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## ***The Politics of Federal Grantmaking***

# **Should the EPA Award Grants to Politically Active Environmental Organizations?**

*To compel a man to subsidize with his taxes the propagation of ideas which he disbelieves and abhors is sinful and tyrannical.*

– Thomas Jefferson

## **Introduction**

Each year, hundreds of agencies of the federal government award billions of dollars in discretionary grants to various organizations. Recipients include state and local governments, educational institutions, and nonprofit organizations. Yet, taxpayers should be aware that grant recipients include politically active organizations that pursue partisan political agendas that many Americans would find objectionable. Moreover, these organizations often promote the expansionist agendas of the awarding agencies, creating (at the very least) an appearance of mutual back scratching.

This paper explores this issue, but limits its discussion to the grants awarded by just one agency, the U.S. Environmental Protection Agency (EPA), as detailed in two recent white papers issued by the Senate Environment and Public Works Committee (EPW).<sup>1</sup> These papers, titled “Grants Management at the Environmental Protection Agency” and “Political Activity of Environmental Groups and Their Supporting Foundations,” provide a summation of the committee’s preliminary oversight work on this issue, detailing both the EPA’s mismanagement of discretionary grants and the political activities of some of the environmental organizations that receive them.

The EPA annually distributes over half of its appropriations on both discretionary and nondiscretionary grants (the latter are grants made mostly to state and local governments, whose

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<sup>1</sup>U.S. Senate Environment and Public Works Committee, September 2004. Both white papers are available on the EPW website: <http://epw.senate.gov>. Unless otherwise cited, all information in this paper comes from these two papers.

amounts and recipients are dictated by formulas contained in statutes).<sup>2</sup> In contrast to nondiscretionary grants, discretionary grants are awarded by EPA officials who set their own criteria for the awards process. In fiscal year 2002 alone, EPA awarded \$700 million in discretionary grants, according to the EPW.

The EPW Committee's papers note that many of these grants are awarded to politically active environmental organizations, some of which have agendas that many Americans find out of the mainstream. Indeed, a survey conducted by an independent market research firm found that 41 percent of Americans agree with this statement: "Most of the people actively involved in environmental groups are extremists, not reasonable people."<sup>3</sup> Many taxpayers, therefore, are likely to be disturbed with the information that the EPA is using federal funds to subsidize groups that they may find extreme and unreasonable. Whether this abuse of taxpayers' dollars is another symptom of the agency's mismanagement of grants or the active undermining of the Administration's policies by career bureaucrats is a question worth studying.

## **EPA's Grant Management Record**

The EPW Committee's detailing of the EPA's less-than-stellar grant-management record is not a revelation. Rather, one of the white papers notes that "The EPA Inspector General (OIG), the Office of Management and Budget (OMB), and the GAO [Government Accountability Office] have identified deficiencies in EPA grant management in numerous audits and reports."<sup>4</sup> From 1995 to the present, these overseers repeatedly have identified EPA's grant management as a "material weakness," despite EPA's attempts to implement corrective policies.<sup>5</sup>

At an EPW Committee hearing on March 3, 2004, Chairman James Inhofe expressed exasperation at the EPA's inability to remedy its grant-management weaknesses.

"For the last 10 years, the story of grants management is seemingly a revolving door of the EPA IG audits, GAO reports, Congressional hearings, and new EPA policies in response. Even with this constant cycle of criticism, hearings, and new policies, the GAO reported later last year that the EPA continues to demonstrate the same persistent problems in grants management."

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<sup>2</sup>The EPA's average annual appropriation from FY97 to FY03 was \$7.5 billion, of which it awarded an annual average of \$4.2 billion in grants.

<sup>3</sup>Michael Adams, *Fire and Ice: The United States, Canada and the Myth of Converging Values*, Penguin Canada, 2003.

<sup>4</sup>EPW Committee, "Grants Management at the Environmental Protection Agency," September 2004.

