

The United EPA of America

Just when you thought regulations couldn't get any worse, the EPA is unleashing another major power grab, even assuming the godlike power to redraw state boundaries.

By Michael S. Coffman, Ph.D.

When Lisa Jackson was forced to step down as head of the Environmental Protection Agency in February 2013, there was a collective sigh of relief. She had been caught illegally using “Richard Windsor” as an alternate email address to thwart oversight of her correspondence when planning dubious EPA actions. It was rapidly becoming apparent that the EPA was corrupt to the core in all its actions, including the science it used.

Entering Never-Never Land

The hope of achieving true science and honesty with the next EPA administrator was dashed with the confirmation of Gina McCarthy in July 2013. McCarthy can only be described as even worse than Jackson. Much worse. She believes in using bureaucratic regulations to stop every perceived activity that allegedly causes pollution, especially those activities most often blamed for global warming.

In her drive to become “sustainable,” McCarthy wrote in a 2012 letter to Congress, “There is no threshold level of fine particle pollution below which health risk reductions are not achieved by reduced exposure.” In other words, no regulation is too severe if *any* risk remains. In essence, she is now aggressively implementing the United Nations Agenda 21 (see *RANGE*, Winter 2014, “Agenda 21: Swallowing America,” at www.rangemagazine.com).

Since McCarthy’s confirmation, Regulations.gov shows that the Obama administration is flooding the nation with more than 1,000 final and over 6,000 introduced regulations during the first quarter of 2014. Many of these are draconian in nature. One of these cuts the sulfur content of gasoline by 67 percent by 2017. While the EPA issued its usual exaggerated “it’s wonderful” platitudes, knowledgeable analysts advise the new rule will have almost no environmental or health benefit and raise the price of gasoline by up to 10 cents a gallon. It will also cost the oil industry billions of dollars in capital costs. The auto industry likes it, not because it



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“Corrupt to the core,” the EPA is drafting at least 134 “significant” regulations to add to thousands of existing pages of bureaucratic rules. No doubt the agency would prefer to keep all of its doors closed to public curiosity.

believes the rule is needed, but because the EPA has promised them it will not keep coming back with ever increasing restrictions that drive up industry costs. Some call this extortion.

McCarthy’s ideology would necessarily demand that every human activity, from cooking, driving, to cleaning out a closet, be regulated. After all, using her rationale, how do we know if the dust created by cleaning a closet will provide the trigger that leads to death? Ridiculous? It doesn’t matter that toxicological studies that actually evaluate the impact of fine particles on cardiopulmonary function show that current levels of fine particulates are harmless.

In McCarthy’s logic, as long as there is a chance, then it is fair game as impetus for new regulation. This same principle provides the foundation of Agenda 21 and is called the Precautionary Principle in “UNeze.” The Precautionary Principle prevents any human action that could, no matter how small the risk, cause environmental damage. It doesn’t

take rocket science to realize that if the U.N.’s nihilistic Precautionary Principle were fully implemented, earth’s residents would soon be living in caves.

Perhaps this is illustrated best by the flood of regulations soon to be issued by the EPA discussed in “EPA’s Tidal Wave” (*RANGE*, Summer 2013) requiring carbon capture and storage sequestration (CCS) for new coal-fired power plants. CCS injects CO₂ into the rock strata of the earth. Experts in the industry adamantly proclaim that the technology is not yet commercially available for capture and storage of CO₂. Consequently, this rule effectively bans all new coal-fired plants from ever being built.

McCarthy denies this, saying that carbon capture and sequestration “is a technology that is feasible, and it’s available today. It’s been demonstrated to be effective. We know that it’s been demonstrated, and it’s being actually constructed on real facilities today.” McCarthy may be correct technologically. Four operational pilot CCS power plants are being built. While feasible, they are a long way from being economically viable. Texas Energy Project, one of the four pilot plants, has been stranded because the buyer of its electricity has backed out. The electricity cost is uneconomically higher than gas-fired generated electricity. It’s like space flight. We’ve traveled to the moon, but commercial travel is still decades away. The same is true for coal-fired CCS as well.

