

President Trump's Environmental Policy

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Abstract: La politica ambientale del Presidente Trump – This essay highlights the USA environmental policy discontinuity due to the Trump administration banalizing the debate on climate change, encouraging the use of fossil fuels, and isolating the country internationally by his withdrawal from the Paris Agreement. Donald Trump's strategy has split the country, generating an intense polarization. It has provoked strong resistance from many states, public opinion, and the courts, with damaging consequences destined to persist even during the Biden presidency, which, however, has immediately embraced a different approach on the issue.

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1. Trump's global environmental strategy

Donald Trump's environmental policy has had a significant media impact in Europe, especially with regard to climate issues. It is thereby interesting to examine its internal and external implications because the environment issue has been a real battlefield during the entire Trump Presidency.

The general approach of the Republican administration in this four-year term was inspired by some fundamental guidelines: the research of new business opportunities; an environmental de-regulation to reduce constraints and limits imposed by previous administrations in many industrial sectors; the willingness to refocus the Environmental Protection Agency (EPA) on its primary mission; a fundamental "environmental denialism" with regard to the issue of climate change and especially to the withdrawal of Obama commitments of Paris Agreement 2015; the transformation of the Obama Climate Action Plan into the Clean Power Plan¹.

It could be said that President Trump is not really "an enemy of the environment". He is just – according to the famous expression coined by Cass R. Sunstein² - a systematic and determined "norm entrepreneur" working for business. His battle on environmental concerns is therefore

¹ All these commitments have already been highlighted in the volume devoted to the first two years of the Trump presidency: R. Louvin, *Environmental Policies*, in G.F. Ferrari (cur.) *The American Presidency under Trump: the first two years*, The Hague, 2020, 165-172.

² C.R. Sunstein, *Social Norms and Social Roles*, 96 *Columbia Law Review* (1996), 909.

essentially the consequence of this order of priorities, which have inspired his own policy. Restarting coal mining, promoting oil and shale production, as well as opening federal lands and offshore areas for oil and gas extraction have been prominently the main targets of his actions³, as a result of a more than evident electoral exchange with the oil industry.

“Jobs! Jobs! Jobs!” was the mantra hammered during his campaign in 2016, with no regards at all for environmental values and public health which would have prevented, in his plans, to “Make America great again”. The equation: “more growth = more jobs” had therefore to be respected, regardless of whether this involved a higher consumption of resources or not: environmental regulations were considered just as impediment to business and therefore had to be quickly and inexorably removed. The environment had just unavoidably become the predestined victim of the deal.

This de-regulatory action has been settled in a kind of bandwagon aiming at freeing businesses from any rule or limitation that might have prevented their full development. Within the framework of this general strategy, a special target had to be achieved beforehand as a precondition for the success of the whole strategy : refocusing EPA on his primary mission - i.e. just protecting air and water - while EPA had acquired in the course of its half a century life a broader spectrum of powers in many fields. Disempowering this agency was, by the way, a masterpiece of Donald Trump’s general strategy of “freezing of agencies”⁴ and this was achieved entrusting the EPA administrator with the special task of rolling back fuel economy standards, a mission which has been consistently conducted in an openly and definitely very favourable way to American producers. Pruitt’s appointment has been openly qualified, very correctly, by the press as a “Hostile Takeover”⁵.

President Trump enforced during four years his environmental denialism on the issue of climate change - “no matter what science says, man is not a primary contributor to global warming”, he declared since the campaign for his election - and immediately announced the withdrawal of Obama’s commitment towards the Paris agreement of 2015. Trump EPA officials in turn have persistently repeated this concept, arguing that despite what scientists and activists said, deregulation has removed burdensome limitations without a cost to the environment.

Despite some rare and partial backpedalling in front of the evidence of the facts concerning global warming, the continuity of Trump’s policy in

³ The reemphasizing of coal as an energy resource is perfectly outlined in the Exec. Order No. 13783 (*Promoting Energy Independence and Economic Growth*), 82 Fed. Reg. 16093 (Mar. 28, 2017).

⁴ The procedure followed for this freezing, through Exec. Order 13,771, 82 Fed. Reg. 9939 (February 3, 2017) is accurately described by N. Palazzo, *Tiptoeing on the Edge of the Law: How Trump is fighting the Regulatory State*, in G.F. Ferrari (cur.) *The American Presidency ...*, cit., 37-39.

