



Written by [Joe Wolverton, II, J.D.](#) on July 10, 2014

## EPA Claims Authority to Deny Due Process and Garnish Wages

A few days ago was the 238th anniversary of the signing of the Declaration of Independence. The tenth grievance listed by Thomas Jefferson in the “long train of abuses” committed by king and parliament was:

“He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.”

One of those swarms of bureaucrats is still buzzing has now claimed the authority to seize the substance of Americans without due process of law.

As reported on July 8 by the *Washington Times*:

The Environmental Protection Agency has quietly floated a rule claiming authority to bypass the courts and unilaterally garnish paychecks of those accused of violating its rules, a power currently used by agencies such as the Internal Revenue Service.

The EPA has been flexing its regulatory muscle under President Obama, collecting more fines each year and hitting individuals with costly penalties for violating environmental rules, including recently slapping a \$75,000 fine on Wyoming homeowner Andy Johnson for building a pond on his rural property.

Given recent judicial setbacks suffered by the EPA, it is no wonder they have created a scheme whereby they can collect fines without having to let a judge rule on the legitimacy of the levy.

The *Washington Times* story reports that the agency “announced the plan last week in a notice in the Federal Register, saying federal law allows it “to garnish non-Federal wages to collect delinquent non-tax debts owed the United States without first obtaining a court order.”

Of course, even with the recent legal losses, the EPA continues “eat[ing] out the substance” of Americans accused of harming the environment.

Annual reports filed by the EPA indicated that the coffers are constantly being filled with fines, many of which are enforced not only in violation of the due process requirements protected by the Constitution, but also in violation of the separation of powers set out in that document, wherein the legislative branch is granted exclusive lawmaking authority.

Just how voracious is the EPA’s appetite? The *Washington Times* reports, “The amount of fines raked in by the agency has jumped from \$96 million in 2009 to \$252 million in 2012, a more than 160 percent increase.”

This galling power grab is being challenged on several different fronts.

First, when he learned of the EPA’s autocratic order, Senator John Barrasso (R-Wyo.) told the





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*Washington Times*, “The EPA has a history of overreaching its authority. It seems like once again the EPA is trying to take power it doesn’t have away from American citizens.”

In [a letter to the administrator of the EPA](#), the Heritage Foundation listed four “flawed and inappropriate procedures” purportedly authorized by the proposed regulation.

First, Heritage points out that this rule would allow the EPA to “decide unilaterally whether a debtor will get a chance to present to the EPA orally the debtor’s defense.”

Second, the think tank highlights how the new regulation would grant the agency “unbridled discretion” in deciding where any hearing would be heard, assuming they allow such a proceeding to take place.

Third, the EPA gets to choose who will act as judge in an appeal filed by the “debtor.” This makes the Obama administration’s environmental gestapo the judge, jury, and executioner in cases it charges against Americans.

Finally, Heritage’s analysis of the EPA’s proposed rule reveals that it would make the accused guilty until proven innocent, by putting “the ultimate burden of convincing the hearing official [an official chosen by the EPA regardless of his or her qualifications] by a preponderance of the evidence of the correctness of the debtor’s position.”

None of this has dissuaded the Obama administration from pressing for final codification of this rule. In fact, the EPA is so anxious to usurp this extraordinary autocratic authority that it has put approval of the rule on “fast track” and it will go into automatic effect on September 2, unless it receives sufficient negative comment by the time the comment period closes on August 1.

Finally, the EPA has declared that the proposed power grab is not a “significant regulatory action” and it will not submit the rule to review.

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