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Replacing the Environmental Protection Agency

A plan to replace the United States Environmental Protection Agency with a Committee of the Whole of the 50 state environmental protection agencies, utilizing a phased five-year transition period.

By Jay Lehr, Ph.D.[1]

In 1968, when I was serving as the head of a groundwater professional society, it became obvious to me and a handful of others that the United States did not have any serious focus on potential problems with the quality of its air, drinking water, and surface water, and that the nation suffered from waste disposal problems and contamination from mining and agriculture. I held the nation's first Ph.D. in groundwater hydrology, which gave me insight to understand the problems. I was asked by the director of the Bureau of Water Hygiene in the U.S. Department of Health to serve on a panel to study the potential to expand the bureau's oversight into a full environmental protection organization.

Collectively, we spoke before dozens of congressional committees in both the House of Representatives and the U.S. Senate, drawing attention to mounting environmental pollution problems. We called for the establishment of a national Environmental Protection Agency (EPA), and in 1971 we succeeded.

I was appointed to a variety of the new agency's advisory councils, and over the next 10 years I helped write a significant number of legislative bills that were to make up a true safety net for our environment.

I was appointed to a variety of the new agency's advisory councils and over the next 10 years I helped write a significant number of legislative bills that were to make up a true safety net for our environment. They included the Water Pollution Control Act (later renamed the Clean Water Act), Safe Drinking Water Act, Resource Conservation and Recovery Act, Surface Mining and Reclamation Act (which, surprisingly, covered deep mines as well), Clean Air Act, Federal Insecticide, Rodenticide, and Fungicide Act, and Comprehensive Environmental Response Compensation and Liability Act (which we now know as Superfund).

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These acts worked well in protecting the environment and the health of our citizens, with the exception of Superfund, which proved to be too overreaching and wreaked havoc with U.S. business as companies operating within the law were fined countless dollars and required to pay huge sums after the fact for clean-up of waste disposal that had been within the law at the time of the activity.

Liberal Activists Take Over EPA

Beginning around 1981, liberal activist groups recognized EPA could be used to advance their political agenda by regulating virtually all human activities regardless of their impact on the environment. Politicians recognized they could win votes by posing as protectors of the public health and wildlife. Industries saw a way to use regulations to handicap competitors or help themselves to public subsidies. Since that time, not a single environmental law or regulation has been passed that benefitted either the environment or society.

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The takeover of EPA and all of its activities by liberal activists was slow and methodical over the past 30 years. Today, EPA is all but a wholly owned subsidiary of liberal activist groups. Its rules account for about half of the nearly $2 trillion a year cost of complying with all national regulations in the U.S.[2] President Barack Obama is using it to circumvent Congress to impose regulations on the energy sector that will cause prices to "skyrocket." It is a rogue agency, the topic of books with titles like *Regulators Gone Wild*[3] and *Out of Bounds, Out of Control.*[4]

For more than 20 years, I have worked to expose this story to the public, beginning with my 1991 book *Rational Readings on Environmental Concerns,*[5] on which 50 environmental scientists collaborated to describe the manner in which their own fields had been hijacked and distorted to allow fear-mongering of an unconscionable nature. Other authors have discovered and have been working to expose this as well. Besides the three already cited, see ...

Ron Arnold, *Freezing in the Dark: Money, Power, Politics and the Vast Left Wing Conspiracy*, 2007.

Wilfred Beckerman, *Through Green-Colored Glasses: Environmentalism Reconsidered*, 1996.

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[2] Wayne W. Crews, *Ten Thousand Commandments*. Washington, DC: Competitive Enterprise Institute, 2014.

[3] Rich Trzupek, *Regulators Gone Wild: How the EPA Is Ruining American Industry.* New York, NY: Encounter Books, 2011.

[4] James V. DeLong, *Out of Bounds, Out of Control: Regulatory Enforcement at the EPA*. Washington, DC: Cato Institute, 2002.

