

CLEARING THE AIR



BY JOEL SCHWARTZ

THE UNITED STATES HAS ACHIEVED STRIKING IMPROVEMENTS IN AIR QUALITY DURING THE LAST FEW DECADES. BETWEEN 1980 AND 2006:

- fine particulate levels declined 42%;
- oxides of nitrogen decreased 41%;
- sulfur dioxide dropped 66%;
- peak ozone levels fell 30%;
- carbon monoxide diminished 75%, and
- airborne lead has been virtually eliminated—plummeting 96%.

These improvements are even more extraordinary considering that they occurred at the same time that power plants increased coal consumption more than 60 percent and the amount of driving nearly doubled. Technology—in the form of cleaner cars, cleaner power plants, cleaner paints, cleaner everything—has won the battle for clean air, even with burgeoning economic activity.

So what's the problem? The public's interest is in clean-enough air, achieved at the least possible cost. But the Clean Air Act (CAA) regulatory system is mainly about process, rather than results. The CAA and Environmental Protection Agency (EPA) regulations to implement it have created large administrative burdens, economic distortions, and perverse incentives—all of which impose costs on Americans that far exceed what is necessary to merely reduce air pollution to safe levels. Furthermore, there is no end in sight, because the CAA endows the EPA with the power to keep expanding its influence. The EPA sets national air pollution standards, so the agency, in effect, decides when its own job is finished. Naturally, it never will be.

Virtually everyone would agree that people have a right to be free from unreasonable risks imposed by others. But federal air pollution regulation goes well beyond this principle, and instead allows special interests—regulators, environmentalists, businesses, and politicians—to gain money, power, and prestige, and advance their ideological goals at the expense of the American people.

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This article suggests a more decentralized, results-focused, and accountable approach to air quality that would guarantee clean air, but with fewer of the harmful side effects of the current system.

THE PROCESS BOX

If Congress wanted states to achieve a given level of air quality, it could simply have dictated to states (1) the standards and the dates by which they would have to be achieved, (2) how compliance would be measured, and (3) the penalties for failure. Given sufficiently large penalties, states would have an incentive to find effective means of meeting their obligations. Such a Clean Air Act could be written on a few pages and would require few federal regulations.

Instead, the CAA spans hundreds of pages and includes exquisitely detailed requirements for everything from the composition of gasoline to the content of permits-to-operate for industrial facilities. The EPA has written thousands of pages of specific regulations to implement the CAA requirements, along with tens of thousands of pages of “guidance documents” to explain what the regulations mean.

States must, in turn, develop their own laws, plans, and regulations to implement the federal requirements, and businesses must obtain permits that specify operating conditions and pollution-control methods, unit by unit and process by process, and which must be amended whenever a process is changed. Legions of lawyers and consultants help regulated businesses figure out what the rules mean and how to comply with them.

The CAA is so focused on process that states can lose their federal highway funding and suffer restrictions on economic development if they fail to win the EPA’s approval of their “State Implementation Plan” for managing air quality. No such sanctions, however, apply if a state fails to actually attain federal air standards by required deadlines. The main penalty for such failure is that the



state merely has to submit a new plan.

The CAA's massive procedural and administrative burdens have little to do with improving air quality, but they impose substantial costs on the businesses, individuals, and government agencies that must carry out their requirements.

Why did federal air regulation get this way? Centralized, administratively complex regulation benefits interest groups—regulators, environmentalists, and businesses—who gain power and profits at taxpayers' and consumers' expense, while the costs are largely hidden from the public. Politicians also gain by passing broad "laws" that appear to deliver benefits without costs, while delegating the real regulatory dirty work to unelected bureaucrats at administrative agencies (Schoenbrod 2000, 2005).

CONFLICTS OF INTEREST

An equally damaging feature of the federal regulatory state is that it has created large bureaucracies with the authority to keep expanding their power. There is no brake built into the system.

The Environmental Protection Agency and state regulators, for public support, depend on a perception that there is still a serious problem to solve. But they are also the ones who decide when their own jobs are finished, because the EPA gets to set the pollution standards and specify the means by which the standards will be achieved. Not surprisingly, no matter how low air pollution goes, the EPA has never declared the air safe and continues to tighten the standards. The EPA is like a company that gets to decide how much of its product people must buy. Congress also charges the EPA with reporting on the costs and benefits of its own regulatory programs—like a company that gets to audit its own books.

Regulators are also major funders of the health research they use to justify tougher air pollution standards. In other words, the EPA funds the research intended to demonstrate the need for the EPA's services. Regulators de-

cide what questions are asked, which scientists are funded to answer them, and how the results are portrayed in official reports. Government-funded scientists sit on the advisory committees that give the EPA "independent" scientific advice. Regulators also provide millions of dollars a year to environmental groups, who then use the money to foment public fear and lobby to increase regulators' powers. The EPA and its allies put great effort into exaggerating air pollution risks and maintaining public fear, despite today's record-low air pollution levels (Schwartz 2006; Schwartz and Hayward 2007).

