



# GREEN THUMBS DOWN



Dan Savickas and Luke Hogg



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By Dan Savickas and Luke Hogg

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## Introduction

One of the main features of the Obama administration was its ruthlessly efficient use of the regulatory state. President Obama famously said that if Congress refused to act, he would employ “his pen and his phone” to get the job done. There was perhaps no area of public policy that embodied this approach more than the environment.

The Obama-era Environmental Protection Agency (EPA) was busy during their eight years. In terms of cumulative cost, they surpassed every other agency. After the administration rolled out of town, the Obama EPA had accounted for 187 finalized regulations, totaling just over \$344 billion in regulatory costs, and almost 33 million paperwork hours to do so.<sup>1</sup> The administration certainly earned its “regulation nation” moniker.

This regulation nation spanned all aspects of the environment, from what gets emitted to the air, to what can be done on certain lands, and even as minute as what is considered a “navigable water.” The wide-reaching and ever-expanding nature of EPA’s authority impacted families and businesses across the United States, causing unnecessary burdens.

These burdens naturally led to resentment and anger towards unelected bureaucrats thinking they knew best and could tell Americans of all stripes how to live. After Donald Trump was elected on a platform running against the Obama environmental agenda, his administration came in poised to deliver the promised change of the campaign trail.

The administration promised to repeal at least two regulations for every new one implemented. President Trump appointed reform-minded Administrator Scott Pruitt to head the EPA and other cabinet officials dedicated to this promise. In almost three and a half years, the administration has not disappointed.

As we come to the end of the first Trump administration, this piece explores the history behind some of the most destructive regulations addressed by the administration. It also analyzes the impact of scaling them back and why it was so important to do so. Just as the Obama administration left no corner of the earth

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1 American Action Forum. “Regulation Rodeo,” AFF. <http://bitly.ws/8QRK>.



untouched by regulation, the pendulum eventually swung back. The air, sea, and land are all more free today because of it.

## Air

The industrial revolution brought unprecedented growth and urbanization. But by the 1950s, the air pollution that had resulted from industrialization had left many major cities blanketed in smog. New York City, for example, was repeatedly hit with dangerously high episodes of smog throughout the mid-20th century.<sup>2</sup> These intense episodes alone resulted in numerous deaths and incalculable damage to public health. Meanwhile, in other areas, people were forced to breathe in toxic chemicals daily.

All of this came to a head in the late 1960s, forcing Congress to act. The result was the passage of the Clean Air Act of 1970. This gave the recently created EPA exclusive control over regulating the air quality of the United States and authorized a variety of other federal and state regulations. In order to clean up our nation's air, Congress directed the EPA to institute national ambient air quality standards (NAAQS). These NAAQS's set acceptable levels for many known air toxicants and pollutants. After major revisions were made in 1977 and 1990, EPA "has set air quality standards for six common 'criteria pollutants': particulate matter (also known as particle pollution), ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, and lead."<sup>3</sup>

Though we often take it for granted, clean air is an important part of a healthy economy. The most obvious effect of air quality on our economic performance is the direct link between healthy workers and healthy businesses. When individuals are made sick by polluted air, it is often whole communities that are impacted by preventable disease, creating a serious drag on production. A peer-reviewed study by the EPA in 2011 found that the base Clean Air Act provisions provide 30 times more economic benefit than is lost to the regulations.<sup>4</sup>

The less obvious impact of air quality on the economy comes in the form of lost productivity. When air quality gets too bad, many areas issue warnings or other orders discouraging people from going outside. In that same 2011 study, the EPA estimated that America loses 13 million workdays and 3.2 million school days when the productivity losses from air pollution are aggregated.<sup>5</sup> In short, clean air improves livelihoods and economic productivity. The trouble comes when air quality regulations exceed necessity and begin impeding economic growth in excess of their benefits.

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2 Jim Dwyer, "Remembering a City Where the Smog Could Kill," New York Times, February 28, 2017.

