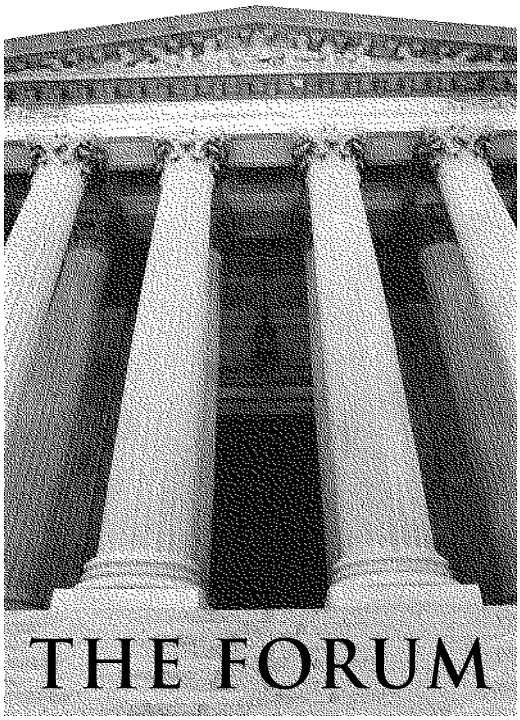


Sustainable Development And U.S. Law. Have The Twain Met?

The World Summit on Sustainable Development may have ended last summer without significant global agreements, but its predecessor meeting, the 1992 Earth Summit in Rio, produced a number of major international treaties plus Agenda 21, which gained the support of over 110 heads of state in attendance. In Agenda 21, the nations of the world endorsed a plan of action for implementing sustainable development. In Section 8.13, Agenda 21 states that "laws and regulations suited to country specific conditions are among the most important instruments for transforming environment and development policies into action."

But progress toward sustainability has been halting, and the United States, a world leader in the law of environmental protection for decades, has been particularly slow in making sustainable development a specific legal objective. As to the latter, why it is so and whether it is a good or bad thing are matters open to interpretation.

This Forum debate invites a group of U.S. environmental law experts to answer the fundamental proposition of whether and how the United States should commit to realizing sustainable development through deliberate legal mechanisms. We ask our panelists to identify the drivers toward sustainability — economic, social, legal, for instance — and then we ask them whether there is a greater role that American law could perform, such as in establishing incentives or regulating economic and social activity, to ensure that human development (which contains economic aspects and social and environmental aspects as well) is sustainable over time. And finally, we ask each panelist to grapple with the question of, even if it can, should the U.S. legal system be explicitly linked to the achievement of sustainable development, as the United States committed to in Agenda 21?

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E. Donald Elliott
Partner
Willkie Farr & Gallagher

"It is time to conform U.S. environmental laws to the worldwide goal of sustainable development. The true end of environmental laws is not merely to 'clean up' air, water, and waste, but to 'respond to the needs of the present without compromising the capacity of future generations to satisfy their needs.'"



Alan D. Hecht
Director for Sustainable Development
Office of Research and Development
Environmental Protection Agency

"The United States was the first government to work seriously to integrate its domestic environmental, economic, and social policies. The root of federal environmental leadership is the body of domestic environmental laws.... The bottom line is to get better at how we do things."



Alan B. Horowitz
Senior Counsel
Global Safety, Health, and Environment
AstraZeneca Pharmaceuticals

"The role of law and regulation in the pursuit of sustainable development is 'about elbow grease, not canned ideas.' Of course, the ability to grease these skids through the U.S. legal system will continue to be a substantial challenge."



Rep. Dennis J. Kucinich
Democrat, Ohio
U.S. House of Representatives

"To start our country on a path toward a complete sustainable vision, I'm proposing a sustainable 'New Deal' in Congress. I call it a Green Deal. I'm developing five proposals into legislation to make the U.S. government operate in a sustainable way, create new jobs, and help developing countries acquire American-made sustainable technologies."



Andrew Savitz
Partner
Environmental and Sustainability Services Group
PricewaterhouseCoopers LLP

"Sustainable development requires financial incentives beyond anything that governments can provide. Progress requires not legislative action but new business models that align societal and shareholder value, and partnerships that create the conditions in which such new models can flourish."