⁵ D. Faber, *Industry’s Hostile Takeover of EPA*, Legal Planet, July 27, 2017; R. Heidorn Jr., *Pruitt Begins Hostile Takeover at EPA*, RTO Insider, Feb. 20, 2017.

this field did not change. Along the same line, Obama climate action plan has been radically transformed into the Clean Power Plan, by which the myth of ‘clean coal’ is reborn, regardless of the fact that there is no clean coal in nature, just as there are no magical technologies for its use without heavy consequential CO₂ emissions. Rather than reducing emissions, EPA implemented the Affordable Clean Energy Rule – or ACE – just requiring plants to operate “more efficiently”⁶.

Here, a leader's political skill building a strong and new narrative, convincing millions of his fellow citizens of the validity of his industrial and environmental strategy, has been proved.

2. Legal Tools deployed

What were the legal tools with which the Trump administration operated in pursuing these objectives?

The first was undoubtedly the reduction of the funds granted by the federal government to the agencies, and it can be said that this mission has been totally fulfilled. All environmental programs, including environmental justice programs funds, suffered a sharp decline and the action of EPA was significantly weakened.

Since March 2017, funding for the EPA had been reduced by 31%, effectively paralyzing the EPA's Office of Research and Development⁷. These cuts, carried out through the Trump Budget Blueprint for EPA, were not based on any real changing needs and reflected exclusively ideological views.

Trump's administration worked very hard in reframing EPA's mission, designating officers loyal to Trump's program and carefully avoiding the appointment of scientists in positions of influence. Following the tactic of revolving doors, lawyers and lobbyists from oil sector were appointed. Many agencies, with the EPA in particular, have deployed bold policies, sometimes bordering on brutality and often at the limits of their statutory powers, if not beyond, as jurisprudence often pointed out.

In terms of standards, deregulation has been going on very prominently. President Trump carried out legislative conversion governing

⁶ EPA issued the final Affordable Clean Energy (ACE) ruling on July 8, 2019 (84 FR 32520) the Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations. ACE replaced the Obama administration's Clean Power Plan (soughing to reduce emissions by about 32% from 2005 levels by 2030 with a rule aiming to restore rule of law, empower states, and supports energy diversity. ACE also clearly and definitely incentivizes the continuation of coal. In EPA's own projections show sulfur dioxide emissions will increase in a very obvious way over the next years.

⁷ The Environmental Protection, Network Analysis of Trump Administration Proposals for FY2018 Budget for the Environmental Protection Agency, March 22, 2017.

by executive action, rulemaking being largely gridlocked because of Congress. Consequently, the decisions taken were more vulnerable to court challenges. In February 2017, through the Congressional Review Act, the Stream Protection Rule of the US Department of the Interior was re-enacted, as it imposed stricter restrictions on the discharge of mining waste into surrounding waterways.

Brookings expert analysis on the issues that shaped the 2020 election tracking the administration's deregulatory actions counted 74 actions that the Trump administration has taken during four years to weaken environmental protection⁸.

The overall deregulation effect has affected the environmental sector not only through environmental measures but also through regulatory simplifications in the areas of transport, waste disposal, telecommunications, health, labor, and more.

Both economic actors and lawyers are now fatigued by the legal and regulatory stop and go, with its consequent risks of whiplash, with President Obama issuing an order and Trump rescinding it. The lack of a stable approach to governing entails economic and environmental risks. There is a widespread support for taking “a pragmatic approach with the new administration, pushing for workable new regimes where they can, rather than suing to return to Trump-era policies”⁹.

A complete reading of the environmental effects of the measures introduced is very difficult because some of the consequences on environment sometimes depend on a simple reclassification or transfer of competences between the federal level and the states, depending on the flexibility of the applicable regulations.

New rules in terms of Steam Electric Power Plant Pollution for example, have stripped pollution protections from popular lakes, such as Sutton Lake in Wilmington, a source of steam generating electricity and at the same time a place to cool hot water from an adjacent coal-fired plant. By a little-noticed provision it has been classified in the rewriting of the Clean Water Act as “cooling pond”, which precisely means a part of “waste treatment systems”, which is consequently not covered under the law. The U.S. Environmental Protection Agency and the power industry describe it as an ordinary clarification with little real-world effect, but environmental

⁸ S. Gross, *What is the Trump administration's track record on the environment?* *Brookings Policy* August 4, 2020, www.brookings.edu/policy2020. Other reviews and websites also describe the Trump administration's legislative dismantling over the course of its four years: N. Popovich, L. Albeck-Ripka, K. Pierre-Louis *The Trump Administration Is Reversing Nearly 100 Environmental Rules. Here's the Full List*, *The New York Times*, October 15, 2020; A running list of how President Trump is changing environmental policy, *National Geographic*, September 9, 2020.

