The Political and Institutional Setting

THE INSTITUTIONAL SETTING

Formal Institutions

As we have seen in Chapter 3, the constitutional foundation of environmental policy is the Commerce Clause, which provides the federal government with the authority to regulate interstate commerce. As this chapter will show, the three formal institutions of the federal government are intricately involved in environmental policy.

The Judicial System

Environmental battles are often fought in the courts. This is particularly true of interest groups lacking the resources necessary to fight in more traditional arenas, such as legislative bodies. However, this is also true of regulated industries when they challenge regulations. As noted earlier, there are a number of long-standing common law judicial remedies for those concerned with the environment, notably the public nuisance doctrine. But since the early 1970s, the most common legal challenge used by environmental organizations has been to enforce the environmental impact statement requirements of the National Environmental Policy Act (NEPA). Most often, environmental impact statements are challenged on the grounds that they do not sufficiently assess environmental impacts or their alternatives.

As we will see in Part Two, a number of environmental statutes, notably the NEPA and the Clean Water Act, have provided environmentalists with opportunities to use the judicial branch of government to enforce environmental laws. Early in the history of the contemporary environmental movement, access to court systems was limited somewhat by questions of legal standing (discussed in the previous chapter). Standing means that a party has a right to represent an interest in court. For example, to bring a lawsuit, a person or organization must show (1) that it suffered an injury and (2) that the injury can be remedied. Standing has not been a major obstacle to use of the judicial system by environmentalists since the early 1970s, when the Supreme Court began taking a somewhat more liberal view of standing in environmental cases.¹

The use of the courts in environmental matters and the benefit to be derived from pursuing a court action vary depending on the interests involved. For instance, if a lengthy lawsuit will allow the maintenance of the status quo (such as continuing to pollute), then clearly the polluting party is advantaged by pursuing its interest in
the courts at length. Thus, the utility of initiating court action will vary depending on a group’s objectives and its available resources.

There are a number of considerations that make the use of the judicial system an attractive alternative—considerations that are different from those recognized in dealing with the other branches of government. For example, there is the question of time. Lawsuits take time. Relatively new interest groups might be concerned with simple organizational maintenance and hence would avoid undertaking commitments of resources to lawsuits when the benefits to be achieved are long term and uncertain. Moreover, groups with few monetary resources would avoid lawsuits for fear of not being able to see them through to completion. The decision by an interest group to pursue its environmental policy goals through the judicial system, then, will be influenced by a number of variables. These include the group’s relative strength in other stages of the policy-making process, the desirability of seeking a short- or long-term solution to the problem, and the nature of the dispute. For example, if the court is the only currently feasible forum, this may play a part in the decision of group leaders to use the courts.

Also, the decision by environmental organizations to use the courts may be affected by which court has jurisdiction over a case. The courts in some states are much less likely to find in favor of environmental interests than are the courts of other states. On the federal level, Lettie Wenner, an expert on environmental litigation, found that federal courts in the Northeast and Midwest and on the West Coast have, since the 1970s, been favorably disposed toward environmental litigants, whereas federal courts in the Southeast, Southwest, and Rocky Mountain region have been more likely to favor economic and development interests.2

The Legislative Branch  Generally, environmental groups often find legal systems useful in pursuing their policy interests. This is partly because some environmental statutes provide for judicial remedies. Perhaps more importantly, environmental organizations traditionally have lacked the political resources useful for exercising influence in the legislative or executive branches of government.

It is important to remember that legislatures are, for the most part, decentralized in their organization and operation. In the U.S. Congress, for example, committees and subcommittees do the major work. Decentralization has a number of effects on the policy-making process. The committee system and the bicameral nature of legislatures in all the states except Nebraska make it much more difficult to pass legislation than to block it. Consequently, those interests that are benefited by the status quo have an advantage in the policy-making process in the United States. Because there are so many different points in the legislative process where a bill can be defeated, those attempting to influence legislation must follow it closely through each stage. Some groups have the resources to closely monitor legislation by attending hearings, or to influence discussion by providing research, whereas other groups do not.

One of the most important aspects to consider when examining the policy-making process in legislatures is that legislators are, in large part, motivated by a desire for reelection.3 Although there are a number of different demands on the attention of a legislator and various incentives not directly related to reelection that are important to legislators, most analysts have concluded reelection is a primary...
motive for legislative behavior. Thus, legislators are likely to be influenced to some
degree by the forces that impact their ability to be reelected.

The late Jesse Unruh, former Speaker of the California Assembly (1961–1969)
and state treasurer (1974–1987), once remarked, “[M]oney is the mother’s milk
of politics.” In practical terms, this means money is necessary for reelection and
that groups with the money to support politicians in their bid for reelection are
most likely to have influence in the legislative process. Although it is difficult to
show a direct causal relationship between contributions and influence, there is
widespread agreement that campaign contributions buy access to the legislative
policy-making process. Access is a very valuable commodity. Because of limitations
on a legislator’s time, and given the large number of issues that a legislator must
address, access provides a crucial opportunity for influence.

Although money is important, a large membership can be a source of influence
as well. Interest groups with a large and motivated membership are likely to be
more influential in the legislative policy-making process than groups without these
resources. Members vote, campaign, and can be enlisted to attend hearings.

The Executive Branch  The executive branch of government on the federal level
is responsible for administering federal environmental regulations through various
federal agencies. The Environmental Protection Agency (EPA) is perhaps the most
important regulatory agency concerned with environmental matters. The EPA was
established in 1970 through a reorganization that consolidated pollution regulatory
activities from different departments into a single agency. The EPA is responsible
for a wide variety of environmental regulations, including the Clean Air Act, the
Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act,
the Resource Conservation Recovery Act, and the Federal Insecticide, Fungicide
and Rodenticide Act.

Another federal agency involved in environmental matters is the Interior
Department. Within the Interior Department are the Bureau of Land Management
(BLM), the National Park Service, the U.S. Fish and Wildlife Service, and the Office
of Surface Mining. Additionally, the U.S. Department of Agriculture is an agency
involved with environmental policy making. Both the U.S. Forest Service and the Soil
and Conservation Service are located in the Department of Agriculture. Finally, the
Department of Energy (DOE) includes the Federal Energy Regulatory Commission
(FERC) and deals with various nuclear, fossil fuel, and environmental issues.

Informal Institutions
The resources that help provide access to the chief executive of a governmental body
are similar to those resources needed by groups working with the legislative branch,
such as a large or motivated membership or any resources conducive to providing
electoral support. The needs of career bureaucrats, the individuals primarily
responsible for the implementation of policy, are, however, somewhat different
than those of the chief executive or political appointees. Public administrators,
particularly those working in state or local governments with little support staff,
have limited resources for acquiring information. Interest groups often provide that
information.
Interest Groups—Support Networks  Administrators also need political support from interest groups. They are often concerned with maintaining organizational autonomy and integrity. This is accomplished, among other ways, by developing networks of support within the legislature and among the public. Public support is most often cultivated among the individuals or groups in the public that the administrative organization serves. It is often developed by the provision of a particular service. We might expect, therefore, administrative organizations to be most responsive to groups that are the beneficiaries of whatever service or function the organization performs and that these groups will have more access and influence with bureaucrats than other groups. To illustrate, the National Park Service enjoys the support of the National Parks and Recreation Association and other supporters of the National Park System during its budget hearings. In return these organizations enjoy increased access to the agency and prompt responses to their inquiries.

What develops from these informal support systems can be referred to as an “iron triangle” or “sub-government.” Here, interest groups, bureaucrats, and legislators become wedded in a sometimes useful, sometimes destructive, triangle of support and need. Legislators need the bureaucrats to implement their policies—they are rewarded for this with funding. In turn, the bureaucrats provide electoral support by making interest groups happy and will also take the fall if policies fail. The interest groups need the bureaucrats to provide them with services, so they support the bureaucracies in front of legislators. The cycle continues where one group not only depends on the others for support, funds, votes, or work but also provides these things to the others.

A concrete example of this can be found in what has been deemed the “military-industrial complex.” Here, industry helps the military (bureaucracy) by lobbying Congress for more money for research, development, and, of course, new weapons produced by industry. The military rewards industry for their political support by also requesting more funds and weapons, which are bought from the profiting industry. This support network continues with a “revolving door” where retired military officials get jobs in the weapons industry for their inside track to the military’s and Congress’ ear. Congress provides more and more funding for more and more weapons because they get the political support of the massive military and weapons industry lobby.

Similarly, subgovernments form those control-specific segments of public policy. Subgovernments often shy away from the bright lights of mainstream politics and media attention. They require an industry dominated by a few firms that grow rich with government help through subsidies, price supports, tax breaks, government contracts, public land, bailouts, or protective tariffs.

Members of subgovernments are not democratically elected, yet they rely on the same “pluralism” that formal government offices do. They are industry’s corporate and trade association executives; its lawyers, lobbyists, publicists, and trade paper’s journalists; congressional subcommittee members and staff; and the relevant agency’s employees. Examples abound and include the mining industry “donating” campaign support and lobbying on behalf of regulators to continue to receive public lands and the underlying minerals for free. The Forest Service has a long tradition of selling lumber at a loss to keep the timber industry/lobby happy. Archer Daniels Midlands, an agribusiness giant, gave President G.H.W. Bush (technically the Republican Party) $652,000 in 1988 and the next year got a $3.4 billion ethanol
subsidy. Perhaps it is in the “public interest” to give tax dollars to corporations to keep them happy, so they will spur the economy and provide employment. Or it may be that subsidies taken from middle-class taxpayers and given to corporate shareholders and executives are necessary to keep America running. Whether or not it is good or bad public policy, this is how many subgovernments operate and how our pluralist democracy functions in certain cases.

Environmental Interest Players There are various types of environmental interest groups. Each will have its own unique membership, motives, and resources. For example, there may be a group of consumers or citizens who band together to protect their favorite fishing hole from development. These groups are usually less well funded and organized, but often contain large numbers, so if they are stirred to unusually high motivation, they can be extremely effective.

Then there are business or trade union groups that are primarily concerned with their narrow work environments, success, and profits. Often the environment is a tool for them to provide jobs, profits, and taxes. Although many such groups are increasingly sensitive to their environmental public relations image, their core motivations stay the same regardless of the advertisements they purchase to cloak them.

There are also NPOs or NGOs (nonprofit or nongovernmental organizations) established by concerned scientists, journalists, or former government employees to protect more diffuse and intangible interests such as ecosystem services, the “rights” of organisms other than humans or future generations of them. Funding can be a problem with these groups, too, especially if the experts running them alienate a more diverse public than may be otherwise willing to support their cause.

The divergent motives and viewpoints of these groups can make discourse, let alone compromise, difficult. Furthermore, the form of pluralist, interest group democracy we utilize pushes these groups to take the stances they do. Together, though, business, personal, or nonprofit-type interest groups can heavily influence public policy. They are quite successful in both achieving and blocking the implementation of policy initiatives.

Implementation An important resource for influence in the administrative process is familiarity with the implementation process and the informational needs of the organization. Paul Culhane, in a study of interest group influence in the Forest Service and BLM, found that “[Forest Service administrators] expected public participation to be professional; that is, they expected comments and public participation forums to present new information about the subject under consideration that they had overlooked.”6 Those participants in implementation who have backgrounds and training similar to organizational members will be advantaged in interaction with the organization, as opposed to participants who do not have such experience.