[5] Jay H. Lehr, ed., *Rational Readings on Environmental Concerns.* Hoboken, NJ: John Wiley and Sons, 1992.

Larry Bell, *Climate of Corruption: Politics and Power Behind the Global Warming Hoax*, 2011.

James T. Bennett and Thomas J. DiLorenzo, *Cancer Scam: Diversion of Federal Cancer Funds to Politics*, 1998.

Alex B. Berezow and Hank Campbell, *Science Left Behind: Feel-Good Fallacies and the Rise of the Anti-Scientific Left*, 2012.

Rupert Darwall, *The Age of Global Warming: A History*, 2013.

Jeff Gillman and Eric Heberlig, *How the Government Got In Your Backyard*, 2011.

Indur M. Goklany, *The Precautionary Principle: A Critical Appraisal of Environmental Risk Assessment*, 2001.

Geoffrey C. Kabat, *Hyping Health Risks: Environmental Hazards in Daily Life and the Science of Epidemiology*, 2008.

Wallace Kaufman, *No Turning Back: Dismantling the Fantasies of Environmental Thinking*, 1994.

Aynsley Kellow, *Science and Public Policy: The Virtuous Corruption of Virtual Environmental Science*, 2007.

The names, dates, and important episodes of the left's take-over of the environmental movement, and then of EPA, are reported similarly in many of these books.

S. Robert Lichter and Stanley Rothman, *Environmental Cancer – A Political Disease?* 1999.

Christopher Manes, *Green Rage: Radical Environmentalism and the Unmaking of Civilization*, 1990.

A.W. Montford, *The Hockey Stick Illusion: Climategate and the Corruption of Science*, 2010.

Daniel T. Oliver, *Animal Rights: The Inhumane Crusade*, 1999.

James M. Sheehan, *Global Greens: Inside the International Environmental Establishment*, 1998.

Julian Simon, *Hoodwinking the Nation*, 1999.

It is possible, one supposes, that some of these authors (and I could list many more books like these) are mistaken, that the environmental movement hasn't abandoned science and isn't now just a tool of the far left for imposing its anti-human, anti-energy, and anti-capitalism agenda on America. But all of them? I don't think so. You can go back and check the historical record yourself: the names, dates, and important episodes of the left's take-over of the environmental movement, and then of EPA, are reported similarly in many of these books.

Replace, Don't Try to Fix, EPA

It is tempting to imagine EPA can be "fixed," that its abuse of power and pursuit of political agendas without regard to their effect on the environment could be stopped if only the right people were appointed to run it, or perhaps if Congress passed laws requiring better science or more cost-benefit analysis. This is wrong. As Fred L. Smith, Jr., wrote back in 1992,

> [T]he serious failures of environmental regulation ... do not occur randomly or, for that matter, as a result of bad management (although this may occasionally be the case). Rather, they stem from deep-rooted institutional and political incentives that systematically bias the EPA's decisions. Better science and risk assessment procedures, public participation, and civic education, in and of themselves, do little to counteract these biases, and may exacerbate them.[6]

I have come to believe the national EPA must be systematically dismantled and replaced by a Committee of the Whole of the 50 state environmental protection agencies.

Incremental reform of EPA is simply not an option. As James V. DeLong wrote in 2002,

> It should surprise no one that 25 years of talk about regulatory reform has achieved little. The vague language of the federal environmental statutes and the corresponding massive delegation of authority to EPA to make law, enforce law, and adjudicate violations concentrate tremendous power in the hands of the agency, breeding insensitivity, zealotry, and abuse. Experience has shown that regulatory agencies will tend to expand until checked, and the potential for regulatory expansion at the EPA, unbounded as it is by congressional language, is vast.[7]

For these reasons, I have come to believe the national EPA must be systematically dismantled and replaced by a Committee of the Whole of the 50 state environmental protection agencies. Those agencies in nearly all cases long ago took over primary responsibility for the implementation of environmental laws passed by Congress (or simply handed down by EPA as fiat rulings without congressional vote or oversight).

