# Lead 1AC

## Inherency

### Our water infrastructure is deteriorating. The Flint water crisis should have provided a wake-up call – showing that lead poisoned water is risking the safety of communities throughout the U.S. Current laws are dangerously outdated and inaccurate.

Robert **Kaplan** U.S. Environmental Protection Agency Office of Regional Counsel (C-14J) **June 4, 2021** Get the Lead Out https://www.jdsupra.com/legalnews/get-the-lead-out-1355205/

Flint is an extreme example, but is also evidence of the larger problem. We have relied upon on the Lead and Copper Rule (LCR) protections since 1991, which place primary emphasis on limited sampling and corrosion control optimization – rather than on the removal of lead connections to homes. In my view, the LCR is flawed. First and foremost, the LCR is not health-based. Its “action level” of 15 ppb (or “trigger level” of 10 ppb under a recent pending revision) is not derived from risk to human health. Rather, it is intended as an indicator to evaluate the efficacy of corrosion control. It is not a “safety” number (although it has often been misinterpreted as such). The LCR is also measured in a small fraction of homes, and even for those measured, only at lengthy intervals. It is also measured at the 90th percentile, meaning 10 percent of homes can be receiving water with lead levels above the action level — by any amount – without consequence. For those homes, this exceedance might be a few parts per billion above the action level – but it might also be hundreds of times that amount. LCR sampling is also unlikely to capture the peak concentration levels of lead in tap water due to the fact that it only samples the first draw of water from the tap. The lateral lines that connect residential plumbing to the street are often made of lead. The first draw often misses the higher concentrations of lead present in water that has been sitting for hours or days in those lead lateral pipes. In addition, we have also learned that lead can flake off from pipes sporadically and unpredictably, sometimes as the result of events like construction and truck traffic. These sporadic pulses of lead are unlikely to be captured in LCR sampling, but can harm children nonetheless. Importantly, the LCR often does not provide adequate warning of an incipient problem to regulators. Again, Flint provides an example of this shortcoming of the LCR: in January 2015, Flint’s LCR result was 6 ppb, and its July 2015 result – just prior to the highest blood levels in Flint — was only 11 ppb. Based on these results, arguably no action was required in Flint. Rather than ringing the alarm bell, the LCR thus tended to provide a false sense of security. Finally, the remedies associated with the LCR – even if exceedances are found – result in lead line replacement at a pace that can allow decades to pass before full replacement occurs (ranging from 3 to 7 percent a year). Even among voluntary replacement programs, the pace of replacement is agonizingly slow: at its current pace, Milwaukee’s program would take 70 years to complete and at the current rate, Chicago’s would take 500 years. The problem hits those least able to afford it the hardest. While wealthier communities or individual homeowners may be able to pay the cost of lead line replacement, there is little hope for poor communities, renters, and those who cannot afford the substantial cost of the work. Absent a significant change in our approach, generations of children will grow up in homes and schools served by lead pipes. EPA has been considering revisions to the LCR for many years and has received extensive stakeholder input. The outgoing Obama Administration summarized the challenges ahead and provided a road map for revisions of the LCR in a White Paper after the Flint Crisis (Office of Water October 2016). The Trump Administration promulgated revisions to the rule in the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR), published in the Federal Register in the final days of the Administration. 86 Fed. Reg 4198 (Jan. 15, 2021). The effective date of those revisions, however, was recently delayed by the Biden Administration pending further comment and review. 86 Fed. Reg. 14003 (Mar. 12, 2021).

## Plan

### To solve these problems, we present the plan: The United States federal government should substantially increase its protection of water resources by amending the Lead and Copper Rule to require the full replacement of all lead service lines in the United States.

## Solvency

### Directly enforceable maximum contaminant levels for lead and a clear commitment to fully replace all lead service lines are fundamental to a solution to our lead water crisis.

Erik D. **Olson** Senior Strategic Director Here’s What’s Needed to Fix the EPA’s Outdated Lead in Tap Water Rule October 09, **2019** https://www.nrdc.org/experts/erik-d-olson/heres-whats-needed-fix-outdated-epa-lead-tap-water-rule

