HARVARD LAW SCHOOL | ENVIRONMENTAL & ENERGY LAW PROGRAM

Transcript of CleanLaw Episode 11: Caitlin McCabe speaks with Eric Lipton about his NYT work on environmental deregulation, January 25, 2019

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Robin Just: Welcome to this podcast from the environmental and energy law program at Harvard Law School. Today, climate clean air and energy fellow Caitlin McCoy speaks with Pulitzer Prize winning investigative journalist Eric Lipton about the recent special section of the New York Times chronicling the stories of four US communities facing the effects of the Trump Administration's environmental rollbacks. We hope you enjoy the podcast.

Caitlin McCoy: Hello, this is Caitlin McCoy, the climate clean air and energy fellow. Today I am joined by Eric Lipton of the New York Times to discuss his recent work on the impacts of environmental deregulation under the Trump Administration. Thank you, Eric, for joining us by phone today.

Eric Lipton: Thank you.

Caitlin: So Eric Lipton is an investigative reporter for the New York Times based in Washington. He started at the times in 1999, and he's a three time winner of the Pulitzer Prize for explanatory reporting, investigative reporting, and as part of a team for foreign reporting. At the end of December, the Times published your recent investigative journey titled This is Our Reality Now, which takes us across the country from Bakersfield, California to Thompsons, Texas, to Charleston, West Virginia, and to the Fort Berthold reservation in North Dakota.

Caitlin: In each place you explore the effects of at least one regulatory rollback that has taken place. And I also want to note that you were joined by Steve Eder and John Branch as your collaborators on some of the sections of the project. And also that Gabriella Demczuk took the stunning photos that accompanied your written work.

Caitlin: So we here have been closely following the regulatory changes under the Trump Administration, but we've been doing so from a purely legal perspective. So I think I speak for all of us here at the program when I say that it was really moving to read your work, to finally hear directly from people whose everyday lives are being affected by these federal policy decisions that are happening in Washington. So I'd like to start by asking you whether you learned anything that was surprising during your investigation into these issues.

Eric: I think, generally speaking, environmental change is quite slow. And what policy decisions are made in Washington, the actual implications for people in their daily lives, they don't materialize instantly. And so you most of the environmental groups have been focused, as have the reporters, on the many regulatory proposals that the Trump Administration has made.

Eric: But we've been less focused on trying to identify actual changes in the quality of life of individual communities. And that's a lot harder to find. And that's because environmental change is slow. And I think that that was one of the things that was really evident to me, as we looked through the dozens of different regulatory proposals that have been made, actually identifying places of real impact was harder than I thought.

Caitlin: Before we get into talking about some of your insights and the process that you went through in reporting these stories that were released at the end of December, could you just walk us through some of your investigative project and what you found across the country?

Eric: Well, it was actually the executive editor of the New York Times, Dean Baquet who raised in a meeting that we were having among environmental reporters at the paper and editors. And he was saying we've written so many stories in 2018 about all of these regulatory proposals that the Trump Administration has made at Interior and EPA in terms of rollbacks and all these headlines, all these front page stories, the stories that have really resonated the United States.

Eric: But he said, "I want to see the impact. Help me identify where are the communities which we can actually see people whose lives are changing and whose health is being affected by these policy choices in Washington. It's a little bit too abstract." And so we set out to evaluate the dozens of different regulatory proposals and to identify those that had been finalized, and then to find communities where they were really manifesting themselves.

Eric: And we also wanted to do it in various media. We wanted to do it in air, in water, in climate related matters, and also in toxic chemicals and pesticides. And so that was a month or two of actually effort was the hardest part of this. One of the hardest parts was just going through all the regulatory changes and trying to figure out where is this bubbling up in a way in which you can actually go and see it and touch it and feel it, and talk to people who know about it.

