

Record Belies Critics of Environmental Rules

“We have seen no compelling evidence that this nation faces an immediate environmental crisis,” according to the testimony. “Studies we have seen point to the uncertainties that exist.” A program “that sets unrealistic compliance dates will increase the cost, [and] risk the reliability of electric service.”

These were the words from Southern Company’s president 28 years ago, delivered in opposition to the Acid Rain Trading Program. It was matched by testimony from the National Coal Association that predicted “electricity rates would rise sharply,” triggering “a loss of jobs” if the program became law.

Of course, it did become law, as part of the 1990 Clean Air Act Amendments, and is now regarded as a crowning achievement for President George H.W. Bush and proof that cap-and-trade regulations can work.

The threatened spike in electricity rates never materialized. In fact, a 2011 report to Congress found that the average retail price of electricity, adjusted for inflation, remained flat or dropped for every year between 1990 and 2008. During that period, sulfur dioxide and nitrogen oxide emissions decreased by more than 60 percent. Meanwhile, GDP more than doubled.

Today the same anti-regulatory arguments are repackaged to block efforts aimed at mitigating the worst effects of climate change.

A significant difference this time around, however, is that the coal industry’s allegations about falling employment are coming from the White House. President Trump has raised the specter of “lost jobs and closed factories,” while ignoring Energy Department data showing that the country already supports more than twice as many solar-related jobs (373,807) as coal-related ones

(160,119). The president has also dismissed the value of a wind-energy industry that grew 32 percent over the last year.

EPA Administrator Scott Pruitt has revived Southern Company’s old message on scientific uncertainty, alleging, “I would not agree that [carbon dioxide is] a primary contributor to the global warming that we see. . . . We need to continue the debate and continue the review and the analysis.” Never mind that a joint publication of the U.S. National Academy of Sciences and the U.K. Royal Society explains that scientists have “incontrovertible evidence of planetary-scale warming” and concludes “that recent climate change is largely caused by human activities.”

By bringing the utility and coal industries’ arguments in house, the Trump administration has taken the problem of agency capture and embraced it as a positive good. In remarks to EPA employees after his Senate confirmation, Pruitt focused on streamlining the permitting process: “Regulators exist to give certainty to those that they regulate.” Coordination with applicants is “the job of the regulator.” Public service is supplanted by customer service.

But EPA is not Chick-fil-A, passing out permits as if they were Spicy Deluxe sandwiches, moving fast just to keep the line short. Being responsive to the business community, while a valuable tool for achieving the agency’s goals, cannot be the ultimate goal itself.

Economic impact is often an important factor, but EPA may be prohibited from considering costs in certain contexts (as in setting National Ambient Air Quality Standards). In those situations, the pur-

pose of environmental regulations cannot be to protect coal-mining jobs or promote renewable energy industries. In the parlance of the political debate, environmental regulators should not be picking winners and losers.

Rather, EPA must defend the congressionally defined public benefits detailed in the Clean Air Act (“to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare”) and the Clean Water Act (“to restore and maintain the chemical, physical, and biological integrity of the nation’s waters”), among other laws.

None of these values were highlighted in the formative documents of President Trump’s environmental policy (Executive Orders 13771 and 13777), or in Pruitt’s opening remarks to his staff. These are ominous omissions.

EPA’s founding administrator, William Ruckelshaus, understood the special trust that had been placed in his agency. In a 2009 interview, he remembered, “We had to select

some big, visible polluters [and] go after them, make sure the public understood we were being responsive to their concerns.”

The Trump EPA is unlikely to ignore the claimed impact of its regulations on coal jobs, and might expand its perspective to see value in the renewable energy industry. But the agency is in grave danger of losing sight of its public health and environmental mission. It risks forgetting the reason why environmental regulators exist.



Cale Jaffe

Cale Jaffe is an assistant professor at the University of Virginia School of Law, where he directs the Environmental and Regulatory Law Clinic.