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The EPA as a Catalyst for the Development of Global Environmental Law

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THE EPA AS A CATALYST FOR THE DEVELOPMENT OF GLOBAL ENVIRONMENTAL LAW

Robert V. Percival†

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INTRODUCTION

The EPA’s global influence has been one of the Agency’s most important, and least appreciated, roles. Throughout most of the Agency’s nearly half-century history the EPA has served as a role model for countries seeking to upgrade their environmental laws and policies. The Agency’s creation in 1970 inspired the establishment of national environmental agencies throughout the world.1 The EPA has played a

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significant role in the negotiation of international environmental treaties, the response to global environmental disasters, and as a source of shared scientific and technical expertise. The EPA is a major reason why the United States has long been considered to be, at least until recently, a global environmental leader. This article reviews the history of how the EPA has served as a catalyst for the development of global environmental law.

I. THE EPA AND THE GLOBAL ENVIRONMENT: A HISTORY

A. Establishment of the EPA

The EPA was not the first federal environmental agency created in the United States. The National Environmental Policy Act (NEPA), signed into law on national television by President Richard Nixon on New Year’s Day 1970, created the Council on Environmental Quality (CEQ) in the Executive Office of the President. Although the NEPA had not been a White House initiative, President Richard Nixon gave it “strong budgetary support” and “a very visible role in formulating environmental policy.” Russell E. Train, who previously had served as Undersecretary of the Department of Interior, became the first

3. Id. at 10,594.
4. Id. at 10,594–95.
6. “Global environmental law” is a term I have used to describe the new reality that, in recent years, countries are borrowing legal and regulatory innovations from one another, blurring traditional distinctions between domestic and international law, and government and private non-governmental organizations are collaborating on initiatives that blur distinctions between public and private law. See, e.g., Robert V. Percival, The Globalization of Environmental Law, 26 PACE ENVTL. L. REV. 451, 452 (2009); Tseming Yang & Robert V. Percival, The Emergence of Global Environmental Law, 36 ECOLOGY L.Q. 615, 616–17 (2009).
chairman of the CEQ. With the encouragement of President Nixon, the CEQ quickly took the lead on international environmental issues. In its first annual report in 1970, the CEQ presciently devoted a chapter to climate change at a time when there was scant public mention of the topic, stating that “world-wide recognition should be given to the long-term significance of manmade atmospheric alterations.”

The EPA was established on December 2, 1970, when, after extensive congressional hearings, President Nixon’s July 1970 reorganization plan took effect. The Agency acquired responsibility for environmental issues previously divided between several cabinet agencies (air pollution and waste management from the Department of Health Education & Welfare, water pollution from the Department of Interior, pesticide registration from the Department of Agriculture, and radiation monitoring and regulation from the Atomic Energy Commission). William Ruckelshaus became the first EPA Administrator on December 4, 1970. Later that month, Congress gave the EPA broad, new national regulatory responsibilities when it enacted the Clean Air Act Amendments of 1970. From the start, the EPA had an Office of International Affairs, which was headed by Fitzhugh Green from 1970–1976.

The EPA was created at a time of unprecedented concern over the environment. The first Earth Day had been held in the United States on April 22, 1970. The establishment of the EPA helped encourage other countries to create national environmental agencies. Virtually every country in the world now has a national environmental agency. By 2019, the United Nations Environment Programme (UNEP) found that a total of 164 countries had created national environmental agencies.

12. Train, supra note 9, at 188.
13. Id.
15. Train, supra note 9, at 188.
ministries, while twenty-two others had set up environmental entities as independent agencies.\textsuperscript{18}

In his report to Congress on United States Foreign Policy for the 1970s, President Nixon noted that global environmental concerns had added “a new dimension” to U.S. foreign policy.\textsuperscript{19} He declared that “our shared and transcendent interest in the livability of our common home, the earth” required global cooperation that “has now become a prime task of American leadership.”\textsuperscript{20} Russell Train noted that U.S. credibility on international environmental issues was enhanced because “the CEQ and [the] EPA, rather than the State Department, took the lead in the international environmental field.”\textsuperscript{21} He concluded that “the active engagement of the responsible environmental officials in international matters gave tremendous stimulus worldwide to the establishment of high-level agencies responsible for environmental policy and management.”\textsuperscript{22}

One of the EPA’s first regulatory initiatives with global repercussions was a decision by Administrator William Ruckelshaus to ban use of the pesticide dichlorodiphenyltrichloroethane, also known as DDT.\textsuperscript{23} This pesticide was a persistent and bioaccumulative chemical that built up in the food chain,\textsuperscript{24} resulting in the death of birds that inspired Rachel Carson’s \textit{Silent Spring}.\textsuperscript{25} A major national environmental non-governmental organization (NGO), the Environmental Defense Fund, was founded by scientists in 1967 with the explicit goal of getting DDT banned.\textsuperscript{26} On June 14, 1972, Ruckelshaus issued an

\begin{itemize}
\item \textsuperscript{19} Second Annual Report to the Congress on United States Foreign Policy, 1971 Pub. Papers 219, 220 (Feb. 25, 1971).
\item \textsuperscript{20} Id. at 331.
\item \textsuperscript{21} Train, \textit{supra} note 9, at 193.
\item \textsuperscript{22} Id.
\item \textsuperscript{23} See id. at 192.
\item \textsuperscript{25} Id.
\end{itemize}
order banning most uses of DDT. The ban took effect at the end of 1972.

B. The 1972 Stockholm Conference

Rising global concern for the environment spawned the very first global environmental summit in June 1972, the Stockholm Conference on Environment and Development, sponsored by the United Nations. The United States sent a sixty-three-member delegation to the conference that included twenty-eight technical advisers and twelve members of Congress. The delegation was led by CEQ Chair Russell Train with Christian A. Herter, Jr., Special Assistant for Environmental Affairs, serving as the vice chairman. EPA Administrator William Ruckelshaus and Secretary of Interior Rogers Morton also were members of the delegation.

Train was elected to serve as a vice chair of the conference, which was attended by representatives of 113 countries, 19 intergovernmental agencies, and more than 400 NGOs. The People’s Republic of China sent a large delegation to the conference. China’s representatives and those of other developing countries were initially skeptical of environmental concerns and had threatened to boycott the conference. Indian Prime Minister Indira Gandhi observed that smoke coming out of a factory signified jobs to her and famously asked, “Are not poverty and need the greatest polluters?”

