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In assessing the environmental train wreck that was the just-concluded Supreme Court Term, the question arises: is there anything from that Term from which environmental interests can take comfort? The answer is at least a qualified "yes."

Somewhat lost in the attention focused on the justices' five major environmental decisions–all of them clear defeats for environmental interests–is the fact that the Roberts Court showed far greater solicitude toward state law and state regulatory initiatives over the last year than it has in the past. While none of the key preemption/Supremacy Clause cases this year arose in an environmental context, they have major, potential consequences for future environmental law and policy.

Some of the Court's most important preemption decisions in 2009 involved claims that federal law preempts state tort law remedies. In *Wyeth v. Levine*, for example, the Court ruled that federal drug laws administered by the Food and Drug Administration don't supersede state common law claims against drug manufacturers. Writing for the majority in *Wyeth*, Justice Stevens disparaged and rejected efforts by Bush Administration regulators to preempt such state law claims in the absence of Congressional intent to do so.

And on the final day of this past Term, the Court similarly dismissed the banking industry's federal preemption challenge to New York Attorney General Cuomo's enforcement of state fair-lending laws. Justice Scalia, of all people, led a six-member majority of the justices in rejecting claims that federal regulators can displace state enforcement authority under the Supremacy Clause. See *Cuomo v. Clearing House Assn*.

An interesting development, particularly for a Court that in years past has been far more sympathetic to claims that federal law trumps state and local measures. But what does this have to do with environmental law and policy?

Quite a bit, actually. Over the previous eight years, the Bush Administration was particularly aggressive in pursuing federal preemption claims vis-a-vis a host of state and local government environmental initiatives. What was particularly galling was that in many of these environmental disputes, the issue was not whether federal environmental program A conflicts with state environmental program B; rather, it was whether state and local regulators could pursue environmental initiatives in the face of abject federal *in*action–climate change being the most prominent example. And the Bush Administration repeatedly invoked "regulatory preemption" in its efforts to trump state and local environmental programs, even in the face of Congressional silence on the question.

Of course, where you stand on the issue of federal preemption and states' rights depends on where you sit–and about which era of our nation's history you're talking. States' rights, for example, had a very different meaning and context in the Kennedy and Johnson Administrations than they did while President George W. Bush was in office. And who's to say that conservative states in the future won't invoke federalism principles in an effort to fend off aggressive federal environmental initiatives launched by the Obama Administration?

For the time being, however, the Supreme Court's recent, renewed affection for principles of cooperative federalism is good news for environmentalists and the cause of sound environmental policymaking. Precedents such as *Wyeth* and *Cuomo* will provide comfort and support for state and regional climate change programs such as California's implementation of the Global Warming Solutions Act (AB 32); the Western Climate Initiative; and the Regional Greenhouse Gas Initiative (RGGI). A host of other interstate, state and regional environmental initiatives will benefit from the Court's recent preemption and federalism pronouncements as well.

For environmental law and policy, this is but a silver lining to an otherwise depressing Supreme Court Term. But one worth noting nonetheless.