

We've now had nearly four years of Trump's all-out war on environmental protection. Trump has single-mindedly tried to wipe out every trace of Obama's legacy. It's time to see what's left of Obama's achievements. And what could a new President do to revive his legacy?

In a [Legal Planet post](#) a week before the last Presidential election, I compiled a list of Obama's environmental achievements. I added, "We can only hope that next Tuesday's election doesn't undo many of these gains." Sadly, things turned out badly. If we do get a more environment-friendly Administration for 2021, a key priority will be addressing Trump's regulatory rollbacks.

The 2016 post included a list of twenty environmental achievements. Here's where we stand on those twenty and what a new President might do.

### 1. **Jumpstarting the green economy.**

The [stimulus](#) provided \$90 billion dollars for a bevy of green initiatives, including \$29 billion for improving energy efficiency, \$21 billion for renewable energy generation, \$10 billion for the grid, \$18 billion for rail, and several smaller initiatives. The program was a great success and the renewable industry has been thriving.

**Recommendation: revive the green stimulus, which we need more than ever after the environmental crisis.**

### 2. **EPA Endangerment Finding.**

For the first time, EPA made an official finding under Obama that greenhouse gases (GHGs) endanger human health and welfare. This finding was upheld by the D.C. Circuit Court of Appeals; the Supreme Court declined review. There was a lot of talk early in the Trump Administration about repealing the endangerment finding, but it came to nothing. *Unaffected by Trump.*

**Recommendation: No action needed.**

### 3. **Greenhouse Gas Standards (GHS) for New Vehicles.**

EPA issued the "tailpipe" rule, cutting CO<sub>2</sub> emissions from new cars by almost a billion tons. This was also upheld by the courts. Trump took advantage of a mid-course review to reopen the rule for the 2020-2025 period and has now reduced

annual efficiency improvements in that period from 4% to 1.5%. The Obama Administration also granted California permission to impose its own limitations on carbon emissions from vehicles. The Trump Administration is attempting to withdraw that permission, an issue that has bitterly divided the car industry.

**Recommendation: Reissue California waiver, request that court stay Trump rollback, reopen rule-making and strengthen national car standards beyond Obama level.**

#### **4. GHG Standards for Power Plants and Factories.**

At the same time as the “tailpipe” rule, Obama’s EPA issued a rule requiring GHG cuts for major new facilities; most of that rule was upheld by the Supreme Court. More importantly, Obama’s EPA issued the Clean Power Plan, addressing emissions from existing power plants. The Trump EPA has repealed the Plan and replaced it with a token restriction on power plant emissions.

**Recommendation: ask court to stay litigation while EPA considers repealing Trump rule.**

#### **5. Mercury Controls for Power Plants.**

Using its authority to regulate toxic chemicals, EPA established a rule cutting mercury emissions, which will save thousands of lives, primarily by cutting dangerous particulates. Trump’s EPA is has now retracted the underlying justification for regulating in the area but not the rule itself. (Yes, I know that sounds weird, but that’s what they’ve done.) The industry has essentially complied with the rule at this point. Utilities were opposed to reopening the issue, fearful that any legal doubts about the Obama rule will imperil their ability to recover their compliance costs from ratepayers.

**Recommendation: Ask court to stay litigation while Trump rule is reconsidered.**

#### **6. Social Cost of Carbon.**

For the first time, the government tried to measure the harm that CO<sub>2</sub> causes, for purposes of future cost-benefit analyses. The Trump Administration slashed the figure but still acknowledges that carbon emissions are costly to society.

**Recommendation: Immediately reinstate Obama rule, convene task force to consider raising the social cost of carbon.**

## **7. National monuments.**

Obama established more national monuments than any other president in history. They also cover more acreage than any previous president's. Trump has attempted to shrink the boundaries of two monuments (Bears' Ears and Grand Staircase/Escalante).

**Recommendation: Restore boundaries of national monuments immediately.**

## **8. Oceans.**

Obama designated some 580,000 square miles off Hawaii as a national monument. Trump hasn't attempted to shrink that monument. Obama also cleaned up the mess from the BP Deepwater Horizon Oil Spill, twisting BP's arm into setting up a compensation fund for victims, and then ultimately obtaining billions of dollars in criminal and civil penalties. He also reformed regulation of deepwater drilling after the disaster, which Trump of course has been vigorously attempting to undo.

**Recommendation: restore regulations governing deepwater drilling. Halt issuance of new leases.**

## **9. Toxic Chemicals.**

Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which finally fixed the nearly moribund Toxic Substance Control Act. He also signed the Food Modernization and Safety Act in 2011, which substantially strengthened the FDA's power to safeguard the food supply. Given the near-total gridlock of today's Congress, obtaining any new legislation is something of a minor miracle. These statutes are still there, though haltingly implemented by Trump.