28. Id.
32. Id.
The conference resulted in the issuance of the Stockholm Declaration, a statement of global environmental principles endorsed by representatives of all the countries who attended.\(^\text{36}\) Prior to the conference, the United States had pushed for it to endorse the negotiation of global treaties to control ocean dumping and to limit trade in endangered species.\(^\text{37}\) This proved successful as the conference endorsed the negotiation of what became the London Dumping Convention and the Convention on International Trade in Endangered Species of Fauna and Flora (CITES).\(^\text{38}\) The conference also led to creation of UNEP.\(^\text{39}\) Overall, the Stockholm Conference confirmed a strong global consensus on the importance of environmental protection and the possibilities of progress through global cooperation. Upon returning to the United States, Train declared the conference a “very definite success” and stated that the United States had “gained really all of its important objectives at the conference.”\(^\text{40}\)

C. Environmental Cooperation with Other Countries

Even before the Stockholm conference, the United States had launched bilateral initiatives to promote environmental cooperation. When President Nixon met with Japanese Prime Minister Eisaku Sato during the summer of 1970, the two leaders pledged to work cooperatively to help each country solve its massive urban air-pollution problems.\(^\text{41}\) This meeting launched several environmental exchanges


37. See Train, supra note 9, at 193.


41. Train, supra note 9, at 195.
between the two countries that ultimately spawned bilateral environmental agreements.42

The most significant bilateral environmental agreement launched during the 1970s was the U.S.-U.S.S.R. Agreement on Cooperation in the Field of Environmental Protection.43 Signed by President Nixon and Soviet President Nikolai Podgorny on May 23, 1972, the agreement promised cooperation “aimed at solving the most important aspects of the problems of the environment.”44 The agreement identified eleven subject areas for study, including air, water and marine pollution, nature reserves, the “influence of the environmental changes on climate,” and “legal and administrative measures for protecting environmental quality.”45 Nearly a quarter of a century later, Russell Train described it as “the most comprehensive, bilateral, environmental agreement ever attempted.”46

While he was CEQ Chairman, Train served as co-chair with a Soviet official of a Joint Committee to implement the agreement, which met annually in either Moscow or Washington, D.C.47 After Train was named EPA Administrator in 1973, he continued to serve as co-chair of the Joint Committee and the EPA became the secretariat for U.S. implementation of the agreement.48 At times as many as 700 scientists and other environmental professionals participated in exchanges under the auspices of the agreement,49 which in 1976 resulted in the adoption of a migratory-bird treaty between the two countries.50 Coordination of climate research became an important area of cooperation during the late 1970s.

Train observed that by the end of the Nixon Administration, “the United States was recognized and accepted as the world leader in environmental protection programs . . . based both upon the leadership role that the [United States] played in international environmental matters but, even more importantly, on the credibility afforded by our domestic environmental policy and action.”51 Yet, according to Train, President Nixon himself had “little appreciation of the significance of

42. Id.
43. Id.
45. Id.
46. Train, supra note 9, at 195.
47. See EPA, supra note 10.
48. Id.
49. Train, supra note 9, at 195.
50. Id.
51. Id.
his achievements in the environmental area,”52 as reflected in his scant and disdainful treatment of them in his memoirs.53 This led Train to “the inescapable conclusion” that Nixon “had little personal interest in or enthusiasm for the environmental program his administration pursued so vigorously and effectively.”54

D. The Ford and Carter Administrations

In his memoirs, Russell Train reports that when the EPA was established in 1970, “Bill Ruckelshaus and I agreed, at his suggestion, that [the] CEQ continue to carry the ball in most international matters.”55 But Train reports that after he moved from the CEQ to become EPA Administrator in 1973, he “took the international portfolio with [him] at the explicit direction of President Nixon.”56 Train reports that when Vice President Gerald Ford assumed the presidency upon Nixon’s resignation in 1974, Ford confirmed this understanding in a letter dated October 17, 1974.57 Thus, during the period from 1970–1973, the CEQ took the lead on international issues, while looking to the EPA and the National Oceanic and Atmospheric Administration (NOAA) for expertise and support. However, after Train was confirmed as EPA Administrator, the EPA assumed primary responsibility for international environmental initiatives as well.58

During the administration of President Jimmy Carter, Douglas Costle served as EPA Administrator.59 Environmental cooperation between the United States and the Soviet Union continued with Costle serving as co-chair of the U.S.-U.S.S.R. Joint Committee.60 Environmental cooperation with China had begun, and Costle served as the chair of the U.S.-China Environmental Protection Protocol.61

52. Id. at 196.
53. Id. at 195–96.
54. Id. at 196.
56. Id.
57. Id. at 342 n.2.
58. Id. at 122–23.
61. Id.
E. The Reagan Administration, Lead Phasedown, and the Montreal Protocol

Upon taking office in 1981, President Ronald Reagan launched a campaign to cut back on environmental regulation.\(^{62}\) This move ultimately produced a backlash that resulted in some significant environmental achievements. President Reagan famously had declared that “trees cause more pollution than automobiles do.”\(^{63}\) This spawned a demonstration in front of the White House where people dressed up in tree costumes held signs reading, “cut me down before I kill again.”\(^{64}\)

President Reagan appointed Vice President George H. W. Bush to chair a Task Force on Regulatory Relief\(^{65}\) that asked corporate CEOs, particularly those in the oil industry, to nominate regulations for elimination.\(^{66}\) The Task Force ultimately directed the EPA to propose relaxing or rescinding the Agency’s first limits on the amount of lead additives that could be placed in gasoline,\(^{67}\) a regulation that had been upheld in 1976 in a landmark en banc decision by the U.S. Court of Appeals for the District of Columbia Circuit.\(^{68}\) This generated such a backlash that the EPA ultimately went in the opposite direction and mandated that nearly all lead additives be phased out of gasoline.\(^{69}\) Ultimately, in the 1990 Clean Air Act Amendments, Congress prohibited the use of all lead additives in gasoline effective January 1, 1996.\(^{70}\) As discussed below, this decision spawned a global lead phaseout.

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64. Id.


66. Id.


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that has proven to be one of the most successful environmental initiatives in world history.

During President Reagan’s second year in office, the United Nations hosted its second global environmental summit. Following the first summit in Stockholm in June 1972, the U.N. General Assembly, in December 1972, had created the UNEP, headquartered in Nairobi, Kenya. UNEP was the first U.N. agency to be based on the African continent. The U.N.’s 1982 environmental summit was held in Nairobi. President Reagan appointed EPA Administrator Anne Gorsuch to lead the U.S. delegation to the Nairobi conference. She was greeted skeptically by other delegates when she reportedly lectured developing countries to rely on market forces to solve their environmental problems.

Sentiment in the developing world had shifted since the 1972 Stockholm conference, with developing countries now demanding that developed countries take action to protect the environment. President Reagan had also appointed one of his daughters to the U.S. delegation, which was widely interpreted as indicating that he placed a low priority on global environmental protection. Yet, ultimately, President Reagan was persuaded of the importance of adopting global measures to phase out ozone-depleting substances.

When an environmental impact statement was performed in 1978 for the U.S. space shuttle program, researchers examined the effects of chemical emissions from NASA’s rockets on the upper atmosphere. University of Michigan scientists Richard Stolarski and Ralph Cicerone discovered that chlorine released in the stratosphere could cause a

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[https://perma.cc/M8EM-BC7J].

73. Stevens, supra note 71.


75. Id.

76. Id.


complex chemical reaction that would destroy the earth’s protective ozone layer, which shields humans from dangerous ultraviolet radiation. Initially, this finding was not considered too alarming because rockets associated with the space shuttle program released virtually no chlorine. But in 1974, scientists Sherwood Roland and Mario Molina discovered that chlorofluorocarbons (CFCs), a class of widely used chemicals, were so durable that after being released into the environment they would migrate into the upper atmosphere where solar radiation would cause them to release large amounts of chlorine, severely damaging the ozone layer.

