US EPA ARCHIVE DOCUMENT

Report of the Environmental Outcomes (Flexibility) Subcommittee

of the

Local Government Task Force Advisory Committee

August 1994

Work on this report was coordinated by Michael J. Pompili, Assistant Commissioner for Environmental Health, Columbus, Ohio; Robert E. Roberts, Secretary, South Dakota Department of Environment and Natural Resources; and Allan Stokes, Administrator, Environmental Protection Division, Iowa Department of Natural Resources.

ARCHIVE DOCUMENT

Introduction

> The central idea animating civic environmentalism is that in some cases, communities and states will organize on their own to protect the environment, without being forced to do so by the federal government. ... [F]ederal agencies can often play important roles in civic environmentalism, but not by forcing state or local action or by threatening to override decisions. Civic environmentalism is fundamentally a bottom-up approach to environmental protection.
>
> Civic Environmentalism: Alternatives to Regulation in States and Communities, DeWitt John

We believe in civic environmentalism. We believe that the most effective protection of the environment takes place when local communities and individual citizens have participated in the decisions which impact on their lives. We believe such participation both raises the quality of the decision, because local participants understand local situations, and provides a "buy-in" that results in stronger support.

Recommendations

We make seven recommendations.

Recommendation #1: EPA should adopt the principles of partnership, community decision making, an informed electorate, and accountability to guide its programs. In all instances, the focus should be on outcomes, not process.

"Partnership" means that state and local governments are full participants in the development, implementation and evaluation of environmental programs. They are not simply members of the "regulated community." Similarly, state and local governments are not just additional interest groups. They are fundamental parts of the American federal system, and they have full standing to carry out the public interest.

While state and local governments are, philosophically, full partners in environmental protection, it is equally important that, as a practical matter, they carry out the overwhelming majority of environmental programs. Failure to involve them early in the development of these programs is to ignore substantial expertise on how such programs can, and should, work.

ARCHIVE DOCUMENT

Osborne and Gaebler have written

> During the industrial era, those in Washington had far more information and capacity than those in smaller state and local governments. And during the 1960s, many state and local governments were unwilling to do much of what the American people wanted done -- particularly the hard work of racial integration. But 30 years later, many state and local governments are not only more effective than the federal government, but more progressive as well. ... [U]nless there is an important reason to do otherwise, responsibility for addressing problems should lie with the lowest level of government possible. The closer a government is to its citizens, polls show, the more they trust it. The closer it is, the more accountable its officials tend to be and the more likely they are to handcraft solutions rather than create one-size-fits-all programs.
>
> Reinventing Government, David Osborne and Ted Gaebler

We share that view.

"Community decision making" simply means that the public has a right to participate in the development of rules and procedures which affect them. "An informed electorate" is critical if new environmental requirements are going to be accepted and acted upon. Without an understanding of what is required, and why it is required, support will be half-hearted, at best. The intention should not be to force people to support environmental programs, but to inform them why they should support such programs, secure in the knowledge that where Americans understand the issues, they will make the correct choices.

By "accountability" we mean that responsibility must be clear for the implementation and management of programs, and for the management of taxpayers money.

Recommendation #2: EPA should, whenever possible, make joint presentations with state and local government representatives to Congress.

State and local governments seek increased opportunities to tell their story to federal decision makers. One way in which this might be accomplished is for EPA and state and local government representatives to make joint congressional appearances. Such presentations might lend credence to EPA's position, as members of Congress are sometimes more responsive to "real people" than to federal bureaucrats.

We also believe that Congress does not receive or does not "hear" the concerns of

ARCHIVE DOCUMENT

local governments when new environmental statutes are being considered. We believe that cost and risk are insufficiently considered by Congress, and that local governments are uniquely situated to address those issues.

Recommendation #3: EPA and state and local governments should develop procedures for flexible, locality-specific, prioritized environmental compliance plans which contain meaningful environmental indicators and necessary accountability.

This proposal would allow -- but not require -- local governments to prioritize their environmental needs and to develop local plans for solving problems in priority order. Where air issues are small or nonexistent, for example, greater attention may need to be paid to groundwater. If forced to deal with specific media issues on an arbitrary time schedule, as often occurs under the present requirements, we risk wasting resources.

Local participation in development of these plans would have the benefits described above. Because the plans are locality-based, they can be tailor made for unusual circumstances. Because they are prioritized, we decrease the risk of wasting resources.

We believe we must have the flexibility to do first the things that must be done, to do second the things that should be done, and not to do at all the things that represent a waste of resources.

Pilot programs are under way on this proposal. They should be carefully monitored, and procedures developed in those programs should be expanded nation-wide.

Recommendation #4: EPA should seek necessary legal authority to implement these recommendations.

We do not know whether EPA has the flexibility to permit development, for example, of the local compliance plans discussed above. We assume that the agency does not have that flexibility, and we recommend that it seek the necessary authority.

