After almost four years of Trump, federal environmental protection is in about the same shape as Western Europe at the end of World War II, filled with bomb craters and destruction. If the election turns out in Biden's favor, he will be faced with the task of rebuilding from the smoking ruins.

Here are some initial, somewhat tentative thoughts about "rebuilding better." One component of being "better" is "less vulnerable to being axed by conservative judges."

Reconstructing Regulation

Executive orders can be easily undone, but regulatory change is a different matter. Rolling back regulatory rollbacks can't be done overnight. Many of the Trump rollbacks with the largest environmental impacts also involve the most complex issues. undoing those rollbacks will take a lot of time and agency resources.

I think we should resist the impulse to think that the goal is to restore Obama regulations with some added oomph. The legal terrain has changed in some important ways in the past four years. Mega-regulations — those that take on major issues in novel ways — are a riskier proposition due to the rightward shift of the judiciary (particularly the replacement of Kennedy by Kavanaugh).

More importantly, during the Trump years, the world itself has changed in important ways. Renewable energy, electric vehicles, and energy storage have all become cheaper and more widespread. Despite Trump, coal use will be a third lower in 2021 than it was in 2016 because it is no longer an economically appealing fuel. Artificial intelligence offers new ways of integrating technologies with the grid. Corporate strategies have shifted in reaction to these changes and to pressure from the public and investors. And the number of state governments embracing serious renewable energy and climate policies has grown dramatically. Issuing stricter versions of Obama-era regulations may not be the way to go under changed circumstances.

We may want to consider a different suite of regulatory strategies if our goal is to accelerate the transformation that is already underway within the power industry. Here are some things we might want to be thinking about.

I wonder how much EPA could leverage the rules governing areas that violate federal air pollution standards (including many major urban areas) to foster transition to clean energy. Given the availability of inexpensive renewables and

electricity storage, those areas should be expected to clean their air more quickly. That would only work in certain areas, but might be useful in Texas, Pennsylvania, and some midwestern states like Ohio. Strengthening regulation of cross-state pollution would also pressure some states, particularly in the midwest, to shift away from fossil fuels. Outside of EPA, FERC and DOE may play crucial roles in pushing states into opening their energy systems to renewables and helping them manage the transition.

In terms of a more frontal attack on carbon emissions by EPA, I'm inclined to think we shouldn't put all of our eggs in one basket. The Obama regulation of carbon from power plants was based on section 111(d) of the Clean Air Act. It's not clear whether the Supreme Court will accept that approach. As a hedge against the litigation risks, we may want to consider a second regulation under section 115, which deals with international pollution. Both the Obama approach and use of section 115 have litigation risks, so it may be better not to rely on either one exclusively. The two regulations could be designed to complement each other.

Other aspects of Obama's regulations seem legally unproblematic and should be readopted in stronger form. Those include restrictions on methane emissions in the oil and gas industry, fuel efficiency standards for cars and trucks; and energy efficiency standards for appliances and lighting.

Actions Other Than New EPA Regulations

We may also want to consider some approaches beyond enacting new regulations. The most obvious is spending money on green infrastructure, *á la* the Green New Deal. Another nonregulatory option involves enforcement. Enforcement of environmental laws has virtually collapsed under the Trump Administration. It should not only be jumpstarted again, it should be targeted at companies with high carbon emissions. Trump's EPA, of course, has no interest in enforcement of any kind.

Private climate action could also be given additional substance. Corporate promises of emissions reductions could also be given more credibility — for instance, the FTC might set standards on how companies need to monitor and report emissions if they make such claims. Pressure could be put on utilities by rating their emissions against other utilities in the same region. The Clinton Administration's efforts to promote voluntary action fizzled, but a lot has changed since then. Regulatory

certainty and reputational capital are worth a lot to companies today. I wonder whether the California's deal with five major carmakers could be a model for similar kinds of agreements at the federal level with companies in other sectors.

I'm not suggesting that any of these ideas are substitutes for serious regulatory initiatives, still less that we should just let the Trump Administration's rollbacks remain on the books. I'm only suggesting that we should develop a broad portfolio of climate actions, rather than being focused exclusively on restoring past regulations. Given that the economics now favor more use of renewables, the biggest problem in many states is simply efforts to protect their prior investments in outmoded power plants. That's a different situation than the Obama people faced when they were writing their regulations.

Conclusion

I really want to stress again the major "if" surrounding all this. The idea of the U.S. government fighting climate change could be nothing but a pipe dream come November. If climate deniers remain in control of the federal government for another four years, an entirely different set of strategies will be required.

However, if advocates of climate action do end up in power, they'll need to be smart and creative as well as dedicated and politically astute. I admire the efforts made by the Obama Administration. In a few short years, however, we find ourselves in a very different situation, and we need to be open to different solutions.