

KEY ISSUES AT A GLANCE

This section lists the key issues discussed in the book that Congress should address. Below these issues are specific recommendations for how Congress can address them.

Please note that some recommendations may preclude other recommendations. In many instances, the goal was to provide preferred options and then alternatives.

Chapter 1: Modernizing EPA science policies

Key issue: Require disclosure sufficient for replication

- ▶ Prohibit the EPA from funding particulate matter (PM) research or using such research to determine air quality standards or other critical metrics, unless all research materials are sufficiently transparent to facilitate independent validation
- ▶ Make data access a condition for receiving an EPA research grant or using a study to determine air quality standards or other critical metrics
- ▶ Facilitate independent review before a study is selected to inform rulemaking
- ▶ Require the EPA to weigh studies according to their reproducibility

- ▶ Prioritize quality over quantity in weight-of-evidence assessments
- ▶ Require each rulemaking to include a table showing whether the studies cited meet reproducibility criteria
- ▶ Require correction for the effects of Multiple Testing and Modeling
- ▶ Require p-value plotting to detect publication bias and data manipulation in meta-analyses

Key issue: Curb publication bias

- ▶ Replace the EPA-centric research funding regime with a decentralized system
- ▶ Limit EPA funding of PM research to the construction of datasets
- ▶ Require the EPA to set aside a percentage of PM health effects grants for replication studies

Key issue: Curb cherry picking

- ▶ Strengthen the Information Quality Act
- ▶ Facilitate public hearings on the scientific basis of rules
- ▶ Send the EPA questions it avoids answering

Key issue: Increase the balance and independence of EPA science panels

- ▶ Replace the EPA-centric funding regime with a decentralized system
- ▶ Disallow current recipients of EPA research grants from serving on advisory panels, and current panelists from applying for such grants

Key issue: Curb self-grading

- ▶ Strengthen and codify OMB's Information Quality Peer Review Bulletin

Key issue: Foster realism, balance, and objectivity in EPA climate assessments

- ▶ Codify, extend, and strengthen the D.C. Circuit’s requirement that models used in rulemaking should have a “rational relationship” to the realities they purport to represent
- ▶ Require the EPA and other federal science agencies to use the most accurate model or models when assessing climate change impacts
- ▶ Facilitate public hearings

Key issue: Remove social cost of carbon from regulatory development and benefit-cost analysis

- ▶ Prohibit the EPA and other agencies from using SCC analysis to either inform regulatory development or quantify regulatory benefits
- ▶ Facilitate the use of public hearings to challenge agencies’ use of SCC analysis in rulemakings
- ▶ Require agencies to publish side cases calculating SCC values with reasonable analytic alternatives

Chapter 2: Modernizing air regulation

Key issue: Eliminate or limit greenhouse gas regulation

- ▶ Expressly prohibit the regulation of greenhouse gases
- ▶ Clarify that the agency has the discretion *not* to regulate greenhouse gases
- ▶ Do not inadvertently authorize regulation of greenhouse gases or confuse greenhouse gases with “air pollutants” as properly understood
- ▶ Follow the recommendations in Chapter 1 including prohibiting the use of the “social cost” metrics of greenhouse gases
- ▶ Establish reasonable thresholds for the endangerment finding

Key issue: Reform the NAAQS process

- ▶ Set the standards
- ▶ Require Congressional approval
- ▶ Allow states to have a voice regarding more stringent standards
- ▶ Extend the time between reviews
- ▶ Clarify the role of science in regulatory decisions
- ▶ Require proper consideration of costs and tradeoffs
- ▶ Give states more flexibility with SIPs
- ▶ Change the exceptional events process
- ▶ Address problems with CASAC

Key issue: Remove language biased in favor of regulation

- ▶ Recognize that scientific conclusions alone should not trigger the decision to regulate
- ▶ Provide the EPA discretion on whether to regulate, while requiring that it properly consider the effects of regulations

Key issue: Reduce outside influence in setting EPA's air agenda

- ▶ Limit mandatory requirements, especially those triggering regulation

Key issue: Establish Boundaries the EPA May Not Cross in its Air Regulations

- ▶ Prohibit shutting down types of businesses, banning or limiting types of goods, and other actions that common sense tells us Congress never authorized