Gregory Wetstone
Director of Advocacy
Natural Resources Defense Council

"There is no effort from the Bush administration nor Congress toward sustainable development. To the contrary, the administration is moving in a mad dash in the opposite direction, undercutting programs that made the United States a leader in sustainable development."

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Declare SD Goal Of U.S. Enviro Laws

E. DONALD ELLIOTT

It is time to conform U.S. environmental laws to the worldwide goal of sustainable development. The true end of environmental laws is not merely to correct "market failures" or to "clean up" air, water, and waste, but to "respond to the needs of the present without compromising the capacity of future generations to satisfy their needs" — in the words of the 1987 report of the World Commission on Environment and Development, *Our Common Future.*

The fundamental norm of fairness to future generations underlies sustainable development. Throughout the ages, great thinkers have recognized what we now call sustainable development as the key principle governing use of the earth's resources. John Locke made it the condition for his defense of private property in the 17th century, arguing it was moral to appropriate property from the commons *only* if "enough and as good" was left for others. In the preamble to the Constitution, our Founders declare the purpose of our government is to secure blessings to "ourselves *and* our Posterity." One of America's first environmentalists, Gifford Pinchot, wrote in 1910: "When the natural resources of any nation become exhausted, disaster and decay in every department of national life follow as a matter of course. Therefore the conservation of natural resources is the basis, the only permanent basis, of national success." Georgetown Law Professor Edith Brown Weiss has shown that intergenerational equity is accepted worldwide as a fundamental principle of international law, and I have argued in academic articles that it has deep roots in human nature and evolutionary biology.

Admittedly, the separate, disconnected mandates of the environmental laws of the 1970s and 1980s have served us reasonably well. By one statistical measure of sustainable development, the U.S. ranked 45th out of 142 in 2002, not one of the best but still in the top third (*See* www.yale.edu/ycelp/esi.htm).

But now a holistic approach in which sustainable development is explicitly stated as the unifying goal of U.S. environmental policies would bring a number of practical benefits. First, speaking the common language of sustainable development would promote harmonization of U.S. environmental policies with the rest of the world's. But harmonization and rationalization of environmental policies here at home would also be useful. For years some environmentalists have argued for an integrated environmental statute to replace our current pastiche of 30 disconnected regulatory programs. For their part, conservatives wanted a "regulatory reform super-mandate" that would subject environmental objectives to cost-benefit disciplines. To some degree, both these objectives could be achieved by agreeing on sustainable development as the lodestar by which environmental policies are measured.

America's greatest lawyer, Oliver Wendell Holmes Jr., once wrote that law works best when those who apply it have its true ends "articulately in mind." On the other hand, bureaucracies can reach perverse, counterproductive results made infamous by the phrase "Catch-22" when they pursue intermediate goals but lose sight of their ultimate objectives. There are many examples of such locally rational but globally irrational policies in environmental regulation. Sometimes we ban a new technology even though it is less risky than the one it would replace. I once had to advise a distillery it could not recycle its alcohol waste as fuel but had to discharge it into the ocean since the waste was considered "hazardous" because it was flammable and EPA rules prohibited burning it.

Administration of our environmental laws would be improved by explicitly declaring sustainable development as the guiding principle by which policies are judged. Debate will be more productive around a shared goal of sustainable development than if we continue to battle over controversial intermediate objectives such as cost-benefit analysis and the precautionary principle. For example, rather than continuing to debate Kyoto, we should be considering whether the Bush administration's policy of developing technology to make coal use compatible with protecting global climate or the European approach will best promote sustainable development over the long run — or indeed, whether a diversity of policies is best.

Let me be clear that this proposal is *not* an attempt to hijack and "regulate" the sustainable development policies already being pursued by some companies, but rather a plea that our public law system of environmental regulation should get its own act together. On the other hand, enhancing the role of sustainable development in our system of public law for protecting the environment could play a constructive role in encouraging organizations that don't currently focus on sustainable development to do so.

Making sustainable development the stated goal of our environmental laws would not require

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re-writing the laws and regulations that we have so painstakingly built up. Rather, Congress should enact a simple mandate to guide interpretation of existing law: "In interpreting and applying any law relating to the environment, all portions of the federal government shall consider that it is the policy of the United States to promote sustainable development."