**Recommendation: make vigorous implementation of the Lautenberg Act an EPA priority.**

## **10. Interstate air pollution.**

EPA established its first major rule addressing interstate transport of particulates

and ozone, something that had been attempted unsuccessfully by the Bush Administration. The Trump Administration has not attacked this rule.

**Recommendation: It now appears that the Obama rule was not strong enough. Begin rule making to strengthen the rule.**

### **11. Keystone XL Pipeline.**

Obama blocked construction of this pipeline to take Canadian tar sands oil to market. Trump has OK'd it, but it's still not clear whether the pipeline will ever be built.

**Recommendation: Withdraw federal permits for project.**

### **12. Mountaintop mining.**

In decisions in 2013 and 2016, the D.C. Circuit upheld the Obama EPA's effort to curb mountaintop mining, an extremely destructive variant on strip mining, even when that means withdrawing or modifying an existing permit. A rule that would have provided more protection for streams was overturned in 2017 by the GOP Congress.

**Recommendation: Use permit process to challenge mountaintop mining projects.**

### **13. Endangered species.**

The Obama Administration listed over 300 endangered species, bringing them under the protection of the Endangered Species Act. The Trump Administration is trying to weaken protection of future species and avoided listing anything new, but hasn't embarked on a delisting campaign.

**Recommendation: restart listing processes for new species; reconsider new regulations.**

### **14. Fracking.**

In 2015, Obama issued new rules regulating fracking on public lands, designed to protect against groundwater pollution. EPA followed up with rules to restrict methane emissions from natural gas operations. Trump is attempting to roll

everything back.

**Recommendation: Ask courts to vacate and remand Trump rules for further consideration.**

### **15. Energy efficiency.**

In December 2015, the Department of Energy issued a standard governing commercial air conditioners and furnaces, which covers heating and cooling for about half of the country's commercial space. The new rule was estimated to save a total of \$167 billions in energy costs and reduce carbon emissions by 885 megatons. The rule has not been repealed. However, DOE has attempted to make it difficult to tighten efficiency rules in the future and has rolled back some other efficiency rules (especially with respect to lighting).

**Recommendation: restore lighting efficiency rules.**

### **16. International mercury agreement.**

The Obama Administration entered into the Minamata Convention on Mercury, which bans mercury mining and regulates mercury products, processes, and pollution. Trump hasn't pursued ratification but hasn't withdrawn from the treaty.

**Recommendation: Pursue ratification in the Senate.**

### **17. Coal ash.**

EPA issued the first-ever regulation of coal-ash impoundments, imposing new requirements for structural integrity and for groundwater protection. The Trump Administration has proposed rollbacks.

**Recommendation: Halt rollback efforts.**

### **18. Stricter air quality standards.**

After dodging the issue in the run-up to the 2012 election, the Obama Administration finally issued a new air quality standard for ozone, cutting the allowable level from 75 to 70 ppb. In November 2019, EPA staff recommended keeping the Obama standard intact. In 2013, EPA had also issued a new standard for particulates, cutting the permissible level of PM<sub>2.5</sub> from 15 micrograms per cubic

meter ( $\mu\text{g}/\text{m}^3$ ) to  $12 \mu\text{g}/\text{m}^3$ . Trump has frozen the Obama standard although there's considerable evidence in favor of tightening it.

**Recommendation: Ask courts to vacate and remand Trump rule for further consideration.**

### **19. Protecting wetlands.**

The Obama EPA issued the Water of the United States (WOTUS) rule, which clarified the reach of federal jurisdiction over wetlands. Trump has come up with a new rule drastically cutting federal jurisdiction. We'll have to wait for the legal challenges.

**Recommendations: Ask courts to stay litigation pending reconsideration. If that fails in some courts, join plaintiffs in seeking to strike down Trump rule.**

### **20. International climate negotiations.**

Last but far from least: President Obama succeeded in negotiating the 2009 Copenhagen Accord and more recently the 2015 Paris Agreement, the first international agreement including developing nation commitments to address emissions. Obama was successful in negotiations to curb super-strong greenhouse gases using the Montreal Protocol and in negotiations for emissions limitations on commercial aviation. Trump is withdrawing the U.S. from the Paris Agreement, but the Agreement remains otherwise intact with every other nation in the world on board. The U.S. has not yet ratified the amendment to the Montreal Protocol. The aviation agreement is still in effect.

**Recommendation: Rejoin Paris Agreement on Day 1. Seek ratification of the Montreal Protocol amendment.**

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This list makes it clear just how strenuously the Trump Administration has tried to eliminate to eliminate every possible form of environmental protection. The Obama legacy is in critical condition, but it's not too late to stop the bleeding and revive it.