

THE ENVIRONMENTAL PROTECTION AGENCY

EXPANDED
EDITION

*Asking the Wrong Questions
From Nixon to Clinton*

MARC K. LANDY

ASU ROSS BLAKLEY LAW LIBRARY



A15085919916

ROBERTS

STEPHEN R. THOMAS

Terry Davies gave close and thoughtful readings of later drafts. Elaine Rossignol and Anna Burdick provided great secretarial help and Andrea Methven supplied invaluable word processing and text editing assistance. We also appreciate the aid of the Gordon Center for Public Policy in producing the final manuscript. We would also like to thank our editors at Oxford, Al Ritchie and David Roll for their discerning editorial advice and their many kindnesses.

The Alfred P. Sloan Foundation provided the financial support that made the case study research possible. The Harvard School of Public Health and Dean Howard H. Hiatt provided further financial and institutional support vital to the completion of the project. We greatly appreciate the generosity, patience and forbearance they showed towards us.

We dedicate this book to Sam Beer. During a long and distinguished career as a professor of government at Harvard University, he has introduced thousands of students to the study of politics. Our approach to this project has been decisively influenced by him, particularly by his insistence upon confronting theory with experience, to the enrichment of both. In addition, his active and thoughtful engagement with nature as a mountaineer, hiker, and woodsman has shown us what it means to be an environmentalist.

Boston and New York

M. K. L.

M. J. R.

S. R. T.

Contents

Part I

1. Introduction, 3
2. The Origins and Development of
The Environmental Protection Agency, 22

Part II

3. Revising the Ozone Standard, 49
(with Valle Nazar)
4. Writing the Resource Conservation and
Recovery Act Regulations, 89
5. Passing Superfund, 133
6. Forging a Cancer Policy:
The Interagency Regulatory Liaison Group, 172
(with Margaret Gerteis)
7. The Steel Industry and
Enforcing the Clean Air Act, 204

Conclusion: The Lessons of the Cases, 238

Part III

8. The Reagan Administration, 245
9. The Bush Administration, 279
10. The Clinton Administration, 306
11. The Wrong Questions and the Right Questions, 310

Index, 337

2

The Origins and Development of the Environmental Protection Agency

BACKGROUND

In this chapter, we review the history of the Environmental Protection Agency and the larger social and political setting in which the agency was born. We do this because the origins and the early years of an organization often leave a lasting impact on its structure, and on the ideas, goals, and attitudes of its members. After describing some of the economic and political processes that helped produce the environmental movement, we trace the evolution of congressional politics and the development of environmental legislation. We then review the short but tumultuous history of EPA from its founding in 1970 to Douglas Costle's arrival in the spring of 1977, at which point our detailed case narratives begin.

Our story really begins with the great movement to the suburbs after World War II. Hordes of upwardly mobile white collar workers left crowded cities for localities with clean air, gardens, and grass. However, the reality of suburban life—smog, traffic jams and strip development—too often left this bucolic fantasy unrealized. At the same time some rural folk watched with dismay as their small towns became urbanized.¹

The population was becoming younger, more secure financially, and better educated. Between 1950 and 1974 the percentage of adults with some college education rose from 13.4 to 25.2%.² This was coupled with a streak of unprecedented prosperity. Affluence, leisure, mobility, and a greater understanding of physical and biological science combined to create a new awareness of, and interest in, the natural world.

The New Deal and the war had taught Americans that government could be used to achieve social goals. When the new suburbanites found that uncontrolled growth produced results they disliked, they turned to public policy to achieve their aims. The overwhelming public support demonstrated for environmental legislation in the 1960s signaled the arrival of a new political constituency, one more concerned with "quality of life" than "bread and butter."³

The translation of widespread but unfocused public concern into specific policies and programs was shaped by the political institutions of the time. The characteristics of these institutions decisively affected the form and the content

of the public debate about environmental questions, and the results that were obtained. The changes that occurred in political parties, in the media, and in the environmental community were of particular importance.

Political Parties

The electoral potential of the new suburban constituency was not lost on either political party, both of whose core constituencies were dwindling. Democrats confronted a decline in union membership and in the number of small farmers and a decrease in party loyalty among traditionally Democratic groups. Republicans were suffering from the continued depopulation of the smaller cities and towns and rural areas. Each party saw its salvation in the suburbs. There resided the young, well-educated voters who were to become the mainstays of environmentalism.⁴ The political leverage of suburbia was further increased by the Supreme Court's reapportionment rulings of the early 1960s.⁵ States were forced to decrease the representation of the depopulated countryside and decaying inner cities and recognize the enormous relocation that was taking place.

Responding to all this caused both parties great political strain. Rural Democrats deeply appreciated the public works projects that had brought electricity to their homes, paved roads to their doorstep, and saved their land from the dual ravages of flood and drought. They were upset at the new criticism of such projects, as were the construction unions whose members built these same dams and roads. Other large unions like the Auto Workers and the Steel Workers likewise were dismayed to find their industries at the top of the list of pollution sources.⁶

Republicans too were torn. Environmentalism risked antagonizing their traditional friends in the business community. Fiscal conservatives and opponents of government intrusion were also upset by demands for increased public and private spending on pollution control.⁷

Leaders in both parties sought to frame environmental programs to avoid these cleavages. A multibillion dollar grant program for the construction of local sewage treatment plants allowed congressional Democrats to make pollution control palatable to the construction unions. Bold statutory preambles, which trumpeted the elimination of all pollution, were often joined to cumbersome enforcement mechanisms designed to appease both labor and management in target industries. The resulting incoherence in the design of environmental programs was therefore due in part to the ambivalent motivations that produced them.⁸

The Media

The second important development was the growing role of television news. During the 1960s and 1970s both network and local news air time increased dramatically. Potentially very profitable, the news is substantially cheaper to produce than entertainment programs, and widely viewed. Local competition is especially intense because the local news is often the first show viewers watch

each evening.⁹ This gives stations an opportunity to capture viewers for the entire evening. It has become industry gospel that a good news segment must have (1) visual interest, (2) a strong story line, and (3) viewer identification with its outcome.¹⁰

Environmental stories meet all three requirements. Oil covered birds, belching smoke stacks, rusting storage drums, and inspection crews in "moonsuits" are all visually compelling. Environmental stories have the particular advantage that often the crew can set up at its leisure, obtain the desired angles, and have plenty of vivid footage to show at the six and the eleven PM newscasts.¹¹

The story to be told is familiar yet poignant. The victims, like the typical viewer, are middle class homeowners. A dangerous polluter threatens their home, livelihood, or family. The perpetrator, a large and faceless corporation, ignores their protests to pursue vast profits. David takes on Goliath while feckless bureaucrats and venal politicians stand idly by.

This is not to say that media journalists concoct environmental stories. They do, however, have powerful incentives to accentuate their pictorial and dramatic qualities. As a result, viewers repeatedly encounter such disputes as life threatening contests between good and evil.

Furthermore, the need for news organizations to "get both sides" has contributed to a demoralizing portrait of public agencies. In a contest between good and evil, they are often more easily seen as being evil. And whenever they are quoted, someone with a contrary opinion gets equal time. Thus, agencies are deprived of whatever impartiality or special expertise they might possess in the public's mind.

