions monitoring and inspection.”

5. European countries just want the US to be less economically competitive

Dr. S. Fred Singer PhD (professor emeritus of environmental sciences at the University of Virginia and president of the Science and Environmental Policy Project), “U.S. Fighting off Kyoto Restrictions,” Environment & Climate News, The Heartland Institute, April 2005, <http://www.heartland.org/policybot/results/16813/US_Fighting_off_Kyoto_Restrictions.html>

“Understandably, our European friends are worried about losing their industries, as rising energy costs make them less competitive. Their efforts to pressure U.S. participation in the Kyoto Protocol thus come as no surprise.”

NEGATIVE BRIEF: MOUNTAINTOP COAL – NOT A PROBLEM

By Vance Trefethen

HARMS

1. Hendryx & Ahern/West Virginia U. study: Doesn’t prove pollution from mining causes mortality

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=2>

Scientists say they have little data on the effects of mountaintop coal mining on public health. [Michael Hendryx](http://www.smithsonianmag.com/topics?keyword=Michael+Hendryx), a professor of public health at [West Virginia University](http://www.smithsonianmag.com/topics?keyword=West+Virginia+University), and a colleague, [Melissa Ahern](http://www.smithsonianmag.com/topics?keyword=Melissa+Ahern) of [Washington State University](http://www.smithsonianmag.com/topics?keyword=Washington+State+University), analyzed mortality rates near mining-industry sites in West Virginia, including underground, mountaintop and processing facilities. After adjusting for other factors, including poverty and occupational illness, they found statistically significant elevations in deaths for chronic lung, heart and kidney disease as well as lung and digestive-system cancers. Overall cancer mortality was also elevated. Hendryx stresses that the information is preliminary. "It doesn't prove that pollution from the mining industry is a cause of the elevated mortality," he says, but it appears to be a factor.

West Virginia U. coal mining/health study doesn’t prove causation: A lot more study is needed

Don Hopey (journalist), 2 Apr 2008, “W.Va. study unearths higher health risks in coal mining communities,” PITTSBURGH POST-GAZETTE, <http://www.post-gazette.com/pg/08093/869656-114.stm>

Dr. Steve Ostroff, director of the Bureau of Epidemiology at the Pennsylvania Department of Health, said the West Virginia University study presents an interesting hypothesis that both requires and deserves further study. "The paper demonstrated a potentially important relationship between health outcomes and location near a coal mine, but it doesn't prove a cause," said Dr. Ostroff. "It's an interesting finding, an important finding, but before you can take it to the bank you need to do a lot more study."

WVU Study limitations: Can’t be sure coal-mining caused the health problems

Ken Ward Jr. (journalist), 20 June 2009, "Coal's costs outweigh benefits, WVU study finds" CHARLESTON GAZETTE (W. Virginia newspaper), <http://www.wvgazette.com/News/200906200170> (brackets added)

In each of his studies, [W. Virginia Univ. researcher Michael] Hendryx has tried to weed out other possible factors -- such as smoking and diet -- to pinpoint coal's possible role in these public health problems. The newest study concedes that this work still has some limitations. "Despite the significant associations between coal-mining activity and both socio-economic disadvantage and premature mortality, it cannot be stated with certainty that coal-mining causes these problems," the new study says.

2. Stream reconstruction restores mining area headwater streams

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, Testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

The State [of W. Virginia] has participated in a multi-agency effort to establish on-site mitigation and stream reconstruction and replacement in the restored mining area to mimic the functions of headwater streams. These practices were specifically sustained by the 4th United States Circuit Court of Appeals.

3. Removed mountain tops have beneficial uses

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia (first brackets added; second brackets and parentheses in original) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

This committee report [House of Representatives’ Committee on Interior and Insular Affairs, H.R. 95-218, which accompanied and recommended adoption of the bill that became the Surface Mining Control and Reclamation Act of 1977] also went on to state:   
[I]t may not always be best to return mountain lands to their approximate original contour. In various areas such as the mountainous Appalachian coalfields, there is a paucity of flood free, relatively flat developable land. Thus some surface mining operations offer the opportunity for creating a resource which otherwise might not be available or might be prohibitively expensive. The mining application process and environmental standards allow the regrading and spoil placement requirements for mountaintop mining in order to achieve post mining land uses including industrial, commercial, agricultural, residential, or public facility (including recreational facilities) development.

4. Mine damage being cleaned up: Abandoned Mine Lands Fund

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Over the past three decades, EPA, our state partners and other concerned stakeholders have begun to make a positive impact on the legacies of abandoned mine lands and acid mine drainage. Over $8 billion has been paid by coal companies into the Abandoned Mine Lands Fund, managed by the Department of the Interior’s Office of Surface Mining. These funds are being spent to address environmental degradation and public health risks caused by past mining practices.

5. Mining companies restore streams and forests

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459>

In 2002 the U.S. Army Corps of Engineers changed its restoration guidelines, requiring operators to restore streams in a more natural manner and regulating the type of ripples and pools, sinuosity, slope and conductivity. The Interior Department’s Office of Surface Mining now encourages operators to restore the hardwood forest when they’re done, said Patrick Angel, an agency forester and soil scientist based in London, Ky. In every new surface mining permit issued recently in Virginia and in 80 percent of those in West Virginia, the mining company has committed to reclaim the land by planting a diverse hardwood forest, according to agency figures.

INHERENCY

1. No barrier, States can solve: Tennessee is considering legislation to regulate mountain mining

Impact/Analysis: Affirmative must affirm all of the resolution, and part of it is the part calling for Federal action. Since the States can do it in the Status Quo, Affirmative must prove why we need federal action and why we cannot just leave it to the States.

Nashville Business Journal, 18 March 2009, “Law would end mountaintop coal mining,” <http://nashville.bizjournals.com/nashville/stories/2009/03/16/daily23.html>

A bill moving through the legislature known as the Tennessee Scenic Vistas Protection Act, would prohibit surface coal mining that alters or disturbs ridge lines at elevations higher than 2,000 feet above sea level. High-elevation surface coal mining is a method of extracting coal from mountains by using explosives to provide easy access to coal seams, but irreparably damaging the mountain.

2. Status Quo Federal policy is to move Appalachia toward clean enterprises and green jobs

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf)

The Federal government has made a commitment to move America toward a 21st-century clean energy economy based on the recognition that a sustainable economy and environment must work hand in hand. Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

3. West Virginia has very high water-quality standards for coal mining

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

West Virginia has gone above and beyond the EPA’s recommended water quality parameters for coal mining by assigning water-quality-based effluent limitations for mining operations that broaden the parameters for which mining operations receive assigned permit limits. Other states continue to use tech based limits that assign permit standards for pH, iron, manganese and Total Suspended Solids. West Virginia permits have limits for these parameters and a host of others such as aluminum.

4. West Virginia set higher standards for mining permits than the Army Corps of Engineers

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

The EPA was concerned that mining permits were being approved by the [Army] Corps [of Engineers] through nationwide or general section 404 permits. The mining industry in West Virginia responded and made the transition to the Individual Permit process under section 404 while other states and regions continued to use the nationwide permit process that required less review and environmental analysis.

5. EPA upgrading Clean Water Act review procedures

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf) (brackets added)

EPA and the [Army] Corps [of Engineers] will begin immediately to implement enhanced coordination

procedures applicable to the Clean Water Act review of Section 404 permit applications for Appalachian surface coal mining activities that have been submitted prior to execution of this MOU [memorandum of understanding]. The goal of these procedures is to ensure more timely, consistent, transparent, and environmentally effective review of permit applications under existing law and regulations. The agencies are issuing these enhanced joint procedures concurrently with this MOU. Also concurrently, EPA is clarifying the factual considerations it is using to evaluate pending CWA permit applications under the 404(b)(1) Guidelines.

6. EPA improving and strengthening oversight

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf)

Recognizing that the regulation of surface coal mining extends beyond CWA Section 404, EPA will improve and strengthen oversight and review of water pollution permits for discharges from valley fills under CWA Section 402, and of state water quality certifications under CWA Section 401, by taking appropriate steps to assist the States to strengthen state regulation, enforcement, and permitting of surface mining operations under these programs.

EPA plans to more fully use its Clean Water Act authority to solve coal mining impacts

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Thank you for the opportunity to address the Subcommittee on EPA’s efforts to protect and restore the water quality and water resources affected by the surface mining of coal, including mountaintop removal and valley fill activities. EPA plans to more fully use its authorities under the Clean Water Act and the National Environmental Policy Act (NEPA), to address the impacts of this type of mining activity on the aquatic and forest systems that provide invaluable ecosystem services to Appalachia and to the waters people use for drinking and fishing.

7.EPA can regulate discharge ponds

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

In addition, EPA has authorities under the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402 of the Clean Water Act for other types of discharges from surface mining operations. Discharge ponds collect stormwater that comes in contact with overburden, exposed coal, and other materials at the mining sites, and water from buried streams that filters through the fill. Most states have been authorized to issue permits for such discharges under the NPDES program, but EPA retains authority to review and, if necessary, object to draft permits and to enforce violations.

MINOR REPAIR: Better enforcement of existing law

1. Mountaintop mining violates existing laws. Let’s just enforce existing law better rather than create a new policy.

Cross-apply under Topicality: Not a change in policy – laws already exist to stop dangerous mountaintop mining

Cross-apply under Solvency: Politicians will be motivated to circumvent Affirmative plans, like they do now. You can fiat laws but not attitudes and not compliance.

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," (brackets added) <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=6>

West Virginia's political establishment has been unwavering in its support for the coal industry. The close relationship is on display every year at the annual West Virginia Coal Symposium, where politicians and industry insiders mingle. This past year, [Gov. Joe Manchin](http://www.smithsonianmag.com/topics?keyword=Joe+Manchin) and [Senator Jay Rockefeller](http://www.smithsonianmag.com/topics?keyword=Jay+Rockefeller) addressed the gathering, advocating ways to turn climate-change legislation to the industry's advantage and reduce its regulatory burdens. "Government should be your ally, not your adversary," Manchin told coal-industry representatives. Without such backing, mountaintop removal would not be possible, because federal environmental laws would prohibit it, says [Jack Spadaro](http://www.smithsonianmag.com/topics?keyword=Jack+Spadaro), a former federal mining regulator and a critic of the industry. "There is not a legal mountaintop mining operation in Appalachia," he says. "There literally is not one in full compliance with the law."

2. Army Corps of Engineers is not following its own “regulations and policies”

Impact/Analysis: Key word “Policies”. Status Quo already has “policies” we just need to follow them.

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=6>

In another case, brought by West Virginia environmental groups against four Massey Energy mining projects, the Corps conceded that it routinely grants dumping permits with virtually no independent study of the possible ecological fallout, relying instead on the assessments that coal companies submit. In a 2007 decision in that case, Judge Chambers found that "the Corps has failed to take a hard look at the destruction of headwater streams and failed to evaluate their destruction as an adverse impact on aquatic resources in conformity with its own regulations and policies." But because three of the mining projects challenged in that case were already underway, Chambers allowed them to continue, pending the case's resolution.

SOLVENCY

1. Many other mines do the same “valley fill” as mountaintop mines

Impact: Not solving for the pollution

Cross-apply under Inherency: West Virginia law already regulates both surface and mountaintop

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

In fact, the debate cannot be limited to surface coal mining. Mining through streams, hard rock surface mining and development activities could warrant the same scrutiny that is being given to the use of valley fills. There are many surface mines requiring valley fills that are not mountaintop removal mines by definition. Also, the Clean Water Act and West Virginia’s Water enforcement program require the same levels of protection for all mining activity.

DISADVANTAGES

Link to multiple Disadvantages: Mountaintop removal is a significant amount of W. Virginia’s coal industry

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

In West Virginia, mountaintop removal and other kinds of surface mining (including highwall mining, in which machines demolish mountainsides but leave peaks intact) accounted for about 42 percent of all coal extracted in 2007, up from 31 percent a decade earlier.

1. Reduced safety. Mountain top removal is safer than other forms of mining

Impact: More miners die if other methods are used.

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459> (brackets added)

The result is that while coal tonnage has decreased in Virginia since 1990, it has stayed steady in central and southern Appalachia as industry compensates with mountaintop removal, said Carl Zipper, director of the Powell River Project, a research program of Virginia Tech aimed at enhancing communities and restoration efforts in the state’s coalfields. There’s an incalculable benefit to this shift, noted , [former Kentucky state secretary of Environmental and Public Protection LaJuana] Wilcher, the lawyer and former regulator: Mountaintop removal mining is safer and requires fewer hands. Coalfield mining deaths have dropped precipitously as a result. Throughout the ‘70s an average of 35 miners died annually. By the 1980s the annual death rate had dropped to the mid-20s. Today it’s in the single digits; not a single miner died in 2006, a first.

2. Lost future economic development – 1: Loss of coal production

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

Coal production is the leading revenue generator for West Virginia, and many in the State are concerned about losing the opportunities for future economic development associated with mountaintop mining.

Staggering impact on West Virginia’s economy

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

Without valley fills, the effect on coal production in Appalachia would be felt in the world’s energy markets. The elimination of valley fills would effectively bring coal production to a point that it would be difficult to sustain energy production and the impact to the State’s economy would be staggering.