Implementation is a long-term process. Battles won today in the legislature may be lost in the implementation process if mandates are ignored or misinterpreted. Consequently, to influence the implementation process, it is necessary to have the resources to monitor the process on a continuous and long-term basis. This is particularly important in environmental policy where, in many cases, losing the battle often means losing the war. Accordingly, groups lacking the resources to send well-prepared spokespersons to agency hearings and to follow up agency action are at a disadvantage.
In summary, the resources most useful for influencing the implementation stages of the policy-making process are the traditional resources of money, political support, and information and expertise that are useful for promoting interaction with bureaucrats. Additionally, these resources must be adequate and channeled in such a way that groups can stay involved in the implementation process for the long haul.

**Interest Groups in the Policy-Making Process** Although different groups may choose to exercise their influence at different stages of the policy-making process, it is clear in all cases that monetary resources are very beneficial either for initiation or follow-through of a group’s policy goals. Given the inherent advantages that private economic interest groups have in fund-raising, it should not be surprising to find that in all stages of the policy-making process, these groups have a certain advantage. This is not to suggest, of course, that private economic interest groups always win out in environmental battles with public, noneconomic interest groups. However, it is clear that in policy formation, they start with an advantage. As we see next, the policy process is not driven only by the concerns that have been detailed in this section.

There are numerous examples in American history where, because of the volatile or intense nature of a policy debate, the incentives that traditionally influenced policy makers were set aside. Indeed, much of the major U.S. environmental legislation passed in the early 1970s provides examples of how the status quo and traditional incremental forms of influence can give way in the face of widespread public support for environmental regulations. Nevertheless, in the day-to-day operation of government, nonincremental change is the exception rather than the rule.

Everything that we have discussed can and is influenced by social movements. Social movements are partly responsible for keeping an issue on the public’s agenda, and they can play an important role in the implementation phase of the policy-making process because, as noted above, policies that are formed are not necessarily implemented. Issues tend to disappear from the public’s agenda because society has a tendency to react to crisis situations, but once the crisis is over, the issue fades from public attention.

**INSTITUTIONAL BIASES**

**Incrementalism**

It is widely accepted among scholars of the American policy process that policy is made incrementally. Incremental theory (or incrementalism) may be summarized in the following manner:

1. Only some of the possible alternatives for dealing with a problem are considered by the decision maker. Either by virtue of limitations on information, ability, time or because of the desire to achieve a consensus, a comprehensive evaluation of all alternatives is not undertaken.
2. The alternatives considered and the option ultimately selected will differ only slightly or incrementally from existing policy.
3. Only a limited number of consequences for each alternative are evaluated.
4. The problem being evaluated is continually redefined with adjustments being made to make the problem more manageable.
There are practical and political explanations for the incremental nature of policy making in the United States. Practically, it would be impossible to consider all the numerous alternatives to a decision and the consequences of each alternative. Given the nature of pluralism, the numerous parties that are involved in the policy-making process, and the inherent limits on human ability to comprehensively analyze all of the alternatives and the ramifications of policy options, it may be that incremental decision making is inevitable. Given limited capacity and information, it makes sense to simplify decision making to facilitate some kind of action. In political terms, incrementalism makes sense because it allows participants in a given policy battle the advantage of being able to work from past policy agreements and shared assumptions. As politics inherently involves trade-offs, bargaining, and compromise, we should not be surprised to find that decisions are often made in relatively small increments that do not differ greatly from past decisions. It is easier to reach agreement on matters when the modifications being discussed in a given policy vary only slightly from prior agreements.

Whether incrementalism is inevitable or desirable, it is a fact that many environmental policy decisions are made on an incremental basis. To cite one example, which we discuss in more detail later, the national debate on the appropriate means of protecting water quality has always centered on evaluation of existing standards, procedures, and means of enforcement. Rarely have federal policy makers seriously considered simply eliminating the entire “standards and enforcement” approach to water quality and substituting, for example, some kind of market-incentive mechanism. Incrementalism means that new, unique, or seemingly radical policy alternatives are rarely, if ever, given serious consideration.

The incremental nature of the policy-making process in the United States has important consequences for environmental policy. First, policies are rarely comprehensive in the sense that they thoroughly evaluate, question, and analyze all the possible options available to decision makers. During the policy process, it is likely to be assumed that past decisions and policies were fundamentally correct and, if anything, may only need fine-tuning. Given the interrelated and interdependent nature of many environmental problems, the incremental approach increases the likelihood that a solution will address only part of the problem. Second, the incremental nature of the policy-making process virtually assures that the established relationships and alliances, which enabled programs to develop, remain and guide subsequent policy adjustments.

In many policy areas, the attributes of incrementalism give stability to the process. Although stability is clearly a benefit for political systems, at times it may be necessary to take quick and decisive action inconsistent with past policy decisions. As we see later, sometimes the system has been able to respond quickly to an environmental emergency. Unfortunately, however, constraints inherent in the policy formation system, including incrementalism, often prevent the development of policies that address short- and long-term problems.

**Decentralization**

Policy making and implementation in the United States are decentralized. Many policy decisions are made at the state and local level. Within governments, at
all levels, decision making and influence are divided up among committees, commissions, boards, and various executive branches.

For example, environmental regulatory standards are established by the federal government and enforced by state and local governments according to federal regulations. This can make management of environmental programs problematic.

Decentralization brings with it certain challenges. For example, David Brian Robertson and Dennis R. Judd have traced the development of political conflicts over the establishment of national environmental policy within a federal structure. They point out that state and local governments charged with enforcement of federal regulations face many obstacles, including (1) limited resources to carry out legislative mandates (especially since the 1980s when federal grants-in-aid for pollution control were reduced); (2) the need for cooperation among various state and local agencies that deal with such diverse areas as highways, land use, natural resources, and economic development—all of which have environmental impacts; (3) direct economic dependence on local industries to be regulated; and (4) interstate cooperation on environmental problems that cross state boundaries.

In various ways, the decentralized nature of policy formation affects which groups will be successful in pursuing their policy goals. Decentralization can help or hurt some organizations and their interests. For example, decentralization is helpful to those with influence in a state legislature, but not in the U.S. Congress.

**Short-Term Bias**

If given a choice between two policy options that will both accomplish the same goals over the same period of time, rational political actors will select the option with the lowest short-term cost. To illustrate, imagine you are a congressperson considering two competing bills designed to deal with the problem of acid rain. The first bill, which we will call the Anderson bill, is estimated to cost approximately $5 billion a year for each of the first five years and then $25 billion for each of the next 20 years. The total cost of the Anderson bill is $525 billion. The competing bill, which we will call the Jones bill, has an initial cost of $25 billion for each of the first five years with subsequent costs of $5 billion for each of the following 20 years. The total cost of the Jones bill over the 25-year life of the program is estimated at $225 billion. Which bill would you support?

Although such a decision might seem relatively easy, if you were a member of Congress faced with a decision between these two policy actions, the rational and logical choice for society may not be the rational choice for you. Election cycles, those two-, four-, or six-year periods in which politicians must run for reelection, require that politicians be responsive to constituent demands in the short term. When deciding between two competing programs, one with low short-term costs and high long-term costs and another with high short-term costs and low long-term costs, it is easier for politicians to select the program that is less costly over the short term. The average voter may not follow particular votes closely, but voters are sensitive to tax increases. The electoral cycle and the pressures of reelection do not always function to push policy makers toward policy options that are attractive only in the short term, but, as we see in Part Two, this has often been the case in environmental policy.
Related to the short-term bias of the policy-making process is the tendency of both policy makers and regular citizens to discount the future in their calculations of current options. In individual behavior, this is evidenced by those who smoke cigarettes or purchase on credit, to give only two examples. In the policy-making process, this results in decisions that defer costs into the future or assume that technological advances or other changes will mitigate any undesired future consequences of decisions made today. Hence, the short-term bias in the system is driven not only by the politicians’ attention to the electoral cycle but also by shared cultural assumptions about a society’s—and the scientific community’s—ability to cope with future problems.

**Ideological Bias**

Throughout most of America’s history, an ideological bias in the system has favored growth and development, an important part of our dominant social paradigm. Assumptions about production and consumption that are considered normal in a capitalist system may or may not be consistent with the rational stewardship of natural resources and the environment. Without passing judgment on the appropriateness or necessity of such assumptions, it is important to remember that an orientation toward growth and development underlies much of the policy-making process in the United States.

For example, when communities plan for future development, rarely is zero growth a serious option. Instead, the question is the acceptable percentage of growth. But for any community, and ultimately for the planet, there has to come a time when the development of new housing tracts—on agricultural land, for instance—comes to a halt, thereby limiting growth significantly. This is rarely one of the seriously considered options. The same orientation was evident in energy planning through the 1950s and 1960s. In making their predictions for demand, utilities frequently employed linear projections based on past and current usage and ignored variables that might affect future demand. During the same period, many municipalities employed the same type of projections in their planning for future water resource needs.

Politicians have a number of incentives to heed the call for increased growth. For one, the businesspeople who make up the local chamber of commerce, who want to sell more newspapers, cars, or whatever the product or service, naturally see an expanding market as directly related to their future well-being. These local businesspeople are also the people who are most often in contact with elected officials, make campaign contributions, and share similar backgrounds. Furthermore, they are most likely to interact socially and officially, formally and informally, with elected officials. Labor unions and, to a certain extent, representatives of minority groups, are also often proponents of economic expansion. Both groups understandably perceive economic growth as the way to provide additional employment. It should not be surprising, therefore, to find that many policy makers share an orientation toward expanding production, increasing development, and expanding economic opportunity.

Finally, there is strong evidence throughout the twentieth century of an ideological bias toward increased energy consumption. Often it has been assumed
that increased energy consumption is necessary for maintaining or expanding the
country’s gross national product and the overall quality of life. Although strong
evidence indicates little relationship between prosperity and energy consumption,9
as we will see in Chapter 7, the debate over energy development has often been
reduced simply to how we can produce more energy.

Private Nature of Public Policy Making

Much of what elected officials do escapes public attention. Although major issues
may generate headlines and bloggers latch onto some votes and spread the word,
the details related to even the major issues are largely ignored by the public.
Furthermore, though we may know how elected officials vote from roll call and
recorded vote figures, we know much less about what motivates them to vote one
way or the other. Many decisions are made outside of the public spotlight. Much
new legislation and many refinements in existing legislation receive very little, if
any, attention from anyone other than the parties directly involved in the legislation.

Considering the resource-raising advantages of private economic interest
groups and the resource and organizational disadvantages of public noneconomic
interest groups, these facts skew the less controversial or less visible decisions to the
advantage of private economic interests. It is estimated that in excess of 70 percent
of the bills Congress votes on are not even contested by two parties or interests on
opposite sides of the issue.10

Crisis and Reforms

Although policy for the most part is developed and redeveloped in an incremental
fashion, the system does seem to respond reasonably well to a crisis or an emergency.
The bargaining, compromise, and give-and-take that characterize the policy-making
process during normal times can be suspended during times of crisis. A notable
example is the Great Depression. During Franklin Roosevelt’s first 100 days in
office, the policy process was streamlined both by a sense of urgency and through
the force of Roosevelt’s personality. Later, due largely to congressional fears that
U.S. forces had been attacked in Vietnam, President Lyndon Johnson was able to
secure swift passage of the Tonkin Gulf Resolution. More recently, in response
to the terrorism tragedies of September 11, 2001, President George W. Bush was
able to create a new cabinet-level agency virtually overnight. The new Office of
Homeland Security was the first agency to be created since the Department of
Veterans’ Affairs in 1989. Congress gave the president unusual discretion and
support with little debate. Clearly, under such circumstances, things can and do get
done more quickly and with much less compromise.

