Cover Story

By almost any measure, this is the greenest White House in history, one that is rapidly reinvigorating federal environmental policy.

The About-Face

By Margaret Kriz Hobson

RISING CONCERN: Water pollution from factory farms and elsewhere could take center stage next year.

The Obama administration has hit the ground running in setting an activist environmental agenda. It has pulled back more than a dozen Bush-era directives and mapped an ambitious course for regulating carbon dioxide for the first time, protecting the nation's waterways, and reducing pollution from power plants, factories, farms, and cities.

RICK DOVE

Activist Agenda

AFP/JOHN ALTHOUSE

- President Obama quickly made a dramatic break from the policies of the Bush era by pushing to regulate greenhouse-gas emissions.
- As the Senate was confirming EPA's top political appointees, the agency was already producing a steady stream of policy changes.
- An interagency team is readying principles for beefing up chemical-safety laws.

By almost any measure, this is the greenest White House in history, one that is rapidly reinvigorating federal environmental policy in a quest to deliver on the president's campaign promises. How many promises ultimately get kept will hinge in large part on the level of pushback from Congress, the courts, and industry. But, no matter how strong the headwinds, long gone are the days when the Environmental Protection Agency was performing a vanishing act—failing, according to its many critics, to live up to its name.

"Too often [under President Bush] this agency seemed to go out of its way to ignore the science or ignore the law, or find somewhat tortured interpretations of law that at the end of the day didn't hold up," EPA Administrator Lisa Jackson told *National Journal*. "And so in those cases, as much as I'd love to just be able to move forward from day one and be proactive with a whole new agenda, I don't think we're able to build the confidence of the American people that we're really on the job without being willing to take on some of those decisions and relook at them." *(See Q&A with Jackson, p. 28.)*

During his first month in office, President Obama signaled a dramatic break from his predecessor by pushing to regulate greenhouse-gas emissions, which are blamed for global warming. The president called on EPA to reconsider Bush administration decisions that blocked regulation of carbon dioxide from cars and coal-fired power plants. The new team also dropped a controversial Bush effort to curb mercury emissions from power plants through a pollution-trading program, and vowed to force the nation's 500 coal-fired power plants to stop releasing mercury into the air. (Some of the oldest plants have always been exempted from complying with the 1970 Clean Air Act.)

As the Senate was confirming EPA's top political appointees, the agency was already producing a steady stream of policy changes. It dropped a Bush rule that allowed more than 3,500 factories to avoid giving the public a full accounting of the toxic pollutants they store or emit into the air and water. Regulators ordered Texas and West Virginia to get tougher on polluters. And federal officials sued three utilities that they alleged expanded their coal-fired power plants without meeting associated environmental mandates.

The pace of EPA action picked up early this month when Jackson announced plans to cut carbon dioxide emissions from cars, take a harder look at water pollution from mountaintop mining, and regulate coal-fired power plants' "coal ash" waste ponds, which have been known to leak and contaminate drinking water and streams.

The White House also unveiled two sweeping, multi-agency efforts to tackle the nation's long-neglected water-pollution problems. On September 10, Jackson joined Interior Secretary Ken Salazar and Agriculture Secretary Tom Vilsack in releasing a comprehensive blueprint for cleaning up the Chesapeake Bay by controlling runoff from urban areas, large livestock operations, and farms. The following week, the administration issued a far-reaching ocean-management plan to protect wildlife and water quality in the seas, along the coasts, and in the Great Lakes area. Still in the works is an environmental strategy for the Mississippi River basin, which reaches nearly from the Appalachian Mountains to the Rockies.

Meanwhile, an interagency team is readying principles for beefing up federal chemical-safety laws. Environmental groups want EPA to require chemical manufacturers to test the safety of substances that find their way into the bloodstreams of adults and newborns. Washington environmental experts predict that water-pollution and toxic-chemicals policies could take center stage next year after final action on global-warming legislation.

Jackson acknowledges that EPA has a lot on its plate but insists that the agency is up to the challenge. "Can I deliver? I fully intend to," she said. "More important, the staff here wants to. If anything, the last eight years has made them realize that it's not any fun not being in the forefront of these issues. And it doesn't feel good to know that the American people have lost some amount of confidence [in EPA]. We want that confidence back."

Warnings From Industry

Yes, things have certainly changed at EPA since the Bush era, when the White House balked at controlling greenhouse gases, squeezed the agency's budget, and sometimes insisted that regulators adopt legally dubious interpretations of environmental laws.

