

“Hungry? Eat an Environmentalist”: From Earth Day to Regulatory Reform, 1970-1980

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On the eve of the tenth anniversary of Earth Day in April of 1980, the editorial page of the *New York Times* weighed the past triumphs and future prospects of the American environmental movement. “The first Earth Day in 1970,” said the editorial, “surprised its organizers by attracting millions to teach-ins and clean-ups. Over the decade, this aroused political force produced a revolution in national attitudes and an explosion of new laws and regulations. But now the movement is colliding with problems that seem more urgent. Energy, inflation and recession have become the main political concerns, and efforts to reduce pollution or strip-mine damage are seen, often unfairly, as interfering with the nation’s welfare.” The editorial went on to ask, “Have the gains been worth the billions spent?” It concluded that the analytic tool that might answer this question, cost-benefit analysis, was “still too primitive to provide definitive answers.” This was just the type of question that business leaders like Richard L. Leshner, president of the U.S. Chamber of Commerce, had long been encouraging. Interviewed for a news story that day, Leshner told the *Times* that in the 1970s there had been “a general agreement by all parties on the need to clean up the air and water.” But there had also been disputes over the “timetables and costs” of the clean up. “The environmentalists tried to move a little too far and too fast and did not have a proper concern for some of the trade-offs.” As a result, he argued, there were “too many regulations.” Looking ahead to the 1980s, Leshner said that the nation must “balance environmental needs, inflation and other national priorities.”¹

By 1980, claims that excessive environmental regulation hurt the economy circulated widely in the nation’s political discourse. In popular culture, political cartoons lampooned government regulation as an out-of-control force which stifled the free operations of the market. Bumper stickers blamed environmentalists for job losses with slogans such as “Hungry? Eat an environmentalist for dinner” and “I’ve Never Met an Unemployed Environmentalist.” A flurry of corporate advertisements attacked regulation as a source of the nation’s economic strains. Some declared “overregulation” a threat to the American standard of living. Business leaders, meanwhile, hinted that regulation was akin to “creeping socialism,” a largely invisible, but no less real, threat to economic and personal freedoms. Echoing such sentiments, one corporate ad depicted a frowning Statue of Liberty strung by a hangman’s noose labeled regulation. Calls for reform of the so-called “new social regulation”—implemented under dozens of new environmental, health, and safety laws beginning in the late 1960s—also resonated in policy-making circles, then teeming with talk of “regulatory reform.” Kicked off in 1978 by airline price deregulation and initially targeting old-line “economic regulation” by federal

¹ “The Ground is Shifting Under Earth Day,” *New York Times*, April 21, 1980, A18; Philip Shabecoff, “Earth Day ’80 Dawns Tomorrow Amid Reflection and Plans for a New Decade,” *New York Times*, April 21, 1980, A16.

commissions, the deregulatory cause soon cast its broad net around environmental, health, and safety programs as well.²

Both the political agenda and the terms of debate in environmental policy had shifted dramatically since the first Earth Day in 1970. Then, the focus had been on how the federal government could best intervene to remedy industry failures to reduce pollution. A decade later the agenda included calls for greater scrutiny of EPA rulemaking, potential market-based alternatives to “command-and-control” regulations, and other policies aimed at reducing the costs of industry’s accumulating regulatory burdens. With talk of major pollution incidents and an “environmental crisis” dominating the environmental agenda in 1970, industry complaints about the excessive costs of environmental regulation elicited little public sympathy. But as these claims rippled continuously through the major media during the periods of stagnant growth and high inflation (or “stagflation”) of the 1970s, industry found an increasingly receptive audience. David Vogel and other scholars have documented the broader “political resurgence of business” in the late 1970s after an earlier period of retrenchment and defeat, often at the hands of the new consumer and environmental movements. The focus here is on more specific questions: First, how, by 1980, did otherwise popular environmental protections become rhetorically linked—in policymaking circles and public opinion—to a host of economic problems, including energy shortages, soaring inflation, and high unemployment? And second, why was an intensified use of the “cost-benefit analysis” of economists the chief policy proposal for striking a new “balance” between the environment and the economy?

The answers are not immediately obvious. For one thing, evidence that environmental regulation contributed significantly to the nation’s economic problems—or even to those of specific industries—was exceedingly thin. Few claims linking environmental rules to economic hardships withstood serious scrutiny. When steel companies claimed that pollution controls had cost thousands of jobs and forced numerous mill closures, for instance, subsequent studies showed that actual job losses were few and that most jeopardized mills were uncompetitive and inefficient older plants already facing shutdowns.³ When chemical firms complained that escalating pollution-control costs threatened the industry’s very existence in the late 1970s, the industry’s own trade journal published figures showing that pollution-control spending was actually trending downward, from more than \$800 million in 1976 to around \$550 million in 1978.⁴ And when conservative economist Murray Weidenbaum famously estimated that federal regulation of all kinds cost \$100 billion annually, the Congressional Research Service dismissed the study as being of “suspect and of doubtful validity” because of its dubious use of data, double counting, inaccurate addition, and a failure to estimate the

² Lester C. Thurow, “Clean Air, New Industry: Let’s Compromise,” *New York Times*, November 16, 1980, F2; “The Ground is Shifting under Earth Day,” *New York Times*, April 21, 1980, A18; Gould Ad, *Wall Street Journal*, Nov. 22, 1978, 11.

³ Eban S. Goodstein, *Jobs and the Environment: the Myth of a National Trade-off* (Washington, DC: Economic Policy Institute, 1994).

⁴ *Chemical Week*, August 10, 1977, 46-48; *Chemical Week*, June 22, 1977, 5; Earle B. Barnes, “Chemical Industry Suffering?” *Christian Science Monitor*, December 11, 1975, 23; “Dow Chemical’s Catalog of Regulatory Horrors,” *Business Week*, April 4, 1977, 50. On the downward trend in spending by the industry, see *Chemical Week*, May 17, 1978, 27; *Chemical Week*, May 16, 1979, 46.

benefits of regulation.⁵ Meanwhile, contemporary estimates of the aggregate costs and benefits of environmental regulation often found a favorable benefit/cost ratio. A study released on Earth Day 1980 by the Carter administration's Council on Environmental Quality (CEQ)—launching a salvo at administration inflation-fighters and industry—estimated that air-pollution controls alone provided benefits of some \$21.4 billion in 1978 in the form of improved public health and reduced damage to property, crops, vegetation, and wildlife, a figure several times the estimated annual costs.⁶ On the whole, as David Vogel has noted, there was “no evidence that government regulation of business contributed significantly to the nation's economic difficulties during the 1970s.”⁷ Despite such thin evidential grounding, narratives linking environmental regulation to economic distress had moved to the center of the nation's political discourse by 1980.

The ascendance of these ideas, this paper will argue, owed much to a decade-long campaign by major corporations. To be sure, other trends were at play: the continued growth and increasing complexity of the regulatory programs themselves, criticism of the inefficiency of “command-and-control” regulation by economists, a broader resurgence of faith in “the market,” and new skepticism of government intervention during this period of economic stagnation. But business played a key role in creating the popular perception of inevitable tradeoffs between environmental and economic goals, while vigorously promoting stringent “regulatory review” using cost-benefit analysis to better balance these tradeoffs. Pushing these ideas, affected industries increasingly operated as a unified political front against the tide of new environmental laws and regulations—a major shift from 1970.

As Congress moved to enact the first of the new environmental laws, the Clean Air Act of 1970, the vast assembly of industries facing stricter air-pollution controls failed to establish a unified political front or to effectively advance common policy positions. Lacking coordination, dozens of trade associations and major corporations each advanced their own narrow proposals at Congressional hearings in 1969-70. The result was a jumble of often conflicting plans and proposed revisions. A consequence of this scattershot lobbying was that businesses failed to influence Congress to make compliance costs a major consideration in the statute. The Act did permit consideration of economic costs in some provisions, including the setting of “New Source Performance Standards” (NSPSs) for certain new sources of emissions. But the Act required the EPA to set national ambient air quality standards (NAAQSs) for the most common pollutants (sulfur oxides, nitrogen oxides, carbon monoxide, particulates, ozone, and lead) solely on criteria “requisite to protect the public health” with “an adequate margin of safety,” without regard to cost. As Richard Andrews writes in his history of American environmental policy, the Act's “philosophy was that protecting public health was paramount, and that the polluters themselves should pay whatever it cost to achieve this. Air quality standards should therefore be set based on medical science alone, rather than on balancing of health against compliance costs.”⁸

⁵ Timothy B. Clark, “Regulation—The Costs and Benefits of Regulation—Who Knows How Great They Really Are?” *National Journal*, December 1, 1979.

⁶ Philip Shabecoff, “Study Finds Savings in Pollution Rules,” *New York Times*, April 22, 1980, A19.

⁷ David Vogel, *Fluctuating Fortunes: the Political Power of Business in America* (New York: Basic Books, 1989), 238.

⁸ *Hearings on Air Pollution Control and Solid Wastes Recycling Before the House Committee on Interstate and Foreign Commerce, Subcommittee on Public Health and Welfare*, 91st Cong., 1st and 2nd sess.,

Experience with the passage and implementation of the Clean Air Act led to new coordination among polluting industries, and a determination to make costs a central criterion in the federal campaign to clean up pollution. As Congress enacted nearly a dozen major pollution-control statutes during the “environmental decade” of the 1970s, businesses increasingly worked together in political opposition, forging common policy positions through advisory councils and inter-industry business lobbies, from the National Industrial Pollution Control Council in 1970 to the Business Roundtable in 1980. In the process, businesses wove their diverse complaints about the costs of environmental regulation into a capacious and usefully fuzzy idea of “overregulation,” a term thrown mainly at environmental, health, and safety rules. They also forged shared commitments to concrete policy proposals to inject cost considerations into environmental policy, vigorously lobbying for statutes and administrative procedures to subject environmental regulations to strict cost-benefit analysis.⁹

This abstract concept of “overregulation” was given initial shape during the “energy crisis” of the early 1970s. Sensing a political opening, oil, gas, and electric power companies first blamed rising fuel price increases, then the nation’s deeper post-1973 economic strains on unreasonable environmental restrictions. With a steady drumbeat of advocacy advertising, public relations, and lobbying, companies such as Mobil Oil and American Electric Power (the nation’s largest electricity provider) charged that environmental rules were stoking rising energy prices, job losses, and inflation. Others joined with their own stories of the perils of “overregulation”: Steelmakers cited job losses; chemical firms warned of stifled innovation and flagging international competitiveness; and the National Association of Manufacturers issued nebulous warnings of lost economic and personal freedoms, with ominous implications for the future of the free market system. As businesses found common cause, they congealed such diverse charges into the amalgamated storyline of “overregulation.”¹⁰ As an organizing theme for the environmental backlash, it drew strength from the sheer fuzziness of its significations. While the prime movers behind the backlash were large corporations, companies such as American Electric Power or U.S. Steel locked in disputes with the EPA on standards and timetables, the public face of the movement against “overregulation” would be a populist revolt of embattled businessmen everywhere. If relatively few in the business community dealt directly with such matters

(Washington D.C.: U.S. Government Printing Office, 1970); Clean Air Act of 1970, P.L. 91-604, Richard N.L. Andrews, *Managing the Environment, Managing Ourselves: A History of American Environmental Policy*, (New Haven: Yale University Press, 1999), 234. In *Lead Industries Association, Inc. v. EPA*, the D.C. Circuit held that “economic considerations [may] play no part in the promulgation of ambient air quality standards.” 647 F.2d 1130 (D.C. Cir. 1980).

⁹ William H. Rodgers, Jr., “The National Industrial Pollution Control Council: Advise or Collude?” *Boston College Industrial and Commercial Law Review* 13 (1971-1972): 719-747; Mark J. Green and Andrew Buchsbaum, *The Corporate Lobbies: Political Profiles of the Business Roundtable & the Chamber of Commerce*, (Washington, D.C.: Public Citizen, 1980); Thomas K. McCraw, “The Business Roundtable,” Harvard Business School Case Study, 4-379-118 (Harvard College, 1979); Peter Slavin, “The Business Roundtable: New Lobbying Arm of Big Business,” *Business and Society Review* 16 (Winter 1975-6): 28-32; Philip H. Burch, Jr., “The Business Roundtable: Its Make-Up and External Ties,” *Research in Political Economy* 4 (1981): 101-127.

¹⁰ Herbert Schmertz, Idea Advertising: Talking to New Audiences,” *Electric Perspectives* (June 1976): 1-7; “Donald Cook Takes on the Environmentalists,” *Business Week*, October 16, 1974, 66-77; “Warning Signals from Smokestack America,” *The Economist*, April 2, 1977, 83.

as the diversion of capital to comply with environmental regulations, many could identify with the varied populist complaints of “overregulation”: out-of-control bureaucracies, unreasonable paperwork and red tape, and the loss of decision-making authority as the prerogatives of business were usurped by regulators. Such rhetoric broadened the appeal of the backlash, allowing major corporations to woo small businesses, employees, and investors to support its cause. Beyond the business community, meanwhile, the charge of “overregulation” could offer a simple, if contrived, explanation for plant shutdowns, high energy prices, or soaring inflation.¹¹

By 1980, businesses had, in great measure, succeeded in redefining environmental regulation as a costly, sometimes perilous endeavor, one that must always be carefully balanced against economic goals. By rhetorically linking environmental regulation to inflation and other economic strains, businesses had reframed their own cost complaints in terms that would appeal to broader public concerns about the performance of the economy, conflating parochial industry interests with the public interest: “Overregulation” hurt not just industry, but all Americans by hindering the efficient operation of the market. To be sure, business interests failed to achieve some of their most coveted legislative goals, such as oft-sought major revisions of the Clean Air Act. Important new environmental legislation still moved through Congress, including CERCLA (or the “Superfund” law) in 1980. Increasingly sophisticated and professionalized environmental groups proved formidable opponents in Washington. And public opinion remained strongly behind environmental goals.¹² But the starting-point for discussions in environmental policymaking circles was no longer the same—the center had shifted. In language, methodology, and law, the question of how to balance the *costs* and *benefits* of environmental regulation, a concern heard mainly in industry circles in 1970, was now woven deeply into the fabric of environmental policy. As policymakers joined a bandwagon of “regulatory reform” in the late 1970s, business lobbies demanded that reform of the “new social regulation,” particularly expensive environmental rules, be part of the broader drive. Asking “Is it worth it?” a growing number looked to economists for answers, in the quantifying precision and apparent objectivity offered by their technique of cost-benefit analysis.

The Rise of Cost-Benefit Analysis

In the United States, cost-benefit analysis was first used by the Army Corps of Engineers in the 1920s and 1930s to justify flood control and dam projects.¹³ Congress mandated the practice in the Flood Control Act of 1936, which required that the benefits of

¹¹ Jane Seaberry, “Small Business Becomes a Force to Contend With,” *Washington Post*, Dec. 16, 1979, F4; Neil Ulman, “Business Lobby: Companies Organize Employees and Holders into a Political Force,” *Wall Street Journal*, Aug. 15, 1978, 1.

¹² David Vogel, *Fluctuating Fortunes*; Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement* (Washington D.C.: Island Press, 1993); Seymour Martin Lipset and William Schneider, “The Public View of Regulation,” *Public Opinion* (January/February 1979):6-13.

¹³ Although the term (also called “benefit-cost analysis”) was given various narrow and formal definitions by economists, I will use the term more broadly, as did its advocates in Washington, to connote any standardized technique to quantify, usually in monetary terms, the costs and benefits of a government action as a precursor to a decision.

proposed flood control projects outweigh the costs. Faced with increasing challenges to its self-serving calculations in the 1940s and 1950s, the Corps developed more rigorous and standardized methods. In the process, writes historian Theodore Porter, “cost-benefit analysis was transformed from a collection of local bureaucratic practices into a set of rationalized economic principles.”¹⁴ In the 1950s, in what Porter calls a “takeover by the economists,” cost-benefit analysis became a specialty within the economics profession, its methodology reworked according to the principles of the “new” welfare economics as economists applied it in case studies evaluating water resources projects.¹⁵ A key institutional center for this work was the Washington-based Resources for the Future (RFF), founded in 1952 with Ford Foundation funding after a recommendation by CBS Chairman William Paley, fresh from chairing a Presidential commission on America’s dependence on foreign natural resources. In the 1950s and 1960s, economists at RFF developed ever more sophisticated methods for quantifying the costs and benefits of multi-use water development projects, including the recreational benefits of protecting free-flowing rivers or wilderness. In the 1970s, they pioneered techniques for assessing the costs and benefits of new environmental, health, and safety regulations.¹⁶

The widespread introduction of cost-benefit analysis into federal management in the 1960s, however, had its origins in Cold War military planning. It was introduced at the Department of Defense (DOD) under Secretary of Defense Robert McNamara’s Planning, Programming, and Budgeting (PPB) system and spread with PPB to other federal departments and agencies after 1965.¹⁷ The cost-benefit calculus used in PPB was developed at the RAND Corporation in the 1950s as a set of techniques called, variously, “systems analysis” or “cost-effectiveness analysis.”¹⁸ After President Kennedy appointed McNamara Secretary of Defense in 1960, he brought to the Defense Department a number of enthusiasts of systems analysis from RAND, including Charles J. Hitch, RAND’s Chief Economist and co-author with Roland McKean of the seminal text on systems analysis, *The Economics of Defense in the Nuclear Age* (1960). Appointed Assistant Secretary of Defense (Comptroller), Hitch implemented the techniques developed at RAND at the Pentagon beginning in fiscal year 1963.¹⁹ Despite

¹⁴ Theodore Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995), 149

¹⁵ Porter, *Trust in Numbers*, 187-89. A seminal early work was Otto Eckstein’s *Water Resources Development* (Cambridge, Mass.: Harvard University Press, 1958).

