

EPA's Tidal Wave

Within three months after Election Day 2012, nearly 6,000 new regulations were posted by the federal government, potentially costing businesses over a trillion dollars and crushing America's economy.

By Michael S. Coffman, Ph.D.

The Office of Management and Budget (OMB) warned in its 2011 Information Collection Budget of the U.S. Government that 8.783 billion hours are required to complete regulatory paperwork annually, up from 7.4 billion in 2000. "If each hour is valued at \$20," the OMB estimates, "the monetary equivalent would be \$176 billion." When all regulatory costs are considered, the Competitive Enterprise Institute estimates the total annual cost to be \$1.8 trillion.

Regulatory costs greatly exceed total corporate pretax profits of only \$1.3 trillion. Obamacare alone will cost \$27.6 billion, with nearly \$30 billion needed just to implement the blizzard of new regulations and required paperwork. Worse, it now is becoming clear that Obamacare is a train wreck in progress as states opt out of state-run insurance exchanges and the federal government is hopelessly behind schedule in implementing its own law. To add to the misery—just as critics warned—it is apparent that Obamacare could double insurance premiums. Instead of saving taxpayers \$100 billion over 10 years, as President Obama, Sen. Harry Reid, and Rep. Nancy Pelosi promised before passing the law, the OMB now says it will likely cost us \$1.9 trillion by 2020. That will increase to \$2.6 trillion by 2023.

Obamacare is on the path to disaster that will graphically illustrate why the government should stay out of the free market and keep regulations to an absolute minimum. Unfortunately, the Obama administration's answer to every conceivable problem is more regulations, justifiable or not. More than 67 percent of the 6,000 new regulations posted by press time are environmentally related, and most are proposed by the Environmental Protection Agency (EPA).

Small Business

Small businesses will be hit hardest because they cannot afford to hire an army of attorneys and accountants to carve out exemp-

tions and minimize regulatory costs. Small Businesses for Sensible Regulations (SBSR) has exposed the gut-wrenching impact of EPA's "tidal wave" of newly proposed regulations (www.sensibleregulations.org).

Meanwhile, the Small Business Administration reports that 64 percent of all new jobs were created by small businesses in 2010; others say it is closer to 70 percent. SBSR found that 85 percent of all small businesses aren't hiring, while 74 percent said there are too many new regulations in

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the pipeline. Half of those polled said the reason they were not hiring was because of regulatory uncertainty; the rest said it was because of the lousy economy. Both reasons are linked together in what is looking more like a death spiral.

A February 2013 study published by the Fraser Institute of Canada reinforces the concerns of small business: "Following an increase in policy uncertainty of the size seen on average between 2006 and 2011, industrial production in the United States dropped by 2.5 percent and employment by 2.4 million.... Economic policy uncertainty is the new normal."

This study was completed before the Obama administration put the regulatory pedal to the metal to create as many new regulations as possible during its second term. That's frightening when considering that finalized regulations released by the administration having a significant impact on small businesses during Obama's first three years exploded by a factor of 800 percent compared to the first three years of Bush. This is no accident. The mass of new regulations is part of a diabolical plan that was actually initiated in late 2011. Just before the November 2012 elections, Sen. James Inhofe (R-OK) issued a Senate Minority Report that is seis-

mic in its nature. It warned: "As the economy has continued to falter over the past year, team Obama has been delaying rule after rule that will eliminate American jobs, drive up the price of gas at the pump even more, impose construction bans on local communities, and essentially shut down American oil, natural gas, and coal production. They don't want this economic pain to hit American families just before the election because it would cost President Obama votes, so they have simply decided to punt, intending to move full speed ahead if they gain a second term."

The Inhofe report underestimated the zeal of the Obama administration in general, and the EPA specifically, to issue this tidal wave of new regulations. What is diabolical is that President Obama deliberately kept this information from the American people until after the election. He lied by omission rather than commission, and his propensity for bending the truth to the breaking point and selectively changing the law has resulted in opinion pieces in the *New York Times*, *Washington Post*, *National Review*, and the *Wall Street Journal* that label Obama's administration as the "Imperial Presidency."

