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# Environmental Policy and Politics: Trends in Public Debate

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Steven Burns

**H**ow much do environmental issues matter in politics? Said another way, how often and to what extent do environmental issues penetrate the general consciousness enough to affect elections in the United States on a national level?

If the focus is on the day-to-day work of an environmental practitioner or consultant, the answer to those questions probably is “not much.” Most environmental policy debates tend to be among specialists—environmental advocates, affected industries, and certain government agencies—and tend to be focused in a particular part of the country. The issues are too technical or the environmental consequences too subtle to hold the broader public’s attention. Sometimes, however, an environmental issue elevates to the level of a broader consciousness among the general electorate.

In politics, it often takes a crisis to precipitate significant action. The environment is no exception. Until 1970 or so, poor urban air quality and lifeless stretches of streams or rivers had been taken largely for granted as unfortunate side effects of economic progress. However, the drama of the Cuyahoga River catching fire in 1969 led many to believe that pollution was out of control. Consumers generally accepted the use of agricultural pesticides, but the newly developing notion that DDT could wipe out entire species of birds—including the bald eagle—was intolerable. Stories began to appear in the popular media questioning whether the earth could sustain then-prevalent industrial practices. That perception of crisis led to new concerns about the old issues of poor air and water quality, and there followed a remarkable series of new or newly expanded environmental statutes including the Clean Air Act, Clean Water Act, Endangered Species Act, and National Environmental Policy Act.

Four decades later, modern environmental programs substantially have addressed many of the more acute environmental issues of that time. With the overall quality of the air and water generally better, it often is the local environmental issue with a clearer potential to affect daily life that appears on the front page of the newspaper. A decision to site a landfill or industrial facility, or possible contamination of drinking water, is more likely to make headlines than the latest rulemaking on, for example, total daily maximum loads.

Beyond local concerns, what national issues have the

potential to capture voters’ attention? That is an important question. When the public as a whole takes an interest in an issue, rather than just the community of environmental specialists, policymakers are more likely to take broader and bolder action.

To identify environmental issues of general political interest, let’s start with a couple of assumptions about politics. First, people generally place the highest priority on their safety and security, including physical safety and financial security. Crime, terrorism, and war, for example, may create the impression of threats to physical safety. Similarly, job cuts, inflation, oil prices, the cost of health care, and tighter credit may provoke a feeling of financial instability. A second assumption is that threats to these high-priority concerns tend to provide the best motivation for political awareness and activity.

With those thoughts in mind, one environmental concern stands out among all others. Climate change has come to dominate the public discourse on the environment unlike any other issue today. Environmental specialists have been following climate change as an issue for years, but what accounts for the relatively recent explosion in general interest?

The answer is that climate change is no longer just about the environment; in the public’s mind, it has become a security issue. It is on a different plane of concern than an incremental enhancement in visibility in a national park, or a timber harvest in some far-off place, or a dead zone out in the ocean. Climate change regularly is portrayed in the media as a potential source of unprecedented chaos and destruction. Seemingly every day, a news story identifies a new catastrophe in the works. Climate change has been blamed for everything from Hurricane Katrina, to infectious outbreaks, to the loss of major ice masses and large swaths of coral reefs. Whether it is too hot or too cold in any given place, whether it rains too much or too little, an expert is prepared to explain why climate change is the cause.

Climate change has gone mainstream. It is no longer just Al Gore demanding action; the major presidential candidates of both political parties support new climate change programs. Climate change is not just the focus of the Sierra Club; television commercials expressing concern about climate change are coming from some of the world’s largest and oldest petroleum producers and automobile manufacturers. People are beginning to think about their carbon footprint almost as much as their cholesterol level.

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## Political Response to the Climate Change “Crisis”

When the public perceives a crisis, a demand to do something about it follows. In this case, the primary ways for us to influence climate change (that we can identify so far) are to limit or capture anthropomorphic sources of greenhouse gases. Therefore, politically responsive policymakers likely will continue calls for limits on emissions of those gases, particularly from the combustion of fuels such as coal and oil, as long as concern for climate change remains so intense. Other possible actions could include land use controls, such as forestry and agriculture practices, designed to increase the amount of carbon tethered to the earth.

A big-ticket issue like climate change can be compared to a wave, and political actors are like surfers. Politicians and policymakers watch and wait for the next issue—the next wave—to ride to their advantage. At some point, there develops a perception that the next wave is the big one. Politically, that means action on the issue is becoming inevitable. The rhetoric then increases in frequency and intensity, media coverage expands commensurately, and the lobbying machines on all sides move into action to press their particular agendas and points of view.