⁹ E. M. Gilmer, *Trump Leaves Unfinished Business in Environmental Litigation*, *Bloomberg Law*, November 7, 2020, www.news.bloomberglaw.com.

groups challenging the Trump rule in court say it opens up reservoirs like Sutton Lake to similar abuse¹⁰.

Also international relations have been in turn radically changed during the Trump Presidency, and the environment has been, without any doubt, the field where we could observe the most spectacular changes with respect to Barak Obama's multilateralism. The process, as we know, has come to an end in the very last days of the Trump Presidency, finishing the reset by USA diplomacy of the laborious arrangement of the Paris 2015 commitments.

We must remember in this regard that even though President Trump could withdraw the U.S. from the Paris Agreement, he had no authority to "cancel" it. Under the terms of the agreement, in fact, withdrawal notices may be submitted three years from its entry into force. The earliest submission could take effect on November 4, 2020, and this allowed the outgoing President Trump to conclude the transaction just before the presidential election¹¹.

3. The energy policy

The path followed during the Trump Era on energy is now perfectly clear and complete. Starting with the idea that there should be no emissions reduction targets, the use of fossil fuels has not been restricted in any way, while there have been continued deregulatory efforts of emission and pollution standards and increased ability to explore federal land.

The overall scenario on permitting and regulation has remained consistent with the objectives we outlined reviewing Trump's policy in the first part of his office: briefly, he has continued removing significant parts of regulatory permitting processes. Considering environmental impacts, he weakened even further environmental regulation and permitting procedures under the National Environmental Policy Act (NEPA), Bureau of Land Management (BLM) and Federal Energy Regulatory Commission (FERC). Federal administration has supported large pipeline projects and increased fracking activity, encourages fast-track permitting for large fossil fuel projects and pipelines. Consistent with this strategy to continue deregulation of emission standards the Clean Power Act was replaced with the less stringent Affordable Clean Energy Rule

The proposal to approve the Dakota Access Pipeline, improving access to supplies from Canada and transport links from North Dakota, Montana

¹⁰ EPA and power industry describe this new classification just as a clarification with little real-world effect. Environmental groups challenge this new rule in court saying it opens up many reservoirs like Sutton Lake to similar abuse: New rule may strip pollution protections from popular lakes, *PBS New hours, Science*, September 27, 2020, www.pbs.org.

¹¹ Robert V. Percival, *Environmental Law in the Trump Administration*, in *4 Emory Corporate Governance and Accountability Review*, 225 (2017).

and Oklahoma to Gulf Coast refineries, was previously vetoed by President Obama due to environmental concerns in Nebraska. Only four days after taking his office in the White House, President Trump issued a *memorandum* ordering to expedite approval of the Dakota Access Pipeline A 1,100-mile pipeline linking oil fields in North Dakota to a river terminal in Illinois: *Memorandum of January 24, 2017 Construction of the Dakota Access Pipeline. Memorandum for the Secretary of the Army. The intention to boost the oil levy is very evident, as on the same day another order was issued in which the President “invites TransCanada Keystone Pipeline, L.P. (TransCanada), to promptly re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline, a major pipeline for the importation of petroleum from Canada to the United States”*¹².

Direct intervention in the exploitation of Arctic energy sources has taken place through measures launched by the 2016 Arctic Exploratory Drilling Rule, mainly through Executive Order 13795¹³.

The most dangerous breach, however, was opened by Oil drilling in the Arctic National Wildlife Refuge. For decades, oil and gas companies fought to open the coastal plain of the Arctic Refuge to oil and gas development. Trump’s efforts to secure this entry were decisive. In 2017, Congress passed a provision allowing administration to begin the process for leasing vulnerable refuge lands to oil companies, fast-tracking a lease sale that leads to drilling in the Arctic Refuge

To expand the possibilities of extraction within the Tribal lands, Bureau of Indian Affairs (BIA) promoted Tribal control over energy development on Tribal lands: The federal strategy led to the removal of regulatory requirements and the establishment of an alternative to TERA through certification of Tribal Energy Development Organization (TEDO)¹⁴.