When national EPA was established in 1971, the federal government had no choice but to oversee implementation of the initial seven safety net laws. Soon thereafter, however, every state established an independent agency that filed for and was granted primary control of the

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[6]Fred L. Smith, Jr., "Conclusion: Environmental Policy at the Crossroad," in Michael S. Greve and Fred L. Smith, Jr., eds., *Environmental Politics: Public Costs, Private Rewards*. New York, NY: Praeger Publishers, 1992, p. 183.

[7]James V. DeLong, *Out of Bounds, Out of Control: Regulatory Enforcement at the EPA*. Washington, DC: Cato Institute, 2002, p. 82.

implementation of the existing laws. With only rare exceptions, the states are now fully in control of the regulatory program.

States have a comparative advantage over the national government in responding to environmental problems because of the major role they play in the "construction and protection of urban infrastructure, regulation of land use, enforcement of building codes, and, certainly not least, natural disaster response."[8] The federalist system adopted when EPA was created recognized this reality and still looks pretty good on paper, but state agencies are continually harassed to ensure no one evades the heavy hand of hundreds of new regulations passed over the past three decades.

The initial laws I helped write have become increasingly more draconian, yet they have not benefitted our environment or the health of our citizens. Instead, they suppress our economy and the right of our citizens to make an honest living. It seems to me, and to others, that this is actually the intention of those in EPA and in Congress who want to see government power expanded without regard to whether it is needed to protect the environment or public health.

With 30 years of experience, these 50 state environmental agencies are ready to take over management of the nation's environment. Only the EPA research laboratories should be left in place at the national level to answer additional scientific questions, and even these laboratories must be substantially reorganized, freed from the grip of insiders who use them to justify new regulations rather than genuinely study the science.[9] Increasingly, the federal laboratories should be exposed to competition from state-funded research efforts to keep them honest.

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Eighty percent of what is now national EPA's budget could be eliminated, and the remaining 20 percent could be used to run the research labs and administer the Committee of the Whole of the 50 state environmental agencies. A relatively small administrative structure would be needed to allow the states to refine existing environmental laws in a manner more suitable to the primary requirement of protecting our environment without thwarting national progress in industry and the development of our natural resources and energy supplies.

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[8]Winston Harrington, *Promoting Innovative Climate Adaptation through Federalism.* Washington, DC: Resources for the Future, August 2010, p. 2.

[9]Patrick Michaels, "State-Funded Science: It's Worse Than You Think!" *Cato Unbound,* August 12, 2013, http://www.cato-unbound.org/2013/08/12/patrick-j-michaels/state-funded-science-its-worse-you-think.

Five-Year Phase-Out

National EPA could be phased out over five years, with a one-year preparation period followed by a four-year program in which 25 percent of the agency's activities would be passed to the Committee of the Whole each year. The Committee of the Whole would be made up of representatives from each state from each significant area of concern. The committee would be divided into subcommittees, reflecting how EPA is set up, though many programs and offices within EPA may be eliminated at the will of the states. For instance, offices whose primary purpose is oversight of the state agencies no longer would be necessary.

The Committee of the Whole would determine which regulations are actually mandated in law by Congress and which were established by EPA without congressional approval. Rules written clearly into legislation would be recommended for continuance or would be included in a request that Congress consider ending them because the Committee of the Whole deems them unnecessary in their current form. Regulations not supported by writings within legislation would be considered by the applicable subcommittees and the whole committee for alteration or repeal by a two-thirds vote of the Committee of the Whole.

This phase-out of national EPA could be done in an orderly manner within five years. Oversight of the existing EPA research labs eventually would be ceded to a subcommittee of the whole.

Until the Committee of the Whole acted on each individual regulation, all regulations would remain in force. Many regulations would give states latitude to act, and others would be required of all states by a two-thirds vote of the Committee of the Whole. Each state would be funded sufficiently to increase its staff to include people whose primary jobs would be to serve on subcommittees of the Committee of the Whole overseeing the issues previously overseen by the current EPA.