Similarly, we have every reason to believe the policy-making system will
respond to urgent environmental problems perceived to require immediate
action. The Three Mile Island nuclear reactor accident resulted in relatively swift
change in the policies of the Nuclear Regulatory Commission. Much of the major
environmental legislation passed in the early 1970s in the United States represented
a significant departure from past environmental policies. This was due, in part, to
a sudden frenzy of public support on a myriad of environmental issues. Not only
were academics and authors proclaiming the end of civilization as we know it, but the first images of the Earth from space gave us all an acute sense of smallness and finiteness. When Earth Day hit in 1970, followed by the Stockholm Conference in 1972, the momentum of the environmental movement was in full swing and could not be accommodated in the regular incremental fashion.

Although the system can and does react to crisis or emergency situations, most environmental problems do not present themselves as urgent. The discovery of the toxic waste site in Love Canal, New York, and related health effects in that community surely added impetus to the passage of the Comprehensive Environmental Response, Compensation, and Liability Act, otherwise known as the Superfund, in 1980. Nevertheless, the Superfund, in its passage and undoubtedly in its implementation, has followed the incremental process that typifies the policy formation process.

Many environmental problems, such as global warming and the greenhouse effect, the discovery of polluted groundwater, the depletion of fossil fuel resources, and the pollution of a river basin, progress slowly without noticeable or dramatic change from one month to the next. This slow progression is ideally suited to incremental decision making and also does not disrupt or challenge the short-term bias of elected policy makers or the ideological bias toward growth and development. In short, environmental problems often lend themselves to incremental solutions.

Unfortunately, the slow, cumulative nature of many environmental problems means these issues are not perceived as urgent by the public or by policy makers. Hydrologists and water resource managers, for example, may be concerned about declining groundwater levels and that farmers are ceasing to irrigate in parts of the Southwest, but to many in the public and to many policy makers, these are viewed as unfortunate yet isolated or unrelated incidents. And the news that another lake in Canada has been found to be devoid of life may spark concern among the public as well as policy makers, but such news is unlikely to provide the necessary incentive for effective action to deal with acid rain.

As we will read later, nonincremental policy options are available today that may provide long-term and inexpensive solutions to many environmental problems. These options may not be available in the future when it becomes politically feasible to act on environmental issues in a comprehensive manner. It may be that environmental policy in some policy areas is doomed to failure if the system is unable to respond appropriately or in time. However, as we have seen under FDR, Johnson, Nixon, and G.W. Bush, nonincremental change can occur under the right circumstances, notably either when the public or relevant interest groups almost unilaterally get behind an issue or in times of crisis.

**THE POLITICAL SETTING**

**Pluralism**

Although some scholars would disagree, for purposes of our discussion in this chapter, we will assume that the United States is, in many respects, a pluralist democracy.\(^{11}\) (There are many different ways to examine public policy. For a description of several approaches, see Appendix A at the end of this book.) An assumption of pluralism is that public policy is determined, in large part, through
the bargaining, compromise, and negotiating of various interest groups in society. Although group activity is not the only explanatory variable in determining public policy, according to most scholars who have studied the policy-making process, it is a very important part. As V.O. Key wrote, “[A]t bottom, group interests are the animating forces in the political process; an understanding of American politics requires a knowledge of the chief interests and their stake in public policy.”

The notion that groups compete over the nature of public policy is as old as the republic. James Madison’s analysis of interest groups (which he called “factions”) in essay 10 of *The Federalist Papers* remains, in the words of political scientist Jeffrey Berry, “the foundation of American political theory on interest groups.” Madison defined a faction as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” The tendency toward faction, according to Madison, was “in the nature of man” and would lead people, when possible, “much more disposed to vex and oppress each other than to co-operate for the common good.” Madison feared that a tyrannical faction would come to dominate others in society but felt a republic form of government (incorporating checks and balances), combined with the many and diverse interests competing with each other in a large country such as the United States, was good insurance against the dominance of one faction.

The contemporary focus of study on interest groups was first emphasized by sociologist Arthur Bentley in *The Process of Government*, published in 1908. Bentley argued that “there are no political phenomena except group phenomena” and that politics “reflects, represents, the underlying groups.”

Bentley’s work appeared at a time when the study of government was oriented toward formal institutions; hence, scholars were not quick to adopt a group approach to politics. During the 1920s and 1930s, several important works contributed to the development of pluralist theory. These were primarily case studies providing insights into interest group activity. However, perhaps the biggest boost for pluralist theory was the publication of *The Governmental Process* by David Truman in 1951. Group activity for Truman, particularly interest groups, had a significant impact on policy. “[Interest groups] are so intimately related to the daily functioning of those constitutionalized groups—legislature, chief executives, administrative agencies, and even courts—that make up the institution of government that the latter cannot adequately be described if these relationships are not recognized as the weft of the fabric.”

Since the publication of *The Governmental Process*, a number of political scientists have expanded on, defended, and criticized pluralist theory. In *Who Governs?* a study of political influence in New Haven, Connecticut, Robert Dahl confirmed and gave a boost to pluralist theory when he found that policies in New Haven were influenced by different groups of people acting in different policy areas. Other scholars, such as Terry Moe and Zachary Smith, have examined the organization, incentives, and behavior of interest groups. Among the critics, Jack Walker and Theodore Lowi have argued that pluralism maintains the status quo by making it more difficult for newer organized groups to influence the policy-making process. The greatest weakness of pluralism, as a normative
theory of politics, is in the failure of all groups and interests to be represented in the bargaining and policy-making process. In environmental policy, for example, how are the interests of your grandchildren represented in the process? What about the interests of inanimate objects such as trees? In addition, even when these interests are represented by “public interest” groups, these groups are, as we shall see, at a serious disadvantage vis-à-vis economic interests when competing in the policy formation and implementation arena. However, just because pluralism is not useful as a normative blueprint for the policy-making process does not mean it is not valuable as a descriptive tool. Although the behavior of interest groups is not the sole force influencing the policy-making process, groups and group activity do have a significant impact on the policy outputs of American democracy.

Group Types  A distinction can be made between types of interest groups by examining their goals and the resources they have available to achieve those goals. Although not all interest groups fall into one of the following two categories, the distinction sharpens our analysis and enables us to better understand the advantages of some groups in participating in the policy-making process.

The first type of group is the “private economic” interest group. This is the kind of organization we typically think of when we hear the term interest group. Characteristically, private economic interest groups pursue noncollective benefits, or benefits the group seeks for its membership that are not available to society at large. Examples of private economic interest groups would include associations of oil and gas producers, fishers, cattle or timber producers, and any organization that regulates a business or profession and simultaneously attempts to influence government policy.

The second type of group is the “public noneconomic” interest group, which pursues collective benefits that cannot be withheld from society at large. Examples of such benefits include clean air, clean water, and a strong national defense. Examples of such groups include most environmental and conservation organizations, consumer organizations, and associations that are involved in nonspecific foreign policy or defense issues.

In contrast to the private economic interest group leader, the leader of a public noneconomic interest group, when soliciting contributions, is unable to hold out any specific individual advantage for members who participate through their contributions. Some have argued, therefore, that it is illogical for members of such groups to contribute or participate in the activities of noncollective groups. When soliciting contributions for a public noneconomic interest group, the group leader might hold out the benefits of an expanded national park system or a coastline free of oil platforms; however, the rational member of a public noneconomic interest group quickly realizes that these potential benefits may be available whether or not he or she decides to contribute to the group. This is a major fund-raising disadvantage for public noneconomic interest groups.

By virtue of their organization and the incentives operating on members and leadership, private economic interest groups have several advantages when attempting to influence the policy-making process compared with public noneconomic interest groups. First, private economic interest groups are advantaged in their fund-raising ability. Given the noncollective nature of their benefits, private
economic interest groups can offer benefits to members in return for their support. For example, the head of a state oil and gas association can solicit contributions from their membership with promises the money will be used to lobby for additional taxes on imported oil. The relationship between the contribution and the potential benefit is straightforward.

The difference between public and private interest groups in their ability to raise money is important. Although groups have many different types of resources and these resources have varying utility for influencing the policy-making process, money is a very important part of the process, due primarily to the role it can play in campaign contributions and public relations.

**Interest Groups and the Policy Cycle** In describing the policy-making process, a number of scholars have identified stages through which policies pass. Characterizations of the policy-making process almost always describe the process as (1) agenda setting, or having an item up for the serious consideration of policy makers; (2) policy making, or having action taken on the item; and (3) implementation, or the carrying out of a given policy.

The “agenda” is commonly defined as the listing of items for governmental action. Agenda setting is obviously a prerequisite to any policy action. Proficiency at agenda setting means the ability to get your issue on the list of items to be taken up by policy makers.

Policy making in government involves the desired action or inaction on an item that has been placed on the public agenda. It can take place in any one of the three branches of government. It is important to know that inaction, or the continuation of the status quo, is also a form of policy making. As we will see later, proficiency at policy making requires different skills and resources depending on the type of policy involved and the location of decision-making authority over the policy issue.

Policy implementation is, in large part, the purview of the bureaucracy. Administrators have discretion in implementing programs. Discretion is power. Even seemingly minor administrative decisions can have a significant impact on how a general legislative mandate is translated into governmental action. For example, the decision about when and where to hold public hearings can have a significant impact on who participates in those hearings. Hearings conducted by the U.S. Forest Service for its first Roadless Area Review and Evaluation (RARE 1) to determine, among other things, the extent and location of wilderness areas on Forest Service lands were held in the Pacific Northwest. The hearings were often held close or adjacent to logging communities, and large numbers of loggers participated in the hearing process. This was significant in that the RARE 1 hearings in the region generated an abundance of testimony against establishing additional wilderness areas.

Agenda setting, policy making, and implementation are all important in different ways. For a major public policy such as the Clean Water Act to be successful, there must be success at each stage of the policy process. For example, water must become an issue that policy makers, in this case the U.S. Congress, are interested in addressing; the interested parties and their representatives in Congress must be able to agree on a policy; and some organization, such as the EPA,
have the incentives and resources to carry out the policy. Failure at any one of these stages in the policy-making process will prevent the objectives of the policy from being realized.

Like any organization, interest groups vary significantly in terms of their size, organization, assets, and other measures. Some groups have combinations of attributes or resources that enable them to participate effectively in any stage of the policy-making process. For example, the oil industry in the United States in the 1950s and 1960s and their associated groups and supporters were influential enough to have most of their policy objectives dealt with favorably in the U.S. Congress.26

The resources that are useful for influencing a particular stage of the policy-making process vary. For example, bringing an issue to the attention of policy makers and thereby getting it on the public agenda requires a different set of resources than having the issue acted upon favorably. Hence, different groups, based on the types of resources they possess, have different levels of strength and influence when attempting to have an impact on a particular stage of the policy process.

The ability to attract media attention is one important preliminary step in the agenda-setting process. By virtue of their strategy, tactics, or available resources, some groups are more likely to use the media for getting their items on the public agenda. Media managers, particularly of broadcast media, have incentives to produce salable, interesting, attention-attracting news. Some groups pursue policy goals that are better suited for satisfying that need. For example, the news that community drinking water supplies are threatened by toxic substances is much more likely to be reported than the release of a study showing that toxic residues in water are below U.S. public health standards.

