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Introduction: What You Don't Know Does Protect You

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INTRODUCTION

WHAT YOU DON'T KNOW DOES PROTECT YOU

For most members of the general public across the United States, environmental pollution control programs only enter their consciousness and discourse in one of two ways (if at all): either when something goes terribly, tragically wrong, such as with the children in Flint, Michigan who are poisoned by lead in their drinking water, or when elected officials or political candidates talk about the importance of clean air and water and/or a thriving economy. Just as most of us do not give feedback to an airline, hotel, or restaurant when everything goes well, as a society we generally do not talk about environmental regulations when they work as intended to protect human health and the environment we live in and love. In short, we often take for granted the very protections we have come to expect. Most people who are not in the environmental field are unaware of the many ways they, and their loved ones, are safer each day because of a half-century old, world-renowned federal environmental policy framework, along with an ever-evolving configuration of additional protections by state, tribal, and local governments, not to mention the thousands of dedicated civil servants who develop and implement those programs.

Consider the following example of public exposure to information about a program designed to reduce health impacts associated with routine household chemicals. In March 2015, the U.S. Environmental Protection Agency (“EPA”) posted a video on YouTube of then-EPA Administrator, Gina McCarthy, and her dog, Emma, telling the public about the Safer Choice program.¹ A Safer Choice label on household cleaning products and detergents communicates to consumers that the chemical-based product meets EPA’s scientific standards and is safer for families, pets, and the environment.² It is a voluntary program for businesses that helps consumers make better-informed choices about what products they bring into their homes. It sounds pretty straight-forward, and full of win-wins, and yet it is an uphill battle for the EPA to spread the word about this beneficial program. For example, as of April 2019, Administrator McCarthy’s YouTube video had been viewed fewer than 12,500 times; equating to less than one view per EPA employee, when the target

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1. U.S. Env’tl. Prot. Agency, *EPA Administrator McCarthy Reveals the Safer Choice Label*, YOUTUBE (Mar. 4, 2015), <https://www.youtube.com/watch?v=Pc4DWqFlqMo>.

2. *Learn About Safer Choice Label*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/saferchoice/learn-about-safer-choice-label> (last visited Apr. 29, 2019).

audience is millions of American families.³ Contrast this level of traction with the number of total views of the last viral video you watched on social media. For a more direct comparison, consider how a news story about environmental protection gone wrong may be picked up by hundreds of news outlets and reach millions of readers and viewers.⁴

Some of the many ways in which Americans are incredibly diverse is in the context of our lifestyles, such as where we live and work, what we eat, and how we travel and recreate. While there are seemingly endless examples of what makes us different, there are a number of basic, some might say “benign,” needs and routines that we have in common. These common threads – breathing, eating, drinking, sleeping, bathing – happen to be directly associated with many of the underlying purposes of federal, state, tribal, and local environmental programs that are often overlooked or misunderstood.

It is undeniable that government regulations, in general, tend to carry a negative connotation, especially when referenced in broad terms. The rhetoric of overly-burdensome and broad regulations during the 2016 Presidential campaign turned into policy when President Trump issued an Executive Order, on his tenth day in office, directing swift action across federal agencies to reduce the number of regulations on the books.⁵ Executive Order 13,771, *Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs*, calls for federal agencies, including the EPA, to eliminate two regulations for every new regulation, such that the costs of all new regulations do not exceed a regulatory cost allowance determined annually for each agency.⁶ This has been referred to as the “2-for-1 regulatory policy,” which relies on a premise that there are hundreds of unnecessary regulations in effect, or for which the costs to society outweigh the benefits. The nuances of E.O. 13,771 implementation are beyond the scope of this Introduction, but it is fair to say the federal government is in a period of active deregulation.⁷

To illustrate these “hidden” protections that many of us take for granted, we will peek behind the curtain of a hypothetical American household headed by a mother of two children who works full-time outside the home. In one day, this mother makes countless decisions to keep the home in order and her children safe, active, and engaged in learning. What do this family’s day-to-day activities have to do with the federal system of environmental and public health regulations?

For starters, this busy family relies on their community water system to deliver safe drinking water to their home. The water utility in town treats the source

3. U.S. Env’tl. Prot. Agency, *supra* note 1.

4. Vox, *Flint’s Water Crisis, Explained in 3 Minutes*, YOUTUBE (Jan. 21, 2016), <https://www.youtube.com/watch?v=NUSiLOWkrIw> (it has been viewed over 650,000 times as of May 2019).

5. Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Feb. 3, 2017).

6. *Id.*; see also Memorandum from Dominic J. Mancini, Acting Adm’r Office of Info. & Regulatory Affairs, for Regulatory Policy Officers at Exec. Dep’ts and Agencies and Managing and Exec. Dirs. of Certain Agencies and Comm’ns (Apr. 5, 2017), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>.