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Organizing the Committee

When one considers how national EPA was established, along with the growth of the state agencies, this plan is actually a logical endpoint that could have begun 30 years ago. The specific details of the five-year transfer from the Washington, DC-based EPA and its 10 regional offices would be carried out as follows.

The federal budget for environmental protection would be reduced from $8.2 billion to $2 billion. Staffing would be reduced from more than 15,000 to 300, and those 300 would serve in the new national EPA headquarters to be located centrally in Topeka, Kansas, to allow the closest contact with the individual states and reduce travel costs from the states to the central headquarters of the Committee of the Whole. The 300 individuals working there would consist of six delegate-employees from each of the 50 states. The personnel currently working at EPA's

more-than-two-dozen research centers would remain in place until the Committee of the Whole chooses to make changes.

National EPA is currently divided into the following 14 offices:

Office of the Administrator
American Indian Environmental Office
Office of International and Tribal Affairs
Office of Policy
Office of Administration and Resources Management
Office of Enforcement and Compliance Assurance
Office of Air and Radiation
Office of Chemical Safety and Pollution Prevention
Office of Solid Waste and Emergency Response
Office of Water
Office of the Chief Financial Officer
Office of General Counsel
Office of Environmental Information
Office of Research and Development

In the first year of transition, all national EPA employees would be informed of the five-year transition period, allowing them ample time to seek other employment opportunities. Additionally, during year one the two offices relating to Indian issues – American Indian Environmental Office and Office of International and Tribal Affairs – would be transferred to the U.S. Bureau of Indian Affairs, which should welcome this responsibility along with about half of the monies budgeted for them at EPA. During the first year, all 300 employees relocating from the 50 states (six each) would begin work in the new Topeka, Kansas, offices established early in year one.

A chairman of the Committee of the Whole would be elected by the 300 delegate-employees to a three-year term early in the transition. The delegate-employees would be assigned to subcommittees corresponding to the offices that currently exist in Washington, DC.

It is quite likely that as the office responsibilities are transferred to Topeka, the Committee of the Whole will choose to eliminate some of them entirely.

During year two, all activities of the Offices of Policy, Administration and Resources Management, and Enforcement and Compliance Assurance would be transferred to Topeka from Washington, DC and the regional offices.

In year three, all activities of the Offices of Air and Radiation and Chemical Safety and Pollution Prevention would be transferred to Topeka. In year four, the responsibilities of the Office of Solid Waste and Emergency Response and Office of Water would move to Topeka. In the final year, the Offices of the Chief Financial Officer, General Counsel, Environmental Information, and the Office of the Administrator would have their responsibilities moved to Topeka.

During each year of transition, members of the Topeka staff would be assigned for periods of time to the Washington, DC offices and the regional offices to study the activities of the existing

units. It is quite likely that as the office responsibilities are transferred to Topeka, the Committee of the Whole will choose to eliminate some of them entirely.

If some DC offices experience an early excessive attrition of employees relocating before the phase-out of their offices, an earlier transfer of responsibility to Topeka may be required.

Not only would this transition save large sums of money, but the efficiency and quality of environmental protection would be enhanced by placing power and responsibility in the hands of the individual states.

As monies are freed up in the transition from 15,000 federal employees to 300, each state would be allocated $20 million to enhance its new independent responsibilities and replace the six employees transferred to Topeka. In addition to that use of $1 billion (50 x $20 million), it is anticipated the management of the Topeka offices and the continuation of the research and development program at the national level would require a second billion dollars, allowing the permanent reduction of an $8.2 billion annual federal outlay for environmental protection to a total of $2 billion.

Rescuing Federalism, Saving the Environment

Not only would this transition save large sums of money, but the efficiency and quality of environmental protection would be enhanced by placing power and responsibility in the hands of the individual states. It is, after all, well-known that government close to the location of the governed is best for all.[10] Most states will enthusiastically embrace this plan, as their opposition to EPA's "regulatory train wreck" grows[11] and since it gives them the autonomy and authority they were promised when EPA was first created and the funding to carry it out.

