28. *Environmental* Reform

The economic cost of environmental regulation is staggering. The United States has invested some $1 trillion in environmental protection over the past two decades and is today investing over $170 billion annually, or 2.8 percent of gross domestic product. More than a third of all the nation's regulatory costs are related to environmental protection, and more than half of the regulatory growth over the past decade has been the result of an explosion of environmental rulemaking. Further, command-and-control regulation and government ownership of natural resources have failed to protect environmental quality. To alleviate those problems, Congress should

- **adopt procedural regulatory reforms that prohibit unfunded federal mandates on states, regulations that fail benefit/cost tests, uncompensated regulatory takings of private property, and unrealistic risk assessment practices;**
- **repeal the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); the Safe Drinking Water Act; the 1990 Clear Air Act amendments; section 408 of the Food, Drug, and Cosmetic Act (the Delaney clause); the Resource Conservation and Recovery Act; subtitles n through IV of the Toxic Substances Control Act; the Emergency Planning and Community Right to Know Act; and all intrastate provisions of both the Clean Air Act and the Clean Water Act;**
- **inventory federal lands and begin to divest those properties to private stewards.**

The high costs of environmental regulation have economic consequences. The Department of Commerce estimates that environmental regulations consume about 16 percent of all investment capital annually, and economists at the University of Tennessee found that environmental protection accounts for 20 percent of all capital spending. Harvard economist Dale Jorgenson concluded that, as of 1990, environmental regulations

were reducing the annual growth of gross national product by about 0.2 percent and the size of the GNP by about 2.6 percent annually. Another study published in the *Journal of Political Economy* found that, because of the Clean Air and Water Acts alone, GNP was 6 percent lower, consumption was 6.5 percent lower, private domestic investment was 8 percent lower, and prices were 6 percent higher than they otherwise would have been.

Clearly, no Congress serious about freeing the American economy from the straitjacket of regulation can afford to ignore the 10,000 pages of federal environmental regulations. To ensure both environmental protection and economic vitality, Congress should adopt three guiding principles for environmental policy reform.

Regulatory Federalism

In her book *Reviving the American Dream,* written for the Brookings Institution in 1992, Office of Management and Budget director Alice Rivlin called for turning much of the environmental regulatory Leviathan over to the states. She is not alone. In fact, a consensus is emerging across the ideological spectrum that centralized federal regulatory authority over local issues has proven unmanageable, costly, and unaccountable to the average citizen.

Congress should revive the forgotten principle of subsidiarity—the idea that local problems are best handled by local officials, regional problems by state officials, and national problems by federal officials. Perhaps most important, the closer a government agency is to the people it regulates, the more accountable and responsible it is. Second, environmental problems differ in each community, and each community ought to have the flexibility to set its own priorities when allocating resources for ecological and public health protection.

Finally, there is an incalculable value in regulatory competition. Our Founding Fathers wrote powerfully of the virtues of states' serving as "laboratories of democracy." If we experiment with a multiplicity of regulatory philosophies and structures, we are far more likely to discover the most efficient and effective regulatory policies than if we trust the stultified regulatory monopolies in Washington to find the "right" answer for all time.

Therefore, Congress should repeal the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); the Safe Drinking Water Act; the 1990 Clean Air Act amendments; the Delaney clause of

the Food, Drug, and Cosmetic Act; the Resource Conservation and Recovery Act (RCRA); subtitles n through IV of the Toxic Substances Control Act; the Emergency Planning and Community Right-to-Know Act; and the myriad intrastate provisions of title Clean Air and Clean Water Acts. Not only do those statutes inappropriately address fundamentally local matters best left to local authorities, they have proven to be remarkably inefficient and costly and unnecessarily injurious to both the economy in general and the taxpayer in particular.

Superfund or Superfraud?