Impact: Mountaintop mining = 14,000 jobs

MSNBC, 24 Mar 2009, “EPA to review mountaintop mining projects,” <http://www.msnbc.msn.com/id/29862781/>

The coal industry says most of the nearly 130 million tons of coal produced at mountaintop mines in Appalachia goes to generate electricity for 24.7 million customers. Moreover, mountaintop mines employ some 14,000 people across West Virginia, Virginia, Kentucky and Tennessee.

Impact: Coal mining communities get $4 in spending for every $1 invested in mining

Jim Ostroff (Associate Editor), 24 October 2006, “A Surge Ahead for Coal Mining,” Kiplinger Business Resource Center, [www.kiplinger.com/businessresource/forecast/archive/a\_surge\_ahead\_for\_coal\_mining.html](http://www.kiplinger.com/businessresource/forecast/archive/a_surge_ahead_for_coal_mining.html)

The money to expand coal mining won't just go underground. Each dollar invested generates another $4 in spending on safety equipment, communications gear, heavy-duty trucks and services needed by a larger mining workforce—including food, clothing, auto dealers and gas stations. Communities around the midwestern and eastern mines are likely to see substantial revitalization.

3. Lost future economic development – 2: Loss of flat developable lands in Appalachia

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

To take advantage of the opportunity to create flat, developable lands in Appalachia presented by surface coal mining operations, Congress specifically provided for variances from the AOC requirement in 30 U.S.C. § 1265( c) so industrial, commercial, agricultural, residential or public facilities, including recreational facilities could be created. This opportunity is very important in the southern West Virginia coal mining region where no flat land exists. To assure that these opportunities are not lost, this year, the State has adopted legislation that requires a mine’s post-mining land use to comport with county master land use plans that are developed by local economic development officials and approved by the State’s Office of Coalfield Community Development. These master land use plans target lands which are proximal to transportation or other infrastructure for development, so these areas of the State, which historically have had little economic activity other than coal mining, can develop sustainable post-coal economies.

Impact: Appalachian Poverty

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459>

Median income in the United States was almost $42,000 in 2000, the most recent data the U.S. Census has for nationwide earnings. In the 100 poorest counties - of which 38 lie in Appalachian coal country - the median was half that. A typical household in Owsley County, in Kentucky’s eastern hills, brought home $16,271 in 2000; in McDowell County in West Virginia’s southern end, median earnings sat at $16,931. The median income for a miner in 2000? $44,400, according to the Bureau of Labor Statistics. “In areas of the country where there are limited education and opportunities, men can live like kings and women can live like queens compared to their neighbors if they mine coal,” said LaJuana Wilcher, an attorney with English Lucas Priest & Owsley in Kentucky who was the state’s secretary of Environmental and Public Protection from 2003 to 2006.

4. Increased poverty in India

Link 1: India wants Appalachian coal to industrialize and grow prosperity

Andrew Revkin (journalist for NY Times), 23 Oct 2008, “Appalachian Coal to Power India?” NEW YORK TIMES Dot Earth Blog, <http://dotearth.blogs.nytimes.com/2008/10/23/appalachian-coal-to-power-india/>

It’s not surprising that India, despite big domestic coal reserves, is [shopping in the United States for new coal sources](http://greeninc.blogs.nytimes.com/2008/10/23/india-shopping-for-coal-mines-in-appalachia/) to feed its climb toward electrification, industrialization, and prosperity. The giant boilers at the planned fleets of “[Ultra Mega” power plants](http://dotearth.blogs.nytimes.com/2008/04/09/money-for-indias-ultra-mega-coal-plants-approved/) will need millions of tons a year. In an email dispatch to our [Green Inc. blog](http://greeninc.blogs.nytimes.com/2008/10/23/india-shopping-for-coal-mines-in-appalachia), Somini Sengupta confirmed some reports that top Indian government and industry figures, with some $4 billion to spend, were shopping in Appalachia and elsewhere not just for American coal ([exports of coal from the United States](http://www.nytimes.com/2008/03/19/business/19coal.html) have growing for awhile), but coal mines.

Link 2: Appalachian mountaintop coal fuels India’s economy

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

So coal torn from a West Virginia mountain was put on a truck and then a rail car, which took it to Alexandria, where it was incinerated, creating the heat that drove the turbines that generated the electricity that enabled me to document concerns about the destruction of that very same American landscape. Demand for mountaintop coal has been rising quickly, driven by high oil prices, energy-intensive lifestyles in the [United States](file://localhost/topics%3fkeyword=United+States) and elsewhere and hungry economies in [China](file://localhost/topics%3fkeyword=China) and [India](file://localhost/topics%3fkeyword=India).

Link: Electricity growth in India will be fueled primarily by coal

(Note: The context of the card is talking about India. Note the title of the article.)

Ananth P. Chikkatur and Ambuj D. Sagar (Belfer Center for Science and International Affairs, Kennedy School of Government, Harvard University) Dec 2007, "Cleaner Power in India: Towards a Clean-Coal-Technology Roadmap" <http://belfercenter.ksg.harvard.edu/files/Chikkatur_Sagar_India_Coal_Roadmap.pdf> (LNG=Liquified Natural Gas)

The projected rapid growth in electricity generation over the next couple of decades is expected to be met by using coal as the primary fuel for electricity generation. Other resources are uneconomic (as in the case of naphtha or LNG), have insecure supplies (diesel and imported natural gas), or simply too complex and expensive to build (nuclear and hydroelectricity) to make a dominant contribution to the near-to-mid term growth.

Impact: Energy shortfall deepens poverty, reduces incomes, hurts health, blocks creation of jobs in India

World Bank, 2008, India Hydropower Development, <http://www.worldbank.org.in/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/INDIAEXTN/0,,contentMDK:21388713~pagePK:141137~piPK:141127~theSitePK:295584,00.html>

Severe power shortage is one of the greatest obstacles to India’s development. Over 40 percent of the country’s people—most living in the rural areas—do not have access to electricity and one-third of Indian businesses cite expensive and unreliable power as one of their main business constraints. India’s energy shortfall of 10 percent (rising to 13.5 percent at peak demand) also works to keep the poor entrenched in poverty. Power shortages and disruptions prevent farmers from improving their agricultural incomes, deprive children of opportunities to study, and adversely affect the health of families in India’s tropical climate. Poor electricity supply thus stifles economic growth by increasing the costs of doing business in India, reducing productivity, and hampering the development of industry and commerce which are the major creators of employment in the country.

5. Dirty coal substitution

Link: Appalachian mountain-top coal is low-sulfur/high energy. Hard to replace and the alternative is coal from countries that have fewer environmental safeguards

MSNBC, 24 Mar 2009, “EPA to review mountaintop mining projects,” <http://www.msnbc.msn.com/id/29862781/>

Carol Raulston, a spokeswoman for the National Mining Association, said further delays in the permits would cost the region high-paying jobs. "This is very troubling, not only for jobs in the region, but production of coal generally," said Raulston. The low-sulfur, high-energy coal produced from those mines is not easily replaced. The industry has long maintained that eliminating mountaintop mining will lead to increased imports from countries that have far fewer environmental safeguards. The practice has a huge economic impact in Appalachia. Mountaintop mines employ some 14,000 people across the four states. Wages average about $62,000 — high pay for rural Appalachia — and states make millions in taxes.

Link: India uses and wants more Appalachian coal. See DA 3 Links #1 and #2 above.

Nick Carey, 10 June 2008, REUTERS news service, “Cheap Wyoming coal looks east, overseas,” <http://www.reuters.com/article/reutersEdge/idUSN0619006820080610>,

Global demand for coal has increased largely due to the rise of developing markets like China and India, heightening interest in U.S. coal -- previously deemed too expensive -- especially coal from the Appalachian Mountains in the east. As a result, Appalachian coal prices have soared. According to the U.S. Energy Information Administration, on June 6 Central Appalachian coal sold for an average $108.25 per short ton, and Northern Appalachian coal at $105.00, more than double the price from a year ago. Much of the increase has been fueled by the overseas demand.

Link: India imports coal because its domestic coal is high-ash / poor quality

Uniqueness: India has little other choice

Margaret Ryan (Editorial Director, Global Nuclear & Coal, for world's largest provider of energy business news and prices. Experienced in global energy issues including nuclear, coal, power market economics and restructuring, risk management, freights, emissions) Dec 2005, PLATTS INSIGHT, <http://www.platts.com/Magazines/Insight/2005/december/200nq5o11151bbH4P3P022_1.xml>

Accordingly, short-term alternatives to coal are limited and expensive. China imports because its coal reserves are far from its population centers; India, because its domestic coal tends to be high-ash coal of poor quality. Both need more coal than their domestic industries can supply. Japan, Korea, and Taiwan have low domestic reserves of any fossil fuels. That leaves these economies with little choice.

Brink/Impact: India will burn dirty coal if it has no alternative – and human & planetary health will suffer

Ronen Sen (India’s ambassador to the US), 21 Feb 2006, Transcript of the Press Conference by Ambassador Ronen Sen at the National Press Club Washington, DC [www.indianembassy.org/newsite/press\_release/2006/Feb/13.asp](http://www.indianembassy.org/newsite/press_release/2006/Feb/13.asp)

If you don't have the alternative, the alternative is not going to be perpetuation of poverty. We are going to burn that coal. And our coal is dirty coal. It's of high -- very high ash content. So if the answer is perpetuation of poverty, that's no answer. We will have to take the course of -- we -- it'll be at the cost of our health and the health of this planet, Earth, this fragile planet.

Impact: India’s economic development constrained by energy supplies. Higher prices will hurt economic growth

Atanu Dey (chief economist of Netcore Solutions, an Indian software company) , 14 July 2008, "India’s energy challenge," Live Mint (a publication of the WALL STREET JOURNAL), [www.livemint.com/2008/07/14235603/India8217s-energychallenge.html](http://www.livemint.com/2008/07/14235603/India8217s-energychallenge.html)

India urgently needs to develop. Energy and economic vitality are conjoined twins. Energy is the binding constraint that faces all of humanity, not just the developing economies. Of course, given the projected increase in demand and the decline in the supply of fossil fuel energy, the price of energy will continue to move up — with predictable adverse effects on the growth prospects of the emerging economies.

Impact: Sickness from trace element pollution. Indian coal contains more dangerous trace elements than coal from other countries

Ananth P. Chikkatur and Ambuj D. Sagar (Belfer Center for Science and International Affairs, Kennedy School of Government, Harvard University) Dec 2007, "Cleaner Power in India: Towards a Clean-Coal-Technology Roadmap" <http://belfercenter.ksg.harvard.edu/files/Chikkatur_Sagar_India_Coal_Roadmap.pdf>

A growing concern in India is the release of trace elements such as mercury (Hg), arsenic (As), lead (Pb), cadmium (Cd), etc., from power plants through the disposal and dispersal of coal ash. The concentrations of many trace elements are high in comparison to coals from other countries (see Table 14). For more details, see Masto et al. (2007). Mercury emissions are of particular concern, as exposure to mercury at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. Mercury present in flue gases and in flyash/bottom-ash that is disposed off in ash ponds enters the hydrological system, wherein the mercury is methlyated in oceans and rivers; methyl-mercury can then enter the human food chain, mainly through consumption of fish (Shah et al., 2008).

Response to Aff’s link response “Nuclear will solve for coal in India”:

Nuclear won’t solve: It’s slow, expensive, and is only 3% of total consumption

Carin Zissis, 23 Oct 2007, "India’s Energy Crunch," COUNCIL ON FOREIGN RELATIONS (a nonpartisan and independent membership organization; convenes meetings at which government officials, global leaders, and CFR members debate major foreign-policy issues; think tank that is home to the world’s most prominent scholars of international affairs), [www.cfr.org/publication/12200/indias\_energy\_crunch.html](http://www.cfr.org/publication/12200/indias_energy_crunch.html)

With fourteen nuclear power plants run by state-owned companies, nuclear energy accounts for just 3 percent of India’s energy consumption. New Delhi hopes to boost this sector through a deal allowing U.S. companies to sell equipment, nuclear fuel, and reactors to India. However, even with a U.S.-India agreement, large scale expansion of the nuclear energy sector will likely take decades because of slow implementation and the relatively higher expense when compared to other forms of energy.

6. Lost public services. Coal taxes pay for highways, hospitals, schools and police officers in poor states

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459> (brackets added)

Coal paid Kentucky $183 million in severance taxes in 2005 and $583 million in other state taxes - almost 10 percent of the state’s general fund for that year. That’s a lot of highways, hospitals, police officers and schoolrooms for poor states, [former Kentucky state secretary of Environmental and Public Protection LaJuana] Wilcher notes.