The Environmental Movement

The third important development involved the evolution of the environmental movement. Some environmental organizations, The Sierra Club (1892), the Audubon Society (1905), the Wilderness Society (1935), and the National Wildlife Federation (1936), have existed for decades and have large numbers of members whose dues support their activities. But in the early 1970s they were joined by newer organizations like the Environmental Defense Fund (EDF) and the Natural Resources Defense Council (NRDC). These had far fewer members and relied on grants from foundations for their sustenance. From the outset their main goal was to influence governmental policy.¹²

Despite their differences, the various organizations have worked well together. Since they each have only limited resources and confront an enormous range of issues, they are virtually forced to specialize and cooperate. Each organization takes the lead on a few issues. Coalitions develop with the leadership provided by the one or two groups whose staff members are expert on that question.¹³ Alliances are also often sought with nonenvironmental groups. For example, the Clean Air Coalition, founded in 1973, included the United Steel Workers, the League of Women Voters, and the American Lung Association, as well as environmental groups. The resulting organization worked hard and effectively to mobilize grass roots support to pressure legislators not normally in the environmental camp.¹⁴

Thus, on any one issue, a relatively few individuals define problems, determine priorities, and craft the overall strategy. The Washington staffers who exercise this power are by no means a microcosm of either the population at large or even the environmental community. Most of them were lawyers who came to political maturity in the 1960s; their political world view was formed by those stormy times. A small, tight-knit community in constant contact with each other, they are bound by ties of loyalty, friendship, and common experience.¹⁵

This group was well prepared to exploit the opportunities that the development of television news offered. Raised on the civil rights revolution, the media-oriented tactics of that extraordinary effort were their political birthright. They appreciated the publicity value of good visuals, clear symbols, and human drama, and they were skilled at providing these to a often sympathetic press corps.¹⁶

Environmentalists make good copy. They enable the media to report highly inflammatory charges without violating its own canon of impartiality. To take Alfred Marcus' apt example, a reporter cannot himself characterize the Federal Trade Commission as a "lethargic pawn of lobbyists." But there is no problem reporting that this charge had been made by a Ralph Nader study group. Thus, environmental activists are rewarded for extremism. The more vivid the language they use, the more melodramatically they criticize industry and government, the more air time and headlines they receive.¹⁷

The media impact of environmentalists is also increased by their role as a source of technical information that nonexpert journalists find difficult to acquire. The press has come to distrust industry, and environmentalists are often the only alternative source of information.

Having become politically aware during the presidency of Lyndon B. Johnson and having reached political maturity during the administration of Richard M. Nixon, many of these activists shared a distrust of executive authority. Their view of the presidency and of the executive branch in general was deeply shaped by what they considered to be the usurpations and prevarications of these two men. New Deal reformers had looked upon the federal bureaucracy as a champion of the public interest. To the new generation the Forest Service, the Bureau of Reclamation, and the highway program were the perpetrators and abettors of ecological rapine.

By contrast, the courts and the Congress were viewed much more favorably. As the Ralph Nader Congress Project wrote in 1972,

Congress has its problems, but the only way to restore balance to the government is for it to stand up for the rights it retains and to fight for the return of those that have been taken from it.¹⁸

Whatever its defects, the decentralized structure and varied membership of Congress rendered it accessible to any group willing to work hard to identify and contact likeminded members and/or their staffs.¹⁹ In contrast to the executive branch, which appeared to be growing ever more isolated, the proliferation of subcommittees and the weakening of the leadership of Congress made it easier for almost any group to obtain a hearing there.

The courts had likewise moved in directions that environmentalists favored.

The Supreme Court, under the leadership of Earl Warren, had demonstrated a willingness to protect the weak that many environmentalists regarded as heroic. The relaxation in the rules of standing and the other innovations comprising the "new administrative law" gave environmental groups increased access to the federal bench. Indeed, judges wrote much of the "new" law in environmental cases. The D.C. Circuit was notoriously friendly to environmentalists' views and several judges made much of their innovative reputation in dealing with such issues. This sympathetic ear encouraged the environmental movement to press for an expanded judicial role. Moreover, its own success made the legal strategy ever more attractive.²⁰

Furthermore, there were plenty of young attorneys eager to sign on to the ecological cause. Since the beginning of the New Deal, the Justice Department and other federal agencies had employed many freshly minted, reform-minded law graduates. With the election of Richard Nixon, young attorneys eager to use their skills for liberal ends preferred to sue the government rather than represent it.²¹

CONGRESS AND THE ENVIRONMENT: MUSKIE'S ROLE

This preoccupation with judicial remedies only increased the importance of Congress. Changing modes of judicial interpretation presented new opportunities to those who knew how to manipulate the nonstatutory aspects of the legislative process: hearings records, committee reports, colloquies on the floor, preambles to legislation, and so on. This development has been keenly and extensively analyzed by R. Shep Melnick. He has described numerous examples of the courts' willingness to divine the "intent" of a Congress that was clearly divided by referring to the actions of specific committee members. For example:

If there was any congressional intent to add PSD (prevention of significant deterioration) to the provisions for attaining the national air quality standards established by the (clean air) act, then that intent existed only in the minds of the staff members who inserted a few pregnant phrases into the Senate report and the committee leaders who subsequently berated the EPA for refusing to address the Sierra Club's concerns.²²

Environmental lobbyists became adept at working with cooperative staffers and members to insert specific phrases in the record that could then serve as "hooks" on which to hang future litigation. The Congress as a whole had no means of controlling these activities. The willingness of courts to elevate these devices to quasi-statutory status thus served to increase greatly the power of the committee and subcommittee chairmen and their staffs who were in a position to fashion them.

Furthermore, once the court had found in favor of the environmentalists, the inertial bias of Congress came to their aid. Their enemies were then forced to undertake the arduous and disaster-prone process of mobilizing the Congress to pass new legislation.

Because of the highly technical nature of these issues, most members of Congress deferred to those who specialized in them. One member in particular,

Senator Edmund Muskie, succeeded in establishing himself as the nation's pre-eminent designer of environmental policy.

Muskie's role in the environmental field began inauspiciously. As a freshman senator from Maine in 1958, he offended Senate Majority Leader Johnson and was relegated to a set of undesirable committee assignments, including the Public Works Committee. Viewed as a pork barrel affair, Public Works was avoided by senators eager to be seen as leaders and statesmen. It ranked eleventh of fifteen Senate committees in a survey of member preferences.²³

Public Works' jurisdiction over water pollution derived from its responsibility for flood control and the dredging of rivers and harbors. In 1955, it took on air pollution by the simple expedient of holding hearings on the subject and reporting out a bill. In 1963 Muskie was appointed chairman of a newly created environment subcommittee, a post he retained until his departure from the Senate seventeen years later.²⁴

Muskie's influence came from several sources.²⁵ One was his ability to assemble a competent and aggressive staff. He also made full and skillful use of his institutional position, developing a detailed knowledge of pollution issues and getting to know environmental officials at the state and local levels. In addition, his own longevity contrasted with the high turnover among other members of the committee. Between 1963 and 1970 twelve members left Public Works for other more attractive assignments. Thus, the senator from Maine chaired a subcommittee whose staff was devoted exclusively to pollution matters and whose other members were far less knowledgeable about the subject than he was. The very undesirability of Public Works thus, ironically, worked to his advantage.

Muskie's central role in the Senate had no parallel in the House, where pollution control issues were assigned to various committees.²⁶ Air pollution became the province of the Commerce Committee whose jurisdiction extended to questions of "public health and quarantine."²⁷ Water pollution went to House Public Works, which had responsibility for flood control, dredging, and other water-related construction. Neither created a special pollution subcommittee.