FOCUSING ON RESULTS

The regulatory system's conflicts of interest and blurred lines of accountability put regulators in the business of fear mongering and empire-building, rather than limiting them to the efficient pursuit of clean air. We can do better by changing our regulatory institutions to focus on results and remove incentives for bureaucratic expansion, risk exaggeration, and administrative complexity. Here is one potential option:

- Congress, not the EPA, should set ambient air pollution standards that states must attain, along with the deadlines for meeting them and the penalties for failure. States would be able to adopt more stringent standards if they wished.
- States should be on the hook only for results—that is, meeting the standards by legislated deadlines. All of the current Clean Air Act's planning, permitting, and process requirements should be removed, as should the mandates that require states to implement specific regulatory programs or approaches.
- The federal government should still be responsible for setting emission limits for a few major air pol-

lution sources with interstate effects such as motor vehicles and power plants. As with the ambient air standards, these requirements should be chosen by Congress, rather than by regulators. Other pollution sources would be under state control and states could also go beyond federal requirements if they desire.

- The EPA's role would be limited to measuring emissions and air pollution levels and enforcing Congress's emission limits for federally regulated sources.

Putting legislators, rather than regulators, in charge would not be a panacea (Congress has imposed some foolish programs of its own, such as the ethanol mandate), but putting the onus on Congress for setting ambient pollution standards and emission limits would reduce the EPA's ability and incentive to grow its administrative empire. Legislators would have less of a stake in growing the power of the administrative state if they are directly accountable for imposing the requirements (Schoenbrod 2000).

Environmentalists and regulators have created the appearance that the modern administrative state is a good and necessary way to protect public health. Indeed, air quality *has* improved dramatically since the 1970 passage of the modern Clean Air Act. But few realize that air quality improvements were equally dramatic in the decades *before* the Clean Air Act (Goklany 2000). Air quality is not unique in this respect. Water pollution as well as automobile and workplace safety were all improving at about the same rate in the decades before and after the creation of, respectively, the EPA, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration.

The key difference is that before the modern era of micromanaging regulation, the government's role was complementary to market forces, evolving gradually, and largely working in concert with people's values and preferences. In contrast, today's federal regulatory system imposes revolutionary institutional changes that override people's preferences, suppress individual initiative and creativity with relentless bureaucracy, and unnecessarily curb freedom. For example, technology, in the form of inherently clean vehicles, has been eliminating air pollution without the need to restrict driving. Nevertheless, activists and regulators have used air quality as the pretext for imposing anti-mobility, anti-suburb policies that have raised housing costs, increased road congestion, and worked against Americans' lifestyle preferences.

The modern administrative state has been unkind to the people it claims to be protecting. The next President and Congress would do well by the American people if they placed responsibility for environmental protection on elected legislatures rather than hiding behind unelected bureaucrats, decentralized authority to the levels of government nearest to the concerns being addressed, and refocused the nation's environmental laws on results rather than process.

Policy Push—Air Pollution

RESULTS MATTER

States should be held accountable only for air quality results and eliminate all process requirements, and place responsibility for setting ambient air standards and emissions limits on elected legislatures, rather than unelected bureaucrats.

REFERENCES

- Goklany, Indur M. 2000. Empirical Evidence Regarding the Role of Nationalization in Improving U.S. Air Quality in *The Common Law and the Environment: Rethinking the Statutory Basis for Modern Environmental Law*, eds. Roger E. Meiners and Andrew P. Morriss. Lanham, MD: Rowman & Littlefield, 27-53.
- Schoenbrod, David. 2000. Protecting the Environment in the Spirit of the Common Law in *The Common Law and the Environment: Rethinking the Statutory Basis for Modern Environmental Law*, eds. Roger E. Meiners and Andrew P. Morriss, Lanham, MD: Rowman & Littlefield, 3-24.
- Schoenrod, David. 2005. *Saving Our Environment from Washington: How Congress Grabs Power, Shirks Responsibility, and Shortchanges the People*. New Haven, CT: Yale University Press.
- Schwartz, Joel. 2006. "Air Pollution and Health: Do Popular Portrayals Reflect the Scientific Evidence?" *AEI Environmental Policy Outlook*, May.
- Schwartz, Joel, and Steven F. Hayward. 2007. *Air Quality in America: A Dose of Reality on Air Pollution Levels, Trends, and Health Risks*. Washington, DC: AEI Press.



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Schwartz's book is available at www.aei.org