Coal-burning plants are changing our environment, but whether government should regulate them is a source of controversy.
Reasons for Regulation
Damage to Common Property
Inefficient Competition
Lack of Necessary Coordination
Unacceptable Inequities

Kinds of Regulation

The Regulatory Process
Writing Regulations
Regulatory Oversight
Implementing and Enforcing Regulations

Cycles of Regulation
Deregulation
ReRegulation
Deregulation: The Current Round
Keeping Pace with Change

Regulatory Politics and Environmental Politics
Evolution of Government’s Role
Implementing Environmental Regulations
Science, Policy, and Environmental Protection

Benefits and Costs of Regulation

Conclusion: Is Regulatory Policy Responsive?

Do You Belong Inside Government, or Outside?

You are Eric Schaeffer, a twelve-year veteran of the Environmental Protection Agency (EPA). For the past five years you have been the director of the Office of Regulatory Enforcement, or the EPA’s “top cop” as the position is sometimes called. One of your major jobs is to negotiate industry compliance with clean air standards. If industries have emitted more pollutants into the air than allowed, you negotiate with them about how they can fix the problem and the fine they will have to pay.

It is February 2002, thirteen months into George W. Bush’s first term and your enforcement job is becoming very difficult because of the president’s opposition to the clean air rules as they are currently written. You are beginning to believe that you will not be allowed to complete the settlement agreements you are negotiating with power companies and oil refineries because of the administration’s decision to rewrite the very rules you are now trying to enforce. A committed environmentalist, you have to decide whether to stay on the job and get the best settlements you can before weaker enforcement rules go into effect or to resign and try to work for enforcement of the Clean Air Act from outside government.

The proposed rule changes are focused on a provision in the Clean Air Act called the New Source Review. “New Source” refers to new sources of air pollution that might be created when power plants upgrade and expand their facilities, such as building new smokestacks. The provision has been around since the landmark Clean Air Act of 1970 was renewed in 1977, and was retained in the 1990 version, signed into law by George H. Bush. It requires that whenever utilities or refineries expand or upgrade their plants they must also improve pollution controls so the plants will emit lower amounts of pollutants into the air than before the upgrade. Those plans are subject to review by regulators. New Source was a compromise that acknowledged the financial burden placed on older plants by the cost of equipment and remodeling necessary to meet clean air standards. With New Source, the EPA was essentially saying to industry: Since you have decided to upgrade your plant, you must use this opportunity to upgrade pollution controls as well. Nonetheless, many industries, especially coal plants, opposed the New Source provision, arguing that it would inhibit expansion and remodeling or add significantly to the costs of upgrading.

At first, the New Source provision was ignored by businesses and regulators alike, but in the mid-nineties the attorneys general of several Northeastern states started suing companies that had upgraded their plants without investing in the required pollution controls. The Clinton administration joined in some of these suits, and threatened to sue other industries, so by the end of his term you were negotiating...
settlements with a number of oil refineries and nine utilities.

The Clinton administration had taken a new approach by consolidating all of the EPA’s enforcement programs—for clear air, water, and toxic waste management—in a single office, the one you now head. Furthermore, instead of pursuing compliance on a company-by-company basis, the EPA began reviewing performance by industry sectors (all utilities or oil refineries in a certain region of the country for example) to gain across-the-board industry compliance by the industry. You have been very successful in this. In fact, just six months ago, John Ashcroft presented you with the Justice Department’s John Marshall Award for your cooperation with DoJ attorneys in reaching massive cleanup settlements with one-third of the country’s oil refineries.

Negotiations with another third of all refineries and a number of big utilities were underway in 2001 when George W. Bush entered the White House. Because Bush had made it clear that he supported more industry-friendly enforcement rules, you and your fifteen-member staff worked fourteen-hour days trying to reach settlements before his inauguration. But most companies held off entering into agreements, believing that they would escape the fines or be able to negotiate a more lenient plan for compliance with the new administration.

You are not concerned with the president’s party affiliation; as a federal bureaucrat your job is to implement the laws passed by Congress and to do so with neutral competence, serving Republicans and Democrats alike. Although you are a registered Democrat, you began working at the EPA in 1990, when George H. Bush was president, and before that you worked on environmental issues for several years as a staff assistant to a Republican member of the House. The EPA was founded in 1970 by a Republican president, Richard Nixon, and led by Republican appointees. It is staffed by hundreds of career bureaucrats of varying political views and party registration and its work has had more bipartisan support than perhaps any other major government agency. But, as with any agency or cabinet department, the top policymaking positions are political appointments and the Bush administration has filled the top jobs at the EPA and other agencies key to environmental regulation—the Departments of Interior, Agriculture, and Justice—with lawyers and lobbyists from industries regulated by those agencies.

Just four months after taking office, Bush asked the EPA’s enforcement division to reassess the New Source provision and Vice President Cheney pressured EPA administrators to write new rules, even while publicly saying that investigations begun under the old rule would not be affected. In June 2002, the assistant EPA administrator who was put in charge of writing the new rules also assured the Senate that there would be no “negative impact on enforcement cases.”

But, well aware that Mr. Bush’s EPA would be more industry friendly than Clinton’s had been, some of the utilities and industries being sued for compliance immediately sought relief from the new administration. They had reason to believe they would get it. At the outset of Bush’s run for the presidency, the head of the Edison Electric Institute, one of Bush’s biggest fundraisers and a former Yale classmate, had sent a confidential letter to energy industry leaders suggesting that they bundle (roll together) their contributions to “ensure that our industry is credited” for its generosity to Bush’s campaign. Now some of Bush’s biggest campaign contributors have come to collect.

You find yourself in a position of trying to conduct negotiations with industry representatives who seem certain you have no White House backing for the settlements you are trying to cut. You know that representatives of the very industries you are negotiating with have been invited to participate in rewriting the rules because you have seen memos from industry lobbyists to regulators circulating within the EPA.

Two of the companies that had signed consent decrees on settlements now refuse to sign the final settlements and others have stopped negotiating, believing they will get a better offer in the near future. You know it is impossible to enforce a rule that everyone knows has no support in the White House.

You see your position as further weakened by an administration budget proposal that will cut two hundred staff members from the civil enforcement program at a time when you think the office is already seriously understaffed. But a great deal is at stake. The small number of power companies you are negotiating with “are responsible for two-thirds of the sulfur dioxide and one quarter of the nitrogen oxides emitted from all sources in the U.S.” More than twenty thousand early deaths each year are attributed to fine particle pollution from power plants. And the same plants also account for one-third of all the airborne mercury emissions that end up contaminating waterways and fish consumed by humans.

On the one hand, maybe you can do more by staying in your job and working to get as much enforcement as possible under the new rules. You have fifteen years of experience working on environmental policy whereas political appointees to government agencies come and go rather quickly and many never master the substance of the issues. It is also true that some come into an agency hostile to its work but, once they get involved, end up being captured by it. You could stay and try to lobby the new policy appointees and perhaps win over some of them to support retention of the strong enforcement rules.

But on the other hand, you feel like a “doormat” and wonder how you can enforce provisions of a law while the White House and Bush’s EPA appointees are “constantly telegraphing ‘the law is stupid.’” Perhaps you can do more by leaving government and finding another venue from which to lobby those members of Congress who want the law it passed to be enforced.

What should you do?
Adam Smith believed the “invisible hand” of the marketplace works to increase production and make individual firms more efficient. As each tries to maximize its profit, market forces push it toward increasing efficiency and productivity as the only means of staying competitive. In the process, in Smith’s view, the greater good of society is served; jobs are created, economies grow, and the rising tide lifts all boats. If the economy did work this way and if everyone in business were honest and played by the unwritten rules, we would have little regulation. But unfortunately, the economy goes awry in ways that threaten the public good because market forces are not sufficient to protect us from the intended or unintended consequences of economic activity. So government regulates to limit or correct these effects: exploitation of labor, dangerous consumer products, unsafe foods and drugs, monopolies, insider trading, and pollution to name a few.

The crucial question in the debate over government’s role in regulation can be stated simply, but it cannot be answered simply. How can we define standards that protect society’s interest in having a clean and healthy environment, safe food and prescription drugs, and a level playing field for businesses and consumers in the marketplace and, at the same time, not unreasonably impede economic growth and job creation? How much risk should government protect us from? How should the benefits of regulation be weighed against the costs of those regulations to business and industry? The public gives no clear-cut answer to these questions. Regulation that is seen as beneficial by one group is regarded by another as wasteful and unnecessary red tape. This is why there is continuing controversy over what should be regulated, how much regulation is needed, and the regulatory mechanisms that should be used.

In this chapter, we look at the evolution of government’s regulatory authority, identify types of regulation and their objectives, and describe the standards used to measure their effectiveness. Then we look at how we cycle through periods of regulation and deregulation depending on the political climate in Washington. Finally, we look at one of the most strongly supported, yet controversial, areas of regulatory policy: environmental law.

Reasons for Regulation
Regulation is necessary for several reasons: (1) the damage to common property that would occur without regulation, (2) inefficient competition, (3) a lack of necessary coordination, and (4) unacceptable inequities.

Damage to Common Property
One reason for regulation has been called the tragedy of the commons. The “commons” refers to the air we breathe and the water we drink, which belong to us all. The “tragedy” is that some individuals may seek to exploit them for their own uses to the detriment of the common good. To maximize their profits, farmers pump as much irrigation water as they need from rivers or aquifers, even in water-short areas, and industries spew toxic chemicals into the air or bury them in the soil. They are acting in accordance with the profit motive. Indeed, most individuals who exploit the commons gain economically and thus have considerable incentive to do so. But when many people exploit the commons, the community as a whole suffers.

Consider the case of Los Angeles and General Motors (GM). Los Angeles once had a low-pollution electric railway system. In the 1930s, GM bought the system and then destroyed it, because GM wanted to sell cars, trucks, and buses. The company replaced the electric system with noisy, polluting diesel buses, so uncomfortable and unreliable that Los Angelenos were given a great incentive to rely on private autos.

In 1949, after buying and destroying electric railway systems in more than one hundred cities, GM was fined a paltry five thousand dollars by the government for illegally conspiring to replace municipal services with its own. Meanwhile, the company made millions of dollars. Due in large part to reliance on cars, smog in Los Angeles became a major health hazard. Some studies claimed that children who grew up in Los Angeles lost up to 50 percent of their lung capacity from breathing in the polluted air. Obviously, it is absurd to charge GM with creating the entire automobile culture of Los Angeles, but clearly its drive for private profits did not contribute to the common good.

When GM or any other entity, such as a chemical company that disposes of its toxic wastes in an unsafe way, imposes a cost on the public, it has created an externality. Externalities are costs or benefits that are not reflected in market prices. Environmental degradation is a negative externality because the social costs, the burdens imposed on society, are not reflected in the cost of the goods whose production caused the damage. For example, when a coal-burning utility emits sulfur dioxide into the air the company is essentially disposing of a by-product at no cost by simply burning it off and releasing it into the air. This places an unfair burden on the public, both in terms of the health risks and the costs of environmental cleanup.

This emission also leads to inefficiency in the marketplace because the utility is not made to bear the true cost of generating electricity. If companies are allowed to externalize costs in this way, they will produce more of a product than is economically or environmentally sound. But if they have to absorb or internalize the cost of emitting pollutants and add it to the price consumers pay for the service or product, then utilities and manufacturers
have “an incentive to reduce production to acceptable levels or to develop alternative technologies.” It also prevents consumers from making decisions on purchasing or use that are based on real costs. Instead, costs that are hidden—deferred payments that taxpayers will make much later for environmental cleanup or health care—encourage consumption.

To make the market more efficient and to get companies to stop producing goods and services whose real costs are not reflected in the prices charged for those goods and services (for example, to get a petrochemical plant to stop releasing toxins into the air), the government can set standards for how much of the pollutant can be emitted and set the recovery costs through penalties and fines from violators. Alternatively, it can impose taxes on emissions or discharges and charge for pollution up front (more on this later in the chapter).

**Inefficient Competition**

In a capitalist system, government intervention is also justifiable when competition is inefficient. Adam Smith believed that in an open market, goods and labor would be used in a way that would limit costs and maximize profits. The competition among manufacturers trying to sell the same products to consumers would force them to make goods as cheaply as possible.

But sometimes competition does not work to drive down prices or increase efficiency. The large capital outlays required to build the infrastructure for public utilities—laying water pipes and gas lines, or building power grids—means that it is not cost effective for every community to have more than one company. Thus utilities (such as gas and electricity producers) have long been “controlled monopolies” regulated by state governments. A utility is allowed to be the only provider of a service in a given geographic area, but a state utility board regulates rates because people do not have a choice of sellers of electricity or gas. Smith himself agreed that this form of government intervention was appropriate.