Eric: And so we ended up picking the most explicit place where the case was just right there, and all you had to do with sort of walk into it. And it was California where Pruitt in March of 2017 had decided not to ban Chlorpyrifos, a pesticide that is attributed with developmental disabilities and children and also causing illnesses among farm workers. And so we went to California to identify the effects of the

continued use of Chlorpyrifos on the farm workers and on their children. And that's a toxic pesticide chemical issue.

Eric: And a second one had to do with climate change. And that was the methane releases that are going on in North Dakota as a result of a policy choice by the Department of Interior to repeal limits on venting and flaring of methane from oil and gas wells that are developed on federal lands and on Indian lands.

Eric: Another choice had to do with air pollution. And so we went to Texas to look at the major re-interpretation of the Regional Haze Rule between the Obama and the Trump Administration, that meant that nine different power plants in Texas were no longer going to have to install scrubbers that cost hundreds of millions of dollars to reduce sulfur dioxide emissions, which would reduce haze and also reduce the harmful health consequences of particulates that results from SO2 emissions.

Eric: And finally we went to West Virginia where the Clean Water Act was being impacted by decisions that the Department of Interior and the EPA had made regarding toxic metals that come out of coal burning power plants and toxins that wash off of coal mines because of a decision that the Interior Department have made.

Eric: So that's a lot of stuff. But the idea was to tell it through real people in real places, air, water, climate, and pesticides. And to make all of this kind of esoteric wonkish stuff into a story that people can really see the consequences.

Caitlin: I think that that's really interesting that you highlighted that, especially because you visited some of these areas, right?

Eric: Yeah. No, I was in Houston, and that's a place where changes in the the interpretation of the Regional Haze Rule means that there are six coal burning power plants that will not have to install SO2 reduction equipment, i.e. scrubbers. And visited Houston, and also visited Arkansas where there is a wilderness area, a class one area that is impacted by the haze that comes from some of the Texas power plants.

Eric: So I was in Arkansas, I was in Texas, and then I was in North Dakota visiting on Fort Berthold where there has been a tremendous increase in flaring and methane leaks and venting as a result of oil and gas production there, that are impacted in part by a change in policy from the Department of Interior that eliminated limits on flaring and venting.

Caitlin: So did you actually get to experience seeing the haze? And I know you wrote about experiencing, seeing, and hearing the flares in North Dakota.

Eric: Yeah, the Texas one was a little bit harder to kind of nail down in a very hands on way. And that's because while there has been a change in the approach from the Trump Administration in terms of regional haze, the actual scrubbers would not yet have been installed. They would be in the process of being installed right now at WA Parish, which is one of the plants that I visited.

Eric: And also one of the points that we made in the Texas piece was that even though the Trump Administration has changed the rules regarding regional haze, and therefore is no longer requiring nine power plants to install SO2 reduction equipment, three of those nine I've already shut down just in the last year because of economic reasons. So even though Trump is trying to kind of reverse the "war on coal," the economic factors are reducing SO2 emissions almost as rapidly as Obama intended to do, not because of federal regulatory choices, but because of market forces.

Eric: So in Texas, you could not actually see the impact of the change in the Trump policy because the economic forces were resulting in change happening almost as rapidly as what Obama had anticipated. I mean that just to further the point is that what still matters in Texas is that there are six plants that, at least as of now, do not have closure plans that are not going to be required to install scrubbers as a result of a change. And that includes some of the biggest sources of SO2 in the United States.

Caitlin: That was a really interesting part of the story for me to read because I could feel that in some sense it's difficult to write about the impact of SO2 on people's lives, and also the impact given the regulatory issues that you talk about. That if Obama's regulations had been allowed to go forward, it didn't necessarily mean that scrubbers would be installed on those plants today. And that you also have market forces at play which provide a different layer of complication. So I was wondering which are the rollbacks, whether it's this one or perhaps another, you found most challenging to write about in terms of communicating the effects on public health and the environment?