E. Donald Elliott is Professor (adj) of Law, Yale Law School, and Partner and Head of the Environmental Department worldwide at Willkie Farr & Gallagher, Washington, D.C. He served as General Counsel of the U.S. Environmental Protection Agency, 1989-1991, and is the co-author (with Mohamed Tarifi) of "Integrating Sustainable Development Into U.S. Law and Business," 33 ELR 10170 (February 2003).

It's Happening Already, Just Not System Wide

ALAN D. HECHT

What are the tools for making sustainable development work in the United States? While in theory federal legislation could be written for achieving sustainable development, it is not practical or politically feasible. Discussions of sustainable development often become heated and divergent because of differences in the definitions being advocated by various groups, and the presumed links between those definitions and policies. Arguments over what sustainable development is would sink any broad-based "civil rights" type legislation. In the United States, practicing sustainable development is highly decentralized among states and local government and the private sector. In land management, for example, the majority of U.S. land is privately owned. Almost 1.5 billion acres of private and tribal lands are managed solely by their owners, with zoning and other land use regulations as the only constraint; only 28 only percent remains under federal management.

Nevertheless, the United States is making substantial progress on natural resource protection and sustainable development, but underplays its considerable efforts. Progress is being made by promoting the basic principle that economic, environmental, and social policies should be organized in ways that are consistent with the fundamental desire of the American people to build better lives for themselves and their children. Further progress can be achieved though targeted legislation, such as the proposed Clear Skies and Healthy Forests initiatives, from fiscal incentives, federal management, and public-private partnerships.

The United States was the first government to work seriously to integrate its domestic environmental, economic, and social policies. The root of federal environmental leadership is the body of domestic environmental laws, the oldest of which, is the National Environmental Policy Act. This law, passed in December 1969, provides the first coherent statement of national policy on the integration of environment and development in decisionmaking at the federal level. NEPA is perhaps the world's first statement on sustainable development. It provides a broad mandate for all federal agencies within the United States to create and maintain "conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirement of present and future generations of Americans." This remarkable piece of legislation introduced the concept of environmental impact assessment to the United States and to the international community as a decisionmaking process designed to integrate environmental, economic, and social concerns

Today the United States is working hard to apply the same concept to other areas as well. The United States has embraced the integration of environmental considerations into trade policy. By Executive Order under President Clinton and continued under President Bush, all trade agreements are subject to environmental reviews (E.O. 13141). The Trade Promotion Act of 2002 also defines as one of its objectives "to strengthen the capacity of U.S. trading partners to protect the environment through the *promotion of sustainable development.*"

The United States is also making considerable efforts to improve performance in economic, social, and environmental arenas — the pillars of sustainability. The federal government is leading by example in its procurement, energy use, and environmental management polices. (See the report of the Office of Federal Executive: *Leading by Example, 2002*). The mission of the little known OFFE is to promote sustainable environmental stewardship throughout the federal government. Six priority action areas have been developed: recycling; waste prevention, and green procurement; electronics stewardship; industrial ecology; sustainable buildings; and environmental management systems.

Significant successes have already been achieved. Toward the goal of having all major federal facilities implement an EMS by December 2005, 19 federal facilities are registered to ISO 14001 and another 164 are implementing EMSs. Total carbon emissions from federal facilities dropped 2.8 million metric tons over the last decade — the equivalent of remov-

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ing 2.1 million cars in a year. Energy intensity (BTUs per square foot) has been cut by nearly one-quarter since 1985, saving taxpayers $1.4 billion. And just in the last two years, the U.S. government has tripled the purchase of electricity from renewable energy sources, to 632 gigawatt hours, the equivalent of 60,000 households for a year.

We all want clean air, clean water, better health, a growing economy, and money and happiness for our children and ourselves. How to get there is the key challenge. The Western Governors Association coined the word "enlibra" to mean balanced stewardship in an effort to focus their energies on making environmental improvements instead of just fighting through lawsuits. Many effective policy and legal tools are available to help, including corporate codes of conduct, environmental management systems, environmental reporting, adherence to ISO and other international standards, pollution prevention, and life cycle management.