Another of the four pilot projects is Southern Company’s Kemper County facility in Mississippi. Rep. Steve Scalise (R-LA) told Janet McCabe, the EPA’s top air-pollution regulator, “You don’t live in the real world.” That project has faced cost overruns, and Scalise’s “real world” comment to McCabe was made as he argued that the Kemper facility is not a nationally replicable model.

The Heritage Foundation released a major study on the impact of the proposed EPA coal regulations on March 4. It found that “by the end of 2023, nearly 600,000 jobs

will be lost, a family of four's income will drop by \$1,200 per year, and aggregate gross domestic product decreases by \$2.23 trillion over the entire period of the analysis." Although some may accuse the Heritage Foundation of overstating the impact, it nonetheless is based on the federal government's National Energy Model System and shockingly demonstrates the magnitude of how much the EPA skews financial, social and environmental impacts to justify its actions.

Like most progressives, McCarthy's ideology ignores real science and focuses on what she "feels" to be the truth. If her current actions are any indication, her feelings are finely tuned to sense any and all real or perceived risks. Are any of us safe?

Even rural residents living miles from their nearest neighbors are now feeling the heavy boot of the EPA. The "say no to everything" agency just banned the production and sale of 80 percent of America's wood-burning stoves. Two percent of U.S. homes (2.4 million) totally heat with wood, especially those living in the rural countryside. Another 10 percent use wood as supplemental heat. Most woodstoves cannot meet the EPA's new 12 microgram per cubic meter of air standard. The only use for these stoves now is scrap metal. Families who used to depend on them for heat now have to spend several thousand dollars to install a propane or oil heater.

There was no reason to impose the new woodstove regulations other than pressure from environmental groups and an unending lust by the EPA to expand its regulatory authority. This is another example of the "sue and settle" racket whereby environmental groups sue the EPA for some trumped up failure to regulate whereupon the EPA settles out of court for a few million dollars and a host of new regulations. The victimized industry then has to conform to the strangling regulations or go out of business. The consumer has to pay for the increased costs of the product and for increased taxes needed for the EPA to pay off the eco-group in the settlement. It's not insignificant. According to the General Accounting Office, Earthjustice received almost \$5 million in EPA settlements to its lawsuits between 1995 and 2010. That income then goes into funding more lawsuits.

Ignoring the Constitution

It gets worse. On May 1, 2013, nominee McCarthy told attendees of the Green Education Celebration at the University of Massachusetts: "I will tell you that I didn't go to Washington to sit around and wait for congressional action. Never done that before, and don't plan to in the future." That's not

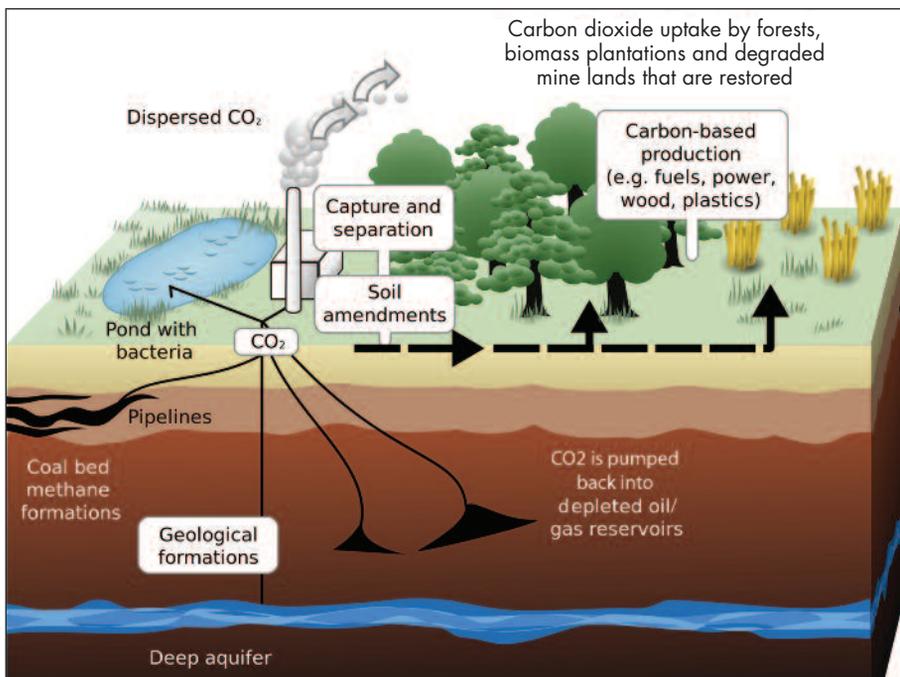
The EPA director and millions of other alarmists have forgotten that green plants must have carbon dioxide to live. Without carbon dioxide there would be no plants. Without plants very little oxygen would be produced. Without oxygen we would all be dead along with almost every other living thing.