However, the drive toward privatization of public services has led some states to deregulate electric utilities, to encourage the most efficient and cost-effective use of power by transmitting it across the country to wherever it was most needed at any point in time. Consumers, who, in the era of controlled monopolies could count on the states to regulate prices and order local plants to maintain reserves strictly for local use, found themselves without this protection.

This was especially true in California, where electricity prices skyrocketed and there were frequent blackouts. California deregulated its utilities differently than other states. It kept the plants that distributed electricity to consumers and the authority to set consumer prices, but it sold all of its generating plants to private companies. It also sold the right to regulate the wholesale price of electricity that the generating plants still provided to the state-owned distribution plants. During a heat wave in the summer of 2000, prices spiked and stayed high even in times of low use. It turned out that the now privately owned generating plants that California had contracted with were producing enough electricity to cover demand even during high-use periods, but they were withholding electricity to drive up prices in a captive market. The state spent more than $9 billion purchasing electricity from other states to end the blackouts and dampen consumer rage. Essentially, California had sold off public utilities to private companies that then held the state ransom to exorbitant prices. Electric bills increased fivefold, and state-owned power distribution plants went bankrupt.

In the end, California reinstated price controls and sued energy providers for price gouging. California’s electrical utilities have become a model of how not to deregulate, leading other states to put their deregulation plans on hold. The deregulation of electricity illustrates
that in some areas of economic activity privatization does not lead to greater efficiencies, more competition, or lower prices.

**Lack of Necessary Coordination**

Another reason for regulation is that sometimes the free market produces an unacceptable lack of coordination. An obvious example is regulation of airline flights. The free market is not well suited to determine which airline will have priority to schedule a departure at 2:00 P.M. on a certain runway at Kennedy International Airport in New York. Competition could lead to disaster. Thus the Federal Aviation Administration (FAA) has been empowered to coordinate takeoffs, landings, and travel routes. Some of this authority has been privatized by allowing airlines to sell or trade their airport slots. But air traffic control remains a federal function.

**Unacceptable Inequities**

Another reason for regulation is to promote equity. Equity in this context does not refer to equality in outcome but rather to ensuring fair conditions for participation in the marketplace. Sometimes individuals or groups are severely disadvantaged by the private marketplace. For example, legislation setting minimum wages, banning child labor, protecting workers’ rights to organize, and defining minimum standards for workplace health and safety is intended to redress the inequity in power between individual workers and employers. But government also protects employers from workers who organize for bargaining power. The conditions under which workers can unionize and the timing and conditions of strikes, or work stoppages, in certain sectors of the economy are also restricted by federal law.

Regulations forbidding race and gender discrimination are also designed to enhance equity. Consumer protection laws, such as those forbidding false advertising, and laws licensing pharmacists, physicians, lawyers, and public accountants are based on the assumption that consumers will often not have sufficient information to evaluate the competence of those selling the service or product. Government seeks to remedy an inequity in information between the buyer and the seller of a product or service.

**Regulating Monopolies**

The first major attempt to reduce inequities by regulation was antitrust law, which prohibits monopolies. A **monopoly** exists when one or a few firms control the sale of a product or service in a particular market. Where a monopoly exists, the producer(s) can fix prices, setting them well above the cost of production, or they can sell below cost to drive small businesses out of the market. The Sherman Antitrust Act of 1890 and the Clayton Act of 1914 made uncontrolled monopolies and price rigging illegal. One firm may use antitrust laws to sue others or the government itself may initiate antitrust actions. The enforcement of antitrust legislation has waxed and waned over the years.

Mergers can lead to monopolies as competitors combine forces to control a larger share of the market. Therefore, when large companies want to merge or acquire their competitors, they are required to submit their proposals for review to the Department of Justice or the Federal Trade Commission (FTC) so that government regulators can determine whether their combination would adversely affect competition and prices.

Our economy has experienced five major waves of business mergers: at the turn of the twentieth century and in the 1920s, the 1960s, the 1980s, and the 1990s. The number of merger proposals tripled during the 1990s with more than seventy thousand deals worth nearly $6 trillion during the Clinton years alone. Some see this trend as a repeat of the corporate mergers that swept the American economy at the turn of the century, when GM was created from more than two dozen car companies, and U.S. Steel was formed by combining many small steel companies. In these situations, government regulators have to decide whether the mergers will make the economy more efficient and
competitive or whether they will create monopolies and lead to price fixing.

Ninety-five percent of the merger proposals made during the Clinton years went unchallenged by the Department of Justice. A notable exception, on which it was joined by many state governments, was antitrust action against Microsoft, alleging it tried to corner the market in computer software. Although the case revealed that Microsoft made a 90 percent pretax profit on its Windows operating system, the government’s case did not rest on the price-fixing standard. Instead, government lawyers established a new basis for challenging monopolies—constraint of innovation or technological change.\footnote{\textsuperscript{15}}

Correcting Inequities in the Marketplace

Correcting inequities in the marketplace is one of the most controversial types of regulation. Conservatives often argue that this type of regulation is unnecessary because they believe a free market is self-regulating. They reason that unsafe or ineffective products will sooner or later end up unwanted: pizza eaters can stop buying pizza with artificial cheese; unions can protect workers from unreasonable demands of corporations. But some opponents of regulation are against unions, too, believing they interfere with the free market for labor.

Defenders of equity-based regulations point out that the market works too slowly in providing vital information. People have been killed and injured before information about defective products became widely known. In the mid-1960s, many children were born with serious deformities because of the prescription drug thalidomide, which their mothers took during pregnancy to prevent miscarriages. This incident caused Congress to set higher standards for drug safety and the Food and Drug Administration (FDA) to tighten its drug-testing rules. Before 1972, twenty million consumers were injured each year by unsafe products and, of those, thirty thousand were killed and more than one hundred thousand were permanently disabled. This prompted Congress to establish the Consumer Product Safety Commission (CPSC), an independent regulatory agency mandated to establish safety standards for consumer products.

Some people believe education campaigns, not regulation, are the best way to protect people. But education campaigns are not cheap, especially over a long period of time, and they are not always effective either. The government’s campaign to educate the public about the health hazards of smoking has had a significant impact, but the campaign has cost tens of millions of dollars, and about one-quarter of Americans still smoke.

Congress does not regulate to remedy the effects of every inequity. Sometimes the costs are seen as greater than the gains; in other cases, resistance by politically powerful groups—the banking and telecommunications industries, for instance—is stronger than lobbying by potential beneficiaries of regulation.

Kinds of Regulation

There are several types of regulation:

1. 
\textit{Requiring information.} Government may regulate by requiring that an employer, lender, or other entity provide certain kinds of information to employees or consumers. For example, credit-card companies must provide cardholders with information about interest rates and how to appeal erroneous charges. Manufacturers of many food products must list in-
ingredients on the label and give their nutritional content. This requirement allows consumers to see whether their peppermint ice cream, for example, is colored with beet juice or red dye number 2, a potentially dangerous additive, and how many calories come from fat and sugar. This requirement is called truth in labeling. Manufacturers sometimes oppose labeling the contents of their goods because, as one said, “If you label, you’re telling consumers there is something wrong with this product.”

The FDA also requires that when information is provided, it should be accurate. Many manufacturers have taken advantage of a new public awareness of the relationship between health and nutrition by labeling their products as “health” foods. The FDA has forced manufacturers to remove words such as fresh from processed juices and no cholesterol from food products that are high in vegetable fats that could contribute to heart disease. It is also demanding that manufacturers remove false claims that their products are “organic,” “bio-degradable,” or have other attributes they do not possess.

2. Licensing. Government may regulate by requiring people to obtain licenses to practice certain trades or professions or to operate certain businesses. For example, the federal government licenses radio and television stations, and states license doctors, beauticians, dentists, and many others. This reassures clients and patients that those providing the services have met minimum qualifications for their professions. But licensing is also valuable for those receiving a license because it allows them to make money while keeping others out.

3. Setting standards. Manufacturers must meet certain standards for content, quality, environmental cleanliness, workplace safety, and employee wages and working conditions. A product called chicken soup must have a minimum amount of chicken in it, and hot dogs cannot include more than a certain proportion of bone, hair, insects, and other extraneous material. The FDA requires manufacturers of condoms to test them for leaks and to destroy an entire batch of one thousand if more than four are defective. Failure to maintain the standards can result in fines or other legal penalties, if convicted.

4. Providing economic incentives. Higher taxes may be imposed on goods or activities viewed as less beneficial than on those deemed more beneficial. Examples are a tax on cars that use fuel inefficiently or on an industry that emits toxic chemicals into the air. Some people, particularly conservatives, believe taxation is a better way to achieve regulatory goals than setting mandatory standards because it gives individuals or businesses an incentive to comply and the choice not to (and to pay for the damage).

5. Limiting liability. Some regulations are designed to encourage the availability of certain products or services by having government assume some of the market risks. Congress has passed laws limiting the ability of patients to sue their HMOs and is trying to set ceilings on the amount of monetary damages that can be claimed in medical malpractice and other civil suits. Federal law prohibits citizens from filing suits against nuclear power plants for personal or property losses resulting from a nuclear accident.

Similarly, drafters of the homeland security bill sneaked in a provision exempting drug manufacturers from liability for the mercury content of vaccines, a provision having nothing to do with homeland security but a lot to do with protecting the financial interests of campaign donors. In these cases, the taxpayers, not the industries, assume the financial burden.

The Regulatory Process

Many Americans blame federal bureaucrats when they are stymied by Byzantine rules or endless paperwork to get government approval for some activity. But regulation is a many-layered process with at least five different aspects: passing the legislation that defines regulatory goals, writing rules to achieve those goals, overseeing the rule writers, implementing and enforcing the rules, and keeping pace with change after the standards are set and rules are written. Here we discuss rule writing, oversight, and implementation, leaving the discussion of reforming rules to keep pace with change until the next section.

Writing Regulations

Most regulatory activity stems from very general, even vaguely stated, mandates because passing legislation, especially in a divided government, requires compromise. If bill writers were too specific, legislation would probably never get passed. When a bill is passed establishing some regulatory goal, such as driver safety, child-labor protection, safe food, or clean air, its content rarely includes specifics on how the goals are to be achieved. Instead, as discussed in Chapter 12, after a bill becomes law, it is up to executive branch specialists to write the rules necessary to achieve these goals. Because most regulations are implemented at the state level, federal
regulators often work with their state counterparts in writing these rules.

Laws granting regulatory authority often require public input, so citizens and interest groups also get involved in rule writing. This has been true since the beginning of the twentieth century for areas of regulatory policy such as food safety and fair labor practices. But historically, much of the public’s input came from the interest groups and industries that would be affected by the rules being written. In fact, interest groups and industry lobbyists work so closely with regulators in writing rules that there is always concern, as discussed in Chapter 12, that agencies can be “captured” by those they are supposed to be regulating.

Kenneth Lay, then CEO of Enron, had a direct hand in selecting the man George W. Bush named to replace the head of the Federal Energy Regulatory Commission (FERC), the agency that was supposed to regulate Enron. Lay had opposed the reappointment of the former head after he set limits on power prices and refused Enron greater access to the national power grid.17 Congressional investigators found that FERC knew for at least a year that energy companies were withholding electricity supplies to drive up prices, yet the new head of FERC took no action against them.

In the 1960s, when the participation and procedural “revolutions” swept through government, Congress began placing more emphasis on citizen participation in rule writing. The Consumer Product Safety Act even authorized nongovernmental groups and organizations to submit their own versions of rules to agencies.18 This movement to democratize the process by providing more public hearings and extended periods for public comment on regulations had advocates among both pro- and antiregulatory groups in Congress. It was a way to open up the process and make it more accountable, but it was also a way of slowing down the issuance of new rules by allowing many opportunities for rule opponents to impede the process. Where citizens see an immediate impact of rules, such as those on handling toxic waste in their communities, ensuring clean drinking water, defining safe foods, or placing restrictions on the use of public lands, a surprising number of people attend hearings or submit written comments. Using the Web sites of regulatory agencies to solicit comments has also greatly increased the public’s role in writing rules.

Standards of Evaluation

No matter how many individuals and groups get involved in the process, writing effective regulations requires guidelines beyond the policies and goals stated in the authorizing legislation. One of the standards by which the effectiveness of any regulation is judged is whether it results in a net benefit for society. It is easy for both the average citizen and the bureaucrat to see that it is not cost effective to enforce a rule requiring all workplace toilet seats to be horseshoe shaped. No one fought to prevent the rule’s abolition. But in most cases, it is far more difficult to decide whether a rule has more negative than positive effects. How do we decide whether the risk involved in using a particular chemical or product, or working in a hazardous environment, is great enough to regulate? There is no agreement on which standard of evaluation should be used.

