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Excessive regulation

Tangled up in green tape

The EPA, Congress, activists, the courts and power companies themselves all share the blame for the chaotic nature of environmental regulation in America

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engineers responsible for keeping America's coal-fired power plants up to standard. Late last year a court halted the adoption of new regulations on interstate air pollution that would have affected lots of them—just two days before they were due to go into force. The suspended regulations, in turn, were themselves a replacement for an earlier set of rules which had been thrown out by the courts in 2008. The older lot have now been temporarily reinstated, while the court hears various challenges to the new ones. What the outcome will be is

anyone's guess.

Similar chaos surrounds another set of rules, these ones governing ozone, which will also affect lots of power plants. In 2010 the Environmental Protection Agency (EPA) proposed tightening restrictions on ozone—a surprise in itself, since the rules were not due for review until 2013. Late last year the White House overruled the EPA, and junked the new rules. Since the previous set, dating to 2008, had never been implemented, a standard first adopted in 1997 still applies. But environmentalists have sued to put a fiercer one into force. Whatever happens, the Clean Air Act obliges the EPA to reopen the whole subject again next year.

Last year the EPA also issued rules on mercury and soot from power plants. In theory that marked the culmination of a decades-long, on-again-off-again process first initiated by amendments to the Clean Air Act in 1990—although further lawsuits seem inevitable. Also in the pipeline are restrictions on emissions of greenhouse gases, new rules regarding cooling water and the possible declaration of coal ash as hazardous waste, from which a stream of new requirements would flow.

Confused? So are the power generators. Conforming to these rules often involves installing new kit or changing the way plants are run, and on occasion shutting them down altogether. That is expensive, utilities complain. The EPA itself estimates that meeting the new mercury standards will cost businesses \$10 billion a year. Electricity prices, it reckons, will initially rise by 3% a year as a result. It puts the cost of the interstate air pollution rule at \$2.4 billion a year, and of the ozone rule (if it is ever implemented) at \$20 billion a year at least. Industry groups, naturally, have far higher estimates of the costs.

Perhaps even worse, from the utilities' point of view, is the unpredictable and inconclusive manner in which rules are proposed, modified, rescinded and reinstated by the bureaucracy and the courts. This can make investment in pollution-control gear, let alone new power plants, an especially risky business. Ralph Izzo, the boss of PSEG, a big power-provider, describes how his firm lost millions in the 1990s building natural-gas plants that were not in the end needed, in

part because some of the EPA's standards ended up more lenient than originally anticipated.

The EPA retorts that the benefits of all these regulations, largely in the form of diseases and deaths averted, far outweigh the costs, at least by its reckoning. Others question both the inclusion in its sums of ancillary benefits, such as the reduction in fine particles that will accompany cuts in mercury emissions, and the value it assigns to improved public health (see [article \(http://www.economist.com/node/21547772\)](http://www.economist.com/node/21547772)). Moreover, the EPA did not dream up the seemingly haphazard process by which most of these rules are formulated and applied: that is dictated by the Clean Air Act, which was approved by Congress in 1970 and updated in 1990, both times with strong bipartisan support.

That bipartisanship has since evaporated. Republicans in Congress now argue that many of the EPA's standards are too onerous for businesses and have introduced legislation to rescind some of them. Newt Gingrich, one of the Republican candidates for president, thinks the EPA is so anti-business as to be beyond repair. He wants to abolish the entire agency and start again. Business lobbying groups are only slightly less vehement in their criticism. The American Chamber of Commerce, for example, routinely denounces EPA regulations as "job-killing".

Barack Obama and his underlings seem acutely sensitive to this charge, and have made several attempts to limit the toll of new regulations on business. In the face of widespread complaints, they withdrew not only the EPA's more exacting ozone standards but also its proposed restrictions on emissions from industrial boilers. They have twisted the Clean Air Act to exempt all but the biggest sources from the coming curbs on greenhouse gases, and have delayed issuing rules even for them, adding to the confusion. When they have pressed ahead with new regulations, they have tried to be flexible, providing for an extended grace period to meet the mercury standards, for example, and preserving a trading scheme for interstate air pollution despite hostility from the courts.

The courts, in fact, are the source of the worst uncertainty surrounding environmental regulation. They have repeatedly forced the EPA to

revise its rules, rejecting decisions reached under both Mr Obama and his predecessors. It is now assumed, says Kyle Danish of Van Ness Feldman, a law firm, that any important rule issued by the EPA will prompt multiple legal challenges. It does not help that the Clean Air Act does not allow the cost of pollution controls to be taken into account when setting certain standards. Nor is it really designed to handle so pervasive and subtle a pollutant as carbon dioxide—a flaw the Obama administration readily concedes.

There seems little hope of updating the Clean Air Act amid the current shouting match about environmental regulation, however, and utilities are far from unanimous about its deficiencies. Mr Izzo, of PSEG, argues that the EPA's standards are scientifically grounded, and that to water them down would be to penalise responsible firms like his which have gone ahead and made the necessary investments. Moreover, it is not clear whether the EPA's critics really would like to see a more predictable rule-making process. Many of the utilities that complain most vociferously about the uncertainty involved actually contribute mightily to it by backing endless legal challenges to new regulations.

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