In the Commerce Committee, in particular, pollution issues were quite subordinate. The House Commerce Committee is very prestigious, and next to Ways and Means, it handles the largest amount of domestic legislation. With a staff whose size has not been commensurate with its enormous workload, Commerce could only deal with the most highly visible and contentious issues.²⁸

During the 1960s the committee focused on health care and securities regulation. Paul Rogers, Chairman of the Health Care Subcommittee, achieved a preeminence in that field that paralleled Muskie's role in pollution. This same subcommittee had jurisdiction over air pollution. Only in the 1970s, as the health import of air pollution aroused greater attention, did Rogers and his subcommittee begin to play a more active role.²⁹

The situation in House Public Works was similar. John Blatnik, Chairman of the Subcommittee on Rivers and Harbors, gradually became a force on water pollution matters. His subcommittee however, dealt with a wide variety of issues of great concern to the rest of the committee, and to the House as a whole. He did not enjoy the luxury of concentrating his attention or his staff on pollution questions as Muskie did.³⁰

Muskie authored a series of pathbreaking water and air quality statutes during the 1960's that had an enormous impact upon both environmental policies and the institutions established to implement them. In 1963 he proposed amendments to the existing Water Pollution Control Act that transferred authority for water pollution control from the Public Health Service to a newly established Federal Water Pollution Control Administration within HEW.³¹ The bill gave the Secretary of HEW power to establish water quality standards for interstate waterways if the standards established by the states failed to meet with his approval. The bill passed the Senate but failed in the House. Muskie reintroduced it in the following session and it ultimately became the Water Quality Act of 1965. The following year, Muskie authored the 1966 Clean Water Restoration Act, which gave the states 3.5 billion dollars in federal grant money to be spent for sewage construction (Muskie's original bill had called for six billion).³²

In 1967 Muskie, who had first pushed through air pollution legislation in 1963, placed his imprimatur upon a far reaching air quality bill. The bill required the states to establish air quality standards on the basis of scientific studies to be carried out by the federal government. The states would also bear primary responsibility for enforcing those standards. Both the standards and the enforcement plans were subject to review and approval by the federal government. The act also required the federal government to set emission standards for automobiles.³³

The Johnson Administration had pressed for greater involvement of regional bodies in setting standards and in planning. Its air pollution proposal also included a provision for national uniform emissions limits. Muskie, a former governor, had successfully resisted these efforts.³⁴ The legislation he sponsored reflected his belief that while federal assistance and involvement was necessary, the states should be primarily responsible for both the formulation and implementation of pollution control policy.³⁵

THE 1972 ELECTION

As the 1960s drew to a close, Edmund Muskie's positions underwent a profound metamorphosis. The senator had emerged from his vice presidential candidacy in 1968 as the leading contender for the 1972 Democratic nomination. As Nixon sought to strengthen his environmental credentials, Muskie responded by advocating strongly pro environmental positions that he had opposed just months before.³⁶

The first Democrat elected statewide in Maine for many decades, Muskie had reflected his state's moderate-to conservative outlook. The environmental statutes he authored during the 1960s expressed this moderation and his concern for state prerogatives. As he prepared to campaign for the presidential nomination, however, he found that those statutes, especially the 1967 air law, were being derided as ineffective.³⁷

The 1967 Air Quality Act was to be reauthorized in 1970. Progress had been disappointing. As of 1970, not a single state implementation plan had been approved by the federal government.³⁸ More seriously, the act's reliance on the

states led some to doubt as to whether it could ever succeed. Critics feared that states would compete for new industry by keeping standards permissive and enforcement lax.³⁹

Muskie felt that it was too soon to judge his handiwork a failure. He continued to oppose nationally uniform standards for either emissions or for ambient air quality. During hearings in March and early April of 1970 he defended the 1967 Act, and blamed the Nixon Administration for failing to implement it adequately.⁴⁰

Much to his surprise, Muskie found himself subjected to a three-pronged attack. First, the House displayed unaccustomed initiative. Paul Rogers' Subcommittee held extensive hearings on air pollution that spring and produced a record that was intensely critical of the 1967 Act. The subcommittee then took the unprecedented step of drafting legislation more stringent and ambitious than Muskie's proposal.⁴¹

Even more devastating was the report in May of a Ralph Nader study group, *Vanishing Air*. It judged the 1967 Act a failure and ascribed Muskie's refusal to endorse a complete overhaul to his "selling out" to industrial interests. It particularly chastised Muskie for his failure to support national uniform emissions limits.⁴² In its closing sentences the task force equated his behavior with that of his rival, the president:

In 1970, for the first time, Americans rallied around the cause of preserving the environment. But their enormous enthusiasm has yet to find direction or true leadership. The two men with the greatest obligation to chart new passages—Richard Nixon and Edmund Muskie—instead dusted off old maps, and are now attempting, each in his own way, to steer the same course which has brought us to our present peril.⁴³

Most damaging of all, the White House itself proposed more ambitious legislation than did the Senate Subcommittee. The administration urged that the Secretary of HEW be empowered to establish national health-based ambient air quality standards and to create national emissions limits for new sources of pollution.⁴⁴

As a legislative craftsman from Maine, Muskie had taken an incremental approach to pollution problems. He had sought to balance improved air quality against other political and economic goals,⁴⁵ especially since his home state was desperately in need of more employment.⁴⁶ Enforcement under the 1967 Act was admittedly slow and cumbersome, and further legislation might well prove necessary. But it was best to proceed slowly and not threaten the web of political alliances he had painstakingly created in the Senate and at home.

Once Muskie decided to run for the presidency, however, he faced new incentives and pressures. For example, his top aide, Don Nicoll, had become executive secretary of the Maine Democratic Party in 1954, the same year that Muskie was elected governor. Together they had worked to revolutionize the politics of that previously rockribbed Republican state. Unfortunately, Nicoll had neither the experience nor the capacity to delegate that were necessary to run a national campaign. After months of procrastination Muskie replaced him.⁴⁷

The air quality controversy required him to make a similar choice between past commitments and new demands.⁴⁸ He had to respond to the public's new interest in quick, visible results even if that meant repudiating previously held positions.

Muskie proposed a revised bill that contained the most stringent federal pollution control program that had ever been attempted. It went far beyond both the House and the Nixon Administration versions. It called for both emissions limits on all new sources and federal national air quality standards to be set without consideration of cost. Automobile emissions were to be reduced by 90 percent by 1975. States retained primary responsibility for devising plans for implementing these requirements, but these plans too had to be approved by the federal government.⁴⁹

The enormous weight of Muskie's leadership was put behind four ideas that were to prove central to later debates over environmental policy: (1) nationally uniform ambient standards, (2) no balancing between health risks and economic costs, (3) rigid deadlines to be adhered to regardless of economic and technological obstacles, and (4) uniform emissions limits for new sources, even in areas without current pollution problems.

Muskie then, shifted from a proponent of broad executive discretion, at both the state and federal levels, to an advocate of a narrow "mission" orientation for EPA. He began to characterize the EPA as "quasi-independent," and wrote laws giving the EPA Administrator—as opposed to the president—the power to make key decisions. He then tried to use his congressional power base to insist that EPA respond to Congress, not the White House, and, in particular, that it heed the nonstatutory instructions it received from the subcommittee.⁵⁰ Muskie adhered to these views for the rest of his political career.⁵¹

THE VIEW FROM THE WHITE HOUSE: ORGANIZATIONAL REFORM

Nixon wanted the support of environmentally oriented voters, but he also wanted to insure the compatibility of environmental policy with other objectives such as economic growth. This led him to a series of apparently contradictory decisions. On the one hand, he signed into law landmark legislation like the National Environmental Protection Act (NEPA) and the Clean Air Amendments of 1970, and he created the Environmental Protection Agency by executive order. On the other hand, he presided over a series of efforts to keep environmental regulators in check.