In authorizing new regulations, Congress uses different standards of risk. One is the “no-risk” standard: if a substance is found to cause cancer or present any life-threatening risk, it cannot be used—even in amounts well below the danger level. Sometimes called the “better-safe-than-sorry” rule, it is often applied to regulations on food and drug safety.

In other cases, the “margin of safety” criterion is used. The regulatory agency establishes a reasonable standard and then allows an extra margin of safety. For example, standards for clean air mandate the EPA to declare how much lead, sulfur, and other materials can be in the air before it is judged unsafe. Then the agency is supposed to set the standards a little higher to allow the extra margin of safety.19

Sometimes Congress mandates a standard whereby the cost of the regulation is to be weighed against the risk. The process of making this evaluation is called cost-benefit analysis. Today, any rule that will have an economic impact greater than $100 million must be submitted for cost-benefit analysis. A rule governing consumer product safety, for example, would not be adopted unless the benefits outweigh the costs to business of complying with the rule. Generally, preregulation groups prefer the no-risk or margin of safety standards, while antiregulation forces prefer cost-benefit analysis.

Applying Standards

Deciding which standard to apply and assigning values to these standards inevitably involve both science and politics. For example, critics of cost-benefit analyses have charged that these analyses are not done fairly or competently.20 They believe that costs are concrete and easily calculated, while benefits are often more difficult to put in dollar terms. How do you quantify saving human lives? If a particular rule is likely to save five lives per year at a cost of $5 million, does the regulation offer a net cost or a net benefit? Ultimately, it depends on what monetary value is placed on a life, but it also depends on whether every life is treated as of equal or different monetary worth.

Cost-benefit analysis is not for the fussy idealist. One of the measures used to determine the value of a life is earning power. So, for example, the life of a man with a college degree would be worth more than that of a
woman with a high school diploma, and either life would be worth more than a child’s or an older person past the peak of maximum earning power.

The ugliness of this type of calculation was brought home when private charities were making decisions on how much to compensate families of victims lost in the terrorist attacks on the World Trade Center. Because of their greater earning power, stockbrokers were deemed worthy of far more compensation than those of the firefighters who died trying to save them. The life of a thirty-three-year-old equities trader, for example, was valued at $6.3 million and that of a forty-year-old firefighter was valued at $1.3 million.

This is everyday decision making for insurance companies, but many citizens believe government should value lives equally and, where lives are at risk, should not use cost-benefit analysis in writing rules.

A more stringent variation of cost-benefit analysis, called risk assessment, was put in place in 1995 when the Gingrich Republicans assumed control of Congress. This standard for determining whether a rule is needed requires that the risks to the public of a particular product or act be assessed using rigid standards of scientific proof. In essence, risk assessment requires that the methods and data an agency presents to show proof of risk must be replicable in independent research by outside scientists. Risk assessment is the standard currently applied by regulatory overseers in the Bush administration.

Risk assessment is used by some agencies, including the EPA—which at one time placed the same value on all lives—to calculate the cost effectiveness of environmental cleanup programs. Risk assessors determine the “value of a statistical life” by calculating how much categories of individuals would be willing to pay for increased safety or to be free of the symptoms caused by exposure to pollutants. This method assumes that older people, for example, having lived most of their lives, would be less risk averse and, therefore, less will-

Jacob Vowell wrote this letter shortly before dying of suffocation in a mine disaster in Fraterville, Tennessee, in 1902. Such disasters eventually prompted government regulation of mining, which has since saved many lives, including the Pennsylvania miners rescued in the summer of 2002.
ing to pay for safety. Hence in calculating the cost effectiveness of a pollution control program, the dollar value of a life saved is set lower for an older American (this is sarcastically referred to as the “senior death discount”).

Once in final form, rules are published in the Code of Federal Regulations and updated each year. Divided into more than three hundred categories, or titles, each representing a regulatory area, they total tens of thousands of pages. Title 40 alone—environmental protection rules—required twenty-seven volumes by 2002. But rule writing is just the beginning of the process.

Regulatory Oversight

Rule writing is overseen primarily by Congress and the president, but the federal courts have a role when an aggrieved party challenges the legality of rules or the interpretation of congressional intent. The public’s oversight role, as discussed earlier, has been steadily increasing over the past thirty years.

The president has several ways to exercise oversight. Since the Carter administration, a principal means has been to issue executive orders that identify an overall rationale for rule writing that is in keeping with the political philosophy and goals of the administration. With Carter, it was rational management and public participation; with Reagan and George H. Bush, it was cost-benefit analysis or, more specifically, eliminating rules whose implementation was costly to business. Clinton’s executive orders stressed public participation and openness as well as cost effectiveness.

Presidents also exercise oversight through their appointment powers, since all agency heads are presidential appointees. Most are selected on the basis of policy agreement with the president, but the head of the EPA is under more pressure to follow presidential preferences than ones on fixed-term appointments. Furthermore, a presidential appointee heads the Office of Management and Budget (OMB), which is the principal oversight agency for the executive branch and which must approve agency budget requests.

The OMB’s authority to review agency rules derives from an executive order issued by President Reagan as part of his efforts in administrative deregulation. This innovation was designed to give the OMB the authority to identify and eliminate duplicate rules and to develop procedures for cost-benefit analysis. Reagan gave the OMB the job of reviewing rules from more than fifty federal agencies. Many argued that giving this power to the OMB would erode the independence of regulatory agencies. This was, no doubt, partly the intent of the change. Regulations developed by agencies under formal rules and according to due process could be killed by the OMB without any public hearings or advance notification. This violated the spirit of the Administrative Procedure Act, which requires openness in rulemaking, and it diminished governmental responsiveness to the general public. For example, EPA rules for limiting the amount of toxic chemicals that industries could dump in municipal sewage systems were killed three months after they were issued. This undoing of the rules followed extensive lobbying of the OMB by chemical manufacturers and other producers of toxic wastes.

Each new administration can set different guidelines, often by executive order, for writing rules or for the standards of evaluation written into rules. (See the “You Are There” section for this chapter.) Just as an agency starts carrying out a directive—sometimes even before it has had the chance to do so—administrations change, or control of Congress changes hands, and all the proceeding guidelines are overridden by new legislation or executive orders. Just as regulatory policy changed when George H. Bush left office and Clinton entered, there were also sharp differences between Clinton’s last directives to regulatory agencies and those sent by George W. Bush.

Shortly after entering office, Bush rescinded a Clinton rule lowering the amount of arsenic allowable in drinking water. The action provoked such a negative public response that Bush reversed himself and restored the standard. It was one in a series of Clinton rules Bush had overridden, but the sharp reaction to this one caused him to pay more attention to public perception of his deregulatory program, leading one watchdog group to refer to his policies as “before arsenic and after arsenic.”

But working much more quietly, Bush changed rules on timber management and snowmobile use in national forests and parks, ocean polluting, and dumping in rivers by mining operations, among others.

Although regulatory agencies are frequently criticized for waste and inefficiency, they have to work under this burden of constantly shifting directions. Ultimately, it is Congress that has the broadest powers of oversight because, at the beginning of the process, it can influence the ways rules are written by the clarity of direction it writes into the enabling legislation. Congress can also amend the original law, change budget authorization for agencies, or attach riders to appropriations bills that effectively kill agency-written rules.

Like presidents, members of Congress also try to impose their political agendas on regulatory agencies. The Gingrich Republicans were zealously committed to deregulation and insisted on the use of the risk-assessment standard to determine whether a rule was necessary. They also supported opening the process of rule writing further to peer and judicial review, hoping proposed regulations would die while tied up in administrative and court challenges. The process was likened
to injecting Arnold Schwarzenegger with steroids, “in hopes he soon will be so muscle-bound he can't move at all.”

Congressional oversight can also affect the regulatory process when committees become captured by lobbyists. The wave of corporate corruption scandals from 2001 to 2003, for example, had as much to do with the failure of congressional oversight as it did with the laxness of regulatory agencies. Taking just one aspect of the scandals, the misrepresentation of corporate earnings, it is clear that Congress prevented regulatory agencies from doing their job. In the late 1990s, the Financial Accounting Standards Board (FASBE, pronounced “fasby”) proposed a new rule that would prohibit corporations from giving their employees stock options without counting them as a business expense. These options cost companies hundreds of millions of dollars, yet corporations were not required to subtract them from their earnings. The effect of this was to greatly inflate the annual earnings reports and mislead investors into thinking the companies were in much better shape than they were.

FASBE’s proposed rule had the support of the chairman of the Securities and Exchange Commission (SEC), but it did not go over well among powerful members of Congress who collectively had received millions of dollars in campaign contributions from accounting firms. Senators Christopher Dodd and Joseph Lieberman, both Democrats from Connecticut (the site of many corporate headquarters), led a successful fight for a Senate resolution repudiating FASBE’s proposed rule. FASBE retreated, as did the SEC chair, Arthur Levitt Jr., who later said it was the worst decision he made at the SEC.

Congress also balked when Levitt proposed a new SEC rule to restrict accounting firms from acting as consultants to the corporations they audited. House Energy and Commerce Committee chair, Billy Tauzin (R-La., now a lobbyist for the pharmaceutical industry), sent Levitt a four-page list of detailed questions about the rule and also told him that an appearance of conflict of interest was not enough; he must provide proof that auditors’ objectivity was undermined by serving in the dual role of consultant. Soon Levitt received similar letters of objection from forty-six other congressmen. And, at the request of industry lobbyists, Henry Bonilla (R-Tex.), a member of the House Appropriations Committee, threatened to cut the SEC’s budget. Levitt fought back by organizing a nationwide series of public hearings, but Congress delayed the rule on procedural grounds knowing Levitt’s term was near an end.

These abuses of the oversight function to win concessions for political supporters and campaign contributors are a huge challenge to effective rule writing and enforcement, and they are not likely to go away. There are seventy-five lobbyists in Washington for every member of Congress; many have deep pockets. The defeat of the FASBE and SEC rules contributed to investor losses in excess of $60 billion, the bankruptcy of Enron and other corporations, and the collapse of the Arthur Anderson accounting firm. And the corporate malpractice that led to these failures was then investigated by the very oversight committees whose members thwarted the rules that might have prevented it.

**Implementing and Enforcing Regulations**

Federal and state regulatory agencies share the responsibility for the implementation and enforcement of those rules not killed in the oversight process, but the overwhelming burden of enforcement falls on the state agen-
cies. After standards and general rules are set by federal agencies, the specific plans for implementing them are designed by state regulators. Because state bureaucracies often divide functional authority differently than the federal government, responsibility for implementing rules on worker safety, fair labor practices, toxic emissions into the air and water, or disposal of hazardous waste may be spread over multiple agencies, each of which may have played some role in writing or refining the rules as well as in their enforcement. The challenges to effective implementation are enormous due to the number of agencies, scientists, legislators, and regulated parties involved and the political and technical differences among them. Moreover, divided government, court challenges, and federal and state disagreement over jurisdiction also present obstacles to effective implementation.

We have already seen how divided government can impede the implementation of rules if the president and the majority in Congress have different views on regulation. But the regulators themselves are often divided on policy issues. The directors of federal agencies might be from a different party than the heads of state agencies and their views on regulation and commitment to enforcement can vary considerably. Furthermore, the scientists and technicians who staff regulatory agencies likely are guided more by professional competence than by the policy preferences of an agency head or elected official.

Regulated industries often refuse to comply with rules or the standards on which they are based. They frequently challenge the jurisdiction of the agencies, the constitutionality of rules, and the reasonableness of standards in federal courts. Every health standard ever issued by OSHA has been challenged in court. And each year hundreds of EPA rules are subjects of lawsuits. Federal regulators also find that, in practice, some rules are nit-picking and not worth enforcing or that enforcement costs more than any benefit that might be gained. Other rules are based on standards that end up not working well to achieve the goal. In the current era of rapid technological change, some rules, and the standards they are based on, become obsolete soon after they are written. This is especially true for the regulation of telecommunications and biotechnology.

Then there are the inevitable disagreements over jurisdiction between federal and state rulemakers. For example, some states have resisted implementing rules that they think will endanger their ability to attract industry or that they believe give federal authorities too much say over their state resources (for example, conservation of wetlands and wilderness areas or protection of animals on the endangered species list). Governors and other state officials are far closer to the electorate in their states than Washington bureaucrats are and more likely to listen to them than to an EPA, OSHA, or FDA administrator.

One recent example of state regulators resisting federal jurisdiction comes from the deregulation of electric utilities. In the 1990s, twenty-four states deregulated their utilities, leaving them free to buy and sell electricity wherever they could get the best price, from independent companies and peaker plants (companies that generate electricity for sale just during peak periods of use) rather than from in-state plants. This approach required transmitting electricity around the country from generating plants to wherever it was most needed at any point in time. So the deregulated power plants could purchase electricity from sources hundreds and even a thousand miles away. As new plants entered the market, the demand for use of the national grid system to transmit electricity increased, leading to regional electricity shortages and brownouts. Congress ordered monopoly utilities in regulated states to allow other companies to use their grids, but the states believed they should retain the regulatory authority they had always had over utilities. Congress argued that power transmitted across a national grid system is interstate commerce, and only Congress has the authority to regulate it. The result was a tug-of-war between Congress and the states over the regulation of utilities.