No significant changes have emerged in the second part of the mandate on alternative energy production since the restrictions imposed on the import of solar panels from China. A possible input tax credits (ITCs) roll

¹² Memorandum of January 24, 2017, Construction of the Keystone XL Pipeline Memorandum for the Secretary of State, the Secretary of the Army and the Secretary of the Interior.

¹³ Executive Order 13795, Implementing an America-First Offshore Energy Strategy and Interior (April 28, 2017), in turn implemented by the Secretary’s Order 3350, America-First Offshore Energy Strategy, Mai, 01, 2017. By virtue of these 37 wells has been completed in the Chukchi and Beaufort Seas.

¹⁴ The Bureau of Indian Affairs (BIA) amended its regulations governing Tribal Energy Resource Agreements (TERAs) by Tribal Energy Resource Agreements on December 18, 2019 between the Secretary of the Interior (Secretary) and Indian Tribes, 84 FR 69602. Tribes, at their discretion, may apply for TERAs. TERAs allow Tribes to enter into leases, business agreements, and rights-of-way for energy resource development on Tribal land without the Secretary’s review and approval. As an alternative to entering into a TERA, a Tribe may obtain certification of a Tribal Energy Development Organization (TEDO).

back on imported solar panels from China is now on the horizon, but there are currently no announced future initiatives.

A separate argument can be made about wind turbines, the production of which is strongly encouraged. However, if we look at this sector as a whole, we have to recognize that “despite sporadic attacks by the President, the last four years have been good to renewable energy technologies. Wind and solar capacities have grown significantly, even if the sector has faced a volatile policy landscape, especially related to tariffs on technology inputs”¹⁵. We must not forget in addition that also Hydrogen offers substantial opportunities for energy transition.

The impetus for modern technologies has been slowed down in research and development, cutting budgeted energy allocation by half in 2020, while no future initiatives have been announced. As the European Union declared its intention to lead and accelerate technological development toward a real energy transition with its Green Deal, the Trump administration has gone in the opposite direction. This is particularly evident in the transportation sector, for example, where fuel efficiency has been substantially frozen.

4. Sweetheart deals

Since 2017, the gap between federal energy policy and many states' policies has widened considerably. The Obama administration had a more inclusive approach to energy policy, prudently oriented towards energy transition and respect for the environment: That approach has been suddenly replaced by the Trump administration's policy of "energy dominance" coupled with a strong preference for fossil fuel development and hostility to renewable energy¹⁶.

The Obama government tried to initiate a process to raise the federal royalty rate for oil and gas which have remained firmly fixed at 12.5 percent during almost a century: these reforms could ensure that taxpayers would be compensated for the development of their resources and that companies would be held responsible for paying for clean-ups related to drilling activity. The Bureau of Land Management (BLM) opened a public dialogue on potential changes to federal onshore oil and gas regulations as part of President Obama's strategy to support a balanced, prosperous energy future¹⁷. State governments and private landowners, on their side, time and again, updated the terms for development on their lands.

¹⁵ E. Vella Moeller, S. McCafferty Harvey, M. Oresman, A.G. Halter, *Trump vs. Biden: What Could Be Next for the Energy Transition?*, 13/12/2020, www.pillsburylaw.com.

¹⁶ A.B. Klass, Federalism “Collisions” in Energy Policy, in *The Regulatory Review*, Nov 19, 2018.

¹⁷ The BLM issued on April 17, 2015, an Advance Notice of Proposed Rulemaking (ANPR) to seek public comment on potential updates to BLM rules governing oil and gas royalty rates, rental payments, lease sale minimum bids, civil penalty caps and financial assurances. The intention was to undertake much-needed reforms to bring the

According to reliable sources, “As a result of the federal government’s failure to modernize its oil and gas program, U.S. taxpayers are losing out on more than \$730 million in revenue every year. At the same time, oil and gas companies are stockpiling leases and sitting idle on the rights to drill on tens of millions of acres of public lands”¹⁸.

We also have to consider that the bonding requirements on federal land have not been updated in more than 50 years, while in the meantime companies’ earnings have enormously grown. Currently, a company can secure a nationwide bond for all its oil and gas wells on public lands for only \$150,000¹⁹.

Two more conditions are traditionally set for oil extraction on federal lands: minimum acceptable bonus bids to purchase a lease on public lands²⁰ and Rental rates to preserve the right to drill on a lease²¹. Again, failure to update these conditions has resulted in damage to the federal finances and to the environment.