In May 1969, he appointed a cabinet committee called the Environmental Quality Council, with his science advisor, Lee DuBridge, as executive secretary. The committee was charged with preparing a comprehensive institutional strategy to address environmental questions.⁵²

When the Council failed to deliver the needed plan, the president asked his top domestic policy advisor, John Ehrlichman, to assemble a task force to do the job. Ehrlichman, a former land use lawyer in Seattle, was well versed in environmental matters. He appointed John Whitaker of the White House staff to direct the task force. It included several men who would eventually perform high level

duties within EPA, including Alvin Alm, later Deputy Administrator, John Quarles, the first General Counsel and Roger Strelow, the first Assistant Administrator for Air and Waste Management.⁵³

In February 1970, the task force produced a preliminary report that recommended the establishment of a new Department of Environment and Natural Resources (DENR). The new department would replace the existing Department of Interior, which had recently acquired control of water pollution activities from HEW. The new department would absorb the Forest Service, Soil Conservation Service and the pesticide program from the Agriculture, the Army Corps of Engineers, and Air Pollution Control from HEW. The Bureau of Indian Affairs would leave Interior for HEW. With resource development and environmental regulation functions in the same department, politically troublesome trade-offs could then nominally be made several steps away from the Oval Office.⁵⁴

Nixon indicated his approval of the DENR concept and delegated responsibility for its development to an advisory commission on government reorganization, which he had created in 1969. Chaired by Roy Ash, former head of Litton Industries, that group came to be known as the Ash Council. Ash had ambitious ideas about government reorganization. He wanted to merge all of the domestic side of the executive branch into four "super-departments:" Community Development; Economic Affairs; Human Resources; and Natural Resources.⁵⁵

Ash assigned responsibility for designing the new Natural Resources Department to Amory Bradford, a former *New York Times* executive and official in the War on Poverty. Bradford's staff included Douglas M. Costle, (whose later tenure as EPA Administrator we will explore extensively) and J. Clarence Davies, a political scientist from Princeton.⁵⁶

This staff, known as the environmental protection group, opposed the DENR plan. Congress, they argued, would not accept the enormous disruption of committee jurisdictions that creating DENR would produce. Even if Congress should acquiesce, the group believed that the new department would be unable to digest such a diverse collection of responsibilities and personnel. Like the existing Department of Interior, it would become little more than a holding company composed of more or less autonomous agencies, not an integrated structure. The president's objective of finding a way to trade off between development and environmental considerations would not in fact be met.

More fundamentally, however, the environmental group did not accept the essential premise of the DENR scheme. Its members did not believe that resource development and environmental quality objectives should be played off against one another within an agency in which development concerns were likely to dominate. Moreover, because it would be impossible to merge all the agencies whose perspectives needed to be taken into account, they viewed the scheme as incomplete and misguided.⁵⁷

Instead, the group proposed to consolidate pollution control programs in a new and separate agency, reporting directly to the president. They offered three reasons for making this change. First, pollution problems were so great that simply providing more resources was not enough. A more visible organization with direct access to the president was needed. Second, a clear focus for environmental advocacy would help ensure that such objectives got attention within the executive

branch. Finally, to develop a comprehensive and systematic approach to pollution, a single agency had to be responsible for all aspects of the problem.⁵⁸

The environmental group won Bradford's support but, on April 8, 1970, Ash turned down its recommendation. He believed strongly that competing viewpoints had to be reconciled within departments, not separated out into different "mission" agencies. The following day he convened a meeting to discuss the DENR proposal with representatives of the affected cabinet departments.⁵⁹

Unsurprisingly, the attitudes of the different departments reflected how they would fare under the proposed reorganization. Secretary Hickel of Interior enthusiastically endorsed the plan. The rest (except Secretary Volpe of Transportation who was largely unaffected) opposed it. For example, Maurice Stans of Commerce argued that resource development, air quality, and water quality did not belong in the same department. Air pollution was a health problem, he said, and, therefore, belonged in HEW; water pollution involved recreation and belonged in Interior; those programs dealing with development ought to be in the government's development agency, the Department of Commerce.⁶⁰ Similarly, Secretary Hardin of Agriculture argued that the nation's farmers would refuse to allow crucial matters concerning forests, soil conservation, and pesticide use to be removed from the department they loved and trusted.⁶¹

President Nixon could not fail to be impressed by the depth and breadth of cabinet opposition to the DENR plan. In addition, he harbored deep reservations about the administrative capacity and political judgment of the man who would inherit DENR, Walter Hickel. Hickel had endorsed Earth Day with a zeal the president deemed excessive. Worse, he had written a letter to the president sharply criticizing the White House response to the killings at Kent State. That letter had somehow leaked to the press and Hickel himself was suspected of leaking it. While reluctant to risk firing Hickel, Nixon was not enthusiastic about significantly increasing his authority.⁶²

Nixon then withdrew his support for the DENR plan and, for a time, it appeared as if no reorganization would take place. The environmental group's plan for a separate environmental agency had surfaced during the cabinet meetings. But it had been opposed by those—most notably the Secretaries of Agriculture and HEW—who would have lost functions to the new agency.

In the wake of the DENR defeat, however, two important shifts occurred. The HEW accepted the creation of a separate agency, although it would be called upon to give up three of its bureaus. Furthermore, Ash decided to support the proposal as an improvement over the status quo.⁶³

From the president's point of view, a separate agency had two very attractive features. First, it was a highly visible and innovative action. Second, it represented a compromise between those who wanted to totally redesign the executive branch and those who wanted to change nothing. Ironically, then, the creation of a powerful environmental advocacy agency was a compromise devised for parties virtually none of whom was an environmental advocate.⁶⁴ The important consequences stemming from this decision will be considered repeatedly throughout this book.

The reorganization plan creating the EPA was submitted to Congress on July 9, 1970, and since neither house chose to oppose it within sixty days, it went into

effect on September 9, 1970.⁶⁵ The order called for the transfer to the new agency of the Federal Water Quality Administration and the Office of Research on Effects of Pesticides on Wildlife and Fish, from the Department of the Interior; the Bureau of Water Hygiene, the Bureau of Solid Waste Management, the National Air Pollution Control Administration, the Bureau of Radiological Health and the Office of Pesticides Research, from HEW; the Pesticides Regulation Division from the Department of Agriculture; the Division of Radiation Standards from the Atomic Energy Commission; and the Interagency Federal Radiation Council.

THE EARLY YEARS OF THE ENVIRONMENTAL PROTECTION AGENCY: DIFFERING EXPECTATIONS

The White House, on the one hand, and environmentalists and their congressional allies, on the other, disagreed sharply about the mission of EPA and its relationship to Congress and to the rest of the Executive Branch. The president and his aides expected the leader of EPA to be a balancer and integrator, to pursue environmental protection in ways that were compatible with industrial expansion and resource development. The advocacy community, in contrast, wanted EPA to champion environmental values against counterpressures from elsewhere in government. To insure congressional supremacy in environmental policy making, they sought to write statutes that imposed strict limits on the executive.

This issue surfaced during the first set of oversight hearings held by Muskie's subcommittee to review EPA's implementation of the Clean Air Act. Richard Ayres, attorney for the National Resources Defense Council, blamed the White House and the Office of Management and Budget (OMB) for undermining environmental policy:

The White House Office of Management and Budget is reviewing in secrecy every major action of the Environmental Protection Agency. The public is completely excluded from this review, but the most anti-environmental Federal agencies, such as the Commerce Department and the Federal Power Commission appear to have full access to it. These agencies, acting as spokesmen for industrial interests, have effective power to veto EPA's actions . . .⁶⁶

Six years later, testifying against efforts of another president to impose external review on EPA, Ayres put forward a fullfledged theory of executive-legislative relations that sought to justify EPA's special isolation from presidential control:

Congress has delegated powers along a continuum. At one end, the President has vast discretion, with little review, . . . at the other, where sound policymaking requires expert knowledge, where decisions need to be insulated from political interference, and where the exercise of judicial review requires safeguarding the integrity and fairness of the record on which the agency acts, his control over the agencies is far more circumscribed.⁶⁷

The writing of regulations by quasi-independent agencies such as EPA, whose

powers are explicitly delegated to them by the Congress, whose judgments require great technical knowledge and whose actions are subject to judicial review, falls near the latter end of this continuum.⁶⁸

Thus, despite the lack of any statutory authority, Ayres wanted EPA to be treated as a quasi-independent agency—like the Interstate Commerce Committee (ICC) and the Federal Communications Commission (FCC)—rather than like a normal federal department.