Tactics that are conducive to attracting media attention include disclosure of the unusual, frightening, or bizarre. A case in point was when an antinuclear activist jumped into Hilo Bay in front of a U.S. Navy nuclear destroyer to protest nuclear weaponry in the early 1980s. Another attention-attracting tactic is protest activities, such as demonstrations or picketing. In addition, the perception that a group is an “underdog” fighting the “big boys” or “the establishment” will attract attention.

In each of these cases, the group using a particular media-attracting tactic is likely to lack resources necessary for more conventional means of getting their policy issue on the public agenda. An example of conventional agenda setting in the U.S. Congress would be to have a sympathetic congressperson introduce a bill and lobby on the bill’s behalf in the hope that it is passed by Congress and signed by the president.

Accordingly, groups that are influential and are able to get their items on the public agenda are those that either can attract the attention of the media or possess the conventional resources necessary for influencing the policy-making stage of the policy formation process. Environmental organizations are more likely to use media-grabbing tactics than are organizations that have the resources for influencing the other stages of the policy-making process.27 Therefore, if an organization is successful in influencing the policy-making stage of the process, then the group is also likely to have the resources necessary for influencing the agenda-setting stage of the process.
Group Resources and Policy Making  The relationship between group resources and interest group influence is important within each of the three branches of government and at every stage of the policy process. Policy making means many different things to different people and can be difficult to define. To illustrate, when the Organization of Petroleum Exporting Countries (OPEC) decides to raise the target price for its oil, there may be various related consequences that affect the world’s economy and environment. Consequently, it is often difficult to distinguish between what is strictly public policy making and what is private sector policy making. Here, however, we limit our discussion to policy making traditionally defined as the activity that takes place in legislative bodies, the executive branch, and the judicial systems. It will be useful for you to remember, however, that there is a close relationship between what goes on in the private sector and what ultimately happens in the public policy-making arena.

The Regulators  
Although the laws and agencies that govern environmental management are discussed throughout the text, we identify here the major participants in the process and present an overview of one of the most significant environmental laws in the United States: the NEPA.

In 1969, Congress passed the NEPA. Although relatively simple and straightforward, NEPA eventually became the most litigated of all federal environmental statutes. Unlike other federal legislation in the environmental area, NEPA exerted control over federal agencies themselves in an attempt to make them more responsive to environmental concerns and values. (For the full text of the NEPA, see Appendix B at the end of this book.)  

In the opening section of the act, NEPA declares its purpose as follows:

The Congress, recognizing the profound impact of man’s activity on the interrelationships of all components of the natural environment, particularly the profound influence of population growth … industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares it is the continuing policy of the federal government … to use all practicable means and measures … in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.  

To reinforce these lofty goals, “action forcing” procedures were developed in Section 102 of the act.29 The most important requirement of NEPA was that an “environmental impact statement,” or EIS, accompany “major federal actions significantly affecting the human environment.”30 NEPA directed that an EIS contain the environmental impact of a proposed federal action, any adverse environmental effects that cannot be avoided should the federal action proposed be implemented, any alternative to the proposed action, and any irreversible commitments of resources that an action would involve should it be implemented.
NEPA also established the Council on Environmental Quality (CEQ) within the executive branch. Although the primary purpose of the CEQ was to advise the president about environmental matters, the CEQ became influential by developing regulations governing the EIS process and its implementation by federal agencies. Although the CEQ could not legally stop a proposed agency action that it deemed inappropriate, the council could delay the action by asking for reassessments. The U.S. Supreme Court has recognized the authority of the CEQ in developing regulations for the implementation of NEPA. During the administrations of Ronald Reagan and George H.W. Bush, environmentalists charged that the CEQ had been stripped of its power. President Reagan wanted to eliminate the CEQ, and during both the Reagan and the George H.W. Bush administrations, funding for CEQ operations was significantly reduced. In a similar vein, President Clinton, in the first month of his presidency, announced his intention to abolish the CEQ and create a White House Office on Environmental Policy (OEP). The new office was designed to strengthen the hand of Vice President Al Gore in shaping environmental policy, thus signaling the Clinton administration’s intentions to give environmental issues priority in the executive branch. Although the CEQ was not abolished (the Clinton administration learned that presidents cannot unilaterally eliminate statutorily created offices), the OEP was merged in 1994 with the CEQ in conjunction with plans to elevate the EPA to cabinet status through legislation. Although the EPA legislation never passed, the office created by merger of the CEQ and OEP continues to advise the president on matters of environmental policy.

Under President George W. Bush, the basic mission of the CEQ remained the same. The CEQ was charged with the responsibility of coordinating federal environmental efforts between other federal agencies and the White House and also served in an advisory position to develop environmental policies and initiatives. However, there were major changes between the Clinton administration and that of Bush. The Bush administration severed the ties between the CEQ and OEP, retaining the CEQ as the dominant environmental advisory council to the president. After Bush’s election, the OEP, now the Office of Environmental Protection and Compliance (OEP), shifted to the U.S. Department of the Interior. In addition to the organizational changes, in 2001 Bush appointed James L. Connaughton as the new Chairman of the CEQ. The Connaughton appointment was criticized at the time by environmentalists because Connaughton previously represented industrial polluters lobbying for and working with companies such as General Electric and ARCO. In 2008, several environmental groups recommended that the CEQ hire four full-time employees in order to support the responsibilities the CEQ holds under NEPA and that CEQ staffing return to the 1990 levels.

The EIS provisions of NEPA are binding on all federal agencies. Early agency reactions to these provisions were mixed. Some agencies were quick to adopt a thorough environmental impact statement process, whereas others were slow to respond, as evidenced by numerous lawsuits forcing agency action. Consequently, much of what NEPA has come to mean in practical terms has been decided by the courts.

NEPA requires that an EIS be circulated among state, local, and federal agencies as well as the public. The act itself has no enforcement provisions; however, the courts, through a number of decisions, have provided enforcement mechanisms.
Two bills introduced in 1969, House Resolution 6750, introduced by Congressman John D. Dingell, and Senate Bill 1075, introduced by Senator Henry Jackson, became the basis of NEPA. In a House–Senate conference committee, the final version of NEPA emerged with an important component deleted. The Senate bill had provided that “[E]ach person has a fundamental and inalienable right to a healthful environment . . .”. In the final version, these words were changed to, “[E]ach person should enjoy a healthful environment.” The inclusion of the original language might have given citizens legally enforceable environmental rights.

The conference report on NEPA indicated the intent of Congress when it stated, “[A]ll federal agencies shall comply with the provisions of Section 102 to the fullest extent possible, . . . [T]hus it is the intent of the conferees that the provision, to the fullest extent possible, shall not be used by any federal agency as a means of avoiding compliance with the directives set out in Section 102.” This report suggests that Congress had intended NEPA to be interpreted as an act that could affect the substance of agency decisions and that it was not intended to be only a procedural requirement.

Three major questions have been before the courts in NEPA litigation: (1) the determination of whether an EIS is necessary, (2) finding that it is, what the EIS should contain, and (3) when it should be prepared. Concerning the first issue, according to NEPA, an EIS is required when a federal action is major and has a significant environmental impact. The cases revolve around determining what constitutes “major” and what constitutes a “significant environmental impact.” An action is a federal action if a federal agency has some control over that action or if the action is carried out by the agency itself. For example, as the federal government is involved in licensing nuclear power plants, an EIS is required for their construction. The determination of whether or not an act is “major” generally involves any substantial commitment by the government of money or other resources.

While Supreme Court decisions over the nature of major federal actions have been fairly clear, more activity has focused on determining what constitutes “significant environmental impact.” First, according to NEPA, the environment does not refer to just woods and streams. The language of NEPA requires that the public in all locations be provided “safe, healthful, productive, and aesthetically and culturally pleasing surroundings.”

To illustrate, a New York federal court found that the construction of a new jail in downtown New York involved an impact significant enough to require an EIS. In another case, the Supreme Court found that “[E]ffects on human health can be recognizable under NEPA, and that human health may include psychological health.”

To determine whether or not an impact is “significant,” a two-step process has been developed that involves assessing the degree of change from the current use of land and the total quantity of the impact involved. The EIS process starts at the time of proposal for a federal action. In 1975, the U.S. Supreme Court found that “[W]here an agency initiates federal action by publishing a proposal and then holding hearings on the proposal, the statute would appear to require that an impact statement be included in the proposal and be considered at the hearing.”
The first step in the EIS process is the preparation of an “environmental assessment,” or EA. If no significant impact is found, then the agency is required to make a “finding of no significant impact,” or FONSI. In the cases where the impact is found to be significant, the second step is to prepare an EIS.

When an EIS is created, it must take into consideration the environmental impacts of the total project, not just one particular component of that project. For example, an Atomic Energy Commission (AEC) EIS for a single breeder reactor was found to be inadequate, and a federal circuit court held that an EIS was necessary to cover the entire breeder reactor program.\textsuperscript{45}

Writing the EIS

The elements that need to be included in the EIS vary from situation to situation and should be determined through the scoping process. Scoping, as the name suggests, determines the scope and breadth of an EIS. The lead agency preparing an EIS is responsible for identifying members of the public and other agencies that may have an interest or stake in the project under consideration. Notices are mailed, posted, and published describing the proposed action and requesting input by a certain date. The discovery process is designed to determine the priorities in an EIS. The fundamental questions include significant environmental impacts of a project, the geographic or physical parameters of the study areas, possible alternatives to the proposed action, and any other activity or actions in the study area or any other relevant factors that might impact the project.

The components of a completed EIS will depend significantly on the nature of the proposed project. Clearly, a project located on a shoreline, for example, would entail considerations different from those of a project located in an urban area. A well-known source book used by environmental professionals for EIS preparation divides the components of an EIS into two categories: the natural environment and the built environment. Table 4-1 identifies what constitutes each category.\textsuperscript{46}

The items in the table do not all have to be addressed in the EIS. Several caveats and qualifications could be added to this list. For example, the courts have made it clear that agencies need to proceed with the EIS process even when they lack the complete information necessary to fully assess the impacts of a project.\textsuperscript{47} In addition, environmental impact statements need to include the direct effects of a proposed action. This part is clear, but more significantly (and more problematically), the EIS should also contain indirect impacts that are reasonably foreseeable.\textsuperscript{48} There are limits, however. Though an agency is required to include in the EIS any information necessary for a reasoned decision, it is not required to obtain that information when the cost is exorbitant.\textsuperscript{49} If it is determined that some data are too costly or difficult to obtain, the EIS must indicate what is missing and evaluate its relevance to any reasonably foreseeable adverse impacts.

