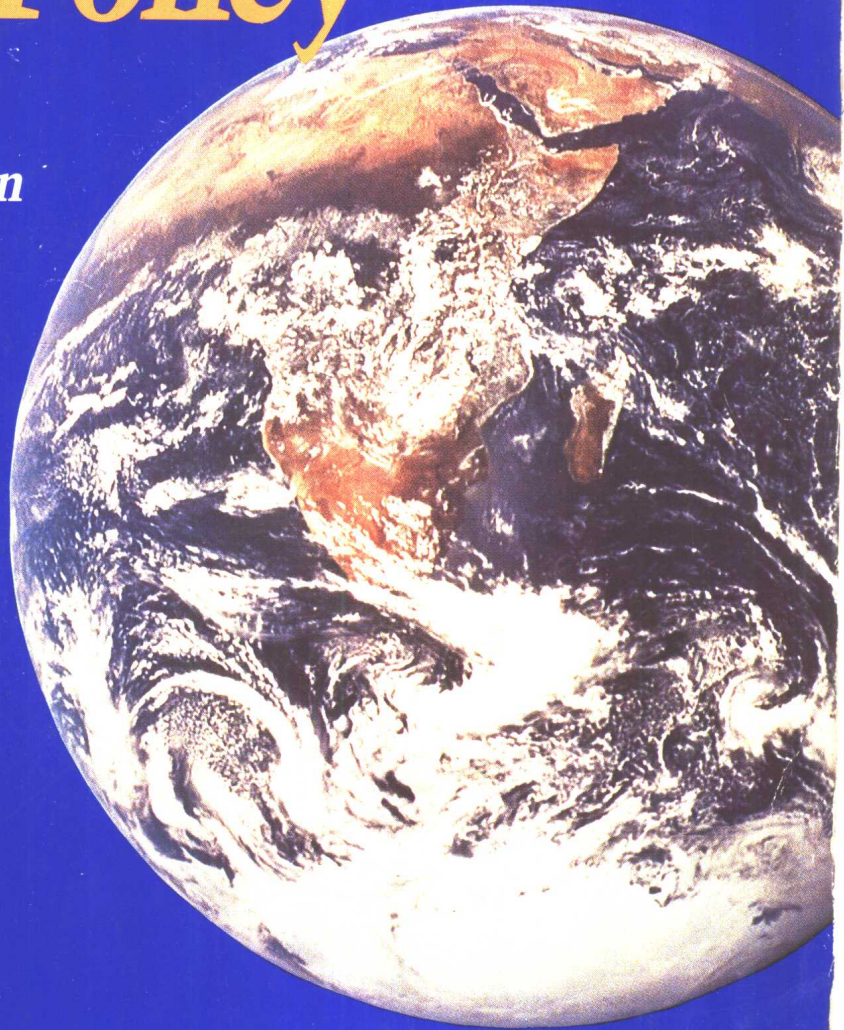


Environmental Politics and Policy

Second Edition



Walter A. Rosenbaum

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Preface

This book focuses upon *continuity* and *change* in the politics of American environmentalism. Both words matter. The changes have been as important as the continuities in shaping the style and substance of American environmental politics in the 1990s.

In revising this book for the third decade of the nation's environmental era, it seemed especially important to provide some accounting of how far and how well the environmental movement has advanced its policy agenda in the last twenty years, to count failures and successes, to blend explanation with criticism when appropriate, to ask where the movement is headed, and to inquire about the forces shaping its future. And so, while many themes remain from the previous edition to mark the continuities of American environmental politics, the reader will note considerable new material intended to chart and appraise the changes in American environmental politics in its third decade.