The agency that confronted these differing expectations, was initially staffed primarily by bureaucrats transferred from other federal departments. Mostly scientists and engineers, they had long labored in the bowels of large departments. Although suffering from budgetary and status deficiencies, they enjoyed the absence of scrutiny that this obscurity offered. They hoped that in the new EPA their status and budgets would increase while their work remained undisturbed. In addition, they brought with them the concepts, attitudes, and skills that had served their former agencies. For example, the pesticide group from the Department of Agriculture had long been more interested in promoting agricultural productivity than in protecting human health and the environment. Over the years, these units had often developed comfortable working relationships with their state and local counterparts. Since early environmental laws emphasized planning, grant giving, and technical assistance, their members did not have to adopt the adversarial posture required by regulatory enforcement. By both training and conviction, they were not prepared to shift from being aid and advice givers to aggressive violation hunters.⁶⁹

The very substantial burden of dealing with these disparate expectations was placed on unlikely shoulders—an orthodox Republican politician from Indiana. A decade before, as a State Assistant Attorney General, William Ruckelshaus had prosecuted water pollution violators. But such matters played little role in his subsequent career as a state legislator, unsuccessful candidate for the U.S. Senate, and U.S. Assistant Attorney General.

Ruckelshaus' selection to be the first EPA administrator appears to have rested on two factors. First, he benefited from an active lobbying campaign by his old friend Jerry Hansler, a career officer in the U.S. Public Health Service. Assigned to the Indiana Health Department in the early 1960's, Hansler provided the expert testimony that enabled Ruckelshaus to successfully prosecute several water pollution cases. In the process they became close friends. When EPA was created, Hansler was in charge of federal air pollution regulation in the New York region, and was well placed to lobby for Ruckelshaus within the federal pollution control establishment. He also happened to be Senator Sam Ervin's (D, NC) son-in-law.

Hansler lined up a list of prominent environmental figures to endorse Ruckelshaus. This helped ensure him serious consideration. His ultimate selection, however, was due to the backing of his boss. Perhaps the single most powerful figure in the administration after Nixon himself, Attorney General John Mitchell's strong support was sufficient to gain Ruckelshaus the appointment.⁷⁰

Ruckelshaus perceived a need to "hit the ground running," to convince the public that the Nixon administration was serious about environmental protec-

tion. The most immediate question was how to meld the various bureaus EPA had inherited into a coherent organization. Nixon's executive order, stressing comprehensive environmental management, pointed in the direction of a thorough restructuring. That was the view of Alain Enthoven, a former senior Defense Department official who was acting as a White House consultant. Based in part on the Ash Council staff recommendations, Enthoven proposed that EPA be organized functionally (e.g., research, standards setting, enforcement), thereby abolishing the agency's legacy of separate units for water, pesticides, and so forth.⁷¹

Douglas M. Costle, future EPA administrator, was the Ash Council staffer in charge of transition issues. He chose not to recommend Enthoven's plan to Ruckelshaus. Costle feared that the massive changes Enthoven proposed would create a great deal of friction and chaos. Only after the Agency had proved itself, Costle believed, could the administrator risk the broad restructuring Enthoven advocated.

Instead, Costle proposed a three-stage approach. Initially, each of the program areas would be left intact. In a second phase, new functional divisions would be added. Finally, the program offices would be abolished and merged into the new functional units.⁷²

Ruckelshaus went through stages one and two of Costle's plan. Initially he established five commissioners, one for each of the existing programs. In April 1971, he created a revised organizational plan that corresponded closely to Costle's stage two proposal. The Agency was divided into five divisions, each headed by an assistant administrator. Three of these, Planning and Management, Enforcement and General Counsel, and Research and Monitoring, were organized along functional lines. The other two, Air and Water, and Pesticides, Radiation and Solid Waste, retained a program orientation. No effort was made, then or later, to implement the final stage of Costle's proposal. As we mentioned in the previous chapter, and as we will see extensively in the cases, differences in professional training and functional responsibilities, and crosscutting jurisdictions caused these various units to coexist uneasily with one another.⁷³

Ruckelshaus decided to give first priority to enforcement. Other directions were certainly possible, even attractive. The woeful state of environmental science and pollution control technology provided a strong rationale for devoting the lion's share of agency resources to research and development. Alternatively, Nixon's stated commitment to comprehensive environmental management could have justified an emphasis on regional planning. Ruckelshaus, a lawyer, chose neither. He had succeeded as a law enforcement officer both in his home state and in Washington. As a Republican, a Nixon appointee, and a protégé of John Mitchell, he knew that he was viewed with suspicion by the Democratic majority in Congress, the anti-Nixon press, and the environmental community. To establish his personal credibility he felt he had to immediately demonstrate his good faith and commitment to environmental objectives.⁷⁴

Alternate strategies would only produce results in the distant future. They were also more difficult since it would take considerable time and effort to effectively assimilate the various units that had come from other agencies. In contrast, with a legal staff already assembled, Ruckelshaus could begin to litigate

immediately. The bigger the targets, the more credibility he could amass. As John Quarles, his General Counsel, later phrased it:

Ruckelshaus believed in the strength of public opinion and public support. . . . He did not seek support for his actions in the established structures of political power. He turned instead directly to the press and to public opinion. . . . The results were impressive, especially during the period of public clamor for environmental reform.⁷⁵

During its first sixty days, EPA brought five times as many enforcement actions as the agencies it inherited had brought during any similar period. Atlanta, Cleveland, and Detroit were sued for illegal sewage discharges; the Reserve Mining Corporation was sued for dumping taconite filings into Lake Superior, Armco Steel was sued for polluting the Houston Ship Channel, U.S. Plywood-Champion Papers for polluting the Ohio River, and ITT Rayonier for dumping pulp waste products into Puget Sound. (The preponderance of water pollution cases reflects the fact that it was easier to sue under existing water quality legislation than under the pre-1970 air quality statute.)⁷⁶

As the case of Union Carbide illustrates, however, lack of enforcement authority did not deter Ruckelshaus. One of that company's plants seemed to be primarily responsible for the particulate matter that blackened the skies in nearby Parkersburg, West Virginia, and Marietta, Ohio. For years, state and federal officials had been unable to move the company to begin a cleanup. Ruckelshaus had EPA send Carbide a lengthy letter detailing the history of the case. The Agency threatened to initiate legal action within ten days unless the company agreed to comply with the recommendations of a previous interstate conference that had considered the problem. Unsure of his formal legal authority, Ruckelshaus immediately released the letter to the press. On the day of the deadline, the company announced its willingness to comply.⁷⁷

Ruckelshaus must have known that his confrontational approach would horrify the White House. He gambled that Muskie's electoral threat would keep the White House wolves at bay until after the 1972 election. Despite Muskie's unexpected failure to capture the Democratic nomination, the gamble worked. EPA's audacious efforts to haul polluters into court created such a positive image for the agency in general and Ruckelshaus in particular that Nixon reappointed him after the election.⁷⁸

While he did establish the Agency's credibility, Ruckelshaus' decision to forego a thorough reorganization had long-term effects. The inherited bureaus and divisions continued to seek support from their traditional allies outside the Agency. The addition of various functional units, as we will see later on, resulted in an organization full of conflicting objectives that has made integrated management extremely difficult. It is also arguable that the early commitment to enforcement led to a shortchanging of other functions, such as research and development and planning. As a result, EPA has had to struggle to develop the scientific capability that would render its work technically credible.

The enforcement strategy had other costs as well. In the eyes of many conservatives, and those sensitive to business perspectives, it demonstrated that EPA

was nothing more than an environmental advocate. Ironically, that is exactly what some in the environmental protection group and in Congress had sought to create. This, in turn, led to the first of many efforts by the White House to find ways to control and manage EPA.

