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# Environmental Decentralization in the United States

## *Seeking the Proper Balance between National and State Authority*

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## Abstract

This paper examines the United States' experience with environmental decentralization, focusing on the relationship between the U.S. Environmental Protection Agency (EPA) and the states. It outlines the factors that are considered in determining the appropriate degree of decentralization, the advantages and disadvantages of decentralization, how the EPA-state relationship has evolved over the years, and the structural mechanisms used to ensure that there is a high degree of performance by EPA and the states in administering the programs. Program-specific examples of the EPA-state relationship are also provided.

**Key Words:** environmental decentralization, environmental administration

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One of the overarching issues affecting the performance of environmental programs in the United States is the coordination of national and regional environmental regulatory authorities, a challenge that all decentralized environmental management systems face. While there is no simple formula for determining the "optimal" balance between national and state environmental responsibilities, it is clear that the roles have evolved considerably over the past several decades. Many functions that were once carried out at the federal level are now routinely managed by state cases and, in some cases, by local governments. For the U.S. Environmental Protection Agency (EPA) there are many challenges in reinventing the federal-state relationship, as the agency seeks to balance its mandate to achieve national environmental goals and wisely manage its own resources, all the while encouraging innovation at the state level.

Reflecting these challenges, this paper examines the United States' experience with environmental decentralization, focusing on the relationship between the U.S. Environmental Protection Agency (EPA) and the states. It outlines the factors that are considered in determining the appropriate degree of decentralization, the advantages and disadvantages of decentralization, how the EPA-state relationship has evolved over the years, and the structural mechanisms used to ensure that there is a high degree of performance by EPA and the states in administering the programs. Program-specific examples of the EPA-state relationship are also provided.

## I. Background

### *Environmental Protection Roles at Various Levels of Government*

In the United States, environmental laws are enacted and environmental programs are managed at all levels of government: federal (i.e., national), state, and local. The laws pertaining to many major environmental problems—for example, clean air, clean water, and management

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of hazardous waste—are typically passed at the national level. The states then pass laws that are consistent with the national laws. Sometimes these state laws are designed to address state-specific environmental problems.

EPA is the federal entity responsible for administering many of the national environmental laws. Examples of EPA's mandates include the regulation of air, water, hazardous waste, pesticides, toxins, pollutants, and the protection of wetlands.

Many other federal agencies also have responsibilities for environmental programs. For example, federal legislation directs the U.S. Fish and Wildlife Service to protect specific natural resources, requires those who wish to dredge streams to obtain a permit from the U.S. Army Corps of Engineers, and mandates that the U.S. Department of Transportation consider the environmental impacts of the highways that they construct. In addition to the programs mandated by legislation, presidential executive orders direct federal agencies to take specific actions that relate to the environment. For example, a recent executive order requires that environmental management systems be developed for all major federal facilities. This paper focuses on the laws that EPA administers and their relationship with the states in implementing these laws.

The environmental protection roles assigned to the various levels of government in the United States reflect not only the constitutional division of responsibilities between the national and state governments, but also a logical allocation of responsibilities. For example, most environmental research is directed at the national level by the EPA's Office of Research and Development and supported by academic institutions and private researchers throughout the country. It makes much more sense to centralize research on many issues (e.g., climate change, impacts of lead pollution) at the national level rather than to have each state do its own research on these topics. Conversely, an environmental permit for a specific facility is usually better negotiated by a level of government closer to the facility. These local government officials have a much better understanding of the local environmental situation, the stakeholders involved (e.g., NGOs), and cultural or economic considerations.

Other factors influence the allocation of responsibility for the administration of environmental programs in the United States. One such factor is the degree of expertise and sophistication of environmental professionals at the various levels of government. From the late 1960s through the early 1980s, when initial versions of many of the major U.S. environmental laws were being passed, environmental programs were generally more centralized at the national level than they are today. For example, EPA issued more permits and conducted more inspections than it does currently. One reason for this centralization is that there were then more

highly trained environmental professionals at EPA than in the state agencies. Another reason was a natural tendency to assert centralized control while regulations were being developed, national standards were being established, and national environmental policies were being debated.

However, not all legislation had the same degree of centralization. For example, in passing the Clean Air Act of 1970, Congress assumed that the states would immediately have "primacy" and would be responsible for the development of the state implementation plans (SIPs) that established the controls needed to meet air quality standards. EPA's role under the Clean Air Act was to give technical assistance in the development of these plans and to formally approve the SIP after it was officially submitted by the state to EPA.