mere arrogance; that is the statement of intent to defy the U.S. Constitution and the rule of law. The EPA is not allowed by the Constitution to make law and neither is President Obama, but that minor problem doesn't seem to bother either the EPA or the president. Both ignore the fact that only Congress can make law.

McCarthy apparently believes that the lawsuits challenging the constitutionality of EPA regulations are a badge of honor. She claimed during the Green Education Celebration that the EPA has a legal mandate to regulate—and it will do so with or without

Congress: "Since we passed [the CO₂ regulations], 15 entities have decided they want to sue us about it, so it must be pretty cool.... You know, carbon dioxide and all these greenhouse gases actually do pose a danger to public health...under the Clean Air Act and, lo and behold, we're required under law to regulate it. That is, indeed, what we are going to do whether Congress moves forward or whether it doesn't."

McCarthy treats CO₂ as if it is a toxic poison. She has apparently forgotten her high school science where she should have learned she would live for maybe two minutes (probably less) if earth didn't have the carbon dioxide it does. At any rate, she and millions of other alarmists have forgotten that green plants must have carbon dioxide to live—it's their food! Without carbon dioxide there would be no plants. Without plants very little oxygen would be produced. Without oxygen we would all be dead along with almost every other living thing. The more carbon dioxide, the faster plants grow. The faster plants grow, the more human food that is produced. Food production has increased by an estimated 15 to 20 percent from increased carbon dioxide alone! Of course, this little fact is inconvenient to its political agenda so it's ignored.



Schematic shows both terrestrial and geological sequestration of carbon dioxide emissions from a coal-fired plant. SOURCE: Wikipedia



Kemper County Project (EPA's "Kill Coal" Plan). This project is one of four demonstration coal-fired CO₂ sequestration plants under construction. Owned by Southern Company, the company received a \$270 million grant from the Department of Energy. Southern Company has issued a statement saying the Kemper technology "cannot be consistently replicated on a national scale." The EPA claims it can be commercially built and operated competitively. Who do you believe? Photo taken in September 2013. Completion expected in late 2014. SOURCE: WIKIMEDIA COMMONS

McCarthy's "regulate everything" disconnect from reality justifies any action by the EPA to stop any perceived pollution or damage to the environment, no matter who is hurt or how high the cost. McCarthy has granted herself the authority to do it, the Constitution be damned. She is so convinced of her righteous position that she demanded, "Can we stop talking about environmental regulations killing jobs, please?" when addressing Harvard Law School on July 31 last year. "We need to embrace cutting-edge technology as a way to spark business innovation." Like many bureaucrats, McCarthy seems to live in an alternate universe. Dozens of independent analyses like the Heritage example earlier clearly show that EPA regulations kill jobs and cost billions of dollars.

Progressives in the current administration repeatedly ignore hard facts that don't support their version of reality. McCarthy is no exception. "The Disconnect" (*RANGE*, Fall 2013) details the stunning failure of the 10-year European green energy disaster that is bankrupting the European Union. Such in-your-face hard evidence that green energy does not work has not dissuaded Obama in the slightest. He has declared from on high that it will work in the United States because junk science ordains that it will.