Key issue: Repeal or Limit California Waivers and Authorizations Under Section 209

- ▶ Repeal waiver and authorization authority under Section 209

- ▶ Clarify that the waiver and authorization authority does not apply to greenhouse gases
- ▶ Prohibit the EPA from granting a waiver or authorization to California that would exceed the agency's own authority
- ▶ Require California to consider the same factors as the EPA

Key issue: Prohibit unreasonable technological requirements

- ▶ Clarify that cost means all costs
- ▶ Prohibit the consideration of subsidies in justifying technological requirements
- ▶ Clarify that technological requirements must be technically and economically feasible

Key issue: Address the abuse of co-benefits

- ▶ Allow ancillary benefits to account for at most a marginal amount of the benefits compared to the costs
- ▶ Alternatively, allow ancillary benefits to account for under 50 percent of the benefits compared to the costs

Key issue: Repeal or limit the Regional Haze Program

- ▶ Repeal the Regional Haze Program
- ▶ Restore state primacy on regional haze

Key issue: Repeal or constrain the AIM Act

- ▶ Repeal the AIM Act as well as Title VI of the 1990 Amendments and withdraw from the Montreal Protocol
- ▶ Repeal the EPA's authority to add new regulatory restrictions
- ▶ Create regulatory relief specific to homeowners who are being hit very hard under the AIM Act
- ▶ Add a safety valve should regulatory costs prove greater than anticipated

Chapter 3: Modernizing water regulation

Key issue: Restrict EPA Regulation of Non-Navigable Waters and Transitory Water Features under the CWA

- ▶ Restore the traditional and clear definition of “navigable waters”
- ▶ Properly define adjacent
- ▶ Pursue other options to clarify the statute
- ▶ Use oversight and appropriations

Key issue: Put the exemptions back in the exemptions

- ▶ Make the exemptions more robust

Key issue: Require compliance with due process norms

- ▶ Provide Americans with the due process protections they deserve

Key issue: Make penalties rational and proportionate

- ▶ Eliminate annual inflation increases for daily penalties
- ▶ Limit fill violations to one and done
- ▶ Reduce penalties for non-polluting activities
- ▶ Protect “innocent landowners”

Key issue: Improve liability standards and citizen suit provisions

- ▶ Provide clear notice to landowners before citizen suits may be filed
- ▶ Improve the citizen suit provisions of the CWA

Key issue: Reform nationwide permits

- ▶ Remove bureaucratic limitations from nationwide permits
- ▶ Extend the availability of nationwide permits

Key issue: Reform the Section 401 certification process

- ▶ Clarify the limits of state 401 certification authority

Key issue: Eliminate the EPA’s veto of Army permits

- ▶ Eliminate the EPA permit veto

Chapter 4: Modernizing chemical regulations and other critical regulatory issues

Key issue: Require the EPA to abandon the precautionary principle

- ▶ Review and revise environmental statutes to avoid precautionary logic
- ▶ Require comprehensive and transparent presentation of risk data
- ▶ Require consideration of substitutes

Key issue: Limit the EPA’s use of the linear no-threshold model

- ▶ Require a comprehensive review of the scientific evidence supporting the LNT model
- ▶ Shift the burden of proof to the agency to demonstrate significant health risks from low-dose exposures
- ▶ Establish a “de minimis” dose below which regulation and safety measures can stop
- ▶ Adopt a mixed dose-response model for more tailored risk assessments or use alternatives to LNT to reflect the state of scientific uncertainty

Key issue: Eliminate the EPA’s IRIS program

- ▶ Wind down the IRIS Program
- ▶ Prohibit the use of legacy IRIS values
- ▶ Mandate that evaluations consider real-world context
- ▶ Make hazard assessments legally accountable
- ▶ Prioritize central risk estimates while accounting for uncertainty

