

The Progressive Strategy on Attacking the President's Environmental Deregulation Policy

By: J. E. Higgins

Summary: President Donald Trump seeks to remove the U.S. from the Paris climate agreement, reduce the authority of the Environmental Protection Agency and deregulate many of the current statutes governing the federal environmental program. Progressives are attempting to build a platform for a movement to combat Trump's plan. At a state and local level, grassroots movements are beginning to form to challenge the current policies of the President and promote state level policies as a response. Their strategy, thus far, points toward two concepts: emphasize building the momentum for their movement to effect regulation and laws at the state level; and tout the argument that government regulation and oversight is the only means to guard against further degradation.

Take Away: The proposed spending that reduces funding to environmental regulation at the federal level has resulted in sharp criticism and warnings of grave repercussions. The arguments made presume deep cuts would slash the Environmental Protection Agency's Budget by 42% after accounting for level funding of two large water infrastructure grant programs. EPA's staff, located in 10 regional offices, headquarters, and a variety of labs around the country are considered essential to carrying out EPA's life-saving responsibilities, would be reduced by one out of four.

The smallest EPA workforce since 1982 would be tasked with administering seven major congressionally mandated programs including implementation of significant 2016 revisions to the Toxic Substances Control Act. Budgets and programs protecting the environment will be further stressed to cover the cost of shrinking their staff.

Despite the Administration's intent to push more responsibility to states, grants to states for that purpose are cut 30%. The punishment inflicted on EPA is deeper than any other major federal agency. Staff layoffs most likely will hit younger, more recently hired staff, decimating the next generation of environmental professionals and crippling EPA and state efforts for years to come¹.

Progressives are building on this concern by touting various scenarios that lax federal environmental oversight could possibly lead to. Camp Century is only one such instance. Built underneath the surface of the Greenland Ice Sheet in 1959 by the US Army Corps of Engineers as part of Project Iceworm, the project was designed to create a network of mobile nuclear missile launch sites in Greenland.

Intended to study the deployment and potential launch of ballistic missiles within the ice sheet, the base was eventually abandoned and decommissioned in 1967. Various kinds of waste remain

¹ <https://assets.documentcloud.org/documents/3863053/EPN-Overview-of-EPA-FY18-Budget-Final-With.pdf>

at the base, including sewage, persistent organic pollutants, diesel fuel, and the radiological waste from the removed nuclear generator.

It was expected all of these problems would be safely buried in the ice sheet — never to see the light of day. A 2016 study found that climate change has altered the situation. According to the study, the rate of ice melt on the ice sheet could outpace the expected gains made from snowfall, releasing the waste sometime after the 2090s. Addressing the released waste would be an expensive proposition for the U.S. and Denmark, which originally gave the U.S. permission to establish the base².

U.S. Army Corps of Engineers built the subterranean city under the guise of conducting polar research—scientists there did drill the first ice core ever used to study climate. But deep inside the frozen tunnels, the corps also explored the feasibility of Project Iceworm, a plan to store and launch hundreds of ballistic missiles from inside the ice. Denmark originally granted the United States permission to establish military bases there; although, it's unclear whether the Danish government knew about the full scope of activities at Camp Century.

U.S. Army Corps of Engineers abandoned Camp Century in 1967. Engineers anticipated that the ice, already a dozen meters thick, would continue to accumulate in northwestern Greenland, permanently entombing what they left behind. Progressives are attempting to build an environmental concern around this issue by claiming global warming is melting the ice entombing the facility and releasing all sorts of toxins into the sea.

A research team used two different combinations of regional and global climate models to estimate how conditions might change at the camp's location in the future. They considered an emission scenario in which temperatures rise 5°C by 2100. One model pair predicted that Camp Century would begin to lose ice around 2090; another suggested it could remain safe into the next century³.

The progressives are also testing the area of race. They have asserted that the president's policies have also been disproportionately threatening to minority communities. According to an article written in *The Atlantic*, more than half of the people who live close to hazardous waste are people of color. Black children are twice as likely to suffer from lead poisoning as white children. The article concluded that this is no accident. That inevitably pollution and the risk of disaster are assigned to black and brown communities through generations of discrimination⁴. Accordingly, environmental activists and progressive politicians are redirecting their focus from Washington to state and local governments and the courts.

