

# How environmentalists can regroup for the Trump era

July 10 2017, by Robert Percival

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Since taking office, President Donald Trump has launched an all-out assault on regulations that protect the environment. In addition to retreating from the Paris climate accord, he wants to slash the Environmental Protection Agency's budget by [more than 30 percent](#) and he has issued executive orders instructing EPA Administrator Scott Pruitt to roll back or bypass [clean air](#) and clean water rules.

Pruitt has enthusiastically championed these initiatives by seeking to suspend and eventually repeal many [Obama-era regulations](#). Six states and several nonprofits are suing the EPA over its choice to backtrack on a decision to [ban chlorpyrifos](#), a pesticide.

As an [environmental law](#) professor who has worked for the federal government and a leading green nonprofit group, I believe there are lessons to draw on from similar anti-environmental initiatives during the administrations of Ronald Reagan and George W. Bush.

## Enforce speed limits

First, environmentalists must ensure that Trump's agencies follow proper legal procedures before suspending or revoking these regulations. Although federal agencies have considerable discretion to make regulatory changes, rules that were the product of years of careful study and deliberation cannot legally be suspended overnight.

When Reagan's EPA announced indefinite suspensions of environmental regulations, the courts ruled in the *Environmental Defense Fund, Inc. v. Gorsuch* case that it was [illegal to do so](#) without first providing notice and an opportunity for public comment. (The Gorsuch in question was then-EPA Administrator [Anne Gorsuch](#), the newest Supreme Court justice's late mother.)

Citing this decision, a federal court has ruled that Scott Pruitt acted illegally when, apparently at the [behest of the industries](#) with the most at stake, he suspended a regulation requiring new oil and gas operations to monitor for [leaks of methane](#), a potent greenhouse gas. The U.S. Court of Appeals for the District of Columbia found that Pruitt's action was "[unauthorized](#)" by the Clean Air Act, "unreasonable," "arbitrary, capricious" and "in excess of statutory authority."

Although Pruitt claims to champion states' rights, his concerns seem to extend only to giving states the right to weaken environmental standards. He has threatened to block California's program to adopt stronger environmental protections than required by federal law ([but apparently has backed down](#)).

## **Ensure that agencies follow the law**

Second, whenever the government changes regulations, the courts must ensure that the new or revised rules still comply with all underlying environmental laws. And the nation's environmental laws, enacted by overwhelming bipartisan majorities in Congress, mandate the protection of public health and the environment – by the EPA.

When George W. Bush's administration claimed that the Clean Air Act couldn't be used to regulate greenhouse gas emissions, the Supreme Court disagreed. In its landmark [Massachusetts v. EPA decision](#), the court found that EPA not only had that authority but that it had [a duty](#) to

regulate emissions that contribute to [climate change](#).

The Massachusetts ruling later served as the legal basis for the Obama administration's efforts to combat climate change. If Trump's team tries to repeal climate-related regulations, the Clean Air Act mandates that it replace them with new ways to fight climate change.

## **Reject alternative facts**

Third, regulatory decisions must be supported by facts – no matter what the White House wants to believe. Consider what happened when the EPA proposed repealing the limits on [lead additives](#) in gasoline during the Reagan administration. Upon taking stock of the damage lead [can do to human health](#), the agency chose to instead phase out leaded gasoline entirely. [Ending the use of lead](#) in gasoline has proven to be a huge environmental success story in the United States and virtually every country in the world.

The Trump administration could run into similar trouble with its efforts to downplay climate change. For example, it has deleted [climate change information](#) from the EPA website, and Pruitt [wants to debate](#) the overwhelming scientific consensus concerning human contributions to climate change, such as burning fossil fuels.

Any EPA effort to deny the established [facts about climate change](#) is unlikely to survive judicial review. Trump and members of his administration are entitled to [their own opinions](#). But they may not write regulations rooted in make-believe "[alternative facts](#)."

## **Fill the leadership vacuum**

Environmentalists and environmentally minded state governments are

pushing back. [Donations to green nonprofits](#) have surged since he won the presidency. These groups – along with numerous [state attorneys general](#) – are joining forces to fight efforts to rescind environmental protections.

As the Trump administration abdicates federal leadership on environmental protection, others are filling that void. For example, in response to the White House's decision to reject the Paris climate accord, many states, local governments, corporations and universities have pledged to [redouble their efforts](#) to shrink their carbon footprints.

[California Gov. Jerry Brown](#) is planning a climate summit that he'll host in 2018. Former New York City Mayor [Michael Bloomberg](#), the billionaire philanthropist who serves as the U.N. secretary-general's special envoy for cities and climate change, is coordinating a nonfederal effort to meet the Paris targets.

## **Heed the Australian experience**

U.S.-based green groups should also should reach out to lay the groundwork for long-range, bipartisan efforts to improve environmental policies. They can find an apt model in Australia.

Three years ago, when former Australian prime minister Tony Abbott was making similar attacks on environmental law, Australian environmental law specialists banded together to lay the groundwork for strengthening their future environmental laws. This effort by the Australian Panel on Experts on Environmental Law, for which I serve as an adviser, has generated a set of [intriguing recommendations](#), supported by technical papers.

The panel recommends measures to strengthen the government's role in environmental policy and to place a price on carbon as a means of

reining in [climate](#) change. In the United States, this is an approach with bipartisan potential. The Climate Leadership Council, a group of prominent Republicans, has proposed a "[Conservative Case for Carbon Dividends](#)" – a blueprint for carbon-pricing that deserves consideration across the political spectrum.

What's more, I have seen that U.S. environmental law remains the envy of the world through my extensive contact with environmental law professors from scores of countries. Our independent and unbiased judiciary ensures that regulatory decisions are supported by law and facts – blunting the impact of the Trump administration's efforts to undercut the environmental protections its predecessors established.

Ultimately, I believe that the nation's environmental laws will survive Trump's assault – and may even become stronger in response to it.

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