Eric: Well, the easiest ones are the starkest ones where, for example in California, there is a pesticide that's still in use that would otherwise have been banned. And so the health consequences of the use of that pesticide is explicit. So the harder ones, as we were discussing is the Texas situation or the West Virginia situation where the environment is really complicated. The regulatory actions are a single variable in a multifaceted environment.

Eric: And so no single thing, the coal industry, coal mining is in massive decline in West Virginia. And so in that place in West Virginia, we were looking at Clean Water Act impacts of some of the regulatory changes that the Trump Administration's made. And we were looking at a particular river there and trying to assess the cumulative

effect of a series of water related regulatory decisions just had on the Kanawha River, which goes right through Charleston.

Eric: There was the Effluent Rule which has been delayed by two years, and so therefore there is a massive coal burning power plant, Amos Plant, which has delayed the design and implementation of effluent advanced the biological wastewater treatment of the flue gas desulfurization wastewater that comes out of its coal burning power plants there. Which has toxic metals and selenium and other contaminants.

Eric: There is a rule from the Interior Department that was intended to reduce runoff from existing and even semi-closed coal mines that was called the Stream Protection Rule, which was nullified by Congress. And then there was also a proposal the EPA was considering that was going to put restrictions on above ground chemical storage tanks. And all three of those were in play in West Virginia. All of them potentially affecting water quality.

Eric: But you couldn't just go to the river, and say, take a test of the river, and say, oh, this water quality is worse today because of Trump than it was during Obama's era. Because that's just not the case. There's just so many factors that go into determining the quality of the water in the Kanawha River. But it's true that all of those regulatory choices were coming into play in that one location. And that's why we chose that location.

Caitlin: So I think it's interesting what you just said about the Kanawha River in West Virginia because we see that in certain parts of the country, multiple rollbacks are having overlapping and even synergistic effects. And sometimes it's difficult to tease out the way that these different rollbacks are affecting specific resources like the river in West Virginia.

Caitlin: But there's this other element which is not just those protections that might be in place that are being rolled back and changed specifically, but those other areas where action might have been taken under an administration that was more focused on environmental protection, where we might actually see some action, some push for that continued incremental progress over time that is just sort of falling by the wayside due to inaction. It seemed that that was also an element of some of the stories that you found in West Virginia. Is that the case?

Eric: I think that's true. I mean, for example, if you look at the toxic chemical regulatory system. We had anticipated, everyone, that after the legislation was passed in 2016 that we would be in a period of really aggressive regulatory action from the EPA in terms of approximately a thousand chemicals that have been on the market for decades, which the EPA itself admitted that it didn't really know the toxicity of them, and that they may in fact be hazardous.

Eric: And it was going to attempt to quickly move through them and make decisions about limiting their use, or perhaps banning them in some cases like methylene chloride, TCE, NMP. Other chemicals that are used in from dry cleaners to paint removers and other settings. And there has been very slow action on that from the EPA so far in terms of following through on some of the initial planned restrictions on those chemicals.

Eric: So I mean, if you step back and you think globally, my experience is in sort of thinking a lot about this and traveling to different parts of the country, is that what we can say so far is happening is that we're not going back to the river on fire in Ohio, or air pollution's so bad that people are dying in New York City as happened several decades ago in other places in the United States just from intense ozone.

Eric: What is changing is the pace of progress. And I don't think that we're in a period in which you're going to see actually a degradation of the environment in terms of air quality or water quality in the United States during Trump's era, or even probably in the aftermath of Trump's era. But the pace at which we had been improving air quality and water quality in the United States, I think we can already identify some parts of that pace that has declined. And you can attribute that, in part, to regulatory choices.

Eric: And that's consequential. And that we have expectations, the American public, that we live in a country where we are making progress in terms of cleaning our air and water. We're approaching the 50 year anniversary of the EPA. It's an incredible movement that's accomplished so much.