Regardless of the state of scientific consensus on the causes and effects of climate change, a political consensus in support of action is taking shape. That means a continuing push for new legislation and regulations governing fuel combustion for purposes of limiting or capturing greenhouse gas emissions. Power plants and vehicles stand out as the easiest targets due to their heavy reliance on coal and petroleum, but any number of processes or industries may be the subject of climate-based scrutiny.

Even programs not directed specifically to climate change are likely to feel the political energy emanating from this issue. Environmental advocates cite climate change as the reason to list polar bears under the Endangered Species Act, to increase vehicles’ fuel economy, to stimulate alternative sources of energy, and to oppose new coal-fired power plants. Of those issues, the last three have been on environmentalists’ agenda for decades, but climate change gives those positions new force.

With public concern for climate change so clearly established, it is possible to imagine climate-based arguments and positions on a broad range of other issues. For example, manufacturers may seek an advantage in government contracting decisions or an increase in government-funded research for technologies on the basis of their ability to reduce greenhouse gas emissions. Timber and agricultural interests may seek financial or tax incentives for certain practices. From the lobbyist’s point of view, the political potential of climate change is limited only by the imagination.

Nevertheless, there are enough political brakes on this issue to keep the climate debate interesting. Notwithstanding the green tint to some advertising campaigns, businesses remain skeptical that domestic limits on greenhouse gas emissions can affect climate patterns discernibly, particularly as emissions in fast-growing countries such as China continue to increase.

Further, while Republicans generally are more aligned with the business community than Democrats, opinions do not divide strictly along partisan lines. For example, Motor City Democrats cannot be too eager to implement regulatory changes that make automobiles more expensive to consumers.

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The scientific understanding of atmospheric processes associated with climate change remains limited. Years from now, better information may lead to the conclusion that our current state of concern for climate change (and, therefore, the political demand for a response) has been too urgent, or not urgent enough. However, any significant change in public opinion on an issue as big and complex as climate change will require new scientific evidence and the passage of time. In the meantime, climate change is poised to remain the dominant environmental issue.

## Homeland Security and the Environment

Concerns about terrorism and United States involvement in wars in Iraq and Afghanistan have led to new homeland security programs with significant environmental components. While these are security programs first and foremost, some have significant environmental implications. A good example is the new program of the Department of Homeland Security (DHS) to regulate chemical facilities. Congress directed DHS to identify and regulate chemical facilities deemed to pose a high level of security risk. In response, DHS has identified chemicals that may be flammable, toxic, or explosive if released and those that may be susceptible for use in weapons or acts of sabotage. Any facility that has a quantity of any such chemical above a threshold established by DHS must report to the agency on, among other things, the facility’s chemical inventory. If DHS deems the facility to be high risk, it is required to develop a security vulnerability assessment and site security plan.

This is primarily a *security* program. However, the regulation of chemicals has traditionally been viewed as an *environmental* issue. Environmental practitioners, consultants, and agencies are likely to play important roles in the ongoing

development and implementation of the program.

The chemical facility program is also an example of how environmental policy tends to be shaped by a political response to a public perception of crisis. The main objective of DHS's chemical facility program is to protect potentially harmful chemicals from attack or theft by terrorists. One response to that concern is to hide information about the chemicals present at any given facility as much as possible to make it more difficult for terrorists to identify a target and mount an assault.

Just twenty years ago, however, environmental agencies were busy implementing provisions in the Emergency Planning and Community Right-To-Know Act requiring increased public disclosure of chemical inventories. Why? That statute was a direct response to public concern for the well-publicized chemical release from an American company's chemical plant in Bhopal, India. In other words, two political responses to two different crises, separated by some twenty years, resulted in chemical regulations having precisely opposing objectives, at least with respect to information management.

With security concerns so prominent, advocates and opponents of other environmental measures are likely to seek out any available security-based arguments to advance their agendas. The military services, for example, have argued for many years that environmental requirements would impede military exercises or training activities. A recent example is the Ninth Circuit's recent review of the Navy's efforts to continue anti-submarine sonar training exercises in the Pacific Ocean, notwithstanding allegations of harm to certain protected marine mammals. However, security-based arguments are not limited to the armed forces. The policy advocate for any client, whether military or civilian, public or private, is well served to identify any security-related points in the client's favor.

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Concerns for terrorism and national security, as well as natural disasters such as Katrina, are leading to new (or newly expanded) programs that are likely to affect environmental practitioners. Environmental lawyers long have played a key role in the construction and operation of infrastructure—highways, ports, railroads, power plants, transmission lines,

gas and oil pipelines, water delivery systems, communication networks, and so on. At every point where an environmental review or permit has been required for critical assets like these, new homeland security programs are emerging to add an additional set of considerations. The homeland security concerns behind these new programs are real and valid, but it is equally accurate to say that the political will to create them derives from a strong sense of public concern. Time will tell whether environmental lawyers expand their practices to incorporate security expertise or whether a new crop of homeland security practitioners will step up.

