

Six Easy Things the Obama Administration Can Do to Heal Our Environment

1) Limit CO₂ Emissions Under the Clean Air Act

The new administration can jumpstart the reversal of global warming easily by using the power the Supreme Court says it has to regulate the huge volumes of CO₂ emitted into the atmosphere.

In 2007, the US Supreme Court overturned the Bush administration's refusal to regulate CO₂ and other greenhouse gases from cars and trucks. This court action resulted from a lawsuit brought by Earthjustice and others. The Bush administration has since stalled responding to the high court's decision. The new administration can move quickly to remedy this delay and adopt real greenhouse gas limits.

Many people talk about the need for Congress to enact some sort of cap and trade system to control CO₂ emissions. But with an upside-down economy and what looks like at least a temporary dip in the price of oil, cap and trade may not move quickly in the coming Congress. However the new president can still move productively on this issue by embracing the Supreme Court ruling and ordering his EPA to take some serious steps forward. One would be to reverse the action of the Bush EPA chief who stopped California from moving ahead with CO₂ controls for autos in the state. Many other states are poised to follow California's lead in regulating auto CO₂.

2) Restore the Endangered Species Act

The new administration should reverse the recent Bush administration proposal to weaken the ESA and restore the ESA to do what it was designed to do — pull plants and animals back from the brink of extinction.

For 35 years, the ESA has been a safety net for plants and animals on the brink of extinction, including grizzly bears, bald eagles, and gray whales. A key feature of the law requires the input of federal fish and wildlife experts when federal money is to be spent on projects that may affect protected wildlife. The ESA requires the use of the best available science to make sure that federal agencies don't inadvertently jeopardize endangered species.

In August of 2008, the Bush administration proposed to significantly weaken the Endangered Species Act by cutting wildlife experts out of decisions affecting protected wildlife. The proposed regulations would reduce the mandatory, independent reviews government wildlife experts have been performing for 35 years of the Act's existence. This proposal, which could be finalized with the force of law sometime in December, would erase essential checks and balances between government agencies that have worked effectively since the origination of the act.

The Bush administration has also proposed to exempt new power plants and other projects that emit greenhouse gases from any review or regulation tying their emissions to harm to species and their habitat caused by the pollution.

The new president may have an opportunity to halt the Bush ESA-weakening rules from taking effect, depending on when the Bush administration finalizes action. If the timing precludes the new president from halting the Bush rule, he should issue his own ESA rules that restore the strength and effectiveness of the Endangered Species Act.

3) Restore the Roadless Area Conservation Rule

The new administration could move to reinstate protections over almost 50 million acres of wild national forest land starting by vigorously fighting in the courts to defend the roadless rule.

With a little extra effort, the new administration could also restore protection to another nine million acres of wild lands in Alaska.

The Roadless Area Conservation Rule, developed in the Clinton administration and adopted in 2001, prohibited most new road construction and logging throughout 58 million acres of the wildest remaining national forest lands. More than two million Americans voiced their support for this rule because it protects our last wild forests from road construction; logging; mining; and coal, gas, oil and other mineral development. The value of these roadless forests as vital sources of clean water and high-quality fish and wildlife habitat is increasing in importance as we face a warming climate.

As soon as the Bush administration came into office it joined its industry allies to repeal the roadless rule and throw open these wild lands to their friends in the timber, mining, and energy development industries. Earthjustice has been in court since 2001 litigating to keep the roadless rule in force and, as a result, these forest protections have successfully been retained. The legal fights continue in several different federal courts and will likely last well into the next administration.

The new administration could quickly and easily reverse direction by undertaking a strong defense of the roadless rule in all pending lawsuits and appeals, instead of leaving the rule's defense solely to conservationists.

The new administration also should allow to expire a "temporary" exception to the 2001 rule created in 2003 which removed more than nine million acres of Alaska's Tongass National Forest from the protective umbrella of the roadless rule.

4) Restore Protections for America's Rivers, Streams, Lakes, and Wetlands

There are a number of actions a new administration could take that would greatly restore protections to America's rivers, streams, lakes, and wetlands.

