



Quick Study

A Policy Report Summary by the Institute for Policy Innovation

Big Government and Bad Science: Ten Case Studies in Regulatory Abuse

A Summary of an IPI / Lexington Institute Policy Report, November 1999

Introduction

by Senator James M. Inhofe

Ronald Reagan once said, “Government exists to protect us from each other. We can’t afford the government it would take to protect us from ourselves.” Everyday it seems the federal bureaucracy is proposing new regulations or regulatory programs designed to protect us from ourselves. The good work of the Institute for Policy Innovation and the Lexington Institute, and other like-minded organizations, goes a long way towards educating members of Congress and the general public about excessive and sometimes “stupid” regulations. Publications such as this, highlighting the ten worst regulations, are vital if we are ever going to have an impact on the intrusion of the federal government into our daily lives.



SUVs: Another Case of Missing EPA Data

EPA intends to force manufacturers of sport utility vehicles (SUVs) to reduce tailpipe emission standards so as to increase the cost of SUVs

by about \$200. Gasoline manufacturers will also be forced to cut sulfur content: a measure that will raise prices as much as five cents per gallon. EPA alleges the new measures will prevent 2,400 deaths every year. This claim is based on a single scientific study (the “Pope” study), conducted by private researchers courtesy of a grant from the agency itself.

In 1996, EPA used the Pope study to justify more stringent air quality standards that cost taxpayers as much as \$100 billion annually and tens of thousands of jobs. EPA claimed the rules would save 15,000 lives per year — a claim also based solely on the Pope study.

When EPA refused to release the data underlying the report, Congress responded with the Shelby amendment, designed to prevent federal agencies from regulating on the strength of “secret science.” Following the recent SUV proposal, Citizens for the Integrity of Science cited the new “data access” law in an attempt to obtain the Pope study data. Undaunted, EPA still refuses to make the study available.

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The Incredible Shrinking Supercomputer

By keeping the computers available for export below certain technical standards, the U.S. government seeks to prevent the proliferation of nuclear warheads and ballistic missiles. But Moore’s law, a rule of thumb that says the performance of chips doubles every eighteen months, conspires against the most well-intentioned regulator. Consider the following from the *Wall Street Journal*: “The entire U.S. nuclear arsenal was designed on computers running at or below the speed of one of today’s new 450 megahertz PCs.” Before the end of 1999, federal guidelines were on a collision course with the latest product of Moore’s law: the Intel Pentium III Xeon chip. Business-grade e-mail servers linking two of these chips rank as “supercomputers” requiring licensing and prior notification requirements in high-growth computer markets such as China, Russia, India, Pakistan, and Israel. Absent a last-minute correction, exporters and U.S. officials alike would have been burdened with unprecedented volumes of sales notifications and license applications, resulting in a high number of lost sales to foreign manufacturers. For

both commercial and security reasons, a greater willingness to keep these regulations up to date is needed.

Philip Peters is Vice President at the Lexington Institute and served in the State Department during the Reagan and Bush administrations.

Safe Drinking Water: Politics Trumps Science

In March 1998, after painstaking review of twenty years of toxicological data, EPA proposed raising the Maximum Contaminant Level Goal (MCLG) for chloroform in drinking water from zero to 300 parts per billion (ppb). The recommendation was hailed by scientists outside the agency, even drawing praise from the Society of Toxicology. Led by the Natural Resources Defense Council (NRDC), however, green groups convinced EPA Administrator Carol Browner to reject what they termed an “unproven and probably incorrect hypothesis.”

In proposing a 300 ppb MCLG for chloroform, agency scientists were acknowledging that current levels of chloroform in drinking water are safe. Moreover, by rejecting the recommendations of its own scientists, EPA has turned its back on the 1996 Safe Drinking Water Act, which directs the agency to use “the best peer-reviewed science.” EPA’s insistence on a zero standard for chloroform (unobtainable in any event) means that water system operators will have to devote limited resources to combating fictitious risks posed by disinfectant byproducts *and* real threats to public health arising from microbial pathogens in drinking water.

Dr. Bonner R. Cohen is a Senior Fellow at the Lexington Institute.