3 "Clean Air Act Requirements and History," EPA. <https://www.nytimes.com/2017/02/28/nyregion/new-york-city-smog.html>

4 EPA Office of Air and Radiation, The Benefits and Costs of the Clean Air Act from 1990 to 2020: Final Report, April 2011. <https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history>

5 Ibid.

Under the Obama administration, the EPA oversaw the largest expansion of air quality regulations since the Clean Air Act itself was last overhauled. In contrast to the Bush administration that had primarily focused on reducing greenhouse gas (GHG) emissions, Obama presented a much more broad approach. Although the administration's strict climate regulations and focus on the Paris Climate Accord took up most of the media interest, the EPA also promulgated several rules on both criteria pollutants, like ozone and ash, and hazardous air pollutants (HAPs) like arsenic and mercury.<sup>6</sup> Perhaps most significantly, the administration adopted much more stringent NAAQSs that faced massive political opposition.

Many of these onerous regulations left the energy industry -- coal and petroleum, in particular -- under attack by the Obama administration. Among these, the new source performance standards (NSPS) for new power plants burning fossil fuels presented major barriers for power companies. However, Obama did not only attack fossil fuels at the energy production level, he also attacked them at extraction.

The hydraulic fracturing (fracking) industry is, perhaps, the best example of the way the Obama administration treated environmental policy. A burgeoning industry at the time of his inauguration, fracking had the potential to remake the American energy sphere for the better. Due to legitimate environmental concerns about this new technology for extracting natural gas, the EPA investigated and resultantly issued new regulations in 2011. Only these regulations were so onerous, perhaps intentionally so, that they would have practically strangled this blossoming industry in its crib. Fortunately, through a series of lawsuits and revisions, these regulations were rolled back towards the end of Obama's tenure.<sup>7</sup> Yet, the fact that the administration was so willing to destroy a new technology speaks volumes.

Advancement will always come with some measure of environmental risk. But that does not mean that we should shy away from innovation. Instead, we should seek to create a regulatory environment that balances societal and environmental interests. The Obama administration's fatal flaw with regards to fracking regulation was its willingness to eliminate societal gains and ignoring alternate paths to environmental protection. By choosing to regulate through a principle of precaution rather than pragmatism, the Obama administration effectively set out to destroy all the gains innovation had brought us. In the case of fracking, the Obama administration's regulations would have prevented America from capitalizing on massive natural gas reserves that provide a cleaner burning fuel.

Fortunately, the Trump administration EPA, under Administrator Andrew Wheeler and his predecessor Scott Pruitt, has made it its mission to undo the damaging regulations of the Obama administration. The first area that they set their sights on

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6 Patricia Ross McCubbin, "Regulation of air pollutants in the Obama administration," American Bar Association, March 1, 2013. [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2012\\_13/march\\_april/regulation\\_of\\_air\\_pollutants\\_in\\_the\\_obama\\_administration/](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2012_13/march_april/regulation_of_air_pollutants_in_the_obama_administration/)

7 Coral Davenport, "Obama Fracking Rule Is Struck Down by Court," New York Times, June 22, 2016. <https://www.nytimes.com/2016/06/23/us/politics/hydraulic-fracturing-interior-department-regulations.html>

was the strict emission standards placed on commercial products.

Vehicle emissions are a significant contributor to air pollution. As such, emissions standards have been in place for decades that limit the amount of exhaust from all types of vehicles. Unfortunately, the Obama administration saw these emissions standards as a way to spur the growth of hybrid and electric vehicles over traditional gas power. In their effort to combat climate change, the Obama administration sought to socially engineer the market to artificially inflate demand for electric vehicles which, at the time, were unreliable and inefficient.

Recognizing the natural growth of alternative fuels, the Trump administration revoked these rules. Instead of picking winners and losers, Chairman Wheeler recognized that you can't socially engineer the market. Sales of electric vehicles are now at an all time high, not because of government interference, but because the market demand exists where it didn't a decade ago. Revoking these regulations simultaneously removed barriers to entry for new competition, reducing prices for consumers, and allowed car manufacturers the freedom to innovate to meet demand where they couldn't otherwise.<sup>8</sup>

Another area where the Trump administration has made great strides in reversing the strict regulations put in place by the Obama administration is that of the Clean Power Plan. As part of their effort to combat anthropogenic climate change, the Obama administration instituted a series of regulations known as the Clean Power Plan that was directly targeted at lowering carbon emissions from power plants.<sup>9</sup> Unfortunately, this plan also created massive and overreaching regulatory burdens for the industry, leading several major power producers to sue the Obama administration over the promulgation of the rule.