The Committee of the Whole of the 50 state environmental agencies would meet the needs of the nation more effectively and more efficiently than the national EPA. Fifty state environmental protection agencies with more than 30 years of experience have the talent to do the job without the oversight of 15,000 federal employees. They are less vulnerable to lobbying and intimidation by national politicians, activists, and special-interest groups than are their counterparts in Washington, DC. Being located in Topeka, Kansas, they will be far away from the beltway culture that corrupts public servants who come to the nation's capital with even the best of intentions.

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[10] See Terry L. Anderson and Peter J. Hill, eds., *Environmental Federalism*. Lanham, MD: Rowman & Littlefield Publishers, Inc., 1997.

[11] See "EPA's Regulatory Train Wreck," an initiative of the American Legislative Exchange Council (ALEC) started in 2011, http://www.alec.org/initiatives/epas-regulatory-train-wreck/. ALEC has produced three reports so far as part of this initiative: *The U.S. Environmental Protection Agency's Assault on State Sovereignty* (2013), *Economy Derailed: State-by-State Impacts of the EPA Regulatory Train Wreck* (2012), and *EPA's Regulatory Train Wreck: Strategies for State Legislators,* (2011). All are available on the ALEC website.

It made sense for there to be a single national agency given authority to enforce the nation's new environmental protection laws in the first decade of the 1970s. But by the end of that decade, the lion's share of benefits from that noble experiment were already achieved and the states could have been, and should have been, allowed to play their intended role in implementing the new programs. Authority should have remained in the hands of the states, where innovation would be rewarded and accountability to local voters and taxpayers was more likely to be preserved. But as is the nature of all bureaucracies, national EPA grew vastly larger than any of its founders and architects intended. It was coopted by various interest groups, and today it stands in the way of environmental protection and is a threat to individual liberty and commerce.

It's time for the national EPA to go. The path forward is now clear and simple: A five-year transition from a federal government bureaucracy to a Committee of the Whole composed of the 50 state environmental protection agencies.

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To those who say this would fail to adequately protect the public's health or the environment, I urge you to reflect on the poor job currently being done by EPA, and then to meet some of the men and women staffing state EPA offices and see for yourself the sophistication, commitment, and resources they have to do the job. You will not remain doubters for long. And to those who like this plan but think it is utopian or impossible, I can tell you as someone who was there at the beginning of EPA, who helped write the laws and advised its founders, that this can be done quickly and efficiently.

All that is missing is the political will.

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About the Author

Jay Lehr, Ph.D. is science director and senior fellow of The Heartland Institute, an independent nonprofit organization based in Chicago. He is a leading authority on groundwater hydrology. After graduating from Princeton University at the age of 20 with a degree in geological engineering, he went on to receive the nation's first Ph.D. in groundwater hydrology from the University of Arizona. He later became executive director of the National Association of Groundwater Scientists and Engineers.

Dr. Lehr is the author of more than 500 magazine and journal articles and 30 books. He is editor of *Rational Readings on Environmental Concerns* (1992 and two subsequent editions), *McGraw-Hill's Handbook on Environmental Science, Health and Technology* (2000), *Wiley's Remediation Technologies Handbook* (2004), *Modern Groundwater Exploration* (with Robert A. Bisson, 2004), *Environmental Instrumentation and Analysis Handbook* (2005), the six-volume *Water Encyclopedia* (2005), *The Fluoride Wars* (with R. Allan Freeze, 2009), and *Nuclear Energy Encyclopedia: Science, Technology, and Applications* (with Steven B. Krivit, Thomas B. Kingery, 2011).

Dr. Lehr has testified before Congress on more than three dozen occasions on environmental issues and consulted with nearly every agency of the federal government and with many foreign countries. He has spoken before more than 1,000 audiences on topics ranging from global warming and biotechnology to business management and health and physical fitness.

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