The EPA should replace the LCR with a directly enforceable maximum contaminant level (MCL) for lead of 5 parts per billion (ppb) at the tap. [Canada](https://www.canada.ca/en/health-canada/services/publications/healthy-living/guidelines-canadian-drinking-water-quality-guideline-technical-document-lead.html) recently set this as a maximum, and the [EU recently recommended](https://ec.europa.eu/environment/water/water-drink/pdf/revised_drinking_water_directive.pdf) that its maximum lead level in drinking water be dropped from 10 to 5 ppb. However, if the EPA refuses to set an MCL, it must at least overhaul the Lead and Copper Rule. At a minimum, the EPA’s revised LCR should establish: A requirement for a full inventory of all service lines to identify all those made from lead or galvanized steel pipe; An enforceable timeline of no longer than 10 years to fully replace all lead service lines, with the water system funding the full cost of replacement under both public and private property; A mandate that lead service lines be replaced at a rate of at least 10 percent per year (the current rule requires only 7 percent per year, a requirement applied only as long as the utility exceeds the EPA action level of 15 ppb); A ban on partial lead service line replacements; Clear sampling protocols to fully capture lead levels in tap water, and a ban (by rule) on methods that tend to minimize detections of lead; Robust monitoring of vulnerable homes, with mandatory observation of identified high-risk homes rather than voluntary, customer-initiated sampling; More frequent sampling at the tap; Prompt and understandable public notification requirements that can effectively reach diverse audiences; A reduced action level for lead of 5 ppb; A requirement for utilities to test for lead in water from all fountains and other drinking water sources at schools and day care centers in their service area.

## Advantage 1: Lead Poisoning

### Lead contamination is a national crisis affecting millions across the US every year

Alisha **Faherty 20**, J.D. Candidate, at the Elisabeth Haub School of Law at Pace University, “Tapped Out: How Newark, New Jersey’s Lead Drinking Water Crisis Illuminates the Inadequacy of the Federal Drinking Water Regulatory Scheme and Fuels Environmental Injustice throughout the Nation,” Environmental Claims Journal, November 17th, 2020, pg. 9, accessed 7/12/21, DOI: https://doi.org/10.1080/10406026.2020.1848078

Another **major issue** with the current system is the **lack of reporting and enforcement**. In 2015, **over 18 million Americans** were served by a water system that **violated the Lead and Copper Rule**, due to failures to properly test the water, failures to report contaminations to state officials and to the public, and failure to treat the water appropriately to avoid corrosion.74 Further, community water systems serving over 3.9 **million Americans demonstrated lead levels in exceedance** of the 15 ppb federal action level.75 Despite these numbers of violations, NRDC has found underreporting within EPA’s drinking water database for the past 25 years.76 Based on EPA’s own data, states and the EPA took formal enforcement action against only 11% of more than 8,000 violations that occurred in 2015, leaving 88% of violators free.77 Of these formal enforcement actions, penalties were sought and enforced on only 3% of violators.78 Even more telling, EPA’s safe drinking water information system, a system designated to track violations of the SDWA, does not even list Flint as a violator,79 despite clear notoriety among the public throughout the country. If Flint is not even in the database, it can only be imagined how many other violators are not, depicting the **utter lack of reporting** within this regulatory scheme. The SDWA and the Lead and Copper Rule thus breeds a **culture of noncompliance, underreporting, and lack of enforcement, creating a perilous national drinking water cycle** that ultimately leaves its greatest impacts on those who are the **most vulnerable**.

### Lead is a heavy metal linked to serious health impacts that can last for a lifetime – yet millions are at risk in communities across the United States. Strengthening governmental protections of clean drinking water is necessary to avoid the risks.

Melissa **Denchak** Flint Water Crisis: Everything You Need to Know November 08, **2018** https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know

Easy to melt and malleable, [lead](https://www.nrdc.org/stories/everything-you-need-know-about-lead) is a heavy metal that has been used by people for millennia. The [Romans](https://www.npr.org/2016/04/06/473268312/before-it-was-dangerous-lead-was-the-miracle-metal-that-we-loved) added it to makeup, cookware, and paint and even consumed it as a sweet seasoning and preservative in wine. They used lead in the pipes for their famous baths as well as their aqueducts. Not surprisingly, the word plumbing is a derivative of plumbum, the Latin word for lead.

