

This [article just published in the Atlantic](#) explains well one of the many ways that EPA Administrator Scott Pruitt may attempt to deeply harm our environment for decades to come: through declining to grant, or revoking, the waivers that allow California to regulate air pollution from new motor vehicle engines more strictly than the federal government does. Less-well noticed is that while California has worked hard to protect public health and the environment through its air quality laws and regulations – and will continue to do so even as the federal government backs off and attempts to thwart California’s efforts – many states have quietly and purposefully rendered themselves legally unable to go beyond whatever the federal government does to limit pollution. So if the new administration’s assault on air quality turns out to broadly include welcoming new pollution, many states will be poorly positioned to pick up the slack.

California can set its own standards limiting air pollution from motor vehicles, and other states can opt in to California’s stricter standards – but only if the federal government issues a waiver to California. Almost every waiver request has been granted, based on a legal standard that requires EPA to approve these waivers where there are “compelling” and “extraordinary” conditions justifying them. Despite the Republican rhetoric of “states’ rights” and “federalism,” apparently the administration is poised to start denying, or even revoking, these waivers. .

My colleague Ann Carlson is quoted extensively in the Atlantic article, which focuses on California’s special legal authority to limit air pollution from motor vehicles (and other states’ ability to opt in to California’s standards), and how the administration is trying to destroy that authority. Ann also [blogged about this issue](#) recently, predicting the very event that is now being discussed seriously in policy circles: the possible refusal to grant, or revocation of, these waivers. (Her linked blog post has excellent background on the issue.)

Not only will people die early from respiratory diseases as a result of the changes likely to be proposed, but it’s almost certain that these same EPA actions are about to roll back much of our state’s pioneering work to address the causes of climate change. Fortunately, as Irene Gutierrez and David Pettit of the Natural Resources Defense Council (NRDC) [have argued in a detailed, recent blog post](#), Administrator Pruitt would not be on solid legal footing if he did this. At the same time, it will surely be a tough legal battle, with organizations such as NRDC at the forefront, and ultimately, as with so many things, we will have to rely on the courts to require the administration to enforce the law as it was written and intended.

Of course, Republicans generally say they support states’ rights and don’t like federal regulatory mandates. But they seem to pick and choose where to apply these principles.

Apparently, allowing states the freedom to choose better public health and less contribution to climate change isn’t a place they tolerate states’ rights.

But it gets worse. Beyond motor vehicle air emissions standards (through opting in to California’s standards), states have broad authority to be more protective than the federal government, including but not limited to setting strict standards for water quality, air emissions from oil refineries, power plants, and other stationary sources of air pollution, and hazardous substances contamination. In these areas, federal law allows a state to be more protective than federal standards, if a state chooses to do so. In fact, in some cases, it’s necessary for a state to regulate emissions more stringently. For example, to comply with federal standards that establish maximum concentrations of pollutants in ambient air in a particularly polluted region, a state may need to require stricter emissions controls on specific pollution sources. But a whole lot of states (under Republican legislatures) have voluntarily [restricted, by statute, their own authority to go further than the federal government in protecting public health and the environment by limiting pollution](#) where states would otherwise have the authority to do so. For example, South Dakota has enacted a law that, in the words of the National Conference of State Legislatures, requires that no state rule “on subjects related to environmental protection, mining, water rights and water management may be more stringent than corresponding federal laws, rules or regulations governing an essentially similar subject or issue.”

These states apparently have no confidence in their own state governments to know better than the federal government what’s best for the residents of their states, despite all the rhetoric of federalism and states’ rights. They apparently don’t want to have the power to protect the public’s health or the environment.

As Administrator Pruitt begins to loosen federal environmental quality standards, I wonder whether residents of any of those states will educate themselves about these state laws, and start to regret them. (Of course, a future state legislature can always change the law back to allow more stringent regulation, but I’m not holding my breath for that, given the politics of the environment these days.) Fortunately, here in California, we have demonstrated our commitment to continue to protect public health and the environment as much as necessary, beyond or in spite of whatever the federal government does. I’m confident we’ll continue to be able to do that. Our Legislature is now considering a [package of bills - SB 49, SB 50, and SB 51](#) - that will help us to keep our environmental protections strong in California. [SB 49 \(Stern, De Leon\)](#) in particular would accomplish essentially the opposite result from the laws in the states mentioned above, by making “current federal clean air, climate, clean water, worker safety, and endangered species standards enforceable under state law, even

if the federal government rolls back and weakens those standards,” and directing “state environmental, public health, and worker safety agencies to take all actions within their authorities to ensure standards in effect and being enforced today continue to remain in effect.” The law is thus designed to prevent backsliding on health and environmental protections if the federal government rolls back federal laws and standards. I’m glad – but not surprised – to see our legislators continuing to stand up for health and the environment. [Note: Post has been edited to add information about SB 49, SB 50, and SB 51.]