The Trump administration, rightly seeing the Clean Power Plan as an undue attack on fossil fuels -- an industry that already has the highest regulatory burden of all -- was determined to repeal it. In June of 2019, the EPA finalized a rule that repealed and replaced the Clean Power Plan with the Affordable Clean Energy Rule.<sup>10</sup> Contrary to what many environmentalists were led to believe, the Affordable Clean Energy Rule did not allow an energy production free-for-all. Rather than forcing the federal government's will on the energy industry, the Trump administration turned to federalism, providing "emission guidelines for states to use when developing plans to limit carbon dioxide," without mandating these standards.<sup>11</sup>

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8 Coral Davenport, "U.S. to Announce Rollback of Auto Pollution Rules, a Key Effort to Fight Climate Change," New York Times, March 30, 2020.

9 "FACT SHEET: Overview of the Clean Power Plan," EPA. <https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html>

10 Lisa Friedman, "E.P.A. Finalizes Its Plan to Replace Obama-Era Climate Rules," New York Times, June 19, 2019. <https://www.nytimes.com/2019/06/19/climate/epa-coal-emissions.html>

11 "EPA Finalizes Affordable Clean Energy Rule, Ensuring Reliable, Diversified Energy Resources while Protecting our Environment," EPA Press Office, June 19, 2019. <https://www.epa.gov/newsreleases/epa-finalizes-affordable-clean-energy-rule-ensuring-reliable-diversified-energy>

The final nail in the coffin for President Obama's climate policy was the official withdrawal of the United States from the Paris Climate Accord in November of 2019. The Paris Climate Accord was an agreement under the United Nations Framework Convention on Climate Change (UNFCCC) that set strict goals for GHG emissions and adaptation of finances to face future climate change.<sup>12</sup> However, as with most international treaties, the Paris Climate Accord hamstrings only those who abide by it. Although some 180+ countries are a party to the treaty, practically none of the major industrialized nations have followed through on their commitments. In essence, President Trump recognized the reality that, while we were attempting to abide by the Paris Climate Accord, other nations like China had signed on in name only and done nothing to meet its obligations.

As former State Department official and climate expert Andrew Light told National Public Radio (NPR), "These agreements are just only as good as the commitments from each country."<sup>13</sup> When other countries are not abiding by the terms of an agreement, as was the case with the Paris Climate Accord, it is a detriment to the legitimate signatories to continue abiding by the terms of the agreement.

Air quality is certainly important, having a direct impact on both the public health and the health of the economy. However, onerous regulation creates economic drag by increasing compliance and startup costs. The key is to find the proper balance between protection and production. With regard to air quality, the Trump administration seems to have struck that balance.

## Water

Just as air quality is important for the public health as well as our economy, so too does water quality have a direct impact on our livelihood as a nation. Before pollution controls, untold numbers of illnesses were tied to water-borne pathogens and toxins. Around the same time as the passage of the Clean Air Act also came the Clean Water Act, which granted EPA exclusive jurisdiction over regulating the pollution of the "waters of the United States."<sup>14</sup>

In addition to rolling back the Clean Power Plan, the Trump administration also set its aim on the Obama-era water policy, with a focus on what is known as the Waters of the United States rule (WOTUS).<sup>15</sup> This rule defines what are considered navigable water, determining what areas are under federal regulation, as the EPA has sole jurisdiction over the WOTUS. This rule, though simple in its explanation, has a massive impact on the power of the EPA over water on private land. Most importantly, although the rule was intended to "provide clarity and certainty" to

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12 "Paris Agreement," European Commission on Energy, Climate Change, and Environment. [https://ec.europa.eu/clima/policies/international/negotiations/paris\\_en](https://ec.europa.eu/clima/policies/international/negotiations/paris_en)

13 Rebecca Herscher, "U.S. Formally Begins To Leave The Paris Climate Agreement," NPR, November 4, 2019. <https://www.npr.org/2019/11/04/773474657/u-s-formally-begins-to-leave-the-paris-climate-agreement>

14 "Summary of the Clean Water Act," EPA. <https://www.epa.gov/laws-regulations/summary-clean-water-act>

15 "Navigable Waters Protection Rule," EPA. <https://www.epa.gov/nwpr/about-waters-united-states>

stakeholders, it ended up confusing landowners and regulators alike.