A chapter has been added that describes what I call the "quiet crisis of regulatory capacity"—the major deficiencies in institutional and policy design that have become increasingly evident, and deeply disruptive, in environmental regulation over the last twenty years. This chapter (Chapter 4) focuses upon major sources of this crisis: administrative overload, congressional and White House overcontrol, the "single media" approach to pollution regulation, and cost-benefit analysis. The final chapter (Chapter 10) proposes several solutions for these problems, including "integrated" pollution regulation, a new definition of environmental protection as a national security issue, and explicit statutory priority for environmental regulation on the domestic policy agenda.

New material has been added to Chapter 1 to illuminate changes in the political style and policy priorities of the environmental movement over the last twenty years—the transformation from a domestic to a global conception of environmental degradation, to cite one example. The chapter on risk analysis (Chapter 5) includes a discussion, based on an emerging new body of research literature, concerning how social and economic values appear to influence scientific judgment in risk assessment.

This new edition includes assessments of the Reagan administration

and its environmental legacy. With Ronald Reagan's departure from the White House, it is now possible to provide a more comprehensive appraisal of his administration's impact on environmental policy and, especially, to appreciate the magnitude of disruption and delay his presidency inflicted upon environmental regulation. This updated appraisal will be found in the chapters dealing with risk assessment, air and water pollution, toxic substances, and the public lands. The general style of the Reagan "administrative presidency" and its objectives are examined in Chapter 3, which focuses on the environmental policy process.

Two issues have been substantially expanded in scope and detail from the earlier edition. In practically every chapter much greater attention has been given to the impact of science and the scientific expert upon environmental policy making and to the problems involved in utilizing science in regulatory decision making. The NIMBY problem—the growing public resistance in the siting of hazardous waste facilities—also gets greater attention in the discussion of hazardous waste management (Chapters 7 and 8) and in the final chapter's prescription for future policy reforms. This enlarged attention is justified, I believe, by the growing importance of these issues in current environmental policy making. Additionally, all the substantive policy chapters have been updated to include the major amendments, passed in the 1980s, to the "Superfund" legislation, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Federal Water Pollution Control Amendments of 1972.

Global climate warming and atmospheric ozone depletion, now major environmental issues but little more than speculation a few years ago, are given appropriately greater attention in the discussion of the environmental policy agenda. In addition, a comprehensive list of readings has been provided at the end of the chapters.

This new edition retains the organizational structure, general themes, and substantive policy chapters of the previous edition and its predecessors. The concepts and characteristics of the "policy cycle" provide the framework in which policy is analyzed. The influence of constitutional design and political culture upon policy is again examined. The policy-making procedures most intimately associated with environmental management are individually characterized, especially the procedures for administrative regulation, risk management, and cost-benefit analysis. Four chapters provide the reader with a brief but informative description of substantive environmental policies, and implementation problems, related to air and water pollution, hazardous and toxic wastes, energy, and the public lands. Numerous illustrations, case studies, and tables or figures are included in an effort to make the material interesting

and comprehensible. I hope these features will continue to be as useful and well received as they have been in the past.

For their many diverse contributions to the writing and production of this book I am grateful to my editors, Joanne Daniels and Kerry Kern, and to Michael E. Kraft, James P. Lester, and Geoffrey Wandesforde-Smith for their thoughtful and thorough reviews of the manuscript. Any errors of omission or commission—alas!—will be mine.

When the first version of this book was written twenty years ago, virtually no one—including me—was confident that environmentalism could survive the ferocious competitive pluralism of American public policy. History is a graveyard that memorializes many great and good causes that could not endure. Few issues long command the passionate majorities essential to keep them high on the public policy agenda. Small wonder that environmentalism was frequently dismissed as another trendy and transient public preoccupation. Now, the voices and events from two decades of vigorous environmentalism resonate through every page of this edition. Environmentalism has endured. It is my wish that this book may help environmentalism prevail.

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Chapter 1

The Second Environmental Era

The difficulty of converting scientific findings into political action is a function of the uncertainty of the science and the pain generated by the action.

