

## **EXECUTIVE SUMMARY**

### **Runaway Bureaucracy or Congressional Control?: Water Pollution Policies in the American States**

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#### **The Research Context:**

Over the last several decades, scholars have debated the extent to which Congress controls administrative decision-making. In the 1970's, prominent academicians cited broad statutory delegations of power to administrative agencies (Lowi, 1979) and lackluster Congressional oversight efforts (Ogul, 1976; Dodd & Schott, 1979), and concluded that the bureaucracy had "run away" and was out of control. A major change in thinking has occurred over the last two decades, as proponents of principal-agent theories have evaluated indicators of Congress's managerial concerns (committee composition, oversight hearings, etc.), and found systematic relationships between Congressional desires and visible policy outputs (Weingast & Moran, 1983; Moe, 1985; Wood and Waterman, 1994).

These debates, while both extensive and interesting, have not yet come to terms with a question that is central to public administration as a field of practice and study, and to overhead theories of top-down democratic accountability – theories that are predicated on the direction of public administration by elected officials. What is the relationship between the statutory structures enacted by Congress and the public policy outputs produced by implementing agencies? To what extent do Congress's statutory directions institutionalize the production of predictable policy outputs? Or, to put the question more succinctly, do public administrators receiving delegated authorities comply with Congress's statutory directions?

While this question is of fundamental importance, it has – somewhat surprisingly – received relatively little systematic attention in the literatures on Congressional control (Spence, 1997 and 1999) and public administration (Egeberg, 2003). A similar gap is evident when one focuses on the literature on federalism and state policymaking, and the central role of the states in implementing many federal domestic policies. While the state politics literature generally recognizes the importance of federal intervention on state policymaking, it has not yet sought to assess systematically the relationship between Congressional directions in statute and the state level policy outputs that flow from them.

This work addresses these gaps in the literature by analyzing Congress's statutory directions in the Federal Water Pollution Control Act (FWPCA) and their relationship to water pollution policy outputs – particularly those at the state level where water pollution policies are most often implemented. Unlike many previous efforts to measure state water pollution policies, however, the measures used here do not relate to enforcement (Wood & Waterman, 1993; Hunter & Waterman, 1996) or composite non-profit group rankings (Ringquist, 1993). Rather, the measures used here reflect the kinds of policy outputs called for by Congress in statute, and include direct measures of the *activism* of state non-point source water pollution programs and the *restrictiveness* of controls on point source water pollution discharges. These measures are appropriate because Congress set very ambitious goals for US water pollution policy, and the structure of its statutory direction has distinguished clearly between these two particular areas of water pollution concern. The policy instruments used to address non-point source water pollution tend to be supportive in nature and apply rather narrowly to state governments. By contrast, the policy instruments used to address point source water pollution problems are directive and apply widely to anyone discharging wastewater from pipes and conveyances throughout the country. As a result, the state policy output measures used here address Congress's statutory intentions, and directly reflect the differing policies established to address non-point and point source water pollution problems and concerns.

### **The Argument:**

The answer provided in this work to the last question highlighted above regarding administrative compliance with Congress's statutory directions is essentially, "yes, much of the time". The analysis finds that public bureaucracies tend to follow the procedures that Congress sets forth in most cases, regardless of whether supportive or directive policy instruments are used. For example, an historical analysis based on existing water pollution control literature finds that federal agencies and the states have generally complied with Congress's directions in over 80% of major statutory policy changes made in the FWPCA during the post World War II era. Analyses of contemporary policies in the fifty states also find rather high levels of procedural compliance with Congress's directions, although supportive policy structures with relatively few requirements appear to enjoy higher rates of compliance than pre-emptive policy structures in which the requirements to be complied with are quite numerous.

A central point made in this argument, therefore, is that Congress's establishment of institutional patterns through law is one of the most important mechanisms for Congressional influence over administrative decision making. After all, as a whole host of public administration

scholars have suggested over the years (Gulick, 1937; Simon, 1946, etc.), institutional patterns created by statute tend to live on and influence behavior for years, and they do not require managerial interventions to be effective in many cases. Congressionally enacted statutory structures also appear to affect a range of policy outputs that may not be subject to substantial ongoing managerial influences.

It is important to emphasize, however, that the patterns of compliance established by Congress in statute are not perfect. Rather, they are subject to disturbances that appear to emanate from political factors at the national level, factors affecting policymaking at the state level, and the form and extent of federal involvement. The historical analyses demonstrate that implementation difficulties do arise at the national level, and these difficulties often owe their genesis to disagreements among national level political principals, insufficient resources, technical complexities, and faulty statutory construction on the part of Congress. And, when these difficulties occur, they tend to have cascading effects on state policymaking.

