Just about nobody who's knowledgeable in the field thinks the U.S. electric grid can be made carbon free in ten years. Having spent the past two years lambasting the Trump Administration for ignoring the experts, I'm loathe to disagree with the expert opinion on this one. But even if the ten-year deadline set by supporters of the Green New Deal is unattainable, there's still an argument that it's useful to set ambitious, even if unattainable, goals.

There's precedent, after all. When they were passed, our environmental laws contained a series of wildly unrealistic deadlines for issuing regulations and cutting pollution. Since then, pollutions levels have fallen dramatically. For the same reason, the argument goes, setting a wildly optimistic deadline can help us fight climate change too.

I want to put aside the question of whether it's politically helpful or harmful to set wildly optimistic goals in statutes. The answer to that question may well be yes, though it's possible to imagine scenarios where this approach loses too many moderates or energizes a backlash. What I want to focus on instead is whether setting those goals actually did help to cut pollution.

If they did, it's certainly not because the deadlines were met. For instance, the Clean Water Act gave EPA less than a year to issue water pollution regulations covering all U.S. industries. They actually didn't get done until over a decade later. The original deadlines for compliance were extended by Congress, which also ratcheted down the standards. The Clean Air Act's deadlines were subject to numerous postponements, waiver requests, statutory amendments, and ultimately noncompliance. In fact, there's a lengthy portion of the statute that now deals with "non-attainment areas"–areas that have missed their deadlines, essentially imposing what amount to probation conditions intended to move them toward compliance someday.

Another possibility is that the deadlines helped communicate the seriousness of Congress's desire to cut pollution to audiences such as courts. As a rough test of that idea, I took a look at court cases citing section 101(a)(1) of the Clean Water Act, which announces a goal of eliminating water pollution by 1985. A Westlaw search showed that this provision has been cited around eighty times by the Supreme Court and the courts of appeals. The effect may have been greatest earlier in the life of the statute. That latest Supreme Court cite is 1987, and seventy percent of the courts of appeals cites are before 1990. Still, even today, there are some cites, and the ones I looked at did refer to this provision as evidence of Congress's determination.

On the other hand, these seem to be a very small subset of all Clean Water Act cases. I did

a search for courts of appeals and Supreme Court cases using the name of the statute (Clean Water Act or the earlier Federal Water Pollution Control Act) plus the terms “water pollution” and “pollution control”. That turned up over thirteen hundred cites, about half before 1990. So if there is a signal to the courts about the seriousness of Congress’s intent, it’s not one that they refer to terribly frequently. Of course, by its own terms, the 1985 deadline was only aspirational, so it may carry less of a message than a deadline that has actual legal effect.

I do think, however, that there are other mechanisms by which unrealistic deadlines may actually help. First, it may not have been immediately clear that the deadlines weren’t completely serious. So at the beginning, industry may have reacted as if they were, putting a lot of effort into improving pollution control. Second, although it became clear after a few years that the deadlines were subject to delay, the burden of inertia rested on the industry. It was industry, not pro-regulatory forces, that had to go back to Congress to seek relief or petition agencies for waivers and extensions. This meant that opponents had leverage to exact terms that forced further progress by industry. This was something of a serendipitous benefit, because Congress had little reason to anticipate that what was then a huge national consensus in favor of environmental protection would collapse a decade later.

This wasn’t a controlled experiment. California has done very well cutting carbon emissions with a series of ambitious but attainable targets, which so far actually have been attained on schedule. That strategy might not have worked so well for the federal pollution laws, at least after the early 1980s when there was no longer a consensus for tightening standards.

There are also downsides to the “impossible deadline” strategy. It lends itself a certain cynicism about statutory requirements, which like speed limits, start looking more like guidelines than strict rules. This might ultimately lead courts or even administrators think that other statutory rules should also be treated as aspirational rather than legal mandates, creating more uncertainty for industry and potentially watering down other legal requirements. Another risk of artificially brief deadlines could be procedural shortcuts – for instance, the only way to build the infrastructure required for the Green New Deal in ten years is probably to truncate public participation and environmental reviews.

In the end, there’s probably no way to be sure whether aspirational deadlines promote or impede progress. My own inclination is against knowingly passing unworkable laws. But there’s a reasonable argument on the other side, especially if we believe that support for climate mitigation may later flag.