THE QUALITY OF LIFE REVIEW

On May 21, 1971, OMB Director George Schultz announced the establishment of a procedure entitled "Quality of Life Review." All proposed EPA regulations were to be submitted for scrutiny by other relevant agencies, with the review process to be coordinated by OMB.⁷⁹ This was to ensure that economic development and fiscal concerns received due consideration in the process of writing regulations. In many cases, this review process delayed the promulgation of regulations for several months.

Environmentalists claimed that the process violated the law by, for example, allowing the OMB and not the EPA administrator to make the final decision on the content of air quality regulations. To support this charge they cited the many revisions that were made in EPA's regulations governing state implementation plans (SIPs) after their quality of life review.⁸⁰ Ruckelshaus maintained that while he paid close attention to the recommendations of other agencies, the final decision in all cases was his alone.⁸¹

The history of these reviews (like the later experience of the "Regulatory Analysis Review Group" under President Carter, which we consider in several of the cases) raises troublesome questions. In particular, who is "the White House" and who can responsibly invoke the authority that flows from the elected head of state? The White House after all is not a single person, but rather an ill-defined collection of groups and individuals all striving to influence policy. During the Nixon years, the president's preoccupation with foreign policy, and later with Watergate, meant that others were emboldened to speak in his name on relatively less important matters, like the formulation and enforcement of environmental policy.

The initial skirmish between the White House and the agency occurred in the fall of 1971. It concerned the case that EPA brought against Armco Steel for polluting the Houston Ship Channel.⁸² After a favorable court decision, EPA enforcement chief John Quarles was summoned to the White House by presidential aide Peter Flanigan. Flanigan showed Quarles a letter to the president from William Verity, president of Armco and a powerful figure in the Ohio Republican Party. Verity claimed that the decision would result in the closing of important segments of the Armco facility and the loss of about 300 jobs. Flanigan contended that the loss of 300 jobs ran counter to the president's policy and that EPA had to remedy the situation.

Flanigan also asked the Justice Department to join Armco in seeking a sixty-day stay of the court order so that the company and the government could try to negotiate a settlement.⁸³ On October 8, however, John Whitaker, the White House aide responsible for environmental policy, convened a meeting to deter-

mine the official administration position on the matter. He ruled that Flanigan's action did not represent White House policy and that no stay should be sought until the government had time to establish its negotiating position vis-à-vis Armco.

Flanigan, a successful investment banker, was far more influential in White House circles than Whitaker. Whitaker's willingness to countermand him suggests that Flanigan had not in fact been acting for the president. Such behavior by the White House staff helped undermine whatever responsibility EPA's leadership might have felt to follow White House orders.

THE TRAIN INTERVAL

Ruckelshaus left EPA in April of 1973 to replace L. Patrick Gray as FBI Director after the latter had become implicated in the Watergate scandal.⁸⁴ He was succeeded at EPA by Russell Train. A career public servant and conservationist, Train had served as a staff member on two congressional committees, joined the Treasury Department and had then been appointed a U.S. Tax Court Judge. In 1965 he became the president of the Conservation Foundation. In 1969 he was appointed Under Secretary of the Interior and, a year later, was made Chairman of the Council on Environmental Quality.⁸⁵

A lifelong Washingtonian, Train enjoyed close personal relations with many members of the Congress and the career civil service. His personal stature and relationships were a decided asset for the Nixon administration during Watergate and in turn helped give him significant independence from the rest of the Executive branch. When he insisted on having written confirmation that the EPA administrator had final authority over the substance of all EPA regulations, the White House provided it. Similarly, in March of 1974, Train refused to support an administration proposal that he claimed would gut the Clean Air Act.⁸⁶

Train remained in office until after Gerald Ford's defeat by Jimmy Carter in 1976. The initiatives undertaken during his regime reinforced the image of EPA as an aggressive environmental advocate. The untidy mix of functional and program offices was retained. For the purposes of this study, the most important new development during these years was EPA's increased dependence on the Congress.

Train's independence limited his influence within the Nixon administration. As a result, he found it all the more necessary to cultivate ties with Congress. As a former senior EPA official put it:

Train survived because Richard Nixon did not. He drew his support from the Air and Water Pollution Subcommittee of the Senate Public Works Committee in resisting the Nixon White House's campaign to dismantle environmental legislation. What had been to Ruckelshaus a voice of encouragement was to Train a lifeline.⁸⁷

All of this enhanced the power and influence of the Muskie Subcommittee. The subcommittee and its staff came more and more to view its responsibilities in quasi-executive terms. The caretaker status of President Ford's administration

limited his ability to disrupt this relationship or to force EPA to abide by White House, as opposed to congressional dictates. These warring views about who had the right to oversee environmental policy, and for what ends, formed a crucial and troubling aspect of the legacy received by Train's successor, Douglas M. Costle.

THE NEW TEAM

Douglas M. Costle, EPA administrator throughout the Carter years, was in many ways archetypical of that administration. He had had little or no prior involvement with the Carter campaign or with Carter personally. Nor was he well connected to the party organization or to some element of the party coalition. In fact, he was barely a Democrat at all, having served in Republican administrations at both the national and state level.

A native of Seattle, who went to Harvard and the University of Chicago Law School, Costle first worked in OMB in the Nixon administration. We have seen how, as a staffer for the Ash Council, he played a major role in designing EPA. He then became the commissioner for Environmental Affairs in Connecticut under a Republican governor. With the advent of a Democratic regime in Connecticut, Costle returned to Washington to work in the newly created Congressional Budget Office. His record as a successful administrator, combined with his involvement in the creation of EPA, made him attractive to an administration interested in administrative reform and enhanced efficiency. The Carter people, political mavericks themselves, were not put off by Costle's lack of orthodox Democratic credentials.⁸⁸

The story of Costle's selection is typical of the transition process. Various lists were circulated and various candidates lobbied for. During the late stages of the process, Costle himself was working on transition matters—but on the structure of the Department of Energy. Senator Muskie wanted his longtime subcommittee staff director Leon Billings to be the EPA administrator. Afraid of the power this might give the senator from Maine, the transition team heeded the advice of one of its members, an ex-McKinsey and Company consultant named William Drayton, who had worked with Costle in Connecticut. Despite the fact that the Democratic governor of Connecticut was not one of his greatest admirers, the transition team settled on this relatively unknown candidate.⁸⁹

As we have seen, the EPA Costle inherited had come to be viewed, and to view itself, as an environmental advocate. Its strong sense of purpose and its hostile relations with Nixon had indebted it to its friends in Congress and in the environmental community, and made it highly resistant to pressure from the White House. Internally, the uneasy coexistence of programmatic and functional units invited turf conflicts and political "free lancing" on the part of subordinates. Costle was not obliged to perpetuate this legacy, but he recognized that any revisions would meet both with internal and external opposition and would, therefore, require considerable effort and political capital.

Recognizing that much of his time would be taken up with external work, he had initially planned to pick a strong administrator for the number two job in the

Agency, that of deputy administrator.⁹⁰ Soon after his own appointment, however, he was asked by Hamilton Jordan, Carter's top aide, to consider Barbara Blum for that post. Blum, a Georgian, had been a local environmental activist before becoming a key campaign organizer. She had no previous experience in agency management.

Costle had to weigh Blum's lack of administrative qualifications against her strong personal ties to the White House inner circle. Although he had not been ordered to take her, a refusal would obviously disappoint Carter's "Georgia Mafia" and strain his relationship with them. Costle, therefore, decided to appoint Blum, and to use her as a political emissary to the White House. This meant he had to find another source of help in running the Agency.

The Office of Planning and Management (OPM) was the obvious alternative. That job, however, went to transition staffer William Drayton, who, before helping Costle land the EPA job, had helped him institute several important regulatory innovations in Connecticut. Drayton's great strength was not in operational matters but policy analysis and conceptual innovation, as well as a legendary capacity for hard work. Again, Costle's desire to build a general management team was frustrated by other considerations.

