

Ruling on states' rights limits scope of Clean Water Act

Environmental groups enraged at ruling that will allow landfill to be built in Chicago area

Associated Press

WASHINGTON — The Supreme Court's conservative majority acted anew Tuesday to strengthen state powers at the expense of the federal government, limiting the scope of the landmark Clean Water Act. The 5-4 ruling stopped short, however, of the reach feared by environmentalists.

The court divided along its familiar conservative-liberal fault line to rule that the 1972 environmental law does not block a landfill that environmentalists and the federal government said would harm migrating birds.

The Chicago-area landfill would be built atop abandoned gravel pits that are now filled with water and used by wildfowl. Writing for the majority, Chief Justice William Rehnquist called the ponds a "far cry" from the kind of large or navigable bodies of water that Congress intended to pro-

tect. Environmental and civil liberties groups saw the landfill case as an opening for a broad assault by the court's conservative bloc on federal regulation that builds on a loose interpretation of the Constitution.

"The court could have gone further, but chose not to," said Ed Hopkins, spokesman for the Sierra Club. Still, "if this kind of habitat is destroyed it will have a very significant effect on migratory birds, ... and the court seems to have opened the door for further harm in future cases."

A group of Chicago suburbs is now free to build the landfill, and the ruling means a variety of other construction projects may proceed without federal clearance.

Duane Desiderio, a senior attorney for the National Association of Homebuilders, said the ruling appropriately clips the wings of the Army Corps of Engineers, which administers much of the federal wetlands program. "If a builder wants to build in a mud puddle, that will not be subject to the corps' jurisdiction anymore," Desiderio said. Projects that would affect real wetlands will still need federal permits, he said.

The 1972 clean water law draws much of its regulatory authority from the part of the Constitution that gives Congress power to regulate commerce between the states.

The same legal reasoning underpins a network of federal environmental and civil rights protections. All use an expansive view of interstate commerce to say that while a local decision to build a landfill or deny lodging to blacks may have only local effect, there is economic power in allowing local governments everywhere to make the same choices.

Environmental and civil liberties groups filed a flood of friend-of-the-court briefs, urging the court not to undermine that kind of reading of the "commerce clause."

Rehnquist's written opinion took pains to skirt the constitutional issue, while also making clear that the federal government had no business getting involved. "Permitting the (government) to claim federal jurisdiction over ponds and mud flats ... would also result in a significant impingement of the states' traditional and primary power over land and water use," Rehnquist wrote.

White House says investigation shows states are neglecting pollution rules

By John H. Cushman Jr.
NEW YORK TIMES

WASHINGTON — Worried that some state governments are neglecting federal environmental laws, the Clinton administration is mounting detailed investigations of several states' performance, according to senior administration officials.

Environmental Protection Agency officials say they have found that Pennsylvania and some other big industrial states are reporting only a handful of major pollution violations, suggesting that inspectors in those states may be ignoring pollution problems.

"Unfortunately, lately we have seen a number of states that are emboldened by the anti-environmental sentiment that began here in Congress, and they are retreating from their commitment to enforce the laws," said Carol Browner, the agency's administrator.

Compounding the agency's consternation, a number of states have passed laws that may conflict with federal policies by providing too much protection for companies that voluntarily identify their own pollution violations.

The agency has warned several states that it may revoke their authority to enforce laws like the Clean Air Act, or withhold federal grants that help the states enforce

the laws, unless they change their practices.

In Pennsylvania, a recent government audit found that the state failed to report significant pollution violations. In Ohio, Gov. George Volnovich is expected to sign a new law of the kind that the federal agency opposes, contending that such laws give companies too much protection. And in Virginia, a bipartisan state legislative panel recently issued a 255-page report that strongly criti-

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Carol Browner
EPA administrator

cized the state's record of environmental enforcement as too lenient.

Altogether, some agency officials said, they are especially concerned about a dozen or so states, and they are calling for a nationwide examination of the states' performance.

Federal laws governing air and water pollution and the handling and disposal of wastes are en-

forced mainly by state agencies which issue and enforce operating permits under the supervision of the EPA. As in other social programs, such as welfare and job training, the trend has been toward giving states more autonomy in carrying out these environmental mandates.

The EPA has signed "partnership agreements" with 20 states giving them increased responsibility for environmental enforcement. It expects to sign similar agreements with 15 other states this year.

But the agency has insisted that those states report serious violations and force violators into compliance. Some states might be disqualified from these partnerships and lose federal financing unless they can do that, officials said.

In interviews, Browner and other officials would not say which states they plan to examine next, saying that enforcement officials and the inspector general's office had not made final decisions.

"We have already looked at some individual states," Browner said. "We are very, very concerned with what we have found, and we are now looking at other states."

Getting in the way of protecting Indiana's environment

By BEN LIEBERMAN

The state of Indiana is trying to improve its protection of the environment, but the Environmental Protection Agency keeps getting in the way.

There is a broad consensus that the federal government's command-and-control approach to environmental protection is outdated and inefficient. Centralized regulations tend to be inflexible, expensive and relatively ineffective, particularly in comparison with state or local alternatives.

