



Command-and-Control Environmental Regulation

by David Hogberg

What type of system of environmental regulation is the most effective and efficient? That is the topic of “Emerging Property Rights, Command-and-Control Regulation, and the Disinterest in Environmental Taxation,” by Bruce Yandle, a chapter from *POLITICS, TAXATION, AND THE RULE OF LAW*, a new book from Public Interest Institute.

Professor Yandle argues that environmental policy can be characterized by “less effective command-and-control regulation” rather than “efficiency-enhancing emission taxes, effluent fees, and property rights operation under a rule of law.”¹ Early environmental rights were “transferable.” That is, they were based on private property, and property owners could negotiate with other property owners over acceptable levels of “pollution, noise, heat, or shade.”²

By the 1970s, environmental rights were a mix of private property and public good, an intricate system with private property owners, city councils, and Indian tribes each having a claim. However, this system was reshaped in the 1970s when the federal government took over environmental decision-making. It quickly evolved into a command-and-control system because such a system benefited politicians, environmentalists, and industry. The politicians liked it because it could be used to reward political supporters. Environmentalists supported it because it better enabled them to seek tough federal controls. Industry supported it because it yielded “uniform and predictable rules that they could expect to find anywhere in the nation.”³

Many firms find command-and-control to be to their advantage. Once Washington sets guidelines, all firms face the same environmental constraints. Old plants usually find it easier to comply with the regulations than new ones. It also increases the barriers to entry for new firms, reducing competition.

Command-and-control has also made it easier for private individuals and environmental organizations to litigate. Private individuals and organizations can file suits against firms that have failed to properly file required environmental reports or have violated pollution regulations. Private individuals, if successful in the suit, can recover not only legal costs from the firm, but also court-ordered grants above and beyond the penalties and fines paid by the polluter. While the plaintiffs cannot benefit directly from these grants, the grants can be designed to benefit environmental organizations favored by the plaintiffs. Given that such suits are usually successful, firms have a strong incentive to settle out of court. The settlements also include the grant.

Such regulation can often lead to an “unholy alliance” between environmental groups and industry. Take, for example, the controversy over the spotted owl in the Pacific Northwest. The Weyerhaeuser Corporation employed wildlife biologists to search for owl habitat, but not on the company’s own land. Weyerhaeuser appeased environmentalists by restricting logging on its own land to 320,000 acres in compliance with federal and state regulations. The efforts of the biologists resulted in 5 million acres of timberland being put off limits from other companies. The restriction in competition drove lumber prices much higher and increased Weyerhaeuser’s profits by 81% over the previous year.

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One problem with this system is that the barriers to entry created by the regulation reduce competition, resulting in higher prices for consumers. Another problem is that the litigation pursued in “citizen suits” is an imprecise enforcement mechanism; litigants often cannot distinguish between firms that deliberately violate environmental regulations, and those that accidentally do or merely keep poor records. The result is a costly and inefficient regulatory system.

Professor Yandle also examines the possibility of a more efficient system of regulation by taxation — i.e. imposing a tax on pollution. Such a system “requires a public authority to identify the cost being imposed by a polluter on others against their will and to place a tax on marginal units of pollution equal to the cost imposed by the polluter.”⁴ Professor Yandle dismisses this approach as “nice in theory but not in practice.”⁵ He notes that calculating efficient environmental taxes may be next to impossible, and even if they could be calculated, they would be distorted by the political process before they were ever enacted.

Ultimately, Professor Yandle is pessimistic about a return to a more decentralized system of environmental regulation through property rights. He states that “it seems logically impossible to dislodge command-and-control regulation as the principal form of environmental control” as long as both industry and environmental groups benefit from it.⁶ He concludes that we will turn away from such a system “only when command-and-control become more burdensome than profitable to industry and environmental outcomes generated by command-and-control cease to satisfy the environmental community.”⁷

ENDNOTES:

¹Bruce Yandle, “Emerging Property Rights, Command-and-Control Regulation, and the Disinterest in Environmental Taxation,” in Donald P. Racheter and Richard E. Wagner (eds.), *Politics, Taxation, and the Rule of Law: The Power to Tax in Constitutional Perspective*, Kluwer Academic Publishers, Boston, 2002, p. 227.

²Ibid., p. 228.

³Ibid., p. 228.

⁴Ibid., p. 234.

⁵Ibid., p. 234.

⁶Ibid., p. 238.

⁷Ibid., p. 238.

This Institute Brief is one in a series on the chapters of a recently published book, POLITICS, TAXATION, AND THE RULE OF LAW, edited by Dr. Don Racheter, President of Public Interest Institute, and Dr. Richard Wagner, Economics Professor at George Mason University and Chairman of the Institute’s Academic Advisory Board. POLITICS, TAXATION, AND THE RULE OF LAW looks at the balance between providing government with the power to operate while preserving and protecting our rights of person and property.

The author of this chapter of POLITICS, TAXATION, AND THE RULE OF LAW is Bruce Yandle, a member of Public Interest Institute’s Academic Advisory Board and Alumni Distinguished Professor of Economics and Legal Studies at Clemson University, Clemson, South Carolina.

This summary of Professor Yandle’s chapter was written by David Hogberg, a Research Analyst with Public Interest Institute.

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