

# *A New Progressive Agenda for Public Health and the Environment: A Project of the Center for Progressive Regulation*

A Center for Progressive Regulation White Paper

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## *Introduction and Overview*

Three decades ago, Americans turned serious attention to preventing the harm that human enterprise does to people and our natural environment. The first problems we attacked were the most obvious ones: rivers and streams laden with pollution, grit in the air that turned the inside of people's noses black, dump sites flooding basements with foul-smelling chemicals, and work places that were death traps for employees. We conquered many of these initial challenges only to confront a set of new, even more intractable problems: cancer-causing contaminants in drinking water that people do not see, smell, or taste; air pollution that eats a hole in the ozone layer; and the swelling of red tides as run-off washes from chemically laden fields and parking lots.

Saving the planet for our children and grandchildren has always been the inspiration for such efforts. But some of today's youth see a larger and darker picture. Asked by a National Public Radio interviewer to react to President George W. Bush's proposal for NASA to focus on returning humans to the moon and eventually traveling to Mars, schoolchildren visiting the Smithsonian's National Air and Space Museum in Washington, D.C., responded favorably because it would give humans somewhere to go "when the Earth dies." Imagine how much less confidence in the future children who live in poorer, more polluted countries must have.

As we struggled to come to grips with the nature and scope of these and similar problems that threaten people and the environment, the nation was buffeted by seemingly more immediate threats. In the wake of September 11, 2001, our attention was diverted from a host of pressing domestic problems. This

distraction, however valid, has imposed a very high price. As environmental problems have faded from public view, right-wing commentators and their allies in regulated industries have systematically dismantled programs designed to protect public health, without ever acknowledging their agenda. The warning signs are in plain evidence: an epidemic of asthma among children, unacceptably high levels of mercury in the blood of women of childbearing age, lead in household water supplies, outbreaks of cryptosporidium and other pathogens in drinking water, bizarre weather changes, mounting levels of pesticides in the natural environment, smog in all our major cities, and cars and workplaces that are still unsafe.

All of these developments suggest that we must renew our commitment to approach environmental health and safety problems with a sense of urgency. Instead, too many of our national leaders behave as if environmental degradation is merely a hypothetical problem. They counter scientific consensus about the

*This Center for Progressive Regulation white paper is a brief summary of the policy recommendations put forward in the Center's new book, [A New Progressive Agenda for Public Health and the Environment](#), edited by Christopher H. Schroeder and Rena Steinzor. The book is the product of a unique collaboration among a number of CPR scholars. It is available for purchase from Carolina Academic Press, from bookstores, and from online vendors. More information on the Center for Progressive Regulation and on how to purchase the book is included at the end of this white paper. Visit the Center on the web at [www.progressiveregulation.org](http://www.progressiveregulation.org).*

scope of various hazards with blanket denial. They passively accept warnings that summer air is too polluted for the elderly and the very young to breathe without demanding to know who is responsible. They treat the manufacturers of toxic chemicals and other pollutants as if they have a constitutional right to market their products until government somehow manages to prove them definitively unsafe.

In the pursuit of a corporate-friendly business environment, the Bush Administration has opened wilderness lands to oil drilling and logging, given power plants a free ride on mercury pollution, walked away from international efforts to address global warming, refused to tighten emissions standards on automobiles, allowed outmoded power plants to operate indefinitely, dragged its feet on investigating pesticide hazards, permitted steady destruction of wetlands crucial to natural filtering of water, and turned a blind eye to the hazards of factory farming. All of these actions flout widespread public support for environmental protection. Whatever else the 2004 election may have been about, no one can credibly argue that the Administration and industry gained a mandate for such radical reforms.

*A New Progressive Agenda for Public Health and the Environment* starts from a place of confidence. It proposes a detailed blueprint for restoring a vigorous and unrelenting campaign to control pollution, protect people, and clean the environment. These recommendations are imbued with a forward-looking optimism about our collective ability to succeed, making the planet a healthier, safer place for people and nature. Government stands at the center of these progressive aspirations, reclaiming its rightful place as the guardian of the public interest in controlling unfettered industrialism. *A New Progressive Agenda* largely focuses on environmental issues. However, it includes several references to other regulatory issues in order to demonstrate that the approaches proposed in its pages can be applied readily to other regulatory goals.

