

January 19, 1993

HOW TO HELP THE ENVIRONMENT WITHOUT DESTROYING JOBS

I believe it is time for a new era in environmental protection which uses the market to help us get our environment back on track - to recognize that Adam Smith's invisible hand can have a green thumb ... [In] certain settings, this results-oriented approach can cut compliance costs, shrink regulatory bureaucracies, enlist corporate support, take environmental policy away from the specialists and lobbyists, and open it up more to the general public.

Bill Clinton, Drexel University, Earth Day, April 22, 1992.

EXECUTIVE SUMMARY

President-elect Clinton, if you really intend to use market forces to reach reasonable environmental objectives, and make results the test for legislative or regulatory action, that truly would be a welcome and positive change in environmental policy. To accomplish this sensible change, you will need to address a number of issues from a fresh perspective. If you do so, you have the opportunity to end the traditional conflict that pits environmental protection against jobs, and give substance to your campaign claim that the conflict is a "false choice."

If you do not approach environmental policy in this different way, however, and instead merely add a new layer of environmental regulations to existing ones, you are doomed to fail not in only your economic mission, but in your environmental mission as well. Contrary to the "false choice" argument, today's environmental policies generally do pit environmental protection against jobs. And the longer the list of environmental regulations, the longer the unemployment lines.

To give Adam Smith a green thumb, as you say you wish to do, will require carefully crafted action on environmental issues. Five in particular will confront your new Administration:

1) **Superfund.** Superfund legislation will be up for reauthorization next year, providing an excellent opportunity for reform.

2) **Global Warming and Carbon Taxes.** Last year's Earth Summit did not put this issue to rest. There is likely to be a bill introduced in Congress to combat the alleged global warming problem, through the creation of a tax on carbon dioxide emissions.

3) **Fuel Economy Standards.** There is certain to be legislation introduced to raise the average fuel economy for a car maker's fleet to 40-45 miles per gallon.

4) Wetlands. Wetlands disputes continued throughout the Bush Administration without resolution. This year, the final resolution of the subject will rest on your shoulders.

5) Solid Waste and Recycling. Solid waste legislation is up for reauthorization, and some in Congress wish to alter radically the substance of the Act.

Addressing these and other environmental issues from the sound approach you have outlined requires you to shape policies using three underlying techniques:

- ✓ **Use of markets and property rights** where possible to distribute environmental “goods” efficiently and equitably. This will help you to promote conservation and reduce pollution to acceptable levels.
- ✓ **Base policies on sound and credible science**, to ensure that problems are real, and to determine the true levels of risk. This will mean ignoring orchestrated media hysteria and “expert” testimony by movie stars, and asking instead for hard scientific evidence.
- ✓ **Develop a priority list of environmental problems**, based on the extent of the possible harm each appears to pose and the cost of reducing that harm to acceptable levels. This will allow Americans to receive the maximum environmental “bang for the buck”—or to achieve environmental objectives with the fewest pink slips for American workers.

Applying these techniques to the major environmental issues before you suggest a number of specific actions you should take.

SUPERFUND

Action 1: Require the Environmental Protection Agency (EPA) to set immediately a specific cancer risk level that it defines as an unacceptable risk. Currently, EPA can choose between different risk levels to apply in its determination of whether a particular site poses a cancer risk. This gives arbitrary power to bureaucrats without giving Americans a guaranteed degree of safety.

Action 2: Factor real exposure levels into decisions to list sites for clean-up. Sites should be listed for remediation only if they actually will expose people to risk.

Action 3: Require EPA to develop within six months a list for different Superfund site characteristics, together with the required level of clean-up for each site. It is unnecessary to clean-up all sites to the same degree; some pose more risk than others.

Action 4: Draw up a priority list for clean-up of orphan Superfund sites based on the site characteristics developed by EPA, the exposure classification, and the estimated remediation costs. Essentially the list should correspond to a formula, determining overall risk per dollar of remediation costs. This will end the current system of relying on ad hoc decisions as to which sites are more important.

Action 5: Immediately instruct EPA to require lowest-bid contractors to post assurance, such as an interest-bearing bond, when awarded contracts for remediation of orphan sites. This will reduce the overall cost borne by the government.

