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but failing, again and again, to take the next, and most crucial step: Figuring out how society will actually pay to keep the air clean and the water pure. The game worked for a while. Politicians—from both parties—could pretend they were environmentalists without actually doing the heavy lifting involved in figuring out how to pay for the programs they purported to support. GOP reformers can now rail against “unfunded mandates” without having to actually come out publicly against the Clean Water Act and the Clean Air Act—two classic and worthwhile unfunded mandates.

Proposed changes in the federal “takings” law, for example, will make government pay for many of its environmental regulations, but will likely lead to environmental degradation as well. Under the old “takings” provision, property owners could recoup damages only if federal environmental regulations reduced the value of their property by 85 percent. Major property owners have long argued that if environmental protection is a public desire, the public should pay for it. Although it has taken years for the property owners to get organized, they are now moving like a herd of hungry buffaloes, contentedly trampling the old environmental regime. If the full provisions of the Contract With America are enacted, for example, property owners would be reimbursed the full value of their land whenever environmental regulations reduce the value by as little as 10 percent.

The new law, part of the Contract, won approval in Congress and is now before the U.S. Senate despite the promise of a presidential veto. If it does become law, property owners would be free to destroy wetlands and marshes and to harvest old-growth timber unless the government was willing and able to buy their land from them—a remote possibility in this era of burgeoning government debt.

“It would mean the end of all local zoning laws,” Clinton warned during his most recent swing through California, pointing out that similar measures have been rejected by voters in 20 different state elections in recent years.

The measure was so popular in Congress, however, that supporters were even able to include a widely overlooked provision that allows California agribusiness to bill the government for water it does not receive during drought years.

Moreover, there is now bipartisan agreement that the enforcement of federal EPA regulations—whether funded or unfunded—has left much to be desired. According to a recent report prepared by Elaine Kamarck, who leads the reinventing government initiative directed by Vice President Gore, EPA officials were evaluating their performance based on the number of reports produced or the amount of penalties dished out,

rather than determining if the environment was actually cleaner as a result.

“It is no wonder the business community is in a full-scale revolt,” she says.

Kamarck wants an environmental policy based on results and not so focused on sound-bite politics accompanied by ineffective and overly burdensome regulations. As a start, President Clinton has accepted Kamarck’s recommendation to suspend EPA fines if the companies involved will agree to use that money to fix the problems identified.

The well-intentioned federal ride-sharing program is often held up as an example of how not to enforce environmental regulations. Los Angeles business lawyer David Friedman, who represents companies before the federal government, points out that more than 300,000 California businesses have been forced to produce ride-sharing reports despite any proof that it’s a cost-effective approach to reducing air pollution. Critics contend that the only certain result of these reports, which entail major planning efforts aimed at increasing employee use of public transit and van pools, is more paperwork.

“It is costing industry millions of dollars,” says Gary Burke, who leads the Santa Clara County Manufacturer’s Association. “It provides a minimal impact on air emissions, less than a 0.01 percent reduction.”

In a creative step that may point the way toward workable compromises between the business community and environmentalists, Burke worked out an arrangement in coordination with the Bay Area Air Quality District that allows local companies, in lieu of producing ride-sharing reports, to buy credits from an auto scrapper who uses the money to permanently take older, high-emission vehicles off the road.

The business community, however, is not united when it comes to formulating a new approach to environmental regulations.

“What’s really missing in all of this is a major dialogue with the business community that is not dominated by the largest corporations,” says Dave Goodreau, chairman of the 1000-member California Industrial Leadership Council, made up primarily of small businesses with fewer than 50 employees. “We are being denied due process.”

Goodreau contends that government environmental policy has long favored large corporations at the expense of the small businesses that are the real engines of growth in the economy. Citing the “thimble regulation,” Goodreau points out that small companies can be held liable for a share of massive clean-up costs if the government can prove that a thimble full of hazardous waste was not disposed of properly. The CILC has been fighting with Lockheed for years over who will pay to clean up the Superfund toxic site near the Burbank airport. The total cost is estimated at \$70 million.

“Everyone down here knows that Lockheed is responsible for that problem,” Goodreau says. “But the federal regulators have allowed a legal feeding frenzy to take place while Lockheed tries to pass the buck to small business owners.”

For starters, Goodreau would like to see regulations changed so that small businesses can appeal government environmental and health and safety rulings to some independent third party, not to the agency that made the ruling.

Goodreau is not alone in fearing that provisions of the Contract With America will allow big business to escape environmental regulation observed by smaller businesses. Chris Stone, who runs the 17-member California Association of Printers, Dyers and Finishers, has virtually eliminated solvents at his LA-based business. Last year, Pacific Fabric Finishing produced nearly 15 million yards of fabric last year while reducing emissions from a previous high of 44 tons several years ago to just 5 tons last year.

“I’m very proud of what we’ve accomplished,” he says, quickly crediting LA’s stringent air pollution regulations for the progress. “We’ve taken all these steps, and they’ve been costly. It would be very unfair if all of the companies are not held to the same standard.”

Like elements of the small business community, many environmentalists admit the debate over regulatory reform has put them in poor bargaining position.

“We really need to refocus this debate,” says Debbie Mytels, the former executive director of the Peninsula Conservation Center. “It’s seen as preservation versus the economy, and in difficult economic times it’s hard to win that argument.”

Mytels would like to see more partnerships with a variety of industries and a more sophisticated approach to environmentalism. There are, she says, as many business opportunities involved in cleaning up the environment as there are in ruining it.

“We just have to get reenergized,” Mytels says. “Unfortunately, we may be on the verge of losing the tools we need.”

However flawed, those tools—the Clean Water and Air acts, the Endangered Species Act and the National Environmental Policy Act—are credited by both supporters and opponents with providing the impetus for a generation of environmental progress. It was the desire to avoid complying with the ride sharing rules, for example, that led local businesses into the much-praised auto scrapping program that is already measurably reducing air pollution.

Congressional environmentalists worry that the current assault on federal environmental policy may have already gone too far.

“The question is not how to reform [environmental laws], but whether any federal environmental protections will be left standing after the 104th Congress,” Eshoo says. Ⓢ