Yet then as now, lead exposure was linked to [serious health impacts—even madness and death](https://archive.epa.gov/epa/aboutepa/lead-poisoning-historical-perspective.html). Modern science shows that even [low levels](https://www.epa.gov/lead/learn-about-lead#effects) of lead can impair the brain development of fetuses, infants, and young children. The damage can reverberate for a lifetime, reducing IQ and physical growth and contributing to anemia, hearing impairment, cardiovascular disease, and behavioral problems. Large doses of lead exposure in adults has been linked to high blood pressure, heart and kidney disease, and reduced fertility. Pure lead pipes, solder, and fittings were banned from U.S. water systems in 1986 (it was only in 2014 that allowable lead levels in plumbing and fixtures dropped to 0.25 percent), and national regulations for lead testing and treatment of public water supplies were established in 1991 iwith the [Lead and Copper Rule](https://www.epa.gov/dwreginfo/lead-and-copper-rule). While action by the water utility is required once the level of lead in public water supplies reaches 15 ppb (as measured at the 90th percentile of samples collected), the EPA [acknowledges](https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water) that “there is no safe level of exposure to lead.” Independent tests conducted in fall 2015 [revealed](http://flintwaterstudy.org/information-for-flint-residents/results-for-citizen-testing-for-lead-300-kits/) that nearly 17 percent of samples from hundreds of Flint homes measured above the 15 ppb federal lead action level, with several samples registering above 100 ppb. Beyond Flint Far more than pipes were corroded during the Flint water crisis. City, state, and federal missteps also destroyed residents’ trust in government agencies. Even if studies indicate Flint’s water is safe, it’s tough to expect its families to drink a glass of tap water without fear. Fortunately, a majority of Americans have access to safe water, a luxury most of us probably enjoy with little thought. But Flint serves as a reminder that safe water isn’t a guarantee. A recent [NRDC analysis](https://www.nrdc.org/resources/threats-tap-widespread-violations-water-infrastructure) found thousands of community water systems have violated federal drinking water laws, including the Lead and Copper Rule, which provides safeguards against lead. Meanwhile, there are [many contaminants](https://www.nrdc.org/stories/whats-your-drinking-water) that aren’t even monitored or regulated, such as perchlorate (a component of rocket fuel) and [PFOA/PFOS/PFAS](https://www.nrdc.org/media/2018/180710) (chemical cousins of Teflon). To protect our water supplies, it is crucial that we upgrade our nationwide water infrastructure, prioritizing the replacement of an [estimated](https://www.nrdc.org/experts/rhea-suh/two-years-tragedy-flint) 6.1 million lead service pipes. Strengthening existing government protections, including the Lead and Copper Rule, is also critical. Michigan is now [leading the way](https://www.nrdc.org/experts/mae-wu/getting-lead-out-michigans-ahead-epa-other-states), strengthening the state Lead and Copper Rule to require that all lead service lines be replaced within 20 years, among other provisions. Though not without flaws, the rule now gives the state the strongest lead drinking water protections in the country. If you are [concerned about your own drinking water](https://www.nrdc.org/stories/whats-your-drinking-water), take a look at your water utility’s annual water quality report (also called a consumer confidence report), which is usually posted online and is required to disclose if contaminants have been found in your water. If contaminants have reached dangerous levels, the water supplier is required to send customers public notification. The EPA’s [Safe Drinking Water Information System](https://www3.epa.gov/enviro/facts/sdwis/search.html) also maintains information about public water systems and their violations. You can go one step farther by having your water tested, either by your water supplier (which may provide this service for free) or by a [certified lab](https://www.epa.gov/dwlabcert/contact-information-certification-programs-and-certified-laboratories-drinking-water). If you discover your water is contaminated, one option is to use [NSF-certified water filters](http://www.nsf.org/consumer-resources/water-quality/water-filters-testing-treatment) that are designed to eliminate specific contaminants. It is most important, though, that you notify your water utility. If necessary, you can also contact your elected officials, [your state’s drinking water program](http://simple.werf.org/Books/Contents/Asset-Management-for-Small-Utilities/Appendices/Safe-Drinking-Water-Act-Primacy-Agencies), or the EPA’s Safe Drinking Water Hotline (800-426-4791). As NRDC President Rhea Suh [noted](https://www.nrdc.org/experts/rhea-suh/two-years-tragedy-flint) at the height of the crisis, “When it comes to providing public services, few things are more fundamental than clean drinking water. What happened to the people of Flint should never have happened. Let’s make sure it doesn’t happen again.”

### The effects of lead poisoning are not evenly distributed. Instead, black and brown communities face dramatically higher levels of water contamination and lead poisoning. This is a clear example of environmental racism and injustice

**Kelly, Whalen, and Nunez 19**

(Margie Kelly, Eric Whalen, and Fabiola Nunez. “New Drinking Water Report: Communities of Color More Likely to Suffer Drinking Water Violations For Years.” NRDC, September 24, 2019)

