



Written by [Becky Akers](#) on January 19, 2010

Green Government

You may not recognize the name John Rapanos, but officials know him well. Some consider him a vile criminal worthy of prison and millions in fines. Did he murder someone? No. Did he steal billions to bail out his buddies in the financial industry, as politicians have from us? No.

Rapanos is a developer guilty of “mov[ing] sand from one end of his property to the other,” according to Judge Lawrence Zatkoff of the Federal District Court in Michigan. The land “included 54 acres ... with sometimes-saturated soil conditions,” as another judicial opinion put it; Rapanos hoped to fill it and build a mall.



But its saturation transformed the ground into “wetlands.” And this synonym for “swamp” has become a magic word in American jurisprudence: It strips the property’s owner of all his rights and privileges — except that of paying taxes — while transferring control of his parcel to the U.S. Army Corps of Engineers. Nor did the Corps want a mall on its land.

Judge Zatkoff apparently didn’t grasp “wetland’s” power, because he emphasized, “This all occurred on property [Rapanos] owned. Nothing was brought in to fill this land except sand that was already on that land.” Sand is a completely natural material, the second most abundant element on Earth; only government’s lackeys could possibly categorize it as a pollutant. But it’s irrelevant anyway since Rapanos left the marshy area alone: “We asked [regulators] to come and show us where the wetland was. They wouldn’t do it,’ he [told the Associated Press], contending there was only one small wetland, which he left untouched.”

No matter. Zatkoff sentenced the defendant to 200 hours of “community service,” three years’ probation, and a fine of \$185,000.

Incredibly, that was lenient, compared with the vengeance the Corps, their accomplices at the Environmental Protection Agency (EPA), and others of Rapanos’ tormentors demanded. They pushed to punish this grandfather in his 70s with more than five years in prison and \$13 million in fines. That struck the judge as a tad unjust, especially when contrasted with the drug-dealer whose case he had heard immediately before Rapanos’: “The government asks me to put [the dealer] in prison for ten months,” Zatkoff exploded. But Rapanos “buys land, pays for it with his own money, and he moves some sand from one end to the other and government wants me to give him sixty-three months in prison. Now, if that isn’t our system gone crazy, I don’t know what is. And I am not going to do it.”

Rapanos’ sand skidded all the way to the Supreme Court. In an opinion so divided and ambiguous that even the justices joked it could “only muddy the jurisdictional waters,” they “vacated and remanded” the case in 2006. Some might hail that as a victory. But they overlook the 18 years and more than \$1 million Rapanos spent defending himself as the litigation inched its way through “our crazy system” — and the civil fines that “settled” things in 2008 while effectively stripping Rapanos of his land anyway:



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“Rapanos has agreed to pay a \$150,000 civil penalty and will spend an estimated \$750,000 to mitigate for 54 acres of wetlands that were filled without authorization under the Clean Water Act,” the EPA crowed in a press release on December 29, 2008. “Rapanos has also agreed to preserve an additional 134 acres of wetlands that were unaffected by the unauthorized activity. Under the agreement, the preservation of these areas will be enforced via a conservation easement held by the State of Michigan.”

One of the EPA’s many and superfluous bureaucrats (17,384 “full-time” employees, according to the agency’s “FY 2010 Budget in Brief”; imagine the smog these environmental guardians generate commuting to work), Lynn Buhl, bragged, “This longstanding case demonstrates that EPA continues to vigorously pursue violations of the Clean Water Act.”

What We Can Expect

It demonstrates a great many other things, too. Chief among them: the folly of trusting government to protect the -environment.

A couple of principles govern government and anything it does — all its programs, laws, and bureaucracies.

First, government is incompetent. That’s not just wishful thinking on the part of liberty’s lovers; it’s due to the popular assumption that the State’s monopoly of legalized brute force makes it capable in every area. But brute force is good for very few things in a sophisticated world of technology and commerce; using government for tasks beyond taxing and waging war is like wielding a hatchet all day to fix everything from your broken laptop to the stain on your shirt to your boss’s penchant for calling last-minute meetings.