The administration's deception and constantly changing regulations are driving America's economy off the cliff, led by federal agencies like the ever-growing EPA. Former EPA administrator Lisa Jackson denied this. She claimed the agency has taken "measured and careful" steps and the new costs would not be a burden to industry. *TIME* magazine noted that for Jackson, "a measured step is when she only gets to move the goalpost half as far as she wanted to." How did she do that? By assuming powers that trample individual rights and the foundational free-market principles.

Rampant Abuse

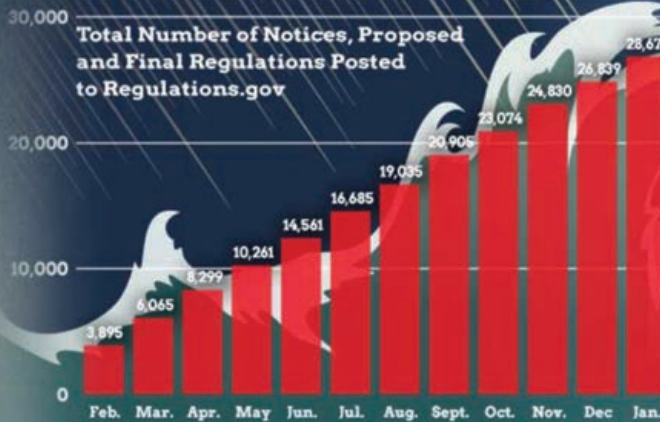
The EPA uses godlike powers to crush those who oppose it. On May 3, 2012, the *Washington Post* published an editorial entitled, "The EPA is earning a reputation for

STOP THE REGULATORY TIDAL WAVE

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Obama's Regulatory Tidal Wave



Source: Regulations.gov originally accessed 1/31/13

Small business owners in America say complying with federal regulations is the most important problem facing them today.*

ALERT YOUR FRIENDS TO STOP THE TIDAL WAVE

*Gov't Regulations at Top of Small-Business Owners' Problem List. Gallup 10/24/11

President Obama is issuing a tidal wave of new regulations that is already causing major problems for business. The National Federation of Independent Businesses is appealing to the public to stop the tidal wave by providing graphics like this, and other information on sensibleregulations.org. BELOW: Chantell and Mike Sackett were ordered by the EPA to cease construction on their home by arbitrarily declaring the site a wetlands and without allowing them due process. The U.S. Supreme Court unanimously ruled in favor of the Sackett family.

abuse.” This was in the wake of an EPA scandal in which former EPA Region 6 Administrator Al Armendariz was caught on video admitting the EPA’s “general phi-

ty was ingrained in its culture. Don’t believe it. In justifying its regulations, the EPA plays fast and loose with science to hype the danger of not imposing the rule, while inflating the alleged benefits of imposing the rule. Any connection to truth and reality has become coincidental.

The Sackett family has become the classic example of EPA’s conquer-and-crucify mentality. They were preparing to build a home on a lot in northern Idaho. They had all the necessary permits and were preparing the site for building when three EPA employees drove by and, apparently without even looking at the site, declared it a wetland. The EPA threatened to fine the Sacketts \$37,000 (up to \$75,000) a day if they did not stop construction and restore the site to a pristine condition.

The Sacketts were not allowed any way to appeal, even when it was determined the site was not on the EPA’s wetlands’ map. Because the EPA was still in the compliance phase—that’s the phase where it issues its threats—and had not yet issued the final enforcement decree, its attorneys informed the Sacketts

that they were not even allowed to sue the agency. The EPA could penalize them anytime it wanted and they could do absolutely nothing. Mike Sackett later confessed, “As this nightmare went on, we rubbed our eyes and started to wonder if we were living in some totalitarian country.” That is, in fact, exactly what was happening to them.

With help from the Pacific Legal Foun-

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losophy” of enforcement for oil and gas is to behave like the Romans who “used to conquer little villages in the Mediterranean. They’d go into a little Turkish town somewhere, they’d find the first five guys they saw, and they would crucify them. And then you know that town was really easy to manage for the next few years.” He continued, saying that he tells his staff to “hit them as hard as you can, make examples of them, and go aggressively after them.”