Race bears the strongest relationship to slow and ineffective enforcement of the federal drinking water law in communities across the nation, according to a new report released today. Watered Down Justice is a new analysis of EPA data that confirms there is unequal access to safe drinking water, based most strongly on race, a scientific conclusion that mirrors the lived experience of people of color and low-income residents in the United States. The report—co-authored by the Natural Resources Defense Council (NRDC), Coming Clean, and the Environmental Justice Health Alliance (EJHA)—reinforces the widely held belief that ongoing water contamination in majority-black communities like Flint, Mich., and Newark, N.J., is related to a history of community disinvestment, residential segregation, and discrimination. “As a scientist, I was surprised to find that race had the strongest relationship to the length of time people had to live with drinking water violations. But as a black woman, I was not surprised at all. It is a travesty that the nation's drinking water law does not protect everyone equally. No one should have to wonder about the safety of their water every time they turn on their tap,” said Kristi Pullen Fedinick, PhD, Director of Science and Data at NRDC. Drinking water systems that constantly violated the law for years were 40 percent more likely to occur in places with higher percentages of residents who were people of color, according to EPA data from 2016-2019 analyzed in the report. Even when actions were taken to compel systems to fix their violations, it took longer for water systems in communities of color to come back into compliance. "Every child deserves safe drinking water but, today, race still matters. The sad reality that communities of color are still more likely to face unsafe drinking water makes it clear that we have a lot farther to go. For decades communities across the country have been leading a movement for environmental and economic justice; yet, even 55 years after the passage of the Civil Rights Act, the law still does not ensure that the color of your skin won't mean you're more likely to drink polluted water," said Michele Roberts, National Co-Coordinator of the Environmental Justice Health Alliance. "It has been nearly 30 years since the First National People of Color Environmental Leadership Summit formally challenged environmental racism. That's why we're renewing our call for the moral and political will to find justice for our communities and equitable access to safe drinking water for everyone," said Roberts. Race, together with ethnicity and language spoken had the strongest relationship to serious longstanding violations and ineffective enforcement of the nation’s drinking water law, the Safe Drinking Water Act. Aging, underdeveloped, and underfunded water infrastructure contributes to unsafe water conditions, as does dysfunction of the law, in part because some dangerous contaminants are not regulated. Drinking contaminated water is linked to high costs to human health, including cancer, compromised fertility, developmental effects, serious infections, and more. "What we have found in Newark is that its residents continue to be besieged with untenable living conditions, poverty and a myriad of health concerns exacerbated by drinking water contaminated with dangerous levels of lead. At its core, environmental justice hits the black and brown community in ways that are not seen or felt immediately. As a public school teacher, I see the effects of this every day. More importantly, I witness the apathy and naivete from my students because of a lack of education regarding environmental justice. This report highlights the steps that are necessary to begin to turn the collective tide towards health equity," said Yvette Jordan, of NEW Caucus, a group of public school teachers who have sued Newark to secure safe drinking water. Large cities are not the only places with water contamination. Small systems – those that serve less than 3,300 people – were responsible for more than 80 percent of all violations. “California rural communities depend on small water systems to fulfill daily basic needs. Farm working families of Latino and Mexican Indigenous origin, many of them single-mother households face social and economic barriers such as language and inaccessibility to healthcare. They should not have to endure the burden of unsafe drinking water in addition to other environmental contaminants,” said Suguet Lopez, Executive Director of Lideres Campesinas, the Women Farmworker Leadership Network. “All people deserve safe drinking water, wherever they live, but our national water law has failed. Nearly 130 million people in the United States live with drinking water violations, often putting their health at risk. Societal inequality and disinvestment exacerbates this in communities of color. We need Congress and the states to take action to fix the Safe Drinking Water Act, while increasing enforcement,” said Pullen Fedinick.

## Advantage 2: EPA Credibility

### The Flint water crisis obliterated public support for the EPA---remedying those wrongs is key

Lenny **Bernstein and** Brady **Dennis 16**, Bernstein covers health and medicine. He started as an editor on The Washington Post’s National desk in 2000 and has worked in Metro and Sports, Dennis is a Pulitzer Prize-winning national reporter for The Washington Post, “Flint’s water crisis reveals government failures at every level,” The Washington Post, January 24th, 2016, accessed 7/14/21, https://www.washingtonpost.com/national/health-science/flints-water-crisis-reveals-government-failures-at-every-level/2016/01/23/03705f0c-c11e-11e5-bcda-62a36b394160\_story.html

