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First Steps for the Trump Administration: Champion Affordable Energy

Free Market Reforms to Protect the Environment and Promote Plentiful, Reliable Energy

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While President Trump will need legislative approval by Congress to accomplish parts of his economic policy agenda, he can also implement several critical initiatives on his sole authority as chief executive. Increasing the affordability of both U.S. and global energy is an important economic and humanitarian objective and should be at the top of the list.

Thanks to affordable energy, the average person today lives a longer and healthier life, travels farther and faster in greater comfort and safety, and has greater access to information than ever before. The new administration should first aim to "do no harm," and reject policies to tax and regulate away our access to affordable energy. Fossil fuels—coal, oil and natural gas—are the world's dominant energy sources because, in most markets, they are the most cost effective and reliable. The following are five actions President-elect Trump should take to promote affordable energy, while protecting the environment.

Policy Recommendations

End U.S. Participation in the Paris Climate Agreement and Defund the United Nations Framework Convention on Climate Change and U.N. Green Climate Fund. Contrary to claims by the Obama administration, the recently negotiated Paris Climate Agreement is no mere update of the United Nations Framework Convention on Climate Change (UNFCCC). It is a new treaty, designed to lock future administrations and Congresses into a policy straitjacket inimical to the production, transport, and use of America's most affordable and abundant energy source—fossil fuels, including coal, gas, and oil. For similar reasons, the incoming administration should zero out the hundreds of millions of dollars of annual funding for the Paris Agreement's foreign aid program, Green Climate Fund.

Overturn the Clean Power Plan. The Environmental Protection Agency's (EPA) so-called Clean Power Plan (CPP) is an unlawful power grab that will increase consumer electricity prices, reduce U.S. job and economic growth, and have no discernible impacts on global warming or sea-level rise. The CPP is an attempt to inflate a three-sentence, seldom-used provision of the Clean Air Act (CAA), Section 111(d), into a mandate for de-carbonizing the U.S. electric power sector, a purpose Congress has not approved.

To overturn the CPP, Trump should direct the Justice Department to side with the 28 states and industry and non-profit petitioners challenging the CPP as unlawful and unconstitutional, if the litigation reaches the Supreme Court. He could also direct the EPA to re-propose the rule affirming petitioners' legal theory that Section 111(d) applies solely to actions regulated facilities can

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affordably take based on their actual emission capability ("inside the fence"), effectively limiting the EPA's power to requiring marginal energy-efficiency improvements in coal and gas power plants.

Require the EPA to Meet its Statutory Deadlines before Pursuing Discretionary Objectives. One effective approach to rein in the EPA's overreach is to require the agency to clear out its backlog of statutory responsibilities and implement a plan to ensure continuing compliance with statutory deadlines imposed by Congress.

Congress created four major Clean Air Act (CAA) programs to control stationary sources of air pollution: National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and Regional Haze. All have statutory deadlines for periodic review. By including those date-certain responsibilities, Congress sought to set the EPA's priorities rather than give the agency broad discretion to set its own priorities. Late deadlines also create opportunities for environmental pressure groups to litigate, culminating in "sue-and-settle" agreements that often elevate litigants' ideological agendas above state interests in allocating the agency's limited resources.

Stop Counting Pollution Reduction Benefits Achieved Both Above and Below the National Ambient Air Quality Standards as One and the Same. Over the past two decades, the EPA has relied increasingly on coincidental reductions in fine particulate matter (PM2.5) pollution to create the perception that the benefits of its regulations justify the costs. Perhaps the most egregious example is the EPA's Mercury Air Toxics Standards rule.

If we consider just the hazardous air pollutants targeted by the mercury rule, the estimated costs of $9.6 billion in 2016 exceed quantifiable benefits by 1,600 times to 2,400 times. Thus, to sell the rule to Congress and the public, the EPA claimed reductions in PM2.5-related emissions would prevent 4,200 to 11,000 premature deaths in 2011—annual "co-benefits" valued by the agency at $37 billion to $90 billion. But these are not real health benefits, because 99 percent of the mercury rule's PM2.5 supposed co-benefits are projected to occur in areas in attainment with the NAAQS for PM2.5.

In other words, the EPA is claiming billions of dollars in health benefits for PM2.5 reductions below the level the agency has determined to be "requisite to protect public health… allowing an adequate margin of safety." That is inconsistent with the basic purpose and structure of the NAAQS program.