Thus as we have seen, every phase of the regulatory process is open to influence by parties affected by the content of regulations. Those with a direct stake in a particular type of regulation can give testimony and lobby influential legislators while legislation is being written. They can lobby bureaucrats who write the rules mandated by legislation, agency heads responsible for implementation of rules, or members of congressional committees with oversight functions. Rules, and the ways they are or are not enforced, can be appealed to the agencies issuing them and, in some cases, challenged in federal courts. Powerful interest groups have opportunities to pressure the White House on the appointment of agency heads and the content of specific rules.

Because regulation does incur costs as it bestows benefits, it is inevitable that those who sustain the costs will compete with those seeking benefits to influence the process of writing and implementing rules. All of this competition between pro- and antiregulation forces, between regulators and the regulated, and among the regulators themselves slows the implementation and enforcement of rules designed to achieve regulatory goals established by Congress. Effective implementation is also slowed by weak enforcement powers. Although agencies are authorized to assess penalties for noncompliance, these punishments are usually negligible. In the face of these obstacles, it is amazing how much federal
...and state regulators have been able to achieve in protecting lives, safeguarding the environment, and promoting equity and competitiveness in the marketplace.

**Cycles of Regulation**

Like other government activity, the push for government regulation comes in fits and starts. The first spurt came in the late 1800s, when a poor economy led to charges, especially by farmers, that the large corporations of the day were exploiting the public. In 1890 with the Sherman Antitrust Act, Congress prohibited firms from conspiring to set prices or restrain trade in other ways. It also declared monopolies illegal and established the Interstate Commerce Commission to regulate the railroads.

The next burst of regulatory activity came after the turn of the twentieth century, in the Progressive Era. Demands for consumer protection arose largely because industrialization and railroad transportation created national markets for goods formerly produced and consumed locally. In these new national markets, consumers had little recourse if the products they bought from distant companies were not safe or reliable. Consumer fraud became endemic. Businesses engaged in deceptive advertising, food products often contained harmful substances (Coca-Cola contained cocaine; formaldehyde was used to preserve milk), and popular patent medicine usually contained alcohol or addictive drugs, such as opium. Reformers also pointed to unsafe and unsanitary conditions in the meatpacking industry. After the media and so-called muckrakers highlighted these scandals, Congress banned certain food additives, prohibited false claims about products, and gave the Department of Agriculture power to inspect meat sold in interstate commerce.

The New Deal era spurred further regulatory activity. After one hundred people died from an unsafe drug, Congress passed an act mandating that the FDA declare a drug safe before it could be marketed. In the activist 1960s and 1970s, reformers were again influential in pressuring Congress to undertake new regulatory activity.

Agencies were established to regulate consumer product safety (the CPSC), the environment (the EPA), and industrial safety (OSHA). The powers of older agencies, such as the Federal Trade Commission (FTC), were strengthened.

**Deregulation**

As long as there has been regulation, there have been demands for deregulation—that is, ending or paring back regulation in a particular area. Although deregulation has had broad bipartisan support since the 1970s, there are partisan differences in the nature of this support. Democrats tend to support deregulation to the extent that it makes business activity more efficient and less cumbersome. Republicans are more likely to see this as a starting point and go further by opposing, in principle, certain kinds of regulation—working conditions, product safety, and a minimum wage, for example—as interference with market competition.

Deregulation can be carried out legislatively—that is, by an act of Congress—or administratively—by executive orders, appointments to policy positions in regulatory agencies, and through the oversight function of the OMB. One method of administrative deregulation is to strip regulatory agencies of personnel and budgets. This was a favored tactic of President Reagan; it was not until the last year of his administration that regulatory agencies (with the exception of the EPA) recovered to the level of funding they had when he entered office.

Another way to deregulate administratively is to appoint agency heads who favor either little regulation or self-regulation by industry. This will almost ensure that the number of regulations proposed and enacted will decrease, and that enforcement will slow. Reagan used this means to deregulate at the EPA and OSHA in particular, and George W. Bush has taken this approach to almost every area of rule making. To regulate the energy industry, he appointed a man recommended by leaders of the industries he would be regulating. Similarly, to head the SEC and regulate the stock market, Bush chose Harvey Pitt, a corporate lawyer whose career had been spent representing some of Wall Street’s most powerful firms and who immediately said he would make the SEC an “accountant-friendly” place. To deal...
with possible conflicts of interest created by stock analysts rating stocks in which they had a financial stake, Pitt proposed, as an alternative to writing new rules, an honor system that would require brokers to sign a statement denying they benefited financially from their ratings. When Pitt chose a man who had chaired the audit committee of an accounting firm under investigation for fraud to head a new accounting oversight board, he finally became a liability to the Bush administration and was forced to resign. Hostile public reaction to corporate corruption forced Bush to accept publicly, and even to campaign for, regulations he had earlier opposed. Out of the public spotlight, however, he sent more business-friendly directives to regulatory agencies, telling them how he expected the new rules on auditing corporate finance to be implemented.

In addition to his appointment powers, a president can also use executive orders to deregulate—just as he can to regulate—by sending directives to agencies changing evaluation standards or implementation and enforcement procedures. This is one way for a president to bypass Congress—and perhaps the only way when Congress is controlled by an opposing party—to pursue some of his objectives. But, as noted earlier, these actions do not have the permanence of legislative measures. The next president can revoke existing guidelines by issuing his own countermanding executive orders.

Types of Deregulation

Legislative and administrative deregulators may cast a narrow net, targeting individual rules, industries, or specific agencies, or a broad net, targeting the entire regulatory apparatus.

Eliminating Rules

Presidents Carter, Reagan, and Clinton promoted regulatory reform through the elimination of unnecessary rules. During the Carter administration, OSHA abolished more than eleven hundred of its ten thousand rules; many, such as the horseshoe-shaped toilet seat rule, had been severely criticized as nitpicking. OSHA paperwork requirements, particularly for small businesses, were reduced, and safety inspections were concentrated on the industries with the worst safety records. The Reagan administration continued this pattern.

But at the outset of the Clinton administration, federal statutes and formal rules still totaled about one hundred million words. OSHA’s remaining four thousand major regulations specified “everything from the height of railings to how much a plank can stick out from a temporary scaffold,” although most of its 140 regulations on wooden ladders had been eliminated. From those examples it is easy to see why rule elimination is a logical target for a deregulator: not only is it costly and inefficient to monitor and enforce rules on the grain of wood in ladders, it is also impossible. There are not enough inspectors to enforce even those rules that are essential to worker and consumer health and safety.

Deregulating by Industry

Many proponents of deregulation argue that it is not enough to streamline, eliminate the more trivial rules, and make regulators more accountable; in some areas, regulators simply should not be regulating at all.

Deregulating by industry began in the Carter administration with trucking, the railroads, and the airlines, and it had strong bipartisan support. The advantage to industry of less regulation is transparent, but it is also meant to benefit consumers by providing greater choice and lower prices or fares due to increased competition and greater efficiency in the marketplace. Not everyone agrees that these goals have been achieved by wholesale deregulation of industries. For an example of industry deregulation see the box “Deregulation and Re-Regulation: The Case of the Airlines” on page 634.

Reregulation

In politics as in physics, actions usually produce reactions. Actions to deregulate bring cries for a resumption of regulatory activity, or reregulation. Airline deregulation is an example of this cycle of action and reaction, as are electric utilities and corporate accounting practices.

Banking is still another example of how industry deregulation led to re-regulation, but only after it had cost taxpayers $150 billion. Traditionally, banks and savings and loan (S&L) institutions were heavily regulated and protected from competition. But during the 1970s and early 1980s, interest rates rose rapidly, and banks and S&Ls competed fiercely to retain their depositors and attract new ones. They were also in competition with the federal government for investors’ money as interest rates on treasury notes continued to rise. In the bipartisan deregulatory mood of the time, Congress adopted a series of measures, beginning in 1980, to deregulate many aspects of the banking industry. Both banks and S&Ls were given more freedom to decide what financial services to offer. Within days, interest was being paid on checking accounts; credit card companies raised their interest rates; brokerages, insurance firms, and even department stores got into the banking business; and S&Ls offered a new range of services and made new types of investments that were formerly prohibited.

Some S&Ls attracted new depositors by paying interest rates that were more than double the interest rates their mortgage holders were paying. With these policies, it was only a matter of time before the S&Ls would go broke, unless they made windfall profits from their investments. As a result, many S&Ls, big and small,
made increasingly risky investments to survive and profit in the now highly competitive atmosphere. Banks, too, made high-risk loans to farmers and foreign governments, while some S&Ls made shaky real estate investments and then saw the bottom drop out of their investments when real estate prices plummeted.

During this period, federal scrutiny of bank and S&L activities fell drastically, even though the government, through its deposit insurance program, guaranteed each deposit (of up to $100,000) that the banks and S&Ls used for their risky investments. Charles E. Schumer (D-N.Y.) said the government “behaved like a fire insurance company that said to its customers: ‘Go ahead, play with matches. We’ll cover you if anything goes wrong.’” Congress repeatedly denied requests from the Federal Home Loan Bank Board, which regulates S&Ls, for more examiners and auditors. In the last half of the 1980s, one thousand banks failed, including the nation’s eighth largest, Continental Illinois. Thanks to the federal deposit insurance program, few individuals lost their savings, but it took an additional $4 billion loan from the government to restore Continental Illinois to solvency.

The S&L crisis proved much more costly; 27 percent of all thrifts failed. Covering the losses, the federal insurance company for S&Ls, the Federal Savings and Loan Insurance Corporation (FSLIC), went broke. By 1996, about $150 billion of taxpayers’ money had been committed to the bailout of failed S&Ls.

In short, deregulation in the financial industry led to disaster. Proponents of deregulation argue that a truly free market would be more efficient because consistently bad business decisions would bring failure without benefit of a taxpayer rescue. But, in the case of Continental Illinois and the hundreds of insolvent S&Ls, the government believed—as it did with the major air carriers—that the nation could not afford to let them go under. Huge banks defaulting and millions of people losing their savings would send shock waves throughout the nation, so the federal government stepped in to save them. Thus critics of banking deregulation argue that since banks have the luxury of Uncle Sam’s pocketbook when things go wrong, they should be forced by Uncle Sam to conduct themselves in a prudent manner. The S&L bailout reflected this view by imposing tougher new regulations that S&Ls must now meet.

**Deregulation: The Current Round**

Reregulation, especially by industry, is often a response to a transparent failure of deregulation, sometimes of
From 1938 to 1978, commercial airlines were heavily regulated by the Civil Aeronautics Board (CAB) and needed its approval to select routes and set fares. Originally, regulations were designed to help the struggling airline industry by protecting it from competition. This worked so well for existing air carriers that after forty years of federal rule-making, it was almost impossible for new airlines to enter the industry. In the mid-1970s, however, when the oil crisis had caused fares to skyrocket and several airlines were in economic difficulty, Congress decided to deregulate. In 1978, President Carter signed a bill phasing in deregulation. The CAB was abolished and regulation was left to the Federal Aviation Administration (FAA), which oversees air safety.

By opening up competition among the airlines, proponents of deregulation hoped the airlines would seek ways to become more efficient and then lower fares. Airlines were allowed to fly new routes without CAB approval and were permitted flexibility in setting their fares. But Congress also provided subsidies to carriers serving small communities to ensure they did not abandon unprofitable routes.

In its early years, deregulation did increase competition; the number of airlines nearly tripled between 1978 and 1983, and the number of people choosing to travel by air doubled by the 1990s. But deregulating airlines does not change the fact that big capital outlays are necessary for a new company to break into the market. The first carriers were protected from competition by the CAB, but for the post-deregulation startups, there was no such protection. Many airlines folded or sold out during the recession of the early 1980s. By 1990, the eight largest airlines controlled about 90 percent of all commercial air travel in the United States. Deregulation had reduced rather than increased competition.

Competition was also diminished when the airlines divided up the nation into regional turfs. In ten major cities, two-thirds of the air traffic fell under the control of one airline, such as TWA in St. Louis and Northwest in Minneapolis and Detroit. In the huge hub airports at Chicago and Atlanta, two airlines, United and American, gained control of three-fourths of the traffic.

