

Foreword: Environmental Policy: Principles for the Next Generation of Protection

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The 2004 election season is upon us and, with it, candidates are talking of new eras and unprecedented times. This election cycle gives us the opportunity to examine and debate our policies on the issues that might truly make or break our future: public health and environmental protection—clean air, clean water, clean communities, and global warming. It is important to recognize that the American public's goals in this regard have remained relatively constant. The American people value and vote for clean water and air, safe disposal of wastes, and the preservation of green spaces.¹ In poll after poll, some 80% of respondents indicate that they consider themselves environmentalists.² A basic commitment to environmental protection is widely shared across the spectrum of U.S. citizens.³ Despite this strong public support, environmental protection has become a bitter battleground in recent years, as some in Washington have advocated the rollback of numerous important environmental laws.⁴

Thirty years ago, the Cuyahoga River in Ohio was so contaminated it caught fire, air pollution in some cities was so thick we could not distinguish one skyscraper from another, and environmental laws focused on the obvious enemies: large factories with belching smokestacks and pipes gushing wastes.⁵ As a nation, we committed ourselves to cleaner air and water, and we have made real progress.⁶ But the job is not done. We must remain vigilant to our original commitments as we

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¹ See, e.g., Clean Air Act, 69 Stat. 322 (codified as amended in scattered sections of 42 U.S.C.); Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566 (codified as amended at 33 U.S.C. §§ 1294-1297, 1281a).

² Johnathan H. Adler, *Green But Anti-Government*, MONTHLY PLANET, Aug. 1, 1996, available at <http://www.cei.org/gencon/005,01312.cfm>.

³ *Id.*

⁴ See, e.g., Anthony Flint, *In Regulation, Shades of Green Costs, Delays of Wetlands Development Rules Prompt State Officials to Consider Changes*, BOSTON GLOBE, Apr. 29, 2003, at B1; Eric Pianin, *EPA Eases Clean Air Rule on Power Plants*, WASH. POST, Aug. 28, 2003, at A9.

⁵ Johnathan H. Adler, *Fables of the Cuyahoga: Reconstructing a History of Environmental Protection*, 14 FORDHAM ENVTL. L.J. 89 (2002).

⁶ See *id.*

embrace the even more difficult challenges of climate change, genetically modified organisms, and, after September 11, 2001, the threat of environmental terrorism.

As we chart a new course in environmental policy, we build on a firm foundation. Over the past thirty years, we have taken the moral and ethical responsibility to protect our resources and translated it into a body of laws and regulations.⁷ More importantly, we have models to draw from while going forward. The specific focus of our attention has changed and the tools for protecting the environment must also adapt as we learn more about how best to protect our planet. However, the principles of protecting our resources and our public health for today and for future generations should continue to shape our responses.

First, we must be willing, as we have been, to set strong pollution standards and strong public health and environmental standards, despite the fact that there may still be some scientific questions to answer or studies to be done. While it is the nature of science itself to ask another question and to complete another study, standards must be based on a body of evidence, analysis, review, and the weight of the best science available. The fact that some scientists continue to study a matter should not in and of itself be enough to delay a decision or the setting of a standard.

Policy decisions should be made based on empirical evidence derived from both verifying scientific hypotheses as well repeated practical observation. One such decision made based on this premise was to remove lead from gasoline. Science provided proof that exposure to lead lowered IQ levels in children. While we did not have the scientific statistics to know exactly how many points a child's IQ was lowered due to lead exposure, we had enough evidence to establish the causality. Rather than wait for more evidence and place another generation of American children at risk for lead exposure, the nation as a whole took the courageous step to ban lead from gasoline. We should consider this example as we look at the debate over climate change today. If we wait to fully document climate change before making any policy decision, it will likely be too late to make any changes.

Second, not only must we be willing to set standards, but we must set them even when we do not fully know how they will be met. Instead of looking at the gap between the technology currently available and environmental issue as an obstacle, it should be seen as an opportunity. American innovation and ingenuity have served us well in the past, and the future should be no different. Our markets allow for voids in technology to fill in quickly with new inventions and innovations. When faced with a goal, we have always found a way to meet it. When the country decided to ban chlorofluorocarbons because of its destruction to the ozone layer and to lower the incidence of skin cancers, we did not have an alternative refrigerant gas. However, once the ban was set in Congress, a cost-effective replacement was quickly available.

Third, we must uphold high public health and environmental standards even when they seem costly. Time and again, we have seen that passing environmental policy often has greater benefits and less cost than originally accounted for. Acid rain was a highly contested issue fifteen years ago. The electric utilities argued emissions reduction of sulfur dioxide would be \$1,000 per ton. Having completed its own study, the U.S. Environmental Protection Agency estimated the costs at around \$600 per ton. In the end, legislation passed requiring emissions caps, and the costs were lower than anyone expected—around \$200 per ton. No one's estimates

⁷ JOHN J. DELANEY ET AL., *LAND USE PRACTICE & FORMS: HANDLING THE LAND USE CASE* ch. 3 (2003).

were wrong—people were simply acting on the best information available to them at that time without accounting for innovation and competition.

Fourth, we must continue to engage the public in our environmental policy-making. In providing the public with information on the effects of pollution and environmental degradation on their community, their children's health, and the environment as a whole, we are inviting their participation in creating a cleaner, safer place to live and work. When community members are engaged on these issues, they will take a personal responsibility for protecting and improving the environment. Armed with that responsibility, they will support the U.S. government's efforts to create environmental standards and regulate activities.

Lastly, we must realize that a healthy environment and a healthy economy are not mutually exclusive. Market-based solutions to environmental problems have arisen in the past once regulations were put in place. Continuing to set strong environmental policy will provide market incentive and competition that can actually strengthen the economy.

We are at a critical point in our policy debate, where we need to decide if we are going to move forward toward solving our environmental problems or slip further toward the days of burning rivers and black skies. Thomas Jefferson once said that "each generation . . . has a right to choose for itself the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself."⁸ A generation has passed and much has changed since the first Earth Day in 1970 awakened many Americans to the challenge of environmental issues and started the modern environmental movement. The question is, how are we going to reform our regulatory regimes, our institutions, our policies, our government to best protect the food, water, air, and public health of this generation and the next. Not whether we should protect our environment, but how best to go about doing what works.

8 THOMAS JEFFERSON ON POLITICS & GOVERNMENT, AMENDING THE CONSTITUTION, *at* <http://etext.lib.virginia.edu/jefferson/quotations/jeff1000.htm> (last visited July 14, 2004) (citing THE WRITINGS OF THOMAS JEFFERSON vol. 15, at 42 (Lipscomb & Bergh eds., Memorial ed. 1903)).