Briefly Noted

Happy Birthday EPA?

BY HENRY I. MILLER | *Hoover Institution*

Touting the 40th birthday of the Environmental Protection Agency this past December, its head, Lisa Jackson, penned a paean to the agency for the *Wall Street Journal*. The op-ed contained far more than a recapitulation of her agency's supposed achievements or a defense against its critics. In fact, it began in a way that, for the top executive of a government regulatory agency, was jarringly political — namely, with a pointed reference to November's elections having "strengthened the influence of groups and individuals who threaten to roll back the EPA's efforts."

Jackson's article was filled with specious assertions built on dubious assumptions. It was devoid of any acknowledgement that regulation has costs, direct and indirect; that the challenge for regulators is to strive for the amount of oversight and intrusion that is necessary and sufficient; or that her agency has myriad deficiencies in both policies and personnel.

For instance, Jackson lauds the EPA's protecting the public from chemical pesticides. In fact, this is one of the agency's *bêtes noirs*. The testing required is excessively burdensome and the tolerances permitted by regulators overly conservative. What makes regulators' approach to chemical pesticides verge on the absurd is the fact that 99.99 percent of consumers' exposure to these chemicals comes not from agricultural applications but from substances that are naturally found in food itself.

The EPA and the "environmentalists" to whom it continually panders regularly muddle the public with specious warnings about impending risk. One such alarm concerns the presence of trace amounts of certain chemicals that are present in our bodies. Activists regularly perform "studies" that search for trace amounts of a variety of chemicals in blood or tissues — and find them. But given the sophistication and sensitivity of our modern analytical techniques, we can find infinitesimal amounts of almost anything we look for. The mere presence of a synthetic chemical — even one known to be toxic at high levels — does not make it a health concern. As the 16th century scientist Paracelsus put it, the dose makes the poison. Consider radioactive isotopes, for example: Our bodies (and our food) contain varying amounts of radioactive isotopes of common elements, including hydrogen, carbon, and potassium. This is normal, a chemical fact of life. And consider the potent toxin of the potentially lethal food-poisoning bacterium that causes botulism: in tiny amounts, the toxin is a useful pharmaceutical and cosmetic. Its brand name is Botox.

Superfund | The EPA's repeated failures should not come as a surprise, because the agency long has been a haven for scientifically insupportable policies perpetrated by anti-technology ideologues in both career and appointed positions. Administrator Jackson herself is a veteran of 16 years at the agency, during which she developed some of its most unscientific, wasteful, and dangerous regulations. She worked on Superfund (officially the Comprehensive Environmental Response, Compensation, and Liability Act), an ongoing EPA program intended to clean up and reduce the risk of toxic waste sites. It was originally conceived as a short-term project — $1.6 billion over five years to clean up some 400 sites (by law, at least one per state and, not coincidentally, about one per congressional district). But it has grown into one of the nation's largest public works projects: more than $30 billion spent on about 1,300 sites.

How could cleaning up toxic waste sites not be a good thing? Well, various studies have attempted to evaluate the effects of Superfund's massive and costly cleanups, but the results are equivocal. Putting that another way, after the expenditure of tens of billions of dollars, no beneficial results have been demonstrated. On the other hand, Superfund projects have caused a great deal of harm. University of California economics professor J. Paul Leigh has analyzed the occupational hazards of environmental cleanup projects and concluded that the risk of fatality to the average cleanup worker — a dump-truck driver involved in a collision or a laborer run over by a bulldozer, for example — is considerably greater than the cancer risks to individual residents that might result from exposures to unremediated sites. (And consider that cancer risks are theoretical estimates over many years or decades, while worksite fatalities occur during the much shorter time of the cleanup.)

Even former EPA administrator William Reilly admitted that Superfund's risk-assessment paradigms are flawed. In a speech at Stanford University while a visiting lecturer, he discussed the excessive costs of basing cleanups on exaggerated worst-case scenarios:

> The risks [Superfund] addresses are worst-case, hypothetical present and future risks to the maximum exposed individual, i.e., one who each day consumes two liters of water contaminated by hazardous waste. The program at one time aimed to achieve a risk range in its cleanups adequate to protect the child who regularly ate liters of dirt....

