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A Paler Shade of Green

The Bush administration sets its own environmental course.

By Jason Jordan

Back in the honeymoon days, when George W. Bush was President-elect, he pleased environmental groups by picking Christine Todd Whitman to head the U.S. Environmental Protection Agency.



Whitman, the former governor of New Jersey, was widely regarded as a moderate with a good track record on the environment. Fighting sprawl and protecting open space had been hallmarks of her administration. In 1999, she won an APA award as "outstanding elected official."

The honeymoon was over in less than 100 days. President Bush's first step in office was to suspend all regulatory actions not made final during the waning days of the Clinton administration. The directive, issued on Inauguration Day 2001, called for all such actions to be suspended until fully reviewed. Numerous environmental regulations were on the list.

Before the end of March, the new Bush team had announced a unilateral withdrawal from an international accord on global warming, rejected higher standards for arsenic in drinking water, reversed course on a policy requiring states to speed up their efforts to limit non-point sources of water pollution, and reversed a campaign pledge to limit carbon dioxide emissions from power plants.

Before the summer was over, the administration had released a budget that recommended eliminating 270 EPA enforcement jobs and cutting any new funds for the federal government's only program to aid urban parks. In the meantime, Vice President Richard Cheney launched an energy policy task force whose goal was to rewrite legislation and set new national goals.

At the same time, the administration began pushing Capitol Hill to enact brownfields legislation that had strong support from many planners, smart growth proponents, and environmentalists. President Bush publicly proclaimed brownfields his top environmental priority.

Despite the contradictions, the basic parameters of the President's philosophy on environmental policy were becoming evident by mid-2001. That philosophy was based on three broad principles: shaping policy through regulatory actions instead of major legislation, placing primary emphasis on energy and utility policy, and shifting executive and administrative priorities within existing programs or initiatives.

Another hallmark of the Bush environmental record is the curious mixture of Republican moderates leading EPA and the industry leaders and lobbyists named to high-ranking posts within EPA and the Interior Department.

New strategy

Before now, nearly every president since Richard Nixon had used major new laws to shape environmental policy. These include landmark statutes such as the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, and the Endangered Species Act. Although the Bush administration has promoted significant legislative initiatives on power plant emissions and national energy policy, its primary focus has been regulatory.

In concert with this strategy is an approach that limits government mandates and enforcement and attempts to achieve goals through greater cooperation with the private sector. This notion was reinforced in 2003 by the appointment of former Utah Gov. Michael O. Leavitt, who replaced Whitman as EPA administrator. Leavitt has long promoted private-sector engagement and cooperation in environmental policy.

Leavitt's approach, which he calls "en libra," emphasizes national standards and neighborhood efforts, markets instead of mandates, solutions that transcend political boundaries, and other common sense ideas. In his first

address to EPA employees, Leavitt called these principles "the prism through which I view environmental issues."

In a speech last January to the National Association of Manufacturers, Leavitt laid out the administration's thinking about environmental regulations and management. "We are dealing with a new economic imperative," he said. "Progress has to be made without compromising our competitiveness in a global marketplace. The approach of the last 30 years has become too slow, expensive, and conflict-ridden."

Economic impacts are a big priority for the Bush administration. One of the administration's early actions was to strengthen the Office of Information and Regulatory Affairs in the White House. The new "regulations czar" aimed to apply a rigorous cost-benefit approach to federal actions.

Changes in water policy



Water policy shows how the administration's environmental philosophy has played out. New rules have been proposed or enacted regarding wastewater treatment, wetlands protection, coastal zone management, farm runoff, and standards for drinking water. All these new rules were designed to increase flexibility for the states and industry by limiting the role of federal regulators, often in the name of consumer costs.

In 2001, the U.S. Supreme Court issued an important ruling regarding the nation's wetlands in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*. The Court held that federal authority over certain "isolated" wetlands was limited. Previously, the Corps of Engineers had used the Migratory Bird Rule to regulate these wetlands. With this decision, the Court created a lot of uncertainty about exactly how far the federal government could go in regulating wetlands under the Clean Water Act.

The Bush administration initially announced its intention to issue a new rule that would remove up to 20 million acres of wetlands from federal jurisdiction, instead allowing states to issue their own guidance on development. These regulations were abandoned in the wake of strong opposition, including that of fishing and sportsmen's groups.

These advocates encouraged the President to maintain federal policy, established under the first Bush administration, of no net loss of wetlands acreage. However, there is still confusion about the extent of federal wetlands jurisdiction. While voicing support for a variety of wetlands initiatives, the administration continues to focus on cooperative conservation agreements, as opposed to direct regulation.

In its preference for executive branch action instead of legislation, the administration has opposed bills that would provide more aid to municipal governments for water infrastructure, even in the face of an EPA analysis demonstrating a major gap in funding for such projects. Likewise, the administration opposed an update to the Clean Water Act that would extend federal jurisdiction to isolated wetlands and resolve the lingering confusion caused by the Supreme Court's 2001 decision.