Roland and Molina’s warning was based solely on an untested theory when it was released, but the U.S. public’s reaction was to stop buying products that contained CFCs. In March 1978, the EPA, the Food and Drug Administration, and the Consumer Product Safety Commission jointly banned all nonessential uses of CFCs. This regulatory action, which effectively banned half of CFC production in the United States (worth $3 billion), made the United States the world leader in responding to the threat of ozone depletion. By contrast, Europeans distrusted the theory of ozone depletion and expressed concerns that the United States was motivated by a desire to gain an economic advantage over them.

The Governing Council of UNEP, which consisted of fifty-eight countries elected by the U.N. General Assembly, in 1980, directed UNEP to consider what measures could be undertaken to protect the stratospheric ozone layer from depletion. In 1981, the Council called for the negotiation of a global convention to accomplish this end. Although UNEP initially pursued the simultaneous adoption of a

80. NASA, supra note 78, at 60–61.
83. Id. at 122.
84. Id. at 122–23.
85. Id. at 122.
86. Johnson, supra note 72, at 34.
88. Id.
framework convention and a protocol to control CFCs,\textsuperscript{89} lingering scientific uncertainty and concern over the costs of a CFC phaseout resulted in the initial adoption in 1985 of a framework convention, the Vienna Convention for Protection of the Ozone Layer.\textsuperscript{90} This treaty established a framework for coordinating research on ozone depletion in support of future regulatory action.\textsuperscript{91} Shortly after the Vienna Convention was adopted, the first hard evidence emerged confirming the existence of an ozone hole.\textsuperscript{92}

As noted above, Ronald Reagan had become president in 1981 and had launched efforts to roll back environmental regulations. Reagan’s Under Secretary of State for Economic Affairs, Allen Wallis, opposed the Vienna Convention out of fear that it would encourage the use of international agreements as a means for circumventing domestic deregulation.\textsuperscript{93} Even though companies producing CFCs opposed regulation, because the Vienna Convention was largely focused on coordinating research on ozone depletion, last-minute intervention by private-sector actors convinced the Reagan administration to allow the U.S. delegation to sign it.\textsuperscript{94}

In the two years between the signing of the Vienna Convention and negotiation of the Montreal Protocol on Substances that Deplete the Ozone Layer,\textsuperscript{95} the EPA spearheaded research on ozone depletion. In late 1985, the EPA released a detailed Stratospheric Ozone Protection Plan and it commissioned papers from experts on all aspects of the problem.\textsuperscript{96}

At a summit meeting in November 1985, President Reagan and Soviet Premier Mikhail S. Gorbachev approved a detailed agreement for further cooperation and research between the United States and the U.S.S.R. on environmental issues.\textsuperscript{97} It was noted at the time that the Soviet Union already had “become involved in an effort to deal with the increasing levels of carbon dioxide and other man-made gases that are contributing to the ‘greenhouse effect’ that is expected to warm the

\begin{itemize}
\item \textsuperscript{89} Id.
\item \textsuperscript{90} Id. at 367–68.
\item \textsuperscript{91} Id. at 368.
\item \textsuperscript{92} Id.
\item \textsuperscript{93} BENEDICK, supra note 79, at 46.
\item \textsuperscript{94} Id. at 46–47.
\item \textsuperscript{95} Sept. 16, 1987, 80 Stat. 271, 1522 U.N.T.S. 3.
\item \textsuperscript{96} BENEDICK, supra note 79, at 49.
\end{itemize}
atmosphere, melt ice caps and cause a rise in sea levels in the next century.98

The EPA played a role in responding to a global environmental disaster in April 1986: the Chernobyl nuclear accident.99 President Regan gave the EPA the responsibility for leading the U.S. response to the nuclear meltdown at the Chernobyl nuclear power plant in Ukraine.100 As fallout from the accident circled the globe, the EPA monitored radiation levels, held daily press conferences to inform the public, and assembled a panel of experts to advise on how to prevent radiation contamination of the food supply.101 EPA scientists went to Europe to monitor levels of radioactivity around U.S. embassies, and they assisted Soviet experts in measuring radioactivity in the Black Sea and Kiev Reservoir.102 The EPA also developed a mobile radiation laboratory for Ukraine.103

On October 17, 1986, President Reagan signed into law the Emergency Planning and Community Right-to-Know Act (EPCRA).104 Enacted as a response to the December 1984 Bhopal tragedy, the EPCRA created the Toxic Release Inventory (TRI), an annual, publicly available registry of the quantities of releases of toxic chemicals into the environment.105 This regulatory innovation has been emulated by other countries, including Canada and the E.U., which have their own inventories of chemical releases.106 In 1991, the EPA reported that it

98. Id.
100. Id.
101. Id.
was helping “Mexico, Europe, Scandinavia and Japan design such programs.”

In September 1986, the EPA had helped UNEP organize a global workshop on ozone depletion hosted by the United States. The EPA’s efforts helped convince other countries of the need for a global phaseout of ozone-depleting substances. But the Agency faced fierce opposition from other parts of the administration. During inter-agency meetings, Interior Secretary Donald Hodel opposed regulation of CFCs by arguing that people could avoid skin cancer simply by wearing “personal protection,” such as hats and sunglasses. His aides leaked this argument to the media, thinking it would be persuasive, but it had precisely the opposite effect, generating widespread mockery and a famous cartoon of fish and wildlife species wearing such accoutrements.

After the President’s Council of Economic Advisers released a cost-benefit analysis showing that the benefits of preventing skin-cancer deaths greatly outweighed the costs of CFC controls, Hodel tried a new tactic: arguing that the United States should condition ratification of any global agreement on all developing countries agreeing to equally stringent controls. Ultimately, Hodel and other opponents of a strong global treaty were overruled by President Reagan at a White House meeting on June 18, 1987. President Reagan, who previously had skin cancers removed in 1985 and earlier in 1987, sided with EPA Administrator Lee Thomas and Secretary of State George Shultz.

On September 8, 1987, representatives of sixty countries, half of them developing countries, convened in Montreal for final negotiations on the Montreal Protocol on Substances that Deplete the Ozone...
Layer. EPA Administrator Lee Thomas played a key role in the final negotiation because the European Union’s representatives were not enthused about phasing out CFCs; they thought it was a U.S. plot to get a trade advantage. Thomas reportedly confronted an E.U. delegate in a bar in Montreal and worked things out over drinks. On September 16, 1987, Thomas signed the Montreal Protocol on behalf of the United States, which he later said was the most satisfying thing he did while EPA Administrator.

F. The George H. W. Bush Administration, Exxon Valdez Oil Spill, and the 1992 Rio Earth Summit

After George H. W. Bush became president in 1989, EPA Administrator William Reilly continued the Agency’s cooperation with other countries. Barely two months after taking office, the Bush administration was forced to confront a major domestic environmental disaster: the Exxon Valdez oil spill. On March 24, 1989, an oil tanker owned by the Exxon Corporation ran aground on Bligh Reef in Prince William Sound, Alaska, spilling more than eleven million gallons of oil. Public outrage over the spill broke a lengthy legislative stalemate, resulting in the adoption of the Oil Pollution Act of 1990 in August of that year. Over a twenty-year period, the legislation phased in a requirement that oil tankers operating in U.S. waters have double hulls. The success of this requirement, which has helped to substantially reduce the amount of oil spilled from oil tankers, helped persuade the International Maritime Organization to adopt it on a global basis.