Armendariz was forced to resign and the EPA quickly denied that this crucify mentali-

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dation, the Sacketts sued anyway and won a unanimous decision in the U.S. Supreme Court on March 21, 2012. Chief Justice John Roberts wrote: “Because of the administrative compliance order, [the EPA] is really never going to be put to the test, because most landowners aren’t going to say, ‘I’m going to risk the \$37,000 a day...’ All EPA has to do is make whatever finding it wants, and realize that in 99 per-



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Windsorgate

EPA's email scandal. By Michael S. Coffman, Ph.D.

Before she was forced to leave her job on Valentine's Day 2013, EPA Administrator Lisa Jackson was President Obama's "hatchet man." Seemingly unaccountable, she ran the EPA as if she had a God-ordained mandate to stop the administration's false belief in man-made global warming. To do this under the nose of the EPA's inspector general, she and her inner circle used private (alias) email accounts to plan their strategies secretly rather than the EPA email system that is open to scrutiny.

Jackson's actions are a clear violation of the Federal Records Act. EPA email and records rules instruct employees to "not use any outside email account to conduct official agency business." When attorney Chris Horner of the Competitive Enterprise Institute (CEI) got wind of the alias accounts used for official business, he filed a Freedom of Information Act (FOIA) request for all the emails listed as belonging to Richard Windsor, Jackson's primary alias. It would later be determined that four other names were also used.

When the EPA stonewalled Horner's FOIA request in 2012, he sued the EPA. The court ruled in December 2012 that the EPA had to release all emails—roughly 12,000 of them—in four batches of 3,000 each. Even then the EPA thumbed its nose at the court by only providing 2,100 emails of the court-ordered 3,000 in the first batch released in January. Incredibly, not one of them was from Richard Windsor's account. "Instead," noted Breitbart News, "the EPA provided such absurdly silly and unresponsive emails as the daily news briefs published by the *Washington Post* and EPA national news clippings. It was a pathetic attempt to avoid a contempt citation that came only after a week's worth of unsuccessful attempts to push the official response date down the road."

There could be only one reason to have alias email accounts: to evade public accountability by conducting government business under the table, outside the public eye. The EPA's only justification for the Richard Windsor false persona is, "Everyone

else does it." Horner laments, "The readiness with which we already know other administration officials, including lawyers, accepted the practice suggests Windsor wasn't the only such false identity Obama officials have created to subvert and circumvent federal record-keeping and disclosure laws." Later events prove Horner correct.

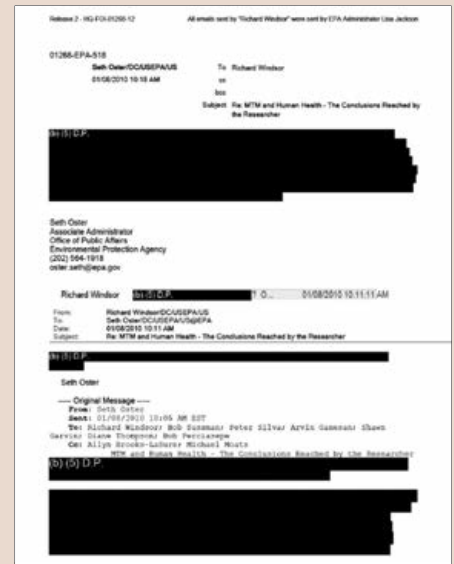
The second batch of 3,000 emails was apparently to or from Richard Windsor, but were so heavily redacted that they omitted all but the most mundane communications (see example). The EPA used a FOIA exemption which allows agencies to redact certain intra-agency communications. The argument for the rule is that disclosing internal debates could chill a bureaucrat's ability to have forthright discussions about policy. However, it also would allow Jackson and her inner circle to easily hide possible criminal activities. She may be innocent, but why would she redact almost everything if the emails merely contained everyday business?

