

MEMORANDUM TO THE PRESIDENT

From: Thomas C. Jorling

Subject: The New Administration and Setting
Environmental Priorities

PROBLEM

The environmental movement in the United States—hatched in the late 1960's—has been highly successful. Some would even say it was the only successful social movement of that era. Now some thirty years later, that very success has produced conditions which reflect the age-old challenge to successful institutions—how to adjust and adapt to continue to achieve progress. Put more graphically: How can bureaucratic systems avoid ossifying, avoid becoming part of the problem rather than part of the solution.

The fundamental challenge and opportunity of the new administration is to initiate and achieve change in environmental law and its implementing agencies and processes to reflect the changed conditions that now exist. This must be done while maintaining and building on the achievement in environmental performance that has been produced by the system of law and implementing agencies established in the late 60's and early 70's.

BACKGROUND

Understanding the history, even superficially, of these laws and agencies over the past 30-plus years, along with their structure and function, is essential to assessing next steps—and the difficulty in achieving them.

For a host of reasons, the perception in the late 60's of what was morphing in language from conservation and natural resource management to environmental protection or environmentalism was a series of problems—water pollution, air pollution, and later land pollution. Ours is a pragmatic political system—we adopt no heroic schemes, but rather we identify the problem, put bounds around it, and fix it. And we did. We passed the Clean Water Act, the Clean

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Water Act, the Clean Air Act, and the Solid Waste Act, followed by the Toxic Substances Act and the Safe Drinking Water Act. Then, wrapping up the decade of the 70's and effectively the authorizing phase of the response to the environmental movement, Superfund was passed in 1980. These statutes and what they authorized have produced great progress. They have accomplished much of what the public demanded and expected. In summary terms, we have reduced pollutant loadings into the various media by upward of 90%, even through a period of immense economic growth.

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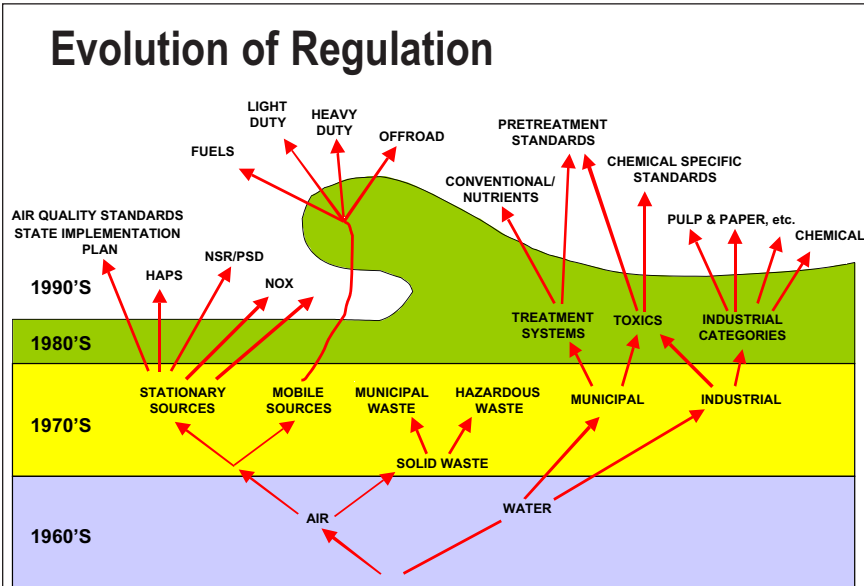


Figure 1

was established in 1970. The new agency was blessed with the leadership of Bill Ruckelshaus, who established a culture of professionalism and quality that was respected across political lines at a time when our political fabric was otherwise under great stress. Its structure matched and grew with the sequence of statutes—a water pollution program, an air pollution program, and so forth.

And how they did grow, from approximately 1,500 staff transferred from other departments in 1970, to now more than twenty thousand! But there was another fundamental premise of these statutes, bred of our Constitutional system, which has resulted in an even more substantial public bureaucracy and one that basically mirrors the EPA. The premise deeply imbedded in our federal environmental statutes is that while the EPA would promulgate the national minimum standards and procedures, the basic authority was to be, and substantively has been, implemented by the States. Consequently, the States have experienced tremendous growth in implementing agencies over the same 30-plus years. These were basically structured the same way as the EPA—water programs, air programs, waste programs—except that in some states these separate functions were lodged in separate agencies. The similar structure is a reflection of the federal and parallel state statutes as well as the program grant funding provided by the EPA to the States. This history of achievement and growth of government is represented somewhat simplistically in Figures 2 and 3.