The scale of government neglect in the water crisis in Flint, Mich., could place the city alongside some of the **most infamous environmental disasters in U.S. history**, from New York’s Love Canal to the Hinkley, Calif., saga of Erin Brockovich fame. Local, state and federal officials — including the top Environmental Protection Agency administrator in the Midwest and Michigan’s Republican governor, Rick Snyder — are accused of ignoring, denying or covering up problems that left thousands of children exposed to toxic lead in their drinking water for about 18 months. “**Nobody was owning the problem**, not the [state Department of Environmental Quality], **not the EPA**, not the governor’s office,” said Kary L. Moss, executive director of the American Civil Liberties Union of Michigan, which revealed that damning passages had been removed from a government specialist’s report on Flint’s water contamination. The debacle ranks among the worst on numbers alone, said Paul Mohai, who studies environmental-justice issues at the University of Michigan. With a community of 100,000 people, largely poor and minority, unable to drink from their taps, Flint is “**one of the biggest environmental justice disasters** I know” — and perhaps unprecedented, Mohai said Friday. Months after activists first called for the EPA’s intervention, the agency used its emergency powers Thursday to demand action by the state and city. Its regional leader, Susan Hedman, resigned — as the state’s water quality director had done just weeks before. The National Guard is handing out bottled water, and water filters have been distributed. State and federal investigations are underway, and there have been calls for Snyder to resign. He has apologized twice, most recently at his State of the State address Tuesday, when he told Flint residents that “**government failed you** at the federal, state and local level.” President Obama has weighed in, too, sharply criticizing the pace of Michigan’s response. But none of that will quickly repair the **deep, pervasive damage to the public’s trust in government**, say experts and others involved in the crisis. “People have realized **they’ve been lied to, and EPA knew** about this, and the state knew about this,” said Virginia Tech engineering professor Marc Edwards, a national authority on municipal water quality whose tests exposed the extent of Flint’s lead contamination. “What you really have as it spun out of control is a **total loss of trust in government,** which failed [residents] miserably. They don’t believe a word that anyone tells them.”

### Public support for the EPA is essential for their success in reducing pollution---focusing on human health renews support

Kenneth **Olden 18**, Ph.D., was named as the third director of the National Institute of Environmental Health Sciences (NIEHS) and the second director of the National Toxicology Program, “The EPA: Time to Re-Invent Environmental Protection,” American Journal of Public Health, March 7th, 2018, accessed 7/14/21, https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.304303

