



CARDOZO

Benjamin N. Cardozo School of Law

LARC @ Cardozo Law

Online Publications

Faculty Scholarship

8-28-2017

Do Not Forget to Wear a Hat

Michael Herz

Benjamin N. Cardozo School of Law, herz@yu.edu

Follow this and additional works at: <https://larc.cardozo.yu.edu/faculty-online-pubs>



Part of the [Environmental Law Commons](#)

Recommended Citation

Herz, Michael, "Do Not Forget to Wear a Hat" (2017). *Online Publications*. 52.

Available At <https://larc.cardozo.yu.edu/faculty-online-pubs/52>

This News Article is brought to you for free and open access by the Faculty Scholarship at LARC @ Cardozo Law. It has been accepted for inclusion in Online Publications by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

Opinion | Environment | Aug 28, 2017

Do Not Forget to Wear a Hat

Michael Herz



EPA provides advice instead of regulation in the new nanny state.

President Trump's tweets get all the attention, but those from others in the federal government can also be pretty striking. Consider how the [U.S. Environmental Protection Agency's \(EPA\) Twitter feed](#) is taking on global and local environmental threats.

For years, regulation foes have [complained](#) about the “Nanny State”—an overbearing government that interferes with personal choice in the mistaken belief that it knows better than you do in what is best for you and your family. The 2016 Republican Party platform [put](#) it this way: “Overregulation is the quiet tyranny of the ‘Nanny State.’”

Well, folks, there is a new nanny in town.

This one does not try to protect through over-regulation; instead, she urges you to be careful and protect yourself from the results of under-regulation. Let me introduce the new nanny (or should I say, “[manny](#)?”): EPA Administrator [Scott Pruitt](#).

In recent years, federal agencies have turned to social media to brag about their accomplishments. But what does an EPA that forswears regulation tweet about?

Mainly, it [urges](#) you to avoid the environmental threats that it is doing nothing to cure or prevent. A warming climate? Yup. But, EPA has the solution, in a tweet it has [posted](#) more than once this summer.

The link in the tweet [connects](#) to a page on the EPA website with handy hints, such as “PREVENTION IS THE BEST DEFENSE!” (Apparently, this is not meant ironically.) “Stay out of direct sun and wear sunscreen of SPF 15 or higher. Be extra careful about sensitive individuals like children, the elderly, or the sick. Never ever leave anyone or an animal alone in a car, or a pool or other risky location, not even for ‘just a few minutes.’”

Thanks, EPA.

Notably, the webpage [linked](#) in the tweet is part of a section of the EPA website [devoted](#) to natural disasters. That is no accident; if climate change is a *natural* disaster, then the only possible response is adaptation. Mitigation is off the table because there [are](#) *no* human contributions. To say that this view of climate change is contested would be generous.

If there is a central theme to this summer’s EPA [tweets](#), it is a concern with extreme heat. “Don’t let dehydration get the best of you this summer!” Or: “Beat the heat!” with a [link](#) to “sun safety” tips, such as wearing a wide-brimmed hat. It turns out the agency’s number one concern is global warming. Who knew?

But it is a dangerous world out there in many other ways, and EPA wants you to be careful about more than the heat. So it has [offered](#) advice on dealing with mold and [controlling](#) fleas and ticks on your pet. About once a week this summer it has tweeted to [offer](#) guidance on what to do in case of a flood. (Like extreme heat, floods [are](#) in the “natural disaster” category.)

In yet another recent [tweet](#), EPA advised lake-goers to stay out of water that is “green or scummy,” as it could contain an algal bloom. The accompanying [photograph](#) shows a woman standing on a dock in a truly disgusting-looking pond, holding her nose. The agency gets points for common sense, but there really was not much chance of her leaping in, even without EPA’s admonition.

In tone, these tweets are unfailingly chipper and constructive. Still, they acknowledge serious environmental conditions with real consequences for human health. One might expect the Environmental *Protection* Agency to take action to avoid these conditions—after all, “PREVENTION IS THE BEST DEFENSE!,” remember?

However, instead of using its authority to protect the environment and exposed individuals, the agency has thrown up its hands and decided its work is done once it has told people, “Be careful out there.”

To be fair, EPA did [release](#) one [tweet](#) (posted several times in different versions) this summer in the more traditional mode of trumpeting regulatory accomplishments. This tweet celebrated the stunning successes of the [Clean Air Act](#) in reducing emissions of criteria pollutants despite huge growth in gross domestic product. Appropriately, this tweet was retrospective, a kind of eulogy, almost wistful – for it celebrated accomplishments in the period *ending* in 2016.

Judged by EPA’s Twitter [feed](#), life in the regulation-free world resembles the Egypt of the plagues. It will feature ticks, fleas, floods, algal blooms, and, most of all, extreme heat. But not to worry. EPA is on the job, there to remind us to stay out of green and scummy water and to wear a hat.



Michael Herz is the Arthur Kaplan Professor of Law at Cardozo School of Law.

Tagged: Clean Air Act, Climate Change, Climate Change Adaptation, deregulation, Environmental Protection Agency, Environmental Regulation, EPA, Social Media