

# INTRODUCTION

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Over a year ago, the Competitive Enterprise Institute (CEI) decided to undertake a major project to reform the Environmental Protection Agency (EPA). Other agencies could have been the focus of such an endeavor, but when it comes to its regulatory effect on Americans, there is no agency that arguably has a bigger effect than the EPA.

This is in part reflected in the costs of the EPA's rules. According to the Office of Management and Budget, EPA regulatory costs account for more than half of all federal regulatory costs.<sup>1</sup> Considering all the agencies across the government, this is a startling figure. Despite these incredible costs, this does not come close to capturing the concerns over the EPA.

The EPA is supposed to protect the nation's environment, but it has become an agency that uses this mission as a means to regulate major portions of the economy and affect how we live our lives. This can be seen by its recent rules to help kill off gas-powered cars and to shift electricity generation from reliable sources (coal and natural gas) to unreliable sources (wind and solar).<sup>2</sup>

The scope of these rules is alarming. Too often, the agency pursues rules covering matters of vast political and economic significance even when Congress has not spoken clearly on the issue or even hinted at wanting the agency to take such actions.

The EPA is well known for ignoring the will of Congress, and this problem is only getting worse. The agency also acts as if the only thing that matters is achieving whatever environmental objective it is pursuing, without properly considering the costs and tradeoffs of its actions and the harm it can cause Americans. It also too often ignores the important role that states are supposed to play in environmental protection, as reflected in key statutes like the Clean Air Act and Clean Water Act. Some of these problems, such as a failure to properly consider costs and tradeoffs, also derive from the underlying statutes that the agency administers.

CEI's project on reforming the EPA is intended to be a thoughtful and comprehensive process to modernize the agency. The use of the word "modernize" is important. The goal is for the EPA to protect the environment in a manner that makes sense in 2025, not to act as if it is the 1970s, and to ensure the problems that have plagued the agency in the past do not occur in the future. To help modernize the agency, CEI needed to develop specific and concrete recommendations for Congress. That is where this book comes in.

## **The project**

Internally, as a matter of shorthand, CEI has simply called our work the "EPA Project." This started with getting insight and feedback from outside experts and speaking with allies. The next phase of the project is the book you are reading now.

CEI made specific decisions regarding the nature of this book. We wanted this to be a legislative blueprint for Congress. To make lasting changes, Congress needs to amend the many statutes that the EPA administers. It should be noted that while the book is focused on Congress, the recommendations throughout the book can help inform an administration about the policies it should focus on as well. While the recommendations may be legislative in nature, there are often ways that an administration can address the issues to some extent without Congress.

We wanted the book to be accessible to readers and to not simply jump in with recommendations. This meant we needed to explain the issues so that readers can understand why something is an issue in the first place.

The recommendations are intended to be specific and concrete and able to be turned into legislative solutions. We recognized that we needed to provide different types of reforms, even for the same specific issue. Therefore, in many instances, the book will discuss ideal solutions and then discuss secondary reforms. The chapters lay out initial background and then are followed by key issues that identify and distinguish the major problems that Congress needs to address through legislation.

After publication of the book, the next phase of the “EPA Project” will be working with whomever wants to join us in our effort to modernize the EPA. We want to work with legislators, the public, think tanks, and quite simply anyone, to modernize this agency so that it respects the rule of law and individual freedom, considers costs and tradeoffs of its rules, respects the role of states in environmental protection, and values scientific integrity and transparency, among other things.

But in this introduction, the focus obviously should be on the book, so let’s discuss what is contained in the pages that follow.

## **Organization of this book**

### **Key issues: At a glance**

This brief section lists the key issues that Congress should address, with specific recommendations for reform. It is an easy-to-read, at-a-glance list of what is being recommended in the book.

### **Chapter 1: “Modernizing EPA science policies”**

Marlo Lewis, a CEI Senior Fellow, provides an in-depth and comprehensive discussion about scientific integrity at the EPA. We intentionally chose to make the science chapter the first chapter because the issues it covers affect all regulations coming out of the agency.

In 2009, President Barack Obama issued a memorandum on scientific integrity, arguing that “the public must be able to trust the science and scientific process informing public policy decisions.”<sup>3</sup> He was absolutely right. Unfortunately, the EPA’s use of science does not make it possible for the public to have this trust. There is a lack of transparency. There is also a “trust us” mindset instead of making sure the public, including leading experts, can assess and challenge the

science used and disseminated by the agency. When the agency issues rules, the best available science should inform those decisions. Unless this is the case, the public would be right not to trust the agency's science nor the rules that are based on this flawed science.

## **Chapter 2: “Modernizing air regulation”**

Daren Bakst, CEI's Director of the Center for Energy and Environment focuses on modernizing the Clean Air Act (CAA). It is difficult to overstate the importance of needing to amend the CAA. Most of the agency's greatest overreach and sweeping regulations are CAA rules. Almost all of the agency's regulatory costs are connected to air regulations.<sup>4</sup> This chapter provides extensive background before getting into the different issues that need to be addressed by Congress, from greenhouse gas regulation to reforming the National Ambient Air Quality Standards process.