Action 6: Urge Congress to require private parties responsible for remediation of privately owned sites that are listed as potential Superfund sites, or low priority sites, to

provide assurance. This will ensure that monies remain available for remediation even if the private party goes bankrupt. Meanwhile, society's economic resources will not be squandered on sites that may never pose a threat.

Action 7: Urge Congress to reform Superfund's inequitable methods for findings of liability.

Joint and several liability currently applies to findings of liability for remediation of Superfund sites. This means that those responsible for only minute quantities of hazardous waste become liable for the full costs of multi-million-dollar clean-ups. Further, innocent owners who purchased their property before passage of Superfund legislation should not be liable for the clean-up of their property since they neither contaminated the sites nor were given notice of liability.

GLOBAL WARMING

Action 1: Pledge continued support for increasing funding levels for global climate change research. Most of what we know about global warming has been learned within the last three to four years, thanks to increased research. This trend should continue.

Action 2: Within 100 days, open up the relevant government archives to researchers, subject to national security concerns. This would allow researchers to gain access to a wealth of raw data collected over the decades by America's intelligence agencies. Any access must, of course, be tightly controlled and limited to this purpose.

Action 3: Announce that you will oppose legislative efforts to impose a carbon tax. A carbon tax would cause the loss of an estimated 600,000 jobs and cost the nation approximately \$100 billion per year. This is too great a price to pay to insure against the possible consequences of an unproven theory in light of more reasonable approaches — such as increasing the knowledge base.

FUEL ECONOMY (CAFE)

Action 1: Announce immediately that you will veto legislative attempts to raise CAFE standards. The Corporate Average Fuel Economy (CAFE) standards regulate the average miles per gallon that a car maker's fleet must obtain. Advocates of raising the current standard from 27.5 mpg to 40 or 45 mpg ignore the fact that this policy change will result in thousands of avoidable highway fatalities.

Action 2: Press for new legislation to replace CAFE standards with pollution fees. These would be directly proportional to the amount of pollution emitted from automobile tailpipes, making polluters pay the costs of their actions.

WETLANDS

Action 1: Instruct EPA to exclude from protection those wetlands from which pollutants cannot in practice migrate to "waters of the United States." These would include wetlands where the physical structure or location of the wetlands makes it impossible for pollutants to migrate to a "water of the United States" — the term used in legislation — via normal water flows. This will return the protection of wetlands to its original meaning.

Action 2: Within the first 100 days, issue an executive order requiring the government to pay landowners the value of their confiscated property rights when development is denied to protect societally beneficial wetlands. It antithetical to the American system of government not to do so. If government confiscation of private property rights benefits the public, the public should pay for it — not some hapless landowner.

Action 3: If you want to protect all wetlands—even those where pollutants cannot migrate to “waters of the United States”—enact a Wetland Protection Act giving EPA the authority to do so. Currently, the authority is lacking.

SOLID WASTE

Action 1: Announce that you will oppose mandatory recycling or packaging reduction legislation. This will allow the nation to devote its scarce economic resources to truly important environmental problems.

Action 2: Within the first 100 days, issue an executive order to eliminate most of the current costly landfill regulations and require financial assurances from operators. This will allow operators to devise the least costly way to contain pollutants. This order should require landfill operators to provide financial assurances, such as interest bearing bonds, to assure compliance or funds for clean-up.

President-elect Clinton, you said during your Earth Day speech last year that you prefer using markets to regulation. Now is the time to translate that preference into public policy. This will take backbone. Although you want to “open [environmental policy] up more to the general public” by instituting market reforms, you will face fierce opposition from environmental lobbyists that have a strong vested interest in the regulatory status quo. But if you wish to use markets to increase protection of the environment without destroying jobs in the process, you must fundamentally overhaul the methods used by government.

Specifically, you must replace Superfund and landfill regulation with a system of financial assurances. You also must substitute for CAFE standards, which needlessly squander lives, a system of fees based on the amount of pollution emitted from automobile tailpipes. You must pay landowners for the value of the property taken in wetlands-regulating confiscation. And you must quickly and exponentially increase our knowledge of the global warming issue through fostering increased research and by opening up the relevant archives. Simultaneously, you should resist imposing a economically devastating carbon tax that will throw hundreds of thousands of Americans out of work to address what may be a theory full of “hot air.”

