Justice Stevens and the Rule of (Environmental) Law

There's already been a lot written in the aftermath of Justice Stevens's death, including Ann Carlson's excellent Legal Planet post last week. I'd like to add something about an aspect of his jurisprudence that had great relevance to environmental law: his belief in the rule of law, and specifically, in the duty of both the judiciary and the executive branch to respect and implement congressional mandates.

This stance was evident in Justice Stevens's decision in Massachusetts v. EPA, probably the most important environmental case that Supreme Court has ever decided. The Bush Administration refused to regulate greenhouse gases under the Clean Air Act. But the statute was very clear. It defined air pollutants as any substance emitted into the air, and it required regulation of such pollutants whenever they endanger human health or welfare. The Bush Administration also argued that international negotiations would be a more fruitful way of addressing the problem. Apart from the fact that this was clearly a pretext – Bush had shown no interest in brokering an international agreement – it had nothing to do with the only relevant issue under the statute: what the science had to say about the dangers of greenhouse gases. Justice Stevens wrote: "To the extent that this constrains agency discretion to pursue other priorities of the Administrator or the President, this is the congressional design." EPA had simply "refused to comply with this clear statutory command." But the duty of the executive branch to carry out the laws doesn't depend on whether the President agrees with those laws. And Justice Stevens's opinion gave that message to EPA in no uncertain terms.

The need to respect congressional mandates was also at the heart of Justice Stevens's generous view of standing in environmental cases. He consistently opposed the efforts by Justice Scalia and other conservatives to narrow standing and thereby give the executive branch more discretion in whether or not to follow the laws. Without the ability to challenge executive violation in court, citizens would have no readdress when the government decided to ditch statutory requirements in favor of its own policy preferences.

Early in his time on the Court, Stevens had already expressed his belief in the importance of respecting Congress's wishes. In one case, the question was whether a court should allow the government to continue violating the law with naval exercises bombarding a coastal area in Puerto Rico without a permit. Some might consider this a technical violation, and the majority of the Court thought the

national security interest clearly outweighed the need for compliance. But Stevens dissented. Congress had created the permit program as part of a carefully designed program to protect water quality, and judges had no right to second-guess that judgment. In another case, a lower court had said that a variance provision to a provision of the Clean Water Act would be appropriate. Writing for a majority this time, Stevens observed that the question “is not what a court thinks is generally appropriate to the regulatory process; it is what Congress intended for these regulations.” He thought it plain that this particularly statutory provision in the Clean Air Act left no room for individual plants to deviate from requirements applying to the whole industry.

Congress has passed sweeping statutes providing for environmental protection, often at considerable cost to the government or the private sector. Stevens that both courts and Presidents should respect the priorities set by Congress, even if they disagree with them. That simple principle was basic to Stevens’ approach as a judge. It turned out to be enough to decide a great many cases.