Since the rule was written as expansively as possible to give EPA as much jurisdiction as possible, the Obama-era WOTUS rule left many landowners technically under EPA jurisdiction without any sense that their creek was regulated. This led to several situations of individuals being sued for exorbitant sums for making minor improvements to their land that even tangentially affect the water. As Administrator Wheeler put it, “I believe that any property owner should be able to stand on his or her property and be able to tell whether or not they have a ‘water of the U.S.’ on their property without having to hire an outside consultant or attorney.”<sup>16</sup>

After the incredibly expansive definition produced by the Obama administration resulted in far-reaching abuses of private citizens, the Trump administration determined to redefine WOTUS.<sup>17</sup> Once again contrary to the beliefs of environmentalists, the Trump WOTUS rule did not revoke any pollution requirements. Major waterways are under no more threat now than they were under the Obama WOTUS definition. Instead, the Trump rule merely removed many smaller tributaries on private land from EPA jurisdiction. Now, private citizens are granted much more leeway in managing tributaries on their land without fear of federal lawsuits for making minor improvements. In other words, the definition for WOTUS put forward by the Trump administration actually brought the regulatory clarity that the Obama administration had promised.

The other major area of advancement in environmental policy for the Trump administration has been the opening of several areas to resource extraction that had, until now, been under moratoria. The most hotly contested area that has been opened for oil and gas exploration is Alaska’s Arctic National Wildlife Refuge (ANWR), a 19 million acre chunk of the northeastern-most corner of Alaska. In late 2019, President Trump opened up ANWR to oil and gas leasing by the Fish and Wildlife Service.<sup>18</sup>

Interestingly, opening ANWR to oil and gas production has been a hotly contested subject of debate since at least 1977 when the environmentalist movement successfully lobbied for a moratorium.<sup>19</sup> Contrary to the multiple-use policy of the Department of Interior -- a policy that supports the simultaneous use of public lands for recreation and economic activity, like mining and logging -- many areas like ANWR exist in practical undisturbed isolation. Tapping into these resources will only

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16 “Hearing on the Nomination of Andrew Wheeler to be Administrator of the Environmental Protection Agency,” U.S. Senate Committee on Environment and Public Works, January 16, 2019. <https://www.epw.senate.gov/public/index.cfm/hearings?ID=64B84BBE-6130-44B5-9825-CF3F1EEF9BD2>

17 Lisa Friedman and Coral Davenport, “Trump Administration Rolls Back Clean Water Protections,” New York Times, September 12, 2019. <https://www.nytimes.com/2019/09/12/climate/trump-administration-rolls-back-clean-water-protections.html>

18 Timothy Puko, “Trump Plans for Oil Drilling in Arctic Refuge Clear Big Hurdle,” Wall Street Journal, September 12, 2019. <https://www.wsj.com/articles/oil-drilling-in-alaskas-arctic-wildlife-refuge-to-have-negligible-impact-interior-department-says-11568319433>

19 Elizabeth Shogren, “For 30 Years, a Political Battle Over Oil and ANWR,” NPR, November 10, 2005. <https://www.npr.org/templates/story/story.php?storyId=5007819>



become more important as our existing reserves of these materials begin to dwindle.

Contrary to the fears of the more radical environmentalists, opening up ANWR to oil and gas drilling prevents a minimal risk to the environment.<sup>20</sup> Yet, this hasn't stopped some from using the classic images of dying polar bears to spread fear.<sup>21</sup> As Thomas Landstreet put it in the Wall Street Journal, "Despite howls from the green lobby, the truth is that it's less hazardous to drill for oil on land and in shallow waters using conventional rigs. BP's Deepwater Horizon was drilling in about 5,000 feet of water when it exploded in 2010," he continued. "If the accident had occurred on land or in shallow seas, the spill could have been contained in three days instead of three months."<sup>22</sup>

Water pollution certainly creates major problems for Americans around the country. However, once again, the most important consideration is to strike a proper balance that both protects the people and allows for growth and innovation. The Obama administration's water policy damaged businesses and failed to attain significant environmental benefits. Fortunately, the Trump administration has rolled back the most stringent of these rules, while maintaining important protections for water quality.