Even the Clinton administration in its report *Reinventing Environmental Regulation* admitted that "Washington, D.C., is not the source of all the answers," to environmental problems and endorses "shifting more authority — and responsibility — from the federal government to states, tribes and local communities."

For their part, the states have taken up the challenge to reinvent environmental regulation, coming up with several innovative approaches, including environmental audits. Unfortunately, every one of their new ideas has been met with hostility by the Washington-based environmental old guard.

Indiana is one of 21 states to have enacted environmental audit legislation. These laws provide incentives for regulated industries to investigate (audit) their own operations and correct any previously undiscovered problems. In exchange for putting the state on notice of any self-discovered violation and promptly remedying it, the audit report becomes privileged information.

Without this protection, far fewer companies, particularly smaller ones, would dare undertake audits

for fear that their content will be used against them.

Audits improve environmental protection by uncovering violations that would otherwise have gone unaddressed. The end result is additional environmental clean-up.

One might think the EPA and national environmental organizations would applaud such a promising innovation. Think again. Instead, the green establishment has waged war on Indiana and other states with audit laws. The EPA is now threatening to with-

All of the states' new ideas about reinventing regulation have been met with hostility by the Washington-based environmental old guard.

hold federally delegated authority to implement the Clean Air Act unless Indiana weakens its audit program. The Sierra Club and other big environmental groups have expressed strong opposition to state audit laws and have petitioned EPA to take action against some states.

EPA insists that Indiana's audit law fails to protect the environment, conceals violations and interferes with government and third-party enforcement efforts. But these claims do not stand up to scrutiny. Indiana's legal protections only extend to self-discovered violations that are reported to the state and promptly and permanently corrected, ensuring that all environmental benefits are attained. In addition, there are exceptions for more serious violations of law.

raise only hypothetical concerns.

So why does a program resulting in increased environmental protection have so many green enemies? The opposition to audits reveals two unfortunate and counterproductive characteristics of the modern environmental movement — bureaucratic self-interest and anti-industry bias.

Indiana's audit law shifts power and control away from Washington and replaces red tape and litigation with a streamlined, results-oriented approach. Environmental audits are good for environmental protection but bad for career environmental bureaucrats in Washington. Audits also focus on improvements in compliance and not on punishing industry. Thus, they have little to offer the many so-called environmental activists who are really anti-industry and not pro-environment.

For those who are less interested in a pragmatic approach to cleaner air and water and more interested in defending bureaucratic turf or engaging in a moral crusade against industry, environmental audits are nothing but bad news.

Realizing that state audit law is in jeopardy, Rep. Joel Helfley, R-Colo., has authored a bill providing federal protection for environmental audits and the state laws that encourage them.

Two similar bills have been introduced in the Senate by Kay Bailey Hutchison, R-Texas, and Mike Enzi, R-Wyo. Such measures may be necessary for Indiana to win its fight against pollution and the environmental establishment.

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Pen Tip International Features

Rather than detract from traditional enforcement, audits complement it. State and federal inspections and investigations continue unimpeded. And since the privilege only applies to information above and beyond that mandated by law, the extensive monitoring, record-keeping and reporting re-

quirements under federal and state laws are totally unaffected. In sum, audits add much but subtract little from existing environmental enforcement efforts.

Not surprisingly, EPA cannot point to any real examples of problematic audits in Indiana (or any of the 20 other states), and instead

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Today's debate: Environmental protection

Candidates' environmental fixes rely on different tools

Our view:

Gore pushes to the edge, while Bush looks for limits.

The news this week that the Earth's surface temperatures may increase by as much as 10 degrees during the next century had at least one positive aspect: It illuminated the stark differences between Al Gore and George W. Bush on environmental issues.

Gore is convinced that climate change is real. Bush says more research is needed. Gore is all about federal oversight. Bush is all about private-sector solutions.

Ideally, environmental objectives would be achieved by splitting that difference, harnessing the power of market forces and private-sector self-interest (with the help of federal incentives, mandates and standards) to improve the air and water, to conserve wild lands, to protect endangered species, and so on.

Both candidates subscribe to that model to one degree or another. But they approach it from very different perspectives.

On the one hand is Gore, federal-policy maven and longtime environmental activist. He represents a tradition of top-down mandates. He supports tougher clean-air standards for smog and soot, and helped negotiate the Kyoto Protocol, which, if ratified, would impose sharp limits on the gases that cause global warming.

On the other hand is Bush, who represents the Western tradition of entrusting stewardship to local governments and the private sector.

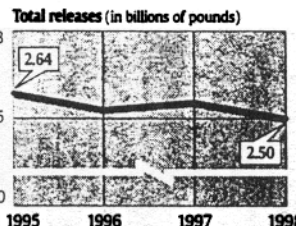
Plainly, Gore as president would be a more aggressive environmental defender. But his Washington perspective could blind him to federal heavy-handedness. The same kind, for example, that has kept the Environmental Protection Agency from remedying problems with its car-emission inspection program, the use of sewage sludge as fertilizer and its mandate for gasoline additives that contaminate groundwater. At times, the EPA has protected its regulatory schemes, even when its own scientists questioned them.