Candidate Obama promised to reverse many of those policies, and so far his efforts have elicited praise from Bush's critics and warnings from industry.

"In nine short months, this administration has made demonstrable and highly significant steps toward curbing air pollution," said S. William Becker, executive director of the National Association of Clean Air Agencies, which represents state and local pollution-control officials. Likewise, Anna Aurilio, Washington office director for the advocacy group Environment America, said, "This is a 180-degree turn. We just came off of an administration that was not only hostile to regulating climate change but would go through scientific reports and scrub [any] mention of global warming out."

Some supporters voice caution, however, that Obama's environmental team is likely to hit a political brick wall as agriculture and coal lobbyists ramp up their opposition. "We know that the various regulated industries that are finally going to have to clean up their acts are not going to go quietly," said Bruce Nilles, director of the Sierra Club's "Beyond Coal" campaign. "The reason they've enjoyed these loopholes for all these years is because they're very powerful, and they spend a lot of money, and they've got some very powerful friends in Congress."

Washington lawyer Jeff Holmstead, who ran EPA's air-pollution office during Bush's first term, said that "in their eagerness to satisfy the environmental community, [Obama officials] have taken some shortcuts" that might not survive legal challenge. "They've misused the process in a way that's never been done before," he said. Specifically, Holmstead said that the Obama administration has reopened consent agreements reached between the Bush administration and electric power companies and ordered the firms to install stricter pollution-control equipment than originally agreed to. Industry groups are also protesting the Obama EPA's decision to postpone the effective dates of rules that were put in place by the Bush White House but opposed by environmental activists.

The business community preferred the Bush administration's emphasis on voluntary environmental protection programs rather than the strengthened pollution regulations that the Obama administration is considering. For example, the National Association of Manufacturers objected that EPA's recent rule setting up a national reporting system for greenhouse-gas emissions is duplicative and burdensome, and will hike business costs for many manufacturers.

Industry lobbyists argue that companies are likely to file legal challenges against EPA as the administration's new environmental policies become final. In early September, the U.S. Chamber of Commerce and the National Automobile Dealers Association went to court seeking to block EPA's decision to allow California to regu-

Going Topless

AFP/GETTY IMAGES/MANDEL NGAN

EPA plans to take a harder look at water pollution caused by mining that lops off a mountaintop and dumps it nearby.

Liquid Leftovers

MCT/CHARLOTTE OBSERVER/JEFF WILLHELM

The toxin-laced coal ash slurry produced by coal-fired plants is set to be the target of EPA regulations.

late greenhouse-gas emissions from cars. The groups contend that climate change is an international problem that should not be addressed through state-level regulations.

William Kovacs, who heads the chamber's environment, technology, and regulatory-affairs division, predicts that EPA faces a long battle to protect its new policies. "We're all going to know [whether the new proposals will stand] when the Supreme Court finally decides all these issues," he said.

Team of Veterans

Jackson is leading the charge on strengthening America's environmental policies. But White House energy and climate-change czar Carol Browner, who headed EPA during the Clinton administration, helped draw up the battle plans. In a 16-page essay for the Center for American Progress think tank written before Obama took office, Browner outlined an agenda much like the one the administration is following.

Obama staffed EPA with an all-star team of experts on environmental law and the federal regulatory process. Throughout her career, Jackson has focused on state and federal environmental policy. She worked for EPA for 16 years before going to New Jersey, where she headed the state Environmental Protection Department. More recently, she served as chief of staff there to Gov. Jon Corzine.

Jackson is a force to be reckoned with in the administration's internal discussions, according to people watching her closely. "Lisa knows the agency," said Eric Schaeffer, executive director of the Environmental Integrity Project, a Washington advocacy group. Schaeffer, a former director of EPA's office of civil enforcement, describes Jackson as "decisive," adding, "She's technically sophisticated. She knows what questions to ask."

Jackson's staff includes former Georgetown University Law School professor Lisa Heinzerling, who was the lead author of legal briefs in the Supreme Court case challenging the Bush administration's decision not to regulate global-warming pollution from cars and trucks. Her work led to the Court's landmark *Massachusetts v. EPA* ruling, which ruled EPA may consider whether climate change endangers health and the environment.