NEPA revamp

Early on, the Council on Environmental Quality was ordered to assess the National Environmental Policy Act's environmental review process and to suggest how the reviews could be streamlined. NEPA has become a flashpoint for administration officials who say that the process is too often used as a way to delay worthy projects. Opponents of that view say that the administration's true purpose is to undermine the central protections offered under the statute.

Natural Resources Defense Council senior attorney Sharon Buccino summed up the concern among environmentalists when the administration's NEPA plans were first announced. "The Bush administration's 'streamlining' strategy for NEPA would amount to steamrolling environmental protections and public input," she said. "'Modernizing' the key law that ensures public participation in federal environmental policy is a code word for shutting the public out."

A battle resulted when the Bush team rejected forest planning rules drafted at the end of the Clinton administration and instead chose to embark on its own overhaul. Primarily the new rules would exempt plans from NEPA review and shift more authority to regional forest managers. In proposing the change, the administration said that environmental reviews were appropriate only for actual land-management decisions, not

the underlying plan for potential uses. (See "Tree Tales," June 2003.)

Critics argued that such a change would skew analysis of overall impacts and limit the value of forest plans. They charged that the suggested changes were troubling in light of other administration proposals to encourage more logging and road building in forests. Opponents also decried the lack of a scientific advisory panel in drafting the rules. A coalition of U.S. senators wrote the administration to request that such a panel be consulted before a final rule was issued. As of this writing, a final rule on forest planning was expected this summer.

Moving ahead on energy



No issue has defined the Bush administration's environmental policy more than energy. The task force led by Vice President Cheney presented comprehensive energy legislation to Congress in 2001. That measure has been debated annually but not enacted.

The administration's proposal seeks to decrease dependence on foreign energy by increasing domestic production. Most heavily debated has been the proposal to open the Arctic National Wildlife Refuge to oil exploration.

Whether controlled by Democrats or Republicans, Congress has fallen short of the majorities needed to adopt the President's energy plan. Critics have steadfastly opposed new drilling in the Arctic and attacked the bill's lack of emphasis on energy conservation and alternatives. Many environmentalists have argued that the administration's bill does nothing to address vehicle fuel efficiency or to encourage the development of renewable energy resources. There were also sharp disagreements about energy transmission and power plant standards.

A number of events during the first years of the Bush administration put the spotlight on energy issues. First, Californians suffered through skyrocketing energy prices and rolling blackouts. Next, the summer of 2002 saw the collapse of energy giant Enron. The company had strong ties to the administration, and many top Enron executives helped to draft policy for the Vice President's task force.

Environmentalists and government watchdogs filed a lawsuit in 2001 to force the administration to open its files on task force deliberations. (A federal court eventually obliged the administration to release a portion of previously withheld documents.) The following summer the nation suffered its worst blackout in a generation, with much of the East Coast plunged into darkness due to problems with a multi-state energy grid. Still, dramatic differences in Congress over the direction of energy policy kept comprehensive legislation bottled up.

Energy issues have also dominated the administration's thinking about air quality. In 2002, the President focused on standards for power plant emissions. The plan, known as Clear Skies, would set new targets for emissions of three key pollutants (sulfur dioxide, nitrogen oxide, and mercury) and allow plants to trade emission credits to meet these standards.

The proposal immediately drew criticism because it failed to limit carbon dioxide, as President Bush had promised to do while still a candidate. The measure also ran afoul of environmentalists because the recalibrated air quality regulations would be less strict than targets already in federal law. For example, the National Environmental Trust estimated that Clear Skies would allow more than one and a half times as much smog-forming nitrogen oxide pollution from power plants for nearly a decade longer than the Clean Air Act currently allows.

Congress rejected Clear Skies. Sen. James Jeffords (I-Vt.) introduced a competing proposal that provided for more stringent limits on pollutants and included new caps on carbon dioxide. The Jeffords bill, the Clean Power Act, passed a Senate committee in 2003 but went no further.

Another congressional bid to limit carbon dioxide was proposed in 2003 by Sen. John McCain (R-Ariz.) and Sen. Joseph Lieberman (D-Conn.). Their bill would try to address global climate change by creating a cap and trade system. The Bush administration has opposed both the Jeffords bill and the McCain-Lieberman proposal for the same reason it rejected the Kyoto accords, namely that they would lead to higher costs.

Power plant emissions were also at the center of another battle: enforcement of the so-called "new source review" program. Under Clinton-era guidelines, energy companies had to install modern emission controls when upgrading or renovating their power plants. The Bush administration issued new guidance that allowed plants to

avoid installing new equipment if their owners could prove that costs were excessive and that the old regulations inhibited the companies from doing maintenance that would improve emissions.