### *Three Principles*

The broad range of federal health and safety and environmental laws enacted over the last three decades are based on the moral bedrock of three overriding principles:

First, activities that harm people and the environment – even those routine to our way of life and economy – should be made as safe and clean as possible, certainly to the extent that they do not cause illness or death.

Second, optimism and confidence are necessary with respect to the technology and human ingenuity required to reduce risks to satisfactory levels, up to and including the belief that entirely new technologies can be developed to accomplish old functions at an affordable price.

Third, government at the national, state, and local levels has a crucial role to play in preserving collective values and protecting the public interest via lawmaking and enforcement.

*A New Progressive Agenda* embraces these principles because they reflect the ethical beliefs that are at the core of most people's personal values: we hold the earth and all of its natural wonders in trust for our children. In a democracy, government at its best reflects these collective values, protecting the weakest among us from the errors and omissions of private enterprise. No individual can expect to make it alone, nor is it right to force people to fend for themselves in the face of forces far stronger than they are.

Americans remain fundamentally committed to the core ideals of national environmental and health and safety laws – reducing risks, requiring industry to do the best it can to prevent pollution, and taking collective action to accomplish these goals. When the public's commitment to public health and environmental quality encounters an obvious, transparent, and easy-to-understand government action that endangers the public and the environment, the public interest stands an excellent chance of prevailing, even over powerful opposing interests.

Even politicians who often may do the bidding of special interests are reluctant to face voters' wrath on Election Day. The Bush Administration's aborted effort to loosen restrictions on arsenic in drinking water is an example of what can happen when arcane regulatory procedural matters attract public attention. Unwilling to be seen as an enemy of clean drinking water, the Administration backed away from its efforts. But when media attention has been easier to avoid or when the issues seem less tangible than a recognizable poison in drinking water, the current Administration has allowed industry to increase the levels of air and water pollution.

To begin moving toward progress again, progressives face several different challenges. First, we must proudly champion policy changes that will make a difference rather than settle for half-a-loaf strategies or half-solutions that fit comfortably into the dominant antiregulatory framework. Second, we must promote our agenda in a cogent and compelling fashion – and in starkly different terms from the typical contemporary policy debate practiced in the states and Washington, D.C. Third, we must understand how current government policy-making undermines initial advances and guard against it. Fourth, we must insist on necessary institutional changes that will facilitate effective regulation and enforcement.

Environmental protection has undoubtedly remained a bedrock value for most Americans because environmental problems are an instance of people hurting other people as the byproduct of other socially useful activities. For the antiregulatory movement to survive, it must obscure this powerful image of the consequences of environmental problems. Regulated industries and their conservative allies have done so by attempting to shift responsibility for pollution from polluters to the

victims of pollution. Our environmental laws do not sanction this shift; instead, they are built on the premise that polluters should be the ones to address the consequences of pollution. Those laws remain on the books, despite energetic efforts by special interests to undermine them.

Rather than balancing the supposed imperative of industrial activity and economic development against the option of protecting pollution victims, progressives believe that government must begin with the assumption that those who cause harm to others must be held responsible. In this moral vision, which pervades most other aspects of the nation's

religious, cultural, and social affairs, industries that produce pollution or harvest natural resources must do whatever they reasonably can to avoid and prevent harm to public health and the environment. Progressives consider the costs of protection and we recognize the need to make sensible, pragmatic decisions. But we reject the morally unacceptable concept of suspending protection until the monetized value of human lives saved exceeds industry compliance costs.

Americans have always had a love-hate relationship with their government. We resent paying for it, we often demean it, and we unfailingly criticize it. However, we also rely on it. From road construction to Social Security to providing for the common defense, we depend on our local, state, and federal government to preserve the quality of our lives. We value our freedom and individual rights, and sometimes we see the government as a threat to that liberty – for reasons real and imagined. But most of us recognize that our world would be a far harsher place if government did not keep police on the beat, provide a safety net for the destitute, and work to eradicate disease. Progressives do not flinch from

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## ***Key NPA Recommendations***