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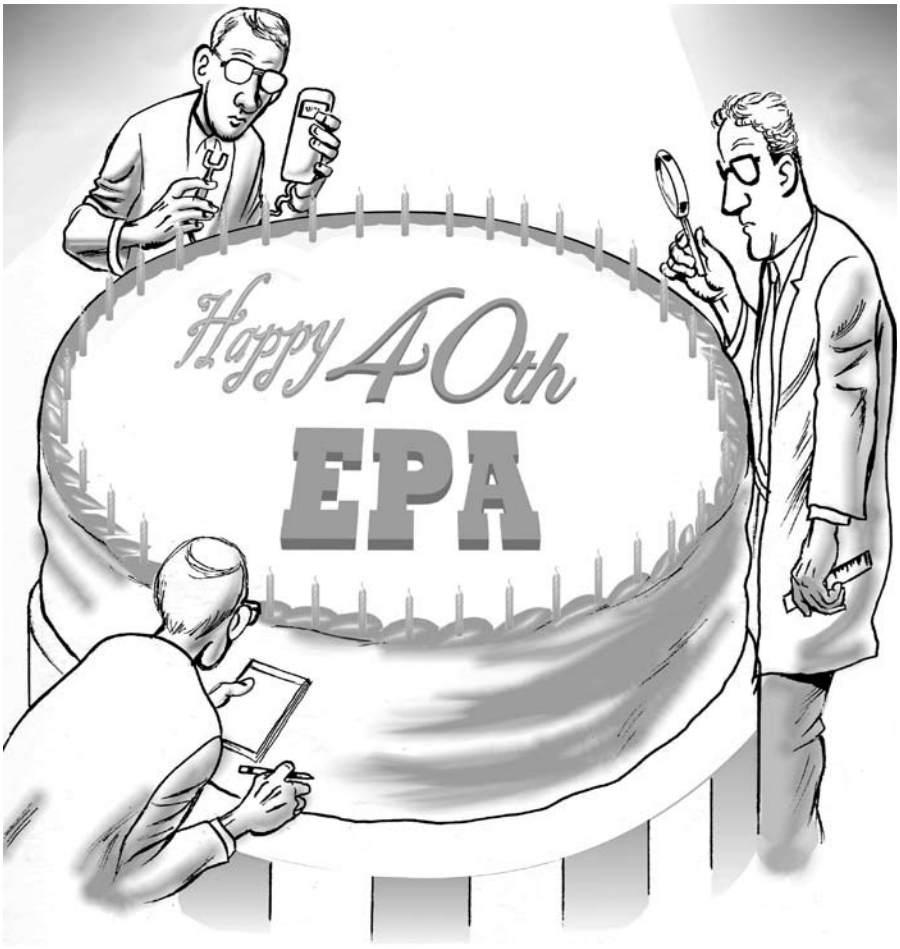

And it formerly assumed that all sites, once cleaned up, would be used for residential development, even though many lie within industrial zones. Some of these assumptions have driven clean-up costs to stratospheric levels and, together with liabilities associated with Superfund sites, have resulted in inner-city sites suitable for redevelopment remaining derelict and unproductive.

Costs and benefits | The EPA has a long and unsavory history of failing to weigh costs and benefits or to make decisions based on science. In his book *Breaking the Vicious Circle*, Supreme Court Justice Steven Breyer cites the low cost-effectiveness of the EPA's ban on asbestos pipe, shingles, coating, and paper, which the most optimistic estimates suggested would prevent seven or eight premature deaths over 13 years — at a cost of approximately a quarter of a billion dollars. Breyer observes that such EPA actions are damaging in two ways: by diverting valuable resources from other, more effective public health measures and by removing asbestos from existing structures in ways that make fibers airborne so that they would pose even greater risk to human health.

Office of Management and Budget analyses of major regulations often show wide disparities between benefits and costs, and the EPA invariably fares badly in comparisons to other federal agencies. In one OMB analysis of the 30 least cost-effective regulations throughout the government, the EPA was found to have imposed no fewer than 17 of them. For example, the agency's restrictions on the disposal of land that contains certain wastes prevent 0.59 cancer cases per year — about three cases every five years — and avoid $20 million in property damage, at an annual cost of $194 to $219 million.