Sen. David Vitter (R-LA) summed up the

concern of thousands of analysts and concerned citizens about the junk science and nontransparency of the EPA during McCarthy's April 11 nomination hearings. "I am concerned that the central functions of the agency have been obfuscated by ideology, frustrated by a severe lack of transparency, undermined by science the agency keeps hidden, and implemented without regard for economic consequences." He went on to detail the agency's history of stonewalling Freedom of Information Act requests and its refusal to provide hard scientific data to Congress while cherry-picking data to fit its needs.

As bad as all this is, the EPA has jumped into the realm previously reserved for the gods. In December 2013, it decreed the city of Riverton, Wyo., was no longer in the state of Wyoming and the United States, but part of the Wind River Reservation. The Northern Arapaho and Eastern Shoshone tribes had requested "state status" under the Clean Air Act to get more grant money and sovereignty in monitoring air quality. The EPA unilaterally and unconstitutionally voided a 1905 agreement between Congress and the sovereign state of Wyoming that established the reservation's boundaries. By its action, one million acres of Wyoming, including Riverton, were transferred to the reservation.

Rewriting the law and moving state boundaries without the state's knowledge apparently is nothing more than a good day's work for the EPA.

Such a bizarre action, however, puts a fine point on how lawless the EPA—indeed the entire Obama administration—has become. Wyoming will fight the move, of course. But why should it have to spend taxpayer money to fight such an outrageous, illegal and insane action?

The growing power of the EPA and the federal government in general is not an academic issue with no consequences. It has had a profoundly negative impact on the U.S. economy. According to the Fraser Institute and CATO's Economic Freedom of the World, combined economic ranking of the United States in the world from 1980 to 2000 was second or third place behind Hong Kong and Singapore. It plunged to 19th in 2011—mostly due to federal spending, debt, loss of a stable legal system and property rights, and skyrocketing regulations. The legal-system-and-private-property-rights ranking plummeted from number one in 1980 to 38th in 2011, while the rank for the fewest impacting regulations went from fourth place to 17th place. Big government (progressivism) and especially the EPA are destroying the economic foundation of the United States. At the rate McCarthy is spewing out regulations, she is shifting this destruction into high gear.

Hope

The EPA might finally be checkmated on its extraconstitutional rule making. States and industries have filed suit against the agency claiming in *Utility Air Regulatory Group v. EPA* that the EPA has assumed powers to regulate carbon dioxide not granted by the 1973 Clean Air Act. In 2007, the Supreme Court found in *Massachusetts v. EPA* that carbon dioxide and other greenhouse gases are pollutants that can be regulated under the Clean Air Act. That worked for motor vehicles, but would produce absurd results if applied to stationary businesses like bakeries and offices. (See "The Economy-Wrecking EPA," *RANGE*, Spring 2012.)

So the EPA simply, unilaterally and arbitrarily rewrote the Clean Air Act to revise the emission minimum for CO₂ from 240 tons to 25,000 tons. That's 100 times more than the law allowed. However, the higher emission limits still include all coal-fired generating power plants and other large industrial

facilities. This arbitrary limit, created out of thin air, allows the EPA to eventually shut down all coal-fired plants—something it has been salivating over for many years.

Craig Rucker of the Committee for a Constructive Tomorrow warns: “If the court sides with EPA, there will be virtually no limitations on how far Executive Branch agencies can go in twisting science, laws and our Constitution to advance their agendas—while ignoring facts, genuine science, and the impacts of regulations on our lives, livelihoods and liberties.” Arguments for both sides were presented on Feb. 24, 2014. Justice Anthony Kennedy, usually the swing vote on these cases, seemed skeptical of the EPA’s power grab, telling Solicitor General Donald Verrilli Jr. during oral arguments, “I couldn’t find a single precedent that supports [EPA’s] position.” While hopeful, the history of the court’s decisions is littered with the bones of predictions made by parsing these kinds of statements. If the court decides to undertake the case, it should decide by midsummer.