—William D. Ruckelshaus

Sometime in the late 1980s, deep in the twilight of Ronald Reagan's final White House years, the United States entered its second environmental era. Unlike Earth Day in April 1970, the media event that became the historic signature for the "Environmental Decade," Environmental Era II arrived unproclaimed. But there were signs and portents.

Prelude

One of these events occurred during October 1988, in the small West Virginia community of Nitro, in the Kanawah River Valley, when the Environmental Protection Agency (EPA) harmlessly destroyed Elmer Fike's four-foot cylinder of deadly hydrogen cyanide gas. Thus ended the EPA's decade-long struggle to compel Fike Chemicals, Inc., a small custom chemical manufacturer, to control the hazardous substances contaminating its plant and the nearby surface and ground waters.

Before it played out, the Nitro affair became a \$13 million parody of environmental regulation, "a travesty" in the words of the EPA's supervising official. It began in 1976, when the EPA obtained a civil order requiring Fike Chemicals to control its hazardous pollutants. The company initially complied but failed to maintain the control technology. In 1980, the EPA filed a civil complaint against Fike Chemicals charging violation of the Resource Conservation and Recovery Act (1976) because the company's improperly controlled chemicals were endanger-

ing public health. In late 1982 the company signed a consent decree, again promising to clean up its mess and maintain its chemicals properly. But shortly after, in compliance with the newly enacted federal "Superfund" legislation (the Comprehensive Environmental Response, Compensation and Liability Act of 1980), Fike Chemicals was placed on the EPA "priority list" of the nation's most dangerous chemical waste sites and assigned to a category that usually meant the EPA would interfere as little as possible in the facility's operations.

Despite the EPA's intention not to disrupt company operations, Elmer Fike sold his company in 1986 because, he complained, the Superfund listing had driven off his customers. The new owners once again promised to correct the plant's deficiencies, but in June 1986 the EPA discovered that the plant had been closed and abandoned. The site was then upgraded to "an immediate and substantial threat" to public health and the EPA was finally able to act directly to control the on-site contamination. What the EPA found at the site was described as "unbelievable." Among the more than 4,000 abandoned containers were "lethal chemicals that could explode in contact with water, open to the sky; incompatible materials stored in deteriorating drums . . . a bunker full of metallic sodium and a container of methyl mercaptan, both lethal, potentially explosive chemicals,"¹ and Elmer Fike's gas cylinder. A fire or explosion involving these highly volatile chemicals could have been catastrophic for Nitro.

The destruction of the hydrogen cyanide cylinder ended the EPA's ten-year battle to gain access to the Fike Chemical site, but it will take many years to render the site safe for the surrounding community. Critics and defenders of environmental regulation alike regard the Nitro saga as a cheerless metaphor for the entire federal toxic and hazardous waste regulatory program—a warning that something is profoundly wrong with the laws intended to be the foundation of environmental policy during the 1970s.

The Greenhouse Is Coming

In mid-August 1988, the Environmental Protection Agency released a warning to federal and state agencies that marked, as well as any event of the decade, a profound transformation in the nation's environmental politics. All but ignored amid the distractions of the upcoming presidential election, the EPA advised federal and state agencies to begin planning to protect the nation's coastal wetlands from rising sea levels predicted for the next century. "Estimates for sea level rise by the year 2025," the agency commented, "range from 5 to 15 inches above current sea levels and estimates for 2100 from two to seven feet higher."² In other words, the nation might lose 30 to 80 percent of its coastal wetlands in little

more than a generation. Charleston, South Carolina, didn't need convincing. It was already contemplating a new storm sewer system to accommodate ocean waters raised by melting polar ice caps.

The EPA's barely qualified warning would have been unthinkable a few years earlier. Global warming—the Greenhouse Effect—was then regarded by most atmospheric scientists as speculation. So were acid rain and depletion of the tropospheric ozone layer. Without a potent scientific or political constituency, these issues were fated for “further research.” Thus, in the mid-1980s the United States rejected participation in any international agreements limiting worldwide production of pollutants assumed responsible for global warming or the more recently discovered depletion of stratospheric ozone.