Also on Jackson's team is Robert Sussman, who directed EPA's air office early in the Clinton administration, and David McIntosh, a former aide to Sen. Joe Lieberman, ID-Conn. During the last Congress, McIntosh was instrumental in Lieberman's attempt to get climate-change legislation through the Senate. Obama has nominated Bob Perciasepe as EPA's deputy administrator. Perciasepe headed the agency's air-pollution program late in the Clinton administration.

Other stars in EPA's lineup include Gina McCarthy, assistant administrator of the air and radiation office, and Peter Silva, assistant administrator of the water office. McCarthy has a long history of environmental work in Connecticut and Massachusetts. Silva is a veteran water engineer who most recently was an adviser to Southern California's Metropolitan Water District.

Obama has asked Congress to boost EPA's budget to $10.5 billion—a nearly 40 percent jump from its $7.6 billion fiscal 2009 figure. Much of that increase, which lawmakers have yet to approve, would go to the states for wastewater treatment plants and drinking-water programs.

To be sure, the Obama administration has hit some bumps in its rush to roll back Bush-era policies. It stumbled, for example, while trying to put the brakes on a controversial form of strip-mining. In March, environmental activists celebrated when EPA announced that it would challenge mountaintop mining permits in Kentucky and West Virginia. (Mountaintop mining operations strip off whatever lies above a layer of coal—sometimes hundreds of feet of dirt and rock. The operators dump all of that material into nearby valleys, sometimes blocking the headwaters of streams.)

The Obama EPA's first press release on the topic stated that such mining "would likely cause water-quality problems in streams below the mines, would cause significant degradation to streams buried by mining activities, and that proposed steps to offset these impacts are inadequate." Just hours later, EPA released a much more subdued statement stressing that the agency was "not halting, holding, or placing a moratorium on any of the mining permit applications." Jackson subsequently signed off on most of those permits. Insiders say that the agency's tone changed after the coal industry howled. "They were not prepared for the blowback," one agency insider says. EPA issued a carefully worded statement this month announcing that it planned to delay 79 mountaintop mining projects in Appalachia while regulators assessed their potential impact on water systems and public health.

Trip Van Noppen, president of Earthjustice, an advocacy group, says that the environmental community has "continuing concerns about where the administration is going to go on mountain removal." He is urging EPA to overturn Bush-era rules that open the door to expanded use of the mining technique, but he acknowledged that the wrath of lawmakers from coal-producing states can be powerful. "The politics of coal are complicated in the current Congress," he said.

Some key environmentalists are also unhappy that the White House has not yet issued executive orders to ensure the integrity of federal scientists' reports, streamline the regulatory process, and make its decision-making more transparent. "We'd like to see the logs of all of the agencies opened up to the public so we know which special interests, including us, are meeting with government officials," said Francesca Grifo, director of the Union of Concerned Scientists' scientific-integrity program. During the Bush administration, Grifo's group charged that two-thirds of EPA's scientists had run into political interference.

The president can achieve some of his top environmental goals only through congressional action. The White House wants Congress to amend the Clean Water Act to explicitly cover wetlands and temporary streams. (The Supreme Court ruled in 2006 that the current law applies only to navigable waterways.) The president also wants to strengthen the Toxic Substances Control Act, which governs chemical safety. In addition, Obama's fiscal 2010 budget called on Congress to bankroll the Superfund hazardous-waste cleanup program by reinstating a tax on the chemical and oil industries that expired in 1995. For now, though, when Obama's environmental officials go to Capitol Hill, they focus on climate-change legislation.

Some industry lobbyists argue that the administration's arm-twisting during the House climate-change debate left bad feelings that could hurt Obama's chances of getting what he wants on other environmental issues. Michael Formica, chief environmental counsel for the National Pork Producers Council, said that the White House will have a hard time persuading moderate Democrats from farm states to rewrite the Clean Water Act. "The Blue Dogs in Congress won't go along with it after the votes they had to take on the climate bill," Formica predicts.

Farm groups fear that the White House wants to give government regulators authority over farms and other rural lands. Operators of so-called factory farms, where a large number of animals are crowded together, often drain liquid manure into special lagoons. The waste can foul groundwater or streams if the lagoons leak or get flooded. For now, EPA has no authority to intervene until after a farm has polluted nearby water.