Beyond policies and pronouncement is the need for new technologies. Future trends in energy use, consumption of goods, natural resource extraction, agriculture use, and a host of other environmental variables point upward as populations grow and shift from a rural to an urban environment. Technologically advanced production processes can offset the pressures of growth. In fact, they have in many sectors and regions of the United States in recent decades, as better air quality and other environmental measures show (see the EPA *Draft Report on the Environment*).

The bottom line is to get better at how we do things. In his most recent State of the Union Speech, President Bush said: "In this century, the greatest environmental progress will come about not though endless lawsuits or command-and-control regulations, but through technology and innovation." For instance, a commitment to develop a hydrogen-based fuel system, through fiscal incentives and public-private sector research, is a commitment to future generations and a step forward toward sustainability. Creating legal, fiscal, and tax incentives to spur new technology and innovation, applying environmental management systems, leading by example, working in partnership with the private sector and promoted targeted environmental legislation is the best way now to ensure that sustainable development is achieved.

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Law Can Facilitate, Not Dictate, SD

ALAN B. HOROWITZ

In his 1971 children's book *The Lorax*, Dr. Seuss tells the tale of the Once-ler, who turned Truffula trees into very profitable Thneeds, until that fateful day when the last Truffula met its inevitable demise. "I meant no harm," cries the Once-ler. "But I had to grow bigger. So bigger I got." But in the end his raw materials are gone, and all he is left with is "a bad smelling sky," regret, and one last Truffula seed, to be planted by someone upon whom the essential lesson would not be lost. To those of us in the trade, the story is more than a tool to communicate to our children what it is we do at work. It also remains an undeniably relevant and prescient tale about the perils of non-sustainable growth. Just as Agenda 21 strives to describe what "sustainability" is or can be, *The Lorax* reminds us of what it is not.

Assuming the signatories will forgive the comparison, like *The Lorax* a generation before it, Agenda 21 was a call to arms for a new social, economic, and legal order that promotes and values human growth and development that gives back as much — and preferably more — than it takes away. Chapter 8 of Agenda 21 contemplates a new "legal and regulatory framework" to implement this vision. Yet the appeals of neither Dr. Seuss nor the drafters of Agenda 21 have been, or will be, answered exclusively through the U.S. Code or CFR. Rather, these messages will be heeded through public and private action motivated by fear and altruism — and much more in between — that deliver sustainable growth through sound corporate governance, marketplace demands, strong public leadership and, above all, creativity and innovation.

Do we recognize "sustainability" when we see it? Like "precautionary" policy, lifecycle assessment, and the endless search for "environmentally preferable" goods and services, "sustainable development," as a matter of both science and public policy, is not readily, or meaningfully, reduced to objective legal standards or criteria. Beyond universally understood concepts such as the "triple bottom line," "sustainable development" is behavior best defined and practiced by those positioned to pursue it, and best assessed by those positioned to benefit from it.

Consider, for example, the phar-

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maceutical industry. Through the discovery and delivery of medicines that provide life-saving and life-enhancing benefits, access programs that broaden the reach of these products, research and manufacturing advances that foster a more efficient use of raw materials, initiatives to improve the understanding of how its products behave in the environment and other efforts, the industry, and the companies that comprise it, are developing their own "sustainability profile." The investment banking industry, through its "Equator Principles," the energy sector through participation in voluntary greenhouse gas emission programs, the electronics industry through product take-back initiatives, and even the video rental sector by committing portions of rental proceeds to child education initiatives are offering their own profiles. In doing so, they are asking the marketplace to pass judgment on how, and to what extent, they contribute to a sustainable global future, from the perspective of economic growth, social development, and ecosystem interaction.

Certainly, the drivers for these initiatives are as diverse as the programs themselves. For some, they may be mere byproducts of a renewed focus on governance and compliance. For others, changeable investor and consumer expectations, competitive pressures, increasingly sophisticated managements systems, European policy influences and, yes, even a desire to "do the right thing" are emerging as motivations for the pursuit of efforts to give back more than is taken away. Law and regulation, together with strong enforcement mechanisms can, and should, ensure a baseline of acceptable behavior and responsible national policy. They cannot, however, dictate the composition of these "sustainability profiles," nor drive the pursuit of sustainability. To quote Jeff Madrick, the editor of *Challenge Magazine,* the role of law and regulation in the pursuit of sustainable development is "about elbow grease, not canned ideas."