¹⁶ William Cronon, “Past and Prologue: The U.S. in 1950 and 2050,” Talk at 50th Anniversary Symposium and Gala Dinner, Resources for the Future, October 15, 2002, at www.rff.org.

¹⁷ PPB involved “program accounting, multi-year costing, detailed description of activities, zero-based budgeting, and quantitative evaluation of alternatives or benefit-cost analysis.” Leonard Merewitz and Stephen H. Sosnick, *The Budget’s New Clothes: A Critique of Planning-Programming-Budgeting and Benefit-Cost Analysis* (Chicago: Rand McNally College, 1971), 2.

¹⁸ An anthology of this work at RAND in the 1950s is Charles J. Hitch and Roland McKean, *The Economics of Defense in the Nuclear Age* (Cambridge, Mass.: Harvard University Press, 1960). See also, Roland McKean, *Efficiency in Government through Systems Analysis* (New York: John Wiley & Sons, 1958). First applied to military spending, RAND’s “systems analysis” was then applied to water resources issues. See Jack Hirshleifer, J.C. DeHaven, and Jerome W. Milliman, *Water Supply: Economics, Technology and Policy* (Chicago: University of Chicago Press, 1960).

¹⁹ Lorentz A. Feltes, “Planning Programming, Budgeting,” *Air University Review* (January/February 1976).

some historical and methodological distinctions between “cost-effectiveness analysis”²⁰ and “cost-benefit analysis,” in practice the terms were used interchangeably by the mid-1960s, along with other synonyms for quantifying the costs and benefits of public expenditures, such as “cost-utility analysis,” “program analysis,” and “program evaluation.”²¹ Whatever the terminology, the cost-benefit methods of McNamara’s PPB soon influenced management practices in other agencies.²²

From its roots at RAND and the Pentagon, cost-benefit analysis was implanted in other parts of the federal bureaucracy after 1965, when the Johnson administration required 22 other agencies, including all cabinet-level departments, to adopt PPB. In the same year, the Brookings Institution held a conference in which researchers presented studies that applied cost-benefit techniques to a wide range of public policy issues, from outdoor recreation to urban renewal. According to the author of a 1969 textbook on cost-effectiveness analysis based on lectures given to defense contractors RCA, Boeing, and Lockheed, “As a result of its many accomplishments within the military establishment, the cost-effectiveness approach today is spreading to many other parts of government as well as throughout industry.”²³ It was also introduced in state and local governments which embraced variations of PPB, including California under governors Edmund G. Brown and Ronald Reagan. By the mid-1960s, its practitioners were applying the technique to a vast range of public expenditures—including various “War on Poverty” programs, the Post Office, the Peace Corps, the Forest Service, and the Department of Agriculture’s “Peanut Program.”²⁴

Despite a full court press by PPB evangelists, formal PPB practices seldom took root outside of the Pentagon. An investigation by Senator William Proxmire’s Joint Economic Committee found that PPB was virtually non-existent in independent agencies, and only four executive departments claimed it as standard practice. In 1971, George Schultz, director of the new Office of Management and Budget, dropped the requirement that agencies and departments use PPB methods in the budgetary process. Nonetheless, one part of PPB—cost-benefit analysis—continued to spread. A compendium of new case studies in Proxmire’s 1973 report—compiled to “bring policymakers up to date on some advances made by economists”—demonstrated an ever wider use of cost-benefit techniques to evaluate a broad spectrum of government programs. These included

²⁰ This was the terminology/methodology developed at RAND and implanted at the Defense Department. In the 1960s, the terms “systems analysis” and “cost-effectiveness analysis” were used interchangeably in policymaking circles. See, for instance, Thomas A. Goldman, ed., *Cost-Effectiveness Analysis: New Approaches in Decision-Making* (New York: Frederick A. Praeger, 1967), v-vii. “Cost-effectiveness analysis” was defined broadly by the RAND Corporation’s Edward S. Quade as “any analytic study designed to assist a decision-maker in identifying a preferred choice among possible alternatives.” Edward S. Quade, “Introduction and Overview,” in Goldman, ed., *Cost-Effectiveness Analysis*, p.1.

²¹ Harly H. Hinrichs and Graeme M. Taylor, *Program Budgeting and Benefit-Cost Analysis: Cases, Text and Readings* (Pacific Palisades: Goodyear Publishing, 1969), 97.

²² See Joint Economic Committee of Congress, *Analysis and Evaluation of Public Expenditures: The PPB System, a Compendium submitted to the Subcommittee on Economy in Government of the Joint Economic Committee of Congress* (Washington, D.C.: U.S. Government Printing Office, 1969).

²³ Karl Seiler III, *Introduction to Systems Cost-Effectiveness* (New York: Wiley-Interscience, 1969), vii.

²⁴ Robert Dorfman, ed., *Measuring Benefits of Government Investments: Papers Presented at a Conference of Experts Held November 7-9, 1963* (Washington, D.C.: The Brookings Institution, 1965); Leonard Merewitz and Stephen H. Sosnick, *The Budget’s New Clothes*, 4; Hinrichs and Taylor, *Program Budgeting and Benefit-Cost Analysis*.

assessments of a hydroelectric dam project at Hells Canyon, a small watersheds program, the federal housing program, Medicare, and vocational education programs. Moreover, some cost-benefit practitioners began moving beyond the assessment of public expenditures, developing methodologies for its application to regulatory programs in areas such as auto safety and pollution control.²⁵

The Auto Industry and Cost-Benefit Analysis

As cost-benefit analysis spread in federal management, industry came to see it as a promising tool for restraining new government activism in the areas of environmental, health, and safety regulation. Automakers took the lead. Nearly unregulated before 1966, the auto industry was caught off guard by the frenzied public attention to auto safety that followed the publication of Ralph Nader's *Unsafe at Any Speed* in 1965. As Congress moved forward with legislation, the industry was forced to abandon its position favoring voluntary standards and accept federally mandated safety standards in the National Traffic and Motor Vehicle Safety Act of 1966 (hereafter Motor Vehicle Safety Act). Dropping an initially proposed "voluntary action plan," the Automobile Manufacturers Association (AMA) instead pushed for modifications of the statute to require cost-benefit assessments by regulators. At 1966 House hearings, Ford Vice President John S. Bugas, representing the AMA, called for the inclusion of language in a key section of the bill which would mandate a "balancing of costs versus benefits."²⁶ In discussion, Bugas said, "'When the Secretary finally decides to set a standard...he should not have in mind such words as 'adequate' and 'unreasonable,' that are subject to application depending on the attitude of the individual. He should look instead at such things as, 'Will this standard that I am going to impose be worth the cost that is required to put it into effect?'"²⁷ Congress refused the automakers' demands, and the Motor Vehicle Safety Act made it clear that safety would be the primary decision-making criterion. The Senate report said that while regulators would "necessarily consider the reasonableness of cost, feasibility and lead-time," that "safety shall be the overriding consideration in the issuances of standards under this bill."²⁸

Rebuffed by Congress, automakers continued to lobby for a cost-benefit test of auto safety regulations. They first pressed the case with regulators at the National Highway Traffic Safety Bureau (NHTSB), later Administration (NHTSA). According to journalist Mark Dowie, after passage of the Motor Vehicle Safety Act the Ford Motor Company began an intensive lobbying campaign, winning an informal agreement from

²⁵ Joint Economic Committee, *Benefit-Cost Analyses of Federal Programs: A Compendium of Papers Submitted to the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee, Congress of the United States*, 92d Cong., 2d sess., (U.S. Government Printing Office: Washington, D.C., 1973); Merewitz and Sosnick, *Budget's New Clothes*, 301; U.S. Office of Management and Budget, "Circular No. A-11, Revised, Transmittal Memorandum No. 38," June 21, 1971. An early application of cost-benefit methods to pollution can be found in Harold Wolozin, ed., *The Economics of Air Pollution* (New York: Norton, 1966).

²⁶ *National Traffic and Motor Vehicle Safety Act: Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 13228*, 89th Cong., 2d sess. (1966), 251.

²⁷ *National Traffic and Motor Vehicle Safety Act*, 300.

²⁸ Jerry L. Mashaw and David L. Harfst, *The Struggle for Auto Safety* (Cambridge, Mass.: Harvard University Press, 1990), 57-58; P.L. 89-563; See S. Rep. No. 1301, 89th Cong., 2d Sess. 6 (1966).

regulators to make cost-benefit “an acceptable mode of analysis by Detroit and its new regulators.”²⁹ Despite the alleged agreement, the practice apparently had little impact on early regulations issued by NHTSA in the late 1960s.³⁰ Automakers turned to the courts, arguing unsuccessfully in *Chrysler Corporation v. Department of Transportation* that the Motor Vehicle Safety Act required a cost-benefit test for auto safety regulations.³¹ Not until the early 1970s did the automakers’ demands gain traction, when the Nixon White House and its Council on Wage and Price Stability (CWPS) pressured NHTSA to conduct more extensive cost-benefit analyses of proposed regulations.³²

One reason for the automakers’ warm embrace of cost-benefit studies was that early studies consistently placed low monetary values on the benefits of safety regulations. The problem was the methodology used to quantify the economic costs of traffic fatalities. Economists would later use polling methods of people’s “willingness to pay” to avoid mortality and morbidity, a technique that placed relatively high dollar values on a human life. But early cost-benefit analyses of regulations used what has been called a “human capital” approach. In its most basic form, it involved simply multiplying the average years of lifetime lost in an early death by the *per capita* income of a particular demographic group or the nation as a whole. The resulting estimate of foregone income was taken to represent the average cost of a fatality, in other words, the value of a lost life. Variations on this approach included adding hospital fees and funeral expenses, pushing the final number slightly upward, or subtracting average lifetime consumption expenditures, pushing the figure somewhat downward. But the resulting figures were all relatively low. A 1966 study by Arthur D. Little, commissioned by the Commerce Department, calculated the cost of a death by “figuring the discounted loss in production by the victim and subtracting from that the change in consumption of the household unit.” Using demographic data from the Washington D.C. area, the study estimated that the average cost of a fatal accident was only \$47,500.³³ Using similar methods, but not subtracting consumption, the National Highway Traffic Safety Administration put the value at \$200,000.³⁴

With human life valued so low, early cost-benefit studies of auto safety regulations tended to be highly favorable to the anti-regulatory positions of automakers. One prominent example was a 1972 study commissioned by the White House Office of Science and Technology Policy and conducted by the Ad Hoc Committee on the Cumulative Regulatory Effects on the Cost of Automotive Transportation (RECAT).³⁵ Applying cost-benefit analysis to vehicle emission standards and safety regulations, the RECAT study concluded that the Clean Air Act’s existing auto emission standards had a

²⁹ Mark Dowie, “Pinto Madness,” *Mother Jones*, September/October 1977, at <http://www.motherjones.com/news/feature/1977/09/dowie.html>.

³⁰ Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations, *Federal Regulation and Regulatory Reform*, (Washington, D.C.: U.S. Government Printing Office, 1976), 175-176. Hereafter cited as *Moss Report*, after Subcommittee Chair John E. Moss of California.

³¹ *Chrysler Corporation v. Department of Transportation*, 472 F. 2d 659, 672 (6th Cir 1972)

³² *Moss Report*, 176-180.

³³ Arthur D. Little, *Cost-Effectiveness in Traffic Safety*, (New York: Praeger, 1968), 108-114.

³⁴ The derivation of the \$200,000 figure is explained in “Societal Costs of Motor Vehicle Accidents,” An NHTSA Preliminary Report, (April 1972), 3-4.

³⁵ Ad Hoc Committee on the Cumulative Regulatory Effects on the Cost of Automotive Transportation, *Cumulative Regulatory Effects on the Cost of Automotive Transportation (RECAT)*, Prepared for the Office of Science and Technology, February 28, 1972. Hereafter cited as *RECAT*.

highly “unfavorable cost/benefit” ratio.³⁶ It also found a proposal requiring airbags in new cars suspect on cost-benefit grounds. Echoing industry’s line that the public would ultimately bear the costs of regulation, the RECAT committee urged that all agency rulemakings be subject to mandatory cost-benefit analysis.³⁷ Not surprisingly, according to journalist William Greider, the RECAT study “won cheers from the auto industry because its cost-benefit conclusions cast doubt on two government regulations that Detroit has been fighting.”³⁸

In its evaluation of airbags, RECAT applied the “human capital” approach to valuing human life. The sixteen-member committee was initially hesitant to monetize the cost of a traffic fatality, but accepted the approach at the urging of Howard P. Gates, a Navy consultant.³⁹ In its cost-benefit analysis, RECAT simply multiplied the average expected lifetime lost by early death (36.9 years) by per capita personal income (\$3,786 in the U.S. in 1970) giving a value of foregone income per death of around \$140,000.⁴⁰ Combining this number with the average costs of personal injury and property damage per accident yielded an average cost for a traffic accident. Using these numbers and the expected reductions in fatalities and injuries resulting from the introduction of new safety measures, RECAT estimated the benefits of various regulations affecting auto design.⁴¹ It characterized airbags as a dubious proposal, with estimated costs of some \$370 per car and estimated benefits ranging from just \$161 to \$384.⁴² Although many economists at the time warned that the foregone income approach to monetizing the loss of life produced gross underestimates,⁴³ the only such qualification offered by RECAT for its \$140,000 figure was buried in a footnote: “[Economist E.J.] Mishan rejects as unsatisfactory all existing methods of evaluating loss of life.”⁴⁴

By the early 1970s, the automakers’ push for greater use of cost-benefit analysis in auto safety regulation was yielding a political dividend. A 1976 investigation of federal regulation by Rep. John E. Moss’s (D-California) Subcommittee on Oversight and Investigation found that increased pressure on NHTSA to produce cost-benefit justifications for safety rules had led to the abandonment or postponement of several important safety rules. In one case, NHTSA Associate Administrator Robert Carter reported that he had ordered the abandonment of a 1971 proposal to require the installation of rear under-ride guards on trucks, after a cost-benefit analysis predicted the costs would exceed the benefits.⁴⁵ Under pressure from the White House and its Council on Wage and Price Stability, NHTSA was also forced to delay proposed rules on passive restraints (i.e. airbags), truck air brakes, and other safety rules, until it could demonstrate that the benefits would exceed the costs.⁴⁶ Criticizing NHTSA for a “slackened” pace of

³⁶ *RECAT*, xxi.

³⁷ *RECAT*, x-xiii.

³⁸ William Greider, “Or, Your Life May Not Be Worth Saving,” *Washington Post*, April 9, 1972, p.B1.

³⁹ Greider, “Or, Your Life May Not Be Worth Saving,” B1.

⁴⁰ *RECAT*, Appendix II-A.

⁴¹ *RECAT*, 42-48.

⁴² *RECAT*, xxvii.

⁴³ See for instance Lester B. Lave and Eugene P. Seskin, “Air Pollution and Human Health,” *Science* 169 (August 21, 1970): 723-733.

⁴⁴ *RECAT*, p.70.

⁴⁵ *Moss Report*, 176; 36 Fed. Reg. 11750 (June 18, 1971).

⁴⁶ *Moss Report*, 176-77.

rulemaking since 1970, the Moss Report said that NHTSA had “needlessly tied itself in knots, partly in response to pressure from the Council on Wage and Price Stability and the White House, by performing benefit/cost studies which prove little and are not required by law.”⁴⁷ The overall effect of forcing cost-benefit analysis into this regulatory domain, charged the Moss Report, had often been “to induce paralysis by analysis.”⁴⁸ If a reasonable accounting of *benefits* plagued the use of cost-benefit analysis in auto safety regulation, the problems were magnified many times over when the technique spread to environmental regulation.