In an unprecedented move, 14 state attorneys general banded together in 2002 to sue the federal government over the revised new source review proposal. These states are mainly in the Northeastern U.S. and suffer from the air pollution generated by older, coal-burning power plants in the South and Midwest. A federal court recently stayed implementation of the regulations pending trial.

Consistent with its policy of unburdening industry, the administration in November 2003 called a halt to investigations of 50 power plants for past Clean Air Act violations and stopped examinations of new complaints at more than 70 other plants. The resulting outcry and threats of further litigation from affected states led the EPA to announce that it will proceed with new enforcement actions.

A shift in priorities

Over the last four years, administration officials have sought a series of changes in the focus of environmental policy. Among the most important are a decreased emphasis on federal enforcement, a shift toward maintenance over acquisition in land policy, a preference for policies that achieve both economic development and environmental benefits, and general opposition to multilateral international approaches.

Changes in enforcement and land policy are evident in the administration's annual budget proposal. The initial Bush budget — in 2001 — called for a \$25 million cut in EPA enforcement. That same year, EPA's director of regulatory enforcement resigned and publicly questioned the administration's priorities, describing the agency as "desperately short of the resources needed" to effectively deal with enforcement.

Although Congress rejected the proposed cut, enforcement has declined. Public Employees for Environmental Protection found that enforcement cases referred by the EPA for prosecution have dipped by 25 percent during Bush's term and new referrals are down by more than 40 percent. Administration officials say the drop is the result of new policies fostering cooperation and a shift of enforcement responsibilities to states.

Federal land policy has seen dramatic shifts during the Bush administration, with resources more focused on maintenance than land acquisition. Further, acquisition policies now emphasize voluntary agreements. Some land policy analysts argue that the stress on maintenance is actually part of an effort to open more federal land for commercial activity and to privatize some park activities.

When running for office, President Bush supported full funding for the Land and Water Conservation Fund (LWCF), which pays to create parks and open space, protect wetlands and refuges, and preserve wildlife habitat. Now administration officials say they have met this goal — but watchdogs say the administration has moved the goalposts. In reviewing last year's budget, the Wilderness Society determined that while claiming to provide full funding of \$900 million, the administration called for only \$314 million for programs originally designated as part of LWCF.

Tom St. Hilaire, executive director of Americans for Our Heritage and Recreation, was delighted with the Bush campaign pledge to fully fund LWCF. This is what he says now: "For the past four years, the President has consistently unveiled his banner touting full funding for LWCF as part of his commitment to conservation and recreation, but when you read the fine print, it spells trouble for the integrity of LWCF."

Many conservation-related programs have been cut in the past few years. The Urban Parks and Recreation Recovery Program has received no funding since 2002, and the Historic Preservation Fund has faced annual cuts.

Focus on brownfields

In his push for economic development, President Bush has lent strong support to an overhaul of cleanup and liability standards for those moderately contaminated sites known as brownfields. The legislation, signed in 2002, was embraced by smart growth organizations as critical to promoting infill development.

"Enacting brownfields legislation will boost smart growth efforts around the country. The signing of this law is a win-win for the economy and the environment," says Don Chen, executive director of Smart Growth America, one of the first organizations to endorse the bill.

At the same time, the administration has called for the elimination of the brownfields program in the U.S. Department of Housing and Urban Development. The rationale for the move, according to officials, is that it is "redundant" to programs currently run by EPA.

By tradition, environmental policy has been relatively bipartisan. Republicans often point to the fact that the father of conservation in the U.S. was a Republican, President Theodore Roosevelt. More recently, President Richard Nixon established the EPA, and leading Republicans in Congress, notably the late Sen. John Chafee, were among the chief architects of landmark legislation.

Environmental policy has become more partisan over the past four years, leading some Republicans to worry that the administration's environmental record could be a liability during the elections this November. Republicans for Environmental Protection (REP America) has emerged as a new voice urging the administration to change direction.

In remarks at the National Press Club celebrating Earth Day this April, REP America president Martha Marks said, "While there are still many Republican office holders and rank-and-file Republican voters who adhere to the GOP's great conservation tradition, we at REP America are not pleased with our party's leaders right now." Republican Party leaders, she added, "have chosen to turn their backs on a long and proud tradition of environmental protection and natural resource conservation. Republican Party leaders have chosen to follow a grim, divisive, and ideological path."

On the other side of the aisle is a new group devoted to electing Democrats. Environment 2004 has called the Bush presidency "the most anti-environmental in the modern era." That sentiment is shared by many leading environmental organizations. Whether or not one agrees with such a stark assessment, it is clear that the Bush years have led to a dramatic shift in federal environmental policies and priorities.

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Images: Top — A series of small islands was created from dredge materials in Louisiana. Photo Anne Marino, Army Corps of Engineers. Middle — Some problems like runoff from failed septic systems, tend to persist despite laws intended to address them. Photo Snohomish County, Washington. Bottom — Environmental groups of various political stripes have fought for progress on global warming and other threats to human health. Photo by Steve Holmer.

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