Recommendation #5: EPA should allow, or obtain authority to allow, transfer of funding for environmental initiatives across media lines, with appropriate accountability.

Funding of programs by medium -- air, water, waste -- is too rigid. It prevents taking a holistic look at the environment. It precludes putting limited resources against real problems, because a locality with extra air money and extended water problems cannot respond in the reasonable and prudent manner of moving money where the problems are.

ARCHIVE DOCUMENT

As noted above, we assume that EPA lacks authority to carry this recommendation out completely, and we recommend that such authority be sought. A pilot program is under way on this recommendation. We believe it should be carefully monitored and the results should be expanded nationwide.

Recommendation #6: Federal legislation and regulations need to recognize the difference in local conditions and situations.

The federal government must recognize that environmental protection can be achieved through various methods. We believe that the federal government should specify ends, and that state and local governments should select means. The federal government is best qualified to set basic national standards, but it is not so well qualified to determine how to implement those standards in a particular location.

All governments at all levels should be committed to environmental solutions that are the least costly and most effective, which means that cost and risk must be considered in developing requirements and programs, and that all participants must learn to focus on outcomes, not procedures.

The efforts of EPA and Congress to establish requirements under Subtitle D, Resource Conservation and Recovery Act, which contained some flexibility are commended. Both geography and size were included as parameters in those regulations. We encourage EPA and Congress to continue this approach.

Recommendation #7: EPA should maximize the technical support it provides to state and local governments.

This recommendation simply recognizes that technical capacity is limited in many local governments and that some alternative source of such capacity is necessary. In "Initial Recommendations of the Small Town Task Force Advisory Committee," this same issue is discussed. That committee noted that many states lack necessary testing capabilities, that EPA needed to serve as a "technology transfer" point by sharing with all those technical approaches which had worked in some locations, and that third party technical assistance providers could assist in this shortfall. The committee also noted that another source of technical assistance might be found in the national laboratories.

When these recommendations are discussed, several issues always come up. Perhaps it would be advantageous to address those issues at this point.

Issue #1: EPA doesn't have the authority to do all the things you want to do. We agree. We believe that EPA should seek such authority, and that state and local governments should help EPA obtain that authority. But we also believe that EPA should be willing to use the maximum amount of authority it has to provide for flexibility and to treat state and local governments as partners.

ARCHIVE DOCUMENT

Issue #2: If vou believe in flexibility for local governments, do vou advocate the same approach to private business? There are two answers. First, local government is not the same as private business. As noted, above, state and local government are full partners, in the federal system, with the federal government. It is the viewpoint that motivates this question, i.e., that local governments and private businesses are all part of the regulated community, that we wish to change.

The second answer is this: if through a flexible approach we increase the speed with which environmental protection measures are taken, or the extent of those measures, or the commitment of private business to those measures, or we increase the actual amount of environmental protection -- why would we favor some other approach simply because we are dealing with private business?

Issue #3: Environmental rules are written to protect activities "downstream." that is. other individuals or communities which might be affected by actions taken by this individual or community. How can you guarantee that level of wrotection if each communitv develops its own approach?

First, some communities have no "downstream." Their actions are pretty much contained within geographical boundaries. Second, environmental compliance plans might well be written by two communities, or by watershed, or combined into watershed or state plans. What is important is not what unit of government develops the plan, but that local areas have the flexibility to develop such plans.

Issue #4: How does this approach sauare with the concern over environmental justice or environmental equity? Aren't vou saving that some people will receive less wrotection than others?

Some people already receive less protection than others. In many parts of the country, particularly in small towns and rural areas, there is no immediate access to a hospital, or emergency medical treatment, or 911 service, and residents may rely on a volunteer fire department. If our concern is only a health protection concern, there are many other approaches which would provide better and more immediate health protection than environmental protection.

Summary

> The problem is not what to do, but how to do it and who should take the lead. The federal government cannot [achieve sustainable and widely shared growth in its standard of living] without an enormous increase in federal taxes, which the public is unlikely to support. Nor does the federal government have the managerial and administrative capacity to execute this whole agenda effectively.

ARCHIVE DOCUMENT

> Parts of it require experimentation and adaptability to particular local and regional situations. State and local governments are much better suited than the federal government to undertake major parts of it. It is time to take a new look at American federalism and how responsibilities are divided between the states and the federal government.
>
> Reviving the American Dream: The Economy, the States and the Federal Government, Alice M. Rivlin.

We believe that environmental protection will succeed only if we "divide the job," in Alice Rivlin's phrase. The framework for dividing the job has always been present in the process of delegating environmental programs to the state level. The larger framework has always been present in the system of federalism.

Now is the time to take that system to its full development. The alternative is wasted resources, limited programs, a public which does not support our efforts and, perhaps, degradation of the environment.

ARCHIVE DOCUMENT