Cost-Benefit Analysis and Environmental Regulation

As complaints mounted about the high costs of the new Clean Air Act of 1970, polluting industries began coordinating efforts to inject cost considerations into the language and methodology of environmental policy.⁴⁹ While the Automobile Manufacturers Association pushed the point in auto safety regulation, here the cost-benefit gospel was spread through an advisory committee with privileged links to the environmental regulatory process—the National Industrial Pollution Control Council (NIPCC). At the urging of his stridently pro-business Commerce Secretary, Maurice Stans, President Nixon created the NIPCC on April 9, 1971 in an effort to reassure a business community concerned after the passage of the National Environmental Policy Act (NEPA) in 1970 and alarmed by the impending wave of new environmental regulation.⁵⁰ “The new Council,” said Nixon, “will allow businessmen to communicate regularly with the President, the Council on Environmental Quality and other government officials and private organizations which are working to improve the quality of our environment.”⁵¹ Appointed by Stans, the Council’s membership consisted not of lobbyists or public relations staff, but of top corporate executives from more than fifty of the nation’s largest

⁴⁷ *Moss Report*, 12, 157.

⁴⁸ *Moss Report*, 181.

⁴⁹ In the chemical industry complaints about costs quickly became a running theme. “Beginning in 1971,” writes business historian Andrew Hoffman, “articles emerged several times a year [in trade journals] stressing the industry was ‘yet again’ spending record amounts on the environment.” Andrew Hoffman, *From Heresy to Dogma: An Institutional History of Corporate Environmentalism* (Stanford, Calif.: Stanford University Press, 2002), 72. A 1971 editorial in the industry’s leading trade journal, *Chemical Week*, headlined “Ecology mows ‘em down in chemical land,” warned that new environmental rules “will continue as a sometimes controlling factor in corporate affairs—an ‘act of God’ or force majeure, like an earthquake or hurricane.” *Chemical Week*, February 10, 1971, 8.

⁵⁰ Executive Order No. 11523, 3 CFR 915 (1966-1970 Comp.). On the role of Stans in the creation of the NIPCC, see J. Brooks Flippen, *Nixon and the Environment* (Albuquerque: University of New Mexico Press, 2000), 139-40. Described by environmental staff in the Nixon administration as a “knee-jerk big business guy,” and “always on the other side,” Stans believed that industry should be treated as a partner in the environmental cleanup. Flippen, *Nixon and the Environment*, p.84. If the newly-created EPA represented a standard-setting and enforcement model for addressing pollution, Stans’ Commerce Department and the NIPCC represented a shadow model of voluntary compliance. The first EPA Administrator William Ruckelshaus recalls, “Stans believed you answered pollution standards with voluntary compliance on the part of industry.” EPA, “William Ruckelshaus: Oral History Interview, by Michael Gorn,” EPA 202-K-92-0003 (January 1993).

⁵¹ Statement by the President on Establishing the National Industrial Pollution Control Council, April 9, 1970, *Weekly Compilation of Presidential Documents* 502 (1970), 6.

industrial firms, including General Motors, Ford, DuPont, Exxon, and U.S. Steel.⁵² As Stans put it at one Council meeting, “Here is a very large part of the industrial might of the country.”⁵³ Operating out of the Commerce Department, the formal activities of the NIPCC and its thirty sub-councils included the preparation of technical reports and policy statements, volumes on industry “commitments” to reduce pollution, case studies of industry cleanup efforts, and a variety of PR endeavors to demonstrate industry’s environmental goodwill.⁵⁴

But informal activities were the real crux of the group’s energies. The Council forged what one observer called “a broad corporate consensus on environmental policy”⁵⁵ It then used its privileged channels to the Commerce Department and the White House to shape both the general framework of environmental policymaking and to influence specific rules proposed by the EPA. As concern rose about the costs of increasingly strict pollution control standards, the NIPCC worked vigorously to inject cost considerations into the basic framework of environmental policymaking and establish requirements for cost-benefit balancing. Foremost on the Council’s agenda was the *cost* of increasingly stringent pollution control regulations.⁵⁶ The NIPCC began to call for the formal integration of some form of cost/benefit balancing in environmental policy. The issue had been broached by the U.S. Chamber of Commerce during 1969-1970 Congressional hearings on the Clean Air Act, where the Chamber called for allowing states to set regional air quality standards with consideration of “such factors as the public welfare, the existing technology, and the costs and benefits of various air quality levels.”⁵⁷ With the strict, cost-blind standards established by the Clean Air Act now being implemented under rigid schedules, the NIPCC pushed the issue with a sense of urgency.

In its February 1971 *Report to the President*, the Council warned that “increasing public concern with the pollution consequences of our affluent society has inspired responses at some levels of government which are incompatible with the economic health of our society. Standards have been established which are unattainable at economically tolerable costs.”⁵⁸ It soon began sponsoring “a number of studies and position papers elaborating this view in more rigorous cost-benefit terms.”⁵⁹ As it gathered extensive information on estimated compliance costs from member companies, it forwarded the data to Stans, who then conveyed it to the White House. Until its termination in 1975, the Council spearheaded efforts to gather and disseminate information on the costs of industry compliance, ensuring that cost figures circulated to the upper reaches of the White House. “At a time when environmental policy was still in an early stage,” wrote one observer of the Council, “the ability to stimulate and coordinate the provision of hard

⁵² Henry J. Steck, “Private Influence on Environmental Policy: The Case of the National Industrial Pollution Control Council,” *Environmental Law* 5 (1974-1975), 241-281.

⁵³ Rodgers, “The National Industrial Pollution Control Council,” 720.

⁵⁴ Steck, “Private Influence on Environmental Policy,” 259-266.

⁵⁵ Steck, “Private Influence on Environmental Policy,” 266.

⁵⁶ Steck, “Private Influence on Environmental Policy,” 266-281; Rodgers, “The National Industrial Pollution Control Council,” 733-743.

⁵⁷ Statement of Herbert. S. Richey, Chamber of Commerce of the United States, in U.S. Congress, Committee on Interstate and Foreign Commerce, Subcommittee on Public Health and Welfare, *Hearings: Air Pollution Control and Solid Wastes Recycling*, 91st Cong., 1st and 2d sess., (Washington D.C.: U.S. Government Printing Office, 1970), 512-516.

⁵⁸ Quoted in Steck, “Private Influence on Environmental Policy,” 272.

⁵⁹ Steck, “Private Influence on Environmental Policy,” 268

technical and cost data was a crucial resource that established the context for Administration policy.”⁶⁰ Armed with new cost figures, the Council took a progressively harder line on environmental regulation in 1971, arguing in an October discussion paper that “unemployment and other economic disruptions” were in the offing. Its positions contributed to a conservative shift in the rhetoric and environmental policy of the Nixon administration.⁶¹

Channeled through the Commerce Department, industry complaints about escalating costs fell on sympathetic ears in the highest reaches of the Nixon administration. In June of 1971, Nixon’s top domestic aide, John Ehrlichman, established a Committee in the White House Domestic Council to study options for Executive Office or interagency review of agency decisions “that affect the balance of many interrelated Quality of Life variables—particularly consumer and environmental interests, industrial requirements, and safety aspects—some decisions working to the disadvantage of others.”⁶² Chaired by the President’s Science Advisor, Edward David, the Committee established the broad outlines for a review process and considered whether a permanent “government vehicle” should be established for reviewing environmental, health, and safety regulations.⁶³ At the time, White House review of regulatory decisions was already being conducted on an *ad hoc* basis, including an Office of Science and Technology Policy task force on automobile standards (i.e. RECAT), a Domestic Council review of proposed EPA regulations to remove phosphate from detergents, and, later that summer, an OMB review of key EPA guidelines for state implementation plans (SIPs) under the Clean Air Act.⁶⁴ The Quality of Life Committee argued that the “central problem, whether or not a permanent review group is set up, is to insure that the action agencies make suitable analyses of benefits and costs and that outside viewpoints are taken into account in the decision process.” To insure that

⁶⁰ Steck, “Private Influence on Environmental Policy,” 269.

⁶¹ Steck, “Private Influence on Environmental Policy,” 268-69.

⁶² Memo, John Ehrlichman to Members, Domestic Council, Knauer, Train, Ruckelshaus and Peterson, June 16, 1971, Folder “Quality of Life, 1971 (1970-1972), 3 of 4,” Box 96, John Whitaker Files, White House Special Files (hereafter cited as WHSF), Richard Nixon White House Papers, Richard Nixon Presidential Materials Project (hereafter cited as RNPMP), National Archives II, College Park, Maryland.

⁶³ Memo, Edward David to Members, Domestic Council Committee on Quality of Life, June 22, 1971, Folder “Quality of Life, 1971 (1970-1972), 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP. Memo, Edward David to Members, Domestic Council Committee on Quality of Life, June 25, 1971, Folder “Quality of Life, 1971 (1970-1972), 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP.

⁶⁴ Domestic Council Study Memorandum, no. 15, draft, June 22, 1971, Folder “Quality of Life, 1971 (1970-1972)”, 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP. In May of 1971, OMB Director Schultz had argued in a letter to EPA Administrator William Ruckelshaus that OMB had authority to review EPA regulations. George C. Eads and Michael Fix, *Relief or Reform?: Reagan’s Regulatory Dilemma* (Washington, D.C.: Urban Institute Press, 1984), 47-48. OMB invoked this authority that summer as the EPA proposed guidelines for state implementation plans (SIPs) under the Clean Air Act. During the formal comment period on the guidelines, the NIPCC had led an industry campaign calling for language in the guidelines allowing states to consider the costs of control strategies when developing a SIP. As the EPA moved to publish final guidelines which did not include such cost considerations, the OMB initiated a formal review. Under pressure from the Commerce Department and other agencies, major revisions were made to the guidelines, and cost considerations were “sprinkled liberally throughout” the disputed section, significantly weakening the final guidelines. Steck, “Private Influence on Environmental Policy,” pp. 274-75; Richard H.K. Vietor, *Environmental Politics and the Coal Coalition* (College Station: Texas A&M University Press, 1980), 168-178.

agencies weighed the costs and benefits of their actions, the task force proposed requiring them to submit some form of “Economic Impact Statement” for proposed actions, modeled on the Environmental Impact Statements (EISs) required under NEPA.⁶⁵ It also decided that a formal mechanism was required “to force agencies to do a better job of obtaining complete information upon which to base decisions and of analyzing alternative courses of action with a comparison of their relative benefits and costs.”⁶⁶ For the location of a permanent review group, it settled on an office within OMB, thus avoiding the complications of creating a new body.⁶⁷ Agencies would be required to keep OMB informed of forthcoming regulatory actions by providing regular briefings and regulatory schedules. They would then submit proposals for new environmental, health, or safety regulations with “important consequences” to OMB for review, which would then consult with relevant agencies affected by the proposal, other White House offices and, if necessary, with the President’s top domestic policy advisors.⁶⁸

Warned that the plan would risk “press misinterpretation” as usurping the authority of the agencies and having “an anti-environment or anti-consumer motivation,” Ehrlichman chose to quietly initiate the new “Quality of Life Review” program through a brief memorandum by OMB Director George Schultz.⁶⁹ In an October 5, 1971 memorandum, Schultz directed that all agency proposals “pertaining to environmental quality, consumer protection, and occupational and public health and safety” with a significant impact on other agencies or imposing significant costs on the private sector be submitted to OMB for review thirty days prior to their scheduled announcement.⁷⁰ Along with the proposal, agencies were required to submit alternatives to the proposed action, the reasons for its selection, and “a comparison of the expected benefits or accomplishments and the costs (Federal and non-Federal) associated with the alternatives considered.”⁷¹ At a time when businesses had stepped up complaints about the costs of stricter environmental regulations, the Nixon administration provided created an institutional channel for them to challenge EPA proposals on cost-benefit grounds through the sympathetic offices of the Commerce Department or OMB.

To design and manage the new Quality of Life Review program, the Nixon administration brought in a group from the Pentagon which had gained a reputation for

⁶⁵ Domestic Council Study Memorandum, no. 15, draft, June 22, 1971, Folder “Quality of Life, 1971 (1970-1972)”, 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP.

⁶⁶ Memo, Hubert Heffner to John Ehrlichman, July 9, 1971, Folder “White House, Domestic Council Study Memorandum #15 (1971)”, Box 7, Edward David Files, WHCF, RNPMP.

⁶⁷ Memo, “RE: Domestic Council Study Memorandum #15,” June 24, 1971, Folder “Quality of Life, 1971 (1970-1972)”, 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP.

⁶⁸ Memo, Edward J. Burger, Jr. and Richard M. Fairbanks to John Whitaker, July 21, 1971, Folder “Quality of Life, 1971 (1970-1972)”, 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP.

⁶⁹ Memo, Hubert Heffner to John Ehrlichman, July 9, 1971, Folder “Quality of Life, 1971 (1970-1972)”, 3 of 4, Box 96, John Whitaker Files, WHCF, RNPMP.

⁷⁰ U.S. Office of Management and Budget, Memorandum, “Agency regulations, standards, and guidelines pertaining to environmental quality, consumer protection, and occupational and public health and safety,” October 5, 1971, at <http://www.thecre.com/ombpapers/QualityofLife1.htm> (accessed December 11, 2004).

⁷¹ *Ibid.*, Appendix A. Regulations would be subject to review if they “have a significant impact on the policies, programs and procedures of other agencies; or impose significant costs on, or negative benefits to, non-Federal sectors; or increase the demand for Federal funds for programs of Federal agencies which are beyond the funding levels provided for in the most recent budget requests submitted to the Congress.”

applying strict cost-benefit tests to regulations issued by the Army Corps of Engineers. In the mid-1960s, this Systems Analysis Group, based in the Office of the Secretary of the Army, had been busy applying PPB-style cost-effectiveness criteria to Corps' budgets and civil works projects. A paper circulated to the group by a visiting professor to the Army secretary's office, Alan Schmid, argued that cost-benefit analysis should be applied not just to the evaluation of public expenditures, such as flood control projects, but to rulemaking as well. Schmid wrote that "Government rulemaking is usually analyzed outside of the above formulations [PPB and cost-benefit analysis]. Yet, the issuance of a rule also directs the use of resources which have alternative employment. Can we then conceive of a benefit-cost ratio for a rule change as well as for an item in the Federal budget?"⁷² Schmid's article prompted Jim Tozzi, Director of the Systems Analysis Group, to begin applying the group's cost-benefit reviews to regulations issued by the Corps as well. Later abolished by Congress after accusations of interference with Corps' prerogatives, Tozzi's group found a new home for their work at OMB in 1971, where they began applying their methods to the burgeoning field of environmental regulation.⁷³ Recalling the move, Tozzi has said, "[Nixon adviser H.R.] Haldeman said, 'What did we let out of the box?' And at the time I was in the Office of Secretary of the Army and Haldeman said, 'There's a nerd over at Army...'"⁷⁴ Tozzi became chief of OMB's environmental branch and was the career official in charge of Quality of Life Review during both the Nixon and Ford administrations.

Although Quality of Life Review was supposed to apply to all environmental, health, and safety programs, in practice OMB singled out EPA proposals for scrutiny. From the start, many in Congress expressed concern that the process would weaken environmental regulations, in part through industry influence. The Conference Report on the Clean Water Act of 1972, for instance, explicitly stated that decision-making authority under the Act would rest solely with the Administrator of the EPA, "and not with such other agencies as the Office of Management and Budget and the National Industrial Pollution Control Council."⁷⁵ During the Nixon and Ford administrations, the process created significant tensions between the EPA and OMB, as the White House and other departments used it to pressure the EPA to weaken proposed rules. Successful interventions included moderating the regulation of a Montana copper smelter in 1971-2, delaying the target date for the phase-out of leaded gasoline, and weakening requirements for municipal waste treatment.⁷⁶ By the mid-1970s, EPA officials increasingly complained that the process had led to lengthy delays and weaker regulations due to pressure from OMB other agencies during the review process, particularly the Commerce

⁷² A. Allan Schmid, "Effective Public Policy and the Government Budget: A Uniform Treatment of Public Expenditures and Public Rules," Reproduced in Joint Economic Committee, *The Analysis and Evaluation of Public Expenditures*, 579-591.

⁷³ Jim Tozzi, "Commentary on Dr. Alan Schmid's Paper," at <http://www.thecre.com/ombpapers/TozziAnalOfEconomicsOfRulemaking.htm> (accessed December 11, 2004).

⁷⁴ "Jim Tozzi: Nixon's 'Nerd' Turns Regulations Watchdog," *Federal Times* (November 11, 2002), at <http://federaltimes.com/index.php?S=1285338> (accessed December 11, 2004).

⁷⁵ Quoted in J. Gustave Speth et. al., *OMB and EPA: Who Sets Environmental Policy?* (Natural Resources Defense Council, August 1976).

⁷⁶ Robert V. Percival, "Checks without Balance: Executive Office Oversight of the Environmental Protection Agency," *Law and Contemporary Problems* 54 (Autumn, 1991), 127-204.