NEGATIVE BRIEF: REFINERIES

By Vance Trefethen

HARMS

Don’t need new refineries: Auto efficiency standards will drive down demand for gasoline

Reuters News Service, 19 May 2009, “Obama auto efficiency move a blow to U.S. refiners,” <http://www.reuters.com/article/SustainabilityCorporate/idUSTRE54I4UN20090519>

The White House said Tuesday that President Barack Obama will announce the most aggressive proposal for increasing auto fuel economy standards ever, requiring an average efficiency of 35.5 miles per gallon by 2016. The measure would cut some 1.8 billion barrels of oil consumption by 2016, the White House said, representing a big drop in the gasoline demand outlook that could hit refiner profitability and force companies to review costly plans to increase production capacity. "If you're a refiner right now, this is a gut-check," said Kevin Book, analyst at ClearView Energy Partners in Washington. "These are enormous changes." Book said he expects the proposal would cut some 2.3 billion gallons per year from U.S. gasoline demand in 2016, a 1.6 percent drop. The outlook could lead refiners to cut more deeply into their investment plans, already sharply reduced since the economic downturn hit profits and darkened the outlook for world energy demand, analysts said. "It's not a time I would necessarily be building big new refineries," said Sarah Emerson, director of consultancy Energy Security Analysis Inc in Boston.

US economy less responsive to oil price shocks than in the 1970s – we can adjust to oil price increases

THE ECONOMIST (respected British news magazine), 1 June 2009, “Hope and anxiety,” <http://www.economist.com/businessfinance/displaystory.cfm?story_id=13764718>

Olivier Blanchard, now the chief economist of the International Monetary Fund, and economist Jordi Gali, in 2008 looked at the response of industrialised economies, particularly America, to oil price shocks since the 1970s. They doubted that higher oil prices would mean the return of stagflation, concluding that inflation, unemployment and output were markedly less responsive to oil prices during the two big oil price hikes since the 1980s, which began in 1999 and 2002. Part of the explanation may be that the original 1970s stagflation episodes were the result not just of oil price shocks, but of other simultaneous shocks and mistakes by policymakers. In Europe and America, the economists argued, wages have become less rigid than they were in the 1970s (perhaps because unions are weaker). All this makes it easier to adjust to oil price increases.

INHERENCY

US law doesn’t cap toxic emissions from refineries

Jim Efstathiou Jr. (journalist), 2 July 2009, Bloomberg News, “Exxon, Valero Face New Curbs On Cancer-Causing Gases,” <http://www.bloomberg.com/apps/news?pid=20601130&sid=aRHl__xeTUHk>

While U.S. law doesn’t cap toxic emissions from refineries, which convert crude oil into gasoline and diesel fuel, it does require plants to match what the best refiners are achieving at reducing hazardous pollution. Thirteen of the 20 largest refineries are in Texas and Louisiana, according to the [U.S. Energy Department](http://www.energy.gov/" \t "_blank). Standards were last set in 1995.

US refineries operating at only 81.5% to 85.8% capacity

Impact/Analysis: No capacity crisis. If we’re out of refinery capacity, why aren’t they 100% utilized?

Energy Information Administration, US Dept. of Energy, 29 June 2009, “Refinery Utilization and Capacity,” thousand barrels per day, <http://tonto.eia.doe.gov/dnav/pet/pet_pnp_unc_dcu_nus_m.htm>

Gross Input to Atmospheric Nov-08 Dec-08 Jan-09 Feb-09 Mar-09 Apr-09

Crude Oil Distillation Units 15,115 14,787 14,503 14,398 14,398 14,582

Operable Capacity 17,621 17,621 17,675 17,672 17,672 17,672

Operating 17,417 17,394 17,251 16,970 17,069 16,766

Idle 204 227 424 702 603 905

Operable Utilization Rate (%) 85.8 83.9 82.1 81.5 81.5 82.5

Diesel fuel price hikes cause by: oil company deception and increased exports of diesel fuel

Tim Hamilton (oil industry consultant; executive director of Automotive United Trades Organization, represents gasoline retailers), 1 July 2008, “$5 Diesel Fuel Is Killing the U.S. Economy” <http://www.consumerwatchdog.org/resources/Diesel0608pricereport.pdf>

Government regulators overseeing the transformation to ultra low sulfur diesel in the US from 2000-2007 believed the oil industry’s assurances that it would provide adequate refining capacity. They were incorrect and as a result refining bottlenecks spiked prices for consumers and profits for the companies;

• In the spring of 2008, the oil companies further curtailed production of diesel in US refineries, cut back imports, and increased exports which resulted in the drawdown of distillate inventories and increased prices as well as corporate profits;

Oil companies exported fuel during a US shortage

Tim Hamilton (oil industry consultant; executive director of Automotive United Trades Organization, represents gasoline retailers), 1 July 2008, “$5 Diesel Fuel Is Killing the U.S. Economy” (brackets added) <http://www.consumerwatchdog.org/resources/Diesel0608pricereport.pdf>

Perhaps the most startling statistic comes from EIA [US Dept of Energy; Energy Information Administration] export data. While production in US refineries was reduced and the companies imported fewer barrels of refined product from refineries abroad, exports of distillate from US harbors to foreign destinations increased significantly. Compared to the previous year, the companies jumped exports from all ports from 6.2 million barrels to just over 11 million barrels (Chart 5). In the diesel-starved West, exports jumped from 415,000 barrels to over 2.5 million barrels.

Refineries decide how much oil to process and manipulate the quantities to raise profits

Tim Hamilton (oil industry consultant; executive director of Automotive United Trades Organization, represents gasoline retailers), 1 July 2008, “$5 Diesel Fuel Is Killing the U.S. Economy” <http://www.consumerwatchdog.org/resources/Diesel0608pricereport.pdf>

Absent collusion, the companies can set or time maintenance and production volumes at U.S. refineries to maximize profit margins. They are free to export or import diesel and other refined products in a manner that draws down inventory levels, which encourage the price spikes that have become common since 2005. While these deliberate decisions can cause prices to spike and increase the profit margins of the companies, such behavior is not illegal or regulated under existing federal or state laws. Unless impacted by a mechanical problem or a shortage of available crude oil, the operator of a refinery in the U.S. will decide how much of the refining capacity to utilize by simply increasing or decreasing the volume of crude oil processed.

Refineries decided to produce less when prices went up

Tim Hamilton (oil industry consultant; executive director of Automotive United Trades Organization, represents gasoline retailers), 1 July 2008, “$5 Diesel Fuel Is Killing the U.S. Economy” <http://www.consumerwatchdog.org/resources/Diesel0608pricereport.pdf>

In the West, where diesel first broke the $5 daily average pump price threshold (in California), the reduction of diesel production intensified going into the second quarter (Chart 3). Compared to the previous year, diesel production from PADD V refineries dropped by up to 87,000 barrels per day from the previous year. This decision by the companies was the equivalent of taking a modern refinery off line entirely.

EPA regulations not burdensome enough to prevent new refineries

Tom Doggett (journalist), 15 June 2007, REUTERS news service, “US law to spur new oil refineries a bust so far,” [www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html](http://www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html) (brackets added)

[EPA Administrator Stephen] Johnson said EPA's regulations were not burdensome enough to prevent a new refinery and that's not a valid excuse from the industry. “It doesn't hold water from the standpoint of whether you are a refiner, or whether you are a citizen, or whether you're a part of EPA, no one wants dirty air,” he said.

Big expansion underway at Gulf Coast refineries

Jessica Resnick-Ault (journalist), 14 Jan 2009, WALL STREET JOURNAL <http://www.kellogg.northwestern.edu/faculty/mazzeo/htm/sp_files/021209/(2)%20Green%20Legislation/Articles/carbonregulationfuture_wsj_jan_2009.pdf>

Marathon Oil Corp. and Motiva, a joint venture between Saudi Aramco and Royal Dutch Shell PLC, are undertaking two of the most aggressive expansions at Gulf Coast refineries. Each company plans to expand its facilities to rank among the biggest in the nation. In the Midwest, BP PLC and ConocoPhillips are adding units to their refineries to run larger volumes of sludgy, cheap Canadian crude oil. The largest projects under way will add a total of more than 600,000 barrels a day of new capacity by 2012, and will allow refiners to increase their ability to process heavy grades of crude oil.

SOLVENCY

1. Congress reduced EPA refinery review process in 2005 but industry leaders didn’t respond

Tom Doggett (journalist), 15 June 2007, REUTERS news service, “US law to spur new oil refineries a bust so far,” [www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html](http://www.signonsandiego.com/news/business/20070615-1058-usa-refineries-law.html)

When the Congress wrote the energy law in 2005, oil companies said there were many obstacles they faced to building new refineries, including high costs, difficult environmental regulations and community opposition to the huge structures. Lawmakers tried to help by including in the final legislation a provision that would allow the Environmental Protection Agency to work with states to have a consolidated permit request for a new refinery, avoiding a lengthy and duplicative review process. “I've had general discussions with industry leadership about wanting to help in that regard, but at this point in time no one has stepped forward,” said EPA Administrator Stephen Johnson.

2. Not getting the root cause: Gasoline prices are high because of weak regulation and commodity speculators

Judy Dugan (research director, CONSUMER WATCHDOG non-profit consumer rights group),2009 “CLEANER & CHEAPER A Handbook of Transportation and Related Energy Choices 2009 and Beyond” <http://www.consumerwatchdog.org/resources/CleanerCheaper.pdf>

The neglect and demolition of reasonable government oversight of the oil industry has cost motorists billions of dollars and wreaked havoc on the economy and the environment. Energy markets and refinery operations in particular suffer from lack of modern regulation. There are two crucial sources of unreasonably high pump prices, both tied to the deregulatory focus of national energy policy over the past several decades: rapacious speculation of commodity traders both in and outside of oil companies and market manipulations by oil refiners.

DISADVANTAGES

1. Leukemia.

Link + Uniqueness: Status Quo is reducing hazardous emissions from refineries

Jim Efstathiou Jr. (journalist), 2 July 2009, Bloomberg News, “Exxon, Valero Face New Curbs On Cancer-Causing Gases,” <http://www.bloomberg.com/apps/news?pid=20601130&sid=aRHl__xeTUHk> (brackets added)

From 1988 to 2007, hazardous emissions from making gasoline, diesel fuel and other products fell 65 percent, [American Petroleum Institute director of regulatory and scientific affairs Howard] Feldman said. In 2005, refineries emitted 10,560 tons of toxic gases, according to the EPA’s latest National Emissions Inventory. Utilities released 408,650 tons. The EPA is behind schedule in reviewing similar standards for other industries, the NRDC’s Walke said. A stricter rule for refiners could lead to tougher restrictions on other polluters. “This is the key test case and first opportunity to adopt more protective policies” for toxics, Walke said. Since 1990, “emissions have gone down dramatically” as refineries, [Bill Day](http://search.bloomberg.com/search?q=Bill+Day&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1), a spokesman for Valero [refinery company], said in an interview.

Link + Impact: Children living near refineries get leukemia more often

Jim Efstathiou Jr. (journalist), 2 July 2009, Bloomberg News, “Exxon, Valero Face New Curbs On Cancer-Causing Gases,” <http://www.bloomberg.com/apps/news?pid=20601130&sid=aRHl__xeTUHk>

Benzene from turning crude oil into gasoline can cause leukemia, said [Philip Landrigan](http://search.bloomberg.com/search?q=Philip+Landrigan&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1), head of community and preventive medicine at the Mount Sinai School of Medicine in New York. “This is not a situation where we talk in probabilities and possibilities,” Landrigan said in an interview. “Studies show excess rates of leukemia and related blood cancers in people, especially children, who live in communities adjacent to these refineries.”

Univ. of Texas study: Higher benzene = more leukemia

Kristina W. Whitworth, Elaine Symanski (Division of Epidemiology and Disease Control, University of Texas School of Public Health, Houston) and Ann L. Coker (Department of Obstetrics and Gynecology, University of Kentucky, Lexington) November 2008, ENVIRONMENTAL HEALTH PERSPECTIVES, Childhood Lymphohematopoietic Cancer Incidence and Hazardous Air Pollutants in Southeast Texas, 1995–2004, [www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2592281](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2592281)

We found that census tracts with the highest ambient air levels of benzene had elevated rates of all leukemia (RR = 1.37; 95% CI, 1.05–1.78) and AML (RR = 2.02; 95% CI, 1.03–3.96) compared with census tracts with the lowest estimated levels ([Table 3](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2592281&rendertype=table&id=t3-ehp-116-1576) ). Additionally, these census tracts had 1.24 (95% CI, 0.92–1.66) times the rate of ALL compared with census tracts with the lowest levels, although this estimate was not statistically significant. We detected a statistically significant trend of increasing incidence rates with increasing estimated levels of benzene for all leukemias combined (p = 0.03) and a borderline significant trend for AML (p = 0.06).

2. Water Pollution

Link: Refinery expansion = more pollution in Lake Michigan

Uniqueness: Water pollution was stopped only by regulation and environmentalists’ objections

Michael Hawthorne (journalist), 12 Feb 2008, CHICAGO TRIBUNE, “Refinery pollution may soar,” <http://www.chicagotribune.com/news/chi-greenhouse_12feb12,0,7430874.story>

Global-warming pollution isn't mentioned in a proposed air permit for BP's Whiting refinery, which is being expanded to process more Canadian oil. By contrast, BP's attempt last summer to increase the amount of pollutants the refinery puts into Lake Michigan was outlined in a water permit required under the federal Clean Water Act. BP later backed down after a deluge of protests prompted by Tribune stories.