Generally speaking, an EIS prepared under NEPA will contain the following:

Contents of an EIS

1. Cover sheet.
2. Executive summary, to describe in sufficient detail (10–15 pages) the critical factors of the EIS, so that the reader can become familiar with the proposed project or action and its net effects, the alternatives and major conclusions.
3. Table of contents.
TABLE 4-1

Components of an EIS

<table>
<thead>
<tr>
<th>Natural Environment</th>
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</thead>
<tbody>
<tr>
<td><strong>Earth:</strong> Geology, Soils, Topography, Unique physical features, Erosion</td>
</tr>
<tr>
<td><strong>Air:</strong> Air Quality, Odor</td>
</tr>
<tr>
<td><strong>Climate:</strong> Surface water improvement/quality/quantity; Run off/absorption; Floods; Groundwater movement/quantity/quality</td>
</tr>
<tr>
<td><strong>Water:</strong> Unique or sensitive (threatened or endangered species); Number or diversity of species</td>
</tr>
<tr>
<td><strong>Public Water Sources:</strong> Unique or sensitive (threatened or endangered species); Habitat for numbers or diversity of species; Fish/wildlife migration routes</td>
</tr>
<tr>
<td><strong>Plants:</strong> Amount required, rate of use, efficiency source/availability; Nonrenewable resources; Conservation and renewable resources</td>
</tr>
<tr>
<td><strong>Animals:</strong></td>
</tr>
<tr>
<td><strong>Energy and Natural Resources:</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Built Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Environmental Health:</strong> Risk of explosion; Releases or potential releases to the environment affecting public health such as toxic or hazardous materials</td>
</tr>
<tr>
<td><strong>Land and Shoreline Use:</strong> Relationship to existing land use plans</td>
</tr>
<tr>
<td><strong>Housing:</strong></td>
</tr>
<tr>
<td><strong>Light and Glare:</strong></td>
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<tr>
<td><strong>Aesthetics:</strong></td>
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<tr>
<td><strong>Recreation:</strong></td>
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<tr>
<td><strong>Historic and Cultural Preservation:</strong></td>
</tr>
<tr>
<td><strong>Transportation:</strong> Transportation systems; Vehicular traffic waterborne, rail, and air traffic; Parking movement/circulation of people or goods; Traffic hazards</td>
</tr>
<tr>
<td><strong>Public Services/Utilities:</strong> Fire, police, schools, parks or other recreational facilities maintenance, communications, water supply, storm water, sewer, solid waste</td>
</tr>
</tbody>
</table>

4. Purpose and need for the action.
5. Alternatives considered by the applicant (proponent), including the do-nothing alternative. The applicants (proponents) preferred alternative shall be identified. There must be a balanced description of each alternative.
6. The affected environment. The affected environment on which the evaluation of each alternative was based to include such matters as hydrology, geology, air quality, noise, biology, socio-economics, energy, land use, archeology, and history. The total impacts of each alternative shall be presented for easy comparison.
7. Coordination. Full consideration must be given to the objections and suggestions made by local, state, and federal agencies, by individual citizens and environment groups. The results of public participation through public meetings or scoping meetings shall also be included. A list of persons, agencies, and organizations, to whom copies of the EIS have been sent shall be included.
8. List of preparers of the EIS and their qualifications. Persons responsible for a particular analysis shall be identified.
9. Index, commensurate with the complexity of the EIS.
10. Appendices.
11. Material incorporated into an EIS by reference shall be included in a supplemental information document, available for review on request.
12. The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic, and social impacts.
13. The text of a final EIS shall normally be less than 150 pages, and for proposals of unusual scope or complexity, shall normally be less than 300 pages.
14. EISs shall be written in plain language with readily understood graphics.  

The preceding paragraphs describe the technical characteristics of an EIS. Such considerations, well known to people in and out of government who prepare EISs, will satisfy the procedural requirements of NEPA. However, they may, and often do, depending how the EIS is prepared, lack any substantive force.

Although NEPA contains both procedural requirements (i.e., the EIS) and a number of substantive recommendations (e.g., maintaining a clean and healthy environment for all Americans), the courts have not enforced any of the substantive language. In effect this means that once the procedures have been followed and the EIS prepared, an agency may then go forward with its plans regardless of the negative impacts these plans may actually have on the environment. As Matt Lindstrom and Zachary Smith have written in their history and analysis of NEPA, *The National Environmental Policy Act: Promises Unfulfilled*,

The executive and judicial responsibilities for implementing, enforcing, and interpreting NEPA’s broad policy objectives are where NEPA’s execution has faltered. Rather than recognizing the comprehensive core and the long-term view of NEPA, most presidents, courts, and agencies have taken a very narrow and myopic view in implementing NEPA.  

This is not to suggest the EIS process is pointless. The mere identification of environmental problems, sometimes coupled with public reaction to these problems, has caused many government plans to be changed or dropped.

**Environmental Administration** In the United States, all three levels of government—national, state, and local—are involved in some capacity in environmental management. Most states have several agencies that are involved in environmental protection. State agencies may go under the name of the EPA or may be identified by function such as Department of Health, Department of Water Resources, or Water Quality Control. At the local level, there are various air and water quality management districts in cities and counties. Larger cities often have environmental quality control departments or, more often, health or public service agencies that have some responsibility for environmental quality control. Also, on the local level, there are various special districts or single-purpose districts that have responsibility over environmental quality control. Special districts are local government units organized to perform one or a limited number of functions, such as park and recreation development or mosquito abatement.
Preferences differ as to the appropriate level of government for the development and implementation of environmental regulations. There is no “correct” level of government for environmental regulation, and the appropriate regulatory authority may vary depending on the issue and the problem. However, certain interests have preferences for the location of regulatory authority. In addition, certain environmental problems have traditionally been handled in one level of government. For example, land-use planning, with minor exceptions, has been a local government concern in the United States. On the national level, nuclear power, again with minor exceptions, has primarily been the responsibility of the federal government.

Interest groups prefer that decision making over public policy be made in an arena where they feel they have the most influence. For example, in a state like Hawaii, in which a particular agricultural activity plays a dominant role in the state’s economy, agricultural interests might prefer that pesticide regulation over pineapple and sugar cane be centered in the state government. In another example, the coal mining industry in West Virginia prefers strip mine reclamation to be on the state level.

On the other hand, major manufacturing companies with nationwide distribution systems often prefer environmental regulations to be implemented on the national level. The consistency and uniformity possible through national regulation costs the companies less than several different types of regulation in different states. In the face of multiple and sometimes conflicting state auto emission requirements, the automobile industry preferred the establishment of national standards to avoid the necessity of producing numerous types of cars for sale in states with differing air pollution control laws. In the late 1980s, refrigerator manufacturers lobbied for national energy efficiency guidelines to head off numerous and potentially conflicting guidelines being considered in state legislatures.

Environmental Protection Agency  The EPA has the primary responsibility for enforcing environmental regulations in the United States. President Richard Nixon, through an executive order in 1970, reorganized environmental administration in the United States, grouping together numerous programs throughout the federal bureaucracy under the direction of the EPA. “[The EPA is] designed to serve as the public’s advocate for a livable environment.”\(^52\) The agency engages in research, the setting of standards, and monitoring and supporting similar activities on the state and local level.

The EPA is basically organized around programs over which Congress has given it enforcement authority. The agency is headed by an administrator with nine assistant administrators. There is also a general counsel, an inspector general, and ten regional offices. The regional offices are the primary contact points for the agency with state and local officials. Administrative units with substantive policy responsibilities include divisions of water, solid waste, air and radiation, pesticides and toxic substances, and research and development. One of the potential problems with this type of organization is that it ignores the interrelationship of environmental problems. For example, the water division might not interrelate with the solid waste division. The agency refers to the overlapping of related problems as “multimedia” management. Although the term media correctly refers to the affected environmental media such as air, water, and land, the agency uses
the term to refer to “media programs” or the major statutory programs under the administration’s jurisdiction. As former EPA administrator Lee Thomas described multimedia solutions, “[Y]ou look at a problem on a geographic basis instead of pollution and air, water, or land. That way, you don’t just pull the pollution out of the air and flush it into the water, or pull it out of the water and dump it out onto the land.”

Enforcement of environmental regulations within the EPA is the responsibility of the assistant administrator for enforcement and compliance, which includes an office of criminal enforcement. Each of the major program areas—for example, water, pesticides, and toxic substances—also has an enforcement office and/or an office of compliance monitoring. The EPA has special agents who work within the agency’s Office of Criminal Enforcement. These agents are required to have at least six years of experience investigating organized crime, white-collar crime, or major felonies. Coming to the agency from police departments, the FBI, and the Treasury Department, EPA agents have jobs very much like the law enforcement agencies from which they come—serving warrants, collecting evidence, and occasionally evading gunfire.

The EPA was criticized for being lax in its enforcement efforts during the Reagan administration. For example, the Federal Water Pollution Control Act Amendments of 1972 directed the EPA to develop regulations to prohibit the discharge of toxic pollutants. During the three years that followed the passage of the 1972 Act, the EPA developed effluent standards for only six pollutants. By November 1987, the EPA had published standards for 63 toxic pollutants discharged by organic chemical plants, but it was not until 1994 that the EPA proposed discharge limitations for Pesticide Formulating, Packaging and Repackaging (PFPR) facilities. The so-called Pollution Prevention, or P2, Guidelines are strictly voluntary suggestions for the pesticide industry and do not invoke mandatory regulation.

In 1986 a U.S. General Accounting Office (GAO) report criticized EPA enforcement of the Superfund as being unsystematic and uncoordinated and stated that enforcement decisions were not uniform between the EPA regions or even within the same region. Representative James Florio, who requested the GAO report, remarked that EPA management of the Superfund was characterized by “delay after delay with no effective enforcement.” Another GAO study found in 1983 that 3,400, or about half, of the nation’s major manufacturing plants had broken the law for discharging pollutants into water for at least six months of the previous year.

EPA enforcement of its regulations has at times been motivated as much by political considerations as by any real intention to elicit compliance. For instance, in 1987 the EPA imposed construction limits on major new sources of pollution in 10 areas that were not in compliance with the Clean Air Act. EPA administrator Lee Thomas, anticipating the public reaction, commented at the time, “I think there will be a real uproar.” The EPA’s action was seen as an attempt to put pressure on Congress to amend the law. Representative Henry Waxman from Los Angeles, one of the affected areas, remarked, “I think what the EPA is doing is trying to shift the burden to Congress to deal with the Clean Air Act. I find this somewhat unfortunate because for the last six years they’ve failed to use the law to force the kind of reductions in air pollution that might have been achieved.”
The politics of enforcement has always been an issue in EPA management. The EPA has enjoyed at various times and to varying degrees the support of both political parties. As an attorney with extensive experience representing clients before the EPA wrote, “[B]oth Republicans and Democrats have enforced the environmental statutes, requested and obtained additional statutory authority, and issued new regulatory controls to improve the environment. . . . The differences between administrations in the environmental enforcement area are merely of degree.”60

Additionally, as the former EPA administrator during the Carter administration remarked, the EPA has “always enjoyed a strong degree of bi-partisan support.”61

The first administrator of the EPA was William Ruckelshaus, a former Indiana politician and attorney for the U.S. Justice Department. Ruckelshaus quickly built a reputation for himself and the EPA as being aggressive in the enforcement of environmental statutes. Although often at odds with the EPA, President Nixon wanted to draw attention to the environmental activities of his administration in an effort to prevent potential Democratic presidential nominee Edmund Muskie from using the issue in the 1972 elections. Within weeks after assuming the administrator’s job, Ruckelshaus moved against Atlanta, Detroit, and Cleveland, threatening federal court action to prevent the discharge of untreated sewage. These cities all had Democratic mayors. It was part of Ruckelshaus’s early strategy, and the EPA’s strategy through most of its institutional history, to go after highly visible polluters in an effort to generate publicity. Early in his term, Ruckelshaus took action against Republic Steel, Jones and Laughlin, and the Kennebec River Pulp and Paper Company.62 As a press officer for the EPA at the time of Ruckelshaus’s tenure remarked, “[Ruckelshaus was] anxious to bring the big polluters into line, [so] he used the press to instill fear in their hearts by holding up a few of them as bad examples.”63

Throughout the 1970s, the EPA continued to enjoy bipartisan support and a reputation for strong enforcement of environmental statutes. The Reagan administration brought a new approach to the management of the EPA, however. Reagan’s first EPA administrator, Anne Burford, sought to ease the enforcement of environmental laws and place more emphasis on voluntary compliance. Uncharacteristic of typical agency behavior, Burford sought smaller, not larger, appropriations for her agency, and her main priority was relief for regulated industries. During the first two years of the Reagan administration, the EPA’s enforcement budget was cut by 45 percent. The number of cases referred by the EPA to the Department of Justice for prosecution had hovered at about 200 per year prior to the Reagan administration, dropping to 50 during the first year of his administration.