### ***Politics and Low-Profile Environmental Issues***

There are a host of emerging environmental issues and trends that lack the same degree of public awareness and support as climate change. For example, it is big news to us and our clients any time the regulatory agencies ratchet down emissions to achieve the next increment of air quality or water quality. The next Supreme Court decision touching on, for example, natural resource damages or Commerce Clause limitations will be hotly debated among the readers of this magazine. However, because these issues do not suggest a broad crisis or grave threat to physical or financial security, they are less likely to gain extensive media coverage and, therefore, unlikely to create as much political steam.

The politics of these "specialized" environmental issues are different from the issues of broad public interest. These issues may have merit. Solving them may address some pressing need or may help make life better or products more effective or inexpensive, but if they do not capture the public's attention, a politically responsive actor has little to gain (at least in terms of popularity or grass-roots support) from working on them. All else being equal, given an infinite number of issues and a limited amount of time, policymakers have more reason to work on high-profile matters and have less to gain politically from their efforts on lesser-known issues.

If issues of intense public interest are like a wave, these specialized issues are more like wagons that have to be pushed and pulled through the political process. In that situation, the debate tends to be driven by one (or both) of two smaller universes of political participants: special interests and local interests. (The term "special interest" has a negative connotation to some, but for purposes of this discussion, I mean only an advocate for a particular and relatively narrow point of view, such as an industry or environmental advocacy group.)

Just as the collection of characters in a more specialized debate is smaller, so is the sphere of action. When lobbying on high-profile matters, the ultimate goal tends to be to shape public opinion. On more specialized issues where the general public has less concern, the lobbying and the politics become more personal. The number of policy-level principals (such as members of Congress, assistant secretaries, or governors) with a personal interest is likely to be smaller, as is the number of staff members with expertise.

On issues where public perception is less of a factor, the responses of policymakers may vary. Some may take a greater interest in an issue out of a sense of public service and personal interest. They may enjoy having the freedom to work on a matter without worrying so much about politics. Readers of this magazine can probably call to mind certain senators or representatives who, at times, have become surprisingly involved in the details of an environmental proposal. However, with less of an opportunity for a political payoff, many political figures lose interest. Either way, on lower-profile issues, policymakers tend to rely more on the existing relationships they have developed with policy advocates and other insiders through past lobbying efforts, campaign activities, and the like.

With those caveats, here are a few thoughts to identify some of the environmental trends and issues that may play out in political arenas in the near future: Think big, think small, think different, and think efficient. “Big” means a greater international focus on environmental issues. There is increasing concern for the consequences of international economic development, including industrial pollution, deforestation, and the loss of biodiversity. A variety of special interests have reasons to favor an international focus with respect to environmental issues. Environmental advocates may seek to promote environmental values and export the relatively well-developed environmental controls typical of industrialized nations. For competitive reasons, some U.S. companies may favor carbon emission limits in the developing world or other increased environmental controls elsewhere in the world. (Of course, many multinationals take advantage of lower environmental costs in other countries and as a result may oppose increased environmental controls there.) Similarly, labor unions may see enhancing international controls as favoring domestic companies already subject to relatively strict standards.

“Small” means focusing on local and even individual sources of pollution. Environmental programs in the United States already have targeted most of the easier targets, if “easy” is defined by the relatively few, larger sources or categories of sources emitting relatively high volumes of pollution. Accordingly, environmental regulators may turn to ever smaller, more diffuse, or more obscure sources. One might expect popular backlash to the extent new regulations may affect popular items such as barbecues or small-engine products or limit micro-activities such as lawn feeding and toilet flushing. Grass-roots opposition may defeat or delay new ideas along these lines. However, it is hard to see a credible effort take the jump to the next major level of environmental quality and control (assuming environmental regulators or advocates wish to do so) without accounting for these many, tiny sources.

“Different” means multimedia. Again, having addressed larger sources in conventional ways, another logical step may be to look at the less apparent consequences of industrial and consumer activities. For example, with direct discharges to surface waters subject to reasonably effective controls, some regulators and advocates are turning to airborne deposits into waters, such as mercury deposition associated with coal com-

bustion. Like other air-quality issues, the politics of this issue may take on a regional flavor, pitting upwind areas and states against those downwind.

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“Efficient” means market-based. The use of market forces in environmental regulation has gone from a relatively novel idea in the 1980s to more or less mainstream acceptance. Generally, politicians and policymakers have become more comfortable with market-based mechanisms as a way to achieve more with the same dollar. However, a new problem may be backlash. Some environmental advocates have always opposed measures that would allow any given source of pollution to exceed its allotted quota, even if another source makes up the difference elsewhere. They are finding some success with their “hot spot” argument, which suggests that cap-and-trade programs may fail to provide adequate environmental quality in particular localities within the trading area.