Key issue: Reform TSCA

- ▶ Ensure that TSCA is implemented consistent with a risk-based approach
- ▶ Clarify the conditions for mitigating unreasonable risk
- ▶ Improve the new chemicals evaluation process
- ▶ Improve the existing chemicals risk evaluation process
- ▶ Eliminate non-mandated EPA programs that take resources away from TSCA implementation
- ▶ Require implementation guidance for risk management
- ▶ Strengthen the Section 21 petition process
- ▶ Improve the approach to test orders

Key issue: Reform FIFRA

- ▶ Require the EPA to pay for fee program delays
- ▶ Improve the oversight of important registration decisions
- ▶ Ensure the robustness of evaluations
- ▶ Improve Endangered Species Act (ESA) implementation
- ▶ Ensure uniform pesticide labeling
- ▶ Reaffirm the importance of state lead agencies
- ▶ Remove barriers to biotechnology
- ▶ Recognize the importance of plant biostimulants
- ▶ Create certainty for registration review
- ▶ Give some more flexibility for state registrations
- ▶ Increase coordination between the EPA and USDA
- ▶ Provide advanced notification and account for existing stocks
- ▶ Eliminate duplicative permitting

Key issue: Reform CERCLA

- ▶ Prune the National Priorities List to focus resources on the most important sites
- ▶ Allow states to assume the responsibility for long term monitoring of sites
- ▶ Specify that federal funds are only to be used to meet federal standards
- ▶ Transfer large river and harbor sites to the Army Corps of Engineers
- ▶ Eliminate the Superfund tax
- ▶ Allow simple Good Samaritan projects without triggering CERCLA liability
- ▶ Create a separate program for uranium mines on tribal lands
- ▶ Allow buyout of “reopeners” for cleaned up sites
- ▶ Eliminate the PFOA and PFOS designation

Key issue: Reform RCRA

- ▶ Clarify the definition of solid waste
- ▶ Require regulation of air emissions related to waste management to be addressed under the Clean Air Act
- ▶ Require all regulation of wastewater discharges to be regulated under the Clean Water Act
- ▶ Allow coal ash reuse as an alternative to current regulation and enforcement
- ▶ Recognize benefits of coal ash
- ▶ Make it easier to reuse coal ash
- ▶ Remove reverse distribution from RCRA and support the circular economy
- ▶ Eliminate land disposal restrictions

- ▶ Repeal and replace the e-Manifest law with a real electronic manifest system and not allow the EPA to create it

Chapter 5: Beyond regulation: Program and organizational changes

Key issue: Eliminate the Greenhouse Gas Reduction Fund

- ▶ Congress should eliminate the Greenhouse Gas Reduction Fund

Key issue: Eliminate environmental education programs

- ▶ Congress should eliminate the EPA's environmental education work

Key issue: Eliminate the Office of Community Revitalization and All of Its Programs

- ▶ Congress should eliminate the EPA's so-called community revitalization work

Key issue: Eliminate EPA's green purchasing programs

- ▶ Congress should eliminate the EPA's green purchasing programs and related work

Key issue: Eliminate the Office of Climate Adaptation and Sustainability

- ▶ Congress should eliminate this office and its work

Key issue: Eliminate EPA programs to electrify vehicles and equipment

- ▶ Congress should eliminate all EPA programs to fund the electrification of goods, including vehicles and equipment, and other programs to upgrade vehicle fleets

Key issue: Reform environmental justice programs

- ▶ Return the agency's environmental justice and civil rights work to where it was before

- ▶ Eliminate the Environmental and Climate Justice Program and any related programs
- ▶ Clarify the concept of environmental justice
- ▶ Eliminate the use of “equity” throughout the agency’s environmental justice work and across the agency

Key issue: Reform the regional offices

- ▶ Regularly review whether regional offices are serving their purpose
- ▶ Move or consolidate offices
- ▶ Create more political appointee positions

Key issue: Eliminate OECA and shift its work to other offices

- ▶ Eliminate the Office of Enforcement and Compliance Assurance and move existing OECA attorneys to the Office of General Counsel and OECA non-attorneys to the program offices
- ▶ Place greater emphasis on compliance assistance

Key issue: Require transparency in the EPA budget

- ▶ Require the EPA to provide a transparent budget