Contrast the Clean Air Act approach with the legislation for the Federal Water Pollution Control Act (FWPCA) of 1972. FWPCA established the national program for regulating point sources of water pollution—the National Pollutant Discharge Elimination System, or NPDES. The NPDES program required that a state be officially "delegated" the program based on having demonstrated that it met certain requirements, such as having laws or regulations with adequate levels of penalties for noncompliance, and employing a sufficient number of properly trained environmental professionals to write the permits, perform the inspections, and take appropriate enforcement actions. Thus, during the early stages of the NPDES program in the 1970s, EPA issued many of the initial permits and enforced these permits. Many states passed the needed laws and hired staff as quickly as their processes would allow, and by the early to mid-1980s a majority of the states were officially delegated the NPDES program. EPA then assumed an "oversight" role, which is addressed in more detail below.

In addition to the Clean Air Act, which gave the states "primacy" from the beginning, and the NPDES program, which was "delegated" to the states only after they had met certain conditions, there is a third category of programs—those that by law are implemented by EPA. An example of this approach is the PCB program under the Toxics Substances Control Act.

To complete the picture of the various approaches to decentralization of responsibilities in the United States, there are also hybrid programs that allow for various combinations of approaches. The Superfund program is one example. This program is designed to remediate abandoned hazardous waste sites. When the program started in 1980, EPA (or the "potentially responsible party") was responsible for cleaning up properties on a list of the worst sites in the country. Over the years, some states have established their own hazardous waste cleanup programs and developed understandings with EPA on a division of responsibility in managing these cleanups and ensuring that national standards are met.

### *The Growing Strength of State Environmental Programs*

To understand the decentralization of environmental management programs in the United States, it is essential to understand an overarching trend—the increasing strength of state programs during the past 30 to 35 years. As noted, in the early 1970s, EPA staff were often more knowledgeable than their state counterparts about environmental protection. The staff had a mandate to ensure rapid implementation of the newly enacted national environmental laws. Many states at that time did not have laws and regulations that were consistent with the new national laws. Also, staff at the state level often lacked the authority (and the expertise) to administer these programs. During the past three or four decades, the states have developed the needed laws, staff expertise, and processes, and some states are now stronger and more progressive in certain areas than EPA.

That said, state performance is still somewhat uneven. There are "strong states" and "weak states" throughout the country, and within any given state there are often stronger and weaker programs. States are generally required to adopt regulations that are as stringent as the federal requirements before EPA will delegate the program to them. However, in most (but not all) programs, the states are permitted to adopt regulations that are *more* stringent than the federal requirements. This results in a natural tension when the states are confronted with decisions regarding how stringent their regulations should be. Stricter regulations may discourage industry from locating in the state, and in recent years, as the competition between the states for attracting new industry has increased, some states have taken steps to ensure that their standards are no more stringent than the national standards. However, some states have been willing to establish higher standards because their citizens demand such standards and/or they can afford the additional degree of environmental protection. For a few programs—auto emissions standards, for example—the states are not permitted to establish more stringent requirements in order to provide a degree of certainty to industry and/or to ensure national consistency.[1] The U.S. system has evolved in this way because the country has a large economy and is geographically diverse.

[1] California is the only state authorized by statute (Clean Air Act of 1970) to set its own auto emissions standards.

## II. Some Overarching Principles of EPA-State Relationships

Since EPA was formed in 1970, EPA-state relationships have always been a major issue. These relationships have evolved over time and reflect a number of factors, including the philosophy of the political administration in office. However, certain overarching principles have emerged and, although not formally adapted, seem to have been accepted by EPA and the states as important to the success of the environmental programs in the United States. Four of these principles will be examined here.

***Neither EPA nor the states can be successful without a strong working relationship between the federal and state levels of government.*** Both EPA and its state counterparts have the same goal—protecting human health and environment. Over the years, the methods for reaching this goal have been agreed upon by EPA and the states. However, in some areas, the means to the goal are still subject to considerable debate. The following are some of the questions that have been debated for years—and will most likely continue to be debated for years to come.

- Should EPA and the states try to ensure compliance with environmental requirements primarily by aggressive enforcement against the regulated community, or by providing assistance to entities that have compliance problems?
- How much information should the states be required to report to EPA?
- To what extent must the states follow EPA "guidance," especially guidance that may go beyond the specific requirements of the legislation or regulation?