Undoubtedly, the ability to grease these skids through the U.S. legal system will continue to be a substantial challenge. Single-medium statutes, barriers to cross-media decisionmaking, scientifically challenged notions of risk, and the procedural morass that litters the history of NEPA — in many respects a forefather of Agenda 21 – begets cynicism and skepticism. Still, the following are examples of potentially fruitful and meaningful roles for U.S. law, regulation, and policy in the pursuit of sustainable development.

Risk-based regulations and enforcement. Formal rulemaking and agenda-setting mechanisms that help direct public and private resources to real, rather than perceived, risks will foster innovation, enhance efficiency, and, ultimately, help yield sustainable growth.

Performance-based alliances as pilots for "sustainability profile" disclosure requirements. Initiatives such as EPA's Performance Track and parallel state initiatives have the potential to encourage participants to focus on sustainable development, to the extent they offer companies real incentives to innovate and go "beyond compliance." Specifically, these programs can be used to encourage companies to develop and communicate their "sustainability profiles." Functioning as "pilots," they could beget broader initiatives through which permit or land development applicants, and perhaps even those engaged in merger and acquisition activity, would be asked to generate "sustainability contribution statements" that reflect the applicant's entire sustainability profile, as a component of regulatory authority and public review processes.

Programs that simplify and promote risk-based cleanup and re-use of contaminated land. Despite recent statutory, regulatory, and policy initiatives, the challenge of substituting brownfield redevelopment for sprawl remains unnecessarily complex and risky. Legislators and regulators must have the ability and compulsion to facilitate risk-based cleanups and provide the liability protections necessary to facilitate the productive re-use of land.

"Sustainable" public leadership. Governments that lack the ability or gumption to help mitigate known and discrete threats to sustainability here and abroad can expect no more from the regulated community. Land use policies that discourage sprawl, legislation that protects our oceans from the perils of unchecked use, scientifically honest climate change policies, procurement policies that reward companies capable of articulating their contributions to a sustainable future, and funding for programs that help to educate the public about sustainability concepts are examples of initiatives that will allow legislators and regulators to lead by example.

In the final analysis, any U.S. or state "legal and regulatory framework" implemented in response to Agenda 21 will only promote the broader vision of that document if it facilitates and encourages — rather than compels — companies or sectors to determine, articulate, and deliver what they can contribute to the global effort, and obligation, to practice sustainable development. Ultimately, this strategy will help to ensure that those to whom *The Lorax* is read today live in a prosperous, and sustainable, tomorrow.

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The Green Deal: The Sustainable New Deal

REP. DENNIS J. KUCINICH

The Cuyahoga River, which flows through my Ohio Congressional District, caught fire in 1969. The burning of the Cuyahoga awakened our political leaders to the need for action on a wide range of environmental concerns. My former colleague Congressman Louis Stokes, and his brother Carl Stokes, then Cleveland's mayor, pushed hard to enact the Clean Air Act in 1970, which set standards for ambient air quality and emission standards for air pollutants, followed by the Clean Water Act in 1972, which set up the national permitting system for point source discharges.

It took shocking events, like a river catching fire, to make the nation commit to laws that prevent pollution and clean it up. Most of our environmental laws are structured around this concept: "Don't put X in the air/water/land, but if you do, make sure it's no more than Y ppm." While it was a major achievement to enact the laws, the philosophy of simply "minimize your harm" is no longer adequate.

I believe our nation should set its sights higher by committing to sustainability as a new goal. By exercising the precautionary principle, conservation, and more efficient use of our natural resources, we can ensure that human development advances in a way that protects and restores the integrity of our world for future generations. The United States, as a center of consumption, economic prowess, and innovation, bears a unique responsibility. Our nation should act as a model in implementing a truly sustainable vision because it is the right thing to do, because we have the capacity to do so, and because it would be good for our country.

As a delegate to the World Summit on Sustainable Development held in Johannesburg last summer, I was part of the global gathering of peoples who reaffirmed the full implementation of Agenda 21. While this administration is not convinced that sustainable commitments are good for our country, the rest of the world is moving ahead. Over a decade ago, our domestic auto industry lost its edge to Japanese auto manufacturers by failing to adopt more sustainable measures, like better fuel economy. This administration still opposes increased fuel economy measures. Sustainability is not the bitter pill this administration seems to think. Sustainability is good medicine — for our citizens, and for our economy.