Department. As one anonymous EPA official put it, EPA regulations were “more reserved, more scientifically aggressive, less environmentally aggressive.”⁷⁷

During investigations on federal regulatory programs in 1976, Representative John Moss’s Subcommittee on Oversight and Investigations charged that OMB “interfered” with the statutory responsibilities and regulatory functions of the EPA, and favored the Commerce Department during the interagency review process by giving it more time to comment on EPA proposals. Lester Brown, a staffer on Moss’s Subcommittee, wrote in 1976 that OMB had “provided industry with an opportunity to review, comment on, delay, and change EPA actions behind closed doors. The public has not been afforded this opportunity and consequently faces industry-influenced and weakened guidelines, regulations, and standards difficult to modify.”⁷⁸ Citing similar examples, a 1976 report by the Natural Resources Defense Council argued that, from the outset, the primary purpose of Quality of Life Review had been “to protect the business community from the long overdue public interest legislation being enacted by Congress.”⁷⁹ The manager of Quality of Life Review, Jim Tozzi, later confirmed the broad outline of the critics’ charges. A strident critic of environmental regulation, Tozzi acknowledged “watering down” EPA rules through OMB review. “We made a lot of changes,” he recalls. “When a regulation went out of OMB, it was lean and mean.”⁸⁰

Successive Presidential directives continued “regulatory review” procedures requiring agencies to prepare and consider the costs and benefits of proposed regulation. The Ford administration retained the Quality of Life Review process targeting the EPA. It also extended the scope of regulatory review by requiring all executive-branch agencies to prepare “Inflationary Impact Statements” for major proposals in a process overseen by a new Council on Wage and Price Stability (“CWPS”).⁸¹ In practice this process had little impact on the EPA, since CWPS mainly scrutinized regulations by the Civil Aeronautics Board and the Interstate Commerce Commission.⁸² OMB’s Quality of Life Review process remained the mechanism for applying cost-benefit analysis of EPA rules, until Acting EPA Administrator John Quarles withdrew the Agency from the process in early 1977 following the election of Jimmy Carter.⁸³

But in 1978 the Carter administration continued regulatory review by OMB in a requirement that agencies to prepare a “Regulatory Analysis” for major regulations with an estimated annual impact of \$100 million or more.⁸⁴ A handful of major rules were selected each year for intense scrutiny by a new interagency Regulatory Analysis Review Group (“RARG”), comprised of representatives from every major executive agency,

⁷⁷ Quoted in “Office of Management and Budget Plays Critical Part in Environmental Policymaking, Faces Little External Review,” *Environment Reporter* (1976), 693-697.

⁷⁸ Quoted in “Office of Management and Budget Plays Critical Part in Environmental Policymaking, Faces Little External Review,” *Environment Reporter* (1976), 693-697.

⁷⁹ J. Gustave Speth et al, *OMB and EPA: Who Sets Environmental Policy?*

⁸⁰ Megan Twohey, “Jim Tozzi on Jazz and OMB,” *The Federal Paper* 1 (November 18, 2002), 1, 12.

⁸¹ Executive Order 11821 (November 27, 1974), 39 Fed. Reg. 41501, at <http://www.thecre.com/ombpapers/ExecutiveOrder11821.htm>. OMB Circular A-107, January 28, 1975. These were later called “economic impact statements under Executive Order 11949 (December 31, 1976) at <http://www.thecre.com/ombpapers/ExecutiveOrder11949.htm>.

⁸² Created by P.L. 93-387 (August 24, 1974), See Percival, “Checks without Balance,” 139-40.

⁸³ Memo, John Quarles to Assistant Administrators, et. al., “Termination of Quality of Life Review,” January 25, 1977, at <http://www.thecre.com/pdf/QualLifeReview8.PDF>

⁸⁴ Executive Order 12044, 3 CFR 152, 154 (1979)

staffed by economists from CWPS, and chaired by the Chairman of the Council of Economic Advisors. Unlike Quality of Life Review, which allowed OMB to delay or influence proposed rules before their publication, RARG reviews took place as part of the formal comment period. They also emphasized cost-effectiveness, or least cost alternatives for reaching a stated goal, rather than attempting a strict cost-benefit litmus test.⁸⁵ Nonetheless, like Quality of Life Review, the RARG process continued to provide industry with an important channel for influencing environmental regulation. The CWPS economists who reviewed EPA rules for RARG were strong advocates of strict cost-benefit analysis. As then EPA Administrator Douglas Costle recalls, “three out of every four CWPS comments on our rule making were cribbed right from industry brief...partly because it suited their economic biases about these issues, and their own perception that they were the custodians and keepers of the regulatory reform flame.”⁸⁶ RARG and White House intervened to weaken EPA several important rules, including the national ambient air quality standard (NAAQS) for ozone, the new source performance standard (NSPS) for coal-fired power plants, and new surface mining rules.⁸⁷

Industry’s Environmental Arithmetic

Having won an institutionalized mechanism for entering costs into the process of EPA rulemaking through Quality of Life Review and its spawn, the environmental backlash continued along several interrelated tracks. First, businesses lobbied for intensifying the regulatory review process by imposing stricter cost-benefit standards on proposed regulations, asking, beginning in the late 1970s, for the practice to be codified by statute in proposed “regulatory reform” legislation. The Quality of Life Review process and its successors had opened the door to challenges and delays of EPA rules by OMB on cost-benefit grounds, but with ultimate authority still vested in the EPA Administrator, proposed rules were never required to pass a formal cost-benefit litmus test. Second, businesses lobbied for the inclusion of cost-benefit “balancing” requirements in new environmental legislation considered by Congress. And third, in support of these policy goals, businesses vigorously took complaints about costs directly to the public, claiming that excessive environmental regulation imposed unreasonable and damaging economic burdens on the nation as a whole. Useful for each effort were detailed numbers on how much the pollution cleanup was costing.

With the initial impetus provided by the NIPCC, individual firms continued tallying annual pollution-control costs, and trade groups aggregated industry-wide data. These cost figures were valuable for efforts to weaken or delay proposed regulations on cost-benefit grounds through OMB’s regulatory review process. But the results also rippled through press releases, trade journals, and annual reports, often gaining traction in major business publications, and even major papers and newsweeklies. Companies willing to pay for advertising placements, meanwhile, could now give their institutional ads an air of objectivity and empirical weight by citing the new environmental arithmetic. In the chemical industry, for instance, companies including Dow, Monsanto, and American Cyanamid each conducted extensive regulatory-cost surveys—salvos against

⁸⁵ Percival, “Checks without Balance,” 144-145.

⁸⁶ Quoted in Percival, “Checks without Balance,” 146.

⁸⁷ Percival, “Checks without Balance,” 146-7.

the rising tide of environmental regulation. Dow estimated that it spent \$147 million in 1975, including \$63 million on environmental controls and \$22 million on health and safety.⁸⁸ Announcing the company's study in a 1977 speech, Dow President Paul Orefice claimed that more than one-third of these expenditures were "excessive," caused by red-tape, inefficiency, and "a state of hysteria." Orefice said it had been necessary to quantify the costs "because we need some weapons in trying to demonstrate to people in Congress what they are doing with this overregulation."⁸⁹

Steel companies also put cost surveys center stage. Locked in a contentious battle with the EPA in the mid-1970s, U.S. Steel used surveys of regulatory costs to argue that it had "been cleaning up its operations in good faith and at great cost." In 1975, the company estimated that it had spent \$114 million on pollution abatement, or 14% of its total capital expenditures that year. Refusing to reduce pollution to the levels demanded by the EPA, U.S. Steel officials argued that any increase in pollution-control spending would divert scarce capital from the expansion of production capacity and leave the company vulnerable to foreign competition.⁹⁰ Although its disputes with the EPA were less acrimonious, Bethlehem Steel also aggressively used analyses of cleanup costs to argue for relief. Beginning in 1976, Bethlehem claimed in advocacy ads that, after having already spent \$400 million to clean up most of its emissions, it was now being unduly forced to "remove the last increment of pollution." In an ad headlined "Does this kind of environmental arithmetic add up to you?" Bethlehem suggested that it would soon be forced to spend \$600 million more to remove only last 1% of pollutants.⁹¹ Dozens of other major industrial firms joined Dow, Bethlehem, and U.S. Steel in briskly publicizing the results of their economic analyses.

Industry also became adept at rapid-response economic analyses of new legislative and rulemaking proposals, promptly putting a high price tag on unwelcome proposals. In the early 1970s, for instance, the chemical industry argued that proposed OSHA standards for vinyl chloride exposure in the workplace would cost between \$65 billion and \$90 billion and as many as 2 million jobs, and its trade association stated, "The standard is simply beyond the compliance capability of the industry."⁹² Similarly, in 1974, the electric utilities protested proposed EPA rules on thermal and chemical discharges under the Clean Water Act by arguing that the rules would cost the industry some \$48 billion by 1983. The president of the Edison Electric Institute, W. Donham Crawford, claimed that the rules would "increase expenditures for electricity by almost \$200 per household annually."⁹³

Following the tracks laid by the NIPCC, businesses worked to reframe the basic language and methodology of environmental policy. At every level, from general political debate, to the fine details of law and administrative rulemaking, industry sought to reorient discussions toward "balancing" the *costs* against the *benefits* of environmental protection. The question, as industry framed it, was not whether the nation should seek cleaner air and water, safer use of pesticides, or better control of toxic chemicals, but how

⁸⁸ *Chemical Week*, August 10, 1977, 46-48.

⁸⁹ "Dow Chemicals Catalog of Regulatory Horrors," *Business Week*, April 4, 1977, 50.

⁹⁰ Eric Morgenthaler, "Cleanup Clash: U.S. Steel, EPA Fight Long-Running Battles over Plants' Pollution," *Wall Street Journal*, August 9, 1976, 1.

⁹¹ Bethlehem Ad, *Newsweek*, September 13, 1978.

⁹² Mark Green, "The Faked Case against Regulation," *Washington Post*, January 21, 1979, C1.

⁹³ "The Utilities Fight Costly Water Rules," *Business Week*, July 13, 1974, 22.

far it should push these goals, and how long it should take to reach them. Forcing the removal of the last few percent of a source's pollutants, pursuing "zero discharge" or "zero pollution," or forcing the adoption of untested or unnecessary technology, would inevitably lead to unfavorable benefit/cost ratios.

It was never as clear as it may have seemed that a cost-benefit calculus would favor industry's positions, particularly early on, when air and water pollution levels were high and existing controls weak. The economists' curves predicted low initial incremental control costs coupled with high absolute reductions in pollution. Indeed, early estimates of the costs and benefits of the Clean Air Act of 1970 suggested a quite favorable benefit/cost ratio, greater than 3:1. The White House Council on Environmental Quality (CEQ) estimated in 1971 that the annual cost of the Act would be some \$4.7 billion in 1975. On the benefits side, both the CEQ and the EPA cited a 1968 estimate of \$16 billion for the total annual toll of air pollution on health, vegetation, materials, and property values. The CEQ thus argued that "even when comparing 1968 benefits with 1975 annualized control costs, the identified benefits are over three times the costs." Leaving aside what fraction of the \$16 billion in damages might actually be reduced under the Act, the number itself was widely seen as little better than an educated guess.⁹⁴

From the start, the key problem for environmental advocates and the EPA was producing hard numbers for the benefits side of the ledger. As industry readily plugged reams of hard cost figures into the regulatory process, calculations of benefits were a much more daunting, painstaking, and uncertain undertaking. By comparison, even the difficult predictions for the benefits of auto safety regulation were on firmer footing. New pollution controls would lead to reductions in property damage, deaths, and illness; but by how much? Before dollar values for illness or death could even be applied by economists, considerable scientific hurdles had to be surmounted. Tracing cause-effect and source-receptor relationships required moving first from predicted cuts in emissions, to predicted reductions in ambient concentrations, and then to the final benefits in public health and reduced property damage. Tracing each step for various pollutants involved an array of complex scientific and medical models, with uncertainties multiplying rapidly along the tortuous paths linking pollution sources, atmospheric chemistry, meteorology, materials science, and epidemiology. With much of the relevant science itself in rapid flux, economists in the early 1970s faced daunting challenges in generating reasonable estimates of the benefits in improved public health, reduced property damage, and aesthetic improvements resulting from new pollution controls. Again, too, there was the thorny problem of assigning a monetary value to lost life. As in auto safety regulation, many early studies, by default, used some variation of the "human capital" approach, summing lost earnings with hospital costs and funeral expenses.⁹⁵

Another glitch in the benefits calculus involved assessing what, in 1966, economist Ronald Ridker called the "psychic costs" of pollution, such as the "anguish of death" or the unrealized "desire for a more beautiful environment."⁹⁶ A pioneer in

⁹⁴ Council on Environmental Quality, *Environmental Quality: The Second Annual Report* (Washington D.C.: U.S. Government Printing Office, 1971), 120.

⁹⁵ Lester B. Lave and Eugene P. Seskin, "Air Pollution and Human Health," in *Economics of the Environment: Selected Readings*, Robert Dorman and Nancy S. Dorfman, eds., (New York: W.W. Norton, 1972), 345-355.

⁹⁶ Ronald G. Ridker, "Strategies for Measuring the Cost of Air Pollution," in Harold Wolozin, ed., *The Economics of Air Pollution* (New York: Norton, 1966), 92.

quantifying the social costs of pollution, Ridker began using household surveys asking people “how much they would be willing to pay to obtain the more pleasant environment.” But in a caveat seldom heeded by later cost-benefit true believers, Ridker cautioned that quantification had its limits. “Under the best of circumstances,” he wrote, “we may never obtain an accurate measure of what I have called psychic costs. Yet this category may well be the most important, and sufficiently large to warrant increased control measures.”⁹⁷ Indeed, in surveys conducted for his 1967 study, Ridker found that residents of high pollution areas—lacking information on the nature and extent of the problem—were willing to pay only \$10 a year for a “complete” solution to air pollution problems.⁹⁸

Others pointed out that many of the most important benefits of current environmental regulations were intergenerational in nature, a position suggested by the EPA in its 1973 annual “Cost of Clean Air” report. Current estimates of benefits, it suggested, were so uncertain as to not warrant further repetition. “How does one establish the value of one’s health or a work of art imperiled by air pollution? Attempts have been made to answer these questions, but at present the estimates have wide ranges and little reliability.” Instead the report argued that a ledger of currently calculable costs and benefits ignored the incalculable benefits of the Act’s technology-forcing requirements—a long-term reorientation of industry along a less-polluting technological path. “With population growth and increased industrialization,” it said, “future pollution control will rely on the technology and practices being initiated today. This redirection, bringing attention to the need for clean air, may turn out to be the greatest benefit of implementing the Act.”⁹⁹ Accruing far into the future, such intergenerational benefits typically either did not show up in cost-benefit analyses, or were heavily devalued by “social discount” rates. As legal scholar Robert Percival notes, “the benefits of environmental regulation, though often substantial, typically accrue over long periods of time in ways that are not nearly as visible as the impacts of compliance costs.”¹⁰⁰

Thus while industry disseminated a steady stream of rising cost figures, the benefits side of the ledger was a tangle of scientific uncertainties, human lives equated with foregone income, “psychic costs,” and other incalculables—the entire endeavor in constant flux throughout the decade. Citing these problems, a 1980 report by the House Committee on Interstate and Foreign Commerce identified the quantification of benefits as “the single greatest problem with the use of formal cost-benefit analysis.”¹⁰¹ Throughout the decade, the EPA struggled to combat industry figures with ever more sophisticated analyses of benefits. But when it came to justifying or challenging policies on cost-benefit grounds, estimated benefits were far more uncertain and less tangible than

⁹⁷ Ridker, “Strategies for Measuring the Cost of Air Pollution,” 100.

⁹⁸ Ronald G. Ridker, *Economic Costs of Air Pollution: Studies in Measurement* (New York: F. A. Praeger, 1967).

⁹⁹ U.S. EPA, “The Cost of Clean Air,” (July 1973), reproduced in U.S. Congress, House Committee on Interstate and Foreign Commerce, Subcommittee on Public Health and Environment, *Hearings: Clean Air Act Extension*, (February 28, 1973), (Washington D.C.: U.S. Government Printing Office, 1973), 59-67.

¹⁰⁰ Percival, “Checks without Balance,” 195.

¹⁰¹ House Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations, *Cost Benefit Analysis: Wonder Tool or Mirage*, 96th Cong., 2d sess., (Washington, D.C.: U.S. Government Printing Office, 1980), 17.

costs. The political dynamics also conspired against the benefits side of the ledger. The constituency for assessing costs was clear—regulated industries with great incentive to delay or weaken regulations by aggressively scrutinizing any potential compliance costs. Benefits, on the other hand, accrued diffusely to the public; less immediate and tangible, they lacked a similarly organized constituency. In practice, it fell to the EPA and environmental groups to press the case. As Massachusetts Institute of Technology researcher Nicholas Ashford observed in 1980, the beneficiaries of social regulation—workers, consumers, and the general public—“have not had the resources to study their benefits in detail and, in most cases, have not been organized or motivated to press for such assessments.”¹⁰² It was clear that both the methodology and political mechanics worked to the advantage of regulated industries. The next step for industry was to convince the public that their interests, too, would be better served by balancing the costs and benefits of the nation’s bold environmental initiatives.

