

Late Action by Lame Ducks

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The administration of George W. Bush seems to have discovered a new interest in the issue of climate change, starting just before the G8 summit last summer in Germany. Common wisdom holds that this interest is either shallow or, more cynically, an effort to derail ongoing international negotiations via distraction. But when President Bush proposed that a new international framework for climate change be developed by the end of 2008, his last year in office, he had no trouble getting other world leaders to agree enthusiastically, and a first meeting is scheduled for this week in Washington.

The dynamics of late-term lame-duck presidencies (i.e., those ineligible to run again for office) suggest that the climate issue is indeed ripe for action at the end of 2008, especially if a Democrat is elected in November. These dynamics give at least some reason for thinking that action on climate change under the Bush Administration may not be so far-fetched a possibility.

It is quite likely that the political use of late-term regulatory action is one lesson that the Bush Administration surely learned from its predecessors. In 1995, under the Clinton Administration, the US Environmental Protection Agency (EPA) completed a report for Congress on mercury emissions, finding 1.6 million Americans potentially at risk from food contaminated by mercury pollution. But the EPA refused to release the report to Congress or to the public, claiming that it needed further scientific review. This drew the ire of several members of Congress, who argued that the report was being withheld because of industry pressure. One of the leading emitters of mercury into the environment is coal-fired power plants.

The EPA report was finally released in December, 1997, and the Clinton Administration continued its policy of inaction, if not obstruction, on mercury regulation. That is, until December 14, 2000, when the EPA abruptly announced a proposed rule that would cut mercury emissions by an impressive 90 percent.

What accounted for the sudden change from years of foot-dragging? One factor that certainly seems to have played a role is that on December 13, 2000 – one day earlier – the US Supreme Court decided that George W. Bush would be the 43rd president of the United States. The EPA could propose drastic regulations on mercury knowing that whatever negative political consequences would ensue, they would be

borne by the incoming Bush Administration.

The proposed mercury regulations were a perfect political trap for the incoming president. The 90 percent reduction would be drastic enough to impose costs on important political constituencies. But if the regulations were to be scaled back, it would ensure headlines like the following: "Bush Administration Rolls Back Clinton Mercury Guidelines," which also would cast the administration in a bad light. Regardless of the merits of mercury regulation, the outgoing administration had guaranteed political problems for its political opponents.

Issuing such "midnight regulations" is a common practice of outgoing presidential administrations. Jimmy Carter put forward many in the last days of his presidency, anticipating the regulation-hostile Reagan Administration. Despite being criticized as hastily put forward, some midnight regulations have had a positive, even historic, legacy. For instance, one of President Carter's midnight regulations was the proposed regulation of chlorofluorocarbons that destroy the ozone layer, which ultimately led to US participation in the Vienna Convention and, subsequently, the highly successful Montreal Protocol.

A 2005 paper in *Presidential Studies Quarterly* by William Howell and Kenneth Mayer finds that "having lost in November, presidents usher through the regulatory process roughly 25 percent more rules and directives during the final three months of their terms." The effect is much larger when the White House changes hands from one political party to another.

There is little doubt that the Bush Administration felt the political sting of not only the proposed mercury regulation but other last-minute actions by the Clinton Administration as well, such as those on arsenic and the International Criminal Court.

So if a Democrat is elected in November 2008, which appears likely, it seems eminently plausible that the Bush Administration would help the new administration get off to a running start by leaving them with a proposed rule, under the EPA, for the regulation of carbon dioxide emissions. Even the possibility of such a late-hour action is probably enough for the declared Democratic presidential candidates to be very careful about calling for dramatic action on climate change, lest – if elected – they find themselves getting what they asked for.

Because no one really yet knows how to reduce carbon dioxide emissions by any significant amount, a strong proposed rule on climate change issued in the final months of the Bush Administration would create all sorts of political difficulties for the next president, just as those late-hour rules proposed by President Clinton did for President Bush. If reducing emissions indeed proves to be easy, as some have suggested, President Bush would get credit for taking decisive action. If it proves difficult and costly, as many suggest, then the next administration would bear the political backlash.

Common wisdom that the Bush Administration will not act meaningfully on climate change may in the end prove to be correct. But, at the same time, remember that lame ducks are unpredictable creatures.

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