Sustainable environmental and energy policies are the bedrock of maintaining public health. International studies show the toll that air pollution takes on children, leading to permanent injury and even death from respiratory problems. In the United States, asthma is the number one serious chronic illness and the third leading cause of hospitalization among children. It is the leading reason why children miss school. Setting aside environmental concerns for a brief moment — how is our democratic society sustainable when children cannot learn in school because of air pollution?

Overseas, U.S. policies can have a tremendous effect on public health. Congress funds several multilateral institutions, like the World Bank. When these institutions make financial assistance available for improvement of water systems, for example, such funds are made on the condition of privatization. The privatization of water systems in Africa and South America has been marked by skyrocketing prices, diminished water quality, and reduced access. Such conditions force poor populations to turn to polluted rivers or other water bodies laden with waterborne disease, like cholera. Privatization of essential public services is unsustainable.

Our nation's domestic and international policies, if focused on sustainability, could have a tremendous effect on the health of our own population and the global population. Because these policy changes are possible now, such as turning to clean energy sources or making clean water available without cost barriers, the need to implement sustainability measures is even more urgent.

A sustainable environment also means a sustainable economy. Instead of structuring our environmental laws to allow the creation of pollution and then to mandate the expensive cleanup of pollution, our economic and our legal system should both be structured in a way so that production does not result in pollution in the first place. Cars can run, energy can be created, crops can be grown, and consumer products can be made using better technology that vastly reduces the amount of necessary inputs and undesirable outputs. Moving to innovative, advanced technologies will create jobs. Instituting the principle of sustainability in our environmental laws will create the domestic market for new technologies. It will also allow U.S. companies to compete abroad, where many European countries and Japan already have stricter environmental standards.

To start our country on a path toward a complete sustainable vision, I'm proposing a sustainable "New Deal" in Congress. I call it a Green Deal. I'm developing five proposals into legislation to make the U.S. government operate in a sustainable way, create new jobs, and help developing countries acquire American-made sustain-

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able technologies. This proposal sets higher standards for our government in order to create a domestic market for sustainable products. It also expands the international market for sustainable technologies manufactured by domestic companies. These provisions would:

• Require all vehicles purchased by the federal government to be powered by an American-made fuel cell or hybrid gas/electric engine by 2006;

• Establish farmer-owned nonprofit wind cooperatives to provide incentives to small family farmers to install wind farms along the edges of their fields to produce increased renewable energy and provide farmers with needed extra income;

• Quintuple the Million Solar Roof program by providing monetary incentives to achieve 5 million solar roofs by 2010;

• Provide up to 100-percent rebates to developing nations for purchasing environmentally clean technologies, including energy efficient irrigation systems, renewable energy generation systems, and alternatives to toxic industrial chemicals; and

• Clean up the 28,000 Department of Defense contaminated sites before it can begin construction of the National Missile Defense program.

These are improvements we can enact today to lay the groundwork for a larger sustainable vision. The Green Deal will make a positive impact on sustainability and create American jobs now. Then we can enhance our goal of improving the global environment.

Representative Dennis J. Kucinich (D-Ohio) is a member of the House Government Reform Committee and of the Sustainable Energy Caucus.

The Middle Of The Pyramid

ANDREW SAVITZ

Of six billion people on earth, roughly two billion enjoy the benefits of democratic capitalism, two billion live on the margin of poverty, and the remaining two billion exist somewhere between poverty and destitution. The United Nations is leading a concerted effort to address the needs of the lowest tier, setting a deadline of 2015 by which to make substantial progress. A more immediate sustainability challenge is to harness the power of business to help bring the two billion people living on the margin into the mainstream economy.

Legislative action by the United States to accelerate progress towards this objective is unlikely to work. New mandates, however well intended, cannot force business to solve the enormous problems facing the developing world — no more than the anti-poverty laws of the 1960s solved poverty in this country. In fact, such requirements may hinder progress — the way some of those laws actually helped foster welfare dependency.

