

## EPA – Bad

**See also:** Regulations - Bad (page 206) for general regulations evidence; Environmentalism - Bad (page 166)

### TABLE OF CONTENTS

1. Bad.....	48
1.1. Burden on society: saps money, joy and fundamental values.....	48
1.2. Unelected and unaccountable.....	49
1.3. Focuses on prosecutions, not quality.....	49
1.4. Extreme overcontrol: Considers a puddle to be regulatable "navigable waters".....	49
1.5. Kills joy.....	49
1.6. Bureaucratic maze.....	50
1.7. Political mess of regulations and laws.....	50
2. Unconstitutional.....	50
2.1. Overreaches constitutional authority.....	50
2.2. Subverts constitutional checks and balances.....	51
3. Unconstitutional Delegation.....	51
3.1. Delegation unconstitutional.....	51
3.2. Creates political irresponsibility.....	51
3.3. Undermines democracy.....	52
3.4. Destroys democracy.....	52
3.5. Special-interest bias.....	52
3.6. Increases size of government.....	52
4. Silences Skeptics.....	53
4.1. Dr. Alan Carlin.....	53
4.2. Endangerment critique.....	53
4.3. Harvard mercury study.....	54
4.4. Harvard mercury study: EPA lied.....	54
5. Property Rights Violation.....	54
5.1. Definition: Property.....	54
5.2. Link: Millions in compliance costs.....	54
5.3. Impact: Constitutional violation.....	55
5.4. Impact: Violation of the purpose of government.....	55
5.5. Impact: Property rights a law of heaven.....	55

### BAD

#### **Burden on society: saps money, joy and fundamental values**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC> (page 13)*

The EPA needlessly burdens society. The burdens sap not only our monthly budgets and retirement savings but also values more precious than dollars - democracy, liberty, justice, and (I will back this up) joy. These downsides are a drag on environmental protection.

**Unelected and unaccountable**

*Nicolas Loris and Ben Lieberman, April 23, 2009, Heritage Foundation Webmemo, "Five Reasons the EPA Should Not Attempt to Deal with Global Warming", <http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>*

While some Members of Congress undoubtedly support the EPA's attempt to curb global warming, the fact that unelected and unaccountable EPA bureaucrats are trying to bypass legislative efforts makes it all the more objectionable.

**Focuses on prosecutions, not quality**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC> (page 212-213)*

Innocent or not, violators get hit because state and federal environmental enforcers are under pressure to rack up high numbers of prosecutions and penalties in order to avoid budget cuts. The term within the EPA for this pressure is "bean counting." To ensure his office got credit for all the beans racked up that year, one EPA regional counsel sent his staff an email entitled "REMEMBER THAT IT AIN'T A BEAN 'TILL IT'S BEEN COUNTED!" Professor Shelley Metzenbaum, a former Clinton-era EPA official (and daughter of the liberal former senator) urges enforcers to refocus their attention - from bean counting to improving environmental quality.

**Extreme overcontrol: Considers a puddle to be regulatable "navigable waters"**

*Michael Farris (J.D., B.S. in Political Science, magna cum laude, a constitutional lawyer who has argued before the Supreme Court, former Dean at Patrick Henry College), 2006, Home School Legal Defense Association, "Constitutional Law for the Enlightened Citizen" (page 10-11)*

Today, the Environmental Protection Agency (EPA) has made decisions that control so-called "federal wetlands." This is not property owned by the federal government. This phrase normally refers to private property - an example of which is a two-acre swampy parcel at Patrick Henry College. This small piece of land cannot be modified or used for building without coping with elaborate rules established by the EPA. This agency established two crucial regulations. First, it decided the definition of "wetlands." If a goose flying over the land sees its reflection in the water (on the wettest day of the year) then this land is a wetland. (I am not making this up.) The theory is that this land is part of the "navigable waters' ... of the United States" and thus subject to federal regulation. I would like to see someone try to float even a surfboard on this swampy area in our campus. Unless an ocean-going vessel could navigate on our property - which would be a true definition of "navigable waters" - our college simply does not own any property that falls within realistic definition of "navigable waters."

