

THE NATIONAL ENVIRONMENTAL FEDERALISM INITIATIVE

Introduction

The catastrophic ongoing January fires in Los Angeles illustrate that we have lost the fight against climate change in many areas. The blame game is beginning. We need to think out of the box. The top-down model has failed. This white paper describes a new initiative, National Environmental Federalism (NEFI), to prepare for the worst climatological, physical and economic effects of climate change, and to simultaneously work to reduce carbon emissions in a “Bottom-Up Model” led by local city and county-elected officials whose governing bodies have the requisite land use, police and financial powers (not necessarily the resources or federal/state cooperation) and strict accountability to their constituents to address climate change in a whole of government approach. They need a template and resources to initiate the planning, management and implementing functions required, and a national mandate and framework for the federal government to support this federalist approach to problem solving and preparedness.

The Problem Statement

Many communities throughout the world have reached the tipping point of global warming. The problem outstrips their resources and our ability to organize and respond. There is no national plan for the future and certainly no plan to mitigate the impacts of climate change. Indeed, we have outdated federal mandates such as federally subsidized flood plain insurance that reward homeowners who build along the ocean and river systems even though their property will be inundated as a result of rising seas and 100-year flood events becoming 10-year or even 1-year events. We can't FEMA spend our way out of this dilemma – climate induced catastrophic events.

Mankind has accelerated a natural process that took cycles of tens of thousands of years of warming and cooling into under 200 years by exploiting carbon for energy that is subsequently captured in the atmosphere and causes warming. As a consequence, we as a nation are experiencing a dramatic escalation of the incidence and scope of catastrophic climatological events like floods, hurricanes, tornadoes, and fires. Even if we did everything right and met the UN goal for reducing carbon emissions, the world would experience an escalation of these events for a hundred years or more before weather conditions improve.

America's federal government-led efforts to meet carbon goals set by the United Nations are failing and will fail. It is no longer a matter of if but when we will be engulfed by the effects of climate change, which will bankrupt our nation and eventually cause mass migration, water wars and loss of food production.

Society as we know it is on the line. Our efforts are failing for **three** reasons. First, the ongoing national efforts to regulate carbon emissions and to massively fund initiatives from Washington D.C. to reduce emissions from the top down, such as moving towards clean energy, funding EV stations, subsidies for homeowners to build solar panels on their homes and to replace oil and gas-fired home heating systems with electric powered heat pump technologies are ineffective. EVs are not the solution. All these measures help but are not a solution in and of themselves. Also, the U.S. Environmental Protection Agency (EPA) regulation of carbon sources, such as coal-fired power plants, flags because our two National Political Parties disagree on the problem statement and, therefore, solutions. The EPA has never had a strategic focus because of the ever-changing political leadership of our two-party system, and therefore, environmental policy has been sloshing back and forth from Democratic to Republican administrations.

The second reason for the failure to reach our carbon reduction goals is that no one is engaging with ordinary people on the subject of “why and what should my family do to reduce carbon emissions” in terms that resonate with them, or asking them to do anything except to buy EV’s and accept federal subsidies for solar panels. Climate change is decidedly not the subject of kitchen table discussions. Without the understanding, buy-in and support and action of local people and the local institutions of government with land use and police powers to whom they trust and first turn for help, we are doomed.

The good news is that there is a vast army of local general-purpose governments and some states that are trying to address climate change. Taken as a whole, these efforts are sporadic at best. Also, there is a new generation of tens of thousands of local environmental activists as well as victims of catastrophic climatological events, who are trying to promote action at the local level, but they have no purchase, no organizational framework that puts local governments at the pinnacle of planning, organizing, managing and operating our vast resources to address climate change. Instead, local governments are bombarded by federal initiatives that often do not resonate or miss the mark. Many local governments are trying to address climate change through local initiatives, such as pushing toward clean energy to fuel local society. It is not enough, as 73% of all carbon emissions emanate from metropolitan areas, according to U.N. studies.

The third reason for our failure is that the top-down model employed by our national government defies one basic law of economics: supply follows demand, not the other way around. Supplying money does not create demand. The Biden Administration’s Deficit Reduction Act (that followed the BBB Act that was not passed into law) is, in part, another massive, costly and suboptimal federal giveaway from Washington, D.C. We should have learned this lesson from the costly and ineffective federal giveaway of police and security resources to local law enforcement immediately following the 9/11 attack on America. Big federal spending bills that benefit local governments in these instances are a classic

example of often missing the mark. No city or county government is going to turn down freebies from the federal government. These giveaways often become wasteful because no federal agency is asking what local governments need in assistance, and there is often no comprehensive local planning that precedes such initiatives, but, offers are accepted anyway.