- ✓ Climate change is the most serious, long-term environmental threat facing future generations. The United States must stop behaving like a rogue nation and join with the international community to take effective action to slow, and eventually halt, global warming.
- ✓ Cost-benefit analysis, which is intrinsically and fatally flawed, should not be used as a definitive approach to policy-making designed to protect human health and the environment.
- ✓ Whenever possible, polluters must install state-of-the-art controls to prevent harming the public. Current standards are much lower, often setting an acceptable level of pollution that effectively encourages industry to pollute up to that limit.
- ✓ Congress should repeal laws that allow companies to hide evidence of their illegal acts, such as the Critical Infrastructure Information Act, and that give corporations the tools to harass and discredit valuable science, such as the Information Quality Act.
- ✓ Budgets for agencies that protect public health and natural resources must be increased dramatically. Spending for standard-setting, enforcement, and the preservation of public lands should double in the next decade. These increases should be funded by new taxes on corporate polluters and by the dedication of fees collected from those who use public resources like the national parks to rigorous conservation programs.
- ✓ Provisions enabling citizens to bring lawsuits that force factories to abide by laws should be strengthened by eliminating restrictions on standing and by allowing penalties for past violations.
- ✓ We must end unwarranted government subsidies of activities that destroy natural resources.
- ✓ Emissions trading schemes can be cost-effective means of controlling pollution where overall quantities of less hazardous pollutants are subject to steeply declining caps, but such market-based remedies must never be used to control toxic hazards, such as mercury, that pool into “hot spots” and poison those unfortunate enough to live nearby.
- ✓ The dirtiest manufacturing facilities are often located in low-income and minority communities. This type of discrimination is compounded by a lack of affordable health care and adequate nutrition. Civil rights laws must be strengthened to outlaw discrimination, eliminating any requirement that intent be proved and instead concentrating on the disparate effects of such practices and activities.
- ✓ Washington, D.C. should continue to be the epicenter of environmental regulation, but the states must have authority to implement more-stringent regulations. The current Administration has contradicted principles of federalism in an effort to prevent states from imposing stricter standards.
- ✓ Current information gaps regarding toxic chemicals are appalling. We lack sufficient information about 80 percent of the high-production volume toxic chemicals sold each year. To close this gap, government must increase public funding for research and require new toxic chemicals to be screened

before they enter the marketplace. The government should compel producers of such substances to complete toxicity testing or require products that contain such substances to be labeled as untested. Untested chemicals should be presumed harmful for legal purposes until comprehensive testing exonerates them.

✓ More public resources must be devoted to monitoring environmental conditions and trends in a consistent and comprehensive manner. In particular, we recommend that Congress establish an independent and truly impartial Bureau of Environmental Statistics, analogous to the federal Bureau of Labor Statistics, and that it provide this new agency with ample authority and resources to work effectively. This new bureau should be charged with assessing environmental data needs, creating guidelines for collecting environmental data, collecting and analyzing comprehensive statistics on environmental quality, and disseminating the data it gathers to the public.

✓ EPA should shine a spotlight on state environmental agency performance by means of regular and public evaluations of how well state agencies are meeting their obligations, based on a uniform set of criteria.

✓ The National Environmental Policy Act (NEPA), which requires environmental impact assessments each time the federal government takes an action that could produce a major effect on the environment, must be extended to cover private corporations.

✓ To strengthen corporate accountability for harmful activities, Congress should enact a law requiring business to disclose promptly, accurately, and fully the nature, extent, and impact of any corporate activity or practice that poses a significant threat to public health and the environment, whether or not the activity is regulated, with appropriately circumscribed protection for confidential business information or protections afforded such information under other laws.

✓ Similarly, companies listed on national securities exchanges must disclose the adverse effects their practices have on human health and the environment so that investors are informed enough to decide whether the company is a sound and ethical investment.

✓ California's Proposition 65 has proven to be an effective tool for triggering needed product reformulations, as well as reductions in unnecessary toxic exposures. It also provides the public with the necessary information to make informed choices and avoid unnecessary risks. A similar requirement should be applied on a broader scale, requiring companies to provide clear and reasonable warnings prior to exposing people to toxic chemicals, with exposures below a certain level of risk exempted.

✓ In the context of so-called "advertorials" or "corporate image ads," companies under fire for poor environmental or labor practices have invoked their ostensible First Amendment rights to evade prohibitions on deceptive and unfair advertising. Those prohibitions are a cornerstone of the free market, protecting consumers and ethical competitors. The courts must reject claims that the First Amendment shields anyone from compliance with these provisions.

advocating as much “big government” as necessary to protect the public’s interest in life, liberty, and the pursuit of happiness and to mitigate the effects of an unbridled marketplace.