In her *Wall Street Journal* article, Jackson defends her agency against charges that it is a job-killer or otherwise harmful to the economy. She is dead wrong. In fact, unscientific and obstructionist policies toward once-promising research areas such as the use of genetically engineered bacteria to clean up toxic wastes (including oil spills) and kill insect pests have caused academics and corporations to abandon entire sectors that could have created jobs and wealth.

The EPA's policies and individual product decisions concerning genetic engineering offer textbook examples of how not to regulate. Between 2001 and 2004 the Swiss agribusiness company Syngenta inadvertently mislabeled and sold small amounts of an unapproved variety of seed corn called *Bt*10 to American farmers as *Bt*11, an approved variety. Except when extremely sophisticated genetic tests are employed, *Bt*10 is indistinguishable from *Bt*11, a widely planted, insect-resistant variety; the two differ only by the presence of an antibiotic-resistance gene and by a handful of nucleotides (the building blocks of DNA) in an inert region of the newly introduced gene that confers resistance to an insect called the corn borer. These differences are far less than those found between various commercial varieties of corn. Moreover, *Bt*10 is far less likely than thousands of other products on the market to cause allergic reactions or other health problems. Although this situation is no more a public health threat than the presence of tiny amounts of non-iodized salt in boxes of the iodized variety, the EPA fined Syngenta $1.5 million. Obviously, the regulators do not grasp the concept, "No harm, no foul."

These kinds of kerfuffles are the inevitable result of EPA regulations that treat gene-spliced products as though they pose some inherent, systematic, unique risks, when it is clear that they do not. A 20-year scientific consensus holds that gene-splicing is an extension, or refinement, of less precise and less predictable techniques for genetically improved products with which consumers and government regulators have long familiarity and comfort. Gene-spliced products are actually safer than those made with less precise techniques. But the EPA's policies discriminate against them, holding them to a far higher standard than other, similar products. For gene-spliced crop and garden plants such as corn, wheat, and tomatoes that have been genetically improved for enhanced pest- or disease-resistance, regulators require hugely

ILLUSTRATION BY KEVIN TUMA

expensive testing that actually exceeds what is required for toxic chemical pesticides. This policy fails to recognize that there are important differences between spraying synthetic toxic chemicals and genetic approaches to enhancing plants' natural pest and disease resistance.

The EPA's policy is so damaging and so far outside scientific norms that it galvanized the scientific community. More than a decade ago, a consortium of dozens of scientific societies representing more than 180,000 biologists and food professionals published a report warning that unscientific regulatory policy would discourage the development of new pest-resistant crops and prolong and increase the use of synthetic chemical pesticides, increase the regulatory burden for developers of pest-resistant crops, limit the use of biotechnology to larger developers who can pay the inflated regulatory costs, and handicap American companies competing in international markets. Sure enough, all of those misfortunes have come to pass.

Payola | The EPA has long been more concerned with public relations than public health. A scheme was exposed several years ago that would have diverted EPA "research" funds to pay outside public relations consultants up to $5 million over five years to improve the website of the Office of Research and Development, conduct focus groups on how to polish the office's image, and produce ghostwritten articles praising the agency "for publication in scholarly journals and magazines."

This payola scheme is similar to the agency's longstanding practice of buying influence by doling out hundreds of millions of dollars each year to certain favored nonprofit organizations — money that, according to the inspector general and the Government Accountability Office, is dispersed with no public notice, competition, or accountability. The investigators documented systematic malfeasance by regulators, including:

- making grants to grantees who were unable to carry out the terms of the grants;
- favoring an exclusive clique of grantees without opening the grants to competition;
- funding "environmental" grants for activities that lack any apparent environmental benefit; and
- failing to ensure that grantees performed the objectives identified in the grants.

Notwithstanding Jackson's claims to the contrary, many critics — including this writer — believe that the 40-year experiment with a free-standing EPA has been a failure and that the agency should be abolished and its essential functions reassigned to other, less scientifically challenged government organizations. But that is unlikely to happen because, over the years, the EPA has, in effect, bought the loyalty of a cadre of scientists and advocacy organizations that will defend the agency's precautionary approach and expansionist tendencies. For the foreseeable future, then, American companies and consumers — and our natural environment — will bear the scars of bureaucratic ambition, incompetence, and chicanery. R

Regulation

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