117. Benedick, supra note 79, at 68–69, 74.


119. Id.


President George H.W. Bush’s signature environmental achievement was the enactment of the Clean Air Act Amendments of 1990. These amendments mandated that leaded gasoline be banned as of January 1, 1996, which completed the transition to unleaded gasoline started during the Reagan Administration. As discussed below, the EPA later played a key role in helping to persuade other countries to make the phaseout of leaded gasoline a global phenomenon. The 1990 Amendments added Title VI to the Act, which dramatically slashed emissions of sulfur dioxide through an emissions-trading program, a concept that China later embraced in an effort to control its carbon emissions.

The most significant development in global environmental law that occurred during the George H.W. Bush Administration was the U.N.’s 1992 Rio Earth Summit. This is widely considered to have been the most successful of the five global environmental summits the U.N. has hosted during the last half century. A total of 172 governments participated, and 108 of their leaders attended, making it the largest gathering of world leaders in history. President Bush appointed EPA Administrator William Reilly to lead the U.S. delegation. More than 2,400 NGOs attended the conference, and 17,000 more people attended a simultaneous “Global Forum.”

The most significant development at the conference was the adoption of the U.N. Framework Convention on Climate Change.
(UNFCCC), the first global treaty to address this problem. The goal of the U.S. delegation was to ensure that the UNFCCC did not impose any obligations on developed countries to limit their emissions of greenhouse gases. The United States succeeded in achieving this goal, and the UNFCCC, like the Vienna Convention, instead set up a process for negotiating such limits. Protests greeted President Bush when he participated in the conference, but he signed the UNFCCC and promptly submitted it to the U.S. Senate for ratification. In October 1992, the Senate ratified the treaty without a dissenting vote, the last time the Senate ratified an environmental treaty.

EPA Administrator William Reilly continually battled conservatives within the Bush Administration, most notably Vice President Dan Quayle and his Council on Competitiveness, which claimed the right to vet and veto EPA regulations. Reilly later claimed that Quayle had persuaded Bush not to sign the Convention on Biodiversity, which first was opened to signatures at the Rio Earth Summit, by mobilizing conservatives and the biotech industry to oppose it after leaking a memo Reilly had sent to Bush.

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134. Id. at 461.
136. Agrawala & Andresen, supra note 133, at 461.
137. Id.; see also David Kaye, Stealth Multilateralism: U.S. Foreign Policy Without Treaties—or the Senate, 92 FOREIGN AFF. 113, 121–122 (2013) (discussing how U.S. international climate policy is made without Senate ratification).
G. The Clinton Administration, NAFTA, Lead Phaseout, and the Kyoto Protocol

When the Clinton Administration assumed office in January 1993, the new Vice President, Al Gore, had stellar environmental credentials, but the new President did not. As governor of Arkansas, Clinton had not been a good steward of the environment: Arkansas was one of only two states that then had not even qualified for delegated authority to issue permits under the federal Clean Water Act. One of Clinton’s first initiatives was to announce that he planned to eliminate the CEQ to help fulfill a campaign pledge to reduce the size of the White House’s staff.

During the 1992 presidential campaign, then-Governor Bill Clinton had endorsed the North American Free Trade Agreement (NAFTA), which the Bush administration had negotiated, with the caveat that side agreements be added to ensure that NAFTA would not erode environmental or labor standards. On August 13, 1993, negotiators from Canada, Mexico, and the United States reached an agreement on environmental and labor side agreements. The environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), required each country to “effectively enforce its environmental laws and regulations through appropriate government...”


146. Id. at 540.

action.”148 It created the Commission on Environmental Cooperation (CEC) to serve as a forum for discussing environmental matters covered by the side agreement.149 This strengthened political support for approving NAFTA because it created a vehicle for environmentalists to file complaints about non-enforcement of environmental laws in Canada, the United States, or Mexico.

As mandated by the 1990 Clean Air Act Amendments, in January 1996, gasoline lead additives were prohibited.150 EPA Administrator Carol Browner hailed this as “one of the greatest environmental achievements of all time,” noting that “[t]housands of tons of lead have been removed from the air, and blood levels of lead in our children are down 70%.”151 The Agency then actively supported efforts to convince other countries to follow suit. In March 1997, a symposium devoted to the elimination of lead in gasoline in China was held in Shanghai, co-sponsored by the EPA and China’s National Environmental Protection Agency.152 At the conclusion of the symposium, China announced that it would convert to 100% unleaded gasoline by 2000.153 Representatives from China’s Ministry of Finance, Ministry of Public Security, and the State Planning Commission all endorsed the plan and offered their strong support.154 Sinopec, China’s largest energy company, which produced nearly 80% of the gasoline in China,155 announced that it was prepared to invest 15 billion RMB (then worth $1.8 billion USD) to make the transition to all unleaded gasoline by 2000.156

The phaseout of leaded gasoline soon became a global imperative. On February 20, 1996, member nations of the Organisation for Economic Co-operation and Development (OECD) signed a declaration establishing phaseout of leaded gasoline as a top action item for each

148. Id. at 57.
153. Id.
154. Id.
155. Id.
156. Id.
country. By the time the E.U. banned the use of leaded gasoline at the pump in 2000, most E.U. nations already had banned it. The EPA sought to facilitate the global phaseout by working with the U.S. Agency for International Development (USAID) to produce an “Implementer’s Guide to Phasing Out Lead in Gasoline.” The guide provided “a checklist and guidance for government officials tasked with developing and implementing a lead phaseout policy . . . by assembling the data and resources these officials need to carry out their task.” In 1999, USAID and the U.S.–Asia Environmental Partnership sponsored a workshop with Vietnam’s Ministry of Transport and the World Bank to discuss phasing out leaded gasoline and to learn from the experiences of other East Asian countries in their phaseout efforts. Vietnam’s phaseout of leaded gasoline was completed by July 2001, eleven years earlier than planned. Sri Lanka’s phaseout of gasoline lead additives resulted in a drop of lead levels in the air by 90%.

In December 1997, parties to the UNFCCC met in Kyoto, Japan, to adopt the first official limits on emissions of greenhouse gases. In an effort to shape the U.S. negotiating position, the U.S. Senate on July 25, 1997 by a vote of 95–0 had adopted the Byrd–Hagel Resolution. The resolution expressed “the sense of the Senate” that the United States should not agree to any “new commitments to limit or reduce greenhouse gas emissions . . . unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the


158. OECD & UNEP, supra note 152, at 4.


160. Id.


162. Id.

163. Id.


same compliance period." In Kyoto, the U.S. delegation argued in vain for applying limits to all countries, but the developing world rejected that position as unfair since nearly all historic emissions that contributed to the climate problem had come from the developed world. Under Secretary of State Stuart Eizenstat, the chief U.S. negotiator, argued for firm targets and flexible means to achieve them, such as the use of emissions trading. When the negotiations began to flounder, Vice President Al Gore joined the talks, and an agreement was reached. The Kyoto Protocol required developed countries, including the United States, to reduce their emissions from 2008 to 2012, on average, to 5% below 1990 levels. But it did not in any way limit emissions from the developing world, including China and India, whose emissions were rapidly increasing. Thus, President Clinton never submitted the Kyoto Protocol to the Senate for ratification.