Similarly, to placate Muskie, and the rest of the Senate subcommittee, Costle chose a former committee staffer, Thomas Jorling, as the assistant administrator for Water Programs. Although assigned to the committee minority, Jorling had played an active role in drafting environmental statutes and mobilizing a bipartisan committee consensus behind them. After leaving the committee, Jorling moved to Williams College to direct its environmental center. His strong commitment to environmental improvement and his zest for battle, however, made the lure of a key post at EPA irresistible.

Other major appointments also went to those with an environmental identification. To head the other large program component of EPA, the Air Office, Costle relied on Muskie's advice and chose David Hawkins. Hawkins was a staff attorney for the Natural Resources Defense Council and one of the environmental community's chief spokesman on air quality issues. As head of the Office of Congressional Relations Costle picked Charles Warren, former chief legislative aide to Senator Jacob Javits (R, NY). Although Warren's own legislative responsibilities had not been centered on environmental matters, his wife, Jacqueline, was a leading environmental attorney. Thus, he too was closely identified with the environmental community.

A NEW STRATEGY

During the campaign, Carter had pledged to make government more efficient and responsive. Costle felt that to keep EPA in the good graces of the White House, he had to actively promote and adopt some of the administration's reform schemes. During the transition period, he and Drayton worked on the White House's proposed Civil Service Reform Act. He lobbied for it in Congress and worked to implement it at EPA. The EPA was also the first federal agency to adopt Carter's zero-based budgeting scheme. Throughout his tenure, Costle,

with Drayton's active assistance, would strive to make EPA a model of "good government."⁹¹

In Costle's view, however, the EPA needed to do more than embrace managerial reform. Although opinion polls continued to reflect widespread public support for pollution control, the Washington community increasingly believed that this support was diminishing.⁹² At the same time, there was growing recognition of the large costs of pollution abatement. To justify such expenditures at a time of slow economic growth seemed to require a more compelling goal than ecological purity. Preventing disease, especially cancer, offered just such a justification. Although most of EPA's regulations were based on health considerations, in the public's mind the agency's mission was more involved with protecting nature. Costle became determined to convince the public that EPA was first and foremost a public health agency, not a guardian of birds and bunnies.⁹³

The public health mission also provided a response to the threat to the Agency posed by executive reorganization. There was widespread speculation about reviving the DENR idea and merging the EPA into the Department of the Interior. If that happened, Costle would find himself reporting to Secretary of the Interior Cecil Andrus, who was close to Carter and the administration's lead spokesman on environmental matters.⁹⁴ Indeed, Andrus had been involved in the choice of Costle, and when they met before Costle's appointment, the two had established a good rapport that would blossom into a close friendship.

Andrus gave Costle private assurances that he would oppose an EPA-DOI merger. He was well aware of the role Costle had played in convincing the Ash Council to recommend the creation of EPA and he agreed with those arguments.⁹⁵ In fact, when Carter's plan for a Natural Resources Department was announced, EPA was not included. The administration's interest in organizational neatness, together with Andrus' preeminence, however, made it clear that EPA could not expect to expand its ecological mandate.

The environmental health arena, by contrast, was wide open, and within it EPA possessed certain advantages. It was the largest of the regulatory agencies concerned with environmental health and the only one that combined a significant research effort with its regulatory duties.

Costle lost no time in implementing the public health strategy. He toured the country giving a speech entitled "The Chemical Revolution," in which he outlined the threat posed by the multiplicity of environmental toxins and discussed how the threat should be met. He was quoted in *Science* and the *National Journal* announcing that "EPA is a preventive health agency as well as an environmental agency."⁹⁶

In a speech delivered to the American Chemical Society on September 11, 1978, he reiterated the Agency's intention to shift its regulatory focus from conventional pollutants to toxic substances. He justified the need for EPA to adopt a more aggressive posture toward environmental disease by stating that the Agency "cannot wait for proof positive in the form of dead bodies" to regulate suspected carcinogens.⁹⁷

The clearest evidence of this new approach surfaced at a briefing outlining the agency's 1979 budget plan. Congressional reform of the budgetary process created a two-year budget cycle that meant that EPA's 1979 budget was really

the first one that Costle could place his own imprint upon. After once again announcing that EPA had become a public health agency, he proceeded to mention "health" six more times in his brief talk. He was then succeeded on the podium by William Drayton, who also stressed that agency priorities had been shifted towards public health; toxic substances, pesticides, drinking water, and health research were slated to receive additional funds; "Older air, water and solid waste programs have been refocused on toxics and hazardous materials." He also noted that both funding and personnel for research on ecological effects of pollution had been reduced to expand research on human health effects.⁹⁸

This shift in strategy bore fruit quickly. It enabled EPA to acquire new resources at a time of strict austerity. Whereas the overall 1979 budget for environment and natural resources increased by less than one percent (from 12.1 to 12.2 billion), EPA was able to increase its operating budget by twenty five percent. One third of that increase was slated to be spent on programs devoted to controlling pollutants posing a public health risk.⁹⁹ The sentiments expressed by Costle and Drayton were echoed in the very first sentence of the natural resources and environment section of the OMB's Budget in Brief, which stated that "our national needs for natural resources and the environment are to protect public health by assuring a clean environment."¹⁰⁰

In summary, Costle made several decisions which shaped the context in which the cases that follow evolved. He left the structure of the Agency intact and maintained its identity as an advocacy agency. He formed his leadership team from people with strong loyalties to outside constituencies, and, most importantly, he redefined the central mission of the agency: protection of public health replaced the maintenance of ecological balance as EPA's central objective.

NOTES

1. For a comprehensive account of suburbanization and its impact, see Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of America* (New York: Oxford University Press, 1985).

2. Andrew S. McFarland, *Public Interest Lobbies: Decision Making on Energy* (Washington, DC: The American Enterprise Institute for Public Policy Research, 1976), 6.

3. See McFarland, *Public Interest Lobbies*, 4-24; Jeffrey M. Berry, *Lobbying for the People* (Princeton, NJ: Princeton University Press, 1977), 18-44; and J. Clarence Davies III and Barbara S. Davies, *The Politics of Pollution*, 2nd ed. (Indianapolis, IN: Bobbs-Merrill, 1975), 80-86.

4. Robert Cameron Mitchell, "Public Opinion and Environmental Politics in the 1970's and 1980's," in Norman J. Vig and Michael E. Kraft, eds., *Environmental Policy in the 1980's: Reagan's New Agenda* (Washington D.C.: CQ Press, 1984), 51-74.

5. See especially *Reynolds v. Sims* 377 U.S. 533; 84 S. Ct. 12 L. Ed. 2d 506 (1964).

6. Norman Ornstein and Shirley Elder, *Interest Groups: Lobbying and Policymaking* (Washington D.C.: CQ Press, 1978), 155-186; John McPhee, *Encounters with the Archdruid* (New York: Farrar, Giroux and Straus, 1971), 151-245.

7. The attitudinal gaps between environmentalists and businessmen are explored by Kathy Bloomgarden in her article "Managing the Environment: The Public's View," *Public Opinion*, 6 (Feb./Mar. 1983):47-51.

8. On the political advantages of statutory ambiguity, see Bruce A. Ackerman and

William T. Hassler, *Clean Coal/Dirty Air* (New Haven, CT: Yale University Press, 1981), 35-38.

9. Edward J. Epstein, *News From Nowhere: Television and the News* (New York: Random House, 1973), 88, 98.

10. Edwin Diamond, *The Tin Kazoo: Television, Politics, and the News* (Cambridge, MA: MIT Press, 1975), 87-109; Epstein, *News from Nowhere*, 4-5.