After discovering unredacted portions of email chains that were redacted in earlier correspondence of the chain, Horner claimed it was obvious that much of the redacted verbiage "appeared to have nothing to do with the sort of agency deliberation that qualifies for withholding." The exemptions, Horner said, "look to be abusive efforts to avoid embarrassing revelations about mystery meetings on Jackson's schedule, planning spin for, and then characterizing, interviews and media coverage, and so on."

The unredacted verbiage reveals that Jackson and other top EPA officials devoted extensive attention to and cooperation with media, public officials, and other "friendly," whose coverage and commentary put the agency's policies and leadership in a positive light. Another 19 private emails using "me.com" between EPA Region 8 Administrator James Martin and Vickie Patton, general counsel for the Environmental Defense Fund, concerned meetings scheduled with each other or a third party.

Martin had previously worked for the

EDF as an attorney. While there is nothing wrong with an EPA employee meeting with an employee of an environmental organization, why was it done with a private email account rather than a highly scrutinized EPA email account? In one email dated April 12, 2012, Martin asks Patton for the contact information of Patton's "guy" in the New York state government. The secretive nature of the emails raises suspicions because a 2011 Chamber of Commerce report exposed secret and costly "sue and settle" collusion between federal agencies and radical environmental groups. Writing in *Forbes* magazine, Larry Bell recaps the practice: "The [s]ue and [s]ettle practice involves far-left radical environmental groups filing lawsuits against federal agencies wherein court-ordered 'consent decrees' are issued based upon a prearranged settlement agreement they collaboratively craft



together in advance behind closed doors. Then, rather than allowing the entire process to play out, the agency being sued settles the lawsuit by agreeing to move forward with the requested action they and the litigants both want. Literally hundreds of millions of taxpayer dollars have gone to environmental groups using this highly illegal tactic."

In other words, the agency throws the case to allow the radical environmental agenda to advance another step, allowing the agency to impose even more regulations while the environmental organizations get reimbursed for their court costs merely to initiate another sue-and-settle case, all at tax-

payer expense. Not only is this an abuse of power, but it is also a clear-cut case of fraud. Yet, to my knowledge, no case has been brought to trial to punish the offenders.

Lisa Jackson announced her resignation days after the EPA lost its court battle with Horner and CEI the previous December, effective Feb. 14, 2013. James Martin resigned a week after Jackson. The dust had not yet settled when it was determined that Jackson's temporary replacement—Acting Administrator Bob Perciasepe—also used a private email account, perciasepe.org, to conduct official business. It never ends.

Don't expect this issue to go away anytime soon. Horner and CEI have filed another lawsuit, this time against the Department of Treasury, to obtain all emails dealing with Treasury's efforts to get support for a carbon tax. But that's another story. The point is that the corruption in our federal government, bad as it was in previous administrations, has exploded in Obama's presidency. His growing habit of trashing the rule of law while continuously claiming to be the most transparent administration in history will not end well for America. It is time to slash the power and reach of the federal government, no matter which party is in power. ■

Dr. Coffman is president of Environmental Perspectives Incorporated (epi-us.com) and CEO of Sovereignty International (sovereigntyinternational.org) in Bangor, Maine. He has had more than 40 years of university teaching, research and consulting experience in forestry and environmental sciences and now geopolitics. He has led a multimillion-dollar research effort on climate change and was one of four who stopped the ratification of the Convention on Biological Diversity one hour before the Senate cloture vote. The Biodiversity Treaty is one of the major treaties promoted by Agenda 21. He produced the acclaimed DVD, "Global Warming or Global Governance" (warmingdvd.com), disproving man-caused global warming, another major theme of Agenda 21. Dr. Coffman's newest book, "Plundered: How Progressive Ideology Is Destroying America" (AmericaPlundered.com), details how the American people are being indoctrinated and bullied into a destructive belief system called progressivism. His recent book, "Rescuing a Broken America" (rescuingamericabook.com), is receiving wide acclaim. He can be reached at 207-945-9878 or epinc@roadrunner.com.

cent of the cases, it's never going to be put to the test." Justice Samuel Alito wrote that the EPA's actions "would have put the property rights of ordinary Americans entirely at the mercy of...EPA employees." This, of course, is exactly what the jackbooted EPA depends on.