7. For a summary of recent E.O. 13771 implementation results, see REGULATORY REFORM UNDER EXECUTIVE ORDER 13771: FINAL ACCOUNTING FOR FISCAL YEAR 2018, https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Final_Accounting_for_Fiscal_Year_2018.pdf (last visited Apr. 29, 2019).

water, which is pumped in from a nearby river, for dozens of contaminants to ensure compliance with public health standards established by EPA under the Safe Drinking Water Act.⁸ The typical consumer pays attention to news about drinking water when there is cause for concern or caution, such as a boil water order issued by the local utility. Otherwise, most of us turn on the tap for drinking, cooking, and cleaning without a second thought. Our hypothetical family relies on their community water system to follow all the mandated treatment, monitoring, and reporting requirements to keep them safe. Without realizing it, they are also relying on a larger oversight structure at the state and federal levels to assess the water system's compliance with all applicable requirements and take action when there are violations.⁹

Beyond teeth brushing and water bottle-filling, this family reaps the benefits of established environmental programs in many ways. The pesticide registration and use programs under the Federal Insecticide, Fungicide, and Rodenticide Act¹⁰ enable the kids to play in the yard outside their home without risking harmful exposure to pesticides applied to crops nearby.¹¹ Mom cleans and disinfects the home using conventional cleansers and detergents, without worrying about harmful exposure to the most vulnerable members of the household. Fortunately, the common ingredients in most cleaning products on the store shelf have been through a rigorous, objective scientific review process before being cleared for household use. Pursuant to the Toxics Substances Control Act,¹² EPA scientists are reviewing new chemicals at the average rate of 1000 per year to continue to protect consumers as technological advancements and discoveries bring new products to the market.¹³

Even away from home, the family's routines intersect with implementation of environmental programs. Both kids enjoy outdoor activities. The community ball fields for little league and soccer club are not far from the town's industrial park. Children are able to play outside without exposure to harmful particulate matter in the air, which means healthier lungs, fewer sick days and trips to the doctor, increased ability to focus at school, a more active lifestyle, and reduced medical expenses for the family. As a result of a statutory and regulatory framework that is

8. Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-27 (2012); *How EPA Regulates Drinking Water Contaminants*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants> (last visited Apr. 29, 2019).

9. The EPA makes hundreds of thousands of data points on drinking water utility compliance easily accessible to the public on the Drinking Water Dashboard, part of the Enforcement and Compliance History Online (ECHO) website. *Analyze Trends: Drinking Water Dashboard*, U.S. ENVTL. PROTECTION AGENCY, <https://echo.epa.gov/trends/comparative-maps-dashboards/drinking-water-dashboard?state=National> (last visited Apr. 29, 2019).

10. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y (2012).

11. See *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act> (last visited Apr. 29, 2019).

12. Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601-2629 (2012).

13. U.S. ENVTL. PROT. AGENCY, WORKING TOGETHER FY 2018-2022 U.S. EPA STRATEGIC PLAN 22 (2018), <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf>; see also *Statistics for the New Chemicals Review Program Under TSCA*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review> (last visited Apr. 29, 2019).

designed to consider available technologies for achieving needed public health-related pollution controls, cleaner air at the soccer field is possible while the town's factories continue to provide hundreds of reliable jobs.¹⁴ Finally, this family's favorite vacation spot is a campground at a nearby lake where they enjoy fishing, boating, and swimming. What they do not realize is that a small watershed association works hard to obtain federal and state grant funding to identify and address sources of surface water pollution that affect water quality.¹⁵ As a result of federal research, guidelines and financial assistance programs, the lake is safe for direct contact activities, such as swimming, and the fish are safe to eat.

In some ways, of course, each of the examples described above is a product of oversimplification, regarding, for example, the intersections of environmental regulatory policy and local economies. However, the premise here is rather simple: the people we love, and the natural resources we enjoy, are safer and better positioned to thrive as a result of carefully crafted environmental programs, and the compliance and enforcement mechanisms in place to carry them out. Environmental laws are designed with built-in checks and balances. When executed properly, the regulatory agencies fully account for the economic impacts of pollution prevention and control requirements as well as evaluate options and balance costs and benefits. Federal environmental statutes are not perfect, as evidenced by a robust body of judicial common law in the environmental arena, but our lawmakers laid out some very savvy directions to the EPA for how to develop regulations that protect the environment and human health *and* support a strong economy. In fact, many of these laws are designed to promote technological innovations that provide critical environmental and human health protections while also spurring economic development in the pollution-control field.

People living in the United States have grown accustomed to having safe drinking water, clean air, and clean rivers, lakes, and coast lines. We expect companies to dispose of their hazardous waste properly and avoid contamination of soil and ground water. When regulated entities, including public utilities, do not meet these expectations, public outrage and demands for accountability are warranted and often necessary. When disasters are prevented, which is true most days in most communities, we can look to a well-established legal and policy framework for environmental and human health protection that is hard at work behind the scenes, whether most of us know it or not.

14. See *Particulate Matter (PM) Basics*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics> (last visited Apr. 29, 2019).

15. See *Basic Information About Nonpoint Source (NPS) Pollution*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution> (last visited Apr. 29, 2019); see also *Resources for Using a Watershed Approach*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/nps/addressing-water-resource-challenges-using-watershed-approach> (last visited Apr. 29, 2019).