The special twenty- to thirty-year leasing arrangements major carriers made with large airports gave a single airline control over much of the traffic and a de facto veto power over expansion projects that would provide new gates for potential competitors.1 At these airports, the daily number of allowable landings and takeoffs is set by the federal government. When the Department of Transportation allocated those slots, they were divided among all carriers, but after 1986, when carriers were freed to buy, sell, lease, or trade their landing and takeoff slots, the major carriers gained control of 98 percent of airport slots. Not surprisingly, a Government Accountability Office study showed that at concentrated or “fortress” hubs, the fares of the dominant airlines were consistently higher than the fares at other airports.2 And trying to route most passengers through hub airports to make connecting flights led to enormous inefficiencies. Although the country had 429 airports, 70 percent of all air traffic was being routed through just 31 of them.4 That made most of the nation’s flights dependent on the weather in hub cities, and when flights were grounded there, traffic backed up around the country. By 2000, the busiest airports were plagued by flight delays, canceled flights, and angry passengers.

After deregulation, comparatively little money went into expanding airports, upgrading air traffic control equipment, or building new airports. Only six new runways were built at the largest airports during the 1990s, and the Denver International Airport is the only major airport to have been built since 1976. Travelers had more flights to choose from, but planes became more crowded. Passenger complaints and lost baggage claims skyrocketed. Although average airfares dropped 36 percent after deregulation, passengers had to contend with a Byzantine system for setting fares. On one 1997 United Airlines domestic flight, for example, twenty-nine passengers with identical coach accommodations paid twenty-three different fares, ranging from $87 to $728.5

Deregulation had a much stronger downside for small and midsize cities that often were left with a single carrier and monopoly prices.6 Since the lowest fares went to travelers who could plan well ahead or fly standby, business travelers with fixed appointments made at short notice were the hardest hit economically; in 2000, they were paying 50 percent more than they had in 1996.7

In 2001, with major carriers entering into alliances to control huge chunks of the market and passenger dissatisfaction growing, Congress was considering a variety of reregulatory measures. The largest airlines were already losing money at alarming rates when the hijacking of commercial airliners by terrorists for use as weapons dealt another tremendous blow to the financial health of major carriers. Given the carriers’ economic distress and airports’ very lax safety procedures, Congress believed it had no choice but to provide a financial bailout and begin a process of reregulation.

Congress delegated authority to a new Air Transportation Stabilization Board (ATSB), with Fed Chair Alan Greenspan as chair. The panel was to grant loans to airlines with the strongest
business plans and to deny help to any airline that looked as if it was going to fail. In return, airlines receiving aid were asked to give the government an equity stake in their companies.8

Congress also tightened regulation to try to prevent future hijackings. The lapses that allowed the terrorists to board the flights that crashed on 9/11 were due both to inadequate federal safety standards and to indifferent airline enforcement. The standard security questions directed at passengers had long since become a joke. At electronic check-ins, passengers were allowed to answer the questions on the whereabouts and packing of their luggage just by pressing options offered on a computer screen. One reporter said it was as if airport security expected travelers to ask one another, “Dear, did we pack the nuclear waste in your suitcase or mine?” or, “Honey, is the plutonium in your purse or the black duffel?”9

Although it provoked a furious debate between deregulators and re-regulators, Congress decided to end privatization and make all airport screeners federal employees, requiring citizenship and a high school diploma, upgrading pay and benefits, and imposing more rigorous training standards. Congress also required airports to purchase new, much more sensitive screening equipment, screen all check-in luggage, and thoroughly search all carry-on bags and passengers. As added protection, Congress reinstated the old sky marshal program, putting security guards on passenger flights. Among the most controversial changes was the authorization of pilots to carry guns and limitations on the legal liability of airlines for injuries caused by those pilots.

The dire state of the industry after 9/11 led to many operational changes to improve the efficiency and overall performance of the big airlines. With travel down, airlines permanently eliminated flights to cities already well served by other carriers. And competition increased as small no-frills airlines stepped into the breach and won over many passengers who had relied on the large carriers. A year after 9/11, low-fare airlines were carrying more than 20 percent of all air passengers in the United States.10 They fly point-to-point without connecting flights, avoiding hub airports. Some lines fly only a single type of aircraft, cutting down on training and maintenance costs, and many have no food service or frequent-flier plans. Businesses that had begun cutting travel budgets well before 9/11 started flocking to the discount airlines, a big blow to the major carriers, which make most of their profits from business travelers.11

Since 1978, 137 carriers have filed for bankruptcy. Three of the ten largest are in bankruptcy; together, the big carriers have lost $30 billion since 2000, and they continue to lose. And in the years from the end of World War II until 1994, “the sum of the industry’s profits and losses was less than zero.” 12 This led investment analyst Warren Buffett to suggest that it might have been “a blessing for shareholders if someone had thought to shoot down Orville Wright at Kitty Hawk.”13

As the newer airlines like Southwest and JetBlue capture the domestic market, the bigger airlines are turning to international flights to try to stay in business. Delta’s CEO told his employees, “The harsh reality is that our world has permanently changed, and we must change with it.”14

Some industry analysts say the continued dominance of megacarriers is inevitable because the industry, like information technology or telecommunications, evolves “toward heavy concentration among a few players because of the high barriers to entry and heavy capital costs.”15 This is the view of those who see the airline industry as a combination public-private enterprise that should be treated like a controlled monopoly and exempt from antitrust rules. They believe the benefits to consumers (low fares, more routes, standardized service) are worth it. But deregulation advocates say government should leave it to the marketplace to determine which carriers will survive the industry crisis.16

crisis proportions, as with S&L failures, power shortages, airline security, and corporate bankruptcies. For the most part, support for deregulation has remained industry specific. Where there are no crises looming, the default rhetorical position for most elected officials is to favor deregulation wherever possible.

The principle of deregulation has been gaining momentum ever since the Carter administration. In the Reagan years, it became an ideological position. In the early 1990s, as the country faced huge budget and trade deficits and an economy that was barely growing, there was near unanimous support for reducing the regulatory burden on both private and public entities to see whether it would help speed up the economic recovery. During the long period of economic expansion that followed, sentiment for deregulation did not decrease but continued to gain momentum.

At least four factors have contributed to continued deregulatory zeal. The first stems from the general policy approach of the Clinton administration, which was to find the middle ground in every policy dispute. Although Clinton favored health-based regulations, he opposed overconcentration of rulemaking in the federal government and was sympathetic to the complaints of both business and state governments about the cost of implementing regulations.

A second factor was the strong deregulatory policy of the Republican leadership that took control of both houses of Congress in 1995. Divided government kept in check, or overrode, Clinton administration tendencies to come down on the side of regulation when a middle ground could not be found.

A third factor sustaining deregulatory momentum was structural change in the global economy. Advances in transportation and telecommunications have changed the “balance between government and international markets” and the terms of business competition. Global competition for market share has allowed businesses, including the heavily regulated banking and utilities industries, to argue that to have the freedom to reorganize on a scale necessary to maintain competitiveness in international markets, they must be deregulated. This argument found broad bipartisan support in Congress and in both the Clinton and George W. Bush administrations.

In 1999, for example, Congress essentially dismantled the Glass–Steagall Act that had separated the banking, insurance, and securities industries since the Great Depression. Commercial banks, already the second most profitable of all industries, are now free to engage in securities trading and to handle the title insurance of your new home as well as to give you a home mortgage and handle your checking account. Congress even sanctioned the creation of banks for large depositors, where accounts will not be protected by deposit insurance.

Within the new, bigger-companies-for-bigger-markets rationale, the number of mergers mushroomed, with only token opposition from the Department of Justice’s antitrust division or from the FTC, even though the 1990s saw the twenty largest mergers in U.S. history. There has been consolidation in the pharmaceutical, oil, telecommunications, and freight and shipping industries. Similar consolidation is being attempted by cable companies, even though no cable merger has ever resulted in a price decrease for consumers. (In fact, cable prices have increased three times faster than inflation.)

Many in government see the 1990s wave of mergers as inevitable, necessitated by global competition. But critics of “merger mania” argued that too little thought is being given to the consequences of corporate consolidations—namely, that the more assets companies acquire through mergers, the more resources they have to buy still other companies. One member of Congress warned, “We’ve got to have the [antitrust] resources that prevent this society from turning from a capitalist society into an oligarchy.”

A fourth stimulus to deregulation is the power of large corporations to influence the political process. Through their key role in financing the campaigns of candidates of both major parties (see Chapter 9), they are guaranteed at least a symbolic hearing for their arguments for deregulation. Currently, the balance of power in Washington is heavily skewed toward corporations, with labor unions, consumer groups, and others who favor regulation in decline.

Corporate financial power resulting from consolidations—for example, Adelphia and WorldCom—gave political access and protection from congressional oversight. Several regulations of the financial industry, rolled back in the 1990s, allowed CEOs and their auditors to cook their books, and eventually led to a stock market crash. This, in turn, led to investor (voter) rage and to legislation reregulating accounting firms and the ways corporations compensate their CEOs and report company earnings.

However, at the same time that limited reregulation was taking place, deregulation continued at a stepped-up pace in other sectors of the economy, including energy, mining and logging, telecommunications, worker safety, product liability, and, as we will discuss later, environmental protection. George W. Bush shares the deregulatory fervor of the Gingrich Republicans and, with a divided Congress in his first two years, employed Reagan’s approach of appointing antiregulation agency heads and cutting agency budgets.

**Keeping Pace with Change**

Rapid advances in technology over the past decade have challenged government’s regulatory powers. One of the
most difficult issues has emerged from advances in biotechnology: should government or the marketplace decide whether science should engineer human life, and should business market it?

Some argue that cloning, for example, could save thousands of lives by providing healthy tissue, bone marrow, or organs needed by people with illnesses that require grafts or transplants from a genetically matched person. Some make a straightforward argument for genetic engineering; they see nothing wrong with procedures that could eliminate the risk of disabling diseases or birth deformities in unborn children. Cloning might also allow infertile couples to have children. In fact, some see cloning as a reproductive freedom issue, and just as they do not want government to regulate whether a woman can terminate a pregnancy, they do not believe government should prevent the cloning of offspring.

To what standard does government look to determine whether cloning is good or bad for the public, and what is the legal basis for this regulatory authority? Typically, government regulates to promote public health and safety and equal access in the marketplace. Should regulatory decisions on cloning be made by committees of scientists, doctors, clergy, and ethicists? If so, who would choose the committee members, and how would they be accountable to the public?

Consumer concern about the safety of genetically engineered foods has also brought demands for new regulation. Lawsuits have been filed against the federal government and biotech companies demanding that the foods grown from genetically altered seeds (called “frankenfoods” by their critics) be more carefully studied before being declared safe. In some cases, opponents have demanded the removal of food already on the market. While the FDA insists that genetically altered foods are safe, it has written new rules requiring manufacturers to inform the FDA of their intent to market such products and has drawn up guidelines for those who want to label contents voluntarily. But food safety is not the only issue. About half the soybeans and a third of the corn planted in the United States are grown from genetically altered seed stocks, creating the potential for emergence of pesticide-resistant insects. In this area, too, government has begun to act, ordering farmers to grow at least 20 percent of their corn and soybeans from nongenetically altered seed.

Communications technology is another area where changes are occurring more rapidly than regulators can keep pace. In 2003, 55 percent of all Americans had home access to the Internet, and online commerce was booming. Many of its supporters see the Internet as the model of a free market, open to all and completely unregulated, and they believe it should stay that way. Advocates of greater government oversight believe that excitement over the development of e-commerce, the new ease in rapid global communication, and the emergence of global markets have caused people to forget the dangers of an unfettered market.

For example, an unregulated Internet has resulted in consumer and credit card fraud, illegal online securities trading, criminal solicitation, access of children to pornography, and public dissemination of personal credit and medical histories and other invasions of personal privacy. Congress has yet to adopt measures to regulate in most of these areas, but more than seventy-five bills dealing with issues of privacy, access, and content on the Internet were under consideration before 9/11. After the 9/11 terrorist attacks, legislative attention shifted to removing privacy protections, allowing (under the PATRIOT Act) intelligence and law enforcement agencies unprecedented access to individual e-mail accounts and records of Internet activity.

Regulating high-tech requires scientific study and time for assessment and it also requires members of Congress to familiarize themselves with the intricacies of a multitude of new technologies and their applications before they write legislation. But changes are occurring with such rapidity it seems impossible that government regulation will be able to keep pace with their application in the market.

Regulatory Politics and Environmental Protection

In this section we use the example of environmental protection to illustrate how legislators, regulators, and interest groups have contributed to the politicization of the regulatory process.

CHAPTER 18 • Regulation and Environmental Policy
Everyone breathes the air and drinks the water, and one in four Americans lives or works in proximity to a hazardous waste site. Therefore, environmental protection has a huge constituency. A majority of the public supports spending for environmental protection, even when agreeing with the statement that government should regulate less. Government action to safeguard public health through protection of the environment has had broader public and more bipartisan legislative support than almost any area of regulation. For three decades, the importance of this type of regulatory activity has been proclaimed by leaders from Richard Nixon—who called a clean environment the “birthright” of every American—to Al Gore, who wrote a best-selling book based on the notion that safeguarding the environment should be “the central organizing principle for civilization.”