Second, government is corrupt. Nor can it help being so, again because of its nature: It’s missing the built-in safeguards that keep other institutions honest. Demagogues deride self-interest and profits as “greed,” and their lack supposedly elevates government over the private sector. In reality, their absence not only suborns rulers, it also explains why “honest” government is logically impossible. Entrepreneurs depend for their success on customers who like their product or service enough to buy it. A supplier who favors undeserving folks over his customers — who hires his brother though he’s rude and inept to wait tables, or who orders shoddy components from a manufacturer because the salesman treats him to lavish lunches — will lose business to his competitors as customers become dissatisfied. Adam Smith famously observed two centuries ago, “It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.”

In contrast, government takes money from us by force, like a mugger in an alley. And it cares about its victims’ preferences and concerns little more than the mugger does. Government’s revenues don’t depend on satisfied customers. It will continue confiscating our money whether or not we like — or even want — the services and products we receive. Its employees have no incentive to work well, or honestly, to give us the value entrepreneurs must. And their motivations are always political; indeed, they can’t be anything else given politicians’ obsession with raising money. Candidates must cajole contributors into handing them fortunes before they run for office; the more money Joe Richman and Wealthy Corp., Inc., invest, the more return they expect. Ergo, government forces on us what the powerful want while entrepreneurs offer us what we want.

Why expect the suspension of either principle when it comes to conservation and the environment? Government’s idea of guarding our air and water is to persecute a man for shoveling sand but allow



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Smithfield Foods of Virginia to continue “dump[ing] hog waste into the Pagan River.” The *Arlington Journal* reported in 2000 that then-Governor Doug Wilder, “responding to threats by Smithfield that it would move its operation to North Carolina unless environmental regulations were relaxed, ... negotiated a consent order allowing the company to continue polluting until it could connect to a waste treatment plant.”

To government’s ineptitude and corruption, add hypocrisy: It consistently, willfully wreaks far more environmental harm than private polluters. Example — and a typical one: the wall the U.S. Department of Homeland Security (DHS) is currently building along the U.S.-Mexican border. Though a citizen must often obtain permits — multiple — before he erects a fence, the government simply and sweepingly ignores all regulations. Section 102 (c)1 of the REAL ID Act exempts DHS from not only environmental, but probably even criminal law: “The Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.”

Construction has destroyed thousands of acres of habitat as the wall cuts through wildlife preserves, both public and private; we can only hope there are no wetlands like those the Corps accused Rapanos of destroying. Animals such as the ocelot, a feline that once thronged along the Rio Grande but now numbers less than 100 in Texas, will probably not survive because the wall drastically reduces the area it ranges for food and mates. Nor did the DHS conduct any hydrological studies, though floods naturally and frequently roar through the terrain; the wall now dams those floods to magnify their -damage.

Economic Realism and Recycling

Corrupt, inept, hypocritical government crowns some players winners and others losers when it pronounces certain products or activities “green.” But because these judgments are based on politics rather than performance, they often lead to an effect opposite from that alleged, degrading resources politicians say they’re conserving.

For example, take recycling — please. Residents of communities that compel them to sort their garbage according to gnomish rules and then let it age a few days until collection, stinking and attracting vermin, can testify that recycling can be a royal pain. But many Americans suffer without complaint in the belief that this somehow saves the planet — and they zealously force those who don’t share the faith to sort and suffer, too. Indeed, New York City entitles one of its pamphlets *Recycling: It’s Not a Choice, It’s the Law*. But does recycling perform the miracles the converted claim?

Unfortunately, all we can say for sure is that recycling is extremely expensive and inconvenient — and that government’s mandates to recycle destroy liberty while empowering the State. But whether recycling actually helps save the Earth depends on how we interpret the data. Which is, to put it mildly, overwhelming and conflicting. Some sources insist that producing new glass from recycled bottles, for instance, uses far more resources than starting from scratch with raw materials; others refute this. So if we consider recycling from a purely practical standpoint — “Does it work?” — we will argue at length and loudly.

As always with government, philosophical issues trump practical ones. Recycling brings more of our lives and property under the State’s control — as does the environmental movement as a whole.