Progressive attorneys general have responded by bringing law suits against federal agencies demanding that the Trump administration follow laws such as the Clean Air Act. A group of 14

² <http://www.motherjones.com/environment/2017/06/camp-century-global-warming/>

³ <http://www.sciencemaq.org/news/2016/08/mysterious-ice-buried-cold-war-military-base-may-be-uneearthed-climate-change>

⁴ <http://inthesetimes.com/rural-america/entry/20229/climate-change-public-opinion-yale-study-global-warming-risk-perception>

attorneys general have already sent a letter to Trump warning him they will file suit to block any effort to repeal the Clean Power Plan. Demanding that the federal government fulfill its legal obligations is not the only pro-environment lawsuit that state attorneys-general, such as Schneiderman, can bring. They also may sue polluters directly arguing under common law that climate pollution creates a nuisance akin to dumping garbage in a neighbor's yard. Some AGs will also have to defend their state when it is sued by polluters for passing stricter environmental regulations than the feds. Past suits from polluting industries and right-wing advocacy groups like Americans for Prosperity have unsuccessfully targeted California's clean car rules. They may also investigate fossil fuel companies to make sure they are being transparent with the public about the risks from climate change.

Environmental activists are directing their focus closer to home. As those activists have described, energy policy is determined largely at the state level with states sometimes working together. One of Oregon's major existing initiatives is regulation of its power sector. Like many progressive states, Oregon has a renewable portfolio standard, or RPS. These laws force utilities to shift a portion of their energy portfolio to renewable sources such as wind, solar, or hydropower within a certain time frame. Last year, Oregon raised the RPS's ambition setting a mandate to be completely coal-free by 2030 and to use 50 percent renewable energy by 2040.

Oregon is looking at such ancillary measures as mandating higher energy efficiency in buildings. Washington and California already have laws that require gradually tighter standards for new buildings until all new buildings are "net zero" energy users. That means each new building will be designed to use so little energy that with rooftop solar panels it will, assuming typical usage, require no more electricity than it produces.

Now Oregon environmentalists want their state to pass "net zero ready" legislation which would require buildings to be so efficient that solar installations would make it net zero. They avoid requiring solar itself because of the upfront cost. They are assuming the installation costs will continue to drop between now and 2032, so by the time the law is fully implemented, a solar requirement could be added. The proposal was introduced in the Oregon House in January, and insiders say it could pass this year.

With the price of renewables dropping and the need for climate action more urgent than ever, a growing number of progressive states are increasing their RPS. In February, both houses of the Maryland state legislature, which have Democrat supermajorities, overrode Republican Governor Larry Hogan's veto of an RPS expansion. The state will now increase its standard from a 20 percent renewable portfolio by 2022 to 25 percent renewable by 2020.

Massachusetts state legislature is pushing climate action forward, whether Republican Governor Charlie Baker likes it or not. Massachusetts State Senate President Stan Rosenberg recently said he hopes to pass a raft of legislation in 2017 to increase the state's climate targets. Bills recently introduced would increase the state's RPS, institute carbon pricing, force utilities to cut down on gas leaks, and incentivize drivers to switch to electric cars.

In the Northeast nine states belong to the Regional Greenhouse Gas Initiative (RGGI) which caps carbon emissions from power plants and sells pollution credits to utilities. RGGI may implement its ambition in the face of continued climate inaction from Washington.

New York is switching to cleaner energy sources through a big push in offshore wind development. The Long Island Power Authority (LIPA) recently approved the nation's largest offshore wind farm off the east end of Long Island. Governor Cuomo also committed, in the same speech, to building 2,400 megawatts of offshore wind power (enough to power 1.25 million homes, by 2030).

Washington last year created a "Clean Air Rule" that is much like cap and trade minus the tradable carbon allowances. All the major industrial greenhouse gas polluters, such as an oil refinery, have to reduce their emissions by 5 percent every three years. If they do not, they must buy credits that are created by other in-state businesses who have cut their emissions beyond the required amount (⁵). The progressive movement is pursuing a strategy that assumes government agencies, through a series of laws, are the only viable stewards to protect the environment.

Conservative identifiers: The progressive's message is to tout government as the only viable means to effectively protect the environment and public interest. However, when it comes to effective protection of the public interest, the government's own stewardship has often been less than capable.

