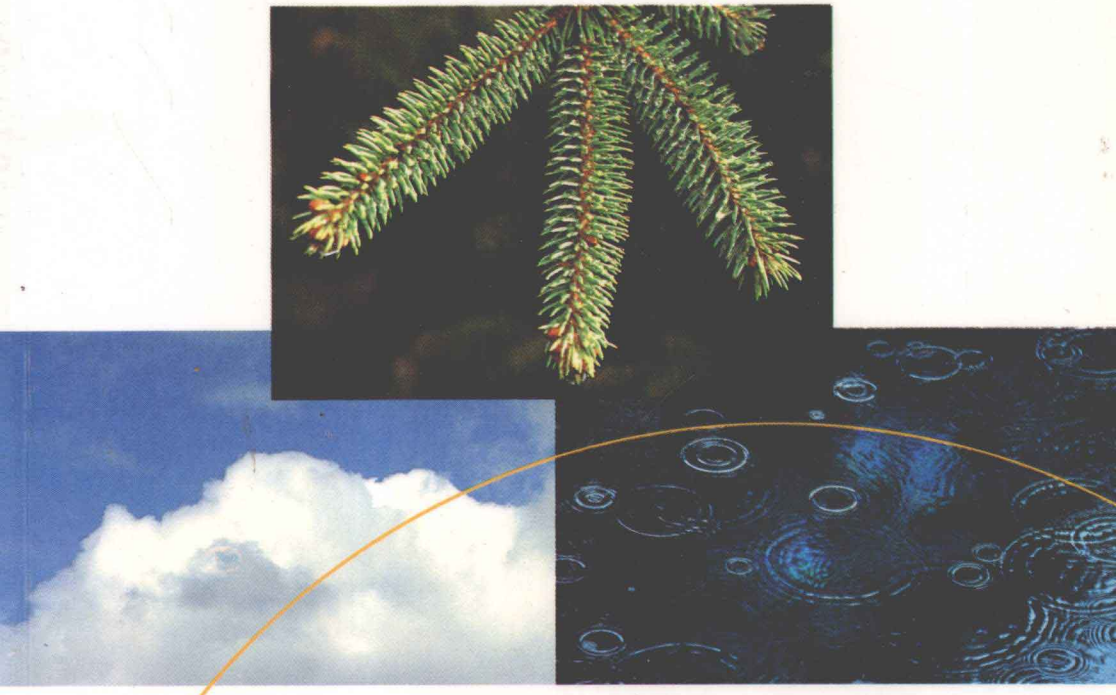

Environmental Politics and Policy

THIRD EDITION

Walter A. Rosenbaum

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Preface

Few things are as predictable in politics as change; and this is also true when writing about politics. In this marketplace of ideas, today's food for thought quickly becomes tomorrow's leftovers. Thus, a hard truth: short is the shelf life for those who reviseth not. The second edition of *Environmental Politics and Policy* was published only a few years ago, yet significant changes in the law, politics, and science concerning environmental policy have occurred since then. Because this book focuses on *change* as well as *continuity* in the politics of American environmentalism, respect for my colleagues and students makes a new edition essential to reflect these transformations as well as to recognize the continuities.

Now that we are at the midpoint in the third decade of the environmental era, it seems important to provide an account of how far and how well the environmental movement has advanced its policy agenda, to count failures and successes, to blend criticism with explanation where appropriate, and to ask where the movement is headed. Because I also want to educate rather than indoctrinate, I have tried, in particular, to balance advocacy of environmental policies with consideration to the thoughtful criticism and reform proposals.

In each chapter I have added new material to address important changes in environmental politics and policy since the last edition was published, or, in some instances, to expand the discussion of issues many readers thought deserving of more attention. Chapter 1 again emphasizes what I have called "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 since 1970. In this chapter the general discussion of the environmental movement's constituency and style is now accompanied by an expanded examination of the movement's group structure and political cleavages, and a critical appraisal of its philosophical strengths and weaknesses.

Chapter 2 now includes, in addition to a discussion about major domestic and international issues familiar from past policy debates, a new examination of species preservation and biodiversity as important domestic environmental issues. Subsequently, Chapter 10 discusses at

length the political problems involved in implementing policies to promote biodiversity. Chapter 4 expands the discussion of political, economic, and scientific issues associated with environmental regulatory policy to include two new matters of emerging importance: the environmental justice movement and ecological valuation. Chapter 5 deals with the political, economic, and scientific problems involved in regulatory risk assessment and now includes an expanded discussion of the increasing scientific controversy about risk-assessment methodologies, paying special attention to the conflict about dioxin.