3. Tar Sands pollution

Link: Refinery expansion will be used for tar sands development

Environmental Integrity Project (nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws) 4 June 2008, EIP Releases Report on U.S. Refinery Expansions to Process Dirty Oil from Canadian Tar Sands, Tar Sands - Feeding U.S. Refinery Expansions with Dirty Fuel, [www.environmentalintegrity.org/pub513.cfm](http://www.environmentalintegrity.org/pub513.cfm)

Over two thirds of currently planned expansions of U.S. oil refining capacity are intended to accommodate heavier, dirtier crude oil from Canadian "tar sands," according to data on U.S. oil refinery permitting activity under the Clean Air Act ("CAA") recently compiled and analyzed by the Environmental Integrity Project. Out of the approximately 1.6 million barrels per day ("bpd") of increased refining capacity currently in the pipeline, about 1.1 million bpd will be devoted to refining tar sand oil. In addition, more than 800,000 bpd of existing conventional crude capacity is planned to be modified to process oil from tar sands, so that the total increase in tar sands capacity is over 1.9 million bpd, while conventional crude capacity is undergoing a net decrease of over 300,000 bpd. This is equivalent to constructing more than sixteen new refineries dedicated to tar sands.

Impact: Harmful air pollution, toxic lakes

Environmental Integrity Project (nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws) 4 June 2008, EIP Releases Report on U.S. Refinery Expansions to Process Dirty Oil from Canadian Tar Sands, Tar Sands - Feeding U.S. Refinery Expansions with Dirty Fuel, [www.environmentalintegrity.org/pub513.cfm](http://www.environmentalintegrity.org/pub513.cfm)

Refining tar sand oil will result in higher air emissions of harmful pollutants such as sulfur dioxide, hydrogen sulfide, sulfuric acid mist, and nitrogen oxides, as well as toxic metals such as lead and nickel compounds. The consequences of tar sand oil extraction include the clear-cutting and strip-mining of huge portions of intact boreal forest ecosystem, the creation of vast un-reclaimable toxic lakes of wastewater, the consumption of enormous amounts of water and energy, and the production of three times more greenhouse gas as extracting conventional crude oil.

4. Greenhouse gases and global warming

A. Link: New refineries would process Canadian tar sands oil. Cross apply DA 3 card above

B. Link: Refining tar sands oil produces more CO2 than conventional oil

Michael Hawthorne (journalist), 12 Feb 2008, CHICAGO TRIBUNE, “Refinery pollution may soar,” <http://www.chicagotribune.com/news/chi-greenhouse_12feb12,0,7430874.story>

While greenhouse gases from the tailpipes of cars get the most attention, the refineries that keep cars and trucks running also contribute to global warming. Fuel must be burned to make gasoline from oil, generating carbon-dioxide pollution. The huge increases in greenhouse gases are a largely hidden consequence of an industrywide trend to buy more Canadian crude. Vast reserves of tar-soaked clay and sand lying under the swampy forests of northern Alberta are seen as a profitable and reliable source of oil, but the heavy petroleum requires more energy to process. Other oil companies declined to discuss projected increases in global-warming pollution, but researchers have calculated that refining the Canadian petroleum produces 15 percent to 40 percent more carbon dioxide emissions than conventional oil.

C. Impact: Species extinction, droughts and human deaths

Dr. Gideon Polya 14 June 2008, "Pollutants from coal-based electricity generation kill 170,000 people annually" <http://www.green-blog.org/2008/06/14/pollutants-from-coal-based-electricity-generation-kill-170000-people-annually/>

It is already clear from declining agricultural production due to drought and massive storm surge disasters in India, Bangladesh, Burma and the US that global warming is already impacting on global avoidable mortality. Greenhouse gas pollution – mostly due to carbon dioxide (CO2) from fossil fuel burning – is driving global warming and attendant species extinctions, droughts, sea level rise, decreased agricultural production and increased human death.

1. Hendryx & Ahern/West Virginia U. study: Doesn’t prove pollution from mining causes mortality

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=2>

Scientists say they have little data on the effects of mountaintop coal mining on public health. [Michael Hendryx](http://www.smithsonianmag.com/topics?keyword=Michael+Hendryx), a professor of public health at [West Virginia University](http://www.smithsonianmag.com/topics?keyword=West+Virginia+University), and a colleague, [Melissa Ahern](http://www.smithsonianmag.com/topics?keyword=Melissa+Ahern) of [Washington State University](http://www.smithsonianmag.com/topics?keyword=Washington+State+University), analyzed mortality rates near mining-industry sites in West Virginia, including underground, mountaintop and processing facilities. After adjusting for other factors, including poverty and occupational illness, they found statistically significant elevations in deaths for chronic lung, heart and kidney disease as well as lung and digestive-system cancers. Overall cancer mortality was also elevated. Hendryx stresses that the information is preliminary. "It doesn't prove that pollution from the mining industry is a cause of the elevated mortality," he says, but it appears to be a factor.

West Virginia U. coal mining/health study doesn’t prove causation: A lot more study is needed

Don Hopey (journalist), 2 Apr 2008, “W.Va. study unearths higher health risks in coal mining communities,” PITTSBURGH POST-GAZETTE, <http://www.post-gazette.com/pg/08093/869656-114.stm>

Dr. Steve Ostroff, director of the Bureau of Epidemiology at the Pennsylvania Department of Health, said the West Virginia University study presents an interesting hypothesis that both requires and deserves further study. "The paper demonstrated a potentially important relationship between health outcomes and location near a coal mine, but it doesn't prove a cause," said Dr. Ostroff. "It's an interesting finding, an important finding, but before you can take it to the bank you need to do a lot more study."

WVU Study limitations: Can’t be sure coal-mining caused the health problems

Ken Ward Jr. (journalist), 20 June 2009, "Coal's costs outweigh benefits, WVU study finds" CHARLESTON GAZETTE (W. Virginia newspaper), <http://www.wvgazette.com/News/200906200170> (brackets added)

In each of his studies, [W. Virginia Univ. researcher Michael] Hendryx has tried to weed out other possible factors -- such as smoking and diet -- to pinpoint coal's possible role in these public health problems. The newest study concedes that this work still has some limitations. "Despite the significant associations between coal-mining activity and both socio-economic disadvantage and premature mortality, it cannot be stated with certainty that coal-mining causes these problems," the new study says.

2. Stream reconstruction restores mining area headwater streams

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

The State [of W. Virginia] has participated in a multi-agency effort to establish on-site mitigation and stream reconstruction and replacement in the restored mining area to mimic the functions of headwater streams. These practices were specifically sustained by the 4th United States Circuit Court of Appeals.

3. Removed mountain tops have beneficial uses

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia (first brackets added; second brackets and parentheses in original) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

This committee report [House of Representatives’ Committee on Interior and Insular Affairs, H.R. 95-218, which accompanied and recommended adoption of the bill that became the Surface Mining Control and Reclamation Act of 1977] also went on to state:   
[I]t may not always be best to return mountain lands to their approximate original contour. In various areas such as the mountainous Appalachian coalfields, there is a paucity of flood free, relatively flat developable land. Thus some surface mining operations offer the opportunity for creating a resource which otherwise might not be available or might be prohibitively expensive. The mining application process and environmental standards allow the regrading and spoil placement requirements for mountaintop mining in order to achieve post mining land uses including industrial, commercial, agricultural, residential, or public facility (including recreational facilities) development.

4. Mine damage being cleaned up: Abandoned Mine Lands Fund

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Over the past three decades, EPA, our state partners and other concerned stakeholders have begun to make a positive impact on the legacies of abandoned mine lands and acid mine drainage. Over $8 billion has been paid by coal companies into the Abandoned Mine Lands Fund, managed by the Department of the Interior’s Office of Surface Mining. These funds are being spent to address environmental degradation and public health risks caused by past mining practices.

5. Mining companies restore streams and forests

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459>

In 2002 the U.S. Army Corps of Engineers changed its restoration guidelines, requiring operators to restore streams in a more natural manner and regulating the type of ripples and pools, sinuosity, slope and conductivity. The Interior Department’s Office of Surface Mining now encourages operators to restore the hardwood forest when they’re done, said Patrick Angel, an agency forester and soil scientist based in London, Ky. In every new surface mining permit issued recently in Virginia and in 80 percent of those in West Virginia, the mining company has committed to reclaim the land by planting a diverse hardwood forest, according to agency figures.

INHERENCY

1. No barrier, States can solve: Tennessee is considering legislation to regulate mountain mining

Impact/Analysis: Affirmative must affirm all of the resolution, and part of it is the part calling for Federal action. Since the States can do it in the Status Quo, Affirmative must prove why we need federal action and why we cannot just leave it to the States.

Nashville Business Journal, 18 March 2009, “Law would end mountaintop coal mining,” <http://nashville.bizjournals.com/nashville/stories/2009/03/16/daily23.html>

A bill moving through the legislature known as the Tennessee Scenic Vistas Protection Act, would prohibit surface coal mining that alters or disturbs ridge lines at elevations higher than 2,000 feet above sea level. High-elevation surface coal mining is a method of extracting coal from mountains by using explosives to provide easy access to coal seams, but irreparably damaging the mountain.

2. Status Quo Federal policy is to move Appalachia toward clean enterprises and green jobs

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf)

The Federal government has made a commitment to move America toward a 21st-century clean energy economy based on the recognition that a sustainable economy and environment must work hand in hand. Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

3. West Virginia has very high water-quality standards for coal mining

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

West Virginia has gone above and beyond the EPA’s recommended water quality parameters for coal mining by assigning water-quality-based effluent limitations for mining operations that broaden the parameters for which mining operations receive assigned permit limits. Other states continue to use tech based limits that assign permit standards for pH, iron, manganese and Total Suspended Solids. West Virginia permits have limits for these parameters and a host of others such as aluminum.

4. West Virginia set higher standards for mining permits than the Army Corps of Engineers

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia (brackets added) <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

The EPA was concerned that mining permits were being approved by the [Army] Corps [of Engineers] through nationwide or general section 404 permits. The mining industry in West Virginia responded and made the transition to the Individual Permit process under section 404 while other states and regions continued to use the nationwide permit process that required less review and environmental analysis.

5. EPA upgrading Clean Water Act review procedures

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf) (brackets added)

EPA and the [Army] Corps [of Engineers] will begin immediately to implement enhanced coordination procedures applicable to the Clean Water Act review of Section 404 permit applications for Appalachian surface coal mining activities that have been submitted prior to execution of this MOU [memorandum of understanding]. The goal of these procedures is to ensure more timely, consistent, transparent, and environmentally effective review of permit applications under existing law and regulations. The agencies are issuing these enhanced joint procedures concurrently with this MOU. Also concurrently, EPA is clarifying the factual considerations it is using to evaluate pending CWA permit applications under the 404(b)(1) Guidelines.

6. EPA improving and strengthening oversight

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF THE INTERIOR, AND U.S. ENVIRONMENTAL PROTECTION AGENCY IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN SURFACE COAL MINING, 11 June 2009, signed by Lisa P. Jackson (EPA Administrator), Ken Salazar (Secretary of the Interior) and Terrence Salt (Acting Asst. Secretery of the Army) [www.epa.gov/owow/wetlands/pdf/Final\_MTM\_MOU\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_MOU_6-11-09.pdf)

Recognizing that the regulation of surface coal mining extends beyond CWA Section 404, EPA will improve and strengthen oversight and review of water pollution permits for discharges from valley fills under CWA Section 402, and of state water quality certifications under CWA Section 401, by taking appropriate steps to assist the States to strengthen state regulation, enforcement, and permitting of surface mining operations under these programs.

EPA plans to more fully use its Clean Water Act authority to solve coal mining impacts

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

Thank you for the opportunity to address the Subcommittee on EPA’s efforts to protect and restore the water quality and water resources affected by the surface mining of coal, including mountaintop removal and valley fill activities. EPA plans to more fully use its authorities under the Clean Water Act and the National Environmental Policy Act (NEPA), to address the impacts of this type of mining activity on the aquatic and forest systems that provide invaluable ecosystem services to Appalachia and to the waters people use for drinking and fishing.

7.EPA can regulate discharge ponds

John “Randy” Pomponio (DIRECTOR, ENVIRONMENTAL ASSESSMENT AND INNOVATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION) 25 June 2009, testimony BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON WATER AND WILDLIFE, U.S. SENATE, <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=53b87b86-805f-4a7f-a7e3-79ff7e5b3eb8>

In addition, EPA has authorities under the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402 of the Clean Water Act for other types of discharges from surface mining operations. Discharge ponds collect stormwater that comes in contact with overburden, exposed coal, and other materials at the mining sites, and water from buried streams that filters through the fill. Most states have been authorized to issue permits for such discharges under the NPDES program, but EPA retains authority to review and, if necessary, object to draft permits and to enforce violations.

MINOR REPAIR: Better enforcement of existing law

1. Mountaintop mining violates existing laws. Let’s just enforce existing law better rather than create a new policy.

Cross-apply under Topicality: Not a change in policy – laws already exist to stop dangerous mountaintop mining

Cross-apply under Solvency: Politicians will be motivated to circumvent Affirmative plans, like they do now. You can fiat laws but not attitudes and not compliance.