**Kills joy**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC>*

Many people want to pursue such joy by running a small business. A majority (56 percent) of Americans dream of starting their own business and another 10 percent have already done so. Among their reasons, "doing something you love" far outweighs "being your own boss" or "get[ting] rich." The EPA, as constituted by Congress, sometimes unnecessarily kills joy.

**Bureaucratic maze**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC>*

Writing of the time when he, [Donald Elliott] as EPA general counsel, was being briefed by four of the attorneys on his staff about "new proposals implementing section 304(l) of the Clean Water Act," he recalls, "As an academic..., I quite naturally asked if what they were telling me about section 304(l) fit together with what I had heard the day before about section 304(m). There was a momentary hesitation followed by an uneasy silence in the room as they looked from one to another. Finally, one of them said, we're the section 304(l) team; if you want to know about section 304(m) you'll have to call in another lawyer in the office." A recent New York Times editorial rightly called the Clean Air Act a "regulatory maze."

**Political mess of regulations and laws**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC> (page 190)*

Environmental politics are generally nasty. As one professor of environmental law put it, "Since almost immediately after [Congress started passing the modern environmental statutes] in the early 1970s, two extreme and opposing philosophies - one devoted to protecting the economy and the other to protecting the environment - have waged a war of annihilation that has left in its wake the mish-mash of laws, regulations, judicial opinions, and countless administrative decisions and policies that we today call environmental law. Any notion that the remnant heap of rules represents a 'middle ground' of political deliberation is utterly naive."

**UNCONSTITUTIONAL****Overreaches constitutional authority**

*Michael Farris (J.D., B.S. in Political Science, magna cum laude, a constitutional lawyer who has argued before the Supreme Court, former Dean at Patrick Henry College), 2006, Home School Legal Defense Association, "Constitutional Law for the Enlightened Citizen"*

Second, a bureaucratic agency, the EPA - not Congress - decided how much wetland is sufficient to justify federal control. The EPA decided that one acre was the minimum.

*[later, in the same context:]*

All legislative power in the United States was supposed to be exercised by Congress. If we are to follow the Constitution, no regulation of this type may be directly issued by the EPA.

**Subverts constitutional checks and balances**

*Clarence B. Carson (M.A., Auburn University and a Ph.D., Vanderbilt University in history, professor of economics at Birmingham-Southern College in Birmingham, Alabama), 2001, "Basic American Government" (page 252)*

But the growth of Leviathan may be even better illustrated with the proliferation of that strange creature called "independent agencies." The first such agency - the Interstate Commerce Commission - was authorized by acts of Congress 1887. The latest listing in The World Almanac and Book of Facts for 1992 indicates that there are now 52 such agencies of the United States government. The best known of these are the regulatory agencies, such as Interstate Commerce Commission, Federal Communications Commission, National Labor Relations Board, Securities and Exchange Commission, Federal Trade Commission, Commodity Futures Trading Commission, Environmental Protection Agency, and Occupational Safety and Health Review Commission. The outstanding feature of these regulatory agencies is that they tend to join together what the Constitution puts asunder. That is, the Constitution separates and generally accords different spheres to the legislative, executive, and judicial functions. These powers tend to be joined in a single body in regulatory agencies. By their interpretations and decisions they make what is now called "administrative law;" they ordinarily enforce - i.e., execute laws -; and they have courts which perform judicial functions. While these agencies are not entirely independent of the regular government, they nevertheless wield great power without constitutional checks and balances.

**UNCONSTITUTIONAL DELEGATION****Delegation unconstitutional**

*David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC> (page 122)*

The Supreme Court affirms that the Constitution prohibits Congress from leaving the lawmaking to others. "Article I of the Constitution vests 'all legislative Powers herein granted ... in a Congress of the United States.' This text permits no delegation of those powers.

**Creates political irresponsibility**

*Jerry Taylor (Senior Fellow at the Cato Institute) and David Schoenbrod (PhD, professor of law at New York Law School), 1997, Cato Institute, "Cato Handbook for Congress: 105th Congress", <http://www.cato.org/pubs/handbook/hb105-4.html>*

Just as deficit spending allows legislators to appear to deliver money to some people without taking it from others, delegation allows them to appear to deliver regulatory benefits without imposing regulatory costs. It provides, in the words of former Environmental Protection Agency deputy administrator John Quarles, "a handy set of mirrors--so useful in Washington--by which politicians can appear to kiss both sides of the apple."