Taking the Case Public

As enthusiasm grew within the business community for economic analyses and intensified use of cost-benefit analysis in regulatory review, some in the business community argued that numbers alone were not enough. To be sure, Dow’s catalog of regulatory horrors or U.S. Steel’s capital spending complaints might suffice to persuade sympathetic industrialists of the perils of “over-environmentalism.” Economic analyses might also be useful evidence at congressional hearings or in the venues of administrative rulemaking. But environmental arithmetic was hardly the stuff to rally public support, said critics like Charles B. Yulish. A leading consultant to the electric utility industry, Yulish told the trade journal *Electrical World* in 1973 that business was losing the communications war to environmentalists. When environmentalists communicated with the public, Yulish said, their material reflected “an outside world loaded with emotions.” “They deal,” he continued “with the specter of *understandable specifics* that people—rightly or wrongly—worry about: radiation, nuclear-waste disposal, and cancer; spent fuel transportation and potential accidents; thermal discharges and dead fish; SO₂, particulates, and lungs.” Industry, on the other hand, disseminated economic analyses, environmental impact statements, and other abstract technical material lacking public appeal. “How can the average, hard-working, middle-class, suburban insurance salesman with a BA degree possibly cope when he gets home, with a 50- or 100-page impact statement that is riddled with calculus, graphs, and descriptions of guppy behavior in the fields?” he asked. Yulish suggested that industry must also communicate in terms of “understandable specifics,” if it hoped to win public support for its positions on environmental policy.¹⁰³

Others in the business community advanced similar ideas for winning public opinion. The public, they said, must be told that the high costs of environmental restrictions not only hurt industry, but all Americans in their roles as workers and consumers. In 1973, the president and editor-in-chief of Reader’s Digest, Hobart Lewis, urged that industry tell consumers that they would ultimately pick up the bill. “The public should be told,” argued Lewis, “in terms that are meaningful to him, just what all

¹⁰² Nicholas Ashford, “In Many Cases, Regulation Pays,” *New York Times*, June 15, 1980, F16.

¹⁰³ *Electrical World*, September 1, 1973, 28-29.

this legislation has him buying, and what it's going to cost him." Industry's environmental arithmetic would thus be translated into the consumer's pocketbook arithmetic.¹⁰⁴ Looking for ways to attract public sympathy, business leaders urged a reframing of complex issues in terms that would relate to the shared everyday experiences and concerns of the public. Robert Gilkeson, chairman of Philadelphia Electric Company and vice chairman of the Edison Electric Institute, the utilities' main trade group, said that threats to the expansion of the power supply should be met by reminding the public what was at stake. "It's time," he said in 1973, "the American people realize how essential electricity is...Why don't we tell them how vital our product is to jobs, food supply, environmental improvement, national security, education, medical care, human comfort, entertainment—all the things that make living possible, and life worthwhile?" Environmental rules, suggested Gilkeson, could be fruitfully linked to higher prices for energy and consumer products, unemployment, and even a general decline in the standard of living.¹⁰⁵

The Energy Crisis

In the early 1970s, polluting industries were given a windfall political opening to take their case public—the "energy crisis." Entering America's political lexicon in the early 1970s, the term pointed to accumulating stresses in the U.S. energy supply system. With natural gas supplies tight and electric power plants operating at close to capacity in many parts of the country, demand for oil surged at the same time that a twenty-year surplus in world oil markets came to an end. With domestic oil production now lacking any spare capacity, by 1972 the U.S. had become heavily dependent on Middle Eastern supplies to satisfy its boundless appetite for petroleum. The energy crisis was most dramatically symbolized by the "Arab oil embargo" of 1973. In retaliation for aid to Israel during the Yom Kippur War of 1973, Organization of Petroleum Exporting Countries (OPEC) began an embargo on all shipments of oil to the United States and rolling cutbacks of overall production.¹⁰⁶ Within months, crude oil prices nearly quadrupled, gas prices jumped some 40%, and gas lines of queuing motorists appeared in some parts of the country. President Nixon advocated a "Project Independence" to free the U.S. from dependence on foreign energy sources by accelerating the development of domestic fuels.¹⁰⁷ Although the embargo itself ended in March, it augured the end of the era of cheap oil. The oil price shock exacted a heavy toll on the U.S. economy, helping end the long postwar boom and send the economy into deep recession. Between 1973 and 1975, the GNP fell 6 percent, and unemployment doubled to 9 percent.¹⁰⁸

Led by energy interests, industries reeling from a string of political defeats at the hands of the environmental movement seized upon the energy crisis to proclaim that environmental rules were a fundamental obstacle to meeting the nation's energy needs. As political scientist Eric Smith writes, "Spokespeople for a wide range of business

¹⁰⁴ *Electrical World*, May 1, 1973, 28-30

¹⁰⁵ *Electrical World*, May 1, 1973, 28-30

¹⁰⁶ Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Touchstone, 1991), 589-612

¹⁰⁷ Yergin, *The Prize*, 615-617.

¹⁰⁸ Yergin, *The Prize*, 635.

interests joined the debate with a chorus of requests to relax various environmental regulations in order to save energy. To them, the energy crisis was an opportunity to beat back environmental advances.”¹⁰⁹ The petroleum industry immediately portrayed the crisis as partly a result of restrictive environmental rules and “pressure by environmental groups.”¹¹⁰ The National Association of Manufacturers demanded the “removal of arbitrary restrictions on the development of energy resources.”¹¹¹ And power-plant operators blamed environmentalists for slowing the development of the nation’s abundant domestic energy sources, particularly coal.¹¹² By late 1973, Gladwin Hill, environment beat reporter for the *New York Times*, would observe, “From the industrial sector particularly has come a drumfire of suggestions that the energy shortage necessitates broad-gauge repudiation of environmental controls.”¹¹³

For their part, electric utilities and other coal-related industries hoped that the multilayered “energy crisis” would herald a major resurgence of coal. Since the end of World War II, coal use in the United States had dropped by nearly a half. Now, with public opposition growing to nuclear plants, natural gas supplies low, and an oil price shock, many in government and industry agreed with the National Petroleum Council’s assessment that coal would again be *the* crucial fuel for U.S. industrial growth. The “energy crisis” appeared to offer “King Coal” a new lease on life, and calls went out to rapidly expand the number of coal-fired power plants to meet the nation’s energy needs.¹¹⁴ For the coal coalition, restrictive new environmental rules seemed the only obstacle to this promising future. Utilities found two policies implemented by the EPA under the Clean Air Act particularly objectionable: “No Significant Deterioration” and stack scrubbers. Both symbolized what was seen as the flawed, cost-blind approach to environmental regulation. The “No Significant Deterioration” controversy emerged after courts interpreted the Clean Air Act as requiring that so-called “pure air” regions—areas with cleaner air than required under the Act—not undergo “significant deterioration” of air quality. Utilities and other smokestack industries claimed that this “No Significant Deterioration” rule would virtually halt new plant construction in many parts of the country.¹¹⁵ The Western Energy Supply and Transmission Associates, a group of western utilities, argued that under this rule “the southwestern US will be denied the opportunity of economic growth, and [our] members will be prevented from meeting their responsibility of providing adequate electric power.”¹¹⁶ The National Coal Association, meanwhile, charged that court decisions outlawing significant deterioration had “thrown the nation into...instant no-growth policy.”¹¹⁷

¹⁰⁹ Eric R.A.N. Smith, *Energy, the Environment, and Public Opinion* (Oxford: Rowan and Littlefield, 2002), 26.

¹¹⁰ Laurence Stern, “Energy Crisis is Exploited,” *Washington Post*, February 4, 1973, A1.

¹¹¹ Quoted in Gladwin Hill, “Environment: Reformers are Undismayed by the Energy Crisis,” *New York Times*, December 2, 1973, 80.

¹¹² William H. Jones, “Warnings Issued on Energy,” *Washington Post*, May 26, 1973, C12.

¹¹³ Gladwin Hill, “Environment: Reformers are Undismayed by the Energy Crisis,” *New York Times*, December 2, 1973, p.80.

¹¹⁴ Vietor, *Environmental Politics and the Coal Coalition*, 206.

¹¹⁵ *Electrical World*, December 1, 1972.

¹¹⁶ *Electrical World*, October 1, 1973, 73.

¹¹⁷ *Electrical World*, September 1, 1973, 26.

An even more acrimonious dispute surrounded the EPA's decision to require coal-fired power plants to install so-called "scrubbers" to remove sulfur dioxide from stack emissions. Throughout the decade, electric utilities vigorously resisted this technology-forcing approach, claiming that workable scrubber technology was not commercially available and that the costs were prohibitive.¹¹⁸ They argued instead for the use of high stacks, to send emissions far from the source, and for "intermittent controls," mainly switching to low-sulfur coal when local meteorological conditions prevented emissions from being dispersed. As a 1974 *Electrical World* editorial put it, "Our position is clear. We feel unequivocally that insistence on the use of scrubbers at their present stage of technological maturity represents a squandering of resources that cannot be justified by the debatable benefits derived. When scrubbing technology demonstrates its practicability, let us then evaluate its costs and benefits. Meanwhile, let's do the best we can with what we have."¹¹⁹ These two rules threw a wrench in the coal coalition's plans for a major revival. "Just when the energy crisis had given coal a new lease on the future," writes historian Richard Vietor, "it seemed inconceivable that a responsible government could allow air pollution controls to thwart coal's solution to the energy crisis."¹²⁰

Electric utilities viewed the energy crisis as an opportunity to take such complaints public and gain popular support for amendments to the Clean Air Act and other environmental laws, or at least greater consideration of costs by the EPA during their implementation. In 1972, W. Donaham Crawford, president of the utilities main trade association, the Edison Electric Institute (EEI), blamed a "rapid imposition of severe environmental restrictions" for the current energy shortages and called for President Nixon to create a new National Energy Council to coordinate government energy policies. Reciting the constant refrain of the environmental backlash, Crawford urged the government to strike a "reasonable and cautious balance between the need for energy and the need for a wholesome environment."¹²¹ As the EPA began implementing the strict requirements of the Clean Air Act, utilities would argue that excessive pollution controls contributed to rising consumer energy costs and hindered economic growth. At the time of the first Earth Day in 1970, utilities had joined other industries in using advertising and public relations to "tell industry's story" of voluntary cleanup and corporate responsibility. But by 1973 many were setting aside such environment-friendly image advertising to publicize criticisms of the excessive costs of new environmental regulations. To be sure, narratives of partnership, voluntary clean-up, and environmental responsibility did not disappear, but after 1973 they were increasingly overshadowed by calls for relief from the heavy hand of government.

A 1973 survey of thirty leading privately-owned utilities found they were "investing heavily in corporate advertising to awaken public interest in the power shortage." These campaigns often blamed environmental regulation for rising energy prices, forcing utilities to switch to more expensive low-sulfur coal and install costly scrubbers and precipitators to capture pollutants. The Investor-Owned Electric and

¹¹⁸ See for instance *Electrical World*, March 1, 1973, 9; *Electrical World*, July 15, 1973, 113-114, *Electrical World*, August 1, 1973, 26.

¹¹⁹ *Electrical World*, May 15, 1974, 7.

¹²⁰ Vietor, *Environmental Politics and the Coal Coalition*, 207.

¹²¹ "Edison Electric Plan," *New York Times*, June 7, 1972, 59.

Power Companies, a loose association of utilities, hammered away at these themes in a PR campaign that placed articles in *Reader's Digest* such as "Do Electric Rates Have to Keep Going Up?" and "Why We Have a Fuel and Power Shortage." In 1972, the Philadelphia Electric Company began a local campaign including two-minute commercials starring TV actor Leslie Nielsen, who explained how environmental regulations had led to higher electricity prices.¹²² In 1974, a group of 37 investor-owned utilities kicked off an "Electric Utilities Clean Air Communications Plan" to influence coverage of clean air policy by the national press and the television networks. A position paper titled "Clean Air and the Consumer: A Statement of Belief by Electric Utilities" established key talking points of the campaign: consumers ultimately paid for cleaner air through higher electricity rates; less-costly alternatives already existed for clearing the air; and the industry's proposals for changing the Clean Air Act could avert otherwise crippling economic impacts. As consumers became aware of these "different options available to them for achieving clean air," utilities would urge them to contact their elected representatives and the EPA with concerns about current programs. In effect, it asked consumers to become a grassroots lobby for the industry in its efforts to weaken Clean Air Act. Beginning with a series of presentations to the top executives and editors of the national print and broadcast media, utility officials hoped for a top-down injection of their messages into news coverage.¹²³

American Electric Power

The most brazen and controversial of the utility campaigns was launched in 1974 by American Electric Power (AEP), a New York holding company which owned seven Midwestern utilities. The nation's largest producer of electric power, AEP spent \$3.6 million in 1974 alone to run 36 different advocacy advertisements in major newsweeklies (*Time*, *Newsweek*, *U.S News*), national newspapers (*The New York Times*, *The Wall Street Journal*, and the *Washington Post*), and some 277 local newspapers within its service area. More than half of the ads charged that environmental regulations were an obstacle to meeting the nation's pressing energy needs, singling out mining restrictions on federal land, air pollution standards, and the EPA's scrubber policy.¹²⁴ The campaign began in February 1974 with a full-page ad headlined "We Have More Coal Than They Have Oil. Let's Use It!" It featured a cartoon of two wealthy Arab sheiks standing in front of a Rolls Royce—the tycoon beneficiaries of America's dependence on foreign oil. The text argued that domestic coal could be the "major solution to our present energy problems" and urged that it be extracted and burned as quickly as possible. While acknowledging that environmental restrictions might pose obstacles, it said that such problems were "nothing that American ingenuity cannot lick." In subsequent ads, the lampooned sheiks periodically reappeared, becoming familiar mascots of the campaign. According to AEP's 1974 annual report, the main objective of this campaign was to "point out the vital importance of utilizing coal" and criticize the "government policies that were restricting

¹²² *Public Relations Journal*, Reproduce in Congressional Print, pp.33-34. ???

¹²³ *Electrical World*, Dec. 1, 1974, 74.

¹²⁴ S. Prakash Sethi, *Advocacy Advertising and Large Corporations: Social Conflict, Big business Image, the News Media, and Public Policy* (Lexington, Mass.: Lexington Books, 1977), 115-177.

the burning of some coal and the mining of other coal.” It argued that greater utilization and availability of coal offered a straightforward solution to the energy crisis, if only unreasonable government restrictions were eased.¹²⁵

AEP’s attack on environmental rules ranged from vague calls to amend the Clean Air Act to biting advertorials focusing specifically on the complex scrubber controversy. Several ads claimed that unreasonable environmental regulations were major drags on the nation’s economy and obstacles to energy self-sufficiency. An ad headlined “Generate Less Energy—Sure. And Generate Galloping Unemployment” warned that conservation measures advocated by “no-growth critics” would obstruct growth and lead to “less production, fewer jobs, and lower demand for products.” Featuring a pointy-toed dandy in plaid slacks (perhaps meant to suggest an EPA bureaucrat) holding a protest sign reading “Generate Less Energy,” the ad urged changes to the Clean Air Act “so that more of our coals can be burned.” Another ad depicted a blindfolded Uncle Sam above a caption “Are We Blind to the Real Energy Crisis?” It warned that unless the Clean Air Act was amended “we will have a *real* energy crisis.”¹²⁶

Perhaps the most controversial ad was titled “We Burn at Those Who Block the Burning of Vast Amounts of America’s Coal.” This charge was thrown at the EPA. “Will the E.P.A. accept the responsibility for the economic effect their restrictive decision will have on the country?” it asked rhetorically. “Oh no! They’ll try to wriggle off the hook by saying you can burn all the coal in America if you’ll just install stack gas scrubbers.” It riled top EPA officials including Administrator Russell Train, who disputed its claims in an August 1974 letter to AEP Chairman and CEO Donald P. Cook which was published in the *New York Times* and *Washington Post*.¹²⁷ Train argued that the ad misled the public about EPA policies and neglected the agency’s efforts to make reasonable accommodations in implementing air quality goals. Not to be outdone, Cook ran a six-page, point-by-point response to Train, which appeared the following month as a paid advertisement in the *Times* and *Post* under the caption “Half a Story is Worse Than None.”¹²⁸

Such aggressive public swipes at environmentalists and the EPA owed much to the leadership of Cook, who signed off personally on each of the 36 ads that ran in 1974. The campaign’s themes reflected Cook’s strong personal belief that much of the new environmental regulation was excessive. A former chairman of the Securities and Exchange Commission and congressional staffer, Cook began working at AEP in 1953. In the early 1970s, Cook became the electric power industry’s most vocal critic of new environmental rules, charging that “our government prevents us from burning the coal we can mine and prevents us from mining the coal we can burn!”¹²⁹ Although other utility executives generally shared Cook’s views, most shunned public controversy and preferred to work quietly for regulatory relief in Congress, the White House, and the courts. Cook, however, seized upon the “energy crisis” to aggressively take the utilities’

¹²⁵ American Electric Power ads, reproduced in Sethi, *Advocacy Advertising and Large Corporations*, 141-147.