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," (brackets added) <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=6>

West Virginia's political establishment has been unwavering in its support for the coal industry. The close relationship is on display every year at the annual West Virginia Coal Symposium, where politicians and industry insiders mingle. This past year, [Gov. Joe Manchin](http://www.smithsonianmag.com/topics?keyword=Joe+Manchin) and [Senator Jay Rockefeller](http://www.smithsonianmag.com/topics?keyword=Jay+Rockefeller) addressed the gathering, advocating ways to turn climate-change legislation to the industry's advantage and reduce its regulatory burdens. "Government should be your ally, not your adversary," Manchin told coal-industry representatives. Without such backing, mountaintop removal would not be possible, because federal environmental laws would prohibit it, says [Jack Spadaro](http://www.smithsonianmag.com/topics?keyword=Jack+Spadaro), a former federal mining regulator and a critic of the industry. "There is not a legal mountaintop mining operation in Appalachia," he says. "There literally is not one in full compliance with the law."

2. Army Corps of Engineers is not following its own “regulations and policies”

Impact/Analysis: Key word “Policies”. Status Quo already has “policies” we just need to follow them.

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/Mining-the-Mountain.html?c=y&page=6>

In another case, brought by West Virginia environmental groups against four Massey Energy mining projects, the Corps conceded that it routinely grants dumping permits with virtually no independent study of the possible ecological fallout, relying instead on the assessments that coal companies submit. In a 2007 decision in that case, Judge Chambers found that "the Corps has failed to take a hard look at the destruction of headwater streams and failed to evaluate their destruction as an adverse impact on aquatic resources in conformity with its own regulations and policies." But because three of the mining projects challenged in that case were already underway, Chambers allowed them to continue, pending the case's resolution.

SOLVENCY

1. Many other mines do the same “valley fill” as mountaintop mines

Impact: Not solving for the pollution

Cross-apply under Inherency: West Virginia law already regulates both surface and mountaintop

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

In fact, the debate cannot be limited to surface coal mining. Mining through streams, hard rock surface mining and development activities could warrant the same scrutiny that is being given to the use of valley fills. There are many surface mines requiring valley fills that are not mountaintop removal mines by definition. Also, the Clean Water Act and West Virginia’s Water enforcement program require the same levels of protection for all mining activity.

DISADVANTAGES

Link to multiple Disadvantages: Mountaintop removal is a significant amount of W. Virginia’s coal industry

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

In West Virginia, mountaintop removal and other kinds of surface mining (including highwall mining, in which machines demolish mountainsides but leave peaks intact) accounted for about 42 percent of all coal extracted in 2007, up from 31 percent a decade earlier.

1. Reduced safety. Mountain top removal is safer than other forms of mining

Impact: More miners die if other methods are used.

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459> (brackets added)

The result is that while coal tonnage has decreased in Virginia since 1990, it has stayed steady in central and southern Appalachia as industry compensates with mountaintop removal, said Carl Zipper, director of the Powell River Project, a research program of Virginia Tech aimed at enhancing communities and restoration efforts in the state’s coalfields. There’s an incalculable benefit to this shift, noted , [former Kentucky state secretary of Environmental and Public Protection LaJuana] Wilcher, the lawyer and former regulator: Mountaintop removal mining is safer and requires fewer hands. Coalfield mining deaths have dropped precipitously as a result. Throughout the ‘70s an average of 35 miners died annually. By the 1980s the annual death rate had dropped to the mid-20s. Today it’s in the single digits; not a single miner died in 2006, a first.

2. Lost future economic development – 1: Loss of coal production

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

Coal production is the leading revenue generator for West Virginia, and many in the State are concerned about losing the opportunities for future economic development associated with mountaintop mining.

Staggering impact on West Virginia’s economy

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

Without valley fills, the effect on coal production in Appalachia would be felt in the world’s energy markets. The elimination of valley fills would effectively bring coal production to a point that it would be difficult to sustain energy production and the impact to the State’s economy would be staggering.

Impact: Mountaintop mining = 14,000 jobs

MSNBC, 24 Mar 2009, “EPA to review mountaintop mining projects,” <http://www.msnbc.msn.com/id/29862781/>

The coal industry says most of the nearly 130 million tons of coal produced at mountaintop mines in Appalachia goes to generate electricity for 24.7 million customers. Moreover, mountaintop mines employ some 14,000 people across West Virginia, Virginia, Kentucky and Tennessee.

Impact: Coal mining communities get $4 in spending for every $1 invested in mining

Jim Ostroff (Associate Editor), 24 October 2006, “A Surge Ahead for Coal Mining,” Kiplinger Business Resource Center, [www.kiplinger.com/businessresource/forecast/archive/a\_surge\_ahead\_for\_coal\_mining.html](http://www.kiplinger.com/businessresource/forecast/archive/a_surge_ahead_for_coal_mining.html)

The money to expand coal mining won't just go underground. Each dollar invested generates another $4 in spending on safety equipment, communications gear, heavy-duty trucks and services needed by a larger mining workforce—including food, clothing, auto dealers and gas stations. Communities around the midwestern and eastern mines are likely to see substantial revitalization.

3. Lost future economic development – 2: Loss of flat developable lands in Appalachia

Randy Huffman (Secretary of West Virginia Dept of Environmental Protection), 2009, testimony to Senate Committee on Environment and Public Works, Subcommittee on Water and Wildlife, Hearing: The Impacts of Mountaintop Removal Coal Mining on Water Quality in Appalachia <http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=95cfb514-b69f-427b-81ea-6a982c9f3cfc>

To take advantage of the opportunity to create flat, developable lands in Appalachia presented by surface coal mining operations, Congress specifically provided for variances from the AOC requirement in 30 U.S.C. § 1265( c) so industrial, commercial, agricultural, residential or public facilities, including recreational facilities could be created. This opportunity is very important in the southern West Virginia coal mining region where no flat land exists. To assure that these opportunities are not lost, this year, the State has adopted legislation that requires a mine’s post-mining land use to comport with county master land use plans that are developed by local economic development officials and approved by the State’s Office of Coalfield Community Development. These master land use plans target lands which are proximal to transportation or other infrastructure for development, so these areas of the State, which historically have had little economic activity other than coal mining, can develop sustainable post-coal economies.

Impact: Appalachian Poverty

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459>

Median income in the United States was almost $42,000 in 2000, the most recent data the U.S. Census has for nationwide earnings. In the 100 poorest counties - of which 38 lie in Appalachian coal country - the median was half that. A typical household in Owsley County, in Kentucky’s eastern hills, brought home $16,271 in 2000; in McDowell County in West Virginia’s southern end, median earnings sat at $16,931. The median income for a miner in 2000? $44,400, according to the Bureau of Labor Statistics. “In areas of the country where there are limited education and opportunities, men can live like kings and women can live like queens compared to their neighbors if they mine coal,” said LaJuana Wilcher, an attorney with English Lucas Priest & Owsley in Kentucky who was the state’s secretary of Environmental and Public Protection from 2003 to 2006.

4. Increased poverty in India

Link 1: India wants Appalachian coal to industrialize and grow prosperity

Andrew Revkin (journalist for NY Times), 23 Oct 2008, “Appalachian Coal to Power India?” NEW YORK TIMES Dot Earth Blog, <http://dotearth.blogs.nytimes.com/2008/10/23/appalachian-coal-to-power-india/>

It’s not surprising that India, despite big domestic coal reserves, is [shopping in the United States for new coal sources](http://greeninc.blogs.nytimes.com/2008/10/23/india-shopping-for-coal-mines-in-appalachia/) to feed its climb toward electrification, industrialization, and prosperity. The giant boilers at the planned fleets of “[Ultra Mega” power plants](http://dotearth.blogs.nytimes.com/2008/04/09/money-for-indias-ultra-mega-coal-plants-approved/) will need millions of tons a year. In an email dispatch to our [Green Inc. blog](http://greeninc.blogs.nytimes.com/2008/10/23/india-shopping-for-coal-mines-in-appalachia), Somini Sengupta confirmed some reports that top Indian government and industry figures, with some $4 billion to spend, were shopping in Appalachia and elsewhere not just for American coal ([exports of coal from the United States](http://www.nytimes.com/2008/03/19/business/19coal.html) have growing for awhile), but coal mines.

Link 2: Appalachian mountaintop coal fuels India’s economy

John McQuaid, Jan 2009, SMITHSONIAN MAGAZINE, "Mining the Mountains," <http://www.smithsonianmag.com/science-nature/36176804.html>

So coal torn from a West Virginia mountain was put on a truck and then a rail car, which took it to Alexandria, where it was incinerated, creating the heat that drove the turbines that generated the electricity that enabled me to document concerns about the destruction of that very same American landscape. Demand for mountaintop coal has been rising quickly, driven by high oil prices, energy-intensive lifestyles in the [United States](file://localhost/topics%3fkeyword=United+States) and elsewhere and hungry economies in [China](file://localhost/topics%3fkeyword=China) and [India](file://localhost/topics%3fkeyword=India).

Link: Electricity growth in India will be fueled primarily by coal

(Note: The context of the card is talking about India. Note the title of the article.)

Ananth P. Chikkatur and Ambuj D. Sagar (Belfer Center for Science and International Affairs, Kennedy School of Government, Harvard University) Dec 2007, "Cleaner Power in India: Towards a Clean-Coal-Technology Roadmap" <http://belfercenter.ksg.harvard.edu/files/Chikkatur_Sagar_India_Coal_Roadmap.pdf> (LNG=Liquified Natural Gas)

The projected rapid growth in electricity generation over the next couple of decades is expected to be met by using coal as the primary fuel for electricity generation. Other resources are uneconomic (as in the case of naphtha or LNG), have insecure supplies (diesel and imported natural gas), or simply too complex and expensive to build (nuclear and hydroelectricity) to make a dominant contribution to the near-to-mid term growth.

Impact: Energy shortfall deepens poverty, reduces incomes, hurts health, blocks creation of jobs in India

World Bank, 2008, India Hydropower Development, <http://www.worldbank.org.in/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/INDIAEXTN/0,,contentMDK:21388713~pagePK:141137~piPK:141127~theSitePK:295584,00.html>

Severe power shortage is one of the greatest obstacles to India’s development. Over 40 percent of the country’s people—most living in the rural areas—do not have access to electricity and one-third of Indian businesses cite expensive and unreliable power as one of their main business constraints. India’s energy shortfall of 10 percent (rising to 13.5 percent at peak demand) also works to keep the poor entrenched in poverty. Power shortages and disruptions prevent farmers from improving their agricultural incomes, deprive children of opportunities to study, and adversely affect the health of families in India’s tropical climate. Poor electricity supply thus stifles economic growth by increasing the costs of doing business in India, reducing productivity, and hampering the development of industry and commerce which are the major creators of employment in the country.

5. Dirty coal substitution

Link: Appalachian mountain-top coal is low-sulfur/high energy. Hard to replace and the alternative is coal from countries that have fewer environmental safeguards

MSNBC, 24 Mar 2009, “EPA to review mountaintop mining projects,” <http://www.msnbc.msn.com/id/29862781/>

Carol Raulston, a spokeswoman for the National Mining Association, said further delays in the permits would cost the region high-paying jobs. "This is very troubling, not only for jobs in the region, but production of coal generally," said Raulston. The low-sulfur, high-energy coal produced from those mines is not easily replaced. The industry has long maintained that eliminating mountaintop mining will lead to increased imports from countries that have far fewer environmental safeguards. The practice has a huge economic impact in Appalachia. Mountaintop mines employ some 14,000 people across the four states. Wages average about $62,000 — high pay for rural Appalachia — and states make millions in taxes.

Link: India uses and wants more Appalachian coal. See DA 3 Links #1 and #2 above.

Nick Carey, 10 June 2008, REUTERS news service, “Cheap Wyoming coal looks east, overseas,” <http://www.reuters.com/article/reutersEdge/idUSN0619006820080610>,

Global demand for coal has increased largely due to the rise of developing markets like China and India, heightening interest in U.S. coal -- previously deemed too expensive -- especially coal from the Appalachian Mountains in the east. As a result, Appalachian coal prices have soared. According to the U.S. Energy Information Administration, on June 6 Central Appalachian coal sold for an average $108.25 per short ton, and Northern Appalachian coal at $105.00, more than double the price from a year ago. Much of the increase has been fueled by the overseas demand.

Link: India imports coal because its domestic coal is high-ash / poor quality

Uniqueness: India has little other choice

Margaret Ryan (Editorial Director, Global Nuclear & Coal, for world's largest provider of energy business news and prices. Experienced in global energy issues including nuclear, coal, power market economics and restructuring, risk management, freights, emissions) Dec 2005, PLATTS INSIGHT, <http://www.platts.com/Magazines/Insight/2005/december/200nq5o11151bbH4P3P022_1.xml>

Accordingly, short-term alternatives to coal are limited and expensive. China imports because its coal reserves are far from its population centers; India, because its domestic coal tends to be high-ash coal of poor quality. Both need more coal than their domestic industries can supply. Japan, Korea, and Taiwan have low domestic reserves of any fossil fuels. That leaves these economies with little choice.