### *Political Trends and the Environment*

To some extent, environmental issues have a context all their own. At the same time, any proposed legislation, regulation, or policy has to run through the process of a governmental body. What political trends of today will shape consideration of environmental proposals?

The recent past has seen a fairly sharp partisan divide on environmental issues. Republicans have been strongly identified with the business lobby, while Democrats have largely aligned themselves with populist positions. That trend has been, if anything, more pronounced on some of the congressional committees having jurisdiction over environmental laws. Few committees have seen sharper partisan divisions than the Senate Committee on Environment and Public Works and the House Committee on Natural Resources.

There is little reason to see a reversal of that trend. Well-established structural factors favor the continued election of ideologically extreme candidates. For example, the primary process by definition favors voters reliably committed to one party or the other, which means Democratic primaries tend to draw liberals and Republican primaries tend to draw conservatives. Independents—who tend to be more centrist—do not

participate as much in the primaries, so by the time they show up for the general elections in November, they are often left with a choice of the political parties' favorites and no real middle-of-the-road candidates. Years of redistricting to protect incumbents of both parties has resulted in individual House districts that lean decidedly to one party (and, therefore, one ideological direction) or another. A relatively few districts—a couple dozen or so—are truly “swing” districts, i.e., those that could go either way.

At first blush, climate change may seem a notable exception to the broad trend of partisanship. Despite bitter opposition to climate change regulation in some quarters, both parties' 2008 presidential candidates favor action. The prospect of new climate legislation, however, is probably more a factor of the surge of public interest in the issue than a sign of a new era of political détente. Moreover, even if both parties agreed in principle to take action, that would not preclude partisan division over the breadth and shape of a new climate program.

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In any event, demographic and regional considerations may provide greater insight on environmental issues than the partisan divide. People in urban areas tend to demonstrate greater sympathy for environmental issues, while those in rural areas are more likely to oppose new environmental regulations and restrictions. A variety of factors may explain the difference. Pollution tends to be more concentrated and demands on resources such as drinking water are more pronounced in cities, and urbanites are more accustomed to seeing government involvement in their daily lives (in the form of mass transit, a heavier police presence, zoning restrictions, etc.). By contrast, in rural areas, air and water quality tends to be better, so people see fewer indications of a need for tighter restrictions. The cultural conservatism of rural areas also coincides with greater suspicion of government involvement and more support for private property rights.

The demographic trends correlate to some extent to the country's geography as well. Major cities tend to be concentrated on the two coasts, while vast areas in between reflect their agrarian and silvicultural roots. Survey the many recent legislative and court battles on environmental issues, and it is

not uncommon to see an environmental organization based in San Francisco or New York taking on commercial operations in a mountain, desert, or forested area where congressional districts are hundreds of miles wide.

From the perspective of environmental politics, the “swing” districts are those where the population is shifting and demographic trends are in flux. For example, a California district may transition from farm and ranch land to suburbs and exurbs as city workers look for bigger houses and safer streets. The new citizens of that district bring a more urban perspective but also the economic conservatism that comes with greater affluence. The district may or may not remain Republican, but it is likely to become politically greener. On the other hand, after years of population decline, an industrial midwestern Democratic district may remain solidly pro-union and Democratic, but people there may have strong concerns about the cost associated with pollution control measures.

### *Effects of New Leadership*

Those in politics like to compare political trends to things like waves and wagons, but what makes politics really interesting is the human element. This article is written before the 2008 general election, and the author would not be foolish enough to predict the outcomes of particular races. However, there will be a new president, and there will be some amount of turnover of seats in the House of Representatives and the Senate.

A new president means new leadership at the Environmental Protection Agency, the Fish and Wildlife Service, the Council on Environmental Quality, and other agencies with environmental responsibilities. It also means new negotiators on international agreements. How much difference will that make? Plenty. Even if Senator McCain wins the election and Republicans keep control of the White House, the new faces are bound to reflect their own experiences and the priorities of the new president. If Senator Obama, the Democrat, were to win, personnel and policy changes likely will be more substantial.

Assuming Democrats retain control of Congress, which seems likely as of the writing of this article, the House and Senate leadership as well as the chairs of the committees of jurisdiction will remain fairly stable. The more interesting factor is whether there is a Democrat or Republican in the White House. With a Republican president, things in Congress may not change much. However, Democrats have not controlled both Congress and the White House since 1994. If that should be the result of the 2008 elections, then Democrats may be emboldened to pursue quite a few new environmental initiatives in the 111th Congress.

For now, the best bet is that climate change will occupy the political spotlight, and most of the rest of our work will remain relatively obscure beyond the environmental trade press. However, if it is true that most high-profile politics is driven by a sense of crisis, that may not be such a bad thing. 🌳