The EPA has become a rogue agency that acts as if it is not accountable to anything or anyone. In an Aug. 6, 1993, internal working document, the EPA bluntly stated that it, along with other agencies, should “fulfill its existing international obligations [e.g., Convention on Biological Diversity, Agenda 21]...and to amend national policies to achieve international objectives.” The agency (and others) has been faithful to that mission since then. Under Obama and McCarthy, the pace of implementation is full speed ahead.

Increasingly, critics of the EPA conclude that it can no longer be “fixed.” The lust for increasing control over everything and everyone has become embedded in its DNA. The EPA must be abolished or totally replaced with fresh blood having vastly reduced authority. Second, the new entity must be divided into two bodies—one for rule making and the other for enforcement—both with very strong congressional oversight. ■

Dr. Michael Coffman is president of Environmental Perspectives Incorporated and CEO of Sovereignty International. He is an expert in property rights and geopolitical issues. He has authored numerous books and videos and can be reached at 207-945-9878. Learn more at AmericaPlundered.com.



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Gina McCarthy is even more zealous than her predecessor, Lisa Jackson. Prior to being named as EPA administrator, McCarthy headed the Office of Air and Radiation, the most powerful office in one of Washington’s most powerful agencies. It promulgates and oversees EPA’s air pollution and climate-change regulations. Particularly alarming, McCarthy directly supervised and allegedly worked closely with John Beale, who bilked taxpayers out of almost \$900,000 in salary by pretending to be a high-powered senior EPA policy advisor as well as a CIA agent. Beale was sentenced to 32 months in federal prison in September 2013. McCarthy gushed on Dec. 3, 2010, “I am very excited to finally get the opportunity to work closely with him.” How did she ever get confirmed as EPA administrator?

EPA—The God Over Water

In its lust to become the god among men, the EPA is rewriting the Clean Water Act to technically give itself jurisdiction over every drop of water in America—and every citizen.

By Michael S. Coffman, Ph.D.

The magnitude of impacts created by the EPA’s new clean-air regulations pale in comparison to its quantum leap in its seizing of total power using the Clean Water Act (CWA). In tandem with the U.S. Army Corps of Engineers (Corps), EPA administrator Gina McCarthy is launching what can only be described as a diabolical expansion of its regulatory authority that would technically put every American under its direct authority. All without any congressional action.

The original intent of the CWA was to control discharge into the “navigable waters of the United States.” The EPA’s jurisdiction ended if the water couldn’t float a boat or was not directly connected to a river that flowed into an ocean.

The Supreme Court muddled the term

“navigable” in *Rapanos v. United States* (2006). The EPA had assumed jurisdiction of Rapanos’ disconnected or isolated wetlands in the Upper Peninsula of Michigan, not far from Lake Michigan. Rapanos claimed that since there was no connection to navigable water, the EPA and Corps had no jurisdiction. The case went to the Supreme Court, which ruled that only waters with a “significant nexus” to “navigable waters” are covered by the Clean Water Act. But what does “significant” mean? The EPA wants it to mean anything it wants.

Specifically, the purpose of the CWA in Section 101 is to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters.” The EPA reveals in the Federal Register that it wants its new regulations to redefine “navigable waters of the