**Undermines democracy**

David Schoenbrod (PhD, professor of law at New York Law School), 2006, "Saving our Environment from Washington", <http://books.google.com/books?id=wh5kG6awyPYC>

Reflecting a view held by many scholars, Bernard W. Bell wrote, "widespread delegation of lawmaking power to unelected officials surely undermines democracy."

**Destroys democracy**

Jerry Taylor (Senior Fellow at the Cato Institute) and David Schoenbrod (PhD, professor of law at New York Law School), 1997, Cato Institute, "Cato Handbook for Congress: 105th Congress", <http://www.cato.org/pubs/handbook/hb105-4.html>

The concern over congressional delegation of power is not simply theoretical and abstract, for delegation does violence, not only to the ideal construct of a free society, but also to the day-to-day practice of democracy itself. Ironically, delegation does not help to secure "good government"; it helps to destroy it.

**Special-interest bias**

Jerry Taylor (Senior Fellow at the Cato Institute) and David Schoenbrod (PhD, professor of law at New York Law School), 1997, Cato Institute, "Cato Handbook for Congress: 105th Congress", <http://www.cato.org/pubs/handbook/hb105-4.html>

Delegation shifts the power to make law from a Congress of all interests to subgovernments typically representative of only a small subset of all interests. The obstacles intentionally placed in the path of lawmaking disappear, and the power of organized interests is magnified.

**Increases size of government**

Jerry Taylor (Senior Fellow at the Cato Institute) and David Schoenbrod (PhD, professor of law at New York Law School), 1997, Cato Institute, "Cato Handbook for Congress: 105th Congress", <http://www.cato.org/pubs/handbook/hb105-4.html>

Perhaps the ultimate check on the growth of government rests in the fact that there is only so much time in a day. No matter how many laws Congress would like to pass, there are only so many hours in a session to do so. Delegation, however, dramatically expands the realm of the possible by effectively "deputizing" tens of thousands of bureaucrats, often with broad and imprecise missions to "go forth and legislate."

## **SILENCES SKEPTICS**

### **Dr. Alan Carlin**

Mike Gonzalez, *June 29, 2009, The Heritage Foundation Blog, "An Inconvenient Voice: Dr. Alan Carlin"*, <http://blog.heritage.org/2009/06/29/an-inconvenient-voice-dr-alan-carlin/>

Until recently, Dr. Carlin's assignment was to research climate change issues for the agency. As part of this responsibility, he prepared a 98-page report earlier this year questioning the need for the agency to regulate CO<sub>2</sub>. His main argument - buttressed by citation after citation of peer-reviewed science - was that the agency's earlier argument for regulating was based on incomplete science that ignored much more recent (and contrary) studies.

EPA responded by burying the report. As for Dr. Carlin himself, he was put under a strict gag order by superiors. They forbade him from writing, speaking or e-mailing about global warming to anyone outside his group at EPA. Now that his comment has been leaked (available here), the truth can come out.

We spoke to an embattled Dr. Carlin on the phone today, and, though he does fear losing his job because of his opinion, he has the strength of his beliefs. He told us that in 40 years of working for the government, he can't remember any other time such pressure has been put on him. But you can hear in his voice that Dr. Carlin, who got his undergraduate degree in physics from CalTech and his PhD in economics from MIT, is not easily silenced.

"I've been involved in public policy since 1966 or 1967," he said. "There's never been anything exactly like this. I am now under a gag order."

### **Endangerment critique**

Sam Kazman, *June 24, 2009, Competitive Enterprise Institute, "Comments to the Environmental Protection Agency on Proposed Endangerment Finding"*, <http://cei.org/rcandtestimony/2009/06/24/comments-environmental-protection-agency-proposed-endangerment-finding>

CEI [*Competitive Enterprise Institute*] is submitting a set of four EPA emails, dated March 12-17, 2009, which indicate that a significant internal critique of EPA's position on Endangerment was essentially put under wraps and concealed. The study was barred from being circulated within EPA, it was never disclosed to the public, and it was not placed in the docket of this proceeding. The emails further show that the study was treated in this manner not because of any problem with its quality, but for political reasons.