In 2014, emergency city managers in Flint Michigan, switched the city's water source to the Flint River in order to cut costs. Because it had not been treated properly, river water began leaching lead from old lead pipes in residential homes across the city. Michigan Attorney General Bill Schuette charged five current and former government officials with involuntary manslaughter for their alleged role in the Flint Water Crisis. Among them was Nick Lyon, the current head of the Michigan's Department of Health and Human Services, and Darnell Earley, the former emergency manager of Flint. Also charged were former City of Flint Water Department manager Howard Croft, Michigan Department of Environmental Quality drinking water chief Liane Shekter-Smith, and water supervisor Stephen Busch. Dr. Eden Wells, was charged with obstruction of justice related to an alleged attempt to stop an investigation into the health crisis in Flint and later misleading investigators as to her actions, according to a press release from attorney general's office (⁶).

Warnings issued by the FDA in 2008 turned out to be wildly inaccurate and deeply damaging. On June 3, 2016, at the time of the first warning, the FDA documented several dozen cases of foodborne illness it wrongly claimed were caused from eating tomatoes. After a lengthy investigation, it determined that fresh tomatoes currently available in the domestic market were not associated with the current outbreak, as stated in an agency press release. By the time the agency admitted its error on July 17, the FDA acknowledged more than 1,200 such cases had

⁵ <http://prospect.org/article/saving-planet-goes-local-0>

⁶ <http://www.motherjones.com/environment/2017/06/flint-water-crisis-involuntary-manslaughter/>

occurred. By that time, salmonella cases had mushroomed into the largest foodborne outbreak in the United States in more than a decade.

While the FDA's misplaced warning was unhelpful at best and harmful at worst to consumers, it was downright devastating to tomato growers and handlers. The agency's warnings had spread like wildfire. For example, the New Mexico Restaurant Association warned its members against using tomatoes. Newspapers around the country warned consumers to avoid eating tomatoes. Demand for tomatoes plummeted by up to 40 percent in the wake of the warning, and prices fell by half. The industry lost hundreds of millions of dollars.

Critics of the FDA and CDC were enraged at the agencies for acting without knowledge they clearly lacked and urged the agencies to work with industry so that they wouldn't repeat their mistakes. A group of tomato growers and handlers sued the FDA in federal claims court in 2013. They argued, as a judge wrote in a 2014 order in the case, all or almost all of the value of the plaintiffs' perishable tomatoes were destroyed by the collapse in the market for tomatoes triggered by the FDA's warnings.

When such agencies make such colossal mistakes that result in such detrimental effects, federal courts have typically sided with the agencies. This leaves businesses with millions in losses, tremendous waist and no recourse⁷.

The meat industry has suffered under similar government complications. States have been prohibited from setting their own inspection rules since Congress passed the Wholesome Meat Act 50 years ago. Under current law, meat processed via "custom slaughter"—at independent slaughter facilities not subject to USDA rules—may not be sold commercially.

Consolidation in the wake of the law has resulted in fewer and fewer slaughter facilities, creating yet another problem. That's meant fewer choices for small farmers and consumers alike. This lack of slaughter facilities at a time of rising demand for grass fed beef typically produced by small farmers is a huge dilemma.

The Wholesome Meat Act was intended to improve food safety. At a signing ceremony for the law, Pres. Lyndon Johnson said the bill would put shady processors out of business. Neither the Wholesome Meat Act nor USDA inspection has been any sort of panacea.

For example, a lengthy piece for the *New Food Economy* describes how the USDA's inspection regime is effectively broken. The piece details a 2014 recall of nearly 9 million pounds of meat illustrating how a chain of USDA actions were careless, secretive, and incompetent from the start, and likely played a role in the need for the recall.

Criticism of the Wholesome Meat Act is nothing new. In fact, opposition to the law was immediate. As explained by Oscar Sussman, a New Jersey doctor of veterinary medicine, in a 1968 letter to the editors of the *American Journal of Public Health*, which had published an

⁷ <http://reason.com/archives/2016/12/10/tomato-growers-lose-millions-thanks-to-f>

editorial in support of the new law. *The new legislation provides for US government takeover if states do not meet US government set standards, whether based on sound public health reasoning or not*⁸.

Government attempts to protect small farmers have also created several detrimental issues in the private sector. The federal government can clamp down on what and how much farmers can farm. State governments are also in on the act, determining even *who* may farm, and *to whom* farmers may sell their farms. Several states, nine at last check, simply don't permit or severely restrict corporate ownership of U.S. farms and farmland. These laws are invariably referred to as corporate farming or anti-corporate farming laws)⁹.