Unfortunately, the Supreme Court's decision did not settle the issue of whether the Sacketts' land really was a wetland. That decision, along with any claim of damages done by the EPA to the Sackett family, was remanded back to the lower court. However, on the bright side, Louisiana State University's Energy Law and Resources has opined that "the [Supreme] Court dealt a detrimental blow to the EPA's ability to regulate parties through the issuance of administrative compliance orders. The [Supreme] Court ruled that regulated parties can challenge compliance orders before the agency seeks enforcement. Though this case specifically dealt with the EPA, its ramifications may be felt across the entire government agency regulatory scheme."

The Supreme Court's decision is unlikely to deter the EPA from further abuse. It, along with other agencies, is frantically trying to find a way to skirt the court's decision in order to regain its totalitarian powers. The only way these agencies can be brought under control is if abusive agency employees face personal liability for their illegal actions that violate their victims' civil liberties—without hiding behind the deep pockets of the federal government.

The EPA has become so arrogant that it

is now creating regulations that are impossible to meet. It suddenly increased the requirement for refineries to use taxpayer-subsidized celluloid ethanol from 8.65 million gallons to 14 million gallons even though the fuel is virtually nonexistent. The U.S. Court of Appeals for the District of Columbia Circuit ruled that the agency exceeded its authority in requiring refiners to purchase a nonexistent fuel. It wrote: "When [the amount available] is less than the mandated volume, the [EPA] Administrator is to 'reduce the applicable volume of cellulosic biofuel...to the projected [available] volume.'"

Incredibly, instead of lowering the use of celluloid ethanol to levels that were available, Lisa Jackson almost doubled the requirement and then mandated that the refineries buy credits in lieu of the actual ethanol. She literally thumbed her nose at the court's ruling and proceeded to break the law.

The EPA is out of control, corrupted by pseudo-science and riddled with bureaucrats who believe their religious vision of nature must be protected at any and all costs to the citizens of America. The EPA can no longer serve its original purpose: to protect the environment without damaging the economy. Its dismal record clearly shows that its zealous ideology is so ingrained in its culture that it cannot be rehabilitated. It has set itself up as the high priest of all human activity, it has outlived its usefulness, and it must therefore be put out of the misery it is causing America before it destroys us all. ■

EPA'S OUTRAGEOUS COST

There are more than 4,100 EPA regulations in the pipeline and just a sampling of these will cost the economy a minimum of \$515 billion over four years.

Regulations	Capital Costs*	Total Annual Cost* Over Four Years
National Ambient Air Quality Standards for Ozone		\$360,000,000,000
Boiler Maximum Achievable Control Technology	\$9,500,000,000	11,600,000,000
Cross State Air Pollution Rule		3,200,000,000
Federal Motor Vehicle Safety Standard No. 111		10,800,000,000
Nat'l Ambient Air Quality Standards Particulate Matter		1,560,000,000
Florida Numeric Nutrient Standards (Phase 2)		100,000,000
Clean Water Act Jurisdictional Guidance and Rulemaking		684,000,000
Non-Hazardous Solid Waste Rule (Reconsideration)	706,000,000	1,120,000,000
Tier 3 Pollution Motor Vehicle Emission & Fuel Standards	17,000,000,000	52,000,000,000
Uniform Standard for Stationary Sources (Flare Rule)	460,000,000	384,000,000
Utility MACT		38,400,000,000
Cooling Water Intake Structures		1,596,000,000
Coal Combustion Residuals Generated by Electric Utilities		5,896,000,000
Cow Tax on CO ₂ Emissions		851,000,000

Total Capital and Annual Cost Over Four Years: \$515,857,000,000

*EPI Estimates

Source: Small Businesses for Sensible Regulations <http://www.sensibleregulations.org/resources/515-billion-dollar-tidal-wave/>