

The Environmental FORUM[®]

Advancing Environmental Protection Through Analysis • Opinion • Debate



Round Two: Obama, Triumphant, Faces a Divided Congress

Rating Obama
*A Report Card
and Scorecard*

Carbon Taxes
*Why Conservatives
Should Support*

Contaminants
*Water Treatment
and the New Arsenic*



THE FORUM

A Report Card on Obama's First Term, and a Scorecard on What He Needs to Do in the Next Four Years

This magazine has published many critiques of the government's efforts in environmental protection, but only rarely in the form of a report card. In the George H. W. Bush administration, Bruce Babbitt, then president of the League of Conservation Voters, gave Congress a D and Henry Waxman, the chair of an influential House panel, gave the president a C-. In the George W. Bush administration, the libertarian Property and Environment Re-

search Center gave the president a surprising D, for failing on market reforms. But if memory serves, that's about it.

In this issue we employed a more systematic approach, asking a broader group of observers and stakeholders to grade President Obama's first term. We also asked them to provide a scorecard on what the president can do — what he *needs* to do — in his second term to advance environmental protection.



“While President Obama’s record has not been perfect, he’s made enormous environmental achievements in his first term.”

Gene Karpinski

President
LEAGUE OF CONSERVATION VOTERS



“The business community would give the Obama administration’s first term a grade of, at best, a C– on regulatory policy.”

William L. Kovacs

*Senior Vice President,
Environment*
U.S. CHAMBER OF COMMERCE



“The most important thing Obama could do to promote public health is terminate his regulatory war on affordable energy.”

Marlo Lewis

Senior Fellow
COMPETITIVE ENTERPRISE
INSTITUTE



“If anything has defined the president’s first four years, it’s been the byzantine world of cost-benefit analysis.”

William J. Snape III

Senior Counsel
CENTER FOR BIOLOGICAL
DIVERSITY



“The 2008 election heralded a revival of environmental and energy issues, more than under any president in recent memory.”

Deborah Tellier

*Partner, Environment
Department*
FARELLA BRAUN + MARTEL LLP

Grades Vary, But Record Is Strong, Future Is Bright

DEBORAH TELLIER

The election of Barack Obama in 2008 heralded a revival of environmental and energy issues, more than under any president in recent memory. He inherited a host of issues that were not effectively addressed during previous administrations. He countered with an economic recovery plan and initiatives designed to prevent the collapse of our economy while jump-starting a clean energy industry, promoting domestic energy production, restoring world leadership on climate change, and protecting the environment.

There are four areas in which we can grade the president's first term:

First, energy independence and forward-thinking domestic programs. Obama has achieved a great deal to advance clean energy despite an economy that was on the brink of collapse. The president declared a national goal of ending dependence on foreign oil and called on Congress to pass a stimulus bill to help "create a new American energy economy." The package provided billions for clean energy investments, a smart grid, energy efficiency measures, training programs for green jobs, and loans to the renewable energy industry. Unfortunately, what may be remembered most about these programs is the bankruptcy of Solyndra, a solar power manufacturer that received a \$527 million loan guarantee. Obama also called for a new generation of safe nuclear power plants, offshore oil and gas development, and using fracking to extract natural gas. Not surprisingly, these options did not endear him to many within the environmental community. Nonetheless, his grade is a B for broad thinking on using energy as a platform for jobs

and economic recovery while moving toward energy independence.

Second, attacking climate change via legislation. Many hoped that Obama could succeed in passing sweeping climate change legislation during his first term. Unfortunately, the issue became exceedingly partisan and the bill died in the Senate. His grade: B for effort, D for results.

Third, fuel efficiency standards through negotiation. In 2010, EPA adopted rules requiring automakers to boost the average fuel economy of new cars and trucks to 54.5 miles per gallon by 2025. This measure alone will reduce American's oil consumption by 12 billion barrels over the course of the program. Grade: A for Obama's work with auto industry during the bailout to garner support for and adoption of these rules.

Fourth, administrative regulation of greenhouse gases. The Supreme Court's 2007 landmark case of *Massachusetts v. EPA* ruled that greenhouse gases are a "public danger," and therefore subject to regulation under the Clean Air Act. This set the stage for EPA to issue its "endangerment finding" that six GHGs threaten the health and welfare of current and future generations. EPA's interpretation of the CAA was recently upheld by the D.C. Circuit Court as "unambiguously correct," which will pave a path for sweeping regulations affecting vehicles, power plants, and other industrial facilities. Grade: A-. While this will be a hard pill for the country to swallow, it will substantially move the needle toward cleaner air and a reduction in GHG emissions.

Finally, a short list of what to do in Obama's second term:

First, restore U.S. leadership on climate change. It is imperative that the United States — one of the world's largest emitters — provide stronger leadership. At home, Obama should look to models such as California's AB 32 legislation and New England's Regional Greenhouse Gas Initiative. Indeed, California just conducted its first auction of

tradable carbon allowances. On the international front, the United States can no longer afford to maintain its status quo position on climate change as it did at the November Doha climate conference.

Second, ensure environmental protection while pursuing energy production. America is experiencing a boom in oil and gas production, which has led to lower energy prices, greater independence from foreign oil, and more jobs. However, the technologies used to develop these resources, including hydraulic fracturing and deep horizontal drilling, can lead to significant environmental impacts. While such drilling is typically regulated at the state level, there is a role for the federal government to provide oversight.

Third, reform of chemical and product regulation under federal law. The Toxic Substances Control Act has not been significantly amended for over 35 years despite widespread agreement that the current regulatory framework is woefully out of date. EPA could take a lesson from the REACH model in Europe, and the administration should take a measured view of California's developing green chemistry initiative when undertaking reform of chemical and product safety in the United States.

Conclusion: The Obama administration has played a significant role in keeping America from falling into another depression. The president recognized the country's ability to pull itself up by its bootstraps and take charge on issues of energy and the environment. His administration created opportunities for economic recovery and energy independence. With the country now standing tall, there is no better time for Americans to lead on the important environmental and energy issues of the day.

Deborah Tellier is a Partner in the Environmental Law Department at Farella Braun + Martel LLP in San Francisco. The views expressed are her own and not necessarily those of the firm.