Hot Prospects

During her first months in office, Jackson's main task has been dismantling the Bush administration's environmental legacy. Bush's White House took special care to finalize the vast majority of its environmental policy changes before its term ended. To overturn any of those rules, Jackson must start from scratch to build a new legal and scientific record, issue a proposed rule change, and give the public time to comment on the proposed revision. That process can take a year or two. The jury is out on how many changes the administrator and her staff can complete during Obama's current term. Regulatory changes are most likely in the following areas.

• **Climate Change.** Environmental experts from the Obama administration, industry, and Congress tend to agree that the Clean Air Act is not the ideal vehicle for controlling greenhouse-gas emissions. But in 2007, the Supreme Court ruled that EPA has the authority under that law to regulate global-warming pollutants if evidence shows that they endanger public health and welfare. The Bush White House refused to exercise that power.

Obama came into office asking Congress to pass climate-change legislation, and this spring, he put his muscle behind a House bill to cut carbon dioxide emissions through a cap-and-trade program. The House passed a bill in June, but momentum to get a bill through the Senate is waning. EPA is moving ahead with plans to use existing law to control emissions, prompting Republicans in the Senate to look for ways to block the agency from acting on its own.

Early this month, Jackson and Transportation Secretary Ray LaHood released proposals to require automakers to sell more-efficient vehicles and to reduce greenhouse-gas emissions from cars and trucks. That regulatory package was the first part of the White House's multistage climate-change plan. EPA also recently set up a registry requiring major polluters to report their emis-

Crowded Issues

KRT PHOTOS/JOHN DZIEKAN

EPA is joining with the Interior and Agriculture departments to tackle the runoff problems caused by factory farms.

Trashed

GETTY IMAGES/BILL PUGLIANO

The Great Lakes area is included in the Obama administration's far-reaching plan to improve water quality.

sions of greenhouse gases. The agency is poised to issue a scientific report on whether carbon dioxide emissions endanger public health and welfare. "It's almost like the Obama administration is carefully constructing a building here, brick by brick, in developing its climate policy," said Frank O'Donnell, president of Clean Air Watch.

Before EPA officials take the final step of issuing a proposed rule to regulate industrial greenhouse gases, however, they want to limit the number of businesses that would be affected. The Clean Air Act requires EPA to regulate companies that emit at least 250 tons of a given hazardous pollutant each year. For greenhouse gases, that could include tens of thousands of small businesses. The White House hopes to craft a small-business exemption, limiting the reach of the regulation to companies that produce at least 25,000 tons of carbon dioxide per year. But Holmstead, who once ran EPA's air office, charges that an exemption would not hold up in court and that, as a result, EPA could be forced to oversee countless businesses.

Jackson contends that her agency is treading carefully in drafting its proposals. "We're not going to put a proposed regulation out that we don't believe stands up to the rule of law," she said. "We believe that there are opportunities that allow us to not start by hitting small businesses or treating everyone the same."

• **Coal.** The nation's most abundant fossil fuel, coal, is at the center of many of the environmental policies that the Bush administration weakened and the Obama administration wants to strengthen. The environmental community is keen on persuading EPA to address two coal-related issues: restricting mountaintop mining and controlling power plants' toxic waste, which operators now keep in unregulated coal ash ponds.

The coal ash problem jumped to the top of many environmentalists' priority lists last December when a retention pond wall collapsed at a Tennessee Valley Authority plant, pouring dangerous chemicals into waterways and flooding nearby houses. Since then, EPA has begun to assess the safety of coal ash impoundment ponds across the nation. And the TVA has conceded that four of its other waste ponds could cause fatalities and serious environmental damage if they ruptured.

Early this month, three environmental groups threatened to sue EPA if regulators fail to crack down on ash ponds. Jackson responded by announcing plans to regulate. "Current regulations, which were issued in 1982, have not kept pace with changes that have occurred in the electric power industry over the last three decades," the agency declared.

EPA studies show that coal plants release millions of pounds of arsenic, lead, mercury, and selenium into ponds each year. Those pollutants can leach into groundwater and contaminate waterways, according to the Defenders of Wildlife, the Environmental Integrity Project, and the Sierra Club, the trio behind the potential suit.

• **Air Pollution.** In the late 1990s, the Clinton administration assembled a team of state, industry, and environmental experts to craft regulations for mercury emissions. The Bush EPA scrapped that effort, instead opting to allow electric companies to trade mercury-pollution credits. Critics complained that the plan could result in high concentrations of mercury near some power plants, and the courts eventually rejected the program. The Obama administration is starting from scratch in developing a mercury-control plan.