In late 1988, Washington reversed itself and signed with twenty-four other nations the Montreal Protocol, which required the United States to cut production and use of chlorofluorocarbons (CFCs) and other halons believed responsible for global ozone depletion. Earlier, Washington agreed with twenty-four other industrial nations to freeze its emission of nitrogen oxides, which are thought to be a major precursor of global acid rain. The sudden ascent of these problems to high priority in the current U.S. public policy debate testifies to the rapidity with which international scientific research is illuminating for Americans the worldwide scale of ecological degradation. The environmental agenda has become global. And issues once thought implausible now abound on the U.S. policy agenda.

Smogbusting in Los Angeles

Even before the EPA released its Greenhouse warning, the board of the South Coast Air Quality Management District, responsible for air pollution control in the sprawling 6,600 square mile Los Angeles basin, had proposed the most radical air pollution management plan in U.S. history. The Los Angeles basin, home to 12 million people, 8 million automobiles, and the nation's worst smog, is the most severe violator of the ozone standards required by the federal Clean Air Act of 1970. In one recent three-year period, the basin violated the standards an estimated 143 days each year. Local authorities must abide with a federal court mandate to produce a plan for complying with EPA air-quality standards for ozone, carbon monoxide, and airborne particulates by the year 2007.

The plan proposed, among other things, within five years to require reformulation of paints and solvents to reduce hydrocarbon emissions, to ban gasoline-powered lawn mowers, to ban the sale of barbecues and fuels requiring a starter fluid, to limit the number of cars each family could have, to raise parking fees for cars carrying a single passenger, and

to restrict all new tire purchases to radials that shed less rubber particles into the air. Within an additional five years, the plan proposed to convert 40 percent of the cars, 70 percent of the trucks and other freight vehicles, and all buses to methanol or other "clean" fuels. The plan contained something to offend almost every powerful economic and political interest in the Los Angeles basin, and its prospects seemed bleak. Nevertheless, the plan was a remarkable act of political boldness in its determination to confront Southern Californians with the real social and economic costs of clean air and to challenge the public to accept responsibility for achieving it.

Time will determine how much is substance or symbolism in the environmental rhetoric of the late 1980s. Policies proclaimed are not programs achieved. But the incidents briefly examined above are significant now because they point away from the style and substance of the "Environmental Decade" past. What is evident in the nation's environmental politics in the last decade of the twentieth century is a sharp mood shift, a more expansive sense of scale and causality, a new vocabulary bespeaking an altered agenda, and a pervasive somberness quite unlike the style of the nation's first environmental era.

A New Mood, A Different Agenda

The Reagan years rise like a great divide between America's environmental eras. On the far side lies Environmental Era I, beginning in the 1960s and spanning the 1970s. The Environmental Decade created the legal, political, and institutional foundations of the nation's environmental policies. It promoted an enduring public consciousness of environmental degradation and fashioned a broad public agreement on the need for governmental restoration and protection of environmental quality that has become part of the American public policy consensus. It mobilized, organized, and educated a generation of environmental activists. The environmental movement prospered in a benign political climate assured by a succession of White House occupants tolerant, if not always sympathetic, to its objectives.

The Reagan Legacy

All this changed with the Reagan administration. Ronald Reagan and his advisers believed the president had been elected to bring "regulatory relief" to the American economy, and environmental regulations were an early priority on the "hit list" of laws needing "regulatory reform." The environmental movement regarded the Reagan administration as the most environmentally hostile in a half century and the president's regulatory reform as the cutting edge of a massive administrative assault

on the institutional foundations of federal environmental law.³ The environmental movement, thrown on the defensive, expended most of its energies and resources defending the legislative and administrative achievements of the Environmental Decade from the onslaught of the president's regulatory relief.