One way to imagine a world **without the** US Environmental Protection Agency (**EPA**) is to draw on our memory of what the environment was like before the agency was created in 1970. This can be approached from two perspectives: from the viewpoint of the physical environment and from the viewpoint of the social and political environment. The conduct of these practical exercises is timely in that the authority and survival of the EPA are now seriously threatened. The president and congressional Republicans have proposed funding and workforce reductions that will devastate the agency with respect to its capacity to protect human health and the environment. To prevent this catastrophe, it is instructive to explore the reasons why the EPA has lost public and political support. The EPA was created in 1970, with strong bipartisan support, by a Republican president who was not particularly interested in environmental health issues. In creating the EPA, President Richard Nixon and Congress were responding to public outrage about the deplorable conditions of the environment. Public pressure for action was so intense that lawmakers could no longer ignore the problem. One did not need experts or highly sensitive technologies to convince the American people that the environment was highly polluted. **Rivers were “catching on fire,”** acute **deaths from air pollution were commonplace** in some US cities, **hazardous waste sites were proliferating**, and the air quality was so bad in Pittsburgh, Pennsylvania, that street lights were turned on during the daytime to protect pedestrians crossing the streets and to prevent automobiles from colliding because of poor visibility.1 These awful conditions led to an explosion of highly vocal public support for environmental protection. The **EPA made** such **spectacular progress** in cleaning up the environment over the first 30 years of the agency’s existence that our memory of what it was like in the 1950s and 1960s has been virtually wiped out. The “big dirties” have disappeared from the landscape. In spite of the fact that approximately 75% of Americans expressed support for environmental protection in a 2016 survey conducted by the Pew Research Center,2 the public does not view the conditions of the environment as grossly offensive. Americans behave as if they believe that developing and enforcing environmental regulations, although still important, is no longer a national priority—that the mission of the EPA has been accomplished. Otherwise, why would we tolerate the massive roll back in the agency’s policies, budget, and staff proposed by EPA administrator Scott Pruitt and the Republican-controlled Congress? REINVENTING THE FIELD Given the record of success just described and the impact the agency has had on public perception, it was necessary for the EPA and the community advocating for environmental protection to “reinvent” the field. Unfortunately, however, this never happened. Government agencies, like businesses, must continue to reinvent themselves and develop new strategies in response to competition and changes in the market; otherwise, they will become irrelevant. It was critical for the EPA to make the case that environmental protection is an activity that never goes away and that there are hazards in the environment even though one may not be able to see, taste, or smell them. In the absence of visible pollutants, the **EPA needed to have put a human face on environmental protection** by **linking invisible pollutants to human health**. Consider the National Institutes of Health; the agency has grown from its humble beginnings as a hygiene laboratory with a focus on infectious diseases to become a federation of 27 institutes and centers with specific research agendas and a combined budget in excess of $33 billion.3 Although infectious disease research has remained an important part of the agency, it has reinvented itself in light of its success in eradicating the epidemic of infectious diseases, which resulted in an increase in life expectancy of approximately 30 years.4 Unlike the EPA, the National Institutes of Health did not become a victim of its own success but instead identified the new scientific challenges associated with the rise in life expectancy (e.g., increases in chronic diseases such as cancer, diabetes, and cardiovascular disease) and redirected its research efforts. Similarly, the EPA **needs a communication strategy** to convince the American people that the agency is just as important today as it was in the 1970s, along with a more proactive and inclusive management strategy that goes beyond enforcement of legal statutes by embracing economics and the social and behavioral sciences. The EPA needs to play a leadership role in promoting dialogue to facilitate a socially responsible transition away from dependency on coal and oil as a source of energy and manual labor in manufacturing. **Otherwise**, farmers, coal miners, and blue-collar **workers will view environmental protection as a threat** to their economic survival. It is difficult to convey passion and convince people that one cares about and understands their problems through press releases and fact sheets. William Ruckelshaus, generally acknowledged to be one of the most successful EPA administrators, obviously understood this challenge and traveled around the nation to talk with state regulators and convene meetings in various regions. He also insisted that the agency conduct its business in a “fishbowl.” VICTIM OF ITS OWN SUCCESS The EPA must become more adept in responding to the social, scientific, and political changes occurring in the nation; otherwise, its role in government will continue to be diminished. The tension between jobs, economic growth, and pollution is not new; it has always been an issue associated with environmental protection. Even before the EPA was created, local residents would resist state regulatory efforts if jobs were threatened, and politicians and local governments were always concerned that industries would relocate to states that had the least burdensome environmental regulations (the so-called “race-to-the-bottom” effect).5 In the global economy, industries are no longer restricted to the continental United States in their search for cheap labor and weak occupational health and safety and environmental protection policies and practices. Ruckelshaus has expressed the view that the EPA is a victim of its own success.6 Christine Whitman, another former EPA administrator, has opined that when the consequences of climate change, such as flooding from sea level rises and droughts, become more severe, public support for environmental protection will be renewed.6 My view is that the EPA’s current problems are related to its earlier success in cleaning up the environment, coupled with its failure to reinvent itself in the context of the dramatic reduction in visible pollution and economic and social changes that have occurred in the United States since 1970. FUTURE ROLE OF THE EPA In summary, it is clear that the nation has reached a point at which decisions about the way forward in environmental protection need to be made. It was inevitable that the technology-driven, command-control approaches that were so effective in the remediation and prevention of regional or point-source pollution associated with human activity would need to be recalibrated to accommodate the shift from point- to scattered-source pollution (e.g., farm runoff and carbon emissions from use of fossil fuels) and changes in attitudes toward pollution on the part of the public, businesses, and local governments. Although there are exceptions, the prevailing attitude is that environmental protection is good for both local governments and businesses with respect to recruitment of industries with high-paying jobs and profits, respectively. Because scattered pollution is more prone to drift across state boundaries, prevention will require more collaborative approaches involving the federal government and multiple states. Thus, the future roles of the **EPA** are to work with states in developing clear national goals, to develop and disseminate tools to allow monitoring of progress, to **garner financial resources** to assist less prosperous states in implementing prevention policies, and to grant more flexibility to state and local governments in achieving their goals.

### The EPA’s efforts solve international environmental challenges AND is a key pillar of the rule of law/democracy.

OGC = EPA’s Office of General Counsel

**Yang 12** – Deputy General Counsel, United States (US) Environmental Protection Agency. (Tseming; Published: April 2012; "The Emerging Practice of Global Environmental Law"; Transnational Environmental Law 1, no. 1; Accessed: July 14, 2021; https://heinonline.org/HOL/LandingPage?handle=hein.journals/tevl1&div=10&id=&page=)//CYang