Perhaps the worst environmental law on the books today is Superfund, the bureaucratic equivalent of the $600 Pentagon toilet seat with the economic ramifications of the savings-and-loan bailout. The law has already cost about $15 billion (88 percent of which has gone to transactions costs such as attorneys' and consultants' fees, not actual cleanup) and, according to government accountants, threatens to cost taxpayers from $300 billion to $750 billion over the next 30 years. Progress has been glacial; fewer than 20 percent of the 1,232 sites on the National Priorities List have been cleaned up after 13 years. Eight to 10 years of site evaluation and legal wrangling typically elapse before a cleanup even begins.

Few if any environmental gains are purchased by Superfund. The Agency for Toxic Substances and Disease Registry estimates that only 18.9 percent of Superfund sites pose actual or potential health risks, while only 0.9 percent are "urgent hazards." The National Research Council argues that many cleanups "create more of a hazard than would be caused by leaving such materials undisturbed."

States have been far more effective in cleaning up sites. Forty states have their own Superfund programs, and cleanups take only two to four years at, typically, a quarter of the federal cost. Wisconsin alone has cleaned up more sites than the federal government. J. Winston Porter, former director of the Superfund program, believes that states have been successful where Washington has not because they have adopted reasonable cleanup standards, minimized the incentives for legal wrangling, and prioritized the most important sites for remediation.

The Unsafe Drinking Water Act

The Safe Drinking Water Act requires all localities to monitor their water supplies for a list of chemicals, promulgated by the Environmental

Protection Agency, four times a year regardless of whether those chemicals are used or have ever been found in the area. North Dakota, for example, estimates that 36 of the 42 pesticides it must monitor are not used at all in that state or are used on less than 0.6 percent of state land. Moreover, the act requires the EPA to regulate 25 additional contaminants every three years regardless of the risks they present or the ambient concentrations of those contaminants in drinking water. Those mandates are extremely expensive, particularly to households hooked up to smaller water systems.

Perhaps most distressing is the fact that, by dictating to local systems uniform sets of priorities, the Safe Drinking Water Act serves, not to improve drinking water quality, but to harm it. Although not a single person has ever been shown to have been harmed by chemical contamination of drinking water, hundreds of Americans have died from bacterial contamination of water supplies, and resources used to overregulate the former are not available to combat the latter. The recent outbreak of cryptosporidium in Milwaukee, for example, demonstrates, not the incompetence of local water officials, but the inability of the federal government to effectively manage the resources and operations of thousands of distinct water systems.

Legislative Chemophobia

The 1990 Clean Air Act amendments should also be repealed. The National Acid Precipitation Assessment Project, a 10-year, billion-dollar scientific undertaking, found that sulfur dioxide had little to do with water acidification or crop and tree damage. Instead, NAPAP found that land-use patterns were responsible for most if not all acidification of waters and that insect infestation was the chief cause of serious tree damage commonly attributed to "acid rain." In any case, simply liming acidic lakes and streams is far more economically and ecologically effective than the long, costly process of controlling sulfur emissions.

Likewise, there is no compelling evidence that ambient air toxic concentrations present any serious threat to human or ecological health. The Occupational Safety and Health Administration is empowered to regulate emissions of toxic substances in workplaces—the only places where toxic emissions present a potential problem.

The Delaney clause of the Food, Drug, and Cosmetic Act is also ripe for repeal. That clause calls for prohibition of the use in processed food of any chemical additive that has been found to cause cancer in laboratory rats. Yet, unlike the standards set for nonprocessed foods, the Delaney clause givers no consideration to dose or concentration. Given that virtually

any chemical (synthetic or natural, including vitamin A) in sufficient doses causes cancer in rats, the Delaney clause violates toxicological common sense, a fact that even the EPA has long recognized by essentially ignoring the "zero standard" for years until recently forced by the courts to take the law's extreme language at face value.

The Resource Conservation and Recovery Act mandates incredibly complex and byzantine practices for handling and disposing of hazardous and various solid wastes. The RCRA is predicated on the idea that regulators in Washington can make efficient decisions about precisely how every chemical and waste byproduct should be managed, controlled, and disposed of by every individual agent in every single commercial enterprise in America.

The RCRA is also a tremendous misallocation of environmental resources. Hazardous waste, according to the EPA Science Advisory Board, is one of the least worrisome matters for public health officials. Solid, industrial, and medical wastes, also regulated by the RCRA, are even less worthy of federal attention. In any case, waste-handling protocols are fundamentally local matters and are best dealt with by local officials.