The Reagan years severely tested the foundations of the environmental movement. While the foundations held, little was done to advance the implementation of existing policy or to address new and urgent environmental issues. "The contest produced a standoff," concludes historian Samuel P. Hays. "When the political force of public environmental desires became too great, the administration backed down, and when the administration became so zealous that it acted in disregard to established procedures or the intent of legislation, it was forced to change tactics. At the same time . . . the administration could effectively check most innovations in environmental policy that were ripe for action."⁴ To environmental leaders, the Reagan years meant, above all, dangerous drift and indecision, almost a decade of lost opportunities and intensifying environmental ills. George Bush's election seemed to promise a far more sympathetic and aggressive White House approach to environmental protection, and promoted a renewed sense of vigor and urgency within the environmental movement. The movement itself was changing in response to the altered political climate and the accumulating experience with environmental management during the prior two decades.

A Global Agenda

When the leaders of thirty national environmental groups met with President-elect George Bush shortly after his victory in November 1988, they presented more than 700 recommendations for his consideration. Among the highest priority issues were global warming, destruction of the planet's ozone layer, loss of tropical rain forests, acid rain, and ocean pollution.⁵ Unlike the first environmental era, the politics of Environmental Era II embraces a far more global conception of environmental degradation. It is more aware that ecological ills grow from a complex causality and create an intricate chain of effects that link different ecosystems and natural orders. Thus, it is likely to stress that sulfur oxides polluting Ohio River Valley airsheds create the acid rain that falls into Lake Ontario and deposits the heavy metals that may end up in the body fat of fish consumed by Canadian children. Or the new politics is likely to emphasize that gases and particulates borne in smoke clouds from the deliberate burning of the Brazilian rain forests can be carried by jet streams south to the Antarctic where they can deplete the tropospheric ozone layer.

During the first environmental era the movement leaders spoke most

often, and most relevantly, to Americans about the nation's environmental ills. Leaders in the second environmental era speak as naturally of "the Global Commons"—global problems and global solutions. This is an international perspective hardened by a twenty-year accumulation of increasingly sophisticated scientific data suggesting that the gravest ecological problems exist on a scale that defies purely national approaches to their solution. Environmental scientist Barry Commoner once defined ecology as the awareness that in nature "everything is connected to everything else."⁶ In this sense, the new rhetoric bespeaks a more truly ecological understanding of the policy problems and solutions involved in environmental management.

Disappointment, Reappraisal, and Reform

The United States enters the second environmental era poised at the intersection of two learning curves: one relates to the body of scientific data, technology, and inference developing about environmental problems; the second relates to experience with the legal and institutional solutions to these problems. One curve seems to climb upward toward a more sophisticated use and understanding of environmental information; the other seems to chart a plummeting confidence in existing institutional and legal capacities to deal with environmental problems.

A conviction is growing among major segments of the environmental movement both inside and outside government that something is fundamentally wrong with many existing approaches to environmental regulation and that action must be taken quickly to change matters. There is ample evidence that many laws considered essential to federal environmental regulation are not working well, and some hardly work at all. Here environmentalists and their opponents often agree, although not about the remedies. Federal laws regulating the manufacture, use, and disposal of hazardous or toxic substances, for instance, are almost a consensus choice as near failures. The specter of Nitro, West Virginia, lingers about the prognosis offered for the current laws by the Conservation Foundation, a respected and moderate environmental organization:

the burgeoning problem of mitigating toxic substances' public health and environmental effects may well exceed the system's regulatory capacity. As the tip of the toxics iceberg gradually enters public view, its perils and complexities may indeed reveal the inadequacy of a segmented approach [to regulation].⁷

Critical reappraisals have affected the environmental movement's policy agenda in several ways. Proposals are now commonly debated to redesign the institutional framework, the incentive structure, and the goals of environmental regulation; some environmental groups, in turn, are changing their viewpoint on such matters. The president's Council