- a) *The new administration could help pass a congressional bill that would protect all American waters from pollution.*

When Congress passed the Clean Water Act more than 35 years ago, it intended to protect all rivers, streams, lakes, wetlands, and other waters from harmful, unregulated pollution and destruction. Polluters have repeatedly challenged the law in courts and pushed for weaker implementation of it by regulatory agencies like EPA and the U.S. Army Corps of Engineers.

In 2006, the Supreme Court issued a deeply divided decision on two of the most important clean water cases brought before the court since the law was passed 35 years ago. The court issued an opinion by four conservative justices advocating a drastic cutback in the protections of the Clean Water Act. One of the nine Supreme Court judges removed himself from voting on this issue.

Because there was no majority opinion written by the Supreme Court, there was no precedent that binds lower courts, the EPA, or the U.S. Army Corps of Engineers to a particular course of action. The plurality of this decision and the remand to the lower court for review muddied the original intent of the Clean Water Act: that all waters of the United States be protected against harmful, unregulated pollution. This confusion and weakened protection for America's waters can easily be fixed.

There is a bill moving in the House and Senate that would slightly tweak the language of the Clean Water Act to make it crystal clear that its protections apply to all waters of the United States including seasonal, intermittent streams and isolated wetlands that supply drinking water to more than 110 million Americans. The EPA estimates that approximately 20 million acres of wetlands and 60 percent of America's streams nationwide are either "isolated," "intermittent," or "start reach" tributaries.

Specific waters include:

- 84 miles of perennial streams, 3,900 miles of intermittent waters and 4,000 playa wetlands in New Mexico
- 22 percent of wetlands in New York City that could be considered "isolated"
- 70 percent of Montana's 192,000 miles of streams that are "intermittent" headwaters
- 23 percent of Minnesota wetlands statewide, including a loss of 92 percent in the northern glaciated plains
- 800,000 acres of wetlands in Florida's panhandle that are considered "isolated," 2,956 miles of intermittent streams, and 25,909 miles of "non-navigable" ditches and canals
- 50 percent of stream length in Ohio that are considered "ephemeral" or "dry"

- 77,371 acres of so-called “isolated” wetlands in California
- Over half of all the streams in Tennessee that are currently considered “non-navigable”
- 1.1 million acres of wetlands in Wisconsin that can be considered “isolated”

b) *The new administration could easily switch sides in a Supreme Court case and join Earthjustice lawyers in defending America’s lakes and rivers from mine waste.*

An Alaskan gold mine 35 miles north of Juneau got a permit from the Bush administration allowing it to dump its waste into a nearby lake. The permit violated a 1982 Clean Water Act rule prohibiting just this type of pollution. The Bush administration justified the permit on the basis of a contradictory rule it enacted in 2002 that allowed such dumping but which never repealed the prior 1982 rule. Conservationists, represented by Earthjustice, opposed the dumping permit and got it invalidated with a strong ruling from the 9th Circuit court of appeals which found the 1982 rule was the proper one. The mining company has appealed the case to the Supreme Court, which will hear the case in January of 2009. The Bush administration entered the Supreme Court case, siding with the mining company. The new administration should switch sides and join conservation attorneys in defending the Clean Water Act’s prohibition from this type of damage to American waterways.

And while they’re at it, the new administration should reverse the contradictory 2002 rule that created the pretense under which the mine got its permit to pollute in the first place.

c) *The new administration needs to reverse an 11th hour rule change being pushed through by the Bush administration that allows open pit coal mines in Appalachia to destroy mountain streams.*

Although the practice has been banned since 1983, open pit coal mines in Appalachia have been bulldozing their waste rock into adjacent valleys and destroying mountain streams and creeks in the process. More than 1,200 miles of streams in Appalachia have already been buried or destroyed by mountaintop removal coal mining, with another 1,000 miles projected for burial and destruction in the next ten years.

Conservationists, represented by Earthjustice and others, have fought this practice with notable success in the courts. The last minute Bush rule change is aimed at legalizing the destruction of these streams. If this 11th hour rule goes final, the new administration needs to vacate it and then start enforcing the rules that forbid dumping rock any closer than 100 feet from these mountain streams.

