

# Finding Better Ways to Achieve Cleaner Air

By Joel Schwartz

Air quality regulation is complicated. The Clean Air Act (CAA) is hundreds of pages long, and the Environmental Protection Agency (EPA) has written thousands of pages of compulsively detailed regulations to implement the CAA requirements, along with tens of thousands of pages of guidance documents explaining what the regulations mean.

Under the law, states must develop compliance plans, laws, regulations, and permitting systems to implement the federal requirements. Businesses must obtain permits that often specify operating conditions and pollution control methods unit by unit and process by process, and that must be amended any time a production process is changed. These permits can run to more than a thousand pages for a large industrial facility.

Legions of lawyers and consultants help businesses figure out what the rules mean and how to comply with them.

The vast majority of this activity has nothing to do with improving air quality, but instead involves creating and then demonstrating compliance with administrative requirements.

There is no greater testament to the process-focused nature of federal air pollution law than the Clean Air Act's penalty system. States can suffer serious sanctions, such as loss of federal highway funds, for failing to submit an acceptable CAA compliance plan. But no such sanctions can be imposed for failing to attain the actual air pollution standards.

## Mandates Prove Counterproductive

Key Clean Air Act requirements can even work in opposition to air quality goals.

New Source Review (NSR) is a good example. This CAA provision requires businesses to install state-of-the-art pollution controls when they build a new industrial facility or upgrade an existing one. Routine repair and maintenance are exempt from NSR, which grandfathers in preexisting facilities.

**"Air quality regulation is complicated. The Clean Air Act (CAA) is hundreds of pages long, and the Environmental Protection Agency (EPA) has written thousands of pages of compulsively detailed regulations to implement the CAA requirements, along with tens of thousands of pages of guidance documents explaining what the regulations mean."**

The idea behind the provision, which was added to the Clean Air Act in 1977, was that emissions would decrease over time as existing facilities reached the end of their natural useful lives and were replaced by plants required to install modern pollution controls. But it didn't work out that way.

By increasing the costs of new and upgraded plants relative to existing ones, NSR encouraged businesses to keep old plants running as long as possible. Instead of reducing pollution, NSR has actually slowed the pace of air quality improvement.

Interstate air pollution provides another example. One pretext for the federal takeover of air quality regulation was that the federal government was better positioned to address transport of air pollution across state lines. But once the CAA was adopted, EPA created regulatory incentives that actually exacerbated interstate transport of air pollution by encouraging businesses to build taller smokestacks that simply sent pollution elsewhere.

Whatever success we've had in reducing air pollution, the stupefying complexity, micromanagement, and perverse incentives that suffuse the federal Clean Air Act regulatory system have imposed large and unnecessary costs on the American public. The costs are only increasing as we spend more for each successive increment of pollution reduction in exchange for ever tinier

health benefits in return.

## Federal Control Unnecessary

It didn't have to be this way. Congress could simply have told states what air pollution standards they would have to meet by what deadline, how success would be measured, and the penalties for failure. Given sufficient penalties, states would have an incentive to find effective means of meeting their obligations. Such a results-focused Clean Air Act could be written on a few pages and would require few or no federal regulations or regulators.

Air pollution regulation could even have been left to the states altogether, without imposing federal control. When Congress nationalized air pollution policy in 1970, one pretext was the claim that states were engaged in a "race to the bottom" to attract industry and jobs at the expense of air quality. In this view, federal intervention was necessary to prevent states from acting against their citizens' interests.

But the race-to-the-bottom claim was bogus. Air quality had been improving for decades before passage of the Clean Air Act, thanks to a combination of common law nuisance suits, local and state regulation, and market pressures toward greater energy efficiency and technological advancement.

For example, airborne particulate levels in Pittsburgh dropped 75 percent between the early 1900s and the late 1960s. Americans were addressing air pollution in their communities without the help of federal regulators.

## Entrenched Beneficiaries

Despite the damage being done by the current regulatory system, there is little impetus for reform.

First, most of the costs are hidden from the public in the form of higher prices, lower wages, and lower returns on investment. Air pollution standards add more than \$1,000 to the price of a new car, for example, but no one ever sees this cost broken out explicitly. Since people don't see the costs of environmental regulation, they have no way to assess whether regulators have struck a good bargain on their behalf.

Second, politically powerful groups benefit from the status quo and resist change.

Environmentalists, for example, gain power, prestige, and public relations opportunities in a centralized, complex, and coercive regulatory system with many administrative decision points.

Regulators likewise benefit from the status quo. The more complex and detailed the regulatory requirements, the more regulators are needed to administer it and the more power they wield. Air quality regulators have created huge administrative burdens that support thousands of jobs for bureaucrats at federal and state regulatory agencies.

Even regulated businesses can benefit from a process-focused system. For example, New Source Review protects existing companies from competition by

making it very expensive for prospective competitors to build a new plant. The requirement to add ethanol to gasoline funnels money directly from motorists to the ethanol industry and corn agribusinesses.

Interest groups also use air quality regulation as a means to pursue other agendas. For example, technology to make cars emit less pollution has proven to be the least expensive and most effective means of reducing transportation-related air pollution. Nevertheless, environmentalists cite air quality as a pretext for efforts to restrict driving, pursuing their anti-suburb and anti-automobile agendas under the guise of air quality improvement.

## Public Misinformed

Third, after decades of federal control of environmental policy, most people mistakenly believe the current regulatory system is necessary to ensure clean air. Regulators and environmentalists solidify this misperception by exaggerating air pollution levels and health risks. (See my articles in the April and June 2006 issues of *Environment & Climate News* for more on this.)

The public's interest is in clean-enough air delivered at the lowest possible cost. Yet the political economy of air pollution control is such that even this eminently sensible objective remains far out of reach.

Joel Schwartz ([joel@joelschwartz.com](mailto:joel@joelschwartz.com)) is a visiting fellow at the American Enterprise Institute.



Tell Me  
What  
You  
Think!

Write to me at:  
Environment  
& Climate News  
James M. Taylor  
Managing Editor

The Heartland Institute  
19 South LaSalle Street #903  
Chicago, Illinois 60603

Or drop me an email:  
[taylor@heartland.org](mailto:taylor@heartland.org)