Brink/Impact: India will burn dirty coal if it has no alternative – and human & planetary health will suffer

Ronen Sen (India’s ambassador to the US), 21 Feb 2006, Transcript of the Press Conference by Ambassador Ronen Sen at the National Press Club Washington, DC [www.indianembassy.org/newsite/press\_release/2006/Feb/13.asp](http://www.indianembassy.org/newsite/press_release/2006/Feb/13.asp)

If you don't have the alternative, the alternative is not going to be perpetuation of poverty. We are going to burn that coal. And our coal is dirty coal. It's of high -- very high ash content. So if the answer is perpetuation of poverty, that's no answer. We will have to take the course of -- we -- it'll be at the cost of our health and the health of this planet, Earth, this fragile planet.

Impact: India’s economic development constrained by energy supplies. Higher prices will hurt economic growth

Atanu Dey (chief economist of Netcore Solutions, an Indian software company) , 14 July 2008, "India’s energy challenge," Live Mint (a publication of the WALL STREET JOURNAL), [www.livemint.com/2008/07/14235603/India8217s-energychallenge.html](http://www.livemint.com/2008/07/14235603/India8217s-energychallenge.html)

India urgently needs to develop. Energy and economic vitality are conjoined twins. Energy is the binding constraint that faces all of humanity, not just the developing economies. Of course, given the projected increase in demand and the decline in the supply of fossil fuel energy, the price of energy will continue to move up — with predictable adverse effects on the growth prospects of the emerging economies.

Impact: Sickness from trace element pollution. Indian coal contains more dangerous trace elements than coal from other countries

Ananth P. Chikkatur and Ambuj D. Sagar (Belfer Center for Science and International Affairs, Kennedy School of Government, Harvard University) Dec 2007, "Cleaner Power in India: Towards a Clean-Coal-Technology Roadmap" <http://belfercenter.ksg.harvard.edu/files/Chikkatur_Sagar_India_Coal_Roadmap.pdf>

A growing concern in India is the release of trace elements such as mercury (Hg), arsenic (As), lead (Pb), cadmium (Cd), etc., from power plants through the disposal and dispersal of coal ash. The concentrations of many trace elements are high in comparison to coals from other countries (see Table 14). For more details, see Masto et al. (2007). Mercury emissions are of particular concern, as exposure to mercury at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. Mercury present in flue gases and in flyash/bottom-ash that is disposed off in ash ponds enters the hydrological system, wherein the mercury is methlyated in oceans and rivers; methyl-mercury can then enter the human food chain, mainly through consumption of fish (Shah et al., 2008).

Response to Aff’s link response “Nuclear will solve for coal in India”:

Nuclear won’t solve: It’s slow, expensive, and is only 3% of total consumption

Carin Zissis, 23 Oct 2007, "India’s Energy Crunch," COUNCIL ON FOREIGN RELATIONS (a nonpartisan and independent membership organization; convenes meetings at which government officials, global leaders, and CFR members debate major foreign-policy issues; think tank that is home to the world’s most prominent scholars of international affairs), [www.cfr.org/publication/12200/indias\_energy\_crunch.html](http://www.cfr.org/publication/12200/indias_energy_crunch.html)

With fourteen nuclear power plants run by state-owned companies, nuclear energy accounts for just 3 percent of India’s energy consumption. New Delhi hopes to boost this sector through a deal allowing U.S. companies to sell equipment, nuclear fuel, and reactors to India. However, even with a U.S.-India agreement, large scale expansion of the nuclear energy sector will likely take decades because of slow implementation and the relatively higher expense when compared to other forms of energy.

6. Lost public services. Coal taxes pay for highways, hospitals, schools and police officers in poor states

Douglas Fischer (Journalist), 9 Dec 2008, SCIENTIFIC AMERICAN, “The Dirty Side of Clean Coal,” <http://www.e2.org/ext/doc/20081209SciAmerican-DirtySideOfCleanCoal.pdf;jsessionid=6F16EDF2F1AC0E504F7E79241FD78459> (brackets added)

Coal paid Kentucky $183 million in severance taxes in 2005 and $583 million in other state taxes - almost 10 percent of the state’s general fund for that year. That’s a lot of highways, hospitals, police officers and schoolrooms for poor states, [former Kentucky state secretary of Environmental and Public Protection LaJuana] Wilcher notes.

NEGATIVE BRIEF: SUPERFUND TAX – Not Needed

By Vance Trefethen

NEGATIVE PHILOSOPHY

Superfund spent more than $35 billion. Result: Not much.

Prof. Daniel K. Benjamin (economics, Clemson University), 26 March 2009, “Superfund Follies Part II,” ENVIRONMENTAL PROTECTION, <http://eponline.com/articles/2009/03/26/superfund-follies-part-ii.aspx>

Through 2005, this program, known as Superfund, has resulted in the expenditure of more than $35 billion in federal funds and an unknown amount of private funds — even though remediation remains incomplete at roughly half of the 1,600 Superfund sites. Recent research reveals what we are getting for our money. Sadly, the answer is "not much."

HARMS

1. HARM: Justice Turn: Unfair to tax chemical & oil companies for Superfund

Cross-apply under INHERENCY: Strict environmental laws are in place to prevent new Superfund sites from happening

Marvin Odum (President of Shell Oil Company), 3 March 2009, , Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

Today's chemical and oil companies operate under stringent environmental laws that are designed to prevent the creation of new Superfund sites. For nearly 15 years, Superfund site activity has been funded through general revenues. To suggest that the chemical and oil industries are 1) responsible for the contamination of these “orphaned” sites; 2) should bear the responsibility or shoulder the cost when no other entity can; and 3) are responsible for cleanup related to customer and consumer misuse of products; is unfair.

INHERENCY

1. States create their own Superfunds – cleaning up thousands of sites

Stephen Lester (CHEJ Science director, Master's of Science in Toxicology from Harvard University; Master of Science in Environmental Health, from New York University) and Anne Rabe (cofounder of NY State Labor & Environment Network, a coalition of over 30 labor and environmental groups working on corporate accountability) March 2009, "Superfund: In the Eye of the Storm," Center for Health, Environment & Justice (founded in 1981 by Lois Gibbs, the community leader who led the successful fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls. CHEJ provides tools, direction, and encouragement to advocate for safe and healthy communities) <http://www.besafenet.com/media/docs_media/superfund.pdf>

States, such as California and New York, created State Superfund programs often with similar hazardous waste fees to fund the clean up of these sites or created Brownfield site programs. For instance, New York refinanced its State Superfund and created a Brownfield site program to facilitate the cleanup of thousands of contaminated properties.

Net benefits: Better for States to clean up local pollution and let Feds do other things

Dave Kopel (former assistant attorney general for the state of Colorado, specializing in civil enforcement of state and federal hazardous waste laws), 19 June 2002, "Defunding Superfund," NATIONAL REVIEW ONLINE, <http://www.nationalreview.com/kopel/kopel061902.asp>

Even though many lower federal courts try to evade the Supreme Court's enforcement of constitutional limits on congressional power, conscientious senators and representatives — and the president — can still respect the Founders' wisdom that local problems ought to be addressed by local governments. As Congress and the president struggle to carry the burdens that the Constitution really does place on the federal government — especially protecting our nation from foreign attack — they should acknowledge that the time has come for the federal government to focus on doing a finite number of jobs very well. They should abandon the failed policy of trying to do everything, the result of which is not doing anything very well. Let our state and local governments take care of health threats from local pollution — the better for the federal government to protect us from the health dangers of nuclear, chemical, and biological warfare launched by our foreign enemies.

2. Responsible parties are already paying for cleanup

Cal Dooley, (CEO, American Chemistry Council) 2 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

Reinstatement of the Superfund excise and environmental taxes is not necessary in order to assure that “polluters pay” – they already do. Responsible parties pay for the majority of cleanups. The Superfund law puts the burden of paying for cleanup squarely on responsible parties. The Trust Fund only bear the costs of cleanup for those “orphan” sites where no solvent responsible party can be found, or where Congress has exempted the responsible parties of liability. Since the taxes expired, responsible parties have continued to pay for all costs of cleanup at their sites and to reimburse EPA for all its costs related to cleanup. In 2004, EPA collected a record $1.7 billion in cleanup funds from responsible parties.

3. Federal “Stimulus” money is supporting Superfund

John M. Broder (Journalist), 25 Apr 2009, “Without Superfund Tax, Stimulus Aids Cleanups,” NEW YORK TIMES, [www.nytimes.com/2009/04/26/science/earth/26superfund.html](http://www.nytimes.com/2009/04/26/science/earth/26superfund.html)

[Lisa P. Jackson](http://topics.nytimes.com/top/reference/timestopics/people/j/lisa_p_jackson/index.html?inline=nyt-per), administrator of the E.P.A., said the use of stimulus money would accelerate progress at [50 Superfund sites in 28 states](http://www.epa.gov/superfund/eparecovery/sites.html), including eight abandoned industrial sites in New Jersey and two on Long Island. “Under the Recovery Act,” Ms. Jackson said, using the formal term for the [stimulus package](http://topics.nytimes.com/top/reference/timestopics/subjects/u/united_states_economy/economic_stimulus/index.html?inline=nyt-classifier), “we’re getting harmful pollutants and dangerous chemicals out of these communities and putting jobs and investment back in.”

SOLVENCY

1. Superfund ineffective at toxic cleanup – tax revenue won’t help

National Center for Policy Analysis, citing H. Sterling Burnett PhD (leading authority on energy and environmental issues; member of the Environment and Natural Resources Task Force in the Texas Comptroller's e-Texas commission, board of directors of the Dallas Woods and Water Conservation Club, and advisor for the American Legislative Exchange Council's Natural Resources Task Force) 5 Jan 2006, “Superfund Tax Will Be Both Costly and Ineffective,” <http://environment.ncpa.org/news/superfund-tax-will-be-both-costly-and-ineffective>

In addition, even if the tax is enacted, its revenue will not improve the 1,529 sites on the EPA's National Priority List. Burnett notes that historically, the EPA has made relatively little progress in cleaning up the nation's hazardous waste sites since Superfund resources have gone toward legal fees. "Instead of reinstating damaging taxes and allowing the inefficiencies of Superfund to continue, we need to reassess what has arguably been the EPA's most costly, yet least successful program," said Burnett. "It's time to throw Superfund on the scrapheap and establish new, creative solutions for the clean up of sites that pose a true threat to human health."

2. Superfund taxes don’t control pace of cleanup – Congress does

Cal Dooley, (CEO, American Chemistry Council) 2 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

What’s more, Superfund taxes do not control the pace of cleanup. Even when the Superfund Trust Fund ran a significant surplus, Congress determined how much EPA could spend in the Superfund program. In other words, the Superfund taxes never determined EPA’s annual Superfund budget. Congressional appropriations have remained fairly constant for the past many years, between $1.2 and $1.4 billion

3. Greenstone & Gallagher study: No value to Superfund cleanup

Prof. Daniel K. Benjamin (economics, Clemson University), 26 March 2009, “Superfund Follies Part II,” ENVIRONMENTAL PROTECTION, <http://eponline.com/articles/2009/03/26/superfund-follies-part-ii.aspx>

Greenstone and Gallagher test these predictions using housing market data for the period 1980 to 2000. They find that none of the predicted effects occur when sites are cleaned up. In particular, housing prices in an area around a site are substantively unaffected by the cleanup of the site, and there is no increase in the local housing stock in response to the cleanup. Moreover, there is no evidence of any movement of people into the area after the cleanup, as would be expected if the cleanups, in fact, reduced hazards in any way that individuals valued. By every measure, the Superfund program is failing to provide anything of value.

Superfund fails: Either the sites were never that dangerous, or the cleanup isn’t cleaning up

Prof. Daniel K. Benjamin (economics, Clemson University), 26 March 2009, “Superfund Follies Part II,” ENVIRONMENTAL PROTECTION, <http://eponline.com/articles/2009/03/26/superfund-follies-part-ii.aspx>

The authors [Greenstone & Gallagher] do not address why Superfund is failing to produce any measurable benefits. At least two forces might plausibly be at work. It is possible that the true hazards of these sites prior to cleanup were much smaller than asserted by EPA. Alternatively, the clean-up process itself may be failing to remediate what are very real hazards. Both of these forces are consistent with other research I have written about in this column (1999). Clearly, we would ultimately like to know which combination of factors is at work. But even though we cannot yet determine why Superfund is not producing measurable benefits, we can ascertain this: The Superfund program is failing and it is time to stop pretending otherwise.

Details on Greenstone & Gallagher study and conclusion: Benefits of Superfund are less than its cost

Justin Gallagher (University of California at Berkeley) and Michael Greenstone (Nonresident Senior Fellow, [Economic Studies](http://www.brookings.edu/economics.aspx)) Jan 2008, “Does Hazardous Waste Matter? Evidence from the Housing Market and the Superfund Program” Brookings Institution, [www.brookings.edu/papers/2008/01\_housing\_market\_greenstone.aspx](http://www.brookings.edu/papers/2008/01_housing_market_greenstone.aspx)

We show that if consumers value the clean-ups, then the hedonic model predicts that they will lead to increases in local housing prices and new home construction, as well as the migration of individuals that place a high value on environmental quality to the areas near the improved sites. We compare housing market outcomes in the areas surrounding the first 400 hazardous waste sites chosen for Superfund clean-ups to the areas surrounding the 290 sites that narrowly missed qualifying for these clean-ups. We find that Superfund clean-ups are associated with economically small and statistically indistinguishable from zero local changes in residential property values, property rental rates, housing supply, total population, and the types of individuals living near the sites. These findings are robust to a series of specification checks, including the application of a regression discontinuity design based on knowledge of the selection rule. Overall, the preferred estimates suggest that the local benefits of Superfund clean-ups are small and appear to be substantially lower than the $43 million mean cost of Superfund clean-ups.