II. The George W. Bush Administration Repudiates Climate Action

During the 2000 presidential campaign, Texas Governor George W. Bush was running against Vice President Al Gore, who had championed measures to combat climate change. In an effort to neutralize the issue, Governor Bush acknowledged that climate change was a serious problem. Although he did not accept the Kyoto Protocol, in an energy speech in Michigan on September 29, 2000, Bush stated that if he were elected President, he would seek new legislation from Congress to control emissions of greenhouse gasses (GHGs) from both old and new

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power plants. Bush appointed New Jersey Governor Christie Todd Whitman to be his EPA administrator, which drew praise from environmentalists. Prior to leaving for a summit in Trieste with other national environment ministers, Whitman checked with White House Chief of Staff Andrew Card to confirm that the campaign pledge was still accurate. With Card's reassurance, Whitman, in March 2001, told the environment ministers that the new Bush administration planned to set limits on U.S. emissions of GHGs, then the largest source of global emissions.

On March 6, 2001, four Republican senators sent a letter to President Bush asking him to clarify his policy on climate change. Vice President Dick Cheney had orchestrated the letter to create an opportunity for the President to disavow his campaign promise to regulate GHGs. Cheney's staff drafted a brief reply emphasizing scientific uncertainties and international competitiveness as reasons for such a reversal. Moments before Administrator Whitman, following her return from Trieste, was scheduled to meet with President Bush on the morning of March 13, Cheney persuaded the President to sign the


180. Id. at 121; BARTON GELLMAN, ANGLER: THE CHENEY VICE PRESIDENT 89 (2008).
letter; Cheney then personally delivered the reply to the senators.\textsuperscript{181} No one at the EPA or the State Department had seen the letter.\textsuperscript{182} Following a brief meeting with Bush, Whitman left the White House in shock.\textsuperscript{183}

Ten years after the 1992 Rio Earth Summit, the nations of the world met in Johannesburg, South Africa, for the 2002 World Summit on Sustainable Development (WSSD).\textsuperscript{184} President George W. Bush declined to attend the Summit, but he named Secretary of State Colin Powell to lead the United States delegation.\textsuperscript{185} Prior to the summit, U.S. officials had urged that it not be used to develop new treaties, but rather that it should focus on how to better implement existing commitments. Secretary of State Colin Powell made a brief appearance during the closing stages of the conference and was denounced by hecklers. No major treaties were signed, but the summit endorsed the importance of voluntary public–private partnerships.\textsuperscript{186}

One of the partnerships that grew out of the summit focused on phasing out gasoline additives on a global scale. During preparatory meetings for the WSSD, the Natural Resources Defense Council (NRDC) held a side event on “Cleaning Up the World’s Fuel Supply: Getting Lead Out of Gasoline and Sulfur Out of Diesel.”\textsuperscript{187} At the event, held in late January 2002, NRDC noted that fifty countries had phased out leaded gasoline and 85\% of all gasoline consumed worldwide was lead-free.\textsuperscript{188} Jacob Scherr, Director of NRDC’s International Program, praised Colombia and Brazil for having banned leaded gasoline.\textsuperscript{189} World Bank chief economist Magda Lovei highlighted success stories in Thailand, Vietnam, and El Salvador, while criticizing Venezuela for being slow and uncooperative in addressing the problem.\textsuperscript{190}

\textsuperscript{182.} Gellman, supra note 180, at 85.
\textsuperscript{183.} Id. at 89–90.
\textsuperscript{184.} SUSAN R. FLETCHER, CONG. RESEARCH SERV., RL31385, WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (WSSD): BACKGROUND AND SUMMARY 2 (2002).
\textsuperscript{185.} Id.
\textsuperscript{188.} Id.
\textsuperscript{189.} Id.
\textsuperscript{190.} Id.
A Plan of Implementation adopted at the WSSD in August 2002 called for the World Bank to support a total phaseout of lead in gasoline.\textsuperscript{191} To this end, the WSSD established the Partnership for Clean Fuels and Vehicles (PCFV) as a public–private partnership dedicated to eliminating leaded gasoline.\textsuperscript{192} UNEP’s Nairobi headquarters agreed to serve as the PCFV’s clearinghouse.\textsuperscript{193}

On October 28, 2003, the Fuels and Vehicles Working Group of the International Petroleum Industry Environmental Conservation Association (IPIECA) endorsed the goal of working toward the worldwide elimination of lead as an additive in motor gasoline.\textsuperscript{194} Noting that “the developing world should benefit from modern fuels which are available now in most countries,” the IPIECA stated that “the removal of lead is important to public welfare because it will allow the introduction of widely available vehicle catalytic exhaust technology to improve air quality.”\textsuperscript{195}

By October 2011, UNEP and the PCFV announced that phaseout of leaded gasoline had been completed in 175 countries.\textsuperscript{196} This has resulted in a 90% decline in levels of lead in human blood.\textsuperscript{197} UNEP and the PCFV lauded a study by economists Peter Tsai and Thomas Hatfield, which estimated the global net benefits from the phaseout of leaded fuel.\textsuperscript{198} The economists concluded that the best estimate is a global net benefit of $2.45 trillion per year, or approximately 4.27% of global gross domestic product per year.\textsuperscript{199}


\textsuperscript{195} Id. at 4.

\textsuperscript{196} Lehner, supra note 193.


\textsuperscript{198} EPA, supra note 192, at 2–3 (citing Peter L. Tsai & Thomas H. Hatfield, Global Benefits from the Phaseout of Leaded Fuel, 74 J. ENVTL. HEALTH 8, 8 (2011)).

\textsuperscript{199} Tsai & Hatfield, supra note 198.
The Bush Administration’s antipathy toward measures to control GHG emissions led it to commit a major strategic error that ultimately laid the legal groundwork for federal regulation. On April 10, 1998, the Clinton Administration’s EPA General Counsel, Jonathan Z. Cannon, had authored a legal opinion finding that greenhouse gases are “air pollutants” that can be regulated under the existing Clean Air Act. On October 1999, his successor, Gary S. Guzy, reiterated that position when appearing before a congressional committee. In January 2001, just before Bush took office, the Clinton EPA solicited public comment on a petition asking the EPA to use the Clean Air Act to regulate GHG emissions from motor vehicles. The petition had been filed in 1999 by the International Center for Technology Assessment, a five-person NGO formed in the wake of Congress abolishing the government’s Office of Technology Assessment.

Eager to drive a stake through the heart of the notion that the Clean Air Act covered GHG emissions, the Bush EPA revoked Cannon’s opinion. On September 8, 2003, the EPA entered an order denying the petition. This was a spectacular strategic mistake made without the support of EPA’s career employees. EPA had no legal obligation to respond to the petition, but by doing so the Agency opened the courthouse doors to environmental interests who now had a federal agency action subject to judicial review. After the D.C. Circuit upheld the EPA’s action, the Supreme Court, by a 5–4 vote, reversed and held that GHGs are air pollutants subject to regulation under the Clean Air Act and that the EPA’s reasons for not doing so were


201. Id. at 14–20 (testimony of Gary S. Guzy, Gen. Counsel, EPA).


206. Lazarus, supra note 179.

207. See Administrative Procedure Act, 5 U.S.C. § 553(e) (2012) (requiring agencies to give interested parties the right to petition, but omitting an obligation to respond to such petitions).


arbitrary and capricious. This decision provided the legal basis for the Obama Administration’s subsequent regulation of GHG emissions.

