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# Time for the Federal Environmental Aristocracy to Give Up Power

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# **Time for the Federal Environmental Aristocracy to Give Up Power**

by David Schoenbrod

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## Introduction

Beginning in 1970, the federal government seized the environmental issue from the states, set an obligatory regulatory agenda down to the farm and septic tank level, and harnessed the states to do the federal bidding. In the process, governors, mayors, state legislators, and town council members lost the power to resolve even the most local of environmental issues. These state and local officials must follow instructions that come down from on high in Washington instead of responding to the wishes of the voters who elected them, the people most directly concerned.

Local pollution sources are, by and large, the ones having the greatest effect on our home environments. Responding to these local pollution problems accounts for most of the money we spend on pollution control — either directly by paying higher taxes and higher prices or indirectly by receiving smaller incomes as regulation dampens economic growth. With our home environments and our home economies at stake, it is terribly important that these local environmental problems be solved adequately and sensibly.

The federal instructions evolve through the complex interplay between members of Congress, their staffs, the president, the vice president, the staffs of the White House and the surrounding presidential and vice presidential complexes, the political appointees at the top of the Environmental Protection Agency (EPA), the agency's 18,000 permanent employees, and the other centers of power in Washington. Those most concerned with federal environmental regulations include businesses that must control emissions or whose products may have environmental impacts, businesses that sell pollution control services, "public interest groups," and even the bypassed state and local officials. It would be naive to suppose that any of this cast of characters is immune to the temptation of putting self-interest above principle. If we are to have any faith in the federal instructions, it is not because only the virtuous have a hand in their writing.

No elected official is directly responsible to local voters for federal regulations. Congress and the president enact idealistic but detailed statutes that deflect the hard choices. Regulations are handed down later on the EPA's letterhead. Only after the EPA applies them in local cases does anyone know what pollution control strategies must be implemented, what forms must be filled out,

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and what permissions must be secured. By that time, members of Congress and the president are so far up the chain of command that they escape political responsibility. Thus, an unaccountable elite — a federal environmental aristocracy — holds the reins of power in resolving local environmental issues. The upshot is that voters have no meaningful control over how the federal government dictates the solution to the environmental problems in their own back yards. Perhaps that is why the public, in opinion polls, supports shifting power over environmental protection from Washington to the states and cities.<sup>2</sup>

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Even if, by some miracle, all members of that aristocracy were driven by only the most altruistic of motives, they would fail to provide sensible solutions to local environmental issues. The federal instructions are meant to apply all across the country. Yet, the country is amazingly diverse. There are huge differences between the large numbers of local environments, industries, facilities within any one industry, and sources emitting pollution at any one large facility. The EPA's instructions must apply not just to air pollution but also to a dizzying array of other environmental issues. The numbers of complex matters that the EPA regulates surpasses that taken on by any other governmental organization since the Office of Price Administration controlled the prices of all goods during World War II. But, EPA control has become far more permanent and deals with matters that are far more complicated. According to Professor Richard Stewart of New York University School of Law, "the system has grown to the point where it amounts to nothing less than a massive effort at Soviet-style planning of the economy to achieve environmental goals."<sup>3</sup> No organization could hope to deal sensibly with such complexity. As a result, the federal takeover of environmental law imposes vast waste and needless regulatory complication, yet sometimes fails to clean up local environmental problems expeditiously.

This study argues that the popular desire for a clean environment can be realized with far more common sense by returning control of local environmental issues to state and local government.

The EPA would still have a job to do, but it would be limited to federal business.

## Why Washington Has Control

The late sixties and early seventies were a time of panic, not just about the environment, but also Vietnam, urban riots, and the ability of government at any level to respond to human needs. The desperate times produced martial measures. The response to Vietnam was war, the response to poverty was called a "war," and the response to pollution was sufficiently warlike that national politicians could boast that they had assured victory as soon as Congress enacted statutes.

A federal chain of command was established in which Congress gives instructions to the EPA about how it should give instructions to the states about how they should deal with all environmental problems. The statutes and regulations purport to take account of every conceivable contingency. They also order the states to submit back up the chain of command plans and reports, in minute detail, on what they will do and have done to carry out the national battle plan. Not for nothing is this called "command and control" regulation.

After Congress enacted a host of federal statutes in the 1970s, environmental quality improved and the panic ebbed. From this, many people concluded that the federal government must continue to control environment issues. But, why should this be so? Three reasons are usually given: (1) only the federal government can deal with interstate pollution; (2) the states can't deal with pollution because they are competing to attract employers; and (3) the states' record before 1970 showed that they are ineffective at controlling pollution. None of these reasons survives careful scrutiny.

### Interstate Pollution

One rationale for nationalizing pollution control is that pollution crosses state boundaries. It is true that states *may* fail to set reasonable standards for interstate pollution because state officials feel no political pressure to take account of the harm that their own constituents do to people living in other states. But, a pollution source that hurts those in other states usually causes even more hurt locally. So, states have adequate incentive to regulate most pollution sources. Concerns about interstate pollution justify a federal role only in regulating the exceptions.

Moreover, the federal government itself has systematically