As was to be expected, the Trump administration did not pursue the intention announced by its predecessor to ensure american taxpayers and energy-producing states to receive a fair return from the development of their valuable resources, but undertook exactly the opposite action.

Instead of rising royalties, as it would have been vital, setting higher floor than 12.5 percent for the royalty rate, President Trump has listened to the oil and gas industry arguing that higher royalty rates will result in a major decrease in production, even if no evidence supported these claims.

“We want to make sure America doesn’t have stranded assets. Reducing the royalty rate to pay for the incremental cost of the subsea flow assurance was reduced, to make this kind of projects more economic”²².

federal government's oil and gas program into the 21st century, reforming royalty rates, bonding requirements, minimum bids and rental rates.

¹⁸ If the onshore federal royalty rate were the same as the offshore rate, as suggested by Center for Western Priorities in his report *A Fair Share: The Case for Updating Federal Royalties*, the U.S. government would collect an additional \$730 million every year: N. Gentile, Federal Oil and Gas Royalty and Revenue Reform, June 19, 2015, in www.americanprogress.org. Based on a review of royalty provisions on state and private lands, Center for American Progress (CAP) recommended that the new regulations – current rate has not been updated since 1920! – set a floor of 18.75 percent for the royalty rate.

¹⁹ Current regulation was set in 1951. Adjusting for inflation, that \$150,000 fee would be nearly \$1.4 million dollars in 2015... Companies pay so little for statewide and nationwide bonds that bonding for individual wells can be as low as \$50 per well.

²⁰ A bonus bid is the payment that an oil and gas company have to offer to purchase a lease on public lands: the bonus bid grants the company the right to drill on the leased land for a period of 10 years.

²¹ The leaseholder is currently required to pay an annual rental fee to the federal government. Rates are set at \$1.50 per acre for the first five years of a lease, and \$2 per acre thereafter.

²² According Director of the Bureau of Safety and Environmental Enforcement Scott Angelle, as reported by J. Resnick-Ault, Trump administration encourages offshore drilling in final energy push, Reuters, Energy & Environment, December 4, 4, 2020.

Beside these deep-water facilities, other pushes to expand oil and gas drilling have included the Administration's efforts to offer oil drilling leases in the Arctic National Wildlife Refuge in Alaska, overseen by the Bureau of Land Management.

Trump Administration also cut royalty rates for oil and gas because of the coronavirus pandemic, giving supplementary energy to the companies, temporary breaking on royalties and renting they pay to extract oil and gas from leases on public lands.

These are just some of the “sweetheart deal”²³ benefiting fossil fuel companies: the administration seeks obviously more money from renewable energy companies that rent federal lands...

According the 360 Energy Expert Network of analysts and energy professionals about global energy, oil and gas, and renewable energy²⁴, the Trump government reduced in December 2017 the federal corporate income tax rate from 35% to 21% through the Tax Cuts and Jobs Act (TCJA), reducing the combined rate from 38.9% to 25.7%). This cut has considerably improved the liquidity of oil and gas producers, reducing breakeven prices. \$193 million (36%) in corporate tax, reducing asset breakeven oil prices by as much as 5.3%. The true impact of the changes was estimate at more than \$5 billion per year (with an average of about \$250 million to \$300 million per year in tax benefits) due to the TCJA.

5. Spreading resistance

Which are the main aspects to highlight as feedback of the presidential action in the mandate that has just ended?

The first is the intense action of prosecutors: a vigorous effort to counter deregulation and authorization of new initiatives deemed dangerous for the environment. Some of the attorneys generals predictably tried to cherry pick more “accommodating” judges if cases were to be appealed²⁵.

²³ As this rate cuts are called by National Wildlife Federation Vice President Tracy Stone-Manning:

“It is simply not fair and is one more signal that oil and gas drilling takes precedence over everything else on our public lands”: J. Resnick-Ault, Trump administration encourages ... cit. ...

²⁴ 360 Energy Expert Network, US presidents and oil production: A deep dive into Obama and Trump records, Biden's proposed plan, in *Oil & Gas 360*, August 31, 2020, in www.oilandgas360.com.