A Colorado company and Kansas resident sued over a Kansas state law requiring farm corporations be made up entirely of Kansas residents. CNK Inc. and Ross Guebelle filed a complaint saying the law violates the Commerce Clause of the U.S. Constitution by discriminating against non-Kansans and creating a burden upon interstate commerce. CNK, an agricultural corporation that owns and develops farmland in eastern Colorado, wanted to buy Guebelle's land and expand their operations into Kansas.

One of the things the Commerce Clause forbids is favoring in-state economic commerce over out-of-state. CNK and Guebelle say Kansas also violates the Equal Protection Clause of the Fourteenth Amendment by allowing out-of-state businesses to purchase agricultural land for nonagricultural use without meeting the same requirements. Missouri, for example, limits foreign ownership of farms to just one percent. That's actually an increase from an earlier law, which banned the practice¹⁰. A 2004 report detailed how Minnesota prohibits farm ownership in most cases by those who aren't American citizens¹¹.

The other area of concern that should be addressed is the discussion of climate change and the issues progressives intend to raise through this position. According to the Intergovernmental Panel on Climate Change, the world has warmed at a rate of 0.12 degrees Celsius per decade since 1951 which implies that the global average temperature has increased by nearly 0.8 degrees Celsius. In the area of food concerns several other reports are concluding less ominous outcomes from progressive considerations.

Even as the world warmed, the World Bank reports that per hectare yields of coarse grains, including wheat and corn, have increased from an average of 1,400 kilograms per hectare in 1961 to 3,900 kilograms per hectare in 2014, an increase of 280 percent. Most notable are the actions and achievements being made by private sector interests to respond to possible environmental changes beyond government involvement.

Crop breeders in the United Kingdom are already working to create a "super wheat" genetically modified with enhanced photosynthesis. In greenhouses, this crop is boosted by 15 to 20

⁸ <http://reason.com/archives/2017/06/17/prime-act-would-help-put-the-local-back>

⁹ <http://reason.com/archives/2017/04/01/corporate-farming-laws-a-bad-deal-for-fa>

¹⁰ <https://www.courthousenews.com/residents-farm-law-taken-kan-court/>

¹¹ <http://www.house.leg.state.mn.us/hrd/pubs/alfarm.pdf>

percent, and the researchers are planning on field trials next year. In addition, the GMO wheat is even more productive when carbon dioxide levels are higher. In South Australia, researchers are figuring out how to add beneficial microbes (endophytes) that boost wheat yields by 10 percent. American researchers detail in an article in *Science*, how they are working on another technique to boost photosynthesis that could increase yields by 15 to 20 percent¹².

Of all the issues, perhaps the major issue this report addresses is the previously mentioned covert nuclear weapons facility in Greenland known as Camp Century. It has the potential to create the same sort of controversy as the Flint, Michigan, water pollution incident.

Conclusion: Most of the issues are not new and have been commonly espoused for several years. It is unlikely most of them will develop into any prominence. The issue that Conservatives should be leery of is the situation regarding Camp Century. This issue, though unlikely, has the potential to cause embarrassment. Camp Century is a base that was established in a foreign country, possibly under false pretenses, and now threatens to dump radioactive and other toxic seepage into foreign waters. Even though whatever momentum the progressives gain from this controversy would be short lived, understanding the issue could help keep it from becoming a point of contention.

The progressives are using the recent environmental policies of the trump administration to build momentum for their movement. Already the various progressive news sites are bolstering articles assuming vast environmental catastrophe if government regulation is removed. Environmental groups are concentrating their efforts at promoting their agenda at state levels where they expect gain more influence. At the national level, the threat is coming through legal channels as various state's attorney's general offices bring legal suit to force national reinstatement and enforcement of preexisting regulations. The next few years will inevitably see a greater emphasis on the court system determining a great deal of the most significant issues and legislation effecting the country.

Recommendations: The concluding point of all the progressive arguments and assertions is the need for more government regulation and oversight. They clearly intend to assert the need for stronger regulations enforced by government agencies who, in their lexicon, are described as nearly infallible stewards. Conservatives must devise any counter-strategy around eroding this image. A Conservative response must point out the history of immense failings of government regulatory agencies and how often they mismanage situations and create havoc in their own right.

Progressives will continue to promote the environmental cause. Whether it gains any momentum is yet to be seen. Conservatives should ensure that they understand that the end game of the progressive message is more government intervention. It is the heart of their agenda and should be the focus of Conservative strategy when responding.

¹² <http://reason.com/blog/2016/11/30/climate-change-wheat-yield-projections-a>

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