Eric: And similarly with climate change, I mean, there are economic forces that are driving decisions, and particularly relating to coal burning power plants, that continue to, although there was a one year apparent uptick in CO2 production in the United States because of a weather conditions and industrial production. But I think the pace of progress on climate changes, the pace of progress is going to slow in the United States because of policy choices. So if you want to look at what is the consequences of Trump that it becoming apparent now, it's that the pace of progress on confronting environmental challenges is slowing. And I think we can now document that.

Caitlin: Absolutely. And indeed, I believe that was a point in the piece that ran after the collection at the end of December. There was a piece in the Times about the takeaways from your investigation. And one of them was about the slowing of the pace of progress. And I think another one was about the tension that people experience when they work for or financially benefit from an industry that's also impacting the public health and the environment in their community. And that really came into sharp focus in Fort Berthold. But it was a tension that seemed to run through out your investigation and into all of the places that you went. And I

was curious if you could just talk about this tension, and how this came up in interviews for people.

Eric: I encounter that frequently as a reporter. Those of us that live on the East or the West Coast, I mean we presume that everyone in the United States is so committed to reducing air and water pollution. But in fact, when you travel to communities where the source of the pollution is also the major employer, it becomes much more complicated, and there is an intense division.

Eric: And so for example, in North Dakota where oil and gas is the source of 90% of the local government revenues, and is building new schools and building a new government center, and new roads, and even a pow wow complex for the annual cultural celebration for the Indian reservation there, that the oil and gas industry is the source of wealth and happiness in a way.

Eric: And it is also producing massive amounts of flaring and methane releases. And so it's also hurting the same community. But the calculus is complicated when it is the source of your bread, and also potentially, a health threat. So I found that to be the case in Texas and in West Virginia when I visited there.

Eric: I didn't visit it for this story, but in California I mean in the agricultural communities in the central parts of of California which produce an incredible, almost more than a third of all the fruits and vegetables and nuts in the United States are produced there in the Central Valley of California, and it is a massive employer. And at the same time, in order to grow all of that fruits and vegetables they use pesticides. And those pesticides have health consequences sometimes.

Caitlin: Yeah. I think I was also struck by the fact that this is often very stark trade off between jobs or environmental protection. Right? It's often painted that way by people maybe on one side of the argument or the other that having a healthy environment is truly the top priority, or that having a job is truly the top priority, and we can't have both. But you seem to be able to tease out that nuance in your reporting where we got a glimpse of people's yearning to have both.

Eric: Yeah, I think that that's a false presumption that you can't have both. I think those are the people that live in those communities whose jobs depend on them, they're in a mindset whereas they fear that if their employer is forced to increase spending on environmental controls, then that may mean that there will be fewer jobs, and that might be the end of their job.

Eric: But for example, there are places in the United States that have much tighter restrictions on flaring and they're still producing oil and gas. And there's a choice that is being made in North Dakota to continue to drill new oil wells because the oil is producing a profitable material, which is the oil, which is much more valuable

than the gas. And they are less concerned about having the pipelines to actually transport the gas off of the well pads. And so they're simply burning the gas.

Eric: And so there is far from sufficient pipeline capacity, but they are collecting the oil because they're making money on it. The gas is worth such a little amount that they're just burning it off. Now that's an economic choice as much as it is... The environmental consequences come because of an economic choice. And if the federal government or the state government were to say, I'm sorry, you can not increase your production until you have the capacity to capture more of that methane instead of just burning it off, then that would be the requirement. But the Interior Department has eliminated that requirement. And that was a policy choice that the Trump Administration made.

Caitlin: Are there other rollbacks, or other parts of the country that you considered covering for this story that you can share with us?

Eric: I mean, I think that the other side of the coin here is enforcement. And we've been talking in this conversation entirely about the regulatory choices. I mean, but EPA has both its policy, its regulatory creating and regulatory writing function, and then also its enforcement function.

