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Sidestepping Regulations On environment, Bush ignores federalism

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For many years, California's environmental laws have been among the toughest in the nation. Indeed, state laws are often harder on polluters than the federal government's. Our auto-emissions standards are an example: They are so much stricter than those of the U.S. Environmental Protection Agency's that auto manufacturers design their products with California's standards in mind.

Until recently, the federal government had not objected to California establishing its own, stricter environmental guidelines. But the Bush administration, from which one might expect a healthy respect for federalism, has shown no such deference.

A recent case in the U.S. Court of Appeals for the Ninth Circuit in San Francisco tells the tale. In the 1990s, California adopted rules requiring that by 2003 (later extended to 2005) a small percentage of the cars each manufacturer sells in the state had to be "zero-emitting vehicles" -- in practical terms, either electric cars or hydrogen fuel-cell vehicles. California was on solid legal ground in adopting the standard, because the federal Clean Air Act expressly allows California to adopt emission controls stricter than federal limits.

But the industry believed California's standard would cut into profits and challenged it in court -- not surprising. What is remarkable, however, is that the Bush administration entered the case on the side of industry, arguing that the state was barred from adopting more protective standards because regulating fuel economy is a federal function. (On Tuesday, the automakers dropped their suit, bringing a temporary respite in the battle and signaling that the industry would meet the so-called ZEV standard.)

A similar challenge can be expected to a pioneering state law enacted last year requiring that greenhouse gas emissions from cars sold in California be reduced starting in 2009. California acted because of the administration's wholesale failure to deal with global warming -- it abruptly withdrew from the Kyoto Protocol and abandoned President Bush's campaign pledge to regulate carbon-dioxide emissions. The automobile industry strenuously opposed the bill passed last year, and is certain to pressure the administration to seek to block the state's efforts.

The issues in these cases reflect a larger battle over how much autonomy states have in regulating pollution within their borders. Most federal environmental laws mandate minimum federal standards, but allow states to adopt more stringent requirements, a model known as "cooperative federalism." Bush came to office pledging greater flexibility for state governments in carrying out federal environmental programs. But as the zero-emissions case demonstrates, state efforts to ratchet up environmental protections were not what he had in mind.

On the other hand, the administration is scaling back some federal standards in order to allow weaker state rules to take effect. In so doing, the administration knows it can rely not just on weaker state standards, but on less comprehensive state enforcement. For example, the administration has proposed exempting hundreds of thousands of wetlands from federal protection, leaving regulation to the states. But only a small number of states have programs in place as effective as federal law.

One of the most troubling examples of the administration's inconsistent view of federalism is its proposed changes to "new source review," a key provision of the Clean Air Act requiring facilities that increase their emissions to install up-to-date pollution control equipment. It ensures that older, dirtier facilities install tighter controls when they upgrade their plants.

The EPA recently proposed changes that would weaken NSR, exempting 50 percent of the facilities covered, according to the agency's estimates. Although the Clean Air Act lets states establish stricter emission rules for industrial facilities than the federal government, and although the new NSR rule weakens standards in place in California and elsewhere, the rule nonetheless requires states to follow the weaker federal standards in most cases.

The administration's selective respect for state interests has even extended to arguing in court that local government efforts to protect the environment from mining-related pollution are pre-empted by federal law. In one instance, a proposed sand and gravel mine on Bureau of Land Management property in Soledad Canyon was rejected by Los Angeles County because the applicant, Cemex, had failed to provide the county with adequate environmental analysis. Last fall, the Bush administration jumped into the case to argue that Cemex should not have to comply with the California Environmental Quality Act or state surface mining laws.

Federalism is usually a bedrock principle for conservatives, and devolution of authority to the states has been a key theme of Bush's rhetoric and policies. Californians should demand that he show similar respect for the principle when it comes to the environment.

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