Headlines from a recent article in the Washington Post reveal, "*Biden's \$7.5 billion investment in EV charging has only produced 7 stations in two years.*" This headline speaks for itself when homeowners and local officials in Los Angeles ask, how could this happen? How can I afford to rebuild when I am losing my insurance? This illustrates the inefficiency of a top-down approach to climate change.

LA city and county governments are among the few areas where there is a robust capability to respond to local disasters. Yet their coffers are drained. Local general-purpose governments do not have extra money lying around to plan for the future. They don't have the knowledge base and need help to understand building codes, for example, that are more fire proof than conventional approaches. They are required by statute to balance their budgets annually. If it isn't in the approved annual budget, it is not undertaken. Local officials are held strictly accountable at the polls, in public hearings and meetings and on the street. No federal or state officials are similarly held accountable even though states are also required to balance their budgets. At the same time, the federal government has been operating financially on multiple continuing budget resolutions. We don't have a constitutionally mandated budget for our federal government. There is no personal accountability for busting budgets at the federal level, indeed, Congress continues to increase the debt ceiling.

Lessons Learned - The Solution – New Environmental Federalism (NEF) Initiative

As a nation, we have implemented a top-down command-and-control national strategy for controlling pollution since the passage of the Clean Air Act of 1970 and the Clean Water Act of 1972. The 800-page book, "*Gorilla in the Closet*" (*GIC*), available on AMAZON.com and B&N.com, examines the 50-year history of EPA's administration over environmental statutes. The conclusion: EPA has failed because it has taken a hierarchical or top-down view of environmental protection despite these statutes calling for federalism. Ever-changing leadership, hubris, arrogance and lack of organizational management skills, fatal statutory flaws such as unrealistic timelines and ambiguity, as well as practical considerations, have characterized this model. Today, all 50 states carry out all but the EPA regulatory functions (ergo, rulemaking from Washington D.C.). There is no systematic EPA oversight, no one looking to see if the millions of pollution discharges into our air, land, water and marine environment are meeting their permit requirements, that we are protecting the cumulative gains we have made in the past half-century through the command-and-control regulatory model. At best, there is antidotal information. The system has imploded. The

lessons of the past half-century of modern-day environmental protection led by EPA are chronicled in GIC.

The United States Senate and House of Representatives should heed the message continued in the speech given by former Senator Howard Baker (Tennessee), member of the Senate Public Works Committee and co-author 25 years from the passage of the 1970 Clean Air Act he wrote in 2015, *“We respected the technical, scientific and regulatory skills that were available to the federal government and to the states ... but at the end of the day, judgments with respect to the availability of technology — the cost of pollution control — and the ability to meet [technology] standards by specific deadlines, were political and not bureaucratic judgments.”* In referring to *“the difficult decisions,”* Baker was very direct in stating they (the Senate) should not delegate these vital decisions to the Environmental Protection Agency, and that only Congress could make these changes. In reality, quite the opposite happened. **Baker was dead wrong!** Congress should not overreach in initiating the National Environmental Federalism Initiative.

For example, GIC chronicles the inordinate influence that congressional staff (and the environmental lobby) had in crafting burdensome statutory language such as schedules. Congress should view this initiative as one that will be lasting and must be given time (and funding) to take root at the local level and should provide only a template and oversight. The details should be left up to states and their local subdivisions, as well as city and county governments and their advisors. The federal government can play an important role in technology transfer and case studies that show the way for local governments to plan for the effects of climate change and use their powers to regulate local emissions from homes, businesses institutions and farming operations.

A bottom-up approach to planning for and managing the catastrophic effects of climate change as a way of life for the foreseeable future in our civic discourse is the only viable untried option available. Only by fostering expressions of the vast differences in opinion and cultures, a key characteristic of our federalist form of government, can we keep the focus on the problem, not through another top-down approach. This means ramping up the formal agreements on roles and responsibilities of our local, state and federal agencies in a whole-of-government approach from the bottom up.

New Environmental Federalism must be presented to local elected officials first and foremost as a political power transfer, tailored to the unique circumstances of each state and their political subdivisions, city and county governments. It will afford the opportunity for local general-purpose governments to sit at the table with state and the federal government on an ongoing basis in decision-making, not just another planning exercise or a technical challenge directed or governed by the federal or state governments. To achieve these goals, local elected officials must understand the power-sharing arrangement and willingly enter into them, not by coercion or federal mandate. They must have time and staff

to conduct inventories and devise plans in an open political process to define their roles and responsibilities for the future. This will take several years of planning. City Councils and Mayors and County Commissioners will not turn down an opportunity to participate in decision-making when they are being expected to carry the burden of implementation or otherwise exercise their vast land use and police powers to achieve societal goals. Once assumed, they will not give up this function or equal power with the federal government without a fight.