Nevertheless, neither widespread support for regulatory activity nor its real achievements have been able to prevent a strong backlash from developing against the environmental activism of federal agencies and interest groups. This is reflected in federal funding, which peaked in 1980, fell sharply during Reagan's deregulatory push, then grew by modest increments during the George H. Bush and the Clinton administrations before beginning to fall again during the presidency of George W. Bush.

**Evolution of Government’s Role**

How can we define standards that protect society’s interest in having a clean and healthy environment and at the same time not unreasonably handicap business and individual producers of pollution? Historical and current debates over environmental policy revolve around this issue.

The Constitution contains no hint of concern about preserving and protecting the environment. Indeed, the Founders’ and our own orientation to the environment is rooted in the Western, Judeo-Christian tradition that the physical world exists to serve human needs. This sentiment was reinforced during the eighteenth-century period known as the Enlightenment, which led people to believe that through science and learning, we could conquer almost any obstacle to human progress. Awareness of the negative consequences of science and technology for the environment was a long way away.

But in the nineteenth century, concern grew about the effect that the Industrial Revolution, coupled with rapid population growth, might have on the environment. Late in that century, a conservationist movement to preserve some of the natural environment from farmers, ranchers, and loggers who were clearing the land resulted in the creation of the national forests and a national park system.

Along with concern about saving some forests and other areas of scenic beauty came an awareness of pollution. The first effort to combat water pollution was an 1899 law requiring that individuals dumping waste into navigable waters get a permit from the Army Corps of Engineers. In 1924, Congress banned oceangoing ships from dumping oil in coastal waters. Neither of these acts was enforced very well, but the legislation did indicate an embryonic concern with pollution.

The modern environmental movement probably stems from a book, Rachel Carson’s *Silent Spring*, originally published in 1962. Carson argued that pesticides used in agriculture find their way into the air and water and harm crops, animals, and people. Moreover, she demonstrated that scientists and engineers did not know the extent of these harmful effects, nor did they seem particularly concerned. The chemical industry immediately attacked Carson, accusing her of hysteria and misstatement of facts. The industry’s attacks created widespread publicity for her views and raised the environmental consciousness of millions of Americans. President Kennedy cited Carson’s work as his reason for ordering a review of government regulation of pesticides.

The decade and a half following the publicity over Carson’s book was characterized by a burst of new regulatory activity. Public concern peaked, too. Huge oil spills, rivers catching fire, and the growing impact of the automobile on air quality lent substance to these concerns. By 1970, opinion polls showed that the most frequently cited public problem was protecting the environment, which was surprising in light of the continuing protest against the Vietnam War. In April 1970, Earth Day was inaugurated, and hundreds of thousands of citizens across the nation demonstrated to show their concern about the environment. Every year since, one day in April has been set aside to celebrate the planet’s resources and to heighten environmental awareness.

In 1970, Congress gave citizens a more formal way to affect environmental policy. New legislation, the *National Environmental Policy Act*, or NEPA, as it is usually called, mandated government agencies to prepare environmental impact statements for internal projects or projects they fund. Impact statements require justification for projects or actions proposed as well as a list of all the people and agencies consulted. Most important, these analyses must detail the effect, including any negative consequences, that a project or
other activity would have on the environment. No new buildings, dams, sewers, pipelines, or highways were to be built, nor any research or other government projects initiated, until this statement had been filed.

Not only did the law give federal agencies the power to comment on each other’s environmental impact statements, but it also gave citizens access. Early environmental legislation was the first to incorporate the 1960s ethic of public involvement and “full disclosure of the information on which government bases its decisions.” These provisions became an important device for organizations interested in protecting the environment, giving them a real opportunity to influence environmental policies. Within a few years, more than four hundred legal suits were filed to force the government to comply with the act’s provisions; by 1980, thousands had been filed.

Another landmark move marking the growing federal involvement in environmental protection was the 1970 creation of the Environmental Protection Agency (EPA) by President Nixon. Recognizing that responsibilities for pollution control were spread throughout the executive branch, Nixon, with congressional approval, brought them together in one regulatory agency with a single head who reported to the president. During the EPA’s first years, three foundational pieces of environmental protection legislation were passed by Congress: the Clean Air Act (1970), the Clean Water Act (1972), and the Endangered Species Act (1973). During the 1970s, the EPA received extensive new mandates to regulate hazardous waste, pesticides, and noise pollution.

Implementing Environmental Regulations

Passing laws is one thing, enforcing them another. Congress mandated the EPA to achieve certain goals, but the EPA had to write the rules for reaching them and then monitor their implementation by the states. For example, under the Clean Air Act, the EPA was ordered to establish air quality standards for major pollutants, a task the EPA estimated would require writing three hundred to four hundred rules. States were mandated to draw up plans that would bring local air quality into compliance with these new federal standards. In keeping with the commitment to public involvement in the regulatory process, the Clean Air Act also permitted citizens to sue to enforce its provisions. Of course, the industries and public utilities subject to the new rules also had the right to challenge them.

Regulating Air Pollution

Though, in theory, the EPA can have a noncompliant company closed down, this move is simply not politically feasible or economically wise. Generally, the agency is reluctant to enforce standards against large companies with political clout or small profit margins, especially industries crucial to the nation’s economic health. To take action against a large industry requires significant political will all the way to the White House. That kind of commitment is rarely evident.

The standard approach to rule writing provided few incentives for industry to comply. Penalties were often not assessed, and when they were, the fines were usually far less than the cost of complying with the standards. Furthermore, sometimes cheaper solutions could be found to pollution than the regulations specified.

The Carter administration adopted the policy of allowing compliance in some industries to be based on the bubble concept. This policy allowed companies to meet an overall standard for emission of pollutants. Imagine that a bubble has been placed over a factory with ten smokestacks, each emitting pollutants. Under the old rules, each smokestack would have to meet EPA standards. Under the bubble concept, one or more smokestacks might exceed the limits on emissions as long as the total emissions within the bubble met the standard. Rather than bringing all ten smokestacks into compliance, the company might find it cheaper to install equipment on five smokestacks if doing so would reduce total emissions to the required level. The bubble concept provided greater flexibility in determining how a standard would be met and reduced the cost of compliance.

From the bubble concept, a more flexible system evolved, allowing for a multifactory bubble. A limit or cap is placed on the amount of a pollutant that can be
emitted in a geographic area, and factories within that area are allowed to buy, sell, or trade rights to pollute as long as collective emissions do not exceed the cap. For example, the EPA sets a limit on how much sulfur dioxide (the chemical that causes acid rain) can be emitted into the air in a particular area; then state environmental agencies sell permits to pollute. Utility companies, which emit a great deal of sulfur dioxide, can then decide whether it is cheaper for them to buy and install scrubbers to reduce plant emissions or to buy permits that allowed them to pollute. This policy, called cap-and-trade, allows industries some flexibility in meeting pollution standards, but if they do pollute, they have to pay in advance.

The bubble concept was hardly a panacea, however. It still required the EPA to set standards for each particular type of pollutant. Since the petrochemical industry was founded during World War II, tens of thousands new chemicals have been manufactured, and of the three thousand that are in high production, just over 40 percent have been even minimally tested for health effects. During its first twenty years, the EPA set standards for only seven of the most toxic chemicals. Believing that it would be impossible to set standards for each separate chemical, the EPA replaced the pollutant-by-pollutant approach with a more comprehensive industry-by-industry approach. Now limits are set on all toxic emissions combined, and, following the cap-and-trade policy, industries with emission levels below allowable limits earn credits that they can “bank,” sell, or trade to other industries whose emission levels are above the standard.

Regulation of air quality is a good illustration of how industry and public responses to the implementation of rules can influence reassessment and revision. The goals of the original Clean Air Act were not weakened but strengthened by subsequent amendments and reauthorizing legislation because the rules to reach goals were revised in ways that make them less cumbersome and more cost effective to administer. The cap-and-trade approach has been adopted by international environmental agencies as a means for achieving worldwide reductions in the emissions of carbon dioxide and other gases linked to global warming, with nations, rather than businesses, buying and trading permits to pollute.

Water Quality

Before 1972, at least eighteen thousand communities regularly dumped their untreated raw sewage into rivers and lakes. Food, textile, paper, chemical, metal, and other industries discharged twenty-five trillion gallons of wastewater each year.

These activities occurred despite federal attempts to improve water quality. A 1948 law authorized the federal government to give funds to local governments to build sewage treatment plants. Thousands of communities used the grants for this purpose, and the program was seen as a welcome pork-barrel project as much as a regulatory one. In 1965, Congress mandated that states establish clean water standards in order to get these sewage treatment grants. But the law was not effective. States did not want to establish stringent quality standards because they were afraid industries would leave.

In 1972, the federal government tried again. It set as goals to achieve “fishable and swimmable” waters by 1983 and zero discharges into water by 1985. Industries were to have permits to discharge wastes; they were to use the “best practicable” technology by 1977 and the “best available” technology by 1983 to make sure the pollutants discharged were the smallest amounts possible. The EPA set uniform national standards for discharge control for each type of industry so states did not have to compete to attract industries or to keep them from moving away by setting the most lax standards.

It took years to implement water quality standards effectively for many of the same reasons that confounded air quality enforcement: rules were not correctly written, inadequate monitoring, industry resistance, and foot dragging in Congress. A substantial number of industries and municipalities did not meet the standard of technology necessary to clean up waste. Some sewage treatment facilities were built inadequately and others were operated improperly because they lacked trained technicians. The EPA and state environmental agencies did not have the personnel to monitor carefully how local governments spent their sewage grants. Local governments also resisted the standards set by the Clean Water Act because of the cost to municipal budgets. Most towns and cities, especially during the bad economic times of the 1970s, did not have the resources to pay for what was essentially an unfunded mandate. Even today, one-third of all EPA spending is on grants to the states to build and maintain water and sewage facilities.

Congress yielded to political pressure from local governments and industry. In 1977, it weakened some of the provisions of the Clean Water Act and granted exemptions and extensions. Thus polluters had reason to believe they need not comply with standards or deadlines because Congress would come to their rescue.

Congress also dragged its feet on enforcement of the Safe Drinking Water Act (1974), waiting a dozen years before imposing a timetable on the EPA for issuing safety standards. Finally, in 1991, Congress did pass new and more stringent safety standards for tap water, requiring more frequent testing for lead levels in munici-
pal water supplies, only to see them threatened by a new round of deregulation.

But the difficulty achieving the goals of clean water legislation was not all due to resistance to regulation and its costs. Part of the problem was with the rules themselves: when the first rules were written, not enough was known about the sources of water pollution to determine which sources to target first. Industries and municipal sewage plants accounted for only part of the water pollution problem. Other contributors were not being regulated. For example, what are called “nonpoint sources” (that is, discharges that do not come from a specific pipe) account for as much as half of all water pollution. Runoff of fertilizer from farmlands is a big source of nonpoint pollution and is difficult to control. So are the sewers connecting drains and grates in city streets. Storm sewers collect gas, oil, fertilizers, pesticides, animal excrement, and other unpleasant substances and then deposit them directly into the nearest waterway.

Current rules written to achieve clean water goals stress pollution from these nonpoint sources. For example, the EPA has told states that they have to develop plans for controlling pesticide runoff from farms and for limiting urban sprawl. This will create a new set of enforcement problems. Cracking down on farmers and construction firms or local land developers is much more difficult politically than attacking huge corporations that dump toxic waste in public waterways. In the Grain Belt states, local politicians may find it hard to tell cash-strapped family farmers that if they do not alter their use of pesticides (changes that could lower production), they may have to help pay for pesticide cleanup.

Despite all of these problems, today’s drinking water is much safer than it was before the clean water laws were enacted, and 60 percent of all rivers and lakes are now safe for swimming and fishing.

Hazardous Waste

Most hazardous waste—toxic chemicals—is generated by government agencies and private industry. From 1976 to 1980, Congress passed legislation designed to clean up hazardous waste sites created by industry, and assigned financial responsibility to the companies doing the dumping. It also levied a tax on industry to create a Superfund to take care of hazardous waste left by companies long defunct or other waste with sources unknown.

Hazardous waste sites created by the government, especially in the development of nuclear weapons and nuclear power, have already exacted enormous health costs. No one warned the citizens of Nevada about radioactivity, even though the government exploded more than one thousand bombs in their state. Atomic Energy Commission documents refer to people living in the fallout area as “a low-use segment of the population.” According to a study by the Centers for Disease Control and Prevention (CDC), eleven thousand people died because of exposure to radioactive fallout from above-ground weapons testing, and it contributed to a minimum of twenty-two thousand cancers.