Finally, and most important, you must create a priority list of environmental concerns. Base this list on the extent of the harm caused by the problem divided by the cost to address the problem. This will provide you with a mechanism to obtain the maximum environmental protection possible for the amount of economic resources used. Without this list, costs will be needlessly high and environmental protection will be needlessly low.

SUPERFUND: REFORM BASED ON RISK

The Superfund legislation was enacted in 1980, under the formal name of the Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA (pronounced *sir-kluh*). CERCLA has failed utterly in its mission of cleaning up old hazardous waste sites. Billions of dollars have been spent, but large portions of this money has been spent on legal

costs, not clean-up. In fact, only 149 of the 1,275 listed superfund sites have been cleaned up. To clean the remaining sites, EPA's costs alone—excluding the costs to businesses and insurance companies—will run approximately \$40 billion. Also many more sites will be listed, thus driving costs up even higher. Total costs to the nation in the next thirty years are estimated at \$300 billion in 1990 dollars.¹

Although EPA has considerably improved its oversight management of this program since the mid-1980s, the agency still has a long way to go. Many of the factors evaluated in the site listing process are given varying importance, depending on the particular EPA decision-maker. The uncertainty and poor decision-making that can result from this practice needs to end. Moreover, Congress should recognize that, while the legislation was well-intentioned, it has become a vehicle to prosecute innocent landowners and businesses through the liability laws applicable under CERCLA. Not only that, the distorted legal framework for findings of liability unnecessarily depresses the real estate market by discouraging lenders from making loans. Bills have been introduced in Congress and rules have been proposed by EPA to resolve this problem.² But the issue remains unsolved.³ Congress should remedy this situation.

The key changes needed:

Action 1: Require EPA to set immediately a specific cancer risk level that it defines as an unacceptable risk.

Currently, EPA uses a range of "risks" to define when the probability of contracting cancer crosses the line from being an acceptable risk to an unacceptable risk. So one EPA official may consider a site to be "hazardous," and thus subject to Superfund legislation, if the risk of cancer from the materials at the site is one in ten thousand over a lifetime. But another EPA official may use a risk level of one in a million to determine if a site is "hazardous." Still others may use various different risk levels, depending on the site being examined.

There is no justification for using a range of risk. The problem is obvious. This range results in some unnecessary site clean-ups and some sites remaining unlisted which possibly should be cleaned up.⁴

Mr. Clinton, you should instruct EPA to choose a single, specific risk level that is acceptable, and to justify that decision. From that point onward, EPA's discretion to pick an arbitrary standard should cease.

Action 2: Factor real exposure levels into decisions to list sites for clean-up.

The Office of Technology Assessment has found that clean-up decisions at the majority of Superfund sites are based on hypothetical future risks rather than on actual or likely risks.⁵ This means that remote or inaccessible contaminated sites that pose no current or even any likely future danger to people's health are given just as high a priority as sites that expose people to a real present danger.

¹ General Accounting Office, "Superfund Program Management," High Risk Series, December 1992.

² For example, in Congress, H.R. 4494 was introduced by Representative John LaFalce and S. 2827 was introduced by Senator Jake Garn in 1990; the proposed EPA rule was published in the Federal Register, June 24, 1991, 5(121), p.28798.

³ Jan Paul Acton, Lloyd S. Dixon, Superfund and Transaction Costs: The Experiences of Insurers and Very Large Industrial Firms," The Institute for Civil Justice, Rand, 1992.

⁴ "Striking a Better Balance: Improving Superfund Clean-up Decisions," Report to Coalition on Superfund, Arthur D. Little, Inc., May 1992, page 18.

⁵ "Coming Clean: Superfund Problems Can Be Solved...," Office of Technology Assessment, October, 1989.

Superfund sites should instead be classified based on categories of actual, likely, and potential risks of human exposure to the site. The way to do this, Mr. Clinton, is for you to instruct EPA by executive order to classify sites according to these categories. The exposure level risks within each category should be given a numerical weight by the EPA so that the relative risk of each site can be determined.

Action 3: Require EPA within six months to develop a list for different Superfund site characteristics, together with the required level of clean-up for each site, such as an industrial or residential area.

Within each site type, EPA would then assign a different level of clean-up required, with justification for the designated level. For instance, in a residential area, where the risk of exposure to children playing in contaminated soil is relatively high, the de-contaminated soil would need to be cleaner than the de-contaminated soil in, say, a warehouse park, where less direct exposure would be anticipated. A range of clean-up requirements of this kind would cut Superfund compliance costs at some sites enormously, thus reducing CERCLA's burden on the economy.