²⁵ S. Okeson, *Trump's Record in Federal Courts is the Worst of any recent President*, DCReport.org, 13/11/2020, p. 4. Trump's policy on the environment and climate have elicited stiff bipartisan resistance from both, Conservatives and Democrats. This reaction has been particularly apparent in California, where Attorney General Xavier Becerra led the opposition's legal attack, stating that “Donald Trump's three worst enemies are the facts, the law and the science”. By mid-October, California was part of coalitions that had launched 106 lawsuits against the Trump administration, 56 of which specifically took on environmental issues: B. Burger, *Trump's EPA rewrote the rules on air, water energy. Now voters face a choice on climate change issues*, Chicago Sun-Times, 13/12/2020.

Regulatory Rollbacks reversing environmental regulations are mired in litigation, and some are still in the rulemaking process. The biggest counteracting action has involved the Clean Air Act rule crafted by Barack Obama in 2015, regulating for the first time carbon emissions from existing power plants and structuring state-by-state emissions reduction from the electric power sector.

The second front of opposition has been brought together by the United States Climate Alliance (USCA) “a bipartisan coalition of governors committed to reducing greenhouse gas emissions consistent with the goals of the Paris Agreement”²⁶. This alliance, was “a direct response to the president’s decision to withdraw from the Paris Agreement”²⁷ between states, in order to achieve common goals, sometimes even in contrast to the federal government. These types of measures are not completely new in the US history, but have never been of this magnitude before.

Three states, namely California, New York, and Washington, were the founding members of USCA currently including twenty-four U.S. states and Puerto Rico. Their coordination reaches a considerable weight significantly exceeding the population of non-member states, roughly 148 million people. Furthermore, roughly 60 percent of the U.S. GDP is currently covered by the member states.

This alliance has found open support from European diplomacy, in particular from France: President Macron openly deplored Trump’s choices on the climate issue, putting in danger the objectives of the Paris Agreement to contain global warming below 2°C. Along with UN Secretary-General António Guterres and World Bank President Jim Yong Kim, Macron jointly decided the launch in December 2017 of the One Planet movement, uniting public and private stakeholders.

On their side the American states have stated three major objectives on the issue: a continuous lead on climate change; an understanding that climate action taken at the state level leads to economic benefits and a strengthened community by job creation and establishing resilient communities; proving a general achievability of ambitious climate action plans²⁸.

The third reaction to be highlighted here is the global youth mobilization to stop global climate change, with the emergence of young people as agents of change in the global climate change arena as well as the urgency of engaging them in climate change governance and policymaking.

That is clearly not an exclusively American phenomenon, but it seems to have very strong bases today thanks to the polarization of American society, and may have played a decisive role in Joe Biden’s victory in the recent presidential election.

²⁶ This is how this organization is qualified by its website www.usclimatealliance.org.

²⁷ L. Lieblang, *Climate Politics under Trump: The United States Climate Alliance*, *American Institute for Contemporary German Studies (AICGS)*, July 2, 2020.

²⁸ Leon Lieblang, *Climate Politics op. cit.*

6. The barrier of the Courts

The environmental justice movement has drawn critical attention to the persistent inequality in exposure to environmental harms, tracking racial and income lines: “environmental justice has become a foundational principle and aspiration within the field”²⁹. As a result of decades of advocacy, environmental justice is now an established, if not fully realized, principle in environmental law.

During the four years of the Trump presidency, we witnessed a frontal attack on environmental justice and shifting positions under his administration severely undermined this progress. It was thereby obvious that there would be a tough reaction. The response of the courts has been rather linear, very determined to reaffirm the principles of its jurisprudence.

Judicially speaking, Donald Trump is therefore a big loser and his administration was losing case after case as States Challenge Sloppy Efforts to Rollback Federal law³⁰. Only one empirical data to prove it: Federal administrations usually win 70% of the cases brought against them. Team Trump has won only about 16% of the 132 decided lawsuits, which justifies describing the President efficiency as head of administration as “borderline”.

An exemplary case in point: the Dakota Pipeline case in which the discriminatory effects of the decisions taken by the federal administration have also become very clear: “The example of the controversy over the Dakota Access Pipeline demonstrates how the shift in policy from the Obama Administration to the Trump Administration dramatically affected a project with clear environmental justice implications”³¹.

Unfortunately, as it is well known, environmental justice claims based on disparate impact have often failed, as U.S. antidiscrimination requires proof of intentional discrimination to make protection available to racial and ethnic minorities³², while by contrast international law on the right to equality recognizes the right to be free from intentional discrimination as well as practices that have a discriminatory impact³³.