Eric: And I think the single biggest thing probably that is happening so far, and we separately documented this, Danielle Ivory and I did, was the massive reduction in enforcement action by the EPA, both in criminal and civil. And not only in terms of the amount of fines that they are imposing, but also what they call injunctive relief, which is the amount that companies agree to pay to fix the cause of the environment violation, the upgrade to their air pollution controls, the upgrades to their wastewater treatment, and a huge decline in terms of injunctive relief and penalties, fines.

Eric: And the EPA would say, well this is because they're pursuing this philosophy of cooperative federalism, which they're pushing down the authority to the state officials. But I think that one of the things I want to examine more is just what does cooperative federalism really mean? And is it mean that the states are actually stepping up, or does it mean that there's just less enforcement? My impression is that there's less enforcement.

Eric: And the impact of a decline in enforcement is faster than the impact of a change in regulatory policy. Both of those things are happening. And if I were to say, well what else do I really want to look into? I want to look into more of what is the impact of the massive decline in enforcement? What impact is that having in terms of environmental quality in the United States?

Caitlin: So you wrote a series of articles in 2014 about the lobbying of state attorneys general, one of which focused on Scott Pruitt, who was the Attorney General of Oklahoma at the time, and detailed his close ties with the oil and gas industry as he fought federal environmental regulations during the Obama Administration.

Caitlin: After Pruitt became EPA Administrator, you investigated and wrote about Pruitt and the EPA's treatment of Chlorpyrifos, which is featured in this story, and the chemical industry and science in a series of several articles throughout 2017. Could you talk us through the evolution in your work over the last few years?

Eric: Yeah, I was really struck by the extents at which both at Interior and EPA, that the people who were the regulated became the regulators. And that, for example, with respect to toxins and pesticides, a senior executive at the American Chemistry Council, Nancy Beck, who was one of the top people for a $600 billion a year chemical industry in terms of intervening with the EPA to try to stop toxic chemical regulations that would limit the sale of certain chemicals in United States, she was the leading party that was documenting why the industry wanted the EPA to ease up its restrictions.

Eric: And then suddenly, a few weeks after she is submitting comments to try to stop the regulations of certain chemicals, she is actually helping run the program that's deciding on which chemicals should be regulated. And not only that, but then the EPA was granting her special ethics waivers to allow her to continued to interact with the same company, the trade association she'd left. And actually, she was able to participate in litigation that was suing the EPA over input she'd had from the private sector, which it's just sort of crazy. Why are there conflict of interest rules if a person can get a waiver like that?

Eric: And so I was fascinated by this revolving door and just how Nancy Beck is just one person, and there was multiple examples of this across the EPA and Interior. I mean if you think about the fact that now the acting administrator at the EPA was a former coal lobbyist, the acting cabinet member from Interior is a former oil industry lobbyist. Across this administration, the regulated have now become the regulators.

Eric: And so it was my kind of fixation to kind of document the extent to which they are using their positions now that they have to benefit the interest of the clients that they once represented. I mean, if you just look at at Bill Wareham who runs the air and radiation policy shop at the EPA, it's one of the most important positions at the agency, I mean he essentially walked out of his client list of dozens of pieces of litigation involving the EPA regarding New Source Review that has to do with air pollution from coal burning power plants and other air polluters. And then he was flipping the policies that directly matched what his goals were as an industry lawyer within a matter of weeks. And that's happening in places across the administration.

Eric: And it's really fascinating. And as a reporter, I think it's a critical thing that we play a role of... You may think it's a great thing, you may take it the bad thing, but at a minimum those actions need to be public. And we have a role as reporters to bring transparency to that. It's not the Mueller investigation, it's not Russia, it's not the stuff that's grabbing all the headlines for most people. But this is really important stuff, and I'm glad the New York Times with letting me help document that.

Caitlin: Yeah. It's certainly been a big focus of our work here looking at how these specific players, but also the overall mission of the Trump Administration has affected the way that these agencies are functioning, and the way that they interpret their mission as the Environmental Protection Agency for example. And how that in many ways departs from prior agency practice in previous administrations. So we are glad that you are focused in on these issues. So what would you say are some of the takeaways then from your last few years of reporting on these issues?