<sup>5</sup>For example, following an OIG report identifying significant weaknesses in EPA's grants management, the EPA instituted new policies for monitoring grant recipients, providing grants training for project officers, and reviewing grants management effectiveness. In September 2002, the EPA issued a new grant award competition policy, which required competition for grants over \$75,000. GAO also reported that the EPA issued oversight policies in 1998, 1999, and February 2002. In April 2003, the EPA issued its first five-year grant-management plan.

The hearing revealed, for example, that EPA's mismanagement of discretionary grants costs the taxpayers hundreds of millions of dollars each year. The grants are often not competitively awarded. In fact, "agency managers continued to use the same grantees year after year..."<sup>6</sup> Other problems include lack of oversight of grantees and lack of measurable environmental outcomes that would justify the use of federal funds.

In one case detailed in the EPW Committee's white paper, the EPA had awarded a cumulative total of \$4,714,638 in five selected grants from 1996 to 2004 to the Consumer Federation of America Foundation, which had registered with the Internal Revenue Service as a 501(c)(3) tax-exempt, charitable organization. Such a charitable organization, by law, may only engage in limited lobbying<sup>7</sup> and may not participate in political campaigns. That prohibition extends to "activities that encourage people to vote for or against a particular candidate on the basis of nonpartisan criteria."<sup>8</sup>

Upon investigation, the EPA's Inspector General office discovered that the ultimate recipient of the funds was not the charitable organization but the Consumer Federation of America, a 501(c)(4) lobbying organization, which may engage in unlimited lobbying related to its primary purpose and may also engage in political campaigns.<sup>9</sup> While the Consumer Federation of America Foundation was separately incorporated as an affiliate of the lobbying organization, the Inspector General office learned that it had no employees, office space, or overhead expenses that were separate from the lobbying organization.<sup>10</sup>

As the representative of the Office of the Inspector General testified, "In summary, the [Consumer Federation of America], a 501(c)(4) organization: (1) performed direct lobbying of Congress, and (2) received Federal funds contrary to the Lobbying Disclosure Act. Consequently, all the costs claimed and paid under the agreements are statutorily unallowable."<sup>11</sup>

This is just one example of the type of abuse that has occurred as a result of the EPA's sloppy grants-management practices. The section below details the political and legal activities of several politically active, agenda-driven grant recipients.

## **Political Activities of Some of EPA's Grant Recipients**

The white papers underscore the reality that the environmental movement in America has become big business and big politics. Four years ago, the *Sacramento Bee* conducted an

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<sup>6</sup>Testimony of Melissa Heist, Assistant Inspector General for Audits, Environmental Protection Agency, March 2, 2004.

<sup>7</sup>See: <http://www.irs.gov/charities/charitable/article/0,,id=120703,00.html>.

<sup>8</sup>See: <http://www.irs.gov/newsroom/article/0,,id=122887,00.html>.

<sup>9</sup>See: <http://www.irs.gov/pub/irs-tege/eotopic103.pdf>.

<sup>10</sup>Environmental Protection Agency Office of Inspector General, "Audit Report Consumer Federation of America – Cost Claimed under Cooperative Agreements CX825612-01, CX825837-01, X828814-01, CX824939-01, and X829178-01," Report No. 2004-4-00014, March 1, 2004.

<sup>11</sup>Testimony of Melissa Heist, March 2, 2004.

investigation into this movement and published a series of articles that characterized it in less than flattering terms. In the series, titled “Environment Inc.,” the *Bee* noted: “Today’s groups prosper while the land does not. Competition for money and members is keen. Litigation is blood sport. Crisis, real or not, is a commodity. And slogans and sound bites masquerade as scientific fact.”<sup>12</sup>

In the course of its series, the *Bee* noted that environmentalism is now an \$8.5 billion-a-year industry. Most of the 3,000 groups collected more than \$1 million per year, many had annual revenues in excess of \$10 million, and some groups’ revenues exceeded a hundred million.<sup>13</sup> The Capital Research Center, which compiles financial statistics on nonprofit organizations, shows that the environmental movement continues to be flush with cash.<sup>14</sup>

Some of this money is privately donated, and some of it comes from taxpayers, but an exact accounting is not available. In a separate article, the *Bee* noted, “Just how much public money flows to environmental groups has never been calculated, partly because it springs from so many sources... But no government agency charts the total spending, identifies trends, or assesses what taxpayers are getting for their money.”<sup>15</sup>

For illustration purposes, the white papers detailed the political activities of several environmental activist groups and the grants they have received through the EPA. The following sections highlight the grants and activities of three of those groups.