It has been correctly pointed out by some scholars that there was no special subordination of conservative judges to this ‘new wave’. Nevertheless, environmental litigation is now set for an abrupt shift after the new President taking office, as the Trump administration leaves behind a trail of unanswered legal questions.

²⁹ U. Outka, E. Kronk Warner, *Reversing Course on Environmental Justice under the Trump Administration*, *Utah Law Scholarship*, 103.

³⁰ S. Okeson, *Trump’s record in Federal Courts is the worst of any recent President*, *Salon*, September 25, 2020.

³¹ *Ibidem*.

³² According to numerous studies, air pollution today in the United States disproportionately affects minorities.

³³ C.G. Gonzalez, *Environmental Racism, American Exceptionalism, and Cold War Human Rights*, 26, *Transnational Law & Contemporary Problems*, 281, 303–08 (2017).

7. Final remarks

We highlighted high discontinuity in USA environmental policy, since we are rather faced with an ‘anti-environmental policy’. Donald Trump has implemented a very consistent action, moving towards a paradigm shift, starting from the banalization of debates on environment and climate change: President Trump imposed to the public opinion his schematic and Manichean vision, which has quickly displaced the USA from scientific discussion and the more pedagogical approach of President Obama to the rough and edgy current ideological debate.

Today it seems to be more challenging to think ecologically in the USA: environmentalist thinking (and its consequent political action) is necessarily complex, and it requires the acceptance and management of complexity.

Ecology, in Trump’s vision and in his speeches, is just a colossal waste of time and the best way to kill employment.

It is not just a temporary political change, but a real paradigm shift which also explains the highly conflictual relationship with the scientific community³⁴ that has been more and more evident in the pandemic crisis of recent months as well. Nevertheless, this (anti-)environmental Trumps’ policy has been strongly conducted and implemented with no uncertainties or hesitations about the path to be followed.

Donald Trump has split the country with a strong polarization and a dividing impact on the US society. The internal conflict within American society has grown significantly, and will likely continue for a long time: this is also proved by a massive environmental litigation.

It will also take probably a long time and a lot of skill to mend relationships with states after the frontal clash between federal power, states and local governmental authorities. In this regard, Joe Biden's task will be far from easy and simple.

The international repositioning of the US, as a result of the strategy adopted by the Trump administration, is coming to an end within the term of office: the end of a world leadership, the isolation of the US, the reality of new alliances and hostilities towards European countries, and the effective abandoning of leadership on the environmental issue to other countries, including China and France.

The international community has now high expectations about a change of direction by the American superpower and the presidential election has finally demonstrated a decision between deregulation and re-

³⁴ The accession of Donald Trump to the presidency of the United States most likely has been perceived as a turning point because he is against scientific research where it can create problems for the economic interests that he defends, becoming therefore a denialist. Repressive measures to censor climate scientists and environmental agencies he has taken provoked the organization of a great march of scientists on Washington hold on the Earth Day on April 22, 2017 in Washington DC.

regulation. But what awaits us in the coming months? Will it be plausible, as somebody says, that the next presidency will “Make America clean again?” A general repositioning by the Biden administration will probably take place, but it will be neither immediate nor total, even if Joe Biden promised a plan to fast-track the country to zero carbon dioxide emissions in the electricity sector by 2035.

Among the first tests there will undoubtedly be the dispute around the Arctic National Wildlife Refuge drilling: it will be difficult to control the race to new opportunities to exploit resources. The orientations announced by President-elect Biden go in a different direction than Trump, but electoral promises appeared cautious in order to avoid alienating the vote of some business circles.

Biden pledges, among other things, the support of ethanol, and this is not good news for the environment. It involves the slowing down, but not the complete prevention, of a very harmful technique to the environment: renewable fuel standard requires oil refiners to blend biofuels into their fuels.

Biden also states he will not ban fracking, the controversial practice of using a high-pressure injection of water, chemicals, and sand to extract oil and gas from the earth. His plan does not call for an outright ban on coal or fracking, although this seems to be the path for a plausible, but cautious repositioning

Some encouraging signs, on the other hand, come from Biden’s opposition to uranium mining in the Grand Canyon, as well as from his announced return to the Paris Agreement. Furthermore, he announced a \$2 trillion climate plan to eliminate fossil fuel pollution from U.S. powerplants by 2035, updating U.S. infrastructures to improve energy efficiency, and addressing environmental injustice by safeguarding the communities most exposed to pollution.

No matter how much effort is put into giving another direction, the Trump administration's legacy will remain significantly present for many years to come.