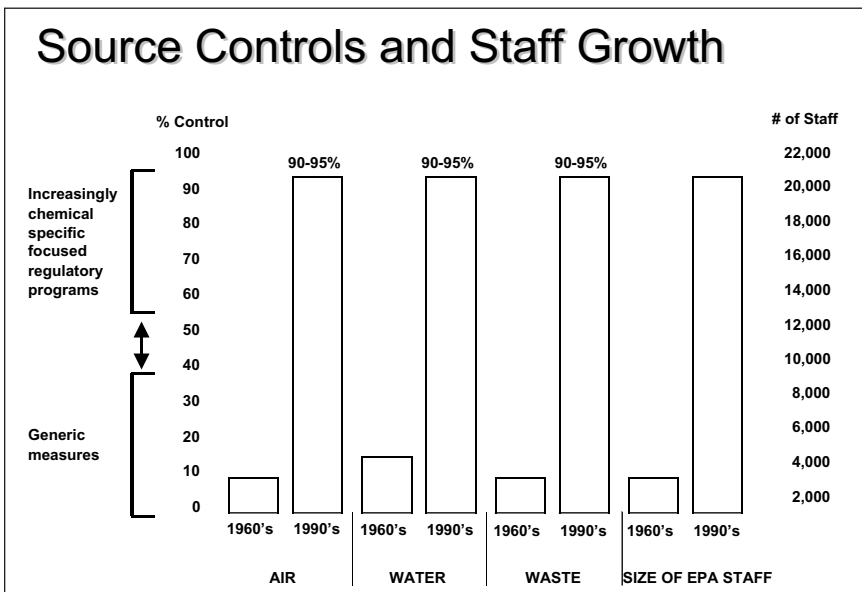


Figure 2

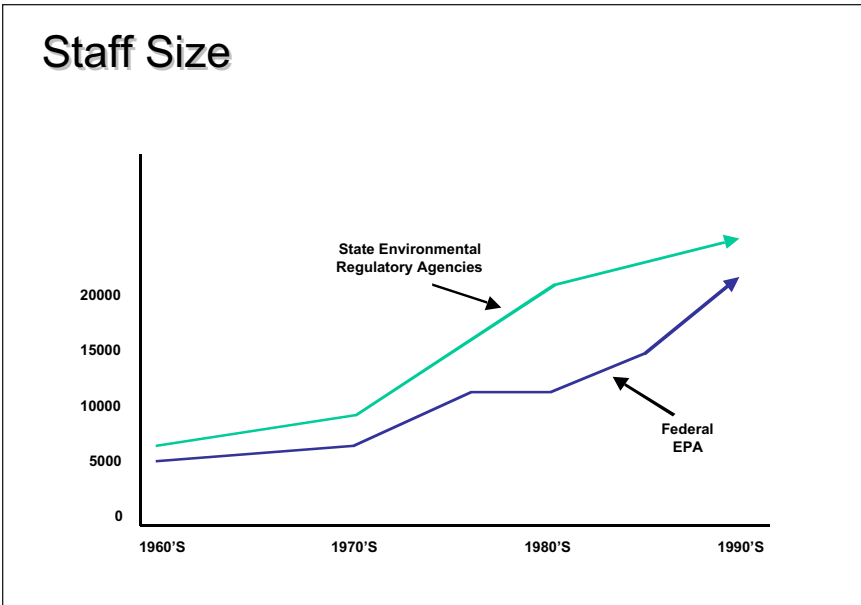


Figure 3

And therein lies the essence of why—today and going forward—change is necessary but also why it will be so difficult to accomplish. Thus the challenge facing the new administration.

We have reached a situation where agencies have imposing personnel and dollar resources (and the consultants those dollars buy, plus the stakeholders who

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have established mutually dependent relationships with the sub-units and personnel of these agencies). With more inertia than momentum, they are achieving less and less but costing more and more. Most significantly, the pattern of focusing the existing apparatus on problems that have been by and large fixed is leaving unaddressed the compelling issues now facing the human community:

land and ecosystem disaggregation, climate change, the need to shift from fossil fuels to alternative energy systems, and the greatest environmental threat—poverty—all subsumed under the challenge of the emerging theme of sustainable development.

However, given the distrust and the partisanship that has emerged in recent years around environmental protection, the new administration cannot succeed, nor can Congress, unless it is clear to everyone—the public, the NGOs, the business community and the media—that the progress made to date will be maintained. No effort at creating a program that fits today's and tomorrow's needs will be successful (and this can't be overemphasized) *unless* that condition prevails. It is a fundamental precondition.