I. The Obama Administration, Minimata, Copenhagen, and the Paris Agreement

During his first week in office, President Barack Obama took bold steps to reverse the Bush Administration’s eight years of inaction on climate change. He instructed the EPA to reverse Bush’s disapproval of California’s request to adopt air-emissions standards that were more stringent than the federal minimum, and he ordered the EPA and the National Highway Transportation Safety Administration (NHTSA) to consider adopting significantly more stringent fuel-economy standards. The President also agreed to initiate negotiations on a global treaty to control mercury emissions, which helped persuade China and India to reverse their opposition. These negotiations culminated in the signing of the Minamata Convention on Mercury in October 2013. By February 2020, a total of 128 countries had signed the Minamata Convention, and 117 of them have ratified it. The Convention entered into force on August 16, 2017.

President Obama challenged Congress to adopt new legislation authorizing a nationwide cap-and-trade program to control GHG emissions. He told Congress that if it did not enact legislation regulating GHG emissions, the EPA would use its authority under the Clean Air

210. See id. at 533–34 (asserting that the EPA’s justifications were not based on “reasoned judgment” and had “nothing to do with whether greenhouse gas emissions contribute to climate change”).


217. UNEP, supra note 215, at 10.
Act to regulate them.218 A bill to create a national cap-and-trade system, the American Clean Energy and Security Act of 2009 (also known as the Waxman-Markey bill), passed the House of Representatives by a vote of 219-212 on June 26, 2009.219 But it never was brought to a vote in the Senate.220 On December 7, 2009, the EPA found that GHG emissions endanger public health and welfare,221 triggering an obligation to regulate them under the Clean Air Act.222

President Obama sought to engage Chinese leaders in regular high-level meetings to discuss economic and environmental issues of mutual concern. This was particularly important because China’s emissions of GHGs had increased so rapidly that in 2007 it overtook the United States as the largest GHG emitter in the world.223 At the G-20 meeting in London on April 1, 2009, President Obama and Chinese President Hu Jintao announced the start of a new U.S.-China Strategic and Economic Dialogue,224 or the “G-2.”225 This represented an upgraded version of the Senior Dialogue and Strategic Economic Dialogue initiated in 2006 by Hu Jintao and President George W. Bush. Top leaders of both countries had met twice a year, alternating between China and the United States; five meetings had occurred between December 2006 and December 2008.

On the day of the first meeting of the new U.S.-China Strategic and Economic Dialogue, Secretary of State Hillary Clinton and Treasury


220. For a discussion of what happened to this proposed legislation in the Senate, see Lizza, supra note 218.


Secretary Timothy Geithner noted that a “priority is to make progress on the interconnected issues of climate change, energy and the environment. Our two nations need to establish a true partnership to put both countries on a low-carbon pathway, simultaneously reducing greenhouse gas emissions while promoting economic recovery and sustainable development.”

Clinton and Geithner emphasized the importance of China agreeing to “meaningful participation” in new measures to cap rising emissions of GHGs at the next meeting of the parties to the UNFCCC in December 2009 in Copenhagen.

The July 2009 U.S.-China meeting included special separate sessions on climate change, clean energy, and the environment. The U.S. officials at the meeting included EPA Administrator Lisa Jackson and former EPA Administrator Carol Browner, who was then Director of the White House’s Office of Energy and Climate Change Policy. China’s representatives include the National Development and Reform Commission’s Vice Minister Zhang Guobao, who spoke on energy issues, and Vice Minister Xie Zhenhua, former head of China’s State Environmental Protection Agency, who talked about China’s efforts to limit its carbon dioxide emissions.

At the Copenhagen conference in December 2009, China refused to agree to cap its GHG emissions. With the negotiations at an impasse, President Obama arrived and played a major role in convincing world leaders to shift to a new approach. He proposed what came to be known as the “Copenhagen Accord,” in which individual countries would volunteer how they planned to control their GHG emissions.

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227. Id.


230. Id.


Although China refused to promise that it would cap its emissions, it adopted a “voluntary goal” to reduce the carbon intensity of its economy by 2020 to 40% below its 2005 levels. India announced an “aspirational target” to reduce the carbon intensity of its economy by 2020 to 20% percent below 2005 levels. While the conference “took notice” of the Copenhagen Accord without formally adopting it, the Accord marked a shift away from the top-down approach of the Kyoto Protocol to a new bottom-up strategy relying largely on voluntary commitments by each nation. This foreshadowed the approach ultimately adopted in the 2015 Paris Agreement.

During the Obama administration, the EPA expanded its international outreach. As part of the U.S.-Asia Environmental Partnership, the EPA provided technical assistance to Vietnam and other governments in Southeast Asia on measures to improve regional air quality. EPA officials continued to participate in the Strategic and Economic Dialogue’s high-level meetings between Chinese and U.S. officials, with environmental issues prominent on the agenda. In June 2012, China protested when the U.S. Embassy in Beijing started a


234. Id.


237. Meyer, supra note 236; The Paris Agreement, supra note 236.


Twitter feed of an air-quality monitor with hourly reports of levels of small particulate (PM2.5). The United States refused to stop reporting the data, which showed much higher levels of pollution than the Chinese government had been reporting. The reaction of the Chinese public ultimately forced China to set new regulations to limit levels of PM2.5. EPA later honored the embassy staffer who came up with the idea for the Twitter feed.

In June 2012, the U.N. Conference on Sustainable Development, also known as the Rio+20 Conference, was held in Rio de Janeiro. The U.S. delegation was led by Secretary of State Hilary Clinton with EPA Administrator Lisa Jackson serving as alternate head of the delegation, and Todd Stern, Special Envoy on Climate Change, serving as chief negotiator. Nancy Sutley, Chair of the White House Council on Environmental Quality, was part of the U.S. delegation, which included technical experts from the EPA. The Conference launched a process to develop sustainable development goals for the period from 2016–2030, building upon the Millennium Development Goals that were expiring at the end of 2015.

In June 2013, the Obama White House released a comprehensive climate action plan vowing to reclaim international leadership on climate issues. The plan pledged to galvanize “international action to significantly reduce emissions . . . , prepare for climate impacts, and drive progress through the international negotiations.” Specifically, it


244. Id.


vowed to “expand major new and existing international [climate] initiatives, including bilateral initiatives with China, India, and other major emitting countries.” It also promised to stop U.S. government support for financing of new coal-fired power plants in other countries unless the plants used the most efficient technology available such as carbon capture and sequestration.

Part of President Obama’s climate action plan was to persuade the global community to use the Montreal Protocol to phase out hydro–fluorocarbons (HFCs), ozone-depleting substances that also are potent greenhouse gases. During President Obama’s first meeting with Chinese President Xi Jinping in California in June 2013, the two leaders agreed to such a plan. In November 2015, EPA Administrator Gina McCarthy led the U.S. delegation to the 27th Meeting of the Parties to the Montreal Protocol (MOP-27) in Dubai. At MOP-27 the Dubai Pathway was adopted, initiating negotiations to phase down the production and use of HFCs. These negotiations culminated in October 2016 with the adoption of the Kigali Amendment to the Montreal Protocol, which entered into force on January 1, 2019.