Action 4: Based on the site characteristics developed by EPA, draw up a priority list for Superfund clean-up.

To deal with this, you should instruct EPA to develop a priority list for superfund clean-up. This priority list would be based on the exposure classification and the type of site, as well as estimated remediation costs. The list would be derived from a formula allowing EPA to arrive at an overall risk per dollar of remediation costs. This can be accomplished by issuing an executive order.

Action 5: Immediately instruct EPA to require lowest-bid contractors to post assurance, such as an interest-bearing bond, when awarded contracts for remediation of orphan sites.

Whenever solvent liable parties cannot be found to clean up old hazardous sites, the government becomes responsible for these "orphan" sites. Contractors for orphan site remediation often have been paid substantial sums even if no work is performed. Worse, contractors that fail to clean up a site properly increase the total costs borne by the government—and ultimately the taxpayer.

Under new rules, lowest-bid contractors of orphan sites should be required to post an interest-bearing bond when awarded remediation contracts. This would ensure that monies were available for remediation if the contractor improperly cleaned the site or became insolvent. Contractors should be made legally liable for the remediation and be given total freedom to choose methods of clean-up without permission from the government. If the contractor failed to remediate the site adequately for any reason, then the bond would become forfeit and another contractor could be selected and paid with the bond proceeds.⁶

Action 6: Urge Congress to require private parties responsible for remediation of privately owned sites that are listed as potential Superfund sites, or low priority sites, to provide assurance.

⁶ See Richard Stroup, "Selling Orphan (Superfund) Sites," Political Economy Research Center, Bozeman, Montana, September 25, 1988.

In dealing with potential, or low priority, Superfund sites, EPA is faced with a dilemma. If solvent liable parties can be identified, the government is encouraged to require remediation; if it waits, the liable parties may become insolvent, leaving the government with an orphan site. Yet the site may never pose a threat to warrant clean-up. To avoid the unnecessary costs resulting from this situation, liable parties should be required to provide assurance.

Action 7: Urge Congress to reform Superfund's inequitable methods for findings of liability.

Two particular changes are needed. The first is to eliminate joint and several liability. This concept is a sham designed to find somebody—anybody—other than Uncle Sam to pay for clean-ups of hazardous waste. Under the doctrine the “responsible” person often has no part or only a small part in creating the waste problem. If, say, someone has caused 2 percent of a hazardous waste problem, that individual or institution will become liable for the full cost of the remedy. In practice, this means that a firm with “deep pockets” pays for the clean-up of wastes created by another individual or firm. The law should be amended to require that the percentage of clean-up costs for which an individual or body is liable is no greater than the percentage of the contamination they contributed.

The second necessary change is to divorce the status of property ownership from findings of liability.

What happens today is that a landowner who bought property that was contaminated before 1980, when Superfund was enacted, is legally responsible for the total cost of clean-up. Yet the owner neither caused the waste nor could be given notice of liability for any clean-up, since Superfund was not law at the time. This ownership basis for liability leads to a host of problems. One is that it makes lending institutions wary of repossessing properties in default because the lender would then become liable for cleaning up any old hazardous wastes that may be on the property. And since the collateral provides less security because the lender is wary of foreclosure,⁷ the lenders are less willing to make loans. This depresses segments of the real estate market.

GLOBAL WARMING

Global warming, also known as the “enhanced greenhouse effect,” is a theory that has gained growing attention over the last decade. Basically the theory predicts that human-caused greenhouse gases such as carbon dioxide will increase the average temperature of the earth. This theory is the mirror image of the ice age theory popular about fifteen or twenty years ago. Although the vast majority of climate change scientists do not believe a runaway greenhouse effect will occur, a vocal minority has maintained its probability.

Although a severe greenhouse effect is improbable, whether more minor atmospheric changes will occur within the next century is subject to much debate.⁸ If warming does occur, however, most of the temperature increase would occur at night and at high latitudes, which could be beneficial, rather than increasing daytime high temperatures. Moreover, most of the models upon which climate change predictions are premised have been flawed. For instance, one of the most widely known models effectively moved the earth's orbit 2 million miles closer to the sun.⁹

⁷ See footnotes 2 and 3 and accompanying text for a brief description of actions proposed to correct this problem.