4. No economic benefit to cleanup because no substantial health benefit from cleanup

Justin Gallagher (University of California at Berkeley) and Prof. Michael Greenstone PhD (economics, M.I.T.) Jan 2008, “Does Hazardous Waste Matter? Evidence from the Housing Market and the Superfund Program” Brookings Institution, [www.brookings.edu/papers/2008/01\_housing\_market\_greenstone.aspx](http://www.brookings.edu/papers/2008/01_housing_market_greenstone.aspx)

Second, consumers may believe that the clean-ups do not appreciably alter the health risks of living near a Superfund site. In fact, the epidemiological literature has not found decisive evidence of substantial health benefits from the clean-ups (Vrijheid 2000; Currie et. al 2008). Consequently, consumers may believe that the reductions in risk are small and rationally place a low value on them.

5. Not much left for Feds to do: Most remaining sites are State cleanup sites

Bill Kovacs (Vice President for the Environment, Technology & Regulatory Affairs Division, U.S. Chamber of Commerce) 2 Mar 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

But let’s just focus on Superfund, Why is it needed and what will it do? Based on EPA’s own website there are few federal sites left for cleanup to be completed; most remaining sites are state sites. Of the completed 1063 NPL sites only 61 were federal, the rest state sites. Of the proposed sites remaining to be cleaned up only 6 of 57 are federal. Of the remaining final sites only 157 are federal and 1098 are state sites.

6. Superfund tax fairness failure: Corporations only pay taxes by collecting money from others

Dr Lester Thurow PhD (Economics; former Dean of MIT Sloan School of Management) 1980, THE ZERO SUM SOCIETY, [http://books.google.com/books?id=V5uBbTOzYOAC&pg=PA98&lpg=PA98&dq=%22no+such+thing%22+%2B+%22corporate+income+tax%22&source=bl&ots=1jkjVzXmNd&sig=qMIt72dghWh8pf\_zABb\_G1CzW7s&hl=en&ei=SGB0Su2uHZqqtgf16N2WCQ&sa=X&oi=book\_result&ct=result&resnum=5#v=onepage&q=%22no%20such%20thing%22%20%2B%20%22corporate%20income%20tax%22&f=false](http://books.google.com/books?id=V5uBbTOzYOAC&pg=PA98&lpg=PA98&dq=%22no+such+thing%22+%2B+%22corporate+income+tax%22&source=bl&ots=1jkjVzXmNd&sig=qMIt72dghWh8pf_zABb_G1CzW7s&hl=en&ei=SGB0Su2uHZqqtgf16N2WCQ&sa=X&oi=book_result&ct=result&resnum=5#v=onepage&q)

While corporations are legal entities that write checks to government, they do not pay taxes. They simply collect money from someone – their shareholders, their customers, or their employees – and transfer it to government. There is no such thing as taxing corporations as opposed to individuals. This immediately raises the issue of who ultimately pays the corporate income tax.

Individuals ultimately pay all corporate taxes

Ed Rubenstein (economics editor) 5 July 1993, “Mr. Clinton's corporate tax - damaging economic consequences from proposed rise in corporate income tax rates” NATIONAL REVIEW, <http://findarticles.com/p/articles/mi_m1282/is_n13_v45/ai_13192451/>

Corporate taxes are ultimately paid by individuals, in the form of lower wages for employees, higher prices for consumers, and lower returns to stockholders. An ideal tax system would have no corporate tax whatsoever.

Corporate taxes are paid by individuals: Stockholders and workers

Dr. Jason Furman PhD (economics;Senior Fellow at the Brookings Institution where he is Director of the Hamilton Project. Former Special Assistant to the President for Economic Policy in the Clinton Administration) June 2007, “Should we tax income at the business level?” <http://www.economist.com/blogs/freeexchange/2007/06/should_we_tax_income_at_the_bu.cfm>

Corporate taxes are paid by individuals – but generally by wealthier individuals. All taxes are ultimately paid by people. Just who those people are in the case of corporate taxes is a complicated and controversial question. But in almost any theory, those people are, on average, wealthier than the general population. That is true in the classic Harberger model, which finds that corporate taxes are paid by owners of capital, and is the basis for the Treasury and CBO distributional analyses. It is even more true if corporate taxes are ultimately paid for by owners of corporate stock, one of many possibilities [analyzed](http://papers.nber.org/papers/W11686) by Alan Auerbach. And it is still true, albeit somewhat less true, if in the long-run workers bear some or even all of the incidence in the form of the lower wages that result from less capital formation.

DISADVANTAGES

1. Fairness/Justice Turn: “Superfund tax” isn’t “polluter pays,” it’s “tax the innocent”

[Angela Logomasini](http://cei.org/people/angela-logomasini) PhD (Director of Risk and Environmental Policy at the Competitive Enterprise Institute; conducts research and analysis on environmental regulatory issues; her articles have been published in Wall Street Journal, the New York Post, the Washington Times, and other papers ), 5 Sept 2003, EPA Uses Superfund Tax to Target the Innocent, Competitive Enterprise Institute, <http://cei.org/gencon/019,03653.cfm>

The Superfund tax was created as part of the nation’s law to clean up contaminated property. The monies collected were designed for a special fund, euphemistically called "the Superfund." The Environmental Protection Agency was then to use this money to clean up waste sites. The tax for this fund expired in 1995, but the fund is only now beginning to run low. Unlike the "polluter pays" principle, this tax rested on what could be called the "tax the innocent" principle. This principle allows the government to take money out of the pockets of innocent parties to line the pockets of regulators. Under the "tax the innocent" principle, chemical and petroleum businesses are punished for the "sin" of being part of industries that environmentalists don’t like. It has nothing to do with their individual actions.

Superfund would tax many for the sins of a few – it should come from general revenues

John M. Broder (Journalist), 25 Apr 2009, “Without Superfund Tax, Stimulus Aids Cleanups,” NEW YORK TIMES, [www.nytimes.com/2009/04/26/science/earth/26superfund.html](http://www.nytimes.com/2009/04/26/science/earth/26superfund.html)

The American Chemistry Council, the industry’s trade association, said that its member companies had paid for hundreds of investigations and toxic cleanups and that it favored making the parties responsible for the messes pay for them. It opposes renewing the Superfund tax that makes all manufacturers pay for the sins of the few.“We strongly believe that Superfund taxes should not be reinstated,” the group said in a policy statement. It added that it believed such taxes supported a variety of activities — including administration, research and cleanup of abandoned sites — that should properly come from general government revenue.

2. Lost businesses

Chemical production would be uncompetitive if tax is reinstated

Cal Dooley, (CEO, American Chemistry Council) 2 March 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

The chemistry industry is facing unprecedented financial challenges. Reinstating Superfund taxes would unduly impact the business of chemistry at a time of economic crisis. Reinstating the chemical excise tax would impose a $310 to $450 million cost on chemical manufacturing every year, even though the products subject to the tax are not necessarily associated with Superfund cleanups. Reinstating the tax on just two products – chlorine and ammonia – would essentially offset any economic return on sales to current producers, making those segments non-competitive in the global market.

Superfund drives companies into bankruptcy

Bill Kovacs (Vice President for the Environment, Technology & Regulatory Affairs Division, U.S. Chamber of Commerce) 2 Mar 2009, Should The U.S. Resurrect Superfund?, NATIONAL JOURNAL, <http://energy.nationaljournal.com/2009/03/should-the-us-resurrect-superf.php>

Those observations notwithstanding, leaving aside questions about the number and type of sites and the size of the funding allocation for clean up of these remaining sites, the real issue is that the effort was, is, and will continue to be a jobs killer. This is because of the joint and several liability provisions in the Superfund program. In particular, anyone with waste at a Superfund site is responsible for cleaning up the entire site, even if that entity had a very small amount of waste at the site. This is the big problem. What has happened as a result of these joint and several liability provisions is that if all the bad actors who were largely responsible for the contamination at a site are out of business the government instead has gone after all the remaining viable companies for the cleanup of the entire site, no matter what the cost or the small amount of waste these companies sent to the site. As a result of this practice, many good balance sheets go bad. That is the history of the Superfund program and throwing more money at clean up isn’t going to solve this problem.

NEGATIVE BRIEF: YUCCA MOUNTAIN / NUCLEAR ENERGY

By Vance Trefethen

INHERENCY

No rush: We can solve the nuclear waste issue over the next 200 years

Spiegel Magazine (German news magazine) interview with David Crane, CEO of NRG Energy, Inc, (based in New Jersey. His company is planning to build two new nuclear reactors in Texas) 9 July 2008, “'The American Public Is Ready for Nuclear' <http://www.spiegel.de/international/world/0,1518,564904,00.html>

**SPIEGEL ONLINE:** Imagining for a moment that so many new nuclear reactors do go on line, what is to be done with all of the radioactive waste? Even after years of debate on the issue, there is still no solution regarding final disposal. **Crane:** A lot of people talk about a final solution, and we do need one. But this solution of on-site waste storage is deemed to be safe for a long time. Global warming is an immediate issue that nuclear energy can help solve. We should solve this issue now and solve the nuclear waste issue over the next 200 years.

Don’t need Yucca: Spent nuc. fuel can be stored safely at reactor sites in dry casks

Clark County Nevada Dept of Comprehensive Planning, Nuclear Waste Program, 2007, “What are the Alternatives to Yucca Mountain?” [www.accessclarkcounty.com/depts/comprehensive\_planning/nuclearwaste/Documents/AlternativesFactSheet.pdf](http://www.accessclarkcounty.com/depts/comprehensive_planning/nuclearwaste/Documents/AlternativesFactSheet.pdf)

Dry cask storage is recognized as a reasonable alternative. The NRC has determined that spent nuclear fuel can be safely stored at reactor sites for decades into the future, allowing time for the development of other potential waste disposal technologies.

Nuclear power plant security has been improved

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

The United States has taken steps to improve the security of nuclear power plants against terrorist attack or sabotage. Soon after the September 11, 2001, terrorist attacks, the U.S. Nuclear Regulatory Commission launched a top-to-bottom review of security procedures and requirements. Despite these updated security requirements, some independent groups continue to express concern about security vulnerabilities at U.S. nuclear power plants. In part to address such concerns, Congress placed statutory requirements for nuclear plant security in the Energy Policy Act of 2005. In particular, the act requires that each nuclear plant conduct force-on-force exercises at least once every three years, which is the NRC’s current policy. The act also calls for the exercises to simulate threats in the design-basis-threat (DBT) and for the NRC “to mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.”

SOLVENCY

1. It would take decades to get all the waste to Yucca, and it couldn’t hold it all

Clark County Nevada Dept of Comprehensive Planning, Nuclear Waste Program, 2007, “What are the Alternatives to Yucca Mountain?” [www.accessclarkcounty.com/depts/comprehensive\_planning/nuclearwaste/Documents/AlternativesFactSheet.pdf](http://www.accessclarkcounty.com/depts/comprehensive_planning/nuclearwaste/Documents/AlternativesFactSheet.pdf)

Even if Yucca Mountain is approved and constructed, it would take decades before spent fuel inventories are depleted. If it were filled to the existing legal capacity of 70,000 metric tons, Yucca Mountain could not contain all the nuclear waste that will be generated by existing reactors. There are currently 65 operating reactor sites in 31 states. As long as nuclear reactors are operating, there will continue to be spent fuel stored.

2. Utilities have not committed to building new reactors because of uncertainties in construction costs

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

Yet, large uncertainties in construction costs continue to impede investors. To try to jump-start the nuclear industry, which was already receiving more subsidies than any other no- and low-carbon energy sources, the Energy Policy Act of 2005 provided billions of additional dollars’ worth of incentives to nuclear and smaller amounts of incentives to other no- and lowcarbon energy sources. (See the Appendix for an analysis of this act.) Nonetheless, the process of new nuclear reactor licensing and construction is estimated to take ten to fifteen years. Even if their license applications are approved, the utilities have still not committed to building the reactors.

3. Massive new nuclear energy would hardly affect global CO2 levels at all

Prof. John R. Christy, (Atmospheric Science, Univ. of Alabama in Huntsville; Ala. State Climatologist) 25 Feb 2009, House Ways and Means Committee - Written Testimony, <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064809d6863>

The scale of CO2 emissions is simply enormous. Again using IPCC climate models, if 1000 new nuclear power plants could be operating by 2020 (about 10% of the world’s energy) this would affect the global temperature by only 0.07°C by 2050 and 0.15°C by 2100. We wouldn’t notice it, but this dent could just be detectable by our instruments. However, these values are very likely overstated as they are based on current models.