Line item seed money must be provided in legislation to general-purpose local governments to carry out the initial planning and management phases until their efforts are institutionalized into their ongoing operations and budget process. An average of \$1 million three- to four-year planning and organizing grant should be awarded to every standard metropolitan area in the nation (refer to the Nixon-era OMB Circular A-95). Follow-up funding for ongoing planning shall be considered after the initial inventory and planning process is completed to avoid disruption in funding to pay for local staff, consultants and the like. States should be funded to organize a small and rural community planning process that does not involve jurisdictions encompassed by SMSAs.

Advanced work must be undertaken by the federal government prior to funding local governments in the planning process. For example:

- Alignment of federal agencies to support the initial planning/management efforts – allocation of functional responsibilities to federal agencies, creation of individual federal agency strategies to support the NEF Initiative.
- Creation of advisory bodies of non-profit organizations with historical experience in local/state advisory efforts, such as the League of Women Voters or the National League of Cities, Municipal Finance Officers Association and the National Organization of Counties. This step is vital as this body will act as a clearinghouse on the overall federal response.
- Advanced work on guidance to carry out the initial planning/management functions at the local level, including intergovernmental agreements that bind city, county and state governments to the NEIF process.
- Specific mandates for federal agencies to conduct analysis and make recommendations regarding flood plain management and federal insurance subsidies to land owners whose property is destroyed by fires.
- Analysis of the property insurance industry and recommendations for their restructuring or federal/state regulation aimed at mitigation of the high escalation of premiums to policyholders.
- Ramping up Energy Star to play a larger role in technology transfer, research/development of clean energy technology and case studies.
- Technology and success/failure case study transfer from the federal government to local governments including dissemination of sample ordinances to implement their plans.

The NEFI legislation must mandate the institutional structure nomenclature at the local level, including **planning, management, operations** and **regulation**. This miss-nomenclature embedded in Section 208 of the Clean Water Act and EPA's gross mismanagement of the overall 208 planning process, resulted in the proliferation of unaccountable special purpose sanitation districts that lack land use and police power from rushing to be designated as "management agencies" as only such agencies were eligible for federal construction grants assistance for wastewater treatment works. This misdirection at once sidelined general-purpose government, who were also eligible grant recipients from controlling land use and, therefore, their ability to ensure the customer base for repaying the costs of construction, operation and maintenance, thus resulting in massive waste, fraud and abuse and operational failure.

This can be avoided by stating in statute, the four functions that general purpose governments must carry out. Delegation agreements can be crafted between general purpose local governments to carry out regulatory and enforcement functions that can be best achieved by others, including private sector organizations. The model for this assignment of functional responsibility at the local level has been proven in the Northern Colorado Front Range 208 plan and implementation over the past 45 years. It may be the only such program in the nation operating today.

Finally, in creating legislation, the NEF Initiative should contain statements of principle that the NEF Initiative will result in local plans that include actions and initiatives that are **practical, affordable, relevant to the lives of local people and meet local values in each planning area jurisdiction**. This is the overarching goal of the planning process.

The Elimination of the Current EPA and Creation of the National Environmental Protection Commission

Any new initiative will require that the federal government, and EPA in particular, play a crucial role. The EPA is a failed agency. Other federal agencies will also play critical roles such as those who have an historic mission to assist local governments and sectors of our economy such as housing, farming operations and agriculture in general, flood plain management, etc.

Though still needed, EPA must adjust to the times and be reorganized to support NEFI and be given a new set of primary functional responsibilities. "*Gorilla in the Closet*" does this in detail by describing the NEF Initiative, the abolition of EPA as an independent agency which it surely is not because it is tethered to the White House through the President's Office of Management and Budget; and finally, the creation of the new National Environmental Protection Commission (NEPC). GIC explains how and why the top-down regulatory and enforcement approach to environmental protection alone has failed. PART III: WATER

NATIONAL ENVIRONMENTAL FEDERALISM INITIATIVE, BY FREDERIC A. EIDSSNESS, JR., author of *GORILLA IN THE CLOSET: How the U.S. Environmental Protection Agency is becoming obsolete and its future after Trump*, a historic account and memoir.