Over the years, many committees and processes have been established to debate those issues. The Environmental Council of the States (ECOS) (http://www.sso.org/ecos) is an influential organization that develops consensus state positions on various issues and negotiates these issues with EPA. ECOS also works with top EPA political and career leaders to establish a framework for resolving differences. Likewise, the leaders of the respective programs—air, water, and hazardous waste—at EPA and in the states also meet frequently to resolve issues unique to their area of responsibility.

It should be noted that EPA relies considerably on its 10 regional offices to be the primary contacts with the states on issues of program implementation. These regional offices, under the leadership of the presidentially appointed regional administrators, are responsible for working with the states to resolve any issues regarding national policies. National policies and regulations are established in close coordination with the states. However, the 50 states do not

always speak with one voice. Indeed, the 10 EPA regions do not always speak with one voice, either.

The art of developing national policies and regulation involves achieving consensus by as many states (and EPA regions, NGOs, and other stakeholders) as possible. Acting individually or collectively, the states could go to court to seek resolution of policies that they believe are not consistent with national legislation. This legal course of action is currently being followed to resolve interstate air pollution problems. The bottom line, however, is that it is much more effective for EPA and the states to resolve any differences through discussions and negotiations. In practice, a large majority of the issues are resolved in that way.

***The nation benefits from national consistency in implementing environmental programs***. One major reason for enacting environmental legislation at the national level is to ensure consistent application of environmental protection throughout the United States. Lack of consistent permit requirements or consistent penalties for noncompliance could potentially result in "pollution havens" that would give unfair economic advantages to particular industries or states.

To address the issue of national consistency, national ambient standards and national technology-based effluent or emissions standards have been established. During the 1980s, after many negotiations between EPA and state representatives, national policies were also established to ensure consistency in enforcement actions if significant permit violations occur. Basically, these enforcement policies seek to take away the economic benefit that a violating facility may realize by actions that result in the violation.[2]

If state enforcement officials do not impose penalties at least at the level dictated by the national penalty policy, EPA reserves the right to impose its own penalty. Of course, in the case of both permits and enforcement, the specific facts of the situation can, and occasionally do, lead to disagreements between EPA and the states. Additionally, the imposition of additional penalties by EPA is usually viewed by the states as an embarrassment, or at least a negative public reflection on its ability to administer the program. Frequent discussions at all levels of

[2] For example, if an industrial plant neglects to install pollution control equipment as required, it theoretically would have more resources available for other investments and would thus gain an economic benefit by not complying with the permit requirements. The penalty policies were designed to ensure that penalties levied would offset that economic benefit. Additional penalties could be imposed for repeat violators or for severe environmental impacts.

EPA and the state organizations usually diffuse such disagreements before they become public issues.

***Decisions are best made by those close to the environmental problem.*** Over the years, the general principle of having environmental decisions made by a qualified authority close to the problem has become widely accepted. Therefore, assuming that the state has the proper authority and makes decisions that are consistent with national policy, delegating national programs to the states is generally viewed as desirable. It is typically assumed that the states know the local environment, local stakeholders, and local political, economic, and social circumstances better than someone in a remote EPA office. EPA, however, is expected to know enough about state decisions made regarding major facilities to ensure that these decisions are consistent with national policy. This requires the good-faith sharing of information.

***Active stakeholder involvement and sharing of environmental data are encouraged.*** The fourth principle that has emerged over the years is the desirability of openly sharing information and actively involving the interested stakeholders in the decisionmaking processes.

To make decisions that are acceptable to all parties—EPA, the states, the public, nongovernmental organizations, and the regulated community—it is important that the parties have open access to all pertinent information. Therefore, EPA and the states have increasingly made available information on discharges and emissions, compliance, and ambient air quality. EPA and the states put much of these data on the Internet, and environmental groups can then put their analyses of the data on their Web sites. For example, Environmental Defense, an environmental nongovernmental organization, uses raw discharge and emissions data that industry is required to submit to EPA, analyzes the data, and posts lists of the "worst polluters" on the Internet. Citizens—and sometimes EPA and the states—use these analyses to encourage polluters to reduce their impacts on the environment. Similarly, the posting of compliance data by EPA and states on the Internet acts as an incentive for noncomplying facilities to comply with their permits.

Affected parties also have opportunities to have their voices heard in the development of permits. Under the permitting provisions of essentially every major federal environmental law, the permit applicant is given a chance to discuss the requirements of the permit with the issuing authority (EPA or the state). In addition, NGOs and individuals can typically request a public hearing, appeal the permit decision, and seek judicial relief. The public and nongovernmental organizations typically also have an opportunity to take judicial actions against polluters if EPA or the states do not enforce actions against violators.