### **Natural Resources Defense Council**

The Natural Resources Defense Council (NRDC) is one of the most politically active environmental groups in existence. Over the years, the NRDC has spent millions of dollars in an effort to influence elections.<sup>16</sup> It is represented by three organizations: NRDC, Inc., a 501(c)(3) charitable organization; the NRDC Action Fund, a 501(c)(4) lobbying organization; and the Environmental Accountability Fund, a section 527 political organization (a Tax Code designation for political organizations that attempt to influence elections). NRDC, Inc., the charitable organization, consistently reports annual revenues in excess of \$70 million. The section 527 organization raised nearly \$1 million for the 2004 campaign cycle. In 2004, the NRDC 501(c)(3) joined Moveon.org, a section 527 political organization, to run anti-Bush-agenda newspaper advertisements.<sup>17</sup>

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<sup>12</sup>*Sacramento Bee*, April 22, 2001.

<sup>13</sup>As of 1999. *Sacramento Bee*, “Fat of the Land: Movement’s prosperity comes at a high price,” April 22, 2001.

<sup>14</sup>See: <http://www.capitalresearch.org>.

<sup>15</sup>*Sacramento Bee*, “Taxpayer dollars help fund many environmental groups,” October 21, 2001.

<sup>16</sup>Since at least the Reagan Administration, the NRDC has spent heavily on election campaigns. See: Ronald A. Taylor, “Why Reagan is on the griddle over environment,” *U.S. News and World Report*, August 30, 1982.

<sup>17</sup>See: “Grants Management at the Environmental Protection Agency,” p. 16, depicting an ad than ran in the *New York Times* on March 26, 2004. See also: <http://www.nrdc.org>.

The NRDC plainly wears its partisan colors. On its public website, a portion of which is dedicated to maligning the Bush Administration, it declares: “This administration, in catering to industries that put America’s health and natural heritage at risk, threatens to do more damage to our environmental protections than any other in U.S. history.”<sup>18</sup>

The EPW Committee white paper notes, “The NRDC, Inc. organization reported receiving over half a million dollars annually in government grants in its IRS filings for the reporting periods ending 1999 through 2003... The EPA reports that the NRDC, Inc. organization has received nearly \$6.5 million in 23 discretionary grants since 1993.” It notes also that the EPA admits that all of these grants likely were awarded without competition. The EPA officials interviewed by the EPW Committee acknowledged that they were aware of NRDC’s regular litigation against the federal government.

### **Environmental Defense, Inc.**

Another politically active environmental group is Environmental Defense. This organization takes numerous political positions, including opposition to energy development in the Arctic National Wildlife Refuge, support for strengthening the Endangered Species Act, and support for legislation to mandate reductions in greenhouse gas emissions. It is represented by two organizations: Environmental Defense, Inc., a 501(c)(3) organization, and the Environmental Defense Action Fund, Inc., a 501(c)(4) organization. Environmental Defense, Inc., the charitable organization, reported end-of-year assets totaling \$49 million for 2003. It received direct public contributions (the term of art used by the IRS to describe non-governmental contributions) of \$42 million in 2003, and it received \$341,338 in government grants. Since 1993, Environmental Defense, Inc. has received more than \$4.6 million from the EPA in discretionary grants. In 2003, it reported (in compliance with the Lobbying Disclosure Act) that it spent \$856,983 on direct and grassroots lobbying. Those expenditures were for lobbying Congress and Administration agencies, including the EPA.

### **World Wildlife Fund**

The World Wildlife Fund (WWF) is another environmental organization that takes positions contrary to the Bush Administration on energy development in the Arctic National Wildlife Refuge, the Endangered Species Act, and greenhouse gas controls. Moreover, the WWF has accused the Bush Administration of planning to eliminate millions of acres of national forests for road building, logging, and mining interests.<sup>19</sup>

The WWF is a 501(c)(3) (charitable) organization. It reported end-of-year assets totaling \$146 million for 2003. During the same year, the WWF reported direct public contributions of \$79 million and \$16 million in government grants, \$1.6 million of which came in the form of

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<sup>18</sup>See: <http://www.nrdc.org>.