## Land

The federal government owns roughly 28 percent of all land in the United States. For some perspective, that's a grand total of 640 million acres.<sup>23</sup> This naturally gives the federal government a large amount of control over what happens on American soil. However, the government also exerts quite a bit of control over private land through regulation. In recent years, environmental regulations impacting land use rightfully lead one to wonder whether the 28 percent statistic is under-representative of how much control the federal government actually has on land.

The aforementioned WOTUS rule used water pollution as a pretext to regulate private land use. The land may have been private, but a broad set of circumstances could have classified it as a "water of the United States." This is just one of many examples that will be outlined in this section demonstrating the way the federal government uses and has used regulation to exert informal control on land in the U.S. ostensibly in the name of environmental protection. Thankfully, the Trump administration has repealed or taken steps toward repealing a good number of these.

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20 Timothy Puko, Wall Street Journal, September 12, 2019.

21 Darryl Fears, "Arctic drilling operators can't accurately pinpoint polar bear dens — which means they can't avoid destroying them," Washington Post, February 27, 2020. <https://www.washingtonpost.com/climate-environment/2020/02/27/polar-bears-drilling-anwr/>

22 Thomas Landstreet, "Drilling in Alaska Is Good for the Earth," Wall Street Journal, January 10, 2018. <https://www.wsj.com/articles/drilling-in-alaska-is-good-for-the-earth-1515627837>

23 Congressional Research Service. "Federal Land Ownership: Overview and Data." Feb. 21, 2020. <https://fas.org/sgp/crs/misc/R42346.pdf>



Early in his administration, President Trump reduced the size of the Bears Ears and Grand Staircase national monuments in Utah; the former by 85 percent and the latter in half. This would strike right at the heart of the problem of federal control of too much land. This proposal that came about in December of 2017 and began its finalization in February of 2020 does not actually transfer ownership away from the federal government. However, it does open this land up for development and multiple uses.<sup>24</sup> Hopefully, this loosening of the proverbial grip leads to letting go in the near future.

Within days of his inauguration, President Trump signed an executive order allowing for construction to move forward on the Keystone XL pipeline and the Dakota Access pipeline. Both projects had been blocked in one form or another by the Obama administration.<sup>25</sup> Despite claims to the contrary made by radical environmentalists, this was hardly a partisan move. One of the key partners of the administration in this pursuit was the leftist Prime Minister of Canada, Justin Trudeau.

In fact, Trudeau even touted the environmental virtues of the Keystone XL project. When asked, Trudeau said, “In both the conversations I’ve had with President Trump, Keystone XL came up as a topic and I reiterated my support for the project. I’ve been on the record for many years supporting it because it leads to economic growth and good jobs for Albertans.”<sup>26</sup> He also made sure to clarify that the pipeline did not undermine in any way the efforts made by the Canadian government to preserve the environment.

Pipeline projects like Keystone XL and Dakota Access promise to have massive economic benefits for our economy as well. A December 2013 study showed that investment in U.S. pipeline infrastructure will reach above \$70 billion by 2025. At that point it will create roughly 893,000 jobs and add \$93.9 billion in GDP share.<sup>27</sup> This becomes possible once the government gets out of the way of these substantial projects.

The Department of the Interior (DOI) has reduced regulations and opened the way for more investment in our economy through their reforms made to regulations promulgated under the National Environmental Policy Act (NEPA). These regulations forced years of review and jumping through hoops to be able to complete domestic

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24 Frazin, Rachel. “Trump administration finalizes plans to shrink Bears Ears, Grand Staircase monuments.” TheHill. Feb. 6, 2020. <https://thehill.com/policy/energy-environment/481826-trump-administration-finalizes-plans-for-bears-ears-grand-staircase>

25 Smith, David & Kassam, Ashifa. “Trump orders revival of Keystone XL and Dakota Access pipelines.” Guardian. Jan. 24, 2020. <https://www.theguardian.com/us-news/2017/jan/24/keystone-xl-dakota-access-pipelines-revived-trump-administration>