Hypoxia: The Dead Zone Lives

By Congressional order, the executive branch must devise a plan for mitigating hypoxia in the Gulf of Mexico by May 30, 2000. (Hypoxia is the technical name for a low-oxygen zone in which fish cannot live.) As the theory goes, fertilizer runoff from Midwestern farms has caused a huge and expanding “dead zone” in the Gulf. Two proposed solutions are already on record: 1) Cut back the use of fertilizer on Midwest farms by 20 percent; 2) Convert 24 million acres of farmland into new wetlands and forests.

The truth is that the “dead zone” is neither expanding nor human-driven, but is a natural phenomenon connected to rainfall patterns in the Mississippi Valley. In the drought year of 1988, the hypoxic zone essentially disappeared; while after the huge Midwest floods of 1993, the zone doubled, only to return to normal size in 1998. Even the White House Task Force says it can find no economic or ecological damage from the current nutrient flows. Undaunted, the hypoxia team wants to impose its agenda anyway.

Dennis Avery is Director of Global Food Issues at the Hudson Institute.

Biotechnology: EPA vs. Plants

In November 1994, EPA announced it would begin requiring case-by-case regulatory review as “pesticides” of crop and garden plants genetically modified for enhanced pest- and disease-resistance. Of course, genetically altered plants are nothing new. EPA’s assault has thus stimulated unprecedented action by the scientific community. In 1996, eleven major scientific societies representing more than 80,000 members published a report excoriating EPA’s proposal. The critique

observed that, contrary to EPA policy, the safety of a new substance synthesized by a plant depends on the biological actions of the substance, the amount present, and whether the substance is in the portion of the plant that will be eaten — not on the mere fact that it’s intended to protect against a plant pest. In October 1998, the prestigious Council on Agricultural Science and Technology concurred, characterizing EPA’s approach as “scientifically indefensible.”

The 1996 report warned that if EPA policy was implemented, it would discourage the development of new pest-resistant crops, prolong and increase the use of synthetic chemical pesticides, increase the regulatory burden for developers of pest-resistant crops, expand federal and state bureaucracies, limit the use of biotechnology to larger developers capable of paying inflated regulatory costs, and handicap the United States in competition for international markets.

Dr. Henry I. Miller is a Senior Research Fellow at the Hoover Institution and author of *Policy Controversy in Biotechnology: An Insider’s View* (R. G. Landes Co., 1997).

The Endangered Species Act: Shoot, Shovel, and Shut Up

Twenty-five years after President Nixon signed the Endangered Species Act (ESA) of 1973, the Act is mired in controversy and seven years overdue for reauthorization. The goal of the Act is to list imperiled species, assist them in recovering, and then “delist” them (i.e., remove them from the Endangered Species List). Of some 1,400 species, a mere 27 have officially been delisted. Analysis by the Competitive Enterprise Institute reveals that the Act has not actually recovered a single species.

By threatening landowners who make room for nature with the uncompensated loss of their land or crops, the ESA creates the “shoot, shovel and shut-up syndrome,” whereby wildlife is viewed as a liability. The only way to make the ESA work is to replace the existing compulsory, regulatory Act with a voluntary, non-regulatory, incentive-based system, by which the government would have no power to take or regulate private property. The government should work out mutually compatible, voluntary, contractual arrangements with landowners, like those used by the Department of Agriculture in its highly successful Conservation Reserve Program. There is a model for such a law, HR 2364, the “Endangered Species Recovery and Conservation Incentive Act of 1995,” which was introduced with little fanfare in the 104th Congress and received little attention because it was considered too novel.

R.J. Smith is Senior Environmental Scholar at the Competitive Enterprise Institute.

PCBs: EPA Occupies the Hudson Valley

In 1975, Dr. Renate Kimbrough reported that laboratory rats fed huge doses of PCBs developed liver cancer; a year later, Congress banned PCB manufacture and use. A new study by Kimbrough and Martha Doemland now finds no association between actual exposure to PCBs and death from cancer or any other diseases. Though the peer-reviewed report has received positive support from the medical community, EPA Administrator Carol Browner still asserts PCBs pose “a serious threat to public health.” Consequently, EPA is proposing to make parts of the Upper Hudson River Valley into a giant Superfund site and wants

General Electric to dredge the river until all traces of PCBs are gone. The cost of the PCB cleanup is estimated between \$50 million and \$100 million. Recent tests by New York State biologists already show that, if left alone, the PCBs will dissipate. Cleanup at a typical litigation-ridden Superfund site takes 12 to 15 years. But since EPA’s “remedy” for the Hudson River — dredging — will only stir up the PCBs, the “cleanup” could go on indefinitely.

