

Federalism and Air Pollution Laws

The Clean Air Act is a series of laws that Congress enacted to control air pollution. The most recent change to the act was passed in 1990. This addition provides guidelines on the amount of a pollutant that can be in the air. It also set deadlines for national, state, and local governments to reduce air pollution. Finally, the 1990 Clean Air Act gives the Environmental Protection Agency (EPA) power to enforce the law. Prior to 1990, state and local governments had been responsible for enforcing the Clean Air Act.

Though the 1990 Clean Air Act is a national law covering the entire country, states are expected to carry out many of its provisions. For example, states must develop implementation plans that outline their best method for controlling air pollution in areas that do not meet national air-quality standards. State standards for controlling air pollution can be stricter than those required by the Clean Air Act, but they cannot be weaker. If the EPA finds a state plan to be unacceptable, it can take over enforcement of the Clean Air Act in that state.

In 1998, the owner of a zinc mine in northwest Alaska requested a permit to build a new generator that would release more pollution into the air. The Alaska Department of Environmental Conservation approved a permit for the new generator if the company installed a technology called low NO_x. The state also required the company to install low NO_x on all of its existing generators. The EPA disagreed with the state of Alaska, believing that a better technology was available for the new generator. Though installing low NO_x on all generators would best reduce overall pollution, the EPA said the state had to consider the best technology for each individual generator. When the EPA blocked the construction of the new generator, Alaska filed a lawsuit.

Alaska argued that the EPA did not have the power to override the state's decision. States, not the EPA, were given the power to carry out the provisions of the Clean Air Act. Alaska believed it properly followed the guidelines set forth in the law. If the EPA stepped in simply because of a disagreement, the state would have no authority to implement its plan to control air pollution. Furthermore, the technology that the EPA recommended was more expensive than the one Alaska had authorized. The state was concerned about the negative economic impact of the more expensive technology.

The national government, on the other hand, argued that Congress did give the EPA authority to enforce the Clean Air Act and ensure that states followed the guidelines of the law. Although states do have the power to make decisions about how best to control air pollution, the EPA could review those decisions. If the EPA were not allowed to do so, it would have no power to enforce the Clean Air Act. In this case, because the EPA did not think Alaska was following the guidelines, a review was required by law. When Alaska granted a permit to allow a generator to be built with low NO_x technology, the EPA argued, it did not use the best technology available for controlling air pollution.

In your group, use your Reading Notes, this handout, and the federal system diagram to answer the questions below. You must reach an agreement on Question 3 and be prepared to share your response with the class.

1. Which expressed, concurrent, and reserved powers apply to this issue?
2. What are the strongest arguments in favor of state power in this issue? Against state power?
3. Which government—national or state—do you think has the power to regulate air pollution in Alaska?