Eric: I think that regulatory decisions are so consequential to society. And I think that we tend to focus on the President and Congress. And of course Congress has to pass the laws, and the President has to sign them. But the regulatory choices that individual agencies make are just so important. And I don't think that I fully appreciated just the consequences of those choices. And the process is very laborious.

Eric: And we're really entering a period in the third year of the administration where this is the make or break moment for them. The Clean Power Plan repeal and its replacement, the Waters of the US, the CAFE Standard in terms of emissions from automobiles. Those three rules are on the table in 2019. And the rewriting of those rules is going to have to be executed this year by and large.

Eric: And so I guess I just think that that's what we have to keep our eyes on. And then it's going to switch to the courts in terms of can they defend those final decisions in the courts? And the Trump Administration is moving as aggressively as it can to remake the federal court system, both the appeals court and the Supreme Court and the federal district courts.

Eric: So I guess these choices that are being made are, it's a very slow moving process, but it's a very consequential one. And it takes quite a commitment to kind of see these things through. And I'm glad that I work at an institution that's willing to make the investment to help the public, as Harvard is doing with your regulatory tracker and other things that you guys are doing. But if we aren't following it, then people just aren't aware of it. Not just the New York Times, but there aren't people tracking it, then it's hard for the public to really kind of be aware of what's happening.

Caitlin: Right, right. And to just read one headline in isolation is not enough either, but to, as you described, try to unveil this huge web, this huge system that's at work. The way that all these different moving pieces play a part, like you said. With the finalization of rules comes the moment where we will see litigation, and the challenges of these rules heading into the court system, which is increasingly becoming full of judges and now justices that have been confirmed during this administration.

Caitlin: So I think it's important to, as you know, follow things all the way through and try to look at these webs of influence. So we are grateful for your work. And we will, I'm sure alongside you, be posted looking at all of the changes that are supposed to be coming down the pipeline over the next year. Is there anything else that you wanted to add that I didn't ask you about that we didn't get to in our time here?

Eric: No. I mean, just it's important that the public continue to be interested in this topic. And there's so much competition for the kind of eyeballs nowadays. And sometimes I'm disappointed with the amount of readers that we get for some of these stories versus the latest wrinkle in the Mueller investigation. What are the consequences of that relative to environmental choices that are being made. But the interest level, I just think it's important that the public stay focused on this and not be distracted by the roiling headlines on things that are equally important in a way, but perhaps not as directly consequential to their lives.

Caitlin: Right. It feels a lot of times like we're living in a constant churn of all these different headlines and scandals. And it can be hard to stay focused on some of these slower moving, but yet very powerful and sometimes insidious things that are also happening somewhat behind the scenes.

Eric: Yeah. It's probably intentional. I mean, all of this like the border wall. It's like how much is that directly going to impact the lives of most Americans? But how much time have we spent talking and focusing and distracted by it for months, or for in fact, years. And so that's one of the challenges is to make sure that people sufficiently interested in this topic. But that puts greater pressure on us as reporters to find ways to tell these stories in a way that will interest readers so that they want to read them. And they're not just dry regulatory pieces, but they play out in real places.

Caitlin: Yeah. And I think that that has been the tremendous success of this piece here at the end of of December, which brought us such compelling portraits of people whose everyday realities are being affected by these regulatory changes happening out in Washington. That to read about them seem rather dry, but are really having an effect on the way that people live. And so congratulations on that.

Eric: Great. No, thank you. Thanks for the work you guys doing on your tracker and other work that you do is really helpful for us as well to sort of keep ahead of what's happening.

Caitlin: Good. Glad to hear that. All right, well I think we will end things there. Thank you again, Eric. Been a pleasure to have you as our guest.

Eric: Okay. Let's stay in touch, and thank you for inviting me to participate.

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