⁸ John Shanahan, “Guide to the Global Warming Issue,” Heritage Foundation *Backgrounder* No. 896, May 21, 1992.

⁹ The study, by Sukryo Munabe and Richard Wetherald of the National Oceanic and Atmospheric Administration (NOAA) in 1975 noted that it had increased the sun's output by 6 percent above its actual output, which is equivalent to moving the earth's

Action 1: Pledge continued levels of research funding on global climate change.

Most of what scientists know about global climate change has been learned within the last three to four years due to the Bush Administration's massive research effort. The U.S. now spends about \$1.4 billion per year—more than all other nations on earth combined—on climate research, and the funding has been going up at the rate of about 25 percent per year. It is likely that our knowledge will grow ten-fold again within the next five years.

Action 2: Within 100 days, open up the relevant federal archives to researchers, subject to national security concerns.

The scientific debate over global warming could be improved if you would order agencies to open up the relevant national archives to researchers—subject to legitimate national security concerns, such as sources and methods of intelligence-gathering. This would be useful because surveillance satellites and aircraft, submarines, and oceanic vessels have collected a vast amount of data that can be used to accelerate research. For example, the material could help resolve questions about past contours and thaw rates of polar caps, ocean chemistry, and many other issues.

Action 3: Announce that you will oppose legislative efforts to impose a carbon tax.

Action to limit carbon dioxide emissions to lessen the effects of the theoretical runaway greenhouse effect will be costly to jobs and put an undue burden on household budgets. Yet there is no firm evidence that runaway global warming will occur — in fact, according to a survey by the environmental group Greenpeace, the vast majority of scientists believe it will not.¹⁰

Taxes on carbon emissions are popularly viewed as the best way to reduce carbon output levels to 1990 levels by the year 2000. But if carbon taxes are imposed, many Americans would be thrown out of jobs. A study by the CONSAD Research Corporation found that five years after the imposition of a \$100 per ton carbon tax — the tax amount needed to reduce carbon to 1990 levels — some 600,000 jobs would be lost. The tax also would reduce total GNP by approximately 2 percent, or \$100 billion.¹¹ This is the equivalent to a \$1,250 tax on every household in America. The price of basic goods would rise substantially. For instance, according to the Department of Energy, electrical and natural gas heating costs would rise by 27 percent.¹²

A study by the George C. Marshall Institute has found that “a five year delay in limiting carbon emissions will make the world warmer in the next century by at most one tenth of a degree [Celsius], compared to how warm it would be if there was no delay.”¹³ Since our knowledge will increase dramatically in those five years, and the theory may well prove false or overstated, taking expensive action now probably would be foolhardy.

orbit 2 million miles closer to the sun. Still other models have incorrectly forecast that clouds warm the earth, but new studies show that clouds actually cool the earth; this is significant since cloud cover is increasing. V. Ramanathan, R.D. Cess, E.F. Harrison, P. Minnis, B.R. Barkstrom, E. Ahmad, D. Hartmann, "Cloud-Radiative Forcing and Climate: Results from the Earth Radiation Budget Experiment," *Science*, Vol. 243, January 6, 1989.

¹⁰ Greenpeace Press Release, "Climate Scientists Fear Effects of Understanding Global Warming, Poll Shows," February 9, 1992.

¹¹ Congressional Budget Office, "Carbon Charges as a Response to Global Warming: The Effects of Taxing Fossil Fuels," August 1990.

¹² "Limiting Net Greenhouse Gas Emissions in the United States," U.S. Department of Energy, Office of Environmental Analysis, Deputy Under Secretary for Policy, Planning and Analysis, September 1991.

¹³ see Marshall Institute, "Global Warming Update: Recent Scientific Findings" (Washington, D.C. 1992).

FUEL ECONOMY (CAFE)

Corporate Average Fuel Economy (CAFE) standards, enacted in 1975 in response to the oil crisis of 1973, were designed to stabilize oil at low prices. Today, CAFE mandates that automobile manufacturers build cars that average 27.5 miles per gallon.