Dr. Bonner R. Cohen is a Senior Fellow at the Lexington Institute.

Factory Farming: Destroying Parkland to Save Rivers

A March 1998 EPA report concluded that U.S. agriculture contributes up to 60 percent of pollution in surveyed rivers and streams. Truth be known, only 17 percent of the nation’s river miles have been surveyed, and of that 17 percent, just 37 percent — 6.3 percent of the nation’s total river miles — are known to be impaired. Agriculture is estimated to be responsible for 60 percent of that impairment, with animal feeding operations adversely impacting 16 percent of those waters. “In the end,” notes former policy planning official Richard Halpern, “that’s less than 1 percent total.”

Even Halpern’s conclusion is doubtful. The Black River watershed in North Carolina, for instance, drains the most intensive hog farming in America — and is still rated “outstanding” in water quality. State data show the river’s nutrient content has not increased even though its hog population has gone from 2 million to 9 million hogs in the past 15 years! Under a proposal put forward by EPA in August, the Clean Water Act will be extended to

cover some 18,000 large-scale hog and dairy operations. Washington will now be competing with state governors to get credit for shutting down the most efficient and environmentally-constructive livestock and poultry farms in history.

Dennis Avery is Director of Global Food Issues at the Hudson Institute.

How Common Chemicals Became “Toxic Pollutants”

Many people are unaware that “toxic pollutant” is actually a regulatory term introduced by the 1972 Clean Water Act (CWA). The Federal Water Pollution Control Act of 1972 (PL 92-500), also known as the Clean Water Act, sought to “eliminate the discharge of pollutants into navigable waters by 1985.” Section 502(6) defined a “pollutant” so broadly as to include almost anything (even sand and rocks) that EPA might decide to regulate. Section 101(a) also gave legal impetus to the term “toxic pollutant” by stating in part that “...it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.” Pursuant to this policy, EPA was required to publish a list of chemicals which were to be designated as “toxic pollutants.” As EPA Administrator William Ruckelshaus later pointed out, the 1972 law was based on mistaken legislative assumptions: that EPA knew which chemicals — and what amounts of these chemicals — are “toxic”; how to measure these substances at trace levels; and how to regulate these chemicals to acceptable levels at reasonable costs. Since it was, and still is, impractical to analyze water samples for the nebulous classes of compounds the CWA is supposed to regulate, EPA’s various lists of “toxic” or “hazard-

ous” chemicals tell us nothing about risks these substances pose in the real world.

Dr. Hugh Wise is an environmental scientist with EPA’s Office of Water. The views expressed in this article are his own and not those of EPA.



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EPA: Science without Biology

EPA has yet to develop a reliable means for predicting how long industrial pollutants will persist in the environment, and what chemicals they will be transformed into by the organisms that inhabit the earth’s soil and water. Of course, the agency has also never been administered by a scientist, while much of its microbiological research is conducted by engineers with no formal training in the subject.

In fact, microbes in soil and water quickly detoxify some industrial wastes once they enter the environment. In other cases, microbes change innocuous wastes into potentially hazardous agents. In spite of EPA’s increasing use of complex mathematical models that incorporate chemical and physical data for

predicting how environmental pollutants will behave once they enter the environment, all of these models assume such microorganisms simply do not exist. For instance, EPA has never accounted for the fact that many of the major pollutants it regulates are chiral, with each individual form of the chemical having completely different effects on living organisms.

EPA must begin to incorporate biology into its Hazardous Waste Disposal Rule, its Remediation Feasibility Implementation Study, its Pre-Manufacturing Notification, and the host of other regulations it oversees.

Dr. David Lewis is a scientist with EPA. The views expressed in this article are his own and not those of the EPA.

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This study is a summary of an IPI / Lexington Institute Policy Report: *Big Government and Bad Science: Ten Case Studies in Regulatory Abuse*.

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