### *Independence and Autonomy*

Federal agencies and departments must recover their orientation toward making public protection their paramount value. Rather than being subject to overbearing supervision by the White House at the behest of regulated industries, they would enjoy sufficient respect that their policy recommendations would be presumed valid, especially when such determinations are developed in the context of the extensive rulemaking procedures now required by the courts.

Adequate funding for EPA and other regulatory agencies is critical. Budgets for agencies that protect public health and natural resources must be increased dramatically. Agencies need sufficient resources to be able to resist industry’s inevitable threat to challenge regulatory and enforcement decisions in court if the agency does not succumb to lobbying pressure. At the moment, federal and state agencies are so underfunded that, even in the absence of political pressure from the executive branch, minor industry resistance sends them scurrying to find a compromise lest the entire enterprise fail.

Spending for standard-setting, enforcement, and the preservation of public lands should double in the next decade. These increases should be funded by new taxes on corporate polluters and by the dedication of fees collected from those who use public resources like the national parks to rigorous conservation programs. The commitment of full funding, which would cost a few billion dollars as opposed to the tens of billions or even hundreds of

billions we spend on other, less important endeavors, is essential to stop the backsliding that undercuts protections in virtually every context.

One important purpose of restoring resources to environmental, health, and safety agencies should be to achieve parity between career regulators and their counterparts in the private sector. The constant revolving door between government and industry, especially with respect to mid-level technical experts, is enormously destructive to the government’s independence.

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Another crucial component of restoring this independence and autonomy is to defeat the campaign that undermines environmental mandates by charging that the agencies do not use

“sound” science. This allegation, which has brought the regulatory process to its knees in far too many contexts, is little more than an effort to disguise regulated industries’ self-serving resistance to effective regulation as the search for scientific truth. Waiting until all scientists are in absolute agreement regarding the source, mechanism, and cause of environmental illness and ecosystem disruption can only result in unprecedented and irrevocable loss of life, health, and natural resources.

Finally, regulatory agencies like the EPA cannot exist to serve their “customers.” This approach is like saying that the police must be considerate of their criminal constituencies. Too often, this definition of government’s role as provider of customer service is also cast in moral terms: Conservatives argue that corporations are the backbone of the American way of life and that casting them as polluters impugns their integrity and will weaken the economy. We do not agree that wanting environmental cops on the beat is equivalent to an attack on all corporations. As

we have seen in the recent wave of corporate scandals involving Enron, Tyco, and WorldCom, we cannot achieve a sound economy without regulators to ensure open and fair competition. Neither can we achieve a society that respects the health and safety of citizens and the environment without supervision of the free market.

### *Setting an Affirmative Agenda for Action*

Rather than engaging in a zero-sum game that grapples with statutory mandates only in response to court orders and compels every affirmative proposal to run the gauntlet of a withering array of analytical requirements, government should systematically evaluate the raft of environmental threats that remain unaddressed. Such problems include:

- Global climate change, produced by industrial activity, that threatens the viability of life on Earth within the next century;
- Ambient air pollutants, especially ozone, sulfur dioxide, nitrogen oxide, and fine particulate matter, that threaten health in every major U.S. city and the growing list of hazardous air pollutants, such as volatile organic compounds, butadiene, and mercury;
- Grandfathered “old dirties,” especially power plants and manufacturing facilities that use toxic substances such as mercury, that have long outlived their useful lives;
- Water pollution, including nutrient loading produced by nonpoint sources such as factory farms and harmful pollutants discharged by factories and sewage treatment plants that will soon need expensive upgrades to maintain their structural integrity;
- Ocean pollution, exacerbated by algal blooms, or “red tides”, and oil spills;
- Asbestos, lead in paint, mercury in consumer products, and other similar legacies of our historical ignorance that pose threats not only to consumers but to workers forced to handle such substances;
- Overfishing and fishery contamination, which threaten an invaluable component of the human food chain as well as the soundness of natural ecosystems;
- Water shortages, which could produce drastic shortages and widespread famine as soon as 2025; and

- Government subsidies that convey unwarranted windfalls to large corporations while destroying natural resources that developed over millions of years.