¹²⁶ American Electric Power Ad, *Washington Post*, April 30, 1974, p.A17.

¹²⁷ Russell E. Train to Donald C. Cook, August 23, 1974, published in *New York Times*, Sept. 2, 1974 and *Washington Post*, Sept. 5, 1974.

¹²⁸ *New York Times*, Oct. 22, 1974; *Washington Post*, Oct. 22, 1974.

¹²⁹ “Donald C. Cook of American Electric Power,” *Nation’s Business*, September 1975, 46-48.

case directly to the public. In 1974, *Business Week* described Cook as a “strong-willed and scrappy man,” whose style was “to come out fighting rather than work quietly behind the scenes.” The result of Cook’s media campaign, according to *Business Week*, was that AEP was “increasingly identified in the public eye as the leading critic of environmental rules.”¹³⁰

Observers split on the impact of the AEP campaign. EPA officials argued that the campaign had actually strengthened the agency’s hand by stirring a backlash. Major papers, including *The Washington Post* and *New York Times*, ran editorials criticizing the claims of specific ads, and some observers, including an Arab-American stockholder of the company, objected to the campaign’s offensive stereotyping of Arabs.¹³¹ Marlin Fitzwater of the EPA observed that “people who saw those ads and then read the editorials probably thought that big business was trying to shaft the public interest.”¹³² But AEP officials said they had succeeded in attracting public attention to the plight of utilities. Although no polls tracked the ads’ impact, AEP claimed that the majority of the mail, telephone, and media responses had been favorable.¹³³ More important, according to some observers, was the company’s move to conflate the industry’s parochial interest in regulatory relief with the economic interests of consumers. John O’Toole, president of the prominent New York advertising agency Foote Cone & Belding, and coiner of the term “advocacy advertising,” told the *Wall Street Journal* that the “best way to present any ad is to make it in terms of the reader’s selfish interest, and that’s the way [AEP’s ads] were presented.”¹³⁴

Petroleum Industry

The petroleum industry also invested heavily in linking environmental rules to the energy crisis. In 1972, the American Petroleum Institute (API), the major oil industry trade association, issued a first-ever policy statement on energy at its annual meeting in Chicago. It suggested that environmentalists would have to compromise on issues such as exploration on federal lands and offshore drilling. Industry executives at the meeting said that a new balance must be struck between energy needs and environmental protection in order to protect the American standard of living. The vice president of Continental Oil, C. Howard Hardesty, for instance, said in a speech that because “environmental concerns are more deeply rooted than our energy concerns. So far we are not willing to accept the fact that some tradeoffs, some compromises will be needed to keep these inconsistencies from destroying our way of life.”¹³⁵ With growing talk of an “energy crisis,” the oil industry moved to link its own agenda to the new energy concerns via campaigns in the national media. Getting in first, the industry hoped to shape the initial terms of political debate according to its own policy preferences. Urging a more aggressive public presence, API’s president, former Texas Congressman Frank Ikard,

¹³⁰ “Donald Cook Takes on the Environmentalists,” *Business Week*, October 26, 1974, 66-73.

¹³¹ Sanford L. Jacobs, “Firm’s Ad Campaign ‘Isn’t Very Bright’ Arab Holder Asserts,” *Wall Street Journal*, April 25, 1975, 18.

¹³² Quoted in Sethi, *Advocacy Advertising and Large Corporations*, 133.

¹³³ Sethi, *Advocacy Advertising and Large Corporations*, 123.

¹³⁴ Edwin McDowell, “Donald Cook and Those Funny Ads,” *Wall Street Journal*, February 7, 1975, 10, 20.

¹³⁵ William D. Smith, “Oil Group Warns on Ecology Issue,” *New York Times*, November 14, 1972, 65.

told the 1972 conference, “it is vital that we sharpen our communications with the public so that the issues are clear and not hazy.”¹³⁶

API took the industry’s ideas public through a costly advertising campaign in the early 1970s. In 1972 alone, the group spent an estimated \$4.2 million targeting the general public through television commercials and newspaper ads. And in 1973, it budgeted \$2.5 million to target “thought leaders” via ads in magazines.¹³⁷ Among other things, the campaign blamed environmental restrictions for preventing the development of adequate supplies of domestic oil. In the summer of 1971, for instance, API ran an ad in twenty-two major newspapers illustrated with an oil can whose nozzle was twisted into a knot. It was captioned “No one can live without air and water. But have you tried living without oil.”¹³⁸

But API’s efforts were just the tip of the iceberg for the oil industry. In May of 1974, Rep. Benjamin Rosenthal (D-New York) estimated that over the last eighteen months the industry as a whole had spent “about a third of a billion dollars on advertising, most of it on politically oriented messages rather than product promotion.”¹³⁹ The majority of this came from individual firms, which joined the API in urging a new balance between environmental protection and energy needs. Gulf Oil, for example warned in 1973 advocacy ads that, unless the nation fully tapped its domestic energy resources, its national security and standard of living would suffer. A June 1973 Gulf ad argued that the pendulum had swung too far in favor of environmental protection, leading to unreasonable standards and unreasonable costs. Like American Electric Power, Gulf told consumers that they would ultimately pay these costs through higher energy prices. The company urged a relaxation of rules for strip mining and offshore drilling, immediate construction of the Trans-Alaska pipeline, and an end to delays in building nuclear power plants.¹⁴⁰ Commenting on this medley of oil industry efforts in 1973, the *New York Times* said, “The industry is portraying the crisis as a by product of unfriendly policies by government regulators, pressure by environmental groups and anti-industry propaganda by spokesman [sic] for consumer organizations.”¹⁴¹

But by far the most ambitious campaign to grow out of the energy crisis was that of Mobil Oil. Kicked off in 1972, it unleashed a continual stream of advocacy advertisements and similarly-themed television commercials. For its controversial advertorials (or “Op-Ads”), Mobil purchased prominent spots in the major papers, including placements on the influential Op-Ed page of the *New York Times*, opened to advertisers in 1970. At a cost of many millions of dollars over the course of the decade, Mobil’s advertorials began appearing weekly in the *Times*, as well as leading papers in Boston, Chicago, Los Angeles, and Washington. Among other things, Mobil’s advertorials defended oil industry profits, criticized energy conservation as an unworkable policy, and claimed that excessive environmental regulation had exacerbated energy shortages. Like other oil companies, Mobil also alleged that environmental rules

¹³⁶ Quoted in Laurence Stern, “Energy Crisis is Exploited,” *Washington Post*, February 4, 1973, A1.

¹³⁷ Philip H. Dougherty, “Wooing the Energy Crisis,” *New York Times*, November 7, 1972, 46.

¹³⁸ Reproduced in Laurence Stern, “Energy Crisis is Exploited,” *Washington Post*, February 4, 1973, A1.

¹³⁹ Benjamin S. Rosenthal, “Big Oil’s Energy-Crisis Blitz,” *New York Times*, May 25, 1974, 29.

¹⁴⁰ Gulf Oil ad, *Wall Street Journal*, June 6, 1973.

¹⁴¹ Stern, “Energy Crisis is Exploited,” A1.

were a major factor in America's energy problems by stifling the expansion of domestic energy supplies.

Herbert Schmertz, Mobil's vice president for public affairs and the architect of the campaign, said that the ads targeted "opinion leaders and decision makers" who helped "set the tone for the thinking of others." The goal was to make the public "understand the different options open to them, and the trade-offs that each demand: between the needs of the economy and environment, for example. Both can be satisfied, but there must be some give on both sides."¹⁴² Mobil was forced to turn to paid advertising, Schmertz argued, because of the failure of the media to tell its side of the story. TV coverage of energy matters had been "simplistic, and often inaccurate," he said, while print reporters often "displayed a distinctly anti-business bias."¹⁴³ Mobil's battle with the media peaked in 1974, when CBS and NBC refused to air a commercial promoting off-shore drilling for oil and gas in spite of the environmental risks. Mobil quickly responded with advertisements in newspapers across the country which reproduced frames from the commercial and blasted the networks for restricting free speech.

Mobil's campaign drew heavy criticism throughout the decade. Environmentalists charged that Mobil opportunistically made a scapegoat out of environmental protections. The Federal Trade Commission investigated the accuracy of the ads, and a top environmental official in the Carter administration called the campaign the "imMOBILization of truth."¹⁴⁴ Nevertheless, Mobil's persistent and highly-visible advertorials ensured that a huge audience of "opinion leaders" in the 1970s would repeatedly encounter claims that environmental regulation carried a heavy price for the nation's economy. In the decade-long construction of a narrative linking environmental rules to the nation's stubborn economic problems, few played a more important role than Mobil and Herbert Schmertz. For Schmertz, Mobil's patient, yet forceful approach offered vital lessons for other companies planning to "put more muscle into public affairs." With "big government" increasingly interfering with the operations of business, wrote Schmertz in 1976, it was time for "the entire business community to join together in defense of certain basic economic principles." Business could not hide from controversial political issues, but like Mobil "must play its part in helping to shape the ideological and philosophical currents that underly social policy."¹⁴⁵

Others who used the energy crisis to demand relief from environmental rules included natural gas companies, banks, and chemical firms. Columbia Gas System, a natural gas provider, argued in a 1972 ad titled "The Gas Shortage" that Congress should amend the National Environmental Policy Act (NEPA) because it had "obstructed efforts to supply the American people with clean burning natural gas."¹⁴⁶ The First National Bank of Chicago warned that, unless opposition to the Trans-Alaska pipeline, offshore drilling, and nuclear power plants was overcome, the country could face a disastrous power shortage leading to blackouts that winter.¹⁴⁷ And PPG Industries of Pittsburgh, owner of the Houston Chemical Company, a maker of tetraethyl lead for gasoline, used

¹⁴² Herbert Schmertz, "Idea Advertising: Talking to New Audiences," *Electric Perspectives*, June 1976, 1-7.

¹⁴³ Schmertz, "Idea Advertising: Talking to New Audiences," 4.

¹⁴⁴ Merrill Brown, "Regulation Critics Assailed," *Washington Post*, February 28, 1980, B1.

¹⁴⁵ Schmertz, "Idea Advertising: Talking to New Audiences," 7.

¹⁴⁶ Columbia Gas System ad, *New York Times*, June 29, 1972, 13.

¹⁴⁷ First National Bank of Chicago ad, *New York Times*, July 7, 1972, 7.

the crisis to publicly challenge the EPA's phasedown of leaded gasoline. A November 1973 PPG ad argued that as much as "1 million barrels of crude oil every day" could be saved by keeping octane-boosting tetraethyl lead in gasoline at current levels. Depicting a barrel of oil wrapped in the Stars and Stripes and labeled "1,000,000 Oil" which was being poured down a drain, the ad urged Congress to allow present levels of lead in leaded gasoline to be maintained.¹⁴⁸ John Quarles, EPA Deputy Administrator, and Senator Edmund Muskie (D-Maine), a principal architect of the Clean Air Act, both publicly criticized the ad, with Muskie calling it a "blatant falsehood." All the same, said Muskie, just "mentioning 1 million barrels is enough to get a Congressman drooling."¹⁴⁹

Muskie and Quarles joined a chorus of top environmental officials, members of Congress, and environmentalists who publicly denounced the broad corporate advertising blitz. Russell Train, then chairman of the Council on Environmental Quality, told the Washington Rotary Club in the summer of 1973 that the environment had become the "whipping boy for our energy problems."¹⁵⁰ Representative Benjamin Rosenthal (D-New York) derided the massive advertising campaigns by the oil industry as an "informational brownout on the truth behind the energy crisis." Along with sixteen other House and Senate members, Rosenthal unsuccessfully petitioned the television networks to give free air time to public-interest advertising under the Federal Communications Commission's Fairness Doctrine, to counterbalance industry's vastly superior economic resources and media access.¹⁵¹ Environmental leaders also cried foul. Stewart Brandborg, president of the Wilderness Society, observed in late 1973, "The moneymaking interests are obviously mounting a massive strategy to undo all the constructive environmental programs."¹⁵² And Elvis Stahr, president of the National Audubon Society, warned of "broadside assaults upon the environmental safeguards enacted in recent years."¹⁵³ Muskie and Quarles, meanwhile, used a series of speeches and press interviews in 1973-74 to push back in the national media against industry claims of an environmental link to the energy crunch.¹⁵⁴

Both Muskie and Quarles warned that the blitz of corporate advertising and public relations by regulated industries was beginning to sway the political debate in favor of rollbacks of environmental protections. Muskie observed a "real move away from the environmental cause," in part because the "oil companies can shape the political attitude so quickly, and we have no resources to counter them."¹⁵⁵ Quarles charged that industry had successfully exploited the energy crisis to recast the political agenda. When Congress was under pressure to act quickly, he said, "Any false information that is widely publicized is not likely to be effectively challenged." With a "near-panic

¹⁴⁸ PPG ad, *Washington Post*, November 27, 1973, A21.

¹⁴⁹ George C. Wilson, "Environmental Gains Threatened by Crisis," *Washington Post*, December 11, 1973, A1.

¹⁵⁰ "Nixon Aide Denies Energy Gap is Caused by Ecological Effort," *New York Times*, June 14, 1973, 34; George C. Wilson, "Environment Link in Fuel Crisis Hit," *Washington Post*, June 14, 1973, A4.

¹⁵¹ Benjamin S. Rosenthal, "Big Oil's Energy-Crisis Blitz," *New York Times*, May 25, 1974, 29.

¹⁵² Quoted in Gladwin Hill, "Environment: Reformers are Undismayed by the Energy Crisis," *New York Times*, December 2, 1973, 80.

¹⁵³ Elvis J. Stahr, "Challenge and Opportunity," Letter to the Editor, *Wall Street Journal*, February 7, 1974.

¹⁵⁴ Wilson, "Environmental Gains Threatened by Critics," A1.

¹⁵⁵ Quoted in Wilson, "Environmental Gains Threatened by Critics," A1.

atmosphere” during the energy crisis, Quarles warned that “one big blast of false advertising could send this country down the wrong path.”¹⁵⁶

But the influence of this corporate media blitz went well beyond its one-sided advertising messages. It also helped convert industry-spun positions into a calcified conventional wisdom espoused by the media. Despite some critical coverage of oil industry advertising and periodic editorials debunking ads by American Electric Power or Mobil, the national media often failed to challenge the claims of industry. For instance, the first story in a *Washington Post* series on the energy crisis in late 1972 asked “Why and how did a fuels crisis strike the world’s richest country so quickly?” Citing a former Federal Power Commissioner, John O’Leary, the story said that the “straw that really broke the camel’s back” was the environmental movement, which hit the “*energy industries like a blitzkrieg*.” Failing to offer alternative explanations, the story suggested that O’Leary’s faulting of environmental “extremism” for the energy crunch reflected conventional expert opinion on the issue.¹⁵⁷ At other times, news stories simply reproduced industry-spun positions as uncontroversial statements of fact. An April 1973 backgrounder on the energy crisis in the *New York Times*, for example, introduced without further explanation the claim: “It is by no means a coincidence that the energy crisis and the environmental crisis have arisen almost simultaneously. Restrictions stemming from the new concern for the environment exacerbated the energy situation.”¹⁵⁸

Industry-spun claims also gained traction on editorial pages. Editorials in the major papers began backing changes in environmental rules to tackle the energy crisis. The proposals ranged widely—from temporary variances and extended deadlines (*New York Times*), to fundamental reforms that would give priority to cost considerations (*Wall Street Journal*). Whatever the prescription, though, this rhetorical turn had the effect of ratifying the claim that environmental rules were a major factor in the energy crunch. The editorial page of the *Wall Street Journal* took a predictably strong line in a January 1974 editorial titled “Environmentalists at Bay.” It said the crisis would augur in a new era for environmental policy—the end of the period in which environmentalists had been “politically absolved of the need to fit their timetables and cost-benefit ratios to the total framework of national priorities.” Now, they would be forced to “refine and justify the standards they want the nation to accept” and to “give way on energy supply” to allow development of domestic resources.¹⁵⁹ The editorial page of the *New York Times*, although highly critical of attempts to make environmental rules a scapegoat for the energy crisis, nonetheless gave credence to the notion that environmental restrictions were at least a partial factor in the nation’s energy problems. As a November 1973 editorial put it, “Most conservationists will surely recognize the necessity for some limited environmental compromises, but only if it is clear that these are temporary.”¹⁶⁰ A *Times* editorial the following month said, “It would be unrealistic—even irresponsible—to argue that the nation’s energy problems can be met without some setbacks to the cause

¹⁵⁶ Quoted in Wilson, “Environmental Gains Threatened by Critics,” A1.