Today, the primary support for CAFE standards comes from the environmental community, which is concerned with energy conservation and the perceived threat of global warming,¹⁴ which, if it is occurring, would be exacerbated by carbon emissions from cars. Unfortunately, CAFE is the wrong tool to address these concerns, and a dangerous one. Alternative policies would be far less burdensome and far more effective.

The most serious problem with CAFE standards, to put it bluntly, is that they kill people. According to economists Robert Crandall of the Brookings Institution and John Graham of the Harvard School of Public Health, 1989 model cars are about 500 pounds lighter than they would have been in the absence of the 27.5 miles per gallon fuel economy standard. Crandall and Graham estimate that this weight reduction will result in 2,500 additional deaths and 25,000 additional serious injuries for the model year fleet.¹⁵

If fuel efficiency standards are raised further, even more deaths can be anticipated. If the standard is raised to 40 mpg, deaths will likely surge to between 4,800 to 8,600 additional deaths per model year fleet. That is why Bush Energy Secretary Admiral James Watkins referred to a 1991 bill to raise CAFE standards as the "Highway Death Act of 1991."¹⁶

Proponents of raising the standards will tell you that, if standards are phased in slowly, car makers will be able to make cars just as safe through technological improvement, even if they are lighter, or that cars will be more efficient so that car weights will not need to be reduced. Both arguments may be true, but they miss the point. If lighter cars in the future will be more safe, future cars with today's weights will be safer still. Similarly, if future cars can be made more fuel-efficient at today's weights, then they can be made just as efficient as today's cars, but at heavier weights. In either case, thousands more Americans will die each year as a direct result of the CAFE standards.

Action 1: Immediately announce that you will veto legislative attempts to raise CAFE standards.

This legislation will surely be forthcoming in your first year in office. If CAFE legislation receives your signature, the political responsibility for those deaths will rest squarely on your shoulders. Press stories that question whether Johnny who crashed into a telephone pole would have lived but for "Clinton's CAFE Act" could well result.

Action 2: Press for new legislation to replace CAFE standards with pollution fees.

Instead of relying on regulatory bureaucracies, Mr. Clinton, it is time, in your own words, to use "the market to get our environment back on track." In areas of the country with air pollution problems, fees should be assessed according to the severity of the local pollution problem, the emission level of each individual vehicle, and the number of miles each vehicle is driven.

¹⁴ Global warming is addressed in the following section.

¹⁵ Robert W. Crandall and John D. Graham, "New Fuel-Economy Standards, The Politics of Energy," *The American Enterprise*, March/April 1991, p. 68.

¹⁶ For further information, see William G. Laffer III, "Auto Cafe Standards: Unsafe and Unwise At Any Level," Heritage Foundation *Background* No. 825, April 19, 1991.

Since 50 percent of all car pollution is caused by 10 percent of the cars, this will provide a powerful economic incentive for owners of polluting cars to tune up or scrap their cars. CAFE standards, on the other hand, place financial penalties on those Americans who buy new cars, which are already the cleanest cars on the road.

WETLANDS PROTECTION ISSUES

Wetlands loss has been extensive since the founding of the nation. An estimated 53 percent of the original number of acres has been lost—still leaving over 100 million acres.¹⁷ Moreover, most of the loss was attributable to government draining of mosquito-infested swamplands or wetlands that hampered navigation of waterways.¹⁸ Today, less than one-fourth of one percent of the total is lost yearly, and much of this small amount serves no ecologically beneficial purpose.

Wetlands are currently protected under Sections 301 and 404 of the 1977 Clean Water Act (CWA). This law regulates the discharge of pollutants into “waters of the United States.”¹⁹ But wetlands regulation has gone beyond the authority granted or intended during passage of the Act. Instead, EPA has used Sections 301 and 404 as a way to protect all wetlands for their ecological value, such as waterfowl habitat.²⁰ The EPA also has been depriving landowners of the value of their properties without compensating them for their loss, forcing many into bankruptcy. While there have been ongoing court challenges, the results have been unclear, and have merely fueled further litigation. In fact, wetlands regulation has now become so inflexible that it has led to many outrageous or ridiculous results. For instance, wetlands rules have blocked construction of low income housing all over the country, delayed construction of shelter for the homeless in Alaska for over a year, and even resulted in the jailing of one environmentalist for making duck ponds.²¹

Throughout the Bush Administration’s term, there was a fluctuating stance towards wetlands protection. The problem in part stemmed from the lack of a clear objective. Additionally, the litigation costs due to the government’s dubious authority under current law have been enormous, thus creating an unnecessary drain on the economy. You will need to rectify this situation if you wish to prioritize environmental concerns, and to minimize unnecessary economic expenditures. Otherwise, it will be one more roadblock in your economic agenda.