Subtitles n through IV of the Toxic Substances Control Act, passed during the height of the chemical scare campaigns of the mid-1980s, mandate local actions to address asbestos, radon, and lead-based paint. The scientific consensus today is that the risks associated with those substances have been tremendously overblown and that, in the case of asbestos, remediation is almost always more harmful than management in place. Local communities, not federal bureaucrats, should decide whether it is necessary to take action against those dubious public health risks.

The Emergency Planning and Community Right-to-Know Act does not even pretend to address direct public health concerns. It simply requires that local governments adopt "emergency preparedness" schemes to be implemented in the event of a chemically related disaster and that businesses provide very detailed reports on their perfectly legal and permitted emissions patterns. The emergency schemes are a generally wasteful exercise analogous to the nuclear bomb shelter craze of the 1950s. Spending resources in such a manner ought to be a community decision, not made by Congress in its role as national city council. The business reports are simply paperwork for paperwork's sake, a measure that is aimed, not at reducing pollution or alleviating public health risks, but at generating meaningless data intended to scare the public about perfectly safe and legal industrial practices.

Back to the Future

Intrastate air and water matters should be left to local or state officials. That means eliminating dozens of parts of both the Clean Air Act and the Clean Water Act, most notably the National Ambient Air Quality Standards of the Clean Air Act and the bulk of the discharge programs of the Clean Water Act. Although many people would undoubtedly argue that it was state mismanagement of those matters that led to federal intervention in the first place, a Brookings Institution study found that progress in abating air pollution was faster in the 1960s before the advent of the Clean Air Act than in the 1970s after the act went into effect. Indeed, Robert Crandall of Brookings suggests that there is little evidence that either the Clean Air Act or the Clean Water Act has done much to improve environmental conditions over the past two decades.

EPA regulation of urban air quality is unnecessarily onerous and poorly reflective of actual air quality. The agency defines "nonattainment" with federal air quality standards as more than three separate one-hour violations of the smog standard over a three-year period. Moreover, current regulatory practices determine the severity of nonattainment by reference to the 1988-90 data time frame. Since 1988 was one of the worst smog years on record, because of anomalous weather, cities are today required to engage in vigorous air pollution abatement programs even though the problem disappeared long ago. The result is an onerous set of transportation and commercial regulations that will cost the nation approximately $12 billion annually when fully implemented. In fact, one of the main reasons for the emerging state rebellion against regulatory federalism is the crushing costs and limited air quality benefits of the federal urban smog program.

Water discharges that have primarily an intrastate effect are also best left to state or local officials. Each body of water has different characteristics and different thresholds for contamination, and pretending that one-size-fits-all regulations from Washington are appropriate in every case violates common sense. A typical example of regulatory federalism in Anchorage, Alaska, is discussed in Chapter 7.

Regulatory Perestroika

A package of reform proposals that would prohibit regulatory actions that fail a benefit/cost test, provide for reasonable scientific risk assessments, strike down unfunded federal mandates on states, and prohibit uncompensated regulatory takings of private property was tagged the

"unholy trinity" by environmental activists in the last Congress. That such common-sense measures are deemed evil by the Green lobby says more about the environmental status quo than it does about the reforms themselves. Congress should move to adopt all those measures to the fullest.

The real question is whether those measures will be more sop than substance. Congress should not only require the EPA to meet benefit/cost tests when the agency has the legal flexibility to do so; Congress should also uniformly amend the existing environmental regulatory code to require that all regulations be retroactively examined and discarded if they fail to pass a benefit/cost examination. Moreover, the benefit/cost tests should not be conducted by the promulgating agency but by a separate office within the Office of Management and Budget. Having a second, disinterested party conduct the examination would reduce the degree to which those analyses are "cooked" to produce a biased outcome. Finally, the results of those tests should be challengeable in federal court.