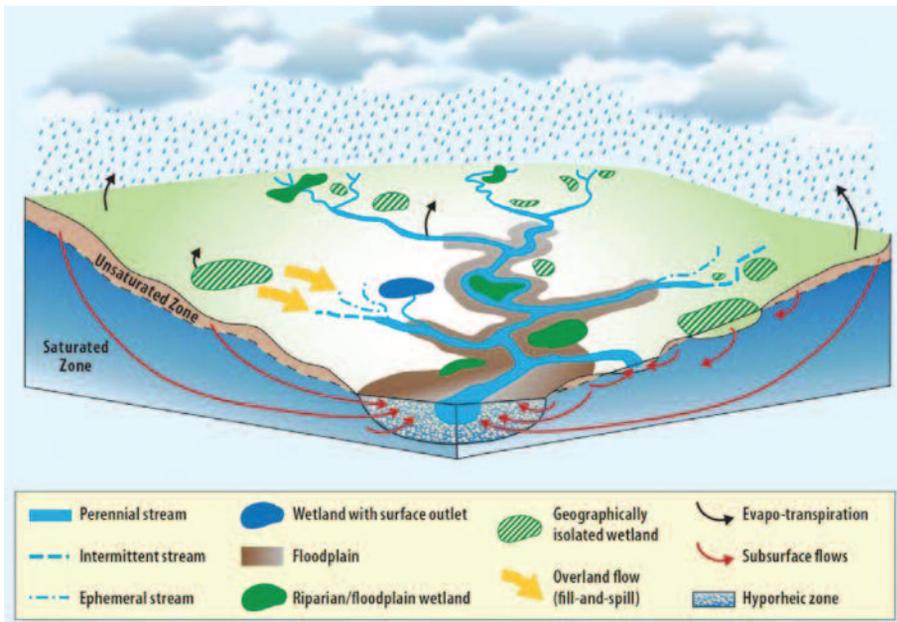


Diagram of the waters to be included in EPA's expanded jurisdiction—including small streams, geographically isolated wetlands and overland flow—represents a major deviation from the original Clean Water Act which was specifically limited to "navigable waters of the United States." This cannot be done without congressional legislation, but as with so many other unconstitutional things the Obama administration is doing, the EPA is ignoring Congress. If successful, the agency will effectively control all land use in the United States.

United States" to include tributaries, regardless of size and continuity of flow, and all lakes, ponds and wetlands, including "ephemeral" (disconnected) waters. Other bodies of water or wet areas like isolated wetlands or temporary standing water (this technically could include mud puddles) would be examined on a case-by-case basis.

Rep. Lamar Smith (R-TX) warns: "The EPA's draft water rule is a massive power grab of private property across the United States. This could be the largest expansion of EPA regulatory authority ever. If the draft rule is approved [by the EPA], it would allow the EPA to regulate virtually every body of water in the United States, including private and

public lakes, ponds and streams." Although the EPA adamantly denies this, every action it has taken since the 1990s suggests that this massive extension of authority is exactly what the agency intends to do.

Water is one of the key factors for life on earth, not only for the crops necessary to feed people, but for the people themselves. Humans can live for about three days without water. Whoever controls the water controls life itself.

The EPA's previous administration of the CWA is littered with the bones of people and businesses that ran afoul of its ruthless power. In *Sackett v. EPA* (2012), the court issued a very rare unanimous ruling against the EPA in which every justice admonished

Have We Forgotten History?

Princess Julia Grant Cantacuzene was the granddaughter of Gen. Ulysses S. Grant. She married a Russian prince and wrote in detail in her journal about the tumultuous period between 1895 and 1920. Russian estates had been divided and given to the peasants in 1861; they held the land in common with no one owning it outright. It was disastrous. The words below were written in 1905, just before the first Russian Revolution:

"[In 1901-1903, soon to be Prime Minister Pyotr] Stolypin [a staunch conservative] thought out and introduced the land reforms, which were to be tried in a few of our Little Russian provinces, and if found satisfactory, were to be carried out all over the Russian empire. Each peasant individually was to own and keep his land, do with it as he pleased, and get the full benefit of the work and care he put into it. The old system of land being held in common by the villagers, with the portions transferred year by year to different hands for cultivation, had produced discouragement, laziness, run-down crops—for the good-for-nothing man did as little as possible, while the sober, hard worker, if he fertilized and plowed his share deeply, saw the square he had improved given away in a season, his good grain sold, mixed with the other's bad, and no result to him but his own weariness. The sense of proprietorship, however, brought energy, ambition, and pride. In turn, these put the people forward so rapidly that within a few years we saw our peasant farmers owning 300 and more acres bought from their own

group or from us. Soon, good machinery and animals were purchased, they grew grain as fine as ours, and sold it at the same prices." (From "Revolutionary Days," Terrence Emmons, editor. R.R. Donnelley & Sons Company, Chicago, 1999.)