<sup>19</sup>See: <http://www.worldwildlife.org>.

EPA discretionary grants. It reported expenditures of \$400,548 on lobbying Congress and the Administration agencies, including the Department of the Interior, the U.S. Forest Service, and the EPA.

Other EPA grant recipients discussed in the EPW Committee reports include the Children's Environmental Health Network, The Tides Center, Consumer Federation of America, Friends of the Earth, World Resources Institute, National Wildlife Federation, and STAPPA - ALAPCO (the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials).

## Legal Activities of Some Grant Recipients

The EPW Committee reports touched only briefly on EPA's practice of awarding grants to groups who regularly sue the agency. These lawsuits often lead to the happy result (for the EPA bureaucrats) in expanding EPA's regulatory authority. During the early 1990s, for example, the American Lung Association brought a series of lawsuits against the EPA while receiving a number of EPA grants. Between 1990 and 1995, the EPA awarded the Association more than \$5 million. During this time, the Association sued the EPA five times. The most controversial (and draconian) regulation to come from these lawsuits was the EPA's particulate matter rule. In addition, the Association was running radio ads attacking Republicans who had voted for the regulatory reform part of the "Contract with America." The Association claimed the Republicans' Contract "fundamentally threatens our entire agenda to battle against lung disease."<sup>20</sup>

But the EPA's largesse wasn't limited to the American Lung Association. Several outspoken advocates of the costly particulate controls received EPA grants. The Harvard School of Public Health, which conducted much of the research used to justify stricter controls, received large sums from EPA. Several American Lung Association officials were invited to testify before EPA hearings and then reimbursed by the agency for the cost of doing so.<sup>21</sup> Another player in this episode was the NRDC. In addition to the millions of dollars it received through grants, the EPA also gave the NRDC \$150,000 to defray legal costs incurred by suing the EPA a total of 34 times from 1993 to 1996.<sup>22</sup> It is hard to imagine any purpose for this flurry of activity, bankrolled by the EPA, other than to get the court's stamp of approval for expanding the EPA's regulatory authority.

In 2001, the NRDC sued the Bush EPA for delaying implementation of the arsenic rule, which was one of a number of the environmental regulations the Clinton Administration

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<sup>20</sup>*Investor's Business Daily*, "EPA Boosters on the Government Tab: Groups Pushing New Rules Get Millions in Grants," January 28, 1997. See also:

[http://www.californialung.org/spotlight/cleanair01\\_milestones.html](http://www.californialung.org/spotlight/cleanair01_milestones.html).

<sup>21</sup>*Investor's Business Daily*, January 28, 1997.

<sup>22</sup>*Investor's Business Daily*, January 28, 1997; Also see, Michael Fumento, "All in the Family: EPA funding of health groups," *Reason*, August 1, 1997.

hurriedly finalized during its waning hours.<sup>23</sup> The lack of scientific justification for the costly rule led the Bush Administration to delay implementation until the completion of further scientific review. In 2000, the NRDC received nearly \$835,000 in EPA grants and nearly \$530,000 in 2001.<sup>24</sup> And more recently, the NRDC and three other environmental organizations have just filed a petition against the EPA's final mercury rule, published in the *Federal Register* on March 30, 2005.<sup>25</sup> If the petition is denied, litigation will likely ensue. So far this year, NRDC has received nearly \$400,000 in EPA grants.<sup>26</sup>

The EPA's practice of awarding grants to groups that are actively seeking to expand EPA's regulatory authority allows activists and bureaucrats to make an end run around the established rule making process. Regarding the American Lung Association lawsuits, Scott Segal, then a professor of environmental management at the University of Maryland, made this observation: "If you think the EPA is upset with the ALA suing them, think again. Truth be known, the EPA wants to be sued, because every time they are sued it expands the reach of the Clean Air Act."<sup>27</sup>