One illustration of the **growing interconnection** between national and international environmental law can be seen in the law practice of the EPA's Office of General Counsel (OGC), as well as other agencies and organizations. For the OGC, the practice of global environmental law **entails a mix** of domestic, international, and transnational **environmental law work**. Such a legal practice is still relatively uncommon, but it is spreading. It also illustrates how government lawyers who have traditionally focused primarily on US environmental law have had to acquire familiarity and expertise in international and transnational law as part of their evolving practice and client needs. The great majority of OGC work, consistent with the bulk of the Agency's overall work, focuses on domestic environmental issues. However, the **international dimension** of environmental issues has grown, and so has the Agency's involvement, including in Department of State-led negotiations of international environmental instruments and their implementation. The trend has been driven by the **practical needs** of supporting the international environmental interests of the US together with an **evolving understanding** of the adverse impacts on human health and environmental quality of pollution and the irresponsible use of toxic chemicals outside the US as well as inside its own territory. For example, various studies indicate that transboundary movement of mercury emissions, persistent organic compounds and other pollutants from sources an ocean away contribute to the deposition of harmful pollutants in the us.18 Even the inappropriate application of pesticides to food crops, use of toxic substances like lead paint to make children's toys, or the manufacture of lawnmowers and other consumer products that fail to conform with US emissions standards can affect the us when global commerce leads to their importation and sale to American consumers. Applying **domestic environmental enforcement** systems to imports at ports and border crossings can be a first line of defence against some of these challenges. However, most are often more effectively addressed through international cooperative activities. With respect to environmental challenges that involve the global commons - such as the atmosphere or the oceans - international cooperation is **vitally necessary** to prevent national efforts from being undone by pollution elsewhere. The same is true for ecosystems that extend outside the US, or migratory species that spend part of their life cycle abroad. Apart from the human and environmental benefits, environmental engagements with other governments and international organizations can also advance **international cooperation** and diplomacy more generally. By sharing its decades of experience in environmental law, science, engineering, health, and expertise in best environmental practices, the EPA has built strong and **positive relationships** with governmental counterparts in other countries. Its broad commitment to public participation, **environmental justice**, and the rule of law resonates with environmental professionals and advocates throughout the world, helps to build goodwill, and provides **environmental leadership** by example. When local or regional conflicts between polluters, pollution victims, and government agencies are reduced or competition for scarce natural resources is lessened, social and **political stability** is enhanced and **global security** is ultimately strengthened. Furthermore, sharing the lessons of the US experience, and otherwise helping to build national environmental governance systems abroad, can make **pollution havens** less likely to emerge and provides businesses operating globally with a more level playing field. Recognition of the interconnected nature of national interests in protecting human health and the environment and international environmental concerns motivated articulation of the EPA's top international priorities in 2010, affirming the agency's long-standing commitment to international engagement. 19 The Agency's commitment to 'building stronger environmental institutions and legal structures', primarily through bilateral technical assistance, is a direct recognition that ineffective environmental law and governance in other countries creates direct or indirect adverse consequences for the us because it can hinder efforts to solve US environmental problems. 20 These developments, especially the proliferation of environmental agreements and environmental chapters of trade agreements, have greatly increased the need for associated legal counselling and support. The preparation of implementing legislation and regulations, as well as advising on how the ongoing activities of international organizations and multilateral environmental agreements affect the Agency's operations and obligations, are just a few aspects of this need. Beginning in 1989, the OGC informally created an International Activities Division, which was formally launched in 1991. Prompted in part by the preparations for the 1992 Earth Summit and Administrator Bill Reilly's particular interest in international environmental issues, the Division's responsibilities and structure mirrored those of the other divisions within the OGC, but focused on the international law needs of the Agency. It was then led by an Associate General Counsel and Deputy Associate General Counsel and included six staff attorneys. Similar to other law divisions within the OGC, it reported directly to the General Counsel. Its function was then described as counselling the EPA on international environmental law, including environmental agreements, to advance the Agency's international engagements as well as its domestic implementation activities. It also assisted the EPA in interagency processes related to international environmental law and policy, contributing the EPA's unique environmental and public health interests, experience, and mission to us participation in the negotiation of international legal instruments at the bilateral, regional, and multilateral levels as well as work within international organizations and meetings. The OGC's International Activities Division was initially headed by Scott Hajost, a former senior lawyer from the State Department's Legal Advisor's Office. After Hajost left the EPA for the Environmental Defense Fund in 199o, leadership of the Division came from the legal academy: Professor Edith Brown Weiss of Georgetown Law School and her successor, former University of Colorado law professor, Daniel Magraw, who became President of the Center for International Environmental Law (CIEL) in 2001. During the George W. Bush Administration, the International Environmental Law Office, as