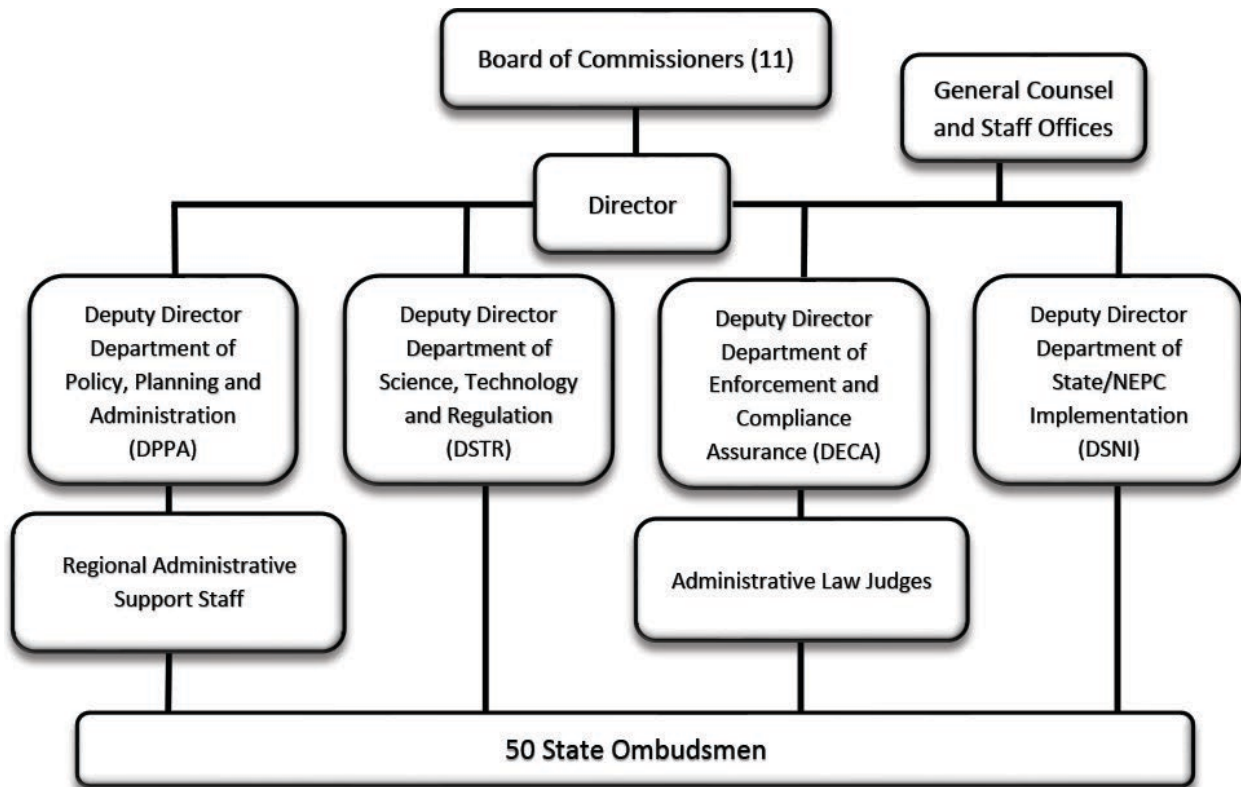
POLLUTION CONTROL FROM THE BOTTOM UP — A CASE STUDY) goes into detail about how a regional wastewater management planning program was conducted in the Northern Front Range of Colorado, one of 149 such studies carried out between 1975 and 1978, that resulted in a local plan that has been self-funded by local governments and major industry and operating for more than 45 years.

Justification for the NEF Initiative, the abolition of EPA and creation of the NEPC are summarized in Part V: Chapters V-4: The Future of Environmental Protection and the Case for Change and Chapter V-5: Marshalling in the New Era of Environmentalism – The New Environmental Protection Commission.

Finally, the EPILOGUE includes a description of the type of program that would be created locally under the NEF Initiative to control carbon emissions. Legislative language to create the new NEPC is contained in Chapter V-5 of GIC, including principles of good government, statement of broad national policy, functional responsibilities of the new NEPC organization, time tables and critical actions need to establish a functional NEPC to replace EPA.

The NEPC reorganization would look as follows:

Figure V-6.1: Proposed NEPC Organization



This proposed organization is intentionally flat with Senior Executive Service EPA employees – and not political appointees who come and go with the wind – assigned to each state to function as liaison and NEPC resource managers between the NEPC and Governors and heads of their environmental agencies. These SES appointees would also lead in EPA participation in the NEF Initiative.