China and the United States ultimately adopted a joint strategy to control their emissions of GHGs. After months of secret negotiations, the United States and China stunned the global community on


249. Id. at 17.


November 11, 2014, by releasing the U.S.-China Joint Announcement on Climate Change.255 For the first time, China agreed to stop the rise of its GHG emissions by 2030 if not earlier;256 the United States set a new target to reduce its GHG emissions by 2025 to 26–28% below 2005 levels.257 This agreement played a major role in the successful conclusion of the 2015 Paris Conference of the Parties (COP-21) where the Paris Climate Agreement was endorsed by every country in the world except for Syria and Nicaragua.258

J. The Trump EPA and the Paris Agreement

During the 2016 presidential campaign, candidate Donald Trump promised to “abolish [the] EPA” and to “cancel the Paris Agreement.”259 In November 2012, Trump tweeted that “[t]he concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.”260

After winning the 2016 presidential election, Trump appointed Myron Ebell, a fierce opponent of the EPA, to head up the Agency’s transition team.261 He nominated Oklahoma Attorney General Scott Pruitt, who had sued the EPA more than a dozen times, to be EPA Administrator.262 On Trump’s first day in office, the White House


256. Id.


website announced that President Obama’s climate action plan would be eliminated as “harmful and unnecessary.”\(^{263}\) The plan was formally repealed by President Trump in a March 2017 Executive Order.\(^{264}\) On June 1, 2017, President Trump hosted a ceremony in the White House Rose Garden where he announced that he intended to withdraw the United States from the Paris Agreement.\(^{265}\) Bob Woodward’s book, *Fear in the White House*,\(^ {266}\) reports that Trump’s daughter, Ivanka, and his son-in-law, Jared Kushner, lobbied him not to withdraw from the Paris Agreement.\(^ {267}\) But White House adviser Steve Bannon and EPA Administrator Scott Pruitt, who fiercely opposed the Paris Agreement, won the battle.\(^ {268}\)

The United States’ withdrawal cannot become effective until November 4, 2020, the day after the 2020 presidential election.\(^ {269}\) Subsequent to Trump’s announcement, both Syria and Nicaragua ratified the Paris Agreement.\(^ {270}\) As a result, the United States, which is now the second largest emitter of GHGs in the world,\(^ {271}\) is now the only

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\(^{265}\) Remarks Announcing United States Withdrawal from the United Nations Framework Convention on Climate Change Paris Agreement, 2017 DAILY COMP. PRES. DOC. 373 (June 1, 2017).


\(^{267}\) Id. at 189–90.

\(^{268}\) Id. at 191, 194.


country in the world to reject the Paris Agreement. Chinese officials have expressed disappointment in President Trump’s decision, but they have reaffirmed that China is committed to meeting its commitments under the agreement. In fact, China may be on track to meet its Paris commitments several years early.

A coalition of 10 states, 11 tribes, 289 cities and counties, 2,239 businesses and investment groups, and 353 colleges and universities calling itself “We Are Still In” has pledged to ignore the U.S. withdrawal and operate in a manner to meet the United States’ commitment. A bipartisan group of governors from twenty-four states and Puerto Rico has joined the United States Climate Alliance, which is committed to reducing greenhouse emissions consistent with the goals of the Paris Agreement.

The Trump administration renegotiated NAFTA, and the new US-Mexico-Canada Agreement (USMCA) includes a side agreement on Environmental Cooperation. The agreement makes no mention of climate change, but a side agreement continues the work of the
Commission on Environmental Cooperation. 278 After being passed by both Houses of Congress, legislation approving the USMCA was signed by President Trump on January 29, 2020. 279

II. THE ROLE OF THE EPA IN THE DEVELOPMENT OF GLOBAL ENVIRONMENTAL LAW

As the foregoing history demonstrates, during its first half century of operation the EPA has played a significant role in the development of global environmental law. Its role has been highly dependent upon the policies of the President and the U.S. Department of State, both of whom are primarily responsible for conducting international relations. But the high regard that other nations hold for the EPA’s experience and technical expertise has afforded the Agency enormous global influence.

The importance the EPA has placed on international activities is reflected in the fact that, from the very beginning, the Agency had an Office of International Affairs. As the development of international environmental law increased in importance, the Agency’s Office of General Counsel informally created an International Activities Division in 1989, 280 and launched it formally in 1991 during preparations for the 1992 Rio Earth Summit. 281 This division consisted of an Associate General Counsel, a Deputy Associate General Counsel, and six staff attorneys. 282 In 2008, the Office of General Counsel’s Environmental Law Office was merged into the Agency’s Cross-Cutting Issues Law Office, headed by an Associate General Counsel. 283 This office includes the International Environmental Law Practice Group (IELPG), which is staffed by four attorneys and an Assistant General Counsel. 284 These lawyers work closely with the EPA’s Office of International and Tribal Affairs (OITA), which coordinates international work within the EPA. 285

The OITA includes three divisions. First, the Office of Regional and Bilateral Affairs is the EPA’s primary point of contact with

280. Yang, supra note 147, at 60.
281. Id.
282. Id.
283. Id.
284. Id.
285. Id. at 61.
governmental officials and environmental experts in countries that the EPA deems “priority regions” for environmental protection. The EPA has established bilateral cooperative programs with countries all over the world to share its expertise while building support for the EPA’s global environmental priorities. In the Asia-Pacific region, the EPA has such programs with Australia, China, Taiwan, Hong Kong, Japan, South Korea, Singapore, Vietnam, and the Pacific Islands. For example, the EPA assists China’s Ministry of Ecology and Environment (MEE) with the development of environmental protection laws based on a shared memorandum of understanding that focuses on six priorities, including improving air quality, reducing water pollution, and improving environmental enforcement and compliance. The EPA has assisted Vietnam’s Ministry of Natural Resources and Environment on topics such as how to conduct environmental impact assessments and how to improve enforcement of regulations.

Similar educational relationships exist in Latin America, the Middle East, and Sub-Saharan Africa, in countries whose governments have not historically prioritized or enforced environmental regulation. In bilateral relationships in these regions, the EPA seems to take a mentorship role. In Latin America, the EPA participates in the Latin American Network for Environmental Enforcement and Compliance and evaluates the environmental impacts of free trade agreements. In the Middle East, the EPA collaborates with Morocco under the auspices of the US-Morocco Free Trade Agreement, and in Israel on waste-site cleanup, water-security initiatives, and lead-paint remediation programs.


288. See id.


290. EPA Collaboration with Vietnam, supra note 238.


292. EPA Collaboration with Morocco, EPA, [https://www.epa.gov/international-cooperation/epa-collaboration-morocco](https://www.epa.gov/international-cooperation/epa-collaboration-morocco) (last updated Sept. 11, 2019).