it was then named, shrunk in staff size and in 2008 was merged with another law office into a combined entity, the Cross Cutting Issues Law Office, headed by a single Associate General Counsel. There it remains a specialized practice group - the International Environmental Law Practice Group (IELPG), made up of four staff lawyers and its leader, an Assistant General Counsel. Further support comes from lawyers based in the OGC's media law offices and Regional Counsels' offices. The Agency's leadership effort to re-elevate the OGC's international environmental law practice in 2010, under the Obama Administration, led to the appointment of a Deputy General Counsel to provide leadership for the EPA's overall international environmental law needs. As a practical matter, that has required working closely with the IELPG as well as with other practice areas with issues related to international environmental law. In its international work, the OGC works closely with a number of internal client programmes, such as the Office of International and Tribal Affairs, which generally coordinates international work within the EPA and focuses on cross-cutting matters. The OGC also works closely with individual media programmes, such as the Office of Air and Radiation with regard to its work on international ozone depletion, transboundary air pollution, and climate change issues, the Office of Water with respect to ocean and other transboundary water pollution issues, and the Office of Solid Waste and Emergency Response regarding international hazardous waste trade issues. Externally, the OGC works with the entire range of federal agencies involved in international issues, including the Department of State, the us Trade Representative's Office, the Coast Guard, the National Oceanic and Atmospheric Administration, and the us Agency for International Development. In addition, the OGC has assisted the EPA's bilateral work with international organizations, such as the United Nations Environment Programme (UNEP), as well as the EPA's counterparts in other countries, such as the Brazilian Ministry of the Environment and China's Ministry of Environmental Protection. The OGC's present-day work continues its long-standing role of providing international environmental law expertise for the Agency's activities. The bulk of the OGC's international work, especially that of the IELPG, consists of counselling the EPA on international environmental activities and representing its legal interests in interagency processes and international negotiations from the perspective of its particular public health and environmental mission. Such counselling is designed to ensure that the us can take action and make policy judgments with a sound appreciation of the applicable international law principles and the EPA's statutory authorities, Congressional mandates, and its distinct mission within the federal government to protect public health and the environment. Most counselling work arises in the context of ongoing multilateral negotiations, such as continuing discussions to create a global legally binding mercury treaty,2 1 or bilateral negotiations, such as efforts to revise the existing US-Canada Great Lakes Water Quality Agreement. 22 Ensuring that new international commitments do not inappropriately conflict or otherwise hinder the EPA in implementing its mission to protect human health and the environment has been especially important in the context of international trade negotiations, such as a Transpacific Partnership Agreement designed to expand and liberalize trade among a number of Pacific nations.2 3 Since the Tuna-Dolphin case2 4 under the World Trade Organization (WTO)'s predecessor, the General Agreement on Tariffs and Trade (GATT), the EPA has actively sought to ensure that new trade agreements do not adversely affect its domestic regulatory authority nor impair the environment and public health. Analysis by the OGC in such situations helps to determine whether new international commitments can be implemented under existing statutory or regulatory authority or whether new Congressional legislation or regulatory changes are needed. In particular, when us diplomats have made it a negotiation position that no new congressional authority will be sought for a new international instrument - possibly because obtaining new legislation might be a serious challenge - an understanding of existing domestic legal authority is crucial to steering international negotiations. Thus, the OGC's work is crucial to the US implementation of international treaties, whether through regulatory revisions or by new legislation. The identification of gaps in legal authority or needs for regulatory clarification allows for legislation and regulatory changes to be crafted. Some provisions in existing us environmental statutes anticipate future international agreements. 25 Frequently, however, existing statutory authorities are deemed to be insufficient for the implementation of new agreements. In addition to providing counselling, the OGC is also intimately involved in ensuring the Agency's compliance with international treaty commitments and defending it against allegations of non-compliance. Because some of the modern MEAs - such as the Montreal Protocol 26 and the Kyoto Protocol 27 - now contain mechanisms that seek to monitor and proactively manage non-compliance issues, these issues have grown in importance.28 For example, as noted above, Article 14 of the NAAEC 2 9 - the environmental side agreement to the North American Free Trade Agreement (NAFTA) 30 \_ allows private individuals to submit allegations that a NAFTA country has failed to comply with its commitment to 'effectively enforce' its environmental laws. Potential remedies include an investigation and compilation of a factual record regarding the allegations. 31 One pending submission, Coal-fired Power Plants,3 2 has alleged failures by the us to effectively enforce the Clean Water Act (CWA) 33 with respect to mercury emissions. Analysis of the allegations has required examination of both us environmental law and us obligations under the NAAEC. 3 4 Finally, the OGC has also supported broader US **diplomatic engagements** and **environmental leadership** efforts **globally**, including the EPA's interest in 'building stronger environmental institutions and legal structures' abroad. Such capacity-building work has included hosting and participating in workshops to share the American environmental law experience with foreign government officials and other foreign visitors to the EPA each year. Beyond enhancing protection of the global environment by strengthening environmental governance abroad, these efforts advance **democratic governance** and the rule of law worldwide.