Naturally, fines dominate all the State’s recycling schemes. New York City has honed its hustle into something Bernie Madoff would envy. First, it hires the otherwise unemployable to stroll the streets peering through the clear plastic of citizens’ trash bags for infractions of the numerous and bizarre



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recycling rules [“wrapping paper (remove ribbon and tape)” is recyclable, but not “paper with a lot of tape or glue” — and who decides what “a lot” is? Certainly not the hapless victim]. Fines for residences start at \$25, but they zoom as high as \$500 for “four or more Notices within a six-month period.” You can contest your fines, but unless they’ve accrued, it’s easier and cheaper to fork over the \$25, even if no speck of tape or glue marred your paper, than to hire an attorney or wait hours for your case to be called “at any ECB [Environmental Control Board] Location,” as the “Notice of Violation” advises.

Nor do we “Respondent[s]” even know the specifics of our crime. Under “Details of Violation,” the pre-printed Notice merely says, “At T/P/O I did observe Non-Recyclable Material improperly placed in a recycling container designated for metal, glass, plastic,” with a signature from the “Sanitation Enforcement Agent.” Cagey, the phrasing there: Anyone, not just “Respondent,” can “improperly place” “Non-Recyclable Material ... in [Respondent’s] recycling container,” given the city’s army of homeless people rooting through garbage in quest of a meal. As if that weren’t enough, New York’s rulers require retailers to charge a five-cent deposit on soda bottles and cans; that incentive sends other folks at the fringes hunting treasure in the trash as well — and neither set of scavengers worries about “properly” replacing what they’ve removed. Finally, many New Yorkers live in large apartment houses where superintendents or management companies oversee the trash. The money the city bilks from the building becomes just a line-item in the accountant’s annual statement — the one residents usually don’t study unless the building can’t afford to light its halls. Most marks don’t even know government’s picked their pockets.

This begs the question of why government involves itself with trash in the first place.

Entrepreneurs can drive garbage trucks and haul trash — and will do so eagerly if recycling makes economic sense. After all, as the EPA itself admits, “The steel industry in North America has been recycling steel scrap for more than 150 years.” And why? Not because bureaucrats order it to but because “the steel industry needs scrap to produce new steel.... It also is cheaper to recycle steel than it is to mine virgin ore to manufacture new steel.”

The website for New York City’s Department of Sanitation offers “A Brief History of Recycling in New York City” that depends on an implied and false dichotomy to legitimize its monopoly. “Throughout the 1880s, 75% of NYC’s waste was dumped into the Atlantic Ocean,” it tells us. And who was in charge of collecting garbage then? Yep: the city. “In 1881, the New York City Department of Street Cleaning was created ... the agency took over waste responsibilities from the New York City Police Department.” So either the city will dump garbage into the ocean, or we can suffer the hassle, filth, and fines of recycling. But there’s a third option: Throw government out with the garbage. Let entrepreneurs compete to collect trash, just as they do to supply buildings’ cleaning personnel and other services.

Entrepreneurs could also compete for the trash itself — though trash is trash for a reason: It has little value. Sometimes one man’s trash becomes another man’s treasure, but after folks who can use them pluck the used furniture and old clothes, there’s little use for the remaining cigarette butts, empty yogurt cups, and coffee grounds (unless an entrepreneur invents one for them, turning garbage valuable overnight and naturally convincing folks to recycle). Nor can all the State’s command-and-control alter that. If collecting empty soda bottles for refill were cheaper — i.e., used less resources and energy — than manufacturing new ones, bottlers hoping to shave their costs would do so.

The picture doesn’t improve, and the principles remain the same, no matter which of government’s pretenses at conservation we investigate. That includes a monstrosity the state of Ohio calls “-E-check.”



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E-Check and Emissions

Since 1996, Ohio has forced drivers in its more populous counties to drive to inspection stations every two years for tests on their vehicles. This supposedly weeds out polluters, since Ohio will not sell you license plates or renewal tags without proof that your car has passed E-check. In reality, it preys on poor Ohioans who can't afford to replace their old beaters. Yet the state's merciless EPA (OEPA) contends that "E-check is the cheapest, most effective way to minimize auto emissions that contribute to unacceptable levels of ozone in summer smog," according to the *Cincinnati Enquirer*.

That doesn't begin to compensate for the time wasted on hunting an E-check station and then waiting in line. Not surprisingly, the program is wildly unpopular. "Nobody likes E-Check," according to Governor Ted Strickland's spokesman, Keith Dailey, "but if the state is not in compliance with the federal Clean Air Act, there is a risk to Northeast Ohio businesses that tighter regulations could be placed on them.... That could not only result in job losses but serve as a deterrent for new jobs coming into this state."