### *Do the Best We Can*

Resolving these problems will not only take more resources, it will compel us to choose the most effective regulatory tools. Many of the greatest successes modern environmental law has achieved in the past 30 years were produced by enforceable requirements that polluting industries do the best they can to prevent or reduce pollution by installing state-of-the-art control technologies. Such regulations are relatively easy for agencies to write and enforcement of technology requirements is straightforward and fair.

Conservatives and their allies in regulated industries have waged a long campaign against technology-based controls, arguing that they are economically inefficient because they require every pollution source to clean up to the same level, regardless of compliance costs. These arguments distort how technology-based controls operate. Instead of calculating the precise amount of pollution that is safe – a hopeless task in many contexts – technology-based controls give industry a pollution-reduction target based on available equipment and then allow companies to select the means for achieving these levels on their own.

Because they dislike technology-based regulation but acknowledge that some pollution problems must still be resolved, conservatives tout the benefits of market-based approaches that allow companies to trade rights to pollute among themselves. The one national experiment with such a “cap and trade” system was largely successful, but only because the substance at issue – sulfur dioxide – is acutely toxic only at relatively high levels. Regional experiments with more toxic chemicals have created hot spots that pose an excessive risk to particular neighborhoods, often home to low-income and minority communities. While trading is a promising alternative in carefully

limited circumstances, it can never replace technology-based controls as the bedrock upon which our regulatory system stands.

### *Put Safety First*

Both in defining an agenda of unfinished business and in developing effective regulatory programs to prevent such hazards, government must put public health and safety first. Because conservatives believe that government's primary role is to ensure that citizens take responsibility for their own problems without expecting a "free lunch," they typically isolate regulatory compliance costs by offsetting them against such essentials as food, clothing, and shelter. This myopic view of accounting contends that excessive regulation will harm the poorest and weakest among us by depriving them of such fundamental needs.

From this fatally flawed premise, conservatives make one further jump: The only way to avoid excessive regulation and its unacceptable social costs is to wait until we are certain that (1) there is a problem; (2) we know its source; and (3) we have developed a cost-effective solution. This search for absolute certainty has delayed government intervention for decades, despite the fact that one would be hard pressed to identify a single environmental problem targeted by the existing regulatory system that has turned out to be less serious than we initially thought.

Progressives believe it is government's job to take precautions and move to nip problems in the bud. Streamlining the regulatory process and restoring independence and integrity to regulatory science are essential to achieving this goal.

### *The Right Tools*

#### **Enforcement**

In addition to restoring their commitment to technology-based controls and faithfully executing the statutory mandates Congress gave them, government agencies must make a far more aggressive effort to enforce the law. To supplement these efforts, citizens should have open access to the courts to bring

enforcement actions as citizen activists when government regulators are unwilling or unable to do the job.

#### **Performance-based Regulation**

We agree with many conservatives that there is great promise in establishing standards of performance and leaving the means used to achieve those goals up to individual polluting firms. Indeed, this is how technology-based controls work. Firms are rarely required to install specific equipment. Instead, they are required to achieve at least the amount of pollution prevention achieved by the best equipment on the market, using whatever methods they choose. Performance-based regulation must never be voluntary, it must always impose enforceable, verifiable goals, and it must punish those who fail to make the grade.

#### **Liability**

One way to achieve these results is to impose stringent liability for harmful conduct after the fact. The Superfund toxic waste cleanup program is among the strongest examples of incentive-based regulation in the world and has led to dramatic improvements in managing industrial waste.

#### **Information Disclosure**

Another extraordinarily effective tool is public disclosure of private-firm performance. By spotlighting the amount and implications of industrial emissions and discharges, public opinion inspires firms responsible for damage to improve their performance. For these reasons, we advocate the expansion of the Toxic Release Inventory and the application of the Freedom of Information Act to private-sector behaviors that have a major adverse impact on the environment.

#### **Government Freed from Ossification**

To select, design, implement, and enforce the right regulatory tools, the government must be liberated from the gauntlet of overlapping and

onerous analytical requirements Congress passes in a futile and poorly understood effort to prevent excessive regulation.