Chapter 6 adds to the existing discussion of major air and water pollution legislation with an expanded discussion of the Clean Air Act Amendments of 1990, perhaps the most important new environmental legislation in a decade. Chapter 7 continues to examine the implementation of legislation that regulates hazardous and toxic waste and now incorporates an updated examination of the enormous problems involved in implementing the Superfund legislation. In Chapter 8 the discussion of fossil fuel and nuclear energy management is supplemented by an expanded discussion of the daunting scientific, economic, and technological problems involved in the Department of Energy's efforts to manage the nation's nuclear weapons waste—probably the most expensive and difficult domestic environmental issue that we will face in the next fifty years. Chapter 9 adds to the examination of major public land policies through a discussion of the "wise use" movement, a matter of growing political importance in public land politics. Chapter 10 examines issues for the 1990s and addresses, for the first time, the political problems inherent in protecting biodiversity.

Despite these changes, readers will find considerable continuity between this edition and the two previous ones in content, organization, and style. In Chapter 3, for example, the same conceptual approach to the public policy-making process—the policy "cycle"—remains, as does the examination of the influence of constitutional design and political culture on policy. The use of substantive policy issues—air and water pollution, hazardous waste and more—as an organizing principle for the other chapters remains. I continue to believe a practical example is worth a paragraph of abstractions, so I include an abundance of contemporary illustrations and case studies to keep the discussion fresh and interesting.

When the first edition of this book was written twenty years ago, virtually no one—including me—was confident that environmentalism would survive the ferocious, competitive pluralism of American public policy. History is a graveyard for many great and good causes that did not endure. Small wonder that environmentalism was then dismissed by many "experts" as another trendy and transient public preoccupation.

Now, the voices and events of a quarter-century of vigorous environmentalism resonate through every page of this edition. Whether this vigor will continue to resonate throughout the 1990s is another matter. I believe this decade will be the most decisive for the environmental movement since its birth. If the problems of regulatory capability examined in this book are not solved soon, the political credibility of environmentalism will be damaged badly. Environmentalism has endured. It is my wish that this book may help it prevail.

I am indebted to many of my professional colleagues and readers for their constructive suggestions in preparing this new edition. I especially appreciate the thoughtful reviews and criticism provided by James E. Anderson, Brian Cook, and Marjorie Hershey who, of course, bear no responsibility for errors of fact or judgment herein. The errors—alas!—are mine.

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Chapter 1

The Politics of Regulatory Discontent

> *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

In mid-1992, the U.S. Environmental Protection Agency (EPA), which seldom had cause to celebrate previously, marked its twentieth anniversary by publishing a handsome document, *Securing Our Legacy*, intended to be a progress report concerning its regulatory accomplishments under the Bush administration. Prefaces by President George Bush and EPA Administrator William K. Reilly burgeoned with affirmations of accomplishment. "Our administration," President Bush declared, "has crafted a new commonsense approach to environmental issues, one that honors our love of the environment with our commitment to growth." [1] Reilly noted a "profound transformation in the three years since the Bush administration took office. We are going about the business of environmental protection in new ways—ways that are more cost effective . . . we have set new records in virtually all categories of enforcement activity." [2]

Among the achievements to which the Administrator called attention was the "accelerated cleanup of hazardous waste." To annihilate any doubt, the document offered an avalanche of celebratory statistics about the nation's hugely expensive Superfund program to clean up abandoned hazardous waste sites. Readers were assured that the program had treated, isolated, neutralized, or removed:

- Almost *13 million cubic yards* of soil and solid wastes (enough to cover a football field more than a mile high)

- More than a *billion gallons* of liquid waste (four gallons for every person in the United States)
- More than *six billion gallons* of groundwater (enough to provide the population of New York City with drinking water for nearly five years.)[3]

The EPA document explained that these billions of gallons and millions of yards translated into greatly reduced risks of exposure to hazardous waste for 23.5 million persons, or 10 percent of the U.S. population.