Before these land reforms could truly show their brilliance in creating a middle class, Tsar Nicholas II stopped the reforms, in part because of his fear of the peasants becoming too powerful, and in part because of the first revolution of 1905. That revolution was caused by agrarian poverty in provinces not part of Stolypin's experiment. The poverty was real. The foment was created by several factions, one being the Bolsheviks [Communists] who eventually overthrew the Tsar government in the 1917 Russian Revolution. In a twist of fate, the Bolsheviks reinstated the very oppressive communist agricultural system that Stolypin tried to abolish by giving the peasants real property rights—the very system that made the United States one of the greatest nations in the world.

Princess Julia went on to describe the growing division and chaos that led to the 1917 Russian Revolution. She described the strategies used by the Bolsheviks, strategies that are being used by the progressives in the United States today. And we wonder why we have increasing division and chaos? If we cannot learn from history, we are bound to repeat it. And we are doing just that.—MC

“By the end of 2023, nearly 600,000 (coal) jobs will be lost, a family of four’s income will drop by \$1,200 per year, and aggregate gross domestic product decreases by \$2.23 trillion over the entire period of the analysis.”

the agency for its overreach. The EPA had arbitrarily declared the Sacketts’ building lot a wetlands and threatened a fine of up to \$75,000 per day if they didn’t return the lot to pristine condition, even though it was surrounded by houses. The Sacketts weren’t even given a right of appeal. The EPA’s attack occurred even though its jurisdiction was still restricted by the CWA.

The EPA and Corps are justifying their jurisdiction expansion on the basis of “Connectivity of Streams and Wetlands to Downstream Waters.” That is the name of an EPA report which allegedly provides the science to justify this enormous landgrab. What good is it if the EPA only has authority over navigable waters if the streams and seeps draining into them are already polluted? Although noble sounding, states already have laws that effectively regulate this kind of pollution. So why is it necessary for the EPA to expand its jurisdiction, if not to expand its control over state sovereignty?

According to the environmental law firm of Van Ness-Feldman, “The [Connectivity] Draft Study reaches three initial conclusions, all of which imply that the agencies’ proposed rule will expand the scope of CWA jurisdiction.” The Draft Study concludes: (1) “[s]treams, regardless of their size or how frequently they flow, are connected to and have important effects on downstream waters”; (2) “wetlands and open waters in floodplains of streams and rivers and in riparian areas are integrated with streams and rivers”; and (3) “there is insufficient information to determine the role isolated wetlands and open waters play in the connectivity of downstream waters.”

The “insufficient information” only means the EPA has not yet decided whether to expand its jurisdiction or to “take a more nuanced case-by-case approach to regulation.” Not much solace to property owners. The “no risk” precautionary principle used by EPA’s administrator Gina McCarthy does not bode well for any American.

Not to worry says the EPA, there is a good side. The report specifically “does not propose changes to existing regulatory exemptions and exclusions, including those that apply to the agricultural sector that

ensure the continuing production of food, fiber and fuel to the benefit of all Americans.” The CWA calls these exclusions “non-point” sources, which are not under the jurisdiction of the EPA—yet. The agency has pushed hard since the law was passed to get nonpoint sources like agriculture, forestry, lawns and similar activities also included in



The EPA threatened to fine Lois Alt, a West Virginia chicken farmer, with a \$37,500 fine every time it rained. Alt sued and won.

the CWA and under EPA jurisdiction.

It’s already happening. The EPA threatened Lois Alt, a West Virginia chicken farmer, with a \$37,500 fine every time it rained. The EPA used the CWA as its authority because storm water near Alt’s farm “could” come into contact with the high nitrogen in the chickens’ waste, which would threaten the downstream water supply. Alt sued the EPA saying she was exempt from the CWA under the nonpoint exemption. She won.

Not satisfied with the outcome, the EPA is appealing the case in an attempt to overcome the nonpoint exemption by stealth. Fortunately, Alt is getting help from the American Farm Bureau because it “has obvious importance to thousands of livestock and poultry farmers nationwide.”

If eventually successful, the EPA would evolve from being the high priest of America to a godlike beast of biblical proportions with absolute power over everyone and everything. The United Nations Agenda 21 would be fully entrenched in the United States. No agency or branch of government should ever have that kind of power. ■