**Justice**

In administering programs that, in essence, authorize polluters to cause harm, the government must establish as routine the consideration of whether the distribution of such burdens is even and fair. Too often, low-income and minority communities assume a grossly disproportionate share of environmental risk. And these risks too often escape recognition because we have only a fragile and tentative understanding of the cumulative and synergistic effects of common chemicals.

Ensuring justice requires more than just lip service to vague notions of equal distribution of the pollution burden. Since much regulation occurs plant by plant through the permitting system, government cannot hope to achieve a larger perspective on these issues unless it is compelled to ensure that state programs do not discriminate on the basis of race or income, without regard to whether such discrimination was intentional.

**Burden-Shifting to Close the Information Gap**

To close the wide gap between the little we know about toxic chemicals and their ever-increasing circulation in the environment, the government should take three steps: (1) increase public funding for research; (2) require toxic chemicals to be screened before they enter the marketplace; and (3) shift the burden on existing chemicals by presuming

them to be harmful until or unless comprehensive testing exonerates them. As it copes with already existing hazards, government can only hope to get a grip on future hazards by shifting the burden to chemical producers to investigate the potential harm they will cause.

**A Leadership Role in the International Community**

The United States has become a rogue nation in the eyes of the world with respect to the global environment. Walking away from the Kyoto Protocol was a fateful mistake, as is our official opposition to including environmental protection provisions in

trade agreements with other countries. It is now clear that global warming is a potentially catastrophic threat that we can no longer ignore; it threatens future generations, perhaps beginning with our own children. If we do not exercise global leadership, underdeveloped countries will not take steps to avert

the disastrous course we are traveling.

**Public Resources**

We are now at the point that we consume more of the Earth's natural resources than we can possibly replenish. A major reason for this distressing state of affairs is the misguided insistence of conservatives that the plundering of public resources – forests, oceans, and other wild spaces – must be evaluated on the basis of the market value they supposedly would have if sold to the highest bidder. This approach cannot help but sabotage every effort we make to ensure sustainable development.

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The United States has a long tradition of protecting public land and resources, and we must return to it. Some things are priceless and will never come back once they are gone, including ecosystem diversity, habitats, and the overall health of the planet.

### *The Good Citizen*

Some have suggested that we return decision-making authority over environmental protection to the local level, where requirements can be tailored to the specific circumstances faced by individual communities. Such civic environmentalism is billed, paradoxically, as the best way to ensure that

regulation does not waste money and as a long-overdue route to reviving grassroots democracy. We share the average citizen's distaste for the overly complex, highly technical nature of modern environmental regulation. Complex problems can call for complex responses, however, and it is not possible to simplify many of the issues we face in a manner suitable for majority vote by citizens who now work harder, longer, and with much less leisure time than previous generations.

Our vision of what it takes to be a good citizen in a pluralistic, highly advanced society such as ours is that people must monitor government from some distance, intervening when it appears, as it does now,

### *About the Authors and Editors*

*A New Progressive Agenda for Public Health and the Environment* is a collaborative project of the scholars of the Center for Progressive Regulation, edited by Christopher H. Schroeder and Rena Steinzor.

Professor Schroeder holds the Charles S. Murphy Chair at Duke University School of Law and is Professor of Law and Public Policy Studies. He has taught and written in the areas of Environmental Law and Policy, Constitutional Law, Tort Law and Philosophy, and Administrative Law for more than 20 years. Before entering teaching, Professor Schroeder was a partner in a small San Francisco law firm, devoting approximately one-third of his time to environmental representations involving California energy issues. He subsequently served as chief counsel of the U.S. Senate Judiciary Committee and served for three years in the U.S. Department of Justice, Office of Legal Counsel, including as Acting Assistant Attorney General.

Professor Steinzor is a tenured full Professor at the University of Maryland School of Law, and director of the Environmental Law Clinic. She began her legal career in 1976, and entered academia in January 1994. Professor Steinzor served as Staff Counsel, Subcommittee on Commerce, Transportation, and Tourism of the Energy and Commerce Committee, U.S. House of Representatives (Rep. James J. Florio, Chairman). From 1987 through 1993, she was associated - first as "of counsel" and ultimately as the partner in charge of the environmental practice - at Spiegel & McDiarmid, a 45-lawyer, Washington, D.C. firm representing approximately 400 cities, counties, states, and public agencies in the energy, environmental, communications, and transportation fields.