¹⁵⁷ Thomas O’Toole, “Energy-Starved U.S. Seeks Sustenance,” *Washington Post*, November 26, 1972, A1.

¹⁵⁸ John Noble Wilford, “The Long-Term Energy Crisis,” *New York Times*, April 19, 1973, 53.

¹⁵⁹ “Environmentalists at Bay,” *Wall Street Journal*, January 3, 1974, 10.

¹⁶⁰ “Energy and Ecology...” *New York Times*, November 25, 1973, 46.

of environmental protection and other socially oriented policies. Compromises between what is ultimately desirable and what is momentarily necessary must be accepted.”¹⁶¹

By 1974, allies of industry were cheering this ascendance of narratives linking environmental protection to the nation’s energy problems. *Electrical World*, an electric power industry trade journal, reckoned that much of the mainstream press was now blaming the environmental movement for the energy crisis. “Yesterday, the environmental person was a hero. But Americans are always finding chinks in the armor of yesterday’s heroes. So today, the environmentalist is rapidly becoming, as they used to say in Brooklyn, a ‘bum.’ Why? Rightly or wrongly, the energy crisis is being laid at his (or her) feet by much of the nation’s press.”¹⁶² Conservative political analyst Ben Wattenberg surmised that the energy crisis and the return of “dollar politics” had “undermined much of the whole windmill-tilting of the ecological movement.”¹⁶³

Opinion polls, however, indicated that the public did not blame environmentalists for the energy crisis. In fact, many respondents believed that the “crisis” was actually a contrivance of the oil companies to drive up profits. A 1974 Roper poll found that 73 percent agreed that “there is not a shortage of gasoline and fuel oil and the big companies are holding it back for their own advantage.” A Gallup poll conducted in December 1973 found that only 2 percent held “Ecologists” responsible for the energy crisis, whereas 25 percent blamed oil companies and 20 percent blamed the government.¹⁶⁴ As for environmental regulation, a January 1974 survey by the Opinion Research Corporation found that only 40 percent thought that pollution controls and environmental restrictions were a “very important” or “fairly important” reason for the energy shortage.¹⁶⁵ Roper surveys conducted during 1973 and 1974, meanwhile, consistently found a roughly equal split on the question, “Are you more on the side of adequate energy or more on the side of protecting the environment?”¹⁶⁶

On the other hand, when asked by pollsters whether they would support specific measures to increase supplies of energy, a majority of respondents often favored the proposed measure. In a Roper survey conducted in December 1973, for instance, a majority of respondents said that the nation “should” take the following steps: “Relax pollution standards so that fuels which don’t meet these standards like coal, high sulfur oil, etc., can be used” (54 percent), “Allow more strip mining to produce more coal supplies” (57 percent), and “Increase off-shore exploration for oil reserves under the

¹⁶¹ “Moral Profiteering...” *New York Times*, December 18, 1973, 40.

¹⁶² *Electrical World*, February 1, 1974, 71

¹⁶³ “New Issues, Old Politics,” *Washington Post*, January 27, 1974, C1.

¹⁶⁴ Survey by Gallup Organization, December 7-December 10, 1973. Retrieved November 13, 2004 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. <<http://www.ropercenter.uconn.edu/ipoll.html>>.

¹⁶⁵ Survey by Opinion Research Corporation, January 24-January 27, 1974. Retrieved November 13, 2004 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. <<http://www.ropercenter.uconn.edu/ipoll.html>>.

¹⁶⁶ Survey by Roper Organization, September 28-October 6, 1973; Survey by Roper Organization, May 2-May 11, 1974; Survey by Roper Organization, September 27-October 5, 1974; Retrieved November 13, 2004 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. <<http://www.ropercenter.uconn.edu/ipoll.html>>.

ocean” (72 percent).¹⁶⁷ More broadly, as Eric Smith has observed, “During the 1970s—the years of the brownouts, the OPEC boycott, and the gas lines—the public looked quite favorably on both increased offshore oil production and nuclear power, and it was warming to the idea of strip-mining coal.”¹⁶⁸

Inflation and Trickle-Down Costs

Fresh from a partial success in linking the “energy problem” to environmental rules, businesses made the same connection with a new crisis dominating the national agenda—inflation. By late 1974, “inflation” was doing the work for regulated industries done a year earlier by “the energy crisis.” Rhetorically, it was close to a clean, one-for-one substitution. After 1973, inflation rates soared and remained high for the remainder of the decade. “Inflation, which had averaged 4.8% between 1966 and 1973, increased at an average annual rate of 9.3% between 1974 and 1981,” writes David Vogel.¹⁶⁹ Business would later blame “overregulation” for other macroeconomic problems, but inflation was the key opening. As policymakers cast about for explanations—and straw men—during confusing confluences of high inflation, stagnant growth, and high unemployment, business launched a flurry of rhetorical salvos and publicity tagging the new social regulation as a major cause. By the late 1970s, there was evidence that these efforts were paying off. Policy-making circles looked to reforms of environmental regulation as a central part of “regulatory reform” initiatives to relieve inflationary pressures. The link also gained traction in public opinion. As Seymour Lipset and William Schneider observed in 1979, “A majority of the public consistently says that government regulation of business increases inflation.” And more specifically: “The proportion believing that ‘government activity to protect the environment and consumers’ increases inflation has hovered around 50 percent from 1975 to 1978, while less, between 14 and 23 percent, feel it does not do so.”¹⁷⁰

The link between inflation and environmental regulation was broached by Richard Nixon in a July 25, 1974 economic speech. Nixon said it was time to “reevaluate the trade-off” between economic goals and “certain other objectives that are worthwhile, such as improving the environment and increasing safety.” “Those goals are important,” he said, “but we too often, recently, have had a tendency to push particular social goals so far and so fast that other important economic goals are unduly sacrificed.”¹⁷¹ The *New York Times* reported that Nixon’s comments were “widely construed as an 11th-hour effort to woo conservative support in his Watergate troubles.” Their most likely source was thought to be Roy Ash, Nixon’s director of the Office of Management and Budget.¹⁷² In 1970, he had headed the Ash Commission, which originally recommended the creation

¹⁶⁷ Survey by Roper Organization, December 1-December 15, 1973. Retrieved November 13, 2004 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. <<http://www.ropercenter.uconn.edu/ipoll.html>>.

¹⁶⁸ Smith, *Energy, the Environment, and Public Opinion*, 71-72.

¹⁶⁹ Vogel, *Fluctuating Fortunes*, 113.

¹⁷⁰ Lipset and Schneider, “The Public View of Regulation,” 6-13.

¹⁷¹ Richard Nixon, “Address to the Nation About Inflation and the Economy,” July 25, 1974, Public Papers of President Richard Nixon, at http://www.nixonfoundation.org/Research_Center/1974_pdf_files/1974_0229.pdf.

¹⁷² Gladwin Hill, “U.S. Aide Defends Ecological Costs,” *New York Times*, September 17, 1974, 56.

of the EPA. But Ash later became a leading critic of the agency and of the economic costs of environmental regulation, claiming in 1977 that it had “probably contributed two to three percentage points to our inflation rate” over the past few years.¹⁷³

Business leaders responded by linking environmental regulation to inflation at a series of regional conferences in September of 1974. Preparatory to a nationwide “summit” on inflation, the conferences were attended by the chairmen and CEOs of most of the nation’s major corporations, as well as top trade association officials. Participants used the “anti-inflation” meetings as a springboard to link environmental rules to inflation in the national political discourse. Headlines out of the meetings in Detroit and Los Angeles included: “Executives Oppose Any New Pollution Rules,”¹⁷⁴ “Big Industries Say Letup Would Slow Price Increases,”¹⁷⁵ “High Costs of Transport Tied to U.S. Regulations,”¹⁷⁶ and “Transport Chiefs Propose Environmental Law Curbs.”¹⁷⁷ Most delegates held that environmental, health, and safety regulations were a major cause of inflation, requiring capital investments in pollution-control technologies that were non-productive, and thus increasing the price of goods. Henry Ford II, chairman of Ford Motors, called for a five-year freeze on new regulations in order to “get inflation under control” by “releasing capital needed to expand capacity and improve productivity.”¹⁷⁸ Others called for the creation of a formal policy mechanism—“cost-benefit analysis” or “inflationary impact statement”—to weigh the costs of regulatory actions.

For the business community, these meetings helped crystallize a consensus language for expressing the shared regulatory grievances of diverse industries. The new public language was articulated at the Detroit anti-inflation meeting by Donald Gaudion, chairman of the National Association of Manufacturers. “While the objectives of such [regulatory] programs are indisputably desirable,” he said, “they should be balanced against the burdens they place on the economy to determine where the true public interest lies.”¹⁷⁹ Or, as Dupont Chairman Irving Shapiro put it, excessive social regulation had “hampered productivity and increased the cost of production to a degree that has negated the intended benefits to the public.”¹⁸⁰ While some delegates called for a suspension of all environmental regulation,¹⁸¹ most echoed Shapiro’s moderate language of balancing *costs versus benefits*. After taking office in 1974, President Gerald Ford responded to stepped up industry complaints by expanding the purview of regulatory review with “inflationary impact statements.” But Quality of Life Review remained industry’s primary channel for influencing environmental regulations, now in part based upon charges of inflationary impacts.

¹⁷³ “The Tricks of the Trade-Off,” *Business Week*, April 4, 1977, 72.

¹⁷⁴ James L. Rowe, “Executives Oppose Any New Pollution Rules,” *Washington Post*, September 20, 1974, A2.

¹⁷⁵ Peter T. Kilborn, “Big Industries Say Letup Would Slow Price Increases,” *New York Times*, September 20, 1974, 51.

¹⁷⁶ Robert A. Wright, “High Costs of Transport Tied to U.S. Regulations,” *New York Times*, September 21, 1974, 30.

¹⁷⁷ Richard Witkin, “Transport Chiefs Propose Environmental Law Curbs,” *New York Times*, September 21, 30.

¹⁷⁸ Quoted in Kilborn, “Big Industries Say Letup Would Slow Price Increases,” 51.

¹⁷⁹ Quoted in Kilborn, “Big Industries Say Letup Would Slow Price Increases,” 51.

¹⁸⁰ Quoted in Kilborn, “Big Industries Say Letup Would Slow Price Increases,” 51.

¹⁸¹ See statement of E. Mandell de Windt, chairman of Eaton Corporation, in Quoted in Kilborn, “Big Industries Say Letup Would Slow Price Increases,” 51.

To be sure, business leaders had argued since 1971 for a “balancing” of the costs and benefits of environmental regulation—an early corporate policy consensus framed by the NIPCC. After 1973, however, it increasingly became a predominant theme in messages for public consumption as well. Widely used in 1974 in relation to the inflationary impacts of environmental regulation, the message of balancing costs and benefits proved equally compatible with other macroeconomic concerns, such as high unemployment, declines in productivity growth, and economic recessions. During the mid and late 1970s, this costs/benefits theme became the principal media-frame used by the business community—and its allies at conservative think tanks—in seeking regulatory relief. Its keywords—“balance” and “tradeoffs”—staked out a symbolic ground of fairness and moderation. On the other hand, environmentalists’ positions were tagged with phrases like “zero-risk,” “no growth,” and “zero-pollution,” suggesting unreasonableness or extremism. What environmentalists wanted, as Dupont Chairman Irving Shapiro put it, was “Too Much”—“Too Soon”—and “Too Extravagant.”¹⁸² If “overregulation” was the problem, as many business leaders phrased it by mid-decade, then a rebalancing of costs and benefits was the cure.

Balancing costs against benefits became a constant refrain in business meetings, executive speeches, and testimony before Congress, and it was woven into countless press releases, trade journals, business magazines, and advocacy advertisements. Throughout the decade the theme was a key talking point for business leaders. Interviewed in 1975 about a new Arthur D. Little study on the economic impact of pollution controls in the steel industry, U.S. Steel Chairman Edgar Speer argued that the study “indicates that there are tradeoffs that should be made” between environmental cleanup and regulatory costs.¹⁸³ Blaming environmental rules for slowing down the development of pesticides the chairman of the National Agricultural Chemicals Association, H.L. Straube, told the group’s 1976 annual meeting, “The revolution against government overregulation and for objectivity and reasonableness in interpreting benefits versus risks must continue.”¹⁸⁴ And calling for a “revolution on regulation” in a 1978 commentary in *Business Week*, Willard C. Butcher, president of Chase Manhattan Bank, wrote, “Our society’s task, it seems to me, is to find the best balance between the benefits of improving the quality of life and the costs to each of us for making those improvements.”¹⁸⁵

The theme also framed messages for corporate advertising and public relations. Facing heightened scrutiny of toxics, the chemical industry appealed to the language of risks/benefits. It urged that consumers weigh the benefits of chemicals in everyday life against their potential risks and that policymakers should balance the environmental benefits of regulations against their economic costs. In a 1975 publicity campaign to defend pesticides, manufacturers sought to “educate” the public that “all substances, natural or man-made, represent intermingled benefits and risks.”¹⁸⁶ The Monsanto Company made risk/benefit tradeoffs the central message of its “Facts of Life”

¹⁸² Quoted in *Enterprise: Journal of the National Association of Manufacturers* 1 (August 1977):17.

¹⁸³ David T. Cook, “Steelmakers Add Up Costs of Clean Air,” *Christian Science Monitor*, May 16, 1975, 20

¹⁸⁴ *Chemical Week*, October 6, 1976, 25.

¹⁸⁵ Willard C. Butcher, “The Stifling Costs of Regulation,” *Business Week*, November 6, 1978, 22.

¹⁸⁶ National Agricultural Chemicals Association and Paluczek & Leslie Associates, Folder 8, Box 121, Public Relations Society of America Archives, Wisconsin State Historical Society.

advertising campaign, launched in 1977 with the slogan “Without Chemicals, Life Itself Would Be Impossible” at a cost of \$4.5 million.¹⁸⁷ And the theme was echoed in a major public relations campaign launched in 1979 by the Chemical Manufacturers Association (CMA)—the industry’s main trade group—which sought to “build a more balanced perspective in the public mind” toward chemicals and the industry and gain “a more realistic approach to regulation and legislation.”¹⁸⁸ Balancing costs versus benefits would also be the stated aim of a variety of industry-funded “councils” founded in the late 1970s, including Elizabeth Whelan’s American Council on Science and Health and the American Industrial Health Council.¹⁸⁹

As they had done during the energy crisis, companies framed the evolving narrative of “overregulation” in terms with the broadest potential public appeal. Environmental rules meant higher costs for industry, but these costs were ultimately passed along to consumers through increased prices for goods and services. In other words, the costs of environmental and other social regulation “trickled-down” to all consumers, the heaviest burden falling on the poorest. The most influential evangelist of this trickle-down theory of regulatory costs was Murray Weidenbaum, a conservative economist with posts at the Center for the Study of American Business in St. Louis and the American Enterprise Institute. Before dropping his \$100 billion figure (for the total cost of federal regulation) into the political debate in the late 1970s, Weidenbaum argued in a 1975 study, “Government-Mandated Price Increases,” that regulation was a major source of worsening inflation. By imposing additional costs on the private sector, regulation led to across-the-board price increases. Weidenbaum called this a “hidden tax,” which was ultimately shifted to consumers and exacted an especially heavy burden on the poor. Citing Weidenbaum’s study, the *Wall Street Journal* editorialized that “earlier tolerance toward controls is no longer economically defensible,” while the *Washington Post* called social regulation a “significant component of the inflationary spiral” that could eventually “produce a stagnant economy.”¹⁹⁰

After Weidenbaum introduced his controversial figures for the total cost of regulation—some \$60 billion in 1977 and \$100 billion in 1979—corporations and business lobbies began attaching numbers to the purported trickle-down effect. The National Association of Manufacturers claimed that regulation cost each family \$2000 annually.¹⁹¹ Bethlehem Steel ads in 1978 said that the cost of regulation “for every man, woman, and child in the U.S.” was \$300.¹⁹² The electronics manufacturer Gould put the number at \$440 per person in its ads.¹⁹³ Some blamed the indirect impact of overregulation for an even greater squeeze on consumer pocketbooks. A 1980 Chase Manhattan Bank ad, for example, argued that, by contributing to slower growth in

¹⁸⁷ *Business Week*, October 8, 1979, 73.

¹⁸⁸ Outline of Industry Communications Plan, September 5, 1979, Executive Committee, Chemical Manufacturers’ Association, at www.chemicalindustryarchives.org.