This active involvement by interested stakeholders in all major governmental decision processes and the increasing availability of environmental data on the Internet are generally viewed by EPA and the states as desirable approaches to ensure that decisions are made as openly as possible.

## III. Coordination Mechanisms Used by EPA and the States

Planning approaches and systems of checks and balances have been developed to help ensure that EPA and the states successfully implement the national environmental programs. Several examples are provided below.

### *EPA-State Planning Partnerships*

In 1993 Congress passed the Government Performance and Results Act (GPRA). This law requires that each federal agency develop a strategic plan with measurable goals and objectives. EPA and other federal agencies must report to Congress on their progress in meeting these goals, and this planning and performance tracking program is considered in determining the level of funding that the agencies receive. In addition to EPA's agency-wide strategic plan, each of EPA's 10 regional offices has developed a strategic plan that reflects its specific environmental issues.

Since the 1970s, EPA and the states have experimented with ways to engage the federal and state levels of government in joint planning and priority setting. Since the passage of GPRA, these activities have received additional focus. Both EPA and the states recognize that implementing numerous environmental programs with limited government staff requires a common vision and a sense of federal-state teamwork. EPA and the states generally view a structured planning process as an opportunity to establish joint priorities based on the best environmental data, allocate responsibilities between EPA and the states, build trust and positive relationships, and provide a forum for EPA and the state officials to discuss areas of mutual concern.

Joint EPA-state planning efforts are currently called performance partnerships and are documented in performance partnership agreements (PPAs), which are typically signed by the EPA regional administrator and the counterpart state environmental secretary or commissioner. Although the overall framework for the PPAs have been established by the EPA administrator and a group of representative secretaries of the environment at the state levels, considerable flexibility is given to the regional administrators regarding the content of individual PPAs (see

http://www.epa.gov/ocirpage/nepps/index.htm for more information on the established framework). While generally adhering to the established national framework, the individual PPAs may differ considerably, depending on the needs of a particular state. The process is often further enriched by an opportunity for the public and other stakeholders to comment on the content of the PPA before it is finalized. The signed PPAs are not legally binding on either party but instead represent a good-faith effort between the parties to guide their respective organizations toward better environmental protection. Examples of PPAs are agreements for sharing environmental data, allocating responsibilities for enforcement actions, and jointly undertaking special environmental studies (see http://www.epa.gov/ocirpage/nepps/agreements.htm for additional examples).

Two relatively recent concepts in some PPAs are (i) the connection between the PPAs and the grants that EPA give the state to implement their programs, and (ii) the idea of "differential oversight." In some states the PPA is supplemented by a performance partnership grant, which combines two or more state program grants. A performance partnership grant can reduce the administrative burden of processing the grants, lessen the reporting burden on the state, and give the state some increased flexibility in how it uses the monies.

The concept of differential oversight addresses the states' interest in having EPA's review of state actions calibrated to the strength of the state programs. Thus, if EPA finds that a particular state program has been consistently performing in an outstanding manner, EPA would lessen its oversight by, for example, undertaking fewer reviews of state-issued permits and reducing its involvement in state enforcement initiatives. The overall goal is to decrease any EPA duplication of state work in high-performing programs, thus enabling EPA to redirect its limited resources to priority areas. Conversely, poor state program performance may result in additional EPA involvement to ensure improvement.

In the future, it is expected that the content of the PPAs and the performance partnership grants will continue to evolve but that the underlying principles of accountability, flexibility, and a focus on environmental data will remain the foundation of these agreements. See http://www.epa.gov/ocirpage/nepps/reviews/reviews_evaluations.htm for current evaluations of the EPA- state performance partnerships and recommendations for improvements to the process.

### *Congressional Mandates and Oversight of Environmental Programs*

In addition to passing environmental legislation, Congress also appropriates EPA funds each year, requires that EPA set specific environmental goals (see EPA's strategic plan at http://www.epa.gov/oefu/plan/plan.htm), and reviews the agency's progress toward these goals. As noted above, GPRA requires that each agency develop a strategic plan with goals, objectives, and measures of success. GPRA also requires that EPA submit performance reports each year (see http://www.epa.gov/ocfu/finstatement/2003ar/2003ar.htm). Ultimately, lack of performance could reduce funding for the agency. EPA relies on its regional offices and the states to collect the information needed to provide these reports to Congress. This information must be received in a timely fashion and be in a consistent format.