EPA's report barely was released when The Nightmare on Main Street appeared to stalk the EPA. The Agency's credibility was attacked in a succession of nationally publicized events beginning with the newspaper-concocted Nightmare, which mocked the Agency's carefully crafted Superfund statistics and reduced the Agency's "progress report" to mere puffery. Before it ended, there was bad news enough to leave the EPA with a huge credibility problem: mass citizen protests against a proposed EPA waste incinerator, allegations of indifference by the EPA to increased community cancer risks, confusion and contradictions between EPA officials about the Agency's competence, turf fights between the EPA and state hazardous waste officials, and more to entice the unwelcome attention of the national media on the EPA's Superfund troubles.

Prelude: Nightmare in Arkansas

The Nightmare attacked from an unlikely direction. In April 1992, *Family Circle* magazine named the small municipality of Jacksonville, Arkansas, as one of seventeen communities in the United States at greatest risk from toxic waste contamination. The irate editor of the Jacksonville *Sunday Leader* promptly condemned the magazine and the local city council censured it. The magazine responded in its August issue with an article featuring Jacksonville's hazardous waste problems, titled "Toxic Nightmare on Main Street." The media seized on the story and the bitter, decade-long conflict over Jacksonville's hazardous waste leapt to national view.[4] In many respects, the conflict over Jacksonville's environmental problems is a microcosm of the difficulties, uncertainties, and confusion currently afflicting environmental regulation in the United States.

Jacksonville's troubles began in the late 1970s when tests at the site of the community's principal industry, Vertac Chemical Company, revealed large quantities of dioxin, considered by EPA to be among the world's most lethal chemicals. Community apprehension about the dioxin mounted in 1986 when Vertac Chemical closed its plant located within the city limits, after more than thirty years of manufacturing

highly hazardous agricultural chemicals. Abandoned were 93 acres of contaminated soil and 30,000 barrels of chemical waste, including the pesticides DDT (dichloro-diphenyl-trichloroethane), aldrin, dieldrin, toxaphene, and the defoliants silvex, 2,4,5-T, and Agent Orange (widely used during the Vietnam War). Most alarming to many residents were the 2,700 barrels containing more than 2 million pounds of the 2,4,5-T, a substance banned by EPA since 1976 because it causes birth defects, and almost 100 pounds of dioxin, described by EPA in 1976 as one of the most dangerous chemicals on earth. Study revealed the presence of dioxin in the city park and large public lake adjacent to the Vertac site. In 1986, EPA added the Vertac site to the Superfund list of the nation's 1,200 worst hazardous waste dumps and began to plan remedial action. EPA's strategy led straight into a morass of legal, political, and scientific controversy from which the community of Jacksonville has not emerged.

First, EPA provoked an angry and organized opposition by proposing to destroy the wastes in a specially constructed incinerator on the Vertac site but within a residential neighborhood. The temporary incinerator, designed to operate continually day and night for seven to ten months, would burn 28,500 barrels of waste at a temperature of 2200° F, which EPA insisted would destroy all hazardous chemicals. It was to be the largest project to incinerate dioxin-contaminated waste ever undertaken in the United States and, if successful, a strategy to be followed at Superfund sites in 400 other cities.

Many local residents, convinced the Vertac wastes already had caused an increase in cancer, stillbirths, and miscarriages in the community, charged that the proposed incineration would release additional dangerous quantities of dioxin. Between 1990 and 1992, the controversy smoldered while the incinerator materialized. Public health officials conducted local studies that appeared to refute assertions of increased public health risks from chemicals at the Vertac site. Nonetheless, organized opposition increased, emboldened by the support of national environmental organizations. These groups, including Greenpeace, the National Toxics Campaign, and the Government Accountability Project (a public law firm), provided legal and scientific resources that challenged and delayed final governmental approval of the incinerator. In addition, EPA inspired its critics and muddled the scientific debate by contradicting itself about incinerator safety. "We have a high degree of confidence in incineration," EPA's chief of Superfund operations for the southern region asserted. At the same time, a high-ranking Superfund official at EPA headquarters warned in the national press: "By EPA's own admission, its regulations on incineration are lacking and don't do the job of protecting public health." [5]

Moreover, by 1992 many experts, including some EPA scientific advisors, the National Academy of Sciences, and the U.S. assistant attorney general, were asserting publicly that dioxin's dangers might be exaggerated. Inevitably, the courts were involved. After then-governor Bill Clinton appeared to end the twelve-year controversy by approving the incinerator in October 1992, the opposition secured a federal district court injunction halting the project until scientists reviewed all relevant studies. The Jacksonville project had cost the federal government $24 million by the end of 1992. Estimates suggest the project may require another decade and an additional $175 million to complete—if it ever is completed.