Dailey's doom-saying is typical: Ohio's politicians frequently threaten its taxpayers with the dire consequences awaiting them should the national EPA throw a snit over the state's air. Rather than defying such anti-constitutional dictatorship, officials instead hector citizens to obey.

Yet tyranny destroys far more than smog does. And in this case, the tyranny not only increases the smog, it degrades the environment in other ways too. The inspection stations require extensive paved drives and parking lots; the morning I visited one, I watched a line of a dozen idling cars inch slowly forward as they awaited their tests, spewing exhaust, not to mention the gas expended in driving to the station as well — when everyone tromps the accelerator a few times to blow out the accumulated gunk that could sabotage results. And for what? Heidi Griesmer of the OEPA told the *Cincinnati Enquirer* that "OEPA expects 88 percent [of cars] to pass"; understandably, "That's a point that critics focus on when they ask why so much time and effort is expended on vehicles whose emissions controls are expected to be in compliance." There's an easy answer: money.

Ohio's E-check used to set you back \$20. Now it's "free," which is State-speak for "you're still paying, but we hide the bill in other taxes so you don't see it." Other states with similar fiats charge drivers directly. Either way, governments rake in the loot.

At least two classes of citizens love E-check and its counterparts: those the scam directly employs, and so-called entrepreneurs who capitalize off the "customers" forced to patronize their services. In an article discussing "inspection and maintenance programs in the 10 most populated states" for AutoInc, Craig Van Batenburg wrote, "An inspection/maintenance (I/M) program can help your business.... Van Batenburg's Garage Inc., my old shop that had been around for 27 years, was a state-certified emission repair facility [in Massachusetts].... If a motorist's car failed to pass an emission test, my shop was listed for repairs, along with others, and the list was handed to the car owner.... If they did not go to a state-recommended repair facility and needed a waiver, they couldn't get one. There was no place to hide; if your car, truck or motorcycle was registered, it was also inspected every year."

Actually, the Akron *Beacon Journal* reported earlier this year that there are lots of places to hide: 11,410 to be exact. That's how many cars failed Ohio's E-check in 2008 — and "disappeared ... no one knows what happened to them.... There is a strong likelihood that many of those 11,410 vehicles were sold and re-registered outside of the area where E-Check is required," currently only seven of Ohio's 88 counties. So in effect, E-check simply shuffles the exhaust in these cases, or, in the words of David Celebrezze of the Ohio Environmental Council, it merely "mov[es] the pollution around." He sees this as "potentially a really big problem," while John Paul, "head of the Dayton-based Regional Air Pollution



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Control Agency and a nationally known clean-air expert” calls it “a giant loophole.” The personal stake entrepreneurs have in the success of their ideas disciplines them; they carefully consider all angles before investing their time and money. Bureaucrats don’t. When a scheme like E-check fails, when it imposes more woes than it cures, bureaucrats don’t go bankrupt. Rather, they bicker and quibble: “The problem [of failed but missing cars] is ‘on the radar screen as an issue, but it’s not seen as a critical issue,’ said Frank Acevedo, an air specialist with the U.S. EPA in its Chicago regional office. ‘It’s not sending up red flags.’”

Ohioans prove with their unemployment and suffering another characteristic of government’s environmentalism: It forces us to choose between prosperity and clean air and water — or, more accurately, the pretense thereof. Private efforts don’t. Unlike bureaucrats, private citizens who conserve their own property have no power to decree artificial standards that cost others time, profits, and jobs. Indeed, Stephen Johnson, the EPA’s administrator under George W. Bush, tightened the regulations on smog to withering criticism from environmentalists, who claimed he wasn’t dictatorial enough and that Big Business owned him. But Johnson protested that “he did not consider the cost of meeting the new air standard.”

What Government Glosses Over

That summarizes government’s environmentalism. In a world of scarcity, where wealth and opportunities once squandered are irretrievably gone, neglecting to consider the cost of anything, from the price of lunch to that of pursuing a graduate degree, is foolish. But for the bureaucrats and politicians who spend our taxes, it’s downright criminal.

Whether it’s money or the environment, government can’t be trusted with anything green.

Becky Akers, an expert on the American Revolution, writes frequently about security and privacy issues.



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