Nuclear energy has little impact on climate change and won’t substitute for petroleum

Sharon Squassoni (senior associate with the Nonproliferation Program at the Carnegie Endowment for International Peace) May 2007, ARMS CONTROL ASSOCIATION "Risks and Realities: The "New Nuclear Energy Revival" <http://www.armscontrol.org/act/2007_05/squassoni>

There is little doubt that nuclear energy will remain an important part of the global energy mix, but it is not the panacea that many advocates are selling. To begin with, a nuclear renaissance will take too long to have more than a negligible impact on carbon dioxide emissions that threaten significant climate change in the next decade. Further, the petroleum-dominated transportation sector, which accounts for 25 percent of world carbon dioxide emissions, offers few footholds now for nuclear energy substitution engineers.

4. “Nuclear Renaissance” won’t happen until capital costs and proliferation risks are solved

James A. Lake (associate laboratory director for the nuclear program at the Idaho National Laboratory and was president of the American Nuclear Society in 2000-2001) 9 May 2008, U.S. Department of State's Bureau of International Information Programs, “The Renaissance Of Nuclear Energy” <http://www.america.gov/st/env-english/2008/May/20080520182724WRybakcuH0.2896387.html>

However, before such a renaissance can become a reality, policy makers must respond to major challenges in such areas as the relatively high capital costs of new plants, sustainable management of used nuclear fuel, and the risks of proliferation of weapons-grade plutonium from the nuclear power fuel cycle.

Either carbon tax or loans+tax incentives needed to expand nuclear power in the US

NOELLE STRAUB AND PETER BEHR (journalists) 22 Apr 2009, NEW YORK TIMES, “Energy Regulatory Chief Says New Coal, Nuclear Plants May Be Unnecessary” <http://www.nytimes.com/gwire/2009/04/22/22greenwire-no-need-to-build-new-us-coal-or-nuclear-plants-10630.html?pagewanted=2>

But a major expansion in U.S. nuclear energy would require a high effective tax on carbon emissions from coal plants, or an extended loan guarantee and tax incentive policy, according to the Congressional Research Service and outside consultants. The leading energy bills before Congress do not provide more loan guarantees. "If expansion of nuclear plants is the nation's policy, then Congress has to recognize that the U.S. energy companies cannot afford to do this alone," said Paul Genoa, policy director for the Nuclear Energy Institute, in a recent interview.

5. Can’t replace existing old reactors fast enough: it will be 50 years before nuclear can solve US energy insecurity

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

While Nuclear Regulatory Commission (NRC) Chairman Dale E. Klein has recently discussed considering license renewals for up to eighty total years for a selected number of reactors, prudent planning would suggest counting on replacing practically all of the current reactors within the coming decades. The replacement rate would be on the order of one new reactor every four to five months over the next forty years. Based on the periods of the 1960s and 1970s, when most of the current fleet was built, this construction rate appears feasible. However, based on the past thirty years, in which reactor orders and construction ground to a halt, this replacement rate faces daunting challenges. For this reason alone, nuclear energy is not a major part of the solution to U.S. energy insecurity for at least the next fifty years.

Can’t build nuclear plants fast enough to solve global warming or energy insecurity

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

In the foreseeable future, nuclear energy is not a major part of the solution to further countering global warming or energy insecurity. Expanding nuclear energy use to make a relatively modest contribution to combating climate change would require constructing nuclear plants at a rate so rapid as to create shortages in building materials, trained personnel, and safety controls. Furthermore, while the nuclear industry is only structured to produce electricity, the existing abundant and cheap fossil fuels provide readily usable energy for electricity, heating, and transportation needs.

6. Nuclear has no impact on foreign oil dependence

Dr. Charles D. Ferguson ( adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University; formerly scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies), April 2007, Nuclear Energy - Balancing Benefits and Risks, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf](http://www.cfr.org/content/publications/attachments/NuclearEnergyCSR28.pdf)

Electricity generation from all sources comprises about 40 percent of total U.S. energy consumption. Of this total, nuclear comprises only about 8 percent. Currently, nuclear power, which solely generates electricity, offers some relief in use of foreign sources of oil and natural gas and could, over the long term (many decades), power cars and trucks through production of hydrogen for fuel cells or electricity for plug-in hybrid vehicles. But at least over the next few decades, a substantial growth in nuclear energy use will not wean the United States off foreign sources of oil.

DISADVANTAGES

1. Radioactive stuff from Yucca will eventually reach the surface through groundwater

Robert Loux, (EXECUTIVE DIRECTOR, NEVADA AGENCY FOR NUCLEAR PROJECTS) testimony BEFORE THE UNITED STATES SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, 2 Mar 2006, [www.state.nv.us/nucwaste/news2006/pdf/nv060302senate.pdf](http://www.state.nv.us/nucwaste/news2006/pdf/nv060302senate.pdf)

The wide range of uncertainty in performance is dominated by the great uncertainty surrounding not the geology and hydrology, but the failure rate of the metal waste containers. Once the waste containers begin failing by corrosion, the contamination of the groundwater will be relatively rapid, far reaching, and irreversible. Radionuclides from waste disposed at Yucca Mountain will eventually reach the land surface both through groundwater pumping and through natural playas and springs where groundwater that has traveled beneath Yucca Mountain reaches the land surface today.

Impact: Nuc. waste causes Disease and death

Dr. Helen Caldicott M.D. (Co-founder of Physicians for Social Responsibility), quoted by journalist Tom Hennessy, 8 Oct 2008, "Doctor sounds alarm on risks of nuclear energy," LONG BEACH PRESS-TELEGRAM (Calif. Newspaper) <http://www.presstelegram.com/news/ci_10674253>

Nuclear power is a grave public health danger, far worse than tobacco. Over time, it will induce epidemics of cancer, leukemia and genetic disease in all future generations from the massive quantities of radioactive waste currently being generated. Therefore, it is dangerous in any country that possesses it. Reactors also manufacture 500 pounds of plutonium per year, fuel for potentially 100 nuclear weapons. Any country possessing a reactor owns a bomb factory. Plutonium remains radioactive for **500,000 years.**

2. Waste transportation risks

Dept. of Energy is a magnet for terrorism and errors in protective casks create conditions that create risk

Prof. James Ballard PhD (Calif. State University -Northridge, sociology; spent 14 years studying terrorism and sabotage risks relating to transportation of radioactive waste to Yucca Mountain), Sept 2008, testimony before the Senate Commerce, Science & Transportation Committee, Hearing on Safety and Security of Spent Nuclear Fuel Transportation, <http://commerce.senate.gov/public/_files/BallardTestimonyFinal.pdf> (brackets added)

Moreover, the DSEIS [Dept of Energy Draft Supplemental Environmental Impact Statement ] ignores evidence, including terrorism studies funded by DOE, that this agency’s activities may be particularly attractive symbolic targets for sabotage or terrorist attacks. The DSEIS also ignores past instances in which human errors in cask fabrication and cask loading actually occurred during NRC‐licensed shipments, and created conditions that could have compromised cask performance in the event of a sabotage event. Likewise, the DSEIS ignores Nevada’s argument that unique local conditions such as proximity of the existing mainline railroads to urban location like downtown Las Vegas and Reno‐Sparks must be factored into consequence assessments, resulting in potential multi‐billion dollar cleanup costs and business disruption impacts.

Dept. of Energy (DOE) refuses to study rail safety for waste transport

Prof. James Ballard PhD (Calif. State University -Northridge, sociology; spent 14 years studying terrorism and sabotage risks relating to transportation of radioactive waste to Yucca Mountain), Sept 2008, testimony before the Senate Commerce, Science & Transportation Committee, Hearing on Safety and Security of Spent Nuclear Fuel Transportation, <http://commerce.senate.gov/public/_files/BallardTestimonyFinal.pdf>

As the end point of a national transportation program, the proposed Nevada rail corridor is critical in the overall performance of the Yucca planning, so articulation of that plan prior to consideration of the rail spur makes policy sense. The safety and security challenges that arise from building an extensive rail spur into the Yucca facility demand a robust dialogue on the issues, one that NEPA requires and to date DOE seems unwilling to offer any realistic approaches to studying.

Costs and terrorism/sabotage risks of rail transportation getting the waste from power plants to Yucca

Sen. Harry Reid (D-NV), 4 Dec 2008, “REID SUBMITS TESTIMONY AGAINST RAIL LINE TO YUCCA MOUNTAIN,” <http://reid.senate.gov/newsroom/pr_120408_STB.cfm> (brackets added)

Nevertheless, the [federal Surface Transportation] Board should not disregard the complexity of transporting thousands of trainloads of nuclear waste tens of thousands of miles to Yucca Mountain in order to streamline DOE’s application for what will effectively be a single-use railroad for nuclear waste. Transportation may be the Achilles heel of the Yucca Mountain project. It is extremely costly, affects millions of Americans and almost all of the states, is fraught with danger from terrorism, sabotage and accidents, and has potential to greatly impact states, cities, and local communities all across the nation.

Waste transportation to Yucca is dangerous: Easy target for wide variety of adversaries

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One critical issue typically neglected by the DOE [Dept of Energy] is the recognition of this shipment campaign as a danger to the public. In other words, any Yucca Mountain transportation program that becomes necessary to transport the nation’s stockpiles of highly radioactive waste is a security risk in and of itself. What DOE seemingly fails to understand is that this large scale federal program will draw the attention of a wide variety of adversaries because of its symbolic value – briefly it is nuclear, it is federal and it is controversial. The choice of a geographic location far distant from the production sites where SNF [spent nuclear fuel] and HLRW [high-level radioactive wastes] are generated assists the adversaries since it:

* Necessitates the movement of large numbers of shipments.
* Allows for the adversary to chart movement of these shipments in a predictable way.
* Is exacerbated by choices the DOE makes. For example, decisions that allow for hotter fuel, thus higher potential harm, to be sent along these predictable corridors.
* Will entail lengthy shipment routes that average over 2000 miles of open, unprotected terrain where an adversary can pick and choose the attack site.

Impact: Thousands of casualties and billions of dollars

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The first NRC [federal Nuclear Regulatory Commission] regulations requiring physical protection of spent fuel shipments were issued in response to a 1977 draft assessment by Sandia National Laboratories (SNL). That assessment, and a follow‐up study by SNL in 1980, indicated that sabotage of a shipment in an urban area could cause hundreds to thousands of casualties, and billions of dollars in economic losses and cleanup costs.

Impact: Thousands of deaths, billions of dollars for cleanup

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Depending upon the meteorological conditions present at the time of an attack, the respirable aerosol of radioactive materials could affect an area of 10 square kilometers (3.9 square miles) or more. RWMA estimated cleanup costs ranging upward from $668 million for the rail incident, and $6.1 billion for the truck incident, to more than $10 billion. Full perforation of the truck cask, likely to occur in an attack involving a state‐of‐the art anti‐tank weapon, could cause as many as 3,000 to 18,000 latent cancer fatalities, and cleanup and recovery costs could far exceed $10 billion.

Impact: Risk is high and cleanup & recovery costs are catastrophic

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Nevada has recommended that DOE address acts of sabotage and terrorism against repository shipments. DOE has acknowledged, in the Final EIS for Yucca Mountain, the potential vulnerability of shipments to such attacks. Analyses by Nevada contractors have concluded that the releases and consequences could be many times greater than reported by the DOE, resulting in catastrophic cleanup and recovery costs.

DA Response: Dept of Energy has tried for years to manage terror risk but hasn’t

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The DOE has for decades tried to find a way to manage the terrorism risks associated with the proposed Yucca Mountain project with little overall programmatic success. Over that extended timeframe the expenditures of rate payer and taxpayer funding for this agency and its efforts have produced some less than stellar social scientific results with respect to the risks of human initiated events. Make no mistake, what we take about when discussing the transport of SNF and HLRW shipments are potentially very dangerous cargos and highly symbolic targets. They are a danger to the transportation infrastructure, to the public health and to the long term economic viability of the location(s) where an accident and/or terrorist attack may transpire. This is a social fact, no matter the rhetoric used by the industry and/or DOE to obscure this reality.

3. Economic and employment losses in Las Vegas/Clark County, Nevada

Savannah River Site Community Reuse Organization citing a 1987-1996 State of Nevada study (SRSCRO; Dept of Energy-designated non-profit organization directed by business, government and academic leaders charged with developing and implementing a comprehensive strategy to diversify the economy of the five-county region of Ga. and S.C. near Savannah River nuclear facility) Oct 2007 “CSRA Region’s Role in Nuclear Renaissance Requires Successful and Timely Long-Term Waste Solutions” <http://www.srscro.org/downloads/Yucca%20Mountain.pdf>

Because of the high profile nature of the whole nuclear waste disposal program, the potential exists for Nevada to become associated with these negative perceptions to the detriment of its attempts to attract tourists, conventions, migrants, and diversified new industry to the state. Nevada’s study concluded that this is especially troublesome in the event of a nuclear waste accident in or near Las Vegas that might stigmatize the area and cause visitors to stay away in significant numbers. Each one-percent decline for Clark County in spending by visitors, retired people, and investors relative to the baseline levels assumed to occur in some future year (e.g., 2010) could produce an annual loss of 7,000 jobs and $200 million in income.