5) Address Arctic Oil and Gas Development

The new administration could easily do America's Arctic a big favor by holding off on issuing new oil and gas leases and limiting exploration activities in the Arctic Ocean and in conservation priority areas in the western Arctic. This time out should remain until needed studies and reviews are completed and a conservation and energy management plan is developed for the region.

In 2001 VP Dick Cheney invited oil and gas industry officials to the White House to plot what the administration might do to help the energy chieftains attain their wish list. High on the list: opening new oil and gas fields in the Arctic, onshore and offshore.

Outside of the industrialized Prudhoe Bay on Alaska's North Slope, vast areas of untouched wildlife habitat remain in Alaska's western Arctic, the Arctic National Wildlife Refuge and the Arctic Ocean. The Bush administration has rushed to open millions of acres of the Arctic Ocean as well as some sensitive wildlife areas onshore in the western Arctic.

The US Arctic Research Commission said the Arctic is, "the least studied and most poorly understood area on Earth ...". We lack even a cursory understanding of many basic ecological conditions in the Arctic Ocean. Significant gaps remain in our knowledge of endangered species such as the polar bear and bowhead whale in these waters. We know even less about other key species such as seals, walrus, beluga whales, gray whales, and many other species of fish and birds that inhabit the Arctic Ocean and its coast. Compounding our lack of knowledge is the fact that the Arctic is undergoing dramatic shifts as a result of climate change.

Government studies and documents analyzing the impacts of oil and gas activity in the Arctic Ocean admit there is currently no proven effective means of cleaning up an oil spill in the ice-choked waters that exist there for most of the year. Industrial noise and traffic associated with oil and gas activities have the potential to injure and disrupt the migration paths of marine mammals and disturb the subsistence hunting traditions of Inupiat coastal communities. Nevertheless, the government continues to issue leases and permits for oil and gas activity throughout the Arctic Ocean.

For all these reasons, the new administration should stop issuing new oil and gas leases and limit exploration activities in the Arctic Ocean and in onshore conservation priority areas at least until it has:

- gathered the data necessary to understand the rapid changes in the Arctic resulting from global warming
- assessed the impact of oil and gas activity in the face of such change
- developed a long term conservation and energy plan for the Arctic.

6) Adopt Energy Efficiency Standards

The new president could easily save Americans a substantial amount of energy and money by dropping two Bush administration lawsuits and adopting higher efficiency standards. The new administration could also easily order the Department of Energy to require higher energy efficiency for a host of soon to be regulated appliances.

The Bush administration is leaving behind two lawsuits: fighting adoption of state of the art efficiency standards for home gas-fired furnaces and those gray electricity transformer boxes hanging on power poles across America.

The best gas-fired furnace you can buy converts about 96 percent of the fuel it burns into heat for the home. The federal Department of Energy issued a new standard, scheduled to take effect in 2015, that only requires an 80 percent rating even though its own studies showed that a 90 percent standard would save Americans \$11 billion in heating bills and another \$3 billion in demand-lowered natural gas prices.

Public interest groups represented by Earthjustice sued the federal government for a higher efficiency standard. The case is currently in court and the new administration could easily take the lower standard back and fix it which would save the American public a lot of energy and money.

Those gray boxes on power poles, called transformers, reduce the voltage of electricity from power plants to levels we can use in our homes. Recent improvements in technology allow new transformers to operate at very high efficiencies – nearly 100 percent. That's extremely important because transformers on poles are energized 24 hours a day, so even a small improvement in efficiency adds up to significant energy savings. And again, saving energy through stronger standards would also save money – about \$3 billion in reduced electricity costs.

Early last year the electric utility industry agreed to accept higher efficiency standards for these boxes. The Bush Cheney team rejected the agreement and set a much weaker standard. Public interest groups, represented by Earthjustice, again brought a lawsuit to obtain the stronger standards and the case is currently in court. Again, the new administration could take the lower standard back and fix it which would save the American public a lot of energy and money.

In 2009, the Department of Energy will issue efficiency standards for several more products, including fluorescent lamps, microwave ovens, supermarket refrigerators, and commercial clothes washers. Effective standards could reduce greenhouse gas emissions and avoid the need for dozens of new coal-fired power plants, while saving money at the same time. That's why adopting strong standards for these and other appliances should be a cornerstone of the next administration's efforts to improve energy security and fight global warming.

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