The only effective answer is to turn humanitarian responsibility into economic opportunity. If business sees the marginal two billion as potential consumers, as purchasers of goods and services, the paradigm changes dramatically. George Carpenter, director of corporate sustainable development at Procter & Gamble, put it succinctly at last summer's World Summit on Sustainable Development in Johannesburg: "Procter & Gamble is investing millions in getting clean water and sanitation to sub-Saharan Africa because the vast majority of our products require those conditions."

To succeed, sustainable development requires financial incentives beyond anything that governments can provide. The best hope for progress, therefore, is not legislative action but new business models that align societal and shareholder value, and innovative partnerships that create the conditions in which such new models can flourish.

Mandates are beginning to emerge, but they present significant philosophical and practical problems. France and South Africa now require sustainability reporting as a precondition for listing on their stock exchanges, and other requirements are in the European Union pipeline. But many companies and industries object, declaring that it is the task of government, not business, to bring economic development and social justice to those in the developing world. A strong undercurrent of such concern ran through the negotiations at the World Summit.

Even deeply committed companies argue that they must be allowed flexibility to do what they think is right — that sustainability does not come in one size that fits all. Like patriotism, corporate social responsibility cannot and should not be specifically defined; judgment is required to balance conflicting social goods and judgments can differ. Talisman Energy Corporation made extensive, documented efforts to improve the lives of its Sudanese employees and their communities, but was sharply criticized for being in Sudan at all, having to pay extraction fees to an allegedly corrupt and inhumane regime. The company and its critics held diametrically opposed views about the respon-

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sible course of action. Neither side had the "right" answer.

To the extent that the United States has addressed sustainability at all, it has been via piecemeal regulation of environmental, social, or economic activities comprising the triple bottom line. Some progress has also been made through pressure by activists, pension fund managers, socially responsible investors, trial lawyers, and, increasingly, scandal-averse directors and shareholders. But these efforts can hardly be called a deliberate approach to sustainability and have little to do with those in the middle of the pyramid.

Deliberate efforts, based on regulations and management standards, are having a minor impact. Numerous companies apply U.S. regulatory standards to their worldwide operations, thus voluntarily putting domestic requirements to work abroad. And others are beginning to use ISO-style sustainability management systems that require planning, goal setting, and measurement of sustainable outcomes in developing countries.

But real progress on sustainable development will come only when corporations see ways to marry responsibility with opportunity.

"We must often rethink fundamental assumptions about how we create, manufacture, distribute, and market new products. We must find creative new ways to help improve the lives of consumers at many different income levels, in many different and diverse parts of the world."

So says A.G. Laffey, president and chief executive of Procter & Gamble, who is working toward a new business model and the partnerships with governments and non-governmental organizations that are needed to make that model a success. P&G sees market share where others see impoverished communities, and seeks opportunities to participate in the sustainable development of those communities. Once corporations see a way to make a profit, they will work overtime to help to bring the world's next two billion consumers on line.

Andrew Savitz is a Partner in the Environmental and Sustainability Services Group of PricewaterhouseCoopers LLP in Boston, Massachusetts.

To Get Out Of The Hole, Stop Digging

GREGORY WETSTONE

Perhaps the most straightforward characterization of the often-used term "sustainable development" embraces the goal of a package of environmental, economic, and social policies that protect, rather than deplete or degrade, the resources upon which they rely. In the end, the objective is to lengthen the planning horizon to extend well beyond the norm in today's economic reality.

In many ways, the nation's entire environmental regulatory structure is about shifting private-sector decisionmaking to look beyond quarterly profits and accommodate the long-term effects of activities that degrade our air and water, despoil our natural resources, or otherwise diminish public health or our quality of life. One need only to look at the horrific environmental legacy left in Eastern Europe to see that, over time, horrible environmental policy makes for horrible economic policy as well.

Aside from the fringes of ideological extremism, a "sustainable development" objective is hardly controversial in the United States. After all, who would not prefer to see us on an environmental and economic path that will work not just for the next quarter or the next year, but will lead to a better life for our children. In light of today's pressing environmental problems, however, leaving the world a better place for our children is no simple challenge. The part where agreement is not easily achieved is in defining a package of "sustainable development" policies that realizes this elusive goal.