"EPA has a legal obligation to issue strong air-toxics rules that will require every power-plant unit in this country of any size to install pollution controls to clean up mercury, lead, arsenic, and all other toxic chemicals," said John Walke, clean-air director of the Natural Resources Defense Council, which filed the lawsuit that prompted EPA to move toward regulating mercury. "That has been something that the utility industry has escaped for the entire 39-year history of the Clean Air Act."

Americans are mainly exposed to mercury, which can cause brain damage, by eating fish from contaminated waters.

• **Water Pollution.** The multi-agency plan to clean up the Chesapeake Bay, coastal waters, and the Great Lakes area includes tackling the politically difficult issues of farm management, urban development, and wastewater treatment plants that overflow into rivers during floods. Environmentalists welcome the Obama initiative. "We've never seen such an interagency effort before aimed at coming up with strategies," said Lynn Thorp, national campaigns coordinator of Clean Water Action. "If that can be real and integrated and have some real force behind it, that is the question."

With water-pollution reports from past years gathering dust, activists want the Obama administration to do more than study the problems. "It's not like we've done all that we could do under existing law," said Michele Merkel, the Chesapeake regional coordinator for the Waterkeeper Alliance. "The states have failed to do their jobs in terms of enforcing the laws and issuing strong and protective permits. And EPA has failed in providing adequate oversight to make sure that the states are meeting their obligation."

Robert Martin, former executive director with the Pew Commission on Industrial Farm Animal Protection, said that the growth of industrial farms has complicated regional water-pollution problems. He noted that manure holding ponds can leak or overflow during floods. Because farmers also use the manure to fertilize crops, storms can wash the nutrients into waterways. "It's a complex problem that needs a nuanced, regional approach," he said.

But Formica of the pork producers' council said that farm groups are wary of the Obama administration's push to protect water systems. Such efforts tend to pit farmers against urban officials reluctant to curb the growth that exacerbates water-pollution problems. "The big concern for us is that we'll be blamed for all of the water problems," he said.

In announcing the Chesapeake Bay plan, Vilsack said that the White House will dedicate $638 million over the next five years to help large livestock farms curb their water pollution. He said that pollution from farming operations is declining, but Jackson noted that agriculture is still responsible "for about half of the pollution in the bay."

Through the Haze

GETTY IMAGES/DAVID McNEW

EPA's Jackson announced plans this month to cut carbon dioxide emissions from cars.

• **Chemical Safety.** In 1989, EPA banned the use of asbestos in some consumer products, based on dozens of studies that linked exposure to deadly respiratory illnesses. The agency imposed the restrictions under the Toxic Substances Control Act, the nation's primary chemical-safety law. Two years later, a federal court ruled that loopholes in the law prohibited the ban. Congress has shrugged off calls to strengthen the law, leaving EPA regulators with little power to control toxic chemicals.

In recent years, however, Americans have become increasingly concerned about the chemicals in children's products. Even the American Chemistry Council, which represents the nation's large chemical manufacturers, supports some proposals to rewrite the law. The administration is drawing up a chemical-safety policy, and environmental and business lobbyists say that it could become a hot topic next year.

Jackson agrees: "Chemicals-management reform for the American people is going to be a huge legislative push. And I think the good news is that almost every stakeholder wants some reform. Obviously, the questions to be asked are 'how' and 'what.' "

Richard Wiles, senior vice president for policy and communications at the nonprofit Environmental Working Group, asserts that Congress should mandate "a fundamental overhaul of the way we do business now." Wiles wants the government to set strict chemical-safety standards to protect children. He favors requiring chemical companies to prove that their products are safe; current law, by contrast, requires EPA to show that chemicals are unsafe before the agency can regulate them.

Environmentalists are demanding that chemical companies determine which chemicals are prevalent in the bloodstreams of adults, children, or fetuses. "We think biomonitoring would be a very critical step to help set priorities of which chemicals should be extensively tested out of the thousands of chemicals on the market today," Wiles said.

The Obama Stamp

Eight months into an ambitious new administration, the White House and the revitalized EPA are hustling to put President Obama's stamp on environmental policy—challenging a slow-moving regulatory system and the regulated industries' certain resistance. The question remains whether the new team can overturn many of Bush's regulations, establish its own, and create an aggressive green legacy that will outlast Obama's presidency.

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