A number of other CPR scholars made significant contributions to the book, providing essential analysis and the ideas expressed in its pages and in this white paper. Authors and contributors included Frank Ackerman, William Buzbee, David M. Driesen, Victor B. Flatt, Alyson Craig Flournoy, Sheila Foster, Robert L. Glicksman, Lisa Heinzerling, Donald Thomas Hornstein, Douglas A. Kysar, Thomas O. McGarity, Joel A. Mintz, Clifford Rechtschaffen, Sidney A. Shapiro, Robert R.M. Verchick, Wendy E. Wagner, and David A. Wirth.

that it has gotten off track in carrying out the public's will. While we believe strongly in the power of citizens as consumers to act as a force for good, we also think that government must provide tools to make such choices in the first instance by, for example, requiring manufacturers to produce more-efficient cars and appliances.

### *Conclusion*

Overall, the United States has the best and most ambitious system for protecting public health and the environment in the world. After three decades of intense effort, we know how to control pollution and preserve natural resources. We have developed technologies capable of cleaning up past mistakes and preventing new ones. Scientific breakthroughs in our understanding of how to improve the quality of life and restore fragile ecosystems continue at an unprecedented pace. In addition, our citizens, especially young people, are conscious of an environmental ethic that provides strong support for the commitment to keep our countryside free, clean, and even wild.

Yet the government entities that preside over all this progress are weaker than they have ever been, and their energy for the challenges ahead, much less for the difficult task of maintaining past victories, is draining. Slowly but surely, these protections are eroding, with government shrinking to the point that the entire regulatory system is threatened with collapse. The debate has shifted from how we can do more to a rigid and misleading trade-off between a clean environment and a healthy economy. The same

special interests continue to oppose government efforts to protect the environment, but they have grown far more adept at portraying these disputes as marginal, discrediting those who advocate tougher protections as environmental extremists, and using the leverage of campaign contributions and an endless supply of ostensibly qualified experts to stop regulators in their tracks.

This right-wing campaign now has unprecedented traction, largely because it is conducted out of the public view. It may be years until visible pollution returns to a degree that the average American notices it. Even where the results of government failure are painfully obvious – such as when cities issuing boil-water warnings to the elderly, families with young children, and the chronically ill – the public has great difficulty discerning the root cause. The efforts to obscure what is happening by making the debate mind-numbingly technical and pushing controversy below the public consciousness have also discouraged public interest groups, which are increasingly at a loss to reverse what seems to be the irrevocable subversion of the regulatory state.

Battles against further erosion of our country's commitment to the environment, health and safety must continue every day, and must always be fought on the battleground of what is immediately politically feasible. At the same time, it is good to be reminded of what our progressive goals are. We can only hope that the vision we have constructed in the preceding pages will itself regain a firm hold on the politically feasible before we lose too much more precious ground.

### *To Order A New Progressive Agenda*

Copies of *A New Progressive Agenda for Public Health and the Environment* are available for \$22, from

- The publisher, Carolina Academic Press, at <http://www.cap-press.com/books/1393>, or by calling 1-800-489-7486;
- Online retailers, including Amazon.com and Bestprices.com;
- Selected bookstores across the country; and
- The Center for Progressive Regulation, at [www.progressiveregulation.org](http://www.progressiveregulation.org).

## ***About the Center for Progressive Regulation***

*Founded in 2002, the Center for Progressive Regulation is a nonprofit research and educational organization of university-affiliated academics with expertise in the legal, economic, and scientific issues related to regulation of health, safety, and the environment. CPR supports regulatory action to protect health, safety, and the environment, and rejects the conservative view that government's only function is to increase the economic efficiency of private markets. Through research and commentary, CPR seeks to inform policy debates, critique anti-regulatory research, enhance public understanding of the issues, and open the regulatory process to public scrutiny. Direct media inquiries to Matthew Freeman at [mfreeman@progressiveregulation.org](mailto:mfreeman@progressiveregulation.org). For general information, email [info@progressiveregulation.org](mailto:info@progressiveregulation.org). Visit CPR's website at [www.progressiveregulation.org](http://www.progressiveregulation.org). The Center for Progressive Regulation is grateful to the Deer Creek Foundation for its generous support of this project and CPR's work in general.*



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