Reforming the procedures by which government agencies assess chemical risks is of vital importance. Dr. Vernon Houk, director of environmental health at the Centers for Disease Control, reflects the consensus of the scientific community: "Risk assessment policy that relies solely on screening bioassay results from the most sensitive species is not based on scientific principles. Neither is it credible or reliable. The general public thinks these risk estimates are based on real science, but that simply isn't true." *Science* similarly editorializes that "the standard carcinogen tests that use rodents are an obsolescent relic of the ignorance of past decades."

Congress should scrap a process that scientists at the Massachusetts Institute of Technology and Harvard have termed the equivalent of "soothsayers reading entrails" and instead require the EPA to rely on mutagenicity tests to assess chemical risk. The mutagenicity test, pioneered by biochemist Bruce Ames of the University of California at Berkeley, is rooted in the observation that cancer is largely a product of cell mutation. If a chemical induces such mutations, then it could well present a cancer threat, and toxicologists should then determine if expected doses could present a health risk. If no mutation occurs, however, cancer risks are fairly remote. Ames and others have observed that the very process of feeding laboratory animals massive doses of any compound induces cancer-causing cell mutations, so that often it is not the poison, but the massive doses, that cause the tumors that lead to regulation.

Finally, Congress should approve a constitutional amendment prohibiting the imposition of unfunded federal mandates on states. Anything less

would probably be circumvented by the rapacious desire of the federal government to tell governors, state legislators, and city council members how to do their jobs.

The best study done on the impact of unfunded mandates was conducted in Columbus, Ohio, a fairly typical city that found itself swamped by regulatory compliance costs imposed by Washington. Whereas the city had to comply with only 40 federal and state mandates before 1988, 75 new mandates were imposed on Columbus between 1988 and 1991 alone. The city estimates that 18.5 percent of its budget will go for compliance with federal environmental regulations. The EPA confirms those numbers and estimates that federal environmental mandates cost local taxpayers $32 billion annually.

Of course, the idea is not for Congress to merely fund what is currently unfunded; it should eliminate those programs and turn them over to state and local governments where they belong.

Ecological Emancipation

Most Americans would be shocked to learn that a third of all land in the United States is owned by the federal government. The main reason is an outdated idea that, as the Forest Service put it in 1933, environmental destruction "may be largely attributed to the national conception of the rights of the private citizen and the policies set up to protect those rights even at the expense of the public welfare. Laissez-faire private effort has seriously deteriorated or destroyed the basic resources of timber, forage, and land universally."

Today we know that almost every instance of ecological meltdown—from the Russian taiga and Lake Baikal to the Amazonian rain forests, from the Florida Everglades to the old-growth timber of the Pacific Northwest—has been due to public, not private, mismanagement. When politics, not economics, determines the highest and best uses of land, the politically strong get their way regardless of the consequences. Subsidies and special privileges are the rule. Private owners, of course, have every incentive to maximize land values and conserve resources. Public managers, on the other hand, are concerned with pleasing their political superiors and maximizing their budgets.

The United States was right to point out to Russia and other survivors of the Eastern bloc that private ownership of the means of production was superior to centralized planning. Congress should now practice what it preached and begin to divest all publicly held land in its control. A

commission should be established to determine which land is used primarily for recreational or aesthetic pursuits and which is used primarily for commercial activity. Lands in the former category should be deeded outright to environmental or nonprofit organizations such as the Nature Conservancy to manage as they see fit. Land in which commercial parties have invested heavily, such as public grazing lands, should likewise be deeded outright to those parties. All other land should be sold to the highest bidder, with the receipts used for deficit reduction. We estimate that such sales would realize $460 billion over the next 10 years.

Conclusion

U.S. environmental policy is mired in the tired and failed dogmas of the past. Federal regulatory policies have not only unnecessarily bled the economy of productive resources, they have compounded environmental damage and promise nothing but more of the same. Marginal reforms that accept the fundamental core of current environmental law will provide little economic or ecological relief. The status quo is built upon a vision of regulatory socialism that is indefensible in both theory and practice. Congress must jettison the entire foundation of modern environmental law if it hopes to provide regulatory relief for a battered economy and environmental protection for generations to come.

Suggested Readings

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