But what of the going-forward program? Two levels are necessary. Both include new and different ways of looking at the problems, and both will require not only new statutory authorization but also new agency structures and functions. Both are also informed by a recognition that at either of the two levels we can't do everything. Simply put, there are scarce resources and many competing social and environmental needs, domestic and international, in our increasingly interconnected world. We must make comparative assessments, then make choices, then act.

The first level is the overview level—taking stock and asking the question: What are now the most pressing environmental problems facing the human community—a population of soon to be 8-10 billion, the majority now impoverished, all of whom have, and are entitled to have, aspirations to a decent quality of life. For our purposes a decent life can, in shorthand, be defined in terms of the health, housing, nutrition, education, and amenities enjoyed by a middle class American. This is an awesome undertaking, but it can't paralyze us. We must spend scarce resources doing the things that make the most difference here and around the globe.

There are now many examples where the next round of domestic environmental regulations directed at compelling technology to control this or that chemical or subsystem component will cause massive expenditures, with little or no environmental gain. Neither we in the United States or anyone in the world is rich enough to pursue such a strategy when other important environmental

needs are going unaddressed. The basic point is that we as a nation and as a global community have to assess which challenges we should address, just as we did in 1970 when dirty water and dirty air had become unacceptable, and devote public and private resources to address them. The candidates are quite obvious:

- natural resource degradation caused by conditions of raw poverty—the greatest environmental threat, often associated with the absence of the rule of law and human rights;
- the lack of clean drinking water, waste water treatment and basic nutrition for the large, impoverished, mostly developing peoples around the world—especially infants and children;
- climate change and energy systems; and
- balkanization or fragmentation of intact ecosystems with associated losses ranging from biodiversity to amenities.

These really represent components of sustainability, and we need to develop the instruments to address them in their domestic and international context.

The other level of focus is, in effect, nested in the first. It is the level of an operating facility, a manufacturing plant, a power plant, or a municipal water and waste treatment system. Today these facilities are not regulated as systems, but as a disaggregated, disconnected set of sources of water pollution, air pollution, or generators of waste. Often there is a bureau, state or federal, that is motivated and authorized to drive a control on one element of a system—without regard for its impacts on other parts of the system. There may also be no comparative assessment of what that bureau or sub-bureau is charged to do with controls on other parts of that system or even whether there is a risk or environmental or health impact associated with their proposed control. All bureaus apply their authority with energy and vigor—not only as if it is the most important in the world, but the only thing in the world. But no one makes that assessment. The only person who must focus on all of these controls, and who bears responsibility for complying with all of them, is the plant manager.

RECOMMENDATIONS

While preserving the gains we have made, the challenge of the next administration is to seek authority for environmental management and regulation that treats an operating facility as a system. In such a system, comparative, science-based assessments can be made of the environmental benefits and risks from all parts of the enterprise so that those things that can make the greatest difference will be achieved with scarce resources. We can thus cease driving controls of this or that form of pollution, merely because there is authority and a bureaucracy in existence to do it, at the expense of newly emerging and fundamental challenges facing the human community.

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In the area of remaining pollutant loadings from domestic facilities, we need to develop the tools that will enable assessing all releases remaining and judging which, if any, deserve further control. That assessment needs to evaluate risk, cost effectiveness, and effects on jobs and competitiveness.

If all we are doing is improving margins of safety, then it is appropriate and necessary to consider other uses of scarce resources, including maintaining a competitive manufacturing base and the jobs and the families it supports in this global economy. And in this era of globalism, this comparative evaluation should extend to improving the environment and the human condition in other parts of the world. American firms can thus be encouraged to invest in developing countries and to bring their resources, management and manufacturing skills to places now degraded or degrading.

So, in sum, the challenge of the new administration will be to support both the statutory and administrative change necessary to assess facilities as systems and to authorize regulation and permit writers to make comprehensive and comparative assessments of the best way to achieve real environmental improvement, without wasting resources. The EPA has made some tentative steps in this direction, but they are not widespread enough nor based on solid enough legislative authority to make much more than episodic progress.

The task may be beyond the capability of the administration alone, for it will require bipartisan leadership. It will require recognizing that the right answers are not lodged in one group but in a collective wisdom that recognizes the multiple objectives represented in the quest for a decent quality of life. In short, it will require a shift in our political dynamics. But if the evidence of poverty, of resource depletion and degradation, of climate change, of corruption and the absence of the rule of law, of loss of biodiversity and on and on are as compelling as they seem to be, then we had better get on with it.