293. EPA Collaboration with Israel, EPA, [https://www.epa.gov/international-cooperation/epa-collaboration-israel](https://www.epa.gov/international-cooperation/epa-collaboration-israel) (last updated Mar. 24, 2020).
In regions that developed environmental regulation concurrently with the United States, such as Canada and Europe, the EPA's bilateral programs are partnerships directed towards common goals, such as reducing vehicle emissions and managing chemical use. The EPA shares technical expertise with European countries by inviting visits to its National Vehicle and Fuel Emissions Laboratory, and the Agency cooperates with European agencies in conducting transboundary pollution studies. The EPA and European agencies also compare how to improve chemical regulation under the U.S. Toxic Substances Control Act and the E.U.'s REACH program. In North America, the EPA has agreements with Canada, like the Boundary Waters Treaty, and with Mexico, including the Border 2020 initiative, to address environmental and public-health priorities in the southern border region.

Second, the EPA's Office of Global Affairs and Policy provides international policy expertise for multinational environmental issues, develops initiatives to tackle new environmental issues, and engages with international instruments (e.g. trade, finance, investment agreements) related to environmental issues. For example, the office serves as the EPA's liaison in the Global Mercury Partnership (a result of the Minamata Convention on Mercury). The EPA also works with the International E-Waste Management Network to share ideas for managing the growing problem of electronic waste around the world.


295. Id.


The Office of Global Affairs and Policy is where the rest of the EPA’s involvement in international environmental treaties takes place, such as the Partnership for Clean Fuels and Vehicles,303 of which the EPA was a founding member, and the Global Alliance to Eliminate Lead in Paint.304 The EPA is also involved in a number of U.N. environment programs, such as the Regional Seas Programme,305 the Caribbean Environment Program,306 and the Global Partnership on Marine Litter.307 The EPA’s involvement in the latter partnership included providing guidance to other countries based on its trash-free waters program, an example of the Agency providing programmatic expertise to foreign governments.308

The Office of Global Affairs and Policy is also responsible for the EPA’s involvement in international trade and finance. The EPA has worked with other domestic governmental agencies to develop robust environmental provisions of proposed free-trade agreements, such as the Central America-Dominican Republic Free Trade Agreement,309 the US-Australia Free Trade Agreement,310 and others.311 It also shapes environmental criteria for the U.S. government’s international finance and investment decisions, working with the Treasury Department to


306. Id.

307. Id.


311. EPA’s Role in International Trade, supra note 309.
review the environmental impacts of investments by multilateral development banks (e.g., the World Bank).  

Finally, the EPA’s Office of Management and International Services manages the Agency’s International Visitors Program for officials interested in learning about its programs, as well as grants and cooperative agreements. The visitors program is a key component of the EPA’s mentorship role on the global stage, as it allows international experts to learn from its successes in environmental regulation. In October 2013, a delegation from the Bureau of Environmental Supervision of China’s then-Ministry of Environmental Protection was in Washington, D.C. to visit the EPA’s offices, only to discover that the U.S. government had shut down due to failure of Congress to agree on a budget. The Environmental Defense Fund stepped in and arranged for the visiting delegation to receive briefings from U.S. environmental law scholars. The government shutdown, which lasted from October 1st to the 17th, forced the U.S. delegation that had traveled to Japan for the signing of the Minamata Convention to abruptly return home.

These three sub-offices of the OITA participate in what the EPA calls its “international cooperation” operations. They are the formalized mechanisms for international involvement, spanning both global environmental law—collaborative sharing relationships with foreign governments developing their own environmental laws—and international environmental law—EPA involvement in the implementation of transnational treaties and partnerships.

The EPA’s successful bilateral partnerships help illustrate how global environmental law is evolving through what one scholar early on


313. About the Office of International and Tribal Affairs (OITA), supra note 286.


317. About the Office of International and Tribal Affairs (OITA), supra note 286.
termed “transgovernmentalism.” This type of exchange—information-sharing between independent governments—continues to thrive as countries borrow legal and regulatory innovations from one another. For example, in Europe the International Network for Environmental Compliance and Enforcement (INECE) works with the EPA and the Netherlands’ Ministry of Housing, Spatial Planning and Environment. Poland and other European countries have sought similar technical assistance from the EPA. Similarly, during the initial NAFTA negotiations, the EPA conducted trainings in Mexico on the basics of environmental inspections, environmental-impact assessments, and using aerial surveillance techniques. As a result of the EPA’s training, many Mexican environmental regulations have been revised to more closely model the EPA’s regulations. Through its educational and collaborative partnerships with foreign governments EPA has used its expertise to improve the development of global environmental law.

In addition to its various formal involvements in international treaties and partnerships with other governments, the Agency maintains a less formal educational network to provide resources to other countries. For example, the EPA’s Public Participation Guide is designed to assist other governments in increasing meaningful public participation with the development of new environmental regulations. The Agency provides Environmental Impact Assessment technical review guidelines in English and Spanish, and an Environmental Solutions Toolkit, which is a guide to U.S. environmental technologies and service providers.

319. Id. at 44.
320. Id.
321. Id. at 47–48.
322. Id. at 48.
The EPA also works with international agencies and environmental departments to develop environmental management standards. For example, it assisted in the development of the International Standardization Organization (ISO) 14001 standard for environmental management systems. The EPA evaluated the usefulness of the proposed standard through a variety of pilot projects.

The Agency has influenced the development of environmental law throughout the world through leading by example. EPA action made the United States one of the first countries in the world to ban DDT. The Agency was instrumental in bringing vehicle-emission regulation into the global mainstream, and its phaseout of gasoline lead additives inspired the rest of the world to follow suit. The Agency’s Toxics Release Inventory has become a model for right-to-know and transparency programs worldwide.

**Conclusion**

Looking back over the first half century of the EPA’s history, several conclusions are apparent. First, from its very beginning, the EPA has played a major role in the development of global environmental law and policy, leading by example. As Russell Train has observed, during the 1970s, the United States “was recognized as the world leader in environmental matters” because “its domestic commitment to environmental progress . . . gave credibility to U.S. leadership in the international arena.” Even when under assault by domestic critics, the EPA has commanded international respect because of its technical expertise and leadership experience.

Second, the EPA’s influence has been enhanced by its working partnerships with other federal agencies and environmental ministries in other countries. In the United States, the President and the State Department have the primary responsibility for conducting foreign relations. Thus, the EPA’s greatest global impact has occurred when it worked in tandem with the President and State Department to provide environmental expertise in support of the nation’s foreign-policy goals.
Third, an important reason for the success of the EPA’s global outreach has been long-time, bipartisan support for promoting a level global playing field featuring strong environmental controls in the rest of the world. As developing countries strengthen their environmental standards and improve enforcement, it becomes more difficult for dirty industries to find countries that are pollution havens.

Fourth, one of the hallmarks in the growth of global environmental law has been the emergence of public-private partnerships as NGOs increasingly work with government officials to develop and strengthen environmental protection measures. Public-private groups, such as the PCFV,\textsuperscript{331} helped spread important and nearly universal policy innovations, such as the prohibition of lead additives in gasoline, which dramatically improved public health throughout the world.

The increasingly global nature of environmental problems has made it imperative that the EPA play a major role in international affairs. Even when under assault domestically, the Agency has commanded international respect because of its expertise and experience. The EPA now may be at a critical crossroads as the current administration again seeks to slash the Agency’s budget and shrink the number of its employees. Review of the enormous impact the EPA has had during the last half century on the development of global environmental law suggests that any such action could have significant global consequences.