Congress uses its Government Accountability Office (GAO) to investigate specific areas of EPA's performance. Congress also holds "oversight" hearings on the agency's performance.

The following sections describe some of the mechanisms used by EPA and the states to ensure a high level of performance.

### *State Program Grants*

EPA provides the states with funding to implement the major national environmental programs. These funds usually represent 25% to 60% of the total state funds for the programs. The EPA grants typically are conditional and may require the particular state to issue a specific number of major permits, supply EPA with certain information, do special studies, or develop a specific policy that is consistent with national goals. The grant conditions are negotiated each year by EPA's regional offices and the states in their region. If the state does not meet the grant conditions, EPA may withhold some funding for the following year (this is rare, but the threat exists).

### *Audits and Performance Reviews*

EPA headquarters reviews performance data from the EPA regional offices, which in turn review the performance of the states. In addition to reviewing performance data submitted by the states (increasingly in electronic form), EPA occasionally also audits performance by visiting the state offices, reviewing files, and interviewing state managers. Issues such as the quality control of information, adequacy of applying national standards and policy to state decisionmaking, and state-EPA working relationships are discussed. A written report is often produced by EPA and reviewed by the state, and corrective measures are agreed upon where needed.

### *The Dynamics of Program Delegation*

As discussed above, most major programs are not delegated until the state demonstrates its capacity to administer the program in a way that is consistent with national standards. If a state does not meet these performance expectations, EPA reserves the right to take back the program. Citizens can petition EPA to rescind the delegation. Although discussions between EPA and poor-performing states are sometimes held, such actions are rarely taken by EPA, since it is in everyone's best interest to correct the performance problem. The states generally have many more staff than EPA does to administer the programs, and taking away state authority would be a political embarrassment to the state. The states also occasionally threaten to return administration of the programs to EPA if they consider the EPA-imposed directives too burdensome. However, it is very rare for delegated programs to be returned to EPA.

### *EPA's Inspector General*

The EPA inspector general often examines programs administered by EPA and the states if there are suspicions of fiscal mismanagement or program ineffectiveness. The inspector general is free of any EPA management control and can make her reports public. Such independent reviews also help ensure proper management by EPA and the states.

### *The Influence of the Media and NGOs*

With the proliferation of information, the news media and nongovernmental organizations can conduct studies and analyses of EPA and state performance. As noted above, a great deal of information is available on the Internet. In addition, the federal government's Freedom of Information Act allows any citizen to review government reports or data (unless protected by the business confidentiality or enforcement confidentiality provisions of the act). With open access to information, it is not unusual for stories related to program performance to appear in newspapers and NGO magazines.

## IV. Conclusions

Although the principles and mechanisms discussed above are now widely accepted in the United States, the art of managing EPA-state relations remains a challenge. The large majority of issues between EPA and the states are resolved amicably, but tensions exist. It has been argued that total national consistency is difficult to attain because environmental professionals in the 10 EPA regions and 50 states are making different decisions on similar facilities. Conversely, it has

been argued by local officials that it would be folly to regulate every facility in the country in the same way, since some local situations are unique.

It is because of such tensions that the various national policies continue to be debated and refined by EPA and the states. The trend is definitely toward more delegation of national programs to the states. Indeed, for most major programs—air, water, and hazardous waste—the majority of the states have been delegated primary responsibility for implementing the programs. In general, the older the national program, the more states have been delegated the lead. Another trend is that is the states are sharing more information not only with EPA but also with the public.

In general, EPA prefers to delegate the major environmental programs to the state under the following conditions:

- The states demonstrate that they have the appropriate state laws and regulations in place to ensure that national objectives are met.
- The state has sufficient expertise and staffing levels.
- The state has a commitment to share with EPA the information that EPA needs to monitor the state's program.

The following observations can also be made about the U.S. system of decentralization:

- A program is generally delegated to the states more frequently as it matures.
- Certain sensitive programs (e.g., criminal enforcement) are not delegated. In fact, all EPA criminal investigators, though located in EPA regional offices, report directly to EPA headquarters. Despite this autonomy, EPA criminal investigators have developed partnerships with their state counterparts.
- EPA's system of decentralization is also driven by the size of the country and the complexities of the industries.
- Many fruitful collaborations between EPA and the states do not involve formal delegation. For example, EPA and the states often collaborate on environmental education efforts and on scientific studies.