The journal of the Natural Resources Defense Council editorialized that “[A] bout all that has mattered has been the sight, smell, and taste of politics. Although the President failed in his promise to weaken environmental laws, through rhetoric, appointments, and budget constraints, his administration has succeeded in blunting their effectiveness.”64 Appointments to major offices within the EPA, like other environmental appointments during the Reagan administration, often came directly from the regulated industries. For example, the first general counsel of the EPA was formerly a lawyer for Exxon Corporation. Burford’s chief of staff was formerly with Johns-Manville Corporation (a building material manufacturer),
and the assistant administrator in charge of air quality was the former lobbyist for Crown Zellerbach Corporation (a paper and pulp manufacturer).  

The emphasis on voluntary compliance and the primacy of politics in the EPA created an atmosphere within the agency that was conducive to political abuses of environmental administration. The head of the Superfund during Burford’s tenure at the EPA was Rita Lavelle, a former campaign worker for President Reagan when he was running for governor of California. In 1983, Lavelle was discovered to have used her office to further the chances of Republican congressional candidates in the 1982 elections. Lavelle distributed Superfund cleanup monies in ways that were seen as politically advantageous for Republicans.  

The combination of Lavelle’s problems and accusations of politicized environmental enforcement leveled against Burford and the EPA generally led to a great deal of turmoil within the agency early in 1983. According to agency officials, the EPA was “demoralized and virtually inert.” Both EPA administrator Burford and Superfund administrator Lavelle were forced to leave the EPA in March 1983. Lavelle was accused of perjury and obstructing a congressional investigation of EPA management of the Superfund. The charge concerned when she learned her former employer, Aerojet General Corporation, had been a user of the Stringfellow Dump in California. When dismissed from office, Lavelle’s staff “went into a flurry of removing sensitive documents from her office.” In December 1983, Lavelle was convicted of perjury and sentenced to prison.

To the delight of environmentalists, Anne Burford was replaced by William Ruckelshaus. Though he had spent the previous eight years as an executive for Weyerhaeuser Corporation, environmentalists remembered the assertive action Ruckelshaus had taken as the first EPA administrator and were optimistic he would continue with that style of management. Many of the hopes of environmentalists were realized. Ruckelshaus replaced most of the EPA’s top administrators with people who had wide experience in environmental policy and science. This was in contrast to many of Burford’s inexperienced appointees.

The EPA administrator to succeed Ruckelshaus after his resignation in 1985 was Lee Thomas, former head of the Federal Emergency Management Agency (FEMA). Thomas previously assumed control of the toxic waste division of the EPA from Rita Lavelle at the time of her departure. On most issues, Thomas was much more aggressive in implementing EPA’s mandate than was administrator Burford. An article in *Business Week* magazine reported,

> Under Rita Lavelle’s stewardship, environmentalists charge, the Toxic Waste Cleanup Program was rife with political favoritism and soft on polluters. After her ouster, business leaders say the agency compensated by taking too hard a line, forcing some companies to pay the full cost of cleanups even when they were responsible for only a portion of the waste.

A change in management strategy in the EPA was evident by the increased number of enforcement actions referred from the agency to the Department of Justice for prosecution.  

During the election of 1988, George H.W. Bush promised to be the “environmental president.” His EPA administrator, William K. Reilly, pushed through the 1990 amendments to the Clean Air Act. However, at the same time, Vice President
Dan Quayle’s Council on Competitiveness and the Office of Management and Budget were working to weaken implementation of the 1990 amendments as well as other environmental regulations in the name of economic efficiency. Although the council had no statutory authority, it did have the ear of President Bush and, as such, provided a format for businesses seeking regulatory relief. The *Sierra* magazine characterized the council’s attack on the 1990 Clean Air Act Amendments as follows: “[T]he Competitiveness Council has pecked at the act ever since its passage, handing out exemptions like candy to power plant operators, automobile manufacturers, and newspaper publishers, among others.”

Early in the Clinton administration, the president moved to abolish the Council on Competitiveness. Clinton appointed Carol Browner as the new EPA administrator. Browner was a former member of Vice President Gore’s Senate staff and headed the Florida Department of Environmental Regulation. Environmental organizations generally applauded her appointment.

The 1994 elections saw a wave of dramatic shift in the control of Congress. Conservative Republicans, led by Newt Gingrich (R-Georgia), came to power with promises of government reform in general and environmental reform in particular. The mid-1990s saw the EPA become an example of what most perceive to be wrong with most federal bureaucracies. As Walter Rosenbaum, a scholar of environmental policy who spent a year working in the EPA wrote, “Despite significant accomplishments, the agency often appears to regulate in slow motion, to labor unproductively, and to write too many costly and impractical regulations after more than twenty-five years as the nation’s most important environmental regulator.” Even the White House has conceded that the EPA needs to reform its policies and organizational structure. Vice President Al Gore’s report “Re-inventing Environmental Regulation,” released in March 1995, argued for an assessment of current regulations in order to better provide for the future protection of the environment.

One of the primary problems within the EPA is the fragmented way in which it regulates various programs. As discussed, the agency tends to focus too much on specific media, without much consideration of the interrelations among media. Reformers argue that the agency needs to consolidate some of its pollution abatement programs in order to become more administratively, as well as economically, efficient. Rosenbaum suggests a greater emphasis be placed on risk assessment and benefit–cost analyses to cut costs and administrative burden, while still providing for environmental protection.

President George W. Bush’s early rejection of the Kyoto Protocol showed that his administration might not tackle serious environmental problems. Still, it seems that a Reagan-era regression is not likely to happen again soon. In September 2001, the president’s choice for top law enforcement official at the EPA, Donald Schregardus, withdrew his name after scathing criticism that he has done poorly in enforcing the environmental laws of Ohio.

Clearly, George W. Bush will not be remembered as the “environmental president.” His administration dropped pollution lawsuits against power plants that were built prior to 1970 (and do not meet Clean Air Act standards). These coal-burning plants, mostly in the Midwest, produce up to ten times more \( \text{SO}_2 \) and \( \text{NO}_x \) than modernized plants.
In addition, during Bush’s tenure the EPA received strong pressure from Vice President Cheney’s energy task force to review environmental regulations that may slow energy production or make it more expensive. To the end of his presidency, Bush continued to favor industry interests over the environment. In the President’s 2009 budget, he stated that he would continue to support “the authorization of environmentally responsible exploration and development on the coastal plain of the Arctic National Wildlife Refuge,” although many environmental groups have argued against this action due to the relatively low predicted yields of oil that the United States would stand to gain. The Bush administration also managed to heavily cut back on the Endangered Species Act, changing the ways in which costs to protect critical habitats were measured. A number of public lands policies enacted under Clinton had been overturned during Bush’s years in office: the roadless rule, which prevented roads from being constructed on almost 60 million acres of public lands; the snowmobile bans in Yellowstone and Grand Teton National Parks, which critics believe pollute the parks and cause harm to the wildlife due to excessive loud noise; and the Healthy Forests Initiative, which allowed timber companies access to national forests to conduct logging projects with broadly defined restrictions. Along with a continued failure to address global warming, the Bush administration maintained an anti-environment, pro-industry position throughout Bush’s eight years in office, with the U.S. government taking several steps backward in a number of environmental areas, the above being but several examples.

President Barack Obama appointed Lisa Jackson as director of the EPA. Jackson was seen as a leader on energy and climate issues with a successful track record as commissioner of the New Jersey EPA. In that role Jackson helped the state adopt limits on pollution that contributes to global warming, making New Jersey second only to California in its efforts to address climate change. She pushed the governor of New Jersey to support an economic stimulus plan that included roughly $500 million for energy efficiency. Jackson also shaped the state’s Energy Master Plan, which requires New Jersey to cut energy use by 20 percent by 2020 and meet 30 percent of demand through renewable energy by 2020.

After taking office, Jackson acted quickly to undo many of the Bush administration’s decisions, notably revising lax standards for carbon dioxide emissions from coal fired utility plants. One of Jackson’s first moves as EPA administrator was to declare carbon an environmental threat and hence subject to the regulation of the EPA. Within weeks, she followed that with rules requiring automakers to boost fuel economy to an average of 35.5 miles per gallon by 2016.

Overall, the EPA has organizational problems outside of its political leadership. First, even with 17,571 employees and a $10 billion budget, the EPA cannot regulate what it does not understand. For example, water quality assessment data are available for only 2088 miles or 4 percent, of the nation’s shorelines, 26 percent of rivers and streams, and 42 percent of its lakes. Furthermore, for the 540 chemicals that EPA identified as most in need of testing under the Toxic Substances Control Act, 70 chemicals have been removed due to completion of testing with roughly half still undergoing testing. However, EPA has begun a partnership with the Department of Health and Human Services to improve this area.
To better protect human and environmental health, the EPA will have to enter into more partnerships to reduce costs and duplication or contradiction of efforts across regions and states. It will need to adopt a more flexible regulatory strategy with less paperwork and fill in important gaps in data, so it fully understands what environmental problems it is dealing with. Steps it has taken include the High Production Volume Challenge Program that began in 1998 to get industry to voluntarily report the effects of the chemicals they produce. Over 400 companies have agreed to compile and report such data on 71 percent of the 2,800 high-volume chemicals produced in the United States.87

In summary, overall the politics of the EPA may best be described as bipartisan and, depending on the issue and the administration in power, aggressive on enforcement. The early Reagan administration and the George W. Bush administration were exceptions to this trend.

**Department of Interior** The Department of the Interior was established in 1849 by combining the Treasury Department’s General Land Office, the War Department’s Office of Indian Affairs (later the Bureau of Indian Affairs), the Pension Office, the Census Office. In its first year of operation, the department had a permanent work force of 10 people and a budget of $14,200.88 Today the Department of Interior has extensive responsibility over environmental and land management. The Department of Interior houses the National Park Service, the U.S. Fish and Wildlife Service, the BLM, the Minerals Management Service, the Office of Surface Mining, the U.S. Geological Survey, the Bureau of Reclamation, and the Bureau of Mines. The department is organized with a secretary and five assistant secretaries covering each of the major substantive areas within the department’s jurisdiction.