To do this, Mr. Clinton, you need to take urgent action:

Action 1: Instruct EPA to exclude from protection those wetlands from which pollutants cannot in practice migrate to “waters of the United States.”

EPA’s policy should be this: only if pollutants discharged into a wetland can migrate via natural water flows into other water bodies, such as streams, rivers, and lakes should government

¹⁷ “Natural Resources Management Issues,” General Accounting Office, Transition Series, December 1992.

¹⁸ Ironically, the government agency that drained these wetlands—the Army Corps of Engineers—now has as its primary mission the enforcement of wetlands regulations.

¹⁹ This term, while ill-defined, should properly be construed to include any water body from which discharged pollutants could migrate via natural water flows into interstate waterways.

²⁰ For further information, see William G. Laffer, III, “Protecting Ecologically Valuable Wetlands Without Destroying Property Rights,” Heritage Foundation *Background* No. 840, July 15, 1990. Note that the Delineation Manual described in Laffer’s paper is the 1989 Manual; the Manual currently in effect is the 1987 Delineation Manual to which EPA’s regulatory authority has been returned. Nevertheless, EPA still protects all wetlands for their ecological value regardless of what criteria are used to define wetlands.

²¹ *Ibid.* See also “EPA’s Most Wanted,” *The Wall Street Journal*, November 18, 1992, p. A16.

intervene.²² This will return wetlands protection to its original meaning. The Clean Water Act was extended to wetlands only in order to restrict pollution in non-navigable water bodies from entering navigable waterways. Thus, restricting the polluting of a wetland that is physically connected to a waterway is proper and was intended in the legislation; protecting wetlands for wetlands' sake was not.

Action 2: Within the first 100 days, issue an executive order requiring the government to pay landowners the value of lands which are designated wetlands.

When a tract is declared a wetland, it becomes off-limits to development. Thus a landowner or developer may be forbidden to build a home on land that he purchased for that purpose. To be sure, society may gain a benefit from the protection of wetlands, but blocking development can impose an enormous cost to the owner. If wetlands protection is for the benefit of the nation, the nation should bear that cost—unlucky landowners should not be forced to subsidize the public. Moreover, requiring the federal government to reimburse the costs imposed by its regulation will encourage government officials to determine the priority of protecting a tract. Now, declaring an area a wetland is a “free” decision to the government, even though that decision can impose large costs on the economy.

Action 3: If you want to protect all wetlands, obtain the necessary authority through a new Wetlands Protection Act.

Sections 301 and 404 of the Clean Water Act, which today are considered the sources of authority for wetlands protection, relate only to pollution discharges that can directly or indirectly pollute navigable waterways. Thus, enforcement of regulations to protect all wetlands under these sections has sparked numerous lawsuits.

You may feel that the government should have the authority to protect all wetlands, regardless of the threat to navigable waterways. If you do, you should seek legislative authority to do so, so the issue can be debated publicly. Obtaining clear legislation also would have the advantage of reducing the extensive and costly litigation resulting from current methods of enforcement under dubious and vague authority.

SOLID WASTE

As you consider your policy on the environment, solid waste legislation should be a low priority. Legislation covering the issue is contained in Subtitle D of the Resource Conservation and Recovery Act (RCRA). You will hear from some environmentalists that this law must be strengthened. They will advocate mandatory recycling and packaging reductions to conserve raw resources and to ease the “crisis” of shrinking landfill space. This advice is misguided.²³ New rules also would be expensive; EPA estimates that efforts to mandate recycling and packaging reductions could cost up to \$30 billion.²⁴ You should adopt a very different course of action.

Before you design a policy, you should ask your advisors some basic questions, and then weigh the evidence. Among the questions you should ask:

²² *Ibid.*

²³ For further information, see John Shanahan, “A Plain Man’s Guide to Garbage: The Reauthorization of the Resource Conservation and Recovery Act,” *Heritage Foundation Issue Bulletin* No. 172, March 30, 1992.