President Trump should instruct federal agencies to make their PM2.5 co-benefit estimates consistent with the EPA's NAAQS determinations. Only PM2.5 reductions from concentrations above the NAAQS should be counted in agency cost-benefit estimates.

Reform and Terminate Unaccountable Environmental Research Programs. A number of non-regulatory EPA programs operate outside the regulatory process and beyond their authority. These "voluntary" or "research" programs have significant policy or market impacts, yet accountability is limited. In particular, the EPA's Integrated Risk Information System (IRIS) produces chemical risk assessments that other EPA divisions use to issue regulations under federal laws such as the Safe Drinking Water Act, Clean Air Act, and others. Similarly, the agency's "Safer Choice" program, formerly called "Design for the Environment," pressures companies to eliminate certain chemicals from their products "voluntarily," largely based on weak and incomplete science.

The EPA should eliminate the Safer Choice program as unnecessary and fold all IRIS risk assessment functions into the Toxics Substances Control Act (TSCA) program, where they must

comply with scientific standards set up in the new TSCA law. Finally, all chemical regulation and research should take place under the legal authorities of the newly reformed TSCA law.

State of Play

Paris Climate Agreement. President Obama refused to submit the Paris Climate Agreement to the Senate for review pursuant to Article II, Section 2 of the Constitution. Why? Because there was no chance the Senate would consent to new international climate commitments. President Trump should withdraw from the Agreement pursuant to its procedures (Article 28), but clarify that America need not withdraw because we never properly joined. He then should submit the Agreement to the Senate, where it would likely fail. The President should also enforce the current law (Title 22, Section 287e of the U.S. Code), which prohibits funding of any United Nations agency that grants full U.N. membership to any organization or group that is not internationally recognized as a state. This would apply to the UNFCCC, as it is a U.N. agency with a staff of about 500 and a budget of more than $60 million, which accepted the "State of Palestine" as a full member of the Conference of Parties to the Framework Convention in March 2016. To date, the Palestinian Authority has not been recognized by the United Nations as a state.

Clean Power Plan. Instead of setting CO2 performance standards that require fossil-fuel power plants to improve their performance (emit less CO2 per megawatt hour), the Clean Power Plan imposes standards no individual plant can meet, and then gives owners the "choice" to comply by reducing output, shutting down the unit entirely, or "investing" in new renewable generation. 'Produce less,' 'shut down your facility,' and 'subsidize your competitor's wind farm' are illegitimate, non-performance mandates, not bona fide Clean Air Act performance standards.

Fine Particulate Matter. Once we factor in the lower probability of PM2.5 health effects in areas where exposures are already below the NAAQS, the value of the mercury rule's co-benefits falls to nearly zero. The lion's share of the health benefits of the EPA's climate regulations, such as the Clean Power Plan, also disappears. The practice of imputing huge health benefits to PM2.5 reductions below the NAAQS can make all-pain- for-no-gain regulation look like a bargain at any price. It also fosters the illusion that today's historically-low and continually-declining air pollution levels are a major health threat demanding ever-more aggressive policies to suppress the production, transport, and use of fossil fuels.

EPA Deadlines. A recent CEI study of 1,000 deadlines across the four major stationary source programs found that 84 percent of the EPA's CAA deadlines were late or outstanding by an average of 4.3 years. For industrial sector-wide regulations, such as NSPS and NESHAPS, the agency was late on average by 7.8 years. In reviewing State Implementation Plans (SIPs) to meet federal air quality standards, the agency was late on average by 1.9 years. The agency, not Congress, is to blame for its chronic tardiness. Rather than pursuing its non-discretionary responsibilities stipulated by Congress, the EPA has given priority to discretionary programs of its own choosing. For example, virtually all of the EPA's climate rules—including the Clean Power Plan, Carbon Pollution Standards for new power plants, methane rules for new sources, and hydrofluorocarbon rules—are not required by the statute.

Environmental Research Programs. Too often, the science agencies use to justify regulations fails to meet basic scientific standards, such as requiring the EPA to rely on the best available science and employ "weight of the evidence testing." As a result, agencies often use incomplete or questionable science to justify excessively precautionary policies that lead to bans or overregulation of consumer products because they include some chemicals, even if those chemicals are relatively safe and have

been used in consumer products for years without problems. Reforms to the Toxic Substances Control Act employ some sound scientific principles and therefore provides an opportunity to bring some accountability to programs that carry regulatory weight but are currently outside the official regulatory process. Bringing programs such as IRIS under TSCA will better use resources, eliminate duplication, and bolster accountability in how research is conducted.

For Further Reading

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