**Harvard mercury study**

*March 22, 2005, Washington Post, "New EPA Mercury Rule Omits Conflicting Data",*  
<http://www.washingtonpost.com/wp-dyn/articles/A55268-2005Mar21.html>

When the Environmental Protection Agency unveiled a rule last week to limit mercury emissions from U.S. power plants, officials emphasized that the controls could not be more aggressive because the cost to industry already far exceeded the public health payoff. What they did not reveal is that a Harvard University study paid for by the EPA, co-authored by an EPA scientist and peer-reviewed by two other EPA scientists had reached the opposite conclusion.

**Harvard mercury study: EPA lied**

*March 22, 2005, Washington Post, "New EPA Mercury Rule Omits Conflicting Data",*  
<http://www.washingtonpost.com/wp-dyn/articles/A55268-2005Mar21.html>

Asked about the Harvard analysis, Al McGartland, director of the EPA's National Center for Environmental Economics, said it was submitted too late to be factored into the agency's calculations. He added that crucial elements of the analysis were flawed. Interviews and documents, however, show that the EPA received the study results by the Jan. 3 deadline, and that officials had been briefed about its methodology as early as last August. EPA officials referred to some aspects of the Harvard study in a briefing for The Washington Post on Feb. 2.

**PROPERTY RIGHTS VIOLATION****Definition: Property**

*James Madison* (a chief architect in writing the Constitution when he devised the "Virginia Plan," created the first draft of the Bill of Rights, and 4th president), *March 29, 1792, The Papers of James Madison, edited by William T. Hutchinson et al., University of Chicago Press, 1962, "Property",*  
<http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>

This term [*property*] in its particular application means 'that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.'

**Link: Millions in compliance costs**

*Nicolas Loris and Ben Lieberman, April 23, 2009, Heritage Foundation Webmemo, "Five Reasons the EPA Should Not Attempt to Deal with Global Warming",*  
<http://www.heritage.org/Research/EnergyandEnvironment/wm2407.cfm>

For instance, the National Environmental Policy Act (NEPA) requires federal agencies to file environmental impact statements for EPA review before moving forward with projects. According to the Government Accountability Office, normally it takes a federal construction project an average of 4.4 years to complete a NEPA review. Along with the Clean Water Act's Section 404 requirements, before a shovel can break ground, it could take 5.6 years for a project to jump through all the normal environmental hoops.[5] Granting the authority for one of the largest and unprecedented regulatory

*[continues on next page]*

undertakings in U.S. history would greatly expand the EPA's power.

The kind of industrial-strength EPA red tape that routinely imposes hundreds of thousands, if not millions, of dollars in compliance costs could now be imposed for the first time on many commercial buildings, farms, and all but the smallest of businesses. Not only would these costs and delays hamper the private sector, but the paperwork could paralyze federal and state environmental regulators, drawing resources away from more useful endeavors.

**Impact: Constitutional violation**

*United States Constitution, 5th Amendment*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Impact: Violation of the purpose of government**

*James Madison (a chief architect in writing the Constitution when he devised the "Virginia Plan," created the first draft of the Bill of Rights, and 4th president), March 29, 1792, The Papers of James Madison, edited by William T. Hutchinson et al., University of Chicago Press, 1962, "Property", <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>*

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.

According to this standard of merit, the praise of affording a just securing to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

**Impact: Property rights a law of heaven**

*James Madison (a chief architect in writing the Constitution when he devised the "Virginia Plan," created the first draft of the Bill of Rights, and 4th president), March 29, 1792, The Papers of James Madison, edited by William T. Hutchinson et al., University of Chicago Press, 1962, "Property", <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>*

The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. If "Thou shalt not covet," and "Thou shalt not steal," were not commandments of Heaven, they must be made inviolable precepts in every society, before it can be civilized or made free.