## **Chapter 3: “Modernizing water regulation”**

Tony Francois, an attorney at Briscoe Ivester and Bazel, LLP, focuses on reforming the Clean Water Act (CWA). The EPA, along with the US Army Corps of Engineers, in their implementation and enforcement of the CWA have consistently ignored the role of states and the importance of private property rights. Arguably, no environmental statute *directly* affects and hurts ordinary Americans more than the CWA. This includes horror stories of extreme enforcement of the law that hurts everyone from American farmers to families trying to build their homes. The chapter discusses the constant overreach of the EPA and the US Army Corps of Engineers in trying to regulate waters and what most people would consider to be land. It provides specific recommendations on how Congress should ensure that this overreach does not continue and how the due process rights of individuals are not trampled upon.

## **Chapter 4: “Modernizing chemical regulation and other critical regulatory issues”**

The chapter, written by numerous contributors, notably CEI Senior Fellow James Broughel and CEI Research Fellow Paige Lambermont,

discusses some cross-cutting risk issues, such as the precautionary principle, and discusses statutes such as the Toxic Substances Control Act, providing detailed recommendations for reform. It also discusses hazardous waste-related statutes, the Comprehensive Environmental Response, Compensation and Liability Act (also known as Superfund) and the Resource Conservation and Recovery Act.

## **Chapter 5: “Beyond regulation: Program and organizational changes”**

Daren Bakst, CEI’s Director of the Center for Energy and Environment looks beyond the many EPA regulatory issues. There is rightfully a lot of attention paid to the regulatory problems, however, there are many other issues that Congress needs to address at the EPA as well. This includes eliminating many programs addressing issues that are not the proper business of the federal government. Some of these programs, like environmental educational programs, are not just beyond what should be the substantive nature of the agency’s work, but also inappropriately meddle in what should be state or local matters or can be addressed by the private sector. This chapter discusses EPA Inflation Reduction Act programs, including those that amount to agency slush funds. There are also many organizational changes that should be made at the EPA, and this chapter addresses some of them, primarily those to help facilitate communication and promote transparency at the agency.

## **The big picture**

Everybody wants a clean environment. There are differences of opinion though in how the United States should go about achieving this objective. Too often, the level of concern for the environment is equated with the level of one’s support for an increasing federal role in environmental protection. This mindset shows a lack of respect and appreciation for states and individuals. It also fails to properly acknowledge the current state of the environment and the proper role of government in our lives. Our nation needs a clean environment not a heavy-handed federal regulatory agency to achieve this objective.

This book does not recommend eliminating the EPA. However, it does recommend major and much-needed reforms that would help put an end to the EPA's overreach, including keeping its focus on environmental protection and not using its environmental mission to act like a central planner for the entire economy. Many of the recommended reforms are made to the underlying environmental statutes because that is where the regulatory abuses would need to be addressed for lasting change.

There are common themes to the recommendations, including:

- ▶ Requiring the agency to consider all relevant factors when deciding whether to regulate;
- ▶ Acknowledging the environment as it is in today, not as it was in the 1970s;
- ▶ Prohibiting the agency from promulgating rules that go beyond the scope of what Congress intended or authorized;
- ▶ Respecting the rule of law, private property rights, and due process;
- ▶ Making regulatory decisions based on science that is transparent and open to challenge;
- ▶ Reasonably evaluating and assessing risk; and
- ▶ Respecting the role of states in protecting the environment.

We expect and hope that most readers sympathetic to the need to modernize the EPA will find a lot to like about the book and its recommendations. The book is by no means exhaustive, and we recognize that more issues and recommendations could have been included. However, the book, while not exhaustive, is certainly extensive.

We also recognize and expect that those who favor an increasing federal environmental role and more intrusive EPA will find plenty to dislike. We welcome thoughtful discourse on the issues, including with people who disagree with us. Inevitably though, there will be those who criticize the book and its recommendations in a manner that is

less than thoughtful. As is common when it comes to environmental issues, the far left will engage in name-calling, scare-tactics, and other actions that do a disservice to an important national conversation that is needed to modernize the EPA.

Our goal in developing the book is to provide a strong foundation for making specific changes to the EPA. Legislative change, especially changes to statutes like the CAA and CWA, will be difficult to achieve. However, administrative measures alone cannot adequately and durably address the challenges posed by the EPA to scientific integrity, the rule of law, and the prosperity and well-being of Americans. Alexander Hamilton called love of fame “the ruling passion of the noblest minds,”<sup>5</sup> and he was doubtless familiar with the old adage that “noble things are hard.”<sup>6</sup> Surely there are some in Congress today who will see opportunity in the hard task of modernizing the EPA.

CEI, through this book and the entire EPA Project, is prepared to start this much needed and important endeavor. Some reforms could get accomplished soon and others may take many years. Regardless, it is time for Congress to modernize the EPA. CEI is taking the initiative to help lead this effort, but it will take many people including readers such as yourself to help make meaningful changes at the EPA a reality.

We hope you will join us in this fight!