Traditionally, major Interior Department appointees, which include the secretary and the assistant secretaries, have had ties to the West and, to a lesser extent, the Midwest.89 Although the agency has known its share of scandal, the Department of the Interior and many of its component agencies, such as the National Park Service, enjoy a long institutional history and tradition and a well-developed interest group support system.90

Consistent with their western roots and the conservation goals of many of the agencies within the Department of Interior, secretaries of the Interior have, for the most part, been conservationists themselves. However, the management pattern we saw in the EPA early in the Reagan administration also occurred in the management of the Department of Interior. President Reagan’s first secretary of the interior, James Watt, came to the department from the Mountain States Legal Defense Fund, an organization that had been active in suing the Interior Department over the management of western lands. As Patricia and Robert Cahn, contributing editors to *National Parks Magazine*, wrote: “[W]ith the advent of James Watt and the Reagan administration in 1981, came the attempt to make drastic changes. The Watt team brought an anti-government ‘sagebrush rebellion’ philosophy to the department and a tilt toward development and privatization, which they aggressively sought to impose….”91

Secretary Watt put the Interior Department on a path away from conservation and toward greater development of federal resources. These activities included
the opening of the outer continental shelf to additional oil company bidding; the rapid acceleration of coal, oil, and gas leasing, including the opening of wilderness areas for mineral exploration; and an end to spending for the acquisition of additional parklands.\textsuperscript{92} Watt immediately drew criticism from environmental organizations for both his actions and his attitudes. The secretary did not shy away from controversy nor was he willing to appease environmentalists. Watt regularly referred to environmentalists as “radicals” and compared those in the environmental movement to “communists” and “Nazis.”\textsuperscript{93} A staunch conservative, Watt, in his own words, felt “[T]he contest between liberals and conservatives … is a moral battle. It is a contest over who’s right and who’s wrong.”\textsuperscript{94}

Watt’s outspokenness eventually led to his resignation. The secretary had become a political liability for Republicans in the 1984 elections, and on October 10, 1983, President Reagan accepted Watt’s resignation.\textsuperscript{95} In addition to attacks on environmentalists, Watt alienated other Interior Department constituent groups. For example, the secretary had called the department’s Bureau of Indian Affairs an example of the “failure of socialism,” and when characterizing the makeup of an Interior Department’s coal advisory board, described the board as being “well balanced,” including “a woman, a black, a Jew, and a cripple.”\textsuperscript{96} This comment turned out to be the fatal blow to his Interior Department career.

Ironically, many in the environmental movement as well as some Democratic Party leaders did not welcome Watt’s resignation. The controversy caused by Watt’s tenure helped fuel the rapid rise of membership in environmental organizations and, undoubtedly, was a catalyst for increased public support for environmental regulation. There is also some irony in the fact that Watt actually accomplished very little, in spite of his rhetoric. By drawing attention to his actions, he undermined the resource development and privatization goals he sought to achieve.

Watt was replaced by Interior Secretary William Clark, who was replaced in 1985 by Donald Hodel. Both Clark and Hodel assumed relatively low profiles and attempted, publicly at least, a more moderate form of management. Hodel, in what was seen as an attempt to either appease or divide environmentalists, suggested in 1987 that the Hetch Hetchy Dam in Yosemite National Park be torn down and the valley be allowed to revert to its natural state. It was not, however, and the drive in the Interior Department for privatization and increased development on federal lands continued throughout the Reagan and George H.W. Bush administrations.

President Clinton appointed former Arizona Governor Bruce Babbitt as his Secretary of the Interior. The Babbitt appointment was widely praised by environmental organizations. In contrast to his predecessors, Babbitt came to office with ideas of reforming western resource policies and a more balanced conservation ethic. During the spring of 1993, when Babbitt was rumored to be under consideration for appointment to the U.S. Supreme Court, environmental organizations lobbied the White House to keep the secretary at Interior, which is what happened.\textsuperscript{97}

Babbitt’s work was generally viewed as successful by environmentalists. Babbitt’s successor, George W. Bush appointee Gale Norton, was the first woman ever to hold the post. She previously worked at the Department of the Interior, overseeing endangered species and public lands legal issues for the National Park Service and the Fish and Wildlife Service before becoming the attorney general of Colorado.
Norton had some environmentalists concerned, however. She went on record saying that there was no energy or commercial use of public land with which she had a problem. As has proven common in Republican administrations, Norton made numerous appointments of people with backgrounds in the industry being regulated. Norton named Camden Toohey, a lobbyist for Arctic oil drilling, as her top official in Alaska. Other Interior appointments followed that trend. Prior to his appointment, Norton’s former Deputy Interior Secretary Griles was a lobbyist for fossil fuel interests. Interior’s solicitor under Norton, William Meyers III, sued the federal government on behalf of grazing interests; and Lynn Scarlett, the Assistant Secretary for Policy under Norton, was former president of a libertarian anti-regulation think tank. Bush’s dip into the antienvironmental lobby for key subcabinet positions speaks to his view on the environment as a collection of resources to be utilized by humans. Accordingly, the direction of Interior’s policy during the Bush/Norton years tended toward natural resource exploitation and energy development. Secretary Norton resigned in early 2006 amid an investigation into alleged wrongdoing involving former Deputy Secretary Griles and a lobbying group cofounded by Norton.

Following Secretary Gale Norton, Bush nominated Governor Dirk Kempthorne of Idaho. Kempthorne had served a six-year term in the U.S. Senate prior to his two terms as Idaho’s governor. Immediately following the announcement of Kempthorne’s nomination, conservation and environmentalist organizations issued statements condemning the nominee. The Natural Resources Defense Council pointed to the poor environmental record that Kempthorne held during his time in the Senate, as well as statistics pointing to a worsening of environmental conditions in Idaho during his two terms as governor there. While in the Senate, Kempthorne’s voting record consistently favored changing laws to make them more favorable to commercial interests. Among the laws he voted to change were the Endangered Species Act and the Safe Drinking Water Act, and he also supported opening ANWR to drilling.

Kempthorne issued a new rule for the Department of Interior that challenges Congress’s authority to prevent mining on public lands. In June 2008, Congress used its emergency power to place a three-year moratorium on uranium mining on 1 million acres near the Grand Canyon in northern Arizona. Kempthorne ignored the directive, because “it was procedurally flawed,” and issued a rule that eliminates all references to congressional authority.

Kempthorne also made changes to the Endangered Species Act, relaxed rules regarding mountaintop surface mining, and opened areas in Utah and Wyoming for oil shale exploration just before his term as secretary of the interior ended. Kempthorne also revised a 1983 rule that prohibited companies from depositing the fill from mountaintop surface mining within 100 feet of streams by allowing the new regulations to expand to all waterways. This may seem like strengthening the rule, but he added that permits could be granted for waste disposal as long as the companies show that they are at least trying to minimize waste. Additionally, he allowed companies to alter a waterway’s flow if the company agreed to repair the damages at a later date.

Both environmentalists and the business community welcomed President Obama’s appointment of Ken Salazar as Secretary of the Department of Interior.
Salazar was seen as a “centrist” sympathetic to the environmental community. Before becoming Secretary of the Interior, Salazar headed the Colorado Natural Resources Department from 1990 to 1994.

Salazar began his job by contesting the Bush administration’s rule to open up areas of Wyoming and Utah for oil shale development. After taking office, he withdrew previous solicitations for proposals to develop the sites. However, after adding some environmental safeguards and requiring companies to obtain a new permit, he allowed a second round of leases on the sites.\footnote{104}

Salazar was pressured by lawmakers and environmentalists following the BP oil crisis in the Gulf of Mexico for failing to oversee drilling in the area and being too relaxed in holding the oil industry accountable. In response to the event, Salazar issued new rules regarding well casing and cementing, blowout preventers, safety certification, emergency response, and worker training.\footnote{105}

**Bureau of Land Management**

The BLM, created in 1946 through the consolidation of the general land office and grazing services, manages 270 million acres of public lands primarily in the Far West and Alaska, as well as 300 million acres where mineral rights are owned by the federal government.\footnote{106} After farmers secured those federal lands they wanted for farming, prime forests were reserved in the U.S. Forest System, and the most spectacular or unique land was preserved in the National Park Service. What was left—those lands that no one wanted—became the responsibility of the BLM. Ironically, those “unwanted” lands are now the focus of much controversy in federal land management.

For most of the bureau’s history, the agency has been criticized, perhaps correctly, for serving the interest of the ranchers that depend on bureau grazing permits to the exclusion of other interests. As one author wrote, “[F]or the first three decades after its creation in 1946 . . . BLM did essentially what its parent bureaucracies had done: handed down land parcels, grazing leases, and mineral claims. It became a standard joke that BLM actually stood for Bureau of Livestocking and Mining.”\footnote{107}

In 1976, passage of the Federal Land Policy and Land Management Act (FLPMA) led to a change in BLM land management practices. FLPMA required the BLM to adopt the management principles of multiple use and sustainable yield that were the mandate of the Forest Service. FLPMA also directed the BLM to examine its holdings to determine which were suitable for wilderness designation, giving the agency 15 years to complete the task. The early history of the BLM had consisted largely of agency validation of the existing arrangements and preferences of established local groups.\footnote{108}

After 1976, this was less the case, and, in fact, BLM offices both in Washington and in the field are now staffed with professionals representing nontraditional values. Nevertheless, as one student of the BLM noted, “[P]rofessionals representing nontraditional values often complain that the values they represent are given short shrift in the planning process and that traditional values are still the dominant concern of many BLM managers.”\footnote{109}

Still, the BLM has been attempting to reach out beyond the traditional ranching and grazing interests of the past. For example, in its wilderness planning for the southern California desert, extensive efforts were made to work with individuals and organizations that were concerned with protection of the desert environment.
The BLM clearly has a self-interest in involving environmentalists in the agency’s decision making. The exclusion of such interests in wilderness planning could result in a backlash in Congress and potentially the removal of some lands from bureau jurisdiction. The BLM has therefore been more sensitive overall to the concerns of environmental interests since the mid-1970s.

**National Park Service**  The National Park Service, created in 1916, was directed to “promote and regulate the use of the federal areas known as national parks, monuments, and reservations … the fundamental purpose of these parks … is to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.” The inherent conflict between preservation and use is a major land-use problem for the National Park Service.

There are 391 areas within National Park Service jurisdiction, including national parks, monuments, historic sites, and recreation areas, which in total cover more than 84 million acres. Park Service holdings expanded significantly in the 1960s and 1970s, growing from 176 units in 1960 covering 26.2 million acres to 333 units covering 77 million acres by 1980. In 1980, Congress passed the Alaska National Interest Lands Conservation Act, which more than doubled the acreage of the national parks system (adding 43.6 million acres). In 2006, Clinton issued a presidential decree establishing the Grand Staircase-Escalante National Monument (adding 1.7 million acres of mostly roadless land) in southern Utah.

The growth of the park system has corresponded to growth in the number of visitations to National Park units. Due undoubtedly in part to increased visitation, the Park Service, unlike the other federal land management agencies discussed in this chapter, has enjoyed a considerable amount of public approval and support. Polls have consistently shown that close to or over 90 percent of respondents give the National Park Service a favorable rating. The primary constituencies of the National Park Service are environmentalists and recreationalists. Environmentalists are primarily concerned with the preservation aspects of Park Service goals, whereas recreationalists are concerned with the use and enjoyment of the parks.

The Park Service, like all of the other federal land management agencies studied here, has fluctuated in its management philosophies from one segment of its public constituency to another. In an effort to provide more service for the public, the Park Service has been criticized by environmentalists for having a “Disneyland” mentality. For example, in the early 1970s, the Park Service and the Music Corporation of America (the concessionaire, at that time, in Yosemite National Park) together developed a master plan for Yosemite Valley that included, among other things, a significant expansion of visitor facilities, including the building of a convention center. MCA produced and distributed promotional brochures outlining the corporation’s commitment to preserving park values. One read, “[I]t’s not just another American convention hotel…. [A]ll your worldly needs are provided for…. [T]his isn’t no man’s land or primitive wilderness. This is civilization.”

**Forest Service**  The Forest Service was created in 1905 by the transference of federal forest reserves out of the Department of the Interior and into the
Department of Agriculture. The Forest Service manages 156 natural forests, 19 national grasslands, and 17 land utilization projects in 44 states. Forest Service holdings cover 191 million acres.