Although the United States has not produced any major new laws that expressly mandate progress toward sustainable development, our landmark environmental protection laws have long placed us in a leadership role by showing that economic vitality can be coupled with continued environmental improvement over the long term. This is a concept not too distant from sustainability. America's environmental laws have been among the most popular and effective legislative initiatives ever. The vitally important question we face now is how to build on this hugely successful framework to address today's dire challenges and move our nation, and our planet, toward sustainable development.

This is no academic matter. Focusing for a moment on the most troubling example, global warming is probably the single most difficult and destructive environmental problem that we have faced. Clearly we have a responsibility to our children to get started on a solution, especially as scientists tell us that efforts to grapple with global warming will be far more expensive and disruptive if we don't take the opportunity available

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now to change the energy trends that underlie the problem.

The tragedy, of course, is that nothing even remotely along these lines is occurring. There is no serious effort from the Bush administration, and no viable effort in Congress, to move us ahead toward sustainable development generally, or solving global warming in particular. Nor are we even moving in the direction of building on the success of existing environmental programs. Quite to the contrary, it appears that the Bush administration is deploying the full force of the federal government in a mad dash to move us in the opposite direction, undercutting programs that made the United States a leader in sustainable development long before the phrase was invented.

Even as the dire necessity of a more sustainable system becomes clearer by the day, America's environmental laws face a threat more sweeping and dangerous than any since the dawn of the modern environmental movement in 1970. Environmental protections have been challenged before, most notably in the James Watt era and in the Newt Gingrich Congress, but never through a campaign as far-reaching and destructive as the threat posed by the current administration's environmental agencies. Over the past two years, environmental programs have been peppered with more than 200 weakening changes. These include basic policy shifts on a staggeringly broad range of issues: clean air, clean water, wetlands preservation, wildlife protection, forest policy, drilling and mining on public lands, requirements for environmental reviews, public participation requirements, protection of the stratospheric ozone layer, and the public's right to know about dangerous pollution.

The full panoply of environmental retreats is documented in a recent NRDC report, *Rewriting the Rules*, and in the up-to-date chronology available in the Bush Records feature of the NRDC web site (*www.nrdc.org*.) Here's a quick review of a few of the most troubling examples:

Clean Air. By changing the New Source Review program of the Clean Air Act, EPA seeks to let the nation's oldest and dirtiest power plants and refineries off the hook, allowing them to expand, modernize, and increase pollution levels still further, without installing modern pollution controls as the law clearly requires.

Forest Policy. In late November, the Forest Service proposed to eliminate the fundamental requirement that forest management plans protect wildlife, and to reduce public involvement in forest planning. Only weeks later, the Forest Service proposed major changes to rules that govern clear-cutting in national forests. These rules are now in force and, in the name of "healthy forests" and "fire prevention," nearly limitless logging of old growth and mature trees will now be allowed in pristine national forests. Long-standing mandates for public input and environmental review are to be eliminated.

Clean Water. In January, EPA announced plans for new policies that will greatly reduce the number of streams and wetlands protected by the Clean Water Act. A month prior, EPA issued new rules governing factory farms that protect corporate agriculture interests from financial liability for illegal spills and groundwater contamination.

NEPA. In recent proposals, the Bush administration has sought to scale back long-standing requirements for environmental reviews and public participation applying to highway construction, offshore oil development, and logging in national forests.

Ozone Layer. EPA is moving to grasp defeat from the jaws of victory in the battle to preserve the earth's protective ozone layer. The agency has proposed opening an outrageous new loophole in the, until now, successful global program to phase out chemicals that deplete the ozone layer. EPA wants to allow continued widespread use in the United States and around the world of methyl bromide, one of the most potent ozone depleting chemicals still manufactured — to benefit agribusiness interests with such "critical" uses as tobacco seedlings and golf course turf grass.

Unfortunately, there are dozens more examples touching nearly every corner of environmental law, and involving actions by every major federal agency with responsibility for environment programs.

It may not be so easy to identify the precise mix of policies that will best move us toward a truly sustainable development path. But it's clear that under pretty much *any* reasonable definition of the term, the current environmental onslaught is not it — not by a long shot.

Should we be doing more in the U.S. to move toward sustainable development? Of course. But before we can move forward, we first have to stop moving backward. To quote an old saying: if you want to get out of a hole, the first step is to stop digging.

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