

***Politics and Precaution***  
***by William W. Buzbee***

Dissatisfied with responses to their questions, Senate Democrats continue to block a committee confirmation vote on the Bush Administration's proposed appointment of Utah Governor Mike Leavitt to head the United States Environmental Protection Agency. That action and Senator Hillary Clinton's related threats to hold up his confirmation may appear odd to some. After all, Democrats' questions center on past Bush administration environmental actions, while Clinton's complaints focus on White House squelching of proposed EPA health warnings to New York City residents post 9/11, as recently revealed by EPA's own Inspector General.

These events occurred under Administrator Christine Whitman's watch. Scrutinizing Governor Leavitt's reaction to these reports and the Senators' submitted questions in the coming weeks, however, will provide a crucial barometer for how he would juggle the perennial tensions between precautionary duties as the head steward of our nation's environment and often contrary pressures to bow to political pressures. On many fronts, the Bush Administration and Republican allies have sought to redefine this balance, giving the executive branch expanded latitude to follow political preferences with little public scrutiny. Public oversight and citizen roles ingrained in the nation's laws have been repeatedly undercut. Governor Leavitt's views on these regulatory and legislative initiatives are important, but were largely unaddressed in the first Senate discussion of his nomination or in his initial responses to written questions. Are open governance and public scrutiny welcomed, or will he too seek to expand realms of hidden executive branch actions?

The recent EPA Inspector General report revealed that after the World Trade Centers collapsed, draft EPA revelations of significant air contaminants were toned down following White House review. Instead, WTC residents were provided bland reassurances. As a result, a more rapid return to area apartments and businesses followed. For a nation hungry for a return to normalcy, optimistic reassurances were undoubtedly welcome. But EPA and other agencies evaluating risks to the environment and health are charged by our nation's laws with providing neutral and accurate warnings, even when costly and unpalatable. Agencies like EPA must comport their conduct to legal standards and "faithfully execute" the laws, unpopular though those actions may sometimes be. If these reports of political pressure explain the neutered EPA reports, they are a scandal. Both the public and our elected representatives reviewing Leavitt's nomination should give significant weight to his views on WTC revelations.

This perennial tension between politics and precaution is also playing out in significant regulatory and legislative proposals to "streamline" or exempt environmental reviews for Department of Transportation and Department of Defense projects, as well as a variety of natural resource projects given possible piecemeal exemptions through legislative appropriations riders or regulatory changes. This nation's National Environmental Policy Act has since the early 1970s required environmentally significant

federal actions to go through the Environmental Impact Statement, or EIS, process. This EIS process has led many executive actions to be modified or shelved. Even where controversial actions have been approved, government accountability has been enhanced due to public awareness of the actions' effects. Officials have had to explain their choices and pay the political price. The precautionary impulse reflected in the EIS process and enforced primarily through public disclosure would be gutted by these new initiatives. For DOD and DOT, and other agencies proposed for exemptions, an accelerated and less costly regulatory review process would surely be welcome. Political preferences could be given sway with little countervailing pressure. These changes would come with a price, however. EPA's frequent role in commenting on EIS's would be lost, as would citizen voice. Would Governor Leavitt bow to these White House and legislative initiatives, or would he support public scrutiny and protect EPA's historic role?

America's environmental laws and regulatory procedures surely have their flaws, but they also have innovations copied around the world. America's EIS process is much emulated in state and local laws, as well as in international agreements and other nations' laws. Similarly, the substantial citizen oversight role long-protected in our laws has furthered their many lofty goals. The coalitions enacting such laws are often long gone, but they remain law unless and until a new legislative majority can actually change them. Public scrutiny remains the best bulwark against executive branch laxity or inaction. Anyone willing to serve as EPA Administrator must be willing to abide by the protective impulses of those laws, even when confronted by contrary pressures from the White House or interest groups. The Senators' questions deserve satisfactory answers from Governor Leavitt and the White House before the Senate votes on his confirmation.

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