²⁴ Assistant Administrator Don R. Clay, Office of Solid Waste and Emergency Response, Letter to Representative Norman F. Lent, June 16, 1992.

1) Is there really a landfill "crisis?" The evidence suggests that there is not. Landfill capacity has been declining 2.8 percent annually while the amount of waste has been increasing 1.6 percent.²⁵ This decline is due to stricter government regulation, which has quadrupled costs in the last decade, and to the "Not In My Back Yard" (NIMBY) syndrome, whereby local opposition to landfills is triggered by ill-informed health concerns. Despite this decline, landfill space will be adequate if a system of financial assurances replaces regulation.

2) What are the real health risks from using landfills and incinerators? These actually are minimal. Today's new facilities are state-of-the-art and pose negligible risk to health and safety. Regulations now are so strict that if an individual sat continuously for seventy years on an incinerator smokestack operating 24 hours a day, that person would have only a one-in-a-million chance of contracting cancer from smokestack pollutants.²⁶

In fact, a major criticism of RCRA is that the regulations have become too strict, leading to a decline in the construction of safe, new incinerators and landfills, even though the health risks are minuscule.

3) Do reductions in packaging conserve resources? Paradoxically, government pressure on businesses to reduce packaging can increase waste. For instance, a pound of paper packaging used for foods reduces food waste by an average of only 1.41 pounds, while a pound of plastic packaging reduces food waste by 1.66 pounds.²⁷

Further, businesses already have economic incentives to reduce packaging weights and volume. After all, the greater the amount of packaging, the greater the transportation costs. Consequently, manufacturers have been decreasing their packaging weights steadily over the past two decades.

4) Does recycling always conserve natural resources? Not always. Recycling can be efficient and environmentally responsible, but it can also waste resources. Whether it does so depends on the energy requirements, the region of the country, and the characteristics of the item to be recycled. Recycling aluminum is worthwhile because recycling uses 95 percent less energy than making aluminum from aluminum ore. Hence, businesses tend to recycle aluminum without being forced to do so by the government. Recycling other products, however, such as resource-efficient shrink wrap, actually would consume far more natural and economic resources than making the resources from virgin materials. Thus collecting, separating, and processing shrink wrap to recycle would drive up costs to the economy, waste resources, and cause air pollution.

5) Can government mandates conserve resources? Any attempt to conserve resources by interfering with production and packaging processes has the perverse effect result of wasting resources. Government policies that mandate packaging reductions or recycling are designed to encourage firms to substitute for one material another material that consumes fewer resources. But to know which resources should be conserved or used in every situation would require the government to know the exact value of each resource in relation to other resources. Market prices do this very well because they fluctuate according to the latest information as to scarcity and value. But if government attempts to determine resource values without using prices, it must set the value or "worth" of each resource according to an arbitrary standard. Hence, the

²⁵ Shanahan, "Plain Man's Guide," *op. cit.*

²⁶ Jerry Taylor, "Municipal Waste Combustion: Toxic Threat or Trivial Pursuit?" American Legislative Exchange Council *Issues Analysis*, April 1990.

²⁷ Harvey Alter, "The Origins of Solid Waste: The Relations Between Residues from Packaging Materials and Food," *Waste Management and Research* 7, 1989.

“wrong” resource inputs will be used in the production process, thus increasing overall resource consumption.²⁸

Given these considerations, there are two specific actions that you should take:

Action 1: Announce that you will oppose mandatory recycling or packaging reduction legislation.

If you do not oppose such legislation, you will be weakening the economic recovery without any appreciable benefit to the environment. Ironically, the environment may even be harmed by encouraging wasteful use of raw resources in the recycling process.

Action 2: Within 100 days, issue an executive order to eliminate most of today’s costly landfill regulations.

Rather than mandating recycling or packaging reductions, it would be wiser to eliminate most of the current costly landfill regulations. These erroneous rules are, in large part, responsible for the nation’s landfill capacity decline. You should instead replace these regulations with a requirement that landfill operators provide financial assurances, such as interest-bearing bonds, that the landfills meet government standards of environmental safety. The operators then should be given free rein to devise the least costly manner of containing pollutants. But if the operator fails in this duty, the bonds would become partially or wholly forfeit to finance a clean-up.

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²⁸ Shanahan, "Plain Man’s Guide," *op. cit.*