Thousands of others suffered health problems as a result of working in or living near weapons industries or serving as subjects in weapons research. Six hundred thousand people in thirty-seven states worked in the nuclear weapons industry during the Cold War. In the 1940s, when government engineers recruited Navajo men and boys living near Cove, Arizona, to mine the uranium necessary for new atomic weapons programs, no one mentioned the dangers of radon exposure. In a government study of how irradiated nutrients are metabolized (paid for by the Quaker Oats Company), boys in a state home were fed oatmeal laced with radioactive isotopes. In other experiments, terminal cancer patients were radiated to toxic levels, hospital patients were injected with plutonium, and at least two hundred thousand military personnel were exposed to radioactive materials to test the consequences of exposure to atomic weapons and bomb blasts.

Not until the 1990s did Congress hold hearings on the “human radiation experiments” and appropriate money to compensate for injuries and deaths to uranium miners, participants in nuclear testing, and victims of radioactive fallout.

The nuclear weapons plant in Hanford, Washington, knowingly released into the air massive amounts of radioactive materials, including iodine, for test purposes. Downwind, near Mesa, Washington, in an area known as the “death mile,” 14 of 108 residents became ill with or died of cancer, and several children died or were born with disabilities. Researchers from the CDC believe that twenty thousand children in eastern Washington may have been exposed to unhealthy levels of this iodine by drinking milk from cows grazing in contaminated pastures.

In Fernald, Ohio, a red-and-white checkerboard design on a water tower and the name “Feed Materials Production Center” led some residents to believe a local firm produced animal feed. Instead, it made uranium rods and components for warheads. Residents were stunned to find out that, for thirty-five years, the plant had dumped radioactive refuse into pits in the ground that regularly overflowed when it rained. The plant also discharged 167,000 pounds of nuclear waste into a local river and released about twice that much into the air. Though these actions were taken by the private company that ran the plant, they were approved
since 9/11, government officials have often warned Americans that an attack on the United States by terrorists armed with biological, chemical, or nuclear weapons is all but inevitable. Much attention has been paid to the possibility of terrorists acquiring such weapons, or the materials to make them, from so-called rogue nations (North Korea, Iran, Libya, and Iraq, for example) or stealing materials from poorly secured weapons and waste storage facilities in Russia and the former republics of the Soviet Union. In their presidential debates in 2004, both George W. Bush and John Kerry labeled the threat of weapons of mass destruction in terrorists’ hands one of the most serious challenges facing the United States.

We are cooperating with Russia and its former republics to destroy weapons of mass destruction, and the materials for making them, that are stored in poorly secured facilities. We are also trying to recover highly enriched uranium shipped to other countries for use in their nuclear energy or research programs. In earlier years, the United States “loaned, leased or sold” highly enriched uranium—enough to make one thousand nuclear bombs—to forty-three countries. Some of the material has been returned but much remains out of U.S. control.

While the government legislates, negotiates, and cajoles to get foreign governments to destroy or better safeguard their weapons and materials stockpiles, it has not done that well getting its own agencies to clean up domestic weapons and energy plants and hazardous waste storage sites. The environmental and health hazards posed by the Department of Defense (DoD) and Department of Energy (DoE) sites have long been an issue. Now the existence of mass quantities of radioactive materials and agents used in chemical and biological weapons at multiple sites across the country has become a major security problem. At the DoE’s Washington State Hanford site alone there are fifty-five million gallons of high-level radioactive waste awaiting disposal. Four other sites in Idaho, South Carolina, and Tennessee contain “substantial quantities of nuclear material . . . in the form of assembled nuclear weapons and test devices, major nuclear components, and other high-grade materials such as solutions and oxides.” An attack on any one of these sites, the Government Accountability Office (GAO) says, would have “devastating consequences.”

After 9/11, weapons plants and testing and storage sites were ordered to develop plans for securing their facilities against theft or attacks from outside, or by insiders working with terrorists groups. Sites at highest risk—those where nuclear weapons are assembled or disassembled—are required to develop more complex security plans, including protection against a large scale terrorist attack. The ultimate risk at these plants is that a breach in security could result in a nuclear detonation. However, it will be years before acceptable security plans will actually be put in place. Most now exist only on paper.

One problem is budgetary; work at some of the sites is substantially under-funded. Some of the most dangerous materials need to be transported to other, safer sites, yet the DoE says it does not have the funding to do it. Decontaminating and decommissioning the nation’s uranium enrichment plants alone will cost in the billions and take decades. Moreover, we must dispose not only of our own nuclear wastes, but also those materials being reclaimed from foreign governments as well. Then, too, the government is developing and testing new nuclear weapons (such as the Bush administration’s bunker bomb program) and every year is piling up more radioactive waste at research and testing sites.

There are many other munitions and hazardous waste sites to be cleaned up as well—including an estimated fifteen million acres of shutdown military ranges—and huge reserves of chemical and biological weapons to be destroyed. At just one site in Anniston, Alabama, the government had stored 660,000 chemical weapons (such as mustard gas and sarin) before it began incinerating them in 2003. At the current level of spending, the GAO estimates that cleanup for all of the chemical and other hazardous waste sights created by the military will take seventy-five to three hundred years.

In addition to budgetary problems, the government faces significant popular opposition to parts of its plans that deal with cleanup. For example, Washington voters passed an initiative to stop the shipment of any more radioactive materials to the Hanford site (a court ruling blocked the initiative).
and even encouraged by the supposed regulators, the Atomic Energy Commission. Senator John Glenn (D-Ohio) said, “We are poisoning our people in the name of national security.”\textsuperscript{60}

To add insult to injury, the government backed federal contractors challenging the findings of the medical panels who ruled on the eligibility of nuclear weapons workers to receive financial aid for medical care. In 2002, President Bush reversed this policy and told the Department of Energy (DoE) to help twelve thousand workers file claims for compensation.

An EPA report estimates that the number of hazardous waste sites needing cleanup is growing by twenty-eight per year, and that as many as 355,000 hazmat (hazardous materials) sites will require cleanup over the next three decades at a cost of more than $250 billion. In spite of this, the Superfund budget has not been increased since 2001, and more than half its budget is spent on nine major sites.\textsuperscript{61}

\section*{Science, Policy, and Environmental Politics}

A former EPA director once said that the EPA’s mission is like trying to give someone an appendectomy while the person is running the hundred-yard dash.\textsuperscript{62} The agency is always shooting at a moving target: just as regulators establish rules for dealing with a pollutant, research reveals new dimensions to the problem or identifies other toxins from new sources. Public pressures also vacillate and sometimes public opinion is not consistent with the way the public acts. Elected officials also change, and their views on regulation can be dramatically different. So it is not surprising that it is difficult to make and enforce environmental policy.

In this section we take a brief look at the chief forces making environmental regulation difficult: changing science, public pressures, interest groups, and lack of consensus among policymakers.

\subsection*{Changing Science}

Sound regulatory policy has to be based on good science and the scientific process is not always fast. Rapid changes in high technology and the massive changes brought by globalization have made it very difficult for policy to keep pace with change.

Sometimes scientific findings of one era are overridden by later research, and policies based on the earlier findings are not valid. Of course, science, like technology, is an ever-developing human enterprise and it is hardly surprising that better techniques and insights lead to improvements in scientific understanding. Nonetheless, regulations based on premature or faulty science can lead to expensive regulatory solutions.

Policies on toxic waste and hazardous substances are singled out by critics as the worst examples of wasteful spending and misguided priorities. They point to studies by the National Cancer Institute that claim that only 1 to 3 percent of the nation’s half-million yearly cancer deaths result from exposure to environmental pollutants.\textsuperscript{63} Yet regulations to control these pollutants often force businesses and government to spend billions of dollars to restore contaminated sites to a pristine state. Reformers cite as examples the unsafe standard for dioxin presence in water, which is equivalent to one drop in Lake Michigan, and the so-called dirt-eating rules, or standards of safety determined by how much chemical-contaminated soil a child could consume without becoming ill.\textsuperscript{64} Opponents of the no-risk standard ask whether it is cost effective to clean up all toxic waste sites to the point that dirt is safe to eat or the water is safe to drink, especially if the amount of chemical contained in that soil or water presents no significant risk through normal exposure.

In too many cases, critics argue, the evidence used to support policy decisions has been unsound. Laws are made and standards mandated, only to have researchers revise the findings on which the laws were based. Scientists studying dioxin and DDT toxicity, for example, have said that early estimates of the danger level for human exposure were faulty. Much of the research on toxicity has been based on animal studies using the method of administering a “maximum tolerance dose” of the substance being studied. Researchers say that two-thirds of the chemicals such studies showed to be carcinogenic would be benign if ingested at lower levels. In addition, there is not a direct correspondence between rodent and human body chemistry, so we cannot be certain that humans will be affected in the same way rats are when exposed to the same chemicals. Arsenic, for example, is highly toxic to humans but not to rats.\textsuperscript{65}

At other times, policymakers deliberately ignore or misuse scientific findings in pursuit of their own ideological ends. While the EPA employs hundreds of scientists, their attempts to research and report on environmental problems in a neutrally competent manner are at times undone by political opposition to their conclusions. The Bush White House has become known for its tendency to delete from agency reports conclusions that do not have political support in the administration. Of course, these revisions rarely escape public attention because they are leaked by disgruntled bureaucrats.

One prominent example of such political editing of scientific reports was the deletion of conclusions from an EPA report on global warming. The scientists’ findings
reflect a consensus that global warming exists and is a serious problem. Bush ignored this and claimed that there is no scientific consensus on the issue and that more research is needed before remedial action is taken. In this case, scientific findings were overridden by politics.

Clinton had accepted the science on global warming, but there was so much opposition in Congress to his environmental initiatives that he did not even submit the Kyoto Treaty, an international agreement on global warming that he had signed, to the Senate because he knew he could not get the needed votes for ratification. Global warming is the poster issue for how politics can trump scientific research on environmental issues.

Public Pressures

Trying to formulate policy based on sound science is complicated by pressures from the public. With the information explosion on how exposure to toxic substances in our food, water, land, and air may be linked to cancer and other illnesses, Americans have become increasingly health conscious. Heightened awareness of environmentally related diseases has led to increased pressure on government to protect us from toxic substances.

Sometimes this creates “politics of panic” and makes government too responsive to public pressure. For example, in 1989, Congress passed a law in the wake of a public outcry that summer over the littering of East Coast beaches with medical and human waste and dead sea life. After cities spent billions to comply with the law, some experts said the beaches had not been contaminated by toxic waste dumped in the ocean after all, but by overtaxed storm sewer systems. While limiting the use of oceans as dumping grounds is a good thing in itself, it is extremely expensive to regulate, and the danger it presents is less than that from inadequate sewage systems.

The public’s behavior is also not entirely consistent with the goals it claims to support. We want clean air and water, but we do not want to give up gas-guzzling cars and SUVs, plastic containers, energy-consuming conveniences, and other pollution-causing aspects of our lifestyles. We use far more energy per person than do the people of any other nation except Canada, and with energy use comes pollution. And emissions from vehicles now cause more pollution than emissions from industrial smokestacks. Part of this heavy consumption is due to our level of economic development and to consumer wealth, but part is plain wastefulness. High oil prices in the 1970s curbed energy use for a while, but we have returned to our high-consumption ways, despite a renewed interest in curbing our dependence on Middle Eastern oil. It is unrealistic to expect the EPA to control pollution when we do not police ourselves.

Interest Groups

Interest groups on both sides of the regulatory issue often exaggerate their claims, thus making it difficult to sort out likely implications of regulation or lack of regulation. Both sides play on public fears. Environmental groups at times make unreasonable demands for setting safety standards. Their critics say this has caused billions to be spent to achieve unrealistic and unnecessary goals, while more threatening hazards are ignored. The National Cancer Institute (NCI), for example, thinks priority should be given to public education on diet and other behavior that puts people at greater risk for cancer than exposure to environmental pollutants. City governments would rather spend federal grants on repairing sewer systems than on trying to restore brownfields (contaminated urban sites) to the safety thresholds prescribed by Congress.

Environmental interest groups counter by asking whether we really want to risk people’s lives by waiting until we get better evidence. They support low- and no-risk standards and believe it is better to err on the side of safety and not wait to regulate until people start dying. They take issue with the NCI findings and claim environmental pollutants are responsible for up to 15 percent of all cancer deaths.

Environmentalists have also been criticized for being unwilling to admit their successes for fear of losing financial support for their organizations and momentum for the movement. These successes, coupled with what has been characterized as “compassion fatigue” among the American public, has led to an intense competition among environmental groups for membership and
financial support. This, in turn, the groups’ critics argue, has led them to make “apocalyptic prophecies to further their political objectives.” One fundraising letter from the National Audubon Society, for example, claimed that it could “project with some accuracy the eventual end of the natural world as we know it.”