11. Diamond, *The Tin Kazoo*, 93-94; Epstein, *News From Nowhere*, 147.

12. For thumbnail sketches of the major old and new environmental organizations, including membership figures, see *The National Journal* (13 Dec. 1980): 2118-9; Davies and Davies, *The Politics of Pollution*, 87-95.

13. Berry, *Lobbying for the People*, 205; McFarland, *Public Interest Lobbies*, 18, 71.

14. For a discussion of the Clean Air Coalition, see Ornstein and Elder, *Interest Groups: Lobbying and Policy Making*, 155-186.

15. Michael J. Malbin, *Unelected Representatives: Congressional Staffs and the Future of Republican Government* (New York: Basic Books, 1980), 19-24; David Broder, *Changing of the Guard: Power and Leadership in America* (New York: Penguin, 1980), 225-253.

16. Broder, *Changing of the Guard*, 225-253.

17. Alfred A. Marcus, *Promise and Performance: Choosing and Implementing Environmental Policy* (Westport, CT: Greenwood Press, 1980), 63.

18. Mark J. Green, James M. Fallows, and David R. Zwick, *Who Runs Congress?* (New York: Bantam, 1972), 130.

19. Green, et al., *Who Runs Congress?*, 5.

20. R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air Act* (Washington D.C.: The Brookings Institution, 1983).

21. Broder, *The Changing of the Guard*, 229-230.

22. Melnick, *Regulation and the Courts*, 374.

23. Bernard Asbell, *The Senate Nobody Knows* (Baltimore, MD: Johns Hopkins University Press, 1978), 120; Charles O. Jones, *Clean Air: The Policies and Politics of Pollution Control* (Pittsburgh, PA: University of Pittsburgh Press, 1975), 56.

24. Asbell, *The Senate Nobody Knows*, 76.

25. Jones, *Clean Air*, 57.

26. Jones, *Clean Air*, 176.

27. Jones, *Clean Air*, 55.

28. Melnick, *Regulation and the Courts*, 33.

29. Davies and Davies, *The Politics of Pollution*, 66-67.

30. Davies and Davies, *The Politics of Pollution*, 33.

31. Davies and Davies, *The Politics of Pollution*, 34.

32. Melnick, *Regulation and the Courts*, 26-27.

33. John C. Esposito, et al., *Vanishing Air* (New York: Pantheon, 1970), 270-271.

34. Theodore Lippman, Jr. and Donald C. Hansen, *Muskie* (New York: WW Norton and Co., 1971), 144.

35. Jones, *Clean Air*, 179.

36. Lippman and Hansen, *Muskie*, 228.

37. Davies and Davies, *The Politics of Pollution*, 52-53.

38. Esposito, et al., *Vanishing Air*, 259, 298.

39. Jones, *Clean Air*, 192-193.

40. Jones, *Clean Air*, 202.

41. Esposito, et al., *Vanishing Air*, 306-307.

42. Esposito, et al., *Vanishing Air*, 309-310.

43. Esposito, et al., *Vanishing Air*, 304; Jones, *Clean Air*, 204.

44. Lippman and Hansen, *Muskie*, 148.

45. Lippman and Hansen, *Muskie*, 145–146.
46. David Nevin, *Muskie of Maine* (New York: Random House, 1972), 120–137.
47. Marcus, *Promise and Performance*, 553–584.
48. Jones, *Clean Air*, 194–214.
49. Melnick, *Regulation and the Courts*, 28, 97–101, 253–254.
50. Robert L. Sansom, *The New American Dream Machine: Toward a Simpler Life-style in an Environmental Age* (Garden City, NY: Anchor Press, 1976), 9, 26, 30.
51. John C. Whitaker, *Striking a Balance: Environment and Natural Resources in the Nixon-Ford Years* (Washington, DC: American Enterprise Institute for Public Policy Research, 1976), 27.
52. Whitaker, *Striking a Balance*, 29–30.
53. Whitaker, *Striking a Balance*, 31.
54. Marcus, *Promise and Performance*, 32.
55. Marcus, *Promise and Performance*, 33.
56. Marcus, *Promise and Performance*, 34–36.
57. Marcus, *Promise and Performance*, 36–37.
58. Marcus, *Promise and Performance*, 38.
59. Marcus, *Promise and Performance*, 40–41.
60. Whitaker, *Striking a Balance*, 54.
61. John Quarles, *Cleaning Up America: An Insider's View of the Environmental Protection Agency* (Boston, MA: Houghton Mifflin, 1976), 16–18.
62. Marcus, *Promise and Performance*, 32.
63. Quarles, *Cleaning Up America*, 20.
64. Marcus, *Promise and Performance*, 56.
65. Senate Committee on Public Works, Subcommittee on Air and Water Pollution, *Implementation of the Clean Air Act Amendments of 1970—Part I*, 92nd Congress, 2nd Session, Hearings February 16, 17, 18, and 23, 1972, Committee Serial No. 92-H31, 4. See also Marcus, *Promise and Performance*, 45.
66. Senate Committee on Environment and Public Works, Subcommittee on Environmental Pollution, *Executive Branch Review of Environmental Regulations*, 96th Congress, 1st Session, Hearings February 26 and 27, 1979, Committee Serial No. 96-H4, 30.
67. *Executive Branch Review of Environmental Regulations*, 31.
68. On the EPA bureaucratic inheritance, see Marcus, *Promise and Performance*, 45–53.
69. Quarles, *Cleaning Up America*, 47–48.
70. The story of Ruckelshaus' appointment is told in Quarles, *Cleaning Up America*, 21–24.
71. Marcus, *Promise and Performance*, 102.
72. Marcus, *Promise and Performance*, 103–104.
73. Marcus, *Promise and Performance*, 105.
74. Quarles, *Cleaning Up America*, 39; Marcus, *Promise and Performance*, 85–99.
75. Quarles, *Cleaning Up America*, 36.
76. Sansom, *The New American Dream Machine*, 24–25, 43; Quarles, *Cleaning Up America*, 117–118.
77. Quarles, *Cleaning Up America*, 37–57.
78. Quarles, *Cleaning Up America*, 42–43.
79. Marcus, *Promise and Performance*, 125; Quarles, *Cleaning Up America*, 118.
80. See testimony of Richard Ayres of the Natural Resources Defense Council, *Implementation of the Clean Air Act Amendments of 1970*, 3–24.
81. Ruckelshaus' testimony, *Implementation of the Clean Air Act Amendments of 1970*, 243.

82. See Quarles statement, *Executive Branch Review of Environmental Regulations*, 3–4.
83. This incident is related in Quarles, *Cleaning Up America*, 59–76.
84. Quarles, *Cleaning Up America*, 190.
85. Quarles, *Cleaning Up America*, 199.
86. Quarles, *Cleaning Up America*, 119; and Sansom, *The New American Dream Machine*, 48.
87. Sansom, *The New American Dream Machine*, 25.
88. Douglas M. Costle, former EPA Administrator, interview with Harvard School of Public Health and Kennedy School faculty, Cambridge, MA, 2 Mar. 1981.
89. Costle interview, 2 Mar. 1981.
90. Costle describes the process of picking his management team during this extensive interview.
91. Costle interview, 2 Mar. 1981.
92. *BNA Environmental Reporter*, 1978, 1614.
93. *Science* 202 (10 Nov. 1978):598.
94. *National Journal*, 12 Mar. 1977, 382–384; *National Journal*, 15 Nov 1977, 1616.
95. Costle interview, 2 Mar. 1981.
96. *National Journal*, 17 Dec. 1977, 1976.
97. *Science* 202 (10 Nov. 1978):598; *National Journal*, 28 Jan. 1978, 140.
98. *BNA Environmental Reporter*, 15 Sep. 1978, 914.
99. *National Journal*, Jan. 1978, 140.
100. *National Journal*, Jan. 1978, 140.