26 Ibid.

27 Snelson Companies, Inc. “Forecasted Impact of Investment in Pipeline Infrastructure.” Snelson. <https://www.snelsonco.com/economic-impact-investment-pipeline-infrastructure/#:~:text=Forecasted%20Pipeline%20Investment&text=This%20major%20share%20of%20wealth,are%20the%20indirect%20economic%20effects>.

infrastructure projects. This made it understandably difficult -- and expensive -- to move forward. Higher courts issue 110 to 140 decisions annually to clear up vagaries with NEPA. This is no way to ensure our nation moves forward with needed infrastructure projects.

Thankfully, the DOI reform would centralize decision making processes to avoid multiple layers of review. The new policy, known as the “One Federal Decision” rule, places primary responsibility for decision making upon a single Federal agency, eliminating duplicitous management.<sup>28</sup> This change is expected to cut five years off of the average wait time for approval for an infrastructure project. There is a clear line between ensuring a project will not harm the environment and being punitive merely for the sake of being so. For too many years, NEPA had the latter impact. The Trump administration has placed an outsized focus on infrastructure, and this is the first significant look at this since the Carter administration.

Another hindrance to private land use in the United States is the Endangered Species Act (ESA). The law, while well intentioned, has caused unnecessary heartache for landowners across the United States. Sometimes, it might actually require proactive infringement on the land rights of Americans with little to no real protection for endangered species. In August of 2019, the DOI made reforms to the implementing regulations of the ESA to alleviate that burden.

Often, it is more difficult to de-list a species than it is to list one. The reforms instituted by DOI in August ensure that the same criteria is used to list and de-list a species. Because of the land use regulations associated with living on or near a suitable habitat for an endangered species, it is important that de-listing not be an arduous process.

Perhaps the most important change in this set of reforms is that it forces regulators to look to areas where the species already exists to designate as a habitat first before looking to relocate the species. It is astounding this was not already done. In many cases, designating an area unoccupied by the species as a critical habitat forces landowners who’ve never had to deal with the species before to adjust to not only new wildlife, but new regulations. This was a common sense reform that will ensure regulators take landowners into consideration first.<sup>29</sup>

These changes are especially important when you consider that some of these species are aggressive. In July of 2019, the DOI introduced plans to de-list the Gray Wolf. Forcing landowners to exist alongside such a predator and offering them little recourse to protect themselves -- as it would bring them into ESA violation -- is a surefire way to upend the livelihood of citizens in Middle America. Thankfully, DOI is

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28 “MEMORANDUM OF UNDERSTANDING IMPLEMENTING ONE FEDERAL DECISION UNDER EXECUTIVE ORDER 13807,” White House, April 9, 2018. <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

29 Department of the Interior Press. “Trump Administration Improves the Implementing Regulations of the Endangered Species Act.” Aug. 12, 2019. <https://www.doi.gov/pressreleases/endangered-species-act>

working to right the wrongs caused by excesses in the ESA.

The federal government has a large amount of control of land in the United States, but slowly the Trump administration is working to return some autonomy and power back to private citizens.

## Other

Anyone who studies public policy with even the slightest amount of scrutiny will know that process can often be as important - and in some cases, more important - than the policy itself. Thankfully, the EPA under the Trump administration has engaged in some key process reforms that will create more transparency and certainty for American families and businesses.

One of the key decisions handed down by the EPA was the decision to revoke California's pre-emption waiver under the Safer Affordable Fuel-Efficient (SAFE) Vehicles rule. This was supplemented by the National Highway Traffic Safety Administration (NHTSA) determining that California's own fuel economy standards were pre-empted by federal standards under the Energy Policy and Conservation Act (EPCA).<sup>30</sup>

In 2013, the Obama administration granted California a waiver for its emission standards. This was for California's "Advanced Clean Cars" program for model years 2021-2025. California also had a zero emission mandate as part of this waiver, meant to incentivize the use of electric vehicles and, by extension, decrease the use of all others.<sup>31</sup> Thus, for the past seven years, the nation's most populous states have operated with a separate framework for emissions standards more strict than the rest of the nation.