EPA has a history of co-locating senior professionals in state offices, particularly in EPA Regions 10 and 8 (Seattle and Denver, respectively). These initiatives successfully enhanced communication and thus minimized miscommunication between the EPA and its State counterparts when states and the regulated community were often confused as to who spoke with authority for EPA. Indeed, top State/EPA office directors, with the veil lifted from their eyes over how the states operate and having greater access to polluters, assumed a posture of advocates for the states. Yet, I propose consolidation of EPA's research and regulatory resources to continue with vital national technology-based regulation.

The Devil is in the Details

GIC includes specific legislation for consideration in restructuring our national environmental protection efforts. It also includes *Congress's policies and principles of good governance*. Additional congressional legislation can be derived from GIC to create the NEC Initiative. It is a thoroughly researched book, vetted by attorneys, that includes more than 450 primary references that span more than 50 years. It is a granular examination of the history of EPA and the industry it supports, incorporating multiple case stories – written by a man who was in the room when EPA was formed in 1970 and returned over a decade later as a top policy official when environmental lobby was trying to recapture EPA that it lost when Ronald Reagan was elected president in 1980. It is a searing examination of the confluence between policy, politics and science by its author, who worked in the field for 40 years, including in and for local government, for governors and industry leaders who were stifled by the confusing and ever-changing edicts from the hierarchical federal EPA. GIC provides the rationale and template for the New Environmental Federalism Initiative.

Since the beginning of civilization, the first communal entities, polities — that were formed to collaborate and share resources to provide vital human services at scale — became some form of local government entity because of strict accountability. Local governments are to be the first that citizens turn to in the face of catastrophe. Local government will be the last to stand when civilization ends — not the federal government. To protect our environment and way of life, we need to upend the hierarchical approach to governance and deploy the vast land use and police powers and resources of local governments supported by local citizens.

Eric Eidsness, The Waddell Sea, Antarctica, December 1, 2022

Command-and-Control

Clean Air Act

Delegation to States

Master-Serf

SEWERGATE

SUPERFUND

CAP AND TRADE

LOCAL LAND-USE &

POLICE POWERS

STAKEHOLDER PARTICIPATION

Clean Water Act

COMPLIANCE & ENFORCEMENT

HIERARCHICAL THINKING

Safe Drinking Water Act

TRUST OR RETRIBUTION

Facilities Inspection

ENVIRONMENTAL ELITE

POLICY OR GUIDANCE?

Subordinating Science to Ideology

EPA

OVERSIGHT

VIOLATIONS & PENALTIES

Beneficial Uses

Human Health Risk Assessment

Political Engineer

FREDERICA A. EIDSNESS JR.

GORILLA IN THE CLOSET

A memoir and historical account of the U.S. Environmental Protection Agency, why it is becoming obsolete, and its future after Trump





4.5 Stars from Literary Titan!

In *Gorilla In The Closet*, author Frederic A Eidsness Jr. dissects and delves into the ins and out of the Environmental Protection Agency to provide a better understanding of the agency and to outline the dramatic restructuring that is needed to reestablish confidence in the agency. The author is deliberate in making this a nonpartisan issue and develops a plan that I think both sides can get behind. Readers will see how both the Democratic and Republican parties want something for the agency that won't enable it to properly do what it was meant to do.

The author has extensive knowledge of the EPA as he was a critical member of the agency and was involved in the 'Sewergate' scandal; which involved the head of the EPA at the time. The author's expertise is on full display throughout the book and provides significant insight that makes this book both informative and captivating.

There is a lot of information to take in, but readers who follow politics or government policy, even a little, will be able to understand the book. as the author does a great job of explaining things in detail. Those deeply interested in politics will be enthralled with this book as it gives readers a behind-the-scenes look at an agency in the midst of a scandal. Frederic Eidsness Jr. also shares a bit of history about the EPA, sharing information about its infancy back in the 70s, well before it became infused with politics.

With any book on politics, I'm always wondering which side of the aisle the author falls on. The great thing about this book is that the author is able to remain nonpartisan throughout, focusing only on what will make the EPA better. I've learned that politics has shaped the EPA up to this point, but the author makes it clear that there is a path forward that can make the EPA better; which conveys a feeling of hope.

With the anecdotes, expert opinions, behind-the-scenes look, history and critical analysis of the agency, the author is also giving the reader an understanding as to why the agency needs to be revamped before then delving into details on how to improve it. The guidance is clear, and the path forward is well-defined in this informative book.

With climate change being a prevailing contemporary issue I feel *Gorilla In The Closet* is very relevant today. This is an enlightening book that provides a blueprint to make significant changes to an important agency at a critical time in history. The author tackles the subject with intelligence and a matter-of-fact tone that is refreshing.

Original review can be viewed here: <https://literarytitan.com/2022/11/21/gorilla-in-the-closet/>