## Addressing the Distribution of Federal Discretionary Grants

As noted above, the EPA has made numerous efforts to improve its grant-making performance, yet problems persist. To address this, the EPW Committee white paper contained these recommendations:

"EPA should include in its new culture of grant management a careful scrutiny of all the activities of discretionary grant applicants to absolutely ensure grant awards are being used for their intended purposes. In addition, and as important as ensuring allowable costs, the Administration should ensure that it is not being undermined by the other activities of its grants recipients and give equally careful scrutiny to the wide spectrum of political activity of some of its discretionary grant recipients before making awards."<sup>28</sup>

Instilling this "new culture of grant management" is indeed a laudable first step. The EPW white paper labeled its efforts as preliminary, and so it certainly would be worthwhile for the committee to continue to exercise its oversight authority by revisiting this issue and pressing the EPA to make the necessary changes in its way of doing business. Even so, these efforts are, in and of themselves, insufficient because they permit agencies to continue to allow taxpayers' dollars to go to groups with political agendas. Congress should go beyond the recommendations in the EPW white paper by mandating the end to this form of taxpayer abuse.

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<sup>23</sup>*Greenwire*, "Senators join enviros in arsenic lawsuit," June 28, 2001.

<sup>24</sup>See: <http://www.capitalresearch.org>.

<sup>25</sup>*Greenwire*, "Enviros petition EPA to halt mercury rule," April 1, 2005.

<sup>26</sup>See: [http://www.epa.gov/enviro/html/gics/gics\\_query.html](http://www.epa.gov/enviro/html/gics/gics_query.html).

<sup>27</sup>*Investor's Business Daily*, January 28, 1997.

<sup>28</sup>EPW Committee, "Grants Management at the Environmental Protection Agency," September 2004.

In the last Congress, Senator Sam Brownback offered a bill that, if amended to specifically include discretionary grants, could effectively address this abuse. The bill from the 108<sup>th</sup> Congress (S. 1668, the Commission on the Accountability and Review of Federal Agencies Act) would require the President to appoint a commission to oversee federal discretionary spending and would provide recommendations for the elimination of unnecessary programs and agencies and the realignment of redundant programs and agencies.

The proposed commission is based on the Base Realignment and Closure (BRAC) model begun in the Reagan Administration to match defense real estate assets with changing defense requirements, especially as the United States became the sole global superpower. Although there was a general consensus about the need to consolidate and close military bases, onerous procedural requirements previously passed by Congress had made it nearly impossible to close a base. The BRAC, which was set up as an independent commission, successfully overcame the political gridlock by mitigating the political backlash faced by Congress and the Administration following the closing of particular military bases.

If used for unnecessary discretionary program spending, the recommendations of a commission – like those of the BRAC – would be subject to a simple up-or-down vote in Congress with no amendments allowed. Although this bill, as introduced last year, would be an effective tool to eliminate waste and redundancy, and to fight the growth of government, it could be strengthened by adding provisions for the commission to evaluate government-wide discretionary grant giving in general, and specifically prohibit discretionary grants to any organization that attempts to influence federal policy or personnel decisions through lobbying, media advocacy, or litigation.

It is illogical for Congress to allow an executive branch agency to award grants to organizations that turn around and use that money (or other sources of funding freed up by that money) to lobby or litigate the agency for the purpose of defeating policies advanced by the executive branch. Yet, that clearly has been the case recently with the aforementioned organizations that oppose the Bush Administration's policies on the Arctic National Wildlife Refuge, endangered species, and greenhouse-gas mandates.

## **Conclusion**

The EPA's grants-management performance has been repeatedly criticized for its failure to: oversee award grantees, competitively award grants, and require measurement criteria to gauge performance. Although the EPA has attempted to address these criticisms, the problems persist. Of particular concern is that millions of dollars are awarded to environmental organizations that engage in political activities to pursue partisan political objectives. No taxpayer should be forced to fund the political activities of organizations with which they may disagree. Whether those organizations be on the right, left, or center of the political spectrum, they should not receive federal discretionary grants.