The decision by Administrator Wheeler to revoke this waiver is an important clarification constitutionally. The states are granted the oversight over all issues not delegated to the federal government, nor prohibited to them by the Constitution. However, the regulation of interstate commerce is expressly delegated to the federal government under Article I. This means California's stricter standards - which no doubt impact the rest of the nation - are an unconstitutional regulation on businesses that do not even fall within its borders.

The revocation will also provide more certainty for businesses across the nation. In a statement, Administrator Wheeler said, "One national standard provides much-needed regulatory certainty for the automotive industry and sets the stage for the Trump Administration's final SAFE rule that will save lives and promote economic

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30 McCubbin, Trish. "The Trump administration's withdrawal of California's Clean Air Act preemption waiver in the SAFE Rule." American Bar Association. Mar. 2, 2020. [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2019-2020/march-april-2020/trump-administration-withdrawal/](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2019-2020/march-april-2020/trump-administration-withdrawal/)

31 Ibid.

growth by reducing the price of new vehicles to help more Americans purchase newer, cleaner, and safer cars and trucks.”<sup>32</sup>

Another key part of regulatory reform on the environmental front has been increased transparency. They took this approach with their regulatory science. In April of 2018, the EPA under then-Administrator Pruitt took steps to publish methodologies. The aim of this reform was to ensure that “where available and appropriate, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments.”<sup>33</sup>

Any first year college student would tell you that publishing a methodology is key to any scientifically reputable study. Findings must be replicable. However, that had not been the case at the EPA until recently. The rulemaking that began in April 2018 was extended two years later for a final public comment period and is set to be finalized soon.<sup>34</sup>

Lastly, the EPA just days ago -- at the time of the publication of this paper -- issued a proposal that would force the agency to make cost-benefit analyses available to the public for regulations promulgated under the Clean Air Act. This is especially important because each rule comes with a public comment period. If the EPA withholds information from the public, they cannot adequately submit their thoughts, as they may not be privy to all the information about how it will impact them, their businesses, and their families.

This rule will provide a consistent framework for transparency across all sub-offices within EPA that handle regulatory affairs related to the Clean Air Act. To this point, there has been no such harmonization. This was also the result of a years-long process beginning in 2018 where the Pruitt EPA began to assess and solicit input from the public on how it should consider costs and benefits. Public input was important then and because of its importance, the public will be better served being informed of the quantifiable pros and cons.

There are many aspects of the regulatory state that are broken. They range beyond pure policy. The way the agencies often defer to high-regulation states or withhold key information from the public contribute just as much to the problem. The Trump administration recognizes the way that process impacts governance and necessarily made it a part of their mission to cut regulatory red tape.

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32 Green, Miranda. “Trump officials formally revoke California emissions waiver.” TheHill. Sep. 19, 2019. <https://thehill.com/policy/energy-environment/overnights/462242-overnight-energy-trump-administration-announces-formal>

33 Environmental Protection Agency. “Strengthening Transparency in Regulatory Science.” EPA. Apr. 30, 2018. <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>

34 Environmental Protection Agency. “EPA Announces Extended Comment Period on Supplement to Science Transparency Proposed Rule.” EPA. Apr. 2, 2020. <https://www.epa.gov/newsreleases/epa-announces-extended-comment-period-supplement-science-transparency-proposed-rule>



## Conclusion

Federal regulatory policy, especially when it comes to the environment, is not merely an intellectual thought experiment. There are tangible costs and benefits to each, as has been demonstrated by the research above. Protection of the environment is no doubt a noble and worthy goal. That is exactly why it deserves such careful consideration, instead of a heavy-handed approach that leaves no consideration for the consequences.

Thankfully, the Trump administration has embodied this more nuanced approach and has allowed the private sector to take charge in crafting innovative solutions to the climate situation in which we now find ourselves. It also allows families and businesses to act in their best interests without having to constantly worry about falling into regulatory loopholes for completely reasonable behavior.

Perhaps most importantly, these reforms have allowed activists across the country to become more connected to the regulators who make the rules that govern them. Not only did the Trump administration usher in a more restrained regulatory state, they created a more accountable one.