The Gathering Crisis of Environmental Governance

Both critics and defenders of environmental regulation increasingly regard the Jacksonville saga as a cheerless metaphor for the entire federal toxic and hazardous waste regulatory program and an omen that something is fundamentally flawed in the institutions and laws intended to be the foundation of environmental policy when most were written more than two decades ago. Despite some impressive achievements—such as the virtual elimination of lead and the significant reduction of carbon monoxide and sulfur oxide in urban air—the United States enters the third decade of its Environmental Era amid growing evidence that many major environmental laws are failing pervasively.

"Comprehensive Reform Is Imperative"

The rising apprehension about the capacity of existing institutions to govern environmental issues effectively was captured in the 1993 report of the National Commission on the Environment, a private sector policy panel including four former administrators of EPA. Citing considerable evidence that the United States "is losing many battles" for environmental protection, a report by the Commission observed: "Regrettably, the U.S. statutory and regulatory system is woefully inadequate, cumbersome, and sometimes even perverse with respect to environmental issues." Then the Commission issued a warning: "Comprehensive reform is imperative to refocus the regulatory system on coherent policies that can bring about sustainable development, encourage environmentally benign technologies, and institute effective incentives for innovation and behavioral change." [6] This widely shared perception, raising fundamental questions about the adequacy of basic institutional structures and primary policies for environmental management, increasingly resonates through the environmental politics of the 1990s.

The nation's environmental politics in the last decade of the twentieth century have become as much a politics of governance as a politics of policy—a struggle to redefine how policy shall be made and to establish confidence in the institutions that must govern effectively, as well as a struggle to determine what shall be done. Proposals are now commonly debated to redesign the institutional framework, the incentive structure, and the goals of environmental regulation. The dominating political cleavages in this politics of governance concern the scale and speed with which the basic processes and institutions on which environmental policy is grounded shall be reformed rather than disagreement about the need for such reform. As the capacity for environmental governance becomes an increasingly critical national issue, it accentuates a sharp shift in mood and substance between the environmental politics at the inception of the "Environmental Era" and its character two decades later. Nonetheless, the politics of the 1990s is a distillation of more than two decades of experience in environmental regulation. To understand the 1990s, one must begin with the legacy of the 1970s and 1980s.

From Era I to Era II

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 reaching into the latter 1980s. The Environmental Decade, as the 1970s were styled, 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.

All this changed with the Reagan administration. Ronald Reagan and his advisors believed he 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. The environmental movement, thrown on the defensive, expended most of its energies and resources through the 1980s in defending the legislative and administrative achievements of the Environmental Decade from the on-

slaught of President Reagan's regulatory relief.[7] The Reagan years severely tested the foundations of the environmental movement. The foundations held but 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 of 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.[8]

To environmental leaders, the Reagan years meant, above all, dangerous drift and indecision, almost a decade of lost opportunities and intensifying environmental ills.

President George Bush awakened expectations of major reform from the environmental movement and brought to the White House a more sympathetic and active environmentalism. Bush's performance never vindicated his promise to be the "environmental president," but his administration ended the pernicious impasse of the Reagan years with important, if episodic, new policy initiatives and administrative reforms. EPA's morale and resources, severely depleted during the Reagan administration, were improved significantly by major funding and staff increases and by the appointment of a popular and politically skilled administrator. The Bush administration sponsored and adeptly promoted the Clean Air Act Amendments of 1990, among the most important and urgently needed environmental policy initiatives since 1970. The Department of Energy finally ended decades of federal deception and negligence by acknowledging publicly the federal government's responsibility for the appalling environmental contamination at military nuclear weapons facilities.

Nonetheless, the backside of Bush environmentalism was equally conspicuous: there was a reluctance to address global environmental issues such as climate warming or the preservation of biodiversity, a progressively hardening resistance to any new domestic environmental regulation, a failure to increase EPA's staff and budget commensurate with its growing responsibilities, and low priority for environmentalism on the policy agenda, to name a few shortcomings. By the end of Bush's single term, it was apparent that his administration had restored only partially the resources essential for governmental management of the environment and had enacted only a few urgently needed policy initiatives. But the rush of history, abetted by science, politics, and economics, was carrying the nation into a new Environmental Era for which the