¹⁸⁹ “Public-Interest Pretenders,” *Consumer Reports* 59 (May 1994):316.

¹⁹⁰ “The Cost of Regulation,” *Wall Street Journal*, March 19, 1975, 20; “It’s Time for Economic Impact Statements,” *Washington Post*, March 5, 1975, A14.

¹⁹¹ “Special Report: The Cost of Regulation,” *Enterprise: Journal of the National Association of Manufacturers*, July 1978, 15.

¹⁹² Bethlehem Steel ad, “Steel Must Comply...” *Wall Street Journal*, May 22, 1978, 3.

¹⁹³ Gould ad, “Technology and Overregulation,” *Wall Street Journal*, November 22, 1978, 11.

productivity during the 1970s, overregulation had cost American households an average of \$4000 annually in lower wages.¹⁹⁴ Such efforts appear to have made some headway in convincing the public of the trickle-down costs of regulation. In 1979, Lipset and Schneider observed, “A large majority (over 80 percent) believes that conforming to government standards involves extra spending for business and that these costs are passed along to consumers.”¹⁹⁵

Strangulation by Regulation

By the late 1970s, businesses were tagging environmental, health, and safety regulation as a principal source of the decade’s economic strains. It wasn’t just inflation, or just energy shortages, social regulation was now portrayed as a general drag on the efficient operation of the market system as a whole. As Henry Ford II, chairman of Ford, put it in 1978, “Maybe it’s only a coincidence that the recent period of rapidly rising government spending and roughshod regulation also has been a period of high unemployment, slow productivity, slow growth in personal income, soaring government deficits and unprecedented peacetime inflation. But I don’t believe it’s a coincidence at all...Despite a mounting record of failure and frustration, our leaders have failed to grasp the fact that too much government inevitably leads to economic decay.”¹⁹⁶ For a growing number of business leaders, the economic drag of “overregulation” meant a creeping threat to the entire free enterprise system. National Association of Manufacturers President Heath Larry warned in speeches that overregulation had taken the place of socialism as a “new flanking attack” against democratic capitalism. “Every misstep,” he told a 1978 conference, was “the excuse for another law or regulation...The result will be to superimpose government and bureaucratic management over private management sufficiently to accomplish the aims of the original plans—and with the original planners very much in charge. Best of all, neither business nor the public may be fully aware of what is happening.”¹⁹⁷

As businesses stepped up attacks late in the decade, the concept of “overregulation” was increasingly depicted as a strangulation of free enterprise. The new visceral metaphors were of overgrown vegetation or the hangman’s noose: “impenetrable jungles of regulation and expense,”¹⁹⁸ a “federal thicket of overregulation,”¹⁹⁹ or a “noose of overregulation.”²⁰⁰ A flurry of advertisements, beginning in 1978, depicted regulation as a force strangling the free enterprise system and overburdening American industry. A 1978 ad by Bethlehem Steel, headlined “Steel Must Comply with 5,600 regulations from 27 federal agencies. It’s a Wonder We Get Anything Done,” was illustrated a cartoon showing a web of tape (presumably red) emanating from Capitol

¹⁹⁴ Chase ad, “How Long...” *Wall Street Journal*, January 22, 1980, 21.

¹⁹⁵ Lipset and Schneider, “The Public View of Regulation,” 9.

¹⁹⁶ Quoted in *Enterprise: Journal of the National Association of Manufacturers*, April 1978, Vol. 2, p.26.

¹⁹⁷ R. Heath Larry, “Washington—1980 and Beyond,” speech delivered on September 25, 1978 to Iron Castings Society Meeting, Hilton Head, National Association of Manufacturers Files, Series XIV, Box 203A, Hagley Museum and Library.

¹⁹⁸ Richard P. Nalesnik, “Environmental Roadman: Time to Get Out the Compass, *Enterprise*, December 1977, Vol. 1, p.17.

¹⁹⁹ Willard C. Butcher, “The Stifling Costs of Regulation,” *Business Week*, November 6, 1978, 22.

²⁰⁰ Gould ad, *Wall Street Journal*, November 22, 1978, 11.

Hill, wrapping up unsuspecting workers, secretaries, and businessmen alike. Analogizing overregulation to the tyranny of King George, it called for urgent “regulatory reform” to “reduce the burden and high cost of red tape.”²⁰¹

Impact on Environmental Legislation

As affected industries waged a decade of publicity campaigns tagging new environmental regulations as too costly, a central political goal was to persuade Congress to include provisions in new environmental statutes requiring the EPA to balance the economic costs of regulation against the health and environmental benefits. Although businesses met with little success in forestalling new environmental legislation by Congress, by demanding statutory cost considerations they were highly successful in weakening several important new laws. Both of the major statutes dealing with toxic chemicals required the EPA to balance the costs and benefits of regulation, and both proved far weaker than the “health-based” Clean Air Act.

When Congress rewrote the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 1972, it gave the EPA the authority to cancel approved uses of pesticides found to cause “unreasonable adverse effects” on the environment. Unlike the Clean Air Act, which set air quality standards solely on the basis of health criteria, FIFRA has been described as a “risk-balancing” or “balancing” statute. Under FIFRA, writes Richard Andrews, “EPA had to weigh the environmental and health risks against the economic benefits of agricultural production, and even repay the manufacturer and users for any stocks left unsold if a product was deregistered.”²⁰² The EPA was slow to review the hundreds of existing pesticides “grandfathered” in under FIFRA. A 1986 report by the General Accounting Office found that the EPA had failed to fully test any of the active ingredients in older pesticides, and tested none of the potentially harmful inactive ingredients.²⁰³ And bearing the burden of proof for finding that a pesticide posed an unreasonable risk, the EPA canceled or suspended only a small number of pesticides.²⁰⁴

Similar problems plagued the EPA’s implementation of another “balancing” statute, the Toxic Substances Control Act (TSCA) of 1976. TSCA gave the EPA the authority to restrict the use of any chemical found to present an “unreasonable risk of injury to health or the environment.” But it required the EPA to use the “least burdensome requirements” to protect against an unreasonable risk, and it directed the EPA, when determining whether a substance posed an “unreasonable risk,” to consider other factors, including the substance’s benefits and “the reasonably ascertainable economic consequences” of regulation. When Congress enacted the legislation, both the House and Senate Committee reports suggested that the balancing provisions of TSCA were not intended to require a formal cost-benefit analysis of EPA regulations.²⁰⁵ In practice, however, the EPA was forced to provide detailed cost-benefit calculations for

²⁰¹ Bethlehem ad, *Wall Street Journal*, May 22, 1978, 3.

²⁰² Richard N.L. Andrews, *Managing the Environment, Managing Ourselves: A History of American Environmental Policy* (New Haven: Yale University Press, 1999), 243.

²⁰³ General Accounting Office, *Pesticides: EPA’s Formidable Task to Assess and Regulate their Risks* (Washington, D.C.: GAO, 1986).

²⁰⁴ Robert V. Percival, et. al., *Environmental Regulation: Law, Science, and Policy*, 4th ed. (New York: Aspen, 2003), 386; Andrews, *Managing the Environment*, 243.

²⁰⁵ Percival, et. al., *Environmental Regulation*, 408.

proposals to restrict or ban chemicals. After the EPA spent a decade developing a rule to ban most remaining uses of asbestos, the asbestos industry successfully challenged the rule on the grounds that the EPA had failed to prepare an adequate cost-benefit analysis.²⁰⁶ With proposals to regulate even such well characterized toxics as asbestos taking more than a decade, the EPA's apparently broad authority to control toxics under TSCA shriveled under the burdens of cost-benefit balancing. By 1986, only four chemicals had been regulated under TSCA. In 1990, a General Accounting Office report found that, of the more than 2,000 chemicals in commercial use that the EPA had identified as potentially posing unreasonable risks, toxicity testing had been completed for only six.²⁰⁷ Richard Andrews expresses a broad consensus about TSCA when he writes that it "appeared at face value to be a potent new policy tool, but in practice it was one of the least effective EPA programs."²⁰⁸

Balancing language was also inserted into provisions establishing the "Prevention of Significant Deterioration" (PSD) program in the Clean Air Act Amendments of 1977. Superceding the EPA's controversial "No Significant Deterioration" rules, the PSD program was designed to maintain the air quality of "clean air regions," areas of the country with air quality better than the national ambient air quality standards (NAAQS). In PSD areas, major new sources of pollution were required to install the "Best Available Control Technology" (BACT). Under oversight by the EPA, each state with a designated PSD area issued permits for new pollution sources and determined what type of pollution-control technology constituted BACT for particular pollution sources. The provisions of the PSD program allowed states to take costs into account when determining BACT. Industry has appealed to this cost balancing provision to press for weaker BACT requirements, arguing that economic considerations justified the use of less costly and less stringent pollution control technologies. In some cases, sympathetic state officials have accepted even vague and undocumented complaints about costs and economic impacts as grounds for allowing companies to use far less stringent control technologies than what was considered the "best available" technology for a particular pollution source.²⁰⁹

Regulatory Reform

²⁰⁶ EPA, "Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions," 54 Fed. Reg. 29,460, (1989); *Corrosion Proof Fittings v. EPA* 947 F.2d 1201 (5th Cir. 1991).

²⁰⁷ General Accounting Office, Toxic Substances: EPA's Chemical Testing Program Has Made Little Progress (Washington, D.C.: GAO, 1990).

²⁰⁸ Andrews, *Managing the Environment*, p.244; Percival, *Environmental Regulation*, pp. 407-425;

²⁰⁹ *Alaska Department of Environmental Protection v. EPA* 540 U.S. ____ (2004). In 1999, the Alaska Department of Environmental Protection (ADEC) issued a PSD permit to Cominco, a zinc producer, for the construction of additional power generators at its Red Dog Mine in northwest Alaska. Although a technology called Selective Catalytic Reduction (SCR) was considered the most stringent technology (removing around 90% of nitrogen oxides), ADEC, citing the "mine's unique and continuing impact on the region's economic diversity and the venture's 'world competitiveness,'" proceeded to grant Cominco a permit to install a less expensive technology (removing only 20-30% of nitrogen oxides). The EPA ordered ADEC to withhold the permit because it had not satisfactorily documented why SCR was not BACT for the proposed new generator. In January 2004, the Supreme Court, in a 5-4 decision, upheld the Ninth Circuit's ruling that EPA had the authority "to stop construction of a major pollutant emitting facility permitted by a state authority when EPA finds that an authority's BACT determination is unreasonable."

Although the Carter administration continued regulatory review, the results proved unsatisfactory to the business community. “Inflation fighters” in the Carter administration—led by Alfred Kahn, Chairman of the Council on Wage and Price Stability, and Charles Schultze, Chairman of the Council of Economic Advisors—had pressed the case for stricter economic analysis, but met stiff resistance from officials at the Occupational Safety and Health Administration (OSHA) and the EPA, who argued that cost-benefit studies should not be a “decision rule” trumping other criteria. Under Carter, regulatory review emphasized the “cost-effectiveness” of proposed rules, or finding the least-cost alternative to a particular end, and the OMB did not have the power to overrule agency heads. Regulatory reviews by Carter’s Regulatory Analysis Review Group virtually ceased after a public controversy erupted with top officials at the EPA threatening to resign. In 1979 the *National Journal* would observe that “the requirement for regulatory analysis has had little impact.” Businesses lobbied for a stricter requirement that proposed rules pass a formal cost-benefit test, in which the benefits of a proposed rule were required to exceed its costs.²¹⁰

Proponents of regulatory overhaul turned to Congress, which considered a medley of omnibus “regulatory reform” bills between 1979 and 1983. The proposals included cost-benefit tests of proposed rules, “Sunset” laws requiring periodic reauthorization of regulatory programs by Congress, and a Congressional veto over new regulations.²¹¹ Fresh from killing the proposed Consumer Protection Agency, a coalition led by the Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce pressed for statutory codification of cost-benefit tests of regulation. Strained by committee rivalries, competing bills, lukewarm administration support, and controversial provisions, no such legislation made it out of Congress. But as the legislation floundered in Congressional committees, business found a new ally in Ronald Reagan, who promised on the campaign trail in 1980 to get government off the back of business, in part by rolling back costly environmental rules and other regulations.²¹²

On February 17, 1981, the new Reagan administration implemented a regulatory review program far stricter than its predecessors. Under Executive Order 12291, agencies were required to submit all proposed and final rules to OMB’s Office of Information and Regulatory Affairs (OIRA) for review before their publication and to include a detailed cost-benefit analysis for “major” rules, costing more than \$100 million annually. Unlike Quality of Life and RARG reviews, which applied only to significant regulatory proposals, the new program applied to all rulemaking proposals. It also gave the OMB, headed by David Stockman, near veto power over regulations, by allowing it to indefinitely delay regulations until it had completed its review.

²¹⁰ See Margot Hornblower, “Environmentalists no Hill Confronting Economizers,” *Washington Post*, February 26, 1979, A2; Edward Walsh, “If You Don’t Like it, Get Out, White House Tells EPA Staff,” *Washington Post*, February 23, 1979, A14; Steven Rattner, “Regulating the Regulators,” *New York Times*, June 10, 1979, SM26; “Cost-benefit Analysis,” *Environmental Science and Technology* 14 (December 1980): 1415. Timothy B. Clark, “Regulation—The Costs and Benefits of Regulation—Who Knows How Great They Really Are?” *National Journal*, December 1, 1979.

²¹¹ James E. Anderson, “The Struggle to Reform Regulatory Procedures, 1978-1998,” *Policy Studies Journal* 26 (1998): 482-98.

²¹² Robert G. Kaiser, “Disagreeing on Most Fundamental Issue,--The Role of Government,” *Washington Post*, October 15, 1980, A2; “The Environment and the Stump,” *New York Times*, October 22, 1980, A30.

Whereas the Carter administration's program had only directed agencies to seek the most cost-effective alternative in developing a regulatory proposal, the Reagan program subjected regulations to the strict cost-benefit tests long demanded by the business community. As legal scholar Robert Percival observes, the program dictated "that agencies should not issue regulations unless their benefits exceed their costs, that agencies should choose regulatory alternatives that involve 'the least net cost to society,' and that regulatory priorities should be set to maximize 'aggregate net benefits to society.'"²¹³ Critics charged that the Reagan program amounted to regulatory relief rather than regulatory reform, opening the door to undue industry influence of regulations during OMB review, delaying EPA rulemaking proposals for months, and weakening the final regulations by focusing solely on the reduction of costs to industry. A powerful tool for opponents of regulation, the Reagan program established the model for the regulatory review process and the use of cost-benefit analysis that continues today.

Conclusion

Scholars have tended to underestimate the success of regulated industries in constraining the reach of environmental regulation during the "environmental decade" of the 1970s. To be sure, regulated industries failed to win many of their most coveted changes to environmental law, such as a major rollback of the Clean Air Act, often settling instead for legislative compromises such as additional time to meet standards.²¹⁴ As Congress rebuffed calls for overhauling the Clean Air Act, it continued passing major new environmental laws: to control toxic chemicals (1976), to regulate strip mining (1977), and to clean up and prevent hazardous waste sites (1980). But businesses succeeded in making the *costs* of environmental protection a central issue. In the process, they reshaped environmental politics, moving law, federal management, and even the terms of debate toward quantitative cost-benefit balancing, an ascendance which continues today. Most important was the legacy of cost-benefit analysis. Injected into administrative rulemaking by the Nixon administration in 1971 to appease the business community, the practice was woven into the fabric of environmental policymaking during the 1970s through "balancing" statutes and White House regulatory review.

The language and methodology of cost-benefit balancing has come to dominate much of environmental policymaking. As Frank Ackerman of Tufts University and Lisa Heinzerling of Georgetown University Law Center observe, "The new trend toward economic critique of health and environmental protection has caught on in every branch of the federal government—within the White House, in Congress, and even in the courts."²¹⁵ For environmental advocates, the triumph of economic analysis has frequently crippled the pursuit of progressive regulation. While regulated industries never gained support for outright rollbacks of environmental laws in the 1970s, by reorienting the language and methodology of environmental policymaking toward a balancing of costs and benefits, they set in motion powerful legal and institutional

²¹³ Percival, "Checks without Balance," 149.

²¹⁴ Vogel, *Fluctuating Fortunes*, 132.

²¹⁵ Frank Ackerman and Lisa Heinzerling, *Priceless: On Knowing the Price of Everything and the Value of Nothing* (New York: New Press, 2004), 8.

mechanisms for containing the bold agenda envisioned by Congress during the environmental decade.²¹⁶

²¹⁶ See Thomas O. McGarity, Sidney Shapiro, and David Bollier, *Sophisticated Sabotage: The Intellectual Games Used to Subvert Responsible Regulation* (Washington DC: Environmental Law Institute, 2004).