The constituent groups that have had an influence on the Forest Service may be divided into two types: resource-using groups and recreation groups. The resource-using groups include timber, mining, and, to a lesser extent, grazing interests. The recreation groups include environmental organizations and organizations of hikers, hunters, and anglers. The management principle of Forest Service lands, and the BLM lands as well, is one of multiple use and sustained yield. For the Forest Service, the guiding principle is “the greatest good to the greatest number in the long run.”

Traditionally and historically, resource user groups have had the most influence within the Forest Service. The national forests have been seen as a kind of agricultural product to be used for the greatest amount of production in the furtherance of economic and consumptive use goals. This traditional orientation has worked to the advantage of and led to the growth and strength within the Forest Service of resource-using constituencies. This is not to suggest the Forest Service has ignored environmental or recreation concerns. Recreationalists in particular have been an important constituency for the Forest Service, and environmentalists have been placated somewhat by efforts of the Forest Service to create wilderness areas. These outcomes are discussed in more detail later.

Although the first Assistant Secretary of Agriculture with jurisdiction over the Forest Service during the Reagan administration was a former counsel for a lumber company, the Forest Service did not undergo the same tumultuous administrative period as the EPA and the Department of Interior went through in the early 1980s.

George W. Bush nominated Mark Rey for the top natural resources position at the Department of Agriculture, which has responsibility for the Forest Service. It would not surprise some to discover Rey spent much of his career as a timber lobbyist. Similarly, Bush nominated Mike Parker to oversee the Army Corps of Engineers, which works closely with the Forest Service and many other federal agencies in natural resource management and environmental planning. Parker was quoted as saying he could not imagine any environmental interests that were more important than commercial interests.

Barack Obama appointed Tom Tidwell as chief of the Forest Service. Both environmentalists and staff in the agency welcomed Tidwell. A career forester who worked for the Forest Service for 32 years, his experience in the department ranged from being a member of a fire ground crew to being a liaison for legislative affairs. Throughout his career, Tidwell supported the protection of roadless areas.

Forest Service management plans and problems, along with those of agencies within the Department of Interior, are discussed in detail in the chapters to follow.

U.S. Fish and Wildlife Service The Department of Interior’s U.S. Fish and Wildlife Service was created in 1940 by combining the Bureau of Biological Survey, established in 1885 in the Department of Agriculture, with the Bureau of Fisheries, established in 1871, first as an independent agency and then later in the Department of Commerce. The Fish and Wildlife Service oversees 512 national wildlife refuges, 198 waterfowl protection areas, 50 waterfowl coordination areas, 65 national fish hatcheries, nine major fish and wildlife research laboratories, and centers totaling
more than 92 million acres. By acreage, most of the national wildlife refuge system, about 88 percent, is in Alaska.

**Department of Energy** Finally, we have the DOE. Its origins date back to the Manhattan Project and the race to develop nuclear weapons. In 1946, Congress passed the Atomic Energy Act, creating the AEC and giving government a monopoly on atom-based research and technologies. Another act was passed in 1954 encouraging the growth of commercial nuclear uses, especially for energy creation.

The AEC was in a precarious position because it was supposed to regulate nuclear energy to ensure public safety, but it was also supposed to foster the development of commercial nuclear use. When an agency is given responsibility to not only regulate an industry but also promote its growth, problems inevitably arise. Eventually people began to realize that such a mission created potentially dangerous conflicts of interest. That recognition combined with the greater environmental movement of the time led to the Energy Reorganization Act of 1974 and the split of the AEC into two agencies.

However, the energy crisis of the 1970s brought to light the need for unified energy planning, and the Department of Energy Organization Act created a single DOE on October 1, 1977. During its early history, the DOE was focused on energy development. Then with the rise of the Cold War, the focus shifted to nuclear proliferation. The times have shifted once again, and the department today focuses on energy security, maintaining the safety and reliability of our nuclear stockpile while promoting nonproliferation, remediation of the environment from the legacy of the Cold War, and developing innovations in science and technology.

Despite these goals, problems exist. The Departments of Energy and Defense are two of the largest polluters in the United States, and the National Commission on Environmental Quality estimates that they will cost the EPA specifically, and American taxpayers in general, over $150 billion in clean-up costs over the next 25 years. In addition, former Energy Secretary Abraham sought to overhaul the Clean Air Act to make energy exploration and production cheaper and easier. (It should be kept in mind that energy industries made very substantial contributions to the president’s 2000 campaign.)

As should now be clear, political leadership and pressures can have at least as much, if not more, to do with environmental policy than department mission statements or specific language in enabling statutes. In that regard, political appointees tend to listen more to those interest groups that directly support them, often leading to a specific type of environmental policy.

**SUMMARY**

In this chapter we examined the regulatory processes governing environmental policy in the United States. Fundamental to that process, as we have seen, is the concept of pluralism—or the bargaining that organized groups engage in when attempting to influence public policy outcomes. However, not all groups are created equal. Because of differences in their ability to raise and spend money for political campaigns, as well as differences in the amount of other resources, some groups have the advantage when attempting to influence environmental policy. Generally, private economic interest groups have more and better resources for influencing
the process than do public interest groups—including most environmental groups. We also saw how incrementalism, decentralization, the incentives operating on policy makers to plan for the short term instead of the long term, ideological bias, and the crisis-response nature of policy making all influence the environmental policy formation process. These attributes of our political system often operate to produce environmental policies that, as we see in greater detail in Part Two, do not do the job or do not accomplish what they were intended to achieve. In other words, they operate to help create the paradoxes of environmental policy.

We also introduced the NEPA and the federal agencies that have primary responsibility for implementing environmental policy. The federal agencies we discussed, the Forest Service, the EPA, the DOE, and the resource management agencies within the Department of the Interior, are the major governmental players in the environmental policy implementation process and are referred to throughout the book.

Part Two has seven chapters, which cover air, water, energy, toxic and hazardous waste, land management, international pollution problems, and international environmental management. Chapter 5, on air pollution, like most of the chapters in Part Two, begins with a description of the nature of the problem of air pollution, continues with a description of laws and regulations governing it, and discusses the successes and failures of those regulatory efforts.

NOTES

1. Although its impact at the time of this writing is uncertain, a 1992 U.S. Supreme Court ruling (Lujan v. Defenders of Wildlife) found that in order to have standing, an individual must have “personally suffered a specific injury or will be harmed immediately.” The case involved the Endangered Species Act. The Wall Street Journal reported, “Justice Harry Blackmun, in a dissent joined by Justice Sandra O’Connor, accused the splintered majority of ‘what amounts to a slash-and-burn expedition through the law of environmental standing.’ ” See Paul M. Barrett, “Environmental Lawsuits Face Tough Standard,” Wall Street Journal (June 15, 1992), p. A3.


3. Numerous scholars have addressed the importance of reelection in motivating the behavior of legislators. See, for example, David R. Mayhew, Congress: The Electoral Connection (New Haven, CT: Yale University Press, 1974); and Gary C. Jacobson, The Politics of Congressional Elections (Boston, MA: Little, Brown, 1987).


5. Nicholas Johnson, “Campaigns: You Pay $4 or $4000,” Des Moines Iowa Register (July 21, 1996). The author is a professor of law and has been a top-level presidential appointee three times. He admits to having been party to subgovernment quasi-corrupt practices and now seeks to end them, in part, through elimination of soft money and public financing of campaigns.


10. Although this point may be found throughout the literature of political science, one of the most


15. Ibid., p. 79.

16. It should be pointed out that Madison was not as egalitarian as the foregoing might suggest. In fact, he was suspicious of majority rule and preferred the elite to conduct the business of government. Pluralist theorists, including Dahl, Truman, and others, have read Madison as a forerunner of pluralist participatory democratic theory. Although this would not be an accurate portrayal of Madison, he is historically interesting in this context for he identified potential problems with interest group influence early on, which have now, in this author’s opinion, come to pass.


18. Ibid., pp. 210, 222.


21. Ibid., p. 51.


29. The first step in the EIS process is the preparation of an “environmental assessment” (EA). If in the environmental assessment, which is relatively short, it is found that there is no significant impact, then the agency is required to make a “finding of no significant impact.” The EIS process starts at the time of a proposal for a federal action. In 1975 the U.S. Supreme Court found that, “[W]here an agency initiates federal action by publishing a proposal and then holding hearings on the proposal, the statute would appear to require that an impact statement be included in the proposal and to be considered at the hearing.” See *Aberdeen and Rockfish Railroad Company v. Students Challenging Regulatory Agency Procedures*, 422 U.S. 289 (1975).

30. National Environmental Policy Act, Section 102(c).

31. Ibid., pp. i–v.


An early case, Calvert Cliffs’ Coordinating Committee, Inc. v. AEC, found that NEPA “mandates a particular sort of careful and informed decision-making process and creates judicially enforceable rule duties.” The court went on to say that if the agency “decision was reached procedurally without individualized consideration and balancing of environmental factors—conducted fully and in good faith—it is a responsibility of the Courts to reverse.” See Calvert Cliffs’ Coordinating Committee, Inc. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971).

38. U.S. Senate, Senate Report No. 91-296, 91st Congress, First Session.

39. 115 Congressional Record (Part 30) at 40417–40418.


43. See Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972), Cert. Denied 412 U.S. 908 (1973); various other formulas have been adopted by other courts, but this is the one most often used.


73. Reed McManus, “Ambushed from Within: The White House Tries to Smother the Clean Air Act,” *Sierra* (September–October 1992), p. 45.
75. Rosenbaum quote on the EPA.
86. Environmental Protection Agency, “Master Testing List—Introduction.” Available at http://www.epa.gov/oppt/chemtest/pubs/mltintro.htm (accessed September 8, 2008). This data is still accurate. Although the website says it was last updated April 29, 2010, the numbers are the same.
87. Ibid., p. 17.
89. See Thomas H. Watkins, “The Terrible-Tempered Mr. Ickes,” *Audubon*, 86 (March 1984), p. 96. An example of the department’s problems: Interior Secretary Albert B. Fall was found to have secretly leased portions of U.S. naval petroleum reserves in Wyoming and California in return for bribes well in excess of $100,000.


Richard O. Miller, “Multiple Use in the Bureau of Land Management Cult: The Biases of Pluralism Revisited,” in Phillip O. Foss (ed.), Federal Lands Policy (New York: Greenwood Press, 1987), p. 57. Unfortunately the BLM still enforces outdated regulations like the 1872 Hardrock Mining Law and ridiculously low grazing fees. President Clinton made a number of significant mining regulation changes in 1997 and just before departing office, but his predecessor was in favor of weaker 1980 regulations and was instructing the Interior Department and BLM to repeal the Clinton changes. The 1997 regulations limited the scope of new mining activities by confining the size of new mills and dumping grounds. Since about 80 tons of rock needs to be disturbed to find one ounce of gold, miners, especially in Nevada, which is the world’s third-largest gold producer, were concerned. These interests also did not like the 1997 regulation’s language that allowed the BLM or the Secretary of the Interior to block any mining operation that might cause “substantial irreparable harm.” In the name of economic efficiency, Bush, Norton, and the BLM continued to allow miners to mine public lands for a nominal filing fee without paying any royalties to the owners of the land, that is, American taxpayers. They also planned on continuing to allow miners like those in Nevada at the Cortez mine to dump two million pounds of cyanide into the land each year to leach out their gold. See Douglas Jehl, “Gold Miners Eager for Rollback of Rules,” The New York Times (August 16, 2001).

National Parks Service Act of 1916.


U.S. House, House Committee on Appropriations, Budget Hearings, 94th Congress, First Session, p. 446.