Moreover, Gore's complex manipulation of the tax code to achieve environmental goals (one plan would provide \$2 billion in tax cuts to control urban sprawl) is not the same as freeing market forces.

Yet, Bush's plan poses even greater concerns. To his credit, he is eager to support

Incentives work

The federal Toxic Release Inventory merely requires industrial polluters to submit annual, public reports on their emissions — nothing more. Yet the program has been an effective environmental tool, providing information for activists and incentives for polluters to cut back. Result: a 5.3% reduction in toxic releases between 1995 and 1998.



clean-fuels technology and has experimented with private-sector initiatives to encourage conservation. Compared to others in his party, this makes him downright progressive.

But Bush also derides 30 years of federal environmental controls as a "model of mandate, regulate and litigate." And his Texas record is not a shining example of environmental leadership. He boasts of a 14% reduction in pollutants from 1995 to 1998, as measured by the federal Toxic Release Inventory (TRI). But overall, Texas ranked just 27th in reductions during the same time frame. Meanwhile, Houston surpassed Los Angeles last year for the smoggiest air, and leads the race this year, too.

What happens if the Bush model of voluntary and ground-up environmental policy fails on a national scale? Even the vaunted TRI, which has inspired industries to cut toxic emissions by 70,000 tons since 1995, doesn't work in every specific case. And some types of environmental problems — forest health, the need to ban certain poisons outright — don't lend themselves to market-based controls one way or the other.

Ultimately, Gore is the candidate for those who want to ensure aggressive environmental protection even at the risk of heavy-handed federal intervention. Bush is the man for those who think environmentalism has gone too far. That's a pretty clear choice, and at the start of the hottest century in thousands of years, it's one worth sweating out right away.

I will set high standards

Opposing view:

Texas is home to several environmental improvements.

By George W. Bush

I believe the federal government should set high standards for environmental protection and work in partnership with state and local communities to protect the quality of our air, water and natural resources. As governor of Texas, I have put my philosophy to work: Industrial air emissions are down 11%. Texas leads the nation in the reduction of toxic pollution, and our drinking-water protection program ranks among the best in the nation. In 1999, I signed legislation that made Texas one of the first states to require air-pollution reductions from older power plants, a law the Environmental Defense Fund called "the strongest in the nation."

In Texas, home to about 75% of the endangered species, we've shown that private-land management ensures wildlife and habitat conservation. As president, I will support full funding of the Land and Water Conservation Fund to \$900 million a year, and will guarantee that 50% of these funds support state and local conservation initiatives.

As president, I will encourage more cleanup and redevelopment of contaminated properties in urban communities, known as "brownfields." My administration will set high federal standards for cleanups and will offer incentives and protection from federal liability under Superfund. The Texas Voluntary Cleanup Program I signed into law, similar to what I am proposing at the federal level, has resulted in the cleanup of more than 450 brownfield sites, creating jobs and revitalizing communities across Texas.

I will ensure that the federal government meets its responsibilities by devoting \$5 billion to eliminate the backlog in maintenance and improvements at our national parks and by directing active federal facilities to comply with environmental protection laws. I also will require pollution reductions from older power plants across the nation.

A successful environmental policy for the 21st century will require a leader who can reach across party lines in Congress and create a partnership among the federal government, state governments and local communities to conserve our natural resources for future generations.

Texas Gov. George W. Bush is the Republican candidate for president.

I will continue the fight

Opposing view:

We can protect the environment while growing U.S. economy.

By Al Gore

For my entire career in public service, I have fought for a clean environment, holding some of the earliest hearings on cleaning up toxic waste in our communities and joining in some of the earliest fights to reverse the tide of global warming.

Now, I am continuing the fight, by pushing for tough new clean-air standards so our children can get relief from the asthma that plagues too many of them, and by taking on the huge factory farms that are polluting our drinking water and threatening our health.

At the core of my commitment is a belief that we do not have to choose between protecting the environment and growing the economy. That's a false choice.

The global market for new energy technology is expected to total \$10 trillion over the next 20 years. If we invest in the cleaner technology of the future, then we can protect our environment while creating good jobs, and we can do it without new taxes, new bureaucracies and onerous regulations.

I have proposed a new Energy Security and Environment Trust to make sure America has clean, secure, affordable energy, while protecting the environment for generations to come.

We will keep working in partnership with Detroit to bring cleaner cars, trucks and SUVs to showrooms and streets around the world. This is a multihundred-billion-dollar opportunity; we have to take it and not leave it to others. We will cut taxes so families can afford those 80-mile-per-gallon cars and industry can mass-produce them sooner.

We will give new incentives to industry to transform dirty old power plants into modern, clean sources of energy.

And we will invest in high-speed rail and mass transit to give families more choices when they commute and to help communities combat congestion and sprawl.

If we make the right choices, we don't have to sacrifice our precious wilderness areas or put up with pollution to bring prosperity to all of our families. Instead, let's create and sell to the world the new technologies that will give us a healthier planet and a stronger, more prosperous economy.

Vice President Al Gore is the Democratic candidate for president.