The analyses conducted also suggest that there are wide variations in the *substantive* water pollution policy outputs among the states, and these variations are attributable in part to factors that operate at the state level. Contemporary state policies are characterized by wide variations in the extent to which they pursue the *active* non point source programs and *restrictive* point source controls envisioned by Congress in the FWPCA. Congress, it seems, is quite successful in fostering the development of ongoing institutional influences that profoundly affect state policymaking processes, but these influences encounter highly varied substantive responses among the states. Consequently, while Congress does indeed influence federal and state policymaking processes through its *ex ante* statutory directions, its *ex ante* influence falls well short of achieving ongoing “control” of policy outputs at the state level.

The argument here further suggests that these state variations are influenced not only by state-specific factors, but also by Congress’s choice of policy instruments and the federal oversight patterns that relate to them. Supportive policies that rely heavily on grant incentives for influence over state governments – like those used to address non-point source water pollution – enable state policymaking processes to unfold, as traditional state politics variables (state capacities, group strength, political culture, etc.) tend to explain much of the variation that is observed among state policy outputs under this form of federal-state arrangement. Interestingly in this regard, environmental group strength and state capacities appear to have higher levels of *direct* influence on state non-point source water pollution policy outputs than broad-based factors such as public opinion and the severity of water pollution problems in the state. Additional work is necessary though to determine whether public opinion (or problem severity) has important

*indirect* impacts on state water pollution policy outputs. Regardless, however, the analyses here also suggest that one broad-based factor, the existence of a moralistic culture in a number of northern states, tends to facilitate active non-point source water pollution policies even when environmental group strength and state capacities are taken into account.

By contrast, strong pre-emptive policy structures that rely on direct federal requirements affecting broad audiences to influence state policies – like those used in point source water pollution control – do not appear to be heavily influenced by environmental group strength, state capacities, political culture, or public opinion. Rather, state policymaking under pre-emptive policy structures appears to partially supplant state political dynamics with dynamics that are grounded in recent federal-state interactions. At the same time, the analyses here provide some evidence that the strength of municipalities in the state and the severity of state water pollution problems affect the restrictiveness of *conventional* pollutant requirements for municipal dischargers, even as they do not appear to have these effects on *toxic* discharge requirements. One plausible explanation for this difference lies in the higher levels of current knowledge that are generally available regarding conventional pollutants in ambient waters than is the case for toxic pollutants.

Thus, while the argument here suggests that *ex ante* Congressional influence through statute is quite powerful, it also suggests that this form of influence is manifestly imperfect as both vertical and horizontal factors in the policy process affect the ways in which Congressional mandates influence state policy outputs. More specifically, the supportive federal policy structures used for non-point source water pollution appear to enable the operation of existing (and horizontally oriented) state policy influences, while the pre-emptive policy structures used to address point source water pollution concerns appear to at least partially replace this dynamic with a top-down (vertical) process that fosters policy variation based on the extent of recent federal oversight.

### **Concluding Thoughts**

The findings in this work are important because they address fundamental questions relating to democratic accountability and public administration performance in the United States. The results point to a fidelity among public administrators to many of Congress's *procedural* directions in water pollution control, and suggest also that the runaway bureaucracy concerns of the 1970's were overstated. However, they also emphasize the ongoing importance of state governments in influencing *substantive* policy outputs, and find great variability among the states

in the extent to which their water pollution policies are consistent with Congress's aggressive mandates. We do not have runaway bureaucracy, nor do we have ongoing Congressional control. Rather, we have a complex process of policy implementation that is structured in fundamental ways around Congress's *ex ante* directions, but is also subject to disturbances emanating from political factors at the national level, state policy influences, and variable levels of federal oversight.

The findings here also suggest that Congress's choice of policy instruments and target audiences influences not only federal administrative behaviors, but also the very nature of the policymaking processes carried out at the state level. The likely causal variables affecting state water pollution policies appear to differ, depending on the policy approaches chosen by Congress. The findings also point to the importance of Congress's statutory directions, and the potential value of further scholarly work relating to *ex ante* Congressional influences on the policy process, statutory influences on policy implementation, and intergovernmental influences on state policymaking processes.

The information and analyses provided in this work highlight several implications for the future federal water pollution policies. They suggest that current policies suffer from inadequate information on water quality trends and conditions, insufficient resource investments relative to very ambitious federal policy goals, an imbalance in federal policy approaches for non-point and point sources of water pollution, and wide disparities in state program aggressiveness. These problems, in turn, suggest a need for policy changes to increase and improve water quality monitoring efforts, increase and/or re-align current resource investments, and adjust the structure of federal policies to provide more balanced tools for non-point and point source water pollution control and to target federal involvement toward recalcitrant states. These practical insights will hopefully be of some benefit in the future as Congress, the states, and the federal government debate how to structure "policy devolution" in water pollution control during the twenty-first century.