But antiregulatory forces play equally to public fears and, in recent years, have had more success. Business and industries being regulated try to scare the public with visions of the huge costs of regulating while ignoring the benefits. But most of these costs are passed on to consumers in the form of higher prices. According to Bush’s 2003 budget message, consumers pay, mostly through higher prices, $50 to $60 billion each year—almost ten times the EPA’s entire budget.

But all dollar estimates of the cost of environmental regulation are controversial because of the disagreement over what monetary value to put on intangibles such as human health, comfort, appreciation of clean air, or loss of individual liberties or over whether it is even possible to put a price on them. The best estimates show that air pollution control, for example, has been a large net benefit not only to the nation’s air quality but to its economy. Although industries must pay employees to deal with federal regulations, and some pollution control equipment costs millions, pollution devices improve health and ultimately mean fewer days lost from sickness, reduced medical costs, and longer life for materials less damaged by corrosion. Cleaning up the air also increases agricultural output. Some people are laid off when factories choose to close rather than install pollution control devices, but even more people are employed making, distributing, and educating people about air pollution devices.

In addition, sixty thousand public and private companies are engaged in environmental activities, employing almost one and a half million people and generating annual revenues in the billions. Ecotourism is also developing as a major industry, helping to revive small towns and rural areas bypassed by development. Today the number of birdwatchers is greater than that of hunters and fishermen combined, and birders spend an estimated $20 billion a year on travel to festivals and on gear and seeds. Whale watching has also become a huge industry.

Lack of Consensus among Policymakers

Regulatory policy is controversial because we do not have a consensus on how we should regulate. Many people have also criticized the command and control approach to regulatory policy that lays down rules and orders people and industries to comply. To force compliance with rules requires monitoring by a large, expensive, and unwanted bureaucracy. When rule breakers are caught, they are assigned penalties that realistically cannot be enforced, even after huge sums are spent on legal fees to force compliance. Reformers stress the need to make greater use of economic incentives to encourage desired behavior and to reduce the cost of enforcing regulations. Instead of trying to control their behavior after the fact, individuals and businesses should be made to “face up to the full costs and consequences” of harmful actions at the time they make their decisions.

The objective of the proposed reforms is to discourage environmentally or other socially harmful behavior by driving up its cost and thereby putting the individual or business engaging in it at a competitive disadvantage in the marketplace. This approach tries to eliminate a negative externality by bringing the polluter’s incentives in line with the social costs imposed on the public. Disincentives could take the form of high-cost pollution permits for companies that decide to pollute and taxes on manufacturing or purchasing environmentally harmful products, waste disposal processes, and energy use. Environmental groups support heavy “green” taxes on “products and activities that pollute, deplete, or otherwise degrade natural systems.” Such taxes would help pay for mounting cleanup costs and, at the same time, would provide a market incentive to avoid actions that endangered the public.

Market-based incentives have been proposed by those deregulation advocates who, in almost every instance, place individual and private property rights above the obligation to protect the commons (that is, mineral resources, waterways, the air, and parklands) for the public good. They assume that the marketplace is the only arena for resolving what is rational and appropriate economic behavior. But the marketplace is no more or less than the people who operate within it, precisely because it is a place where individuals and businesses pursue private gain. There is no guarantee that the cumulative effect of these actions will benefit the common good.

Other supporters of regulatory reform believe it is possible for the government to set standards for health and safety and environmental protection while limiting its role in rule writing. This view was expressed in Philip Howard’s best-selling book on regulatory law, The Death of Common Sense: How Law Is Suffocating America. Much cited by both Republicans and Democrats, Howard argues that the federal government has gone too far in its belief that science and technology make it possible to protect against every public danger and that this has led to an excessive number of rules that try to anticipate every eventuality. This approach,
Howard says, has left the economy suffocating under the weight of countless picky and unnecessary rules. Howard's solution was to decentralize the rule-writing process while leaving federal standards in place, a policy generally in line with Clinton deregulation policy.

In accordance with the Clinton–Gore “reinventing government” policy, the EPA proposed a Common Sense Initiative (CSI) to revise unrealistic, costly standards and to eliminate unnecessary rules. George W. Bush, who supports deregulation, called Clinton’s CSI ineffective because it lacked clear goals and was without legal authority. His policy favors reliance on voluntary compliance by business and application of the risk assessment standard to spur deregulation. In the case of clean air standards, for example, Bush has argued that the economic demands of meeting standards impedes economic growth and discourages businesses from modernizing. When he weakened the enforcement rules he promised that his approach, as embodied in his Clear Skies Initiative, would significantly reduce the amount of pollutants emitted into the air while being much less onerous for industry. While the weaker enforcement rules went into effect, the Clear Skies bill never made it out of committee. However, Bush’s approach is similar to Clinton’s in that both give the states primary responsibility for enforcement.

Every state has its own EPA, and almost 90 percent of all environmental enforcement is in the hands of the states. As the federal government has reduced its spending on environmental protection, it has expected the states to pick up the tab. But with their own revenue shortfalls to cope with, the states spent less (as a percentage of overall spending) in 2003 than at any time in the previous seventeen years.

Industries are not necessarily better off dealing with the state agencies. Instead of dealing with one EPA, they have to deal with the EPAs of every state they operate in, and keep abreast of rules and procedures as they vary from state to state. But because states are trying to attract both foreign and domestic industries, it could encourage a competition among them to provide relaxed enforcement, just as states compete to give tax breaks to industries that will relocate. This should not be possible as long as federal standards are in place and states are charged with the responsibility of seeing that industries and utilities are in compliance. But under the Bush administration, federal standards have been relaxed as regulated industries have been invited to help write the very rules that will regulate their activities.

Defending environmental protection in principle has remained good politics, but forcing implementation of EPA rules is not always seen as good politics. When Congress held hearings in the early 1990s to consider renewing several major pieces of environmental legisla-

### Benefits and Costs of Regulation

Regulation has many acknowledged successes but they are produced at a cost. Some are trivial, such as depriving hunters of the satisfaction of shooting eagles. But some are significant. Businesses and environmentalists differ wildly about what the net cost of improvements in the environment, public safety, and other areas have been, although it is indisputable that regulation requires industry to increase its costs to relieve the larger community of the burden of pollution, unsafe products, hazards to workers, or other negative aspects of business activity.

How much was it worth, for example, to have dramatically reduced the lead content in air by mandating unleaded and lower-leaded gasoline? When testing began, measurable levels of lead in children were eight times higher than they are today and, consequently, the level of brain damage in children from airborne lead has also dropped dramatically. Was it worth the cost to
clean up Los Angeles’s air to the point that city smog alerts dropped from 122 in 1978 to zero in 2001?

It is how costs are calculated that brings values, and therefore politics, into the regulatory process. Those against regulation minimize the value of health, life, and a clean environment, and look only (or mostly) at the costs of achieving those aims. In fact there is no way for science or accounting alone to place a value on a human life that everyone will agree on any more than regulators can put a dollar value on the preservation of the bald eagle or of wilderness areas within national parks that will be acceptable to everyone. Many do not even accept the idea that quantitative values can be placed on human life or on the intrinsic satisfactions that exist above and beyond the economic value of protecting endangered species and their habitats.

Even some environmentalists argue that the cost of preserving a wilderness area must be offset by its “existence value” or “contingent value,” the price the public is willing to pay just for the sake of keeping a pristine area in existence. But how does one determine the dollar value people will place on a wilderness area? Some environmentalists worry that putting a dollar value on nature sets a bad precedent. Former interior secretary Bruce Babbitt, for example, has said that we have reached the point where “[w]e know the cost of everything and the value of nothing...you can't just cost this stuff out.” He argues that economics should not drive a debate that is about something much deeper.81

Although environmental regulation retains a high level of public support, regulation of business activity remains controversial. Some continue to believe that its cost is too high and that it leads to crushing paperwork, endless litigation, loss of jobs, and diminishment of the rights of business and individual property owners. Americans want government to anticipate problems and to prescribe behavior by businesses and individuals that endangers public health. But we do not want to force unnecessary, costly regulations on business that will drive up prices for consumers, slow the economy, and increase unemployment. Is our national economic condition such that we must pick our poisons and regulate to protect public health and safety only when it is “cost effective”?

Conclusion: Is Regulatory Policy Responsive?

Americans have called on government to protect them from unsafe workplaces, unclean air and water, fraudulent advertising, hazardous highways and drunk drivers, dangerous drugs, and many of life’s other perils. But then we turn around and say we want government “off our backs.” We resent the rules, regulations, and red tape. We want government protection, but we are uncertain about how much and what we are willing to give up in return.

Most Americans share the belief that the private sector can do many things better than government and have a general distaste for red tape and in-your-face government. But it was the federal government, not industry, that took the initiative on environmental protection and workplace health and safety. Even though to some Americans there is no such thing as a good regulation, many would agree that the majority of federal environmental regulations, most administered by state governments—to preserve forests and wilderness areas; clean up the air and waterways, drinking water, and toxic waste sites; and to protect the habitats of endangered species—are examples of responsive regulation. And regulating for worker, product, and food and drug safety has saved millions of lives. The benefits have not come cheap, but all have been realized through government regulatory activity and not from business or individual consumers regulating their own behavior.

Most businesses do favor regulations that bring sufficient order in the marketplace to support public confidence because, without it, business—certainly publicly traded companies—cannot function. Some may even lobby for the kind of regulation that protects them from domestic or foreign competitors. But when a regulation does not benefit a specific business, then it, too, wants government off its back, complaining that regulation decreases autonomy and increases operating costs.

Complaints about overregulation provoke legislative attempts to deregulate and to cut money for enforcement by both federal and state regulatory agencies. But the subsequent laxness in enforcement can lead to abuses and provoke calls for reregulation. All of these actions and reactions are responsive, in the sense of giving the public and business community at least some of what they want. But elected officials may respond to their political base first and to the larger public only when pressured.

Regulators have a hard job because they have to be responsive to the president and his political appointees in their agencies as well as to Congress and the political agendas of its members. In addition, they must be responsive to the thousands of inquiries about, and challenges to, rules posed by the public, including powerful interest groups and lobbyists who may be aligned with members of congressional oversight committees. Theirs is no easy road to walk.

In forming our opinions about government regulations and regulators, it is sometimes easy to forget that regulators are carrying out presidential orders and
congressional acts. While bureaucrats may be overly zealous or overly lax in enforcing laws they are mandated to enforce, ultimately it is Congress that decides what is to be regulated and that calls an agency to heel when they are overregulating or neglecting to regulate.

Regulatory policy is a good example of fluctuations in government responsiveness to the public. In general, regulation exists because influential groups—sometimes representing a majority, other times not—demand government action to protect their interests. At times, regulatory effort is directed primarily toward protecting business. At times of heightened public awareness of finite natural resources and the health risks of environmental degradation, consumer and environmental groups have succeeded in getting government to better regulate business and itself.

The public generally approves of deregulation up to the point where it affects them negatively. But a majority has long opposed efforts to get government completely out of the business of protecting health, safety, and the environment.
In late February 2002, Eric Schaeffer resigned as the EPA’s director of the Office of Regulatory Enforcement, saying he was tired of fighting a White House that “seems determined to weaken the rules that we are trying to enforce.” The new rules were not completed until November 2002 and the announcement was made at a Friday afternoon EPA news conference where no cameras were allowed; the EPA director declined to be present and Bush made no public statement.

The new rules made it easier for utilities to expand without installing new pollution control equipment by allowing industries to replace up to 20 percent of their plants and still call it routine repair or maintenance rather than an upgrade. This would exempt them from the requirement of adding new pollution controls and allow them to dump thousands of tons of new pollutants into the air.

Schaeffer’s reaction was incomprehension at why they “were so greedy. Five percent would have been too high, but 20? I don’t think the industry expected that in its wildest dreams.”

Although the New Source Review provision had been effectively gutted, EPA Director Christie Todd Whitman said the revisions would make it easier for plants to modernize and still result in improved air quality. In May 2003, she resigned, although she denied any policy clashes with the Bush administration. But others quoted Whitman as saying that in meetings with other Bush appointees, she was often in a ten to two minority. Former Secretary of State Colin Powell, who also spent most of his tenure in a policy minority, described Whitman’s role at the EPA as a “wind dummy,” referring to “the buffeting she took for the administration’s unpopular initiatives.”

Not all opponents of the new policies resigned; Nikki Tinsley, a Clinton appointee, stayed on as the EPA’s inspector general and in a report on the rule changes requested by the Senate, charged the Bush administration with “misinforming Congress about the potential impact of [the new rules] on the government’s ability to enforce the law.” Tinsley’s report claimed that the rule change undermined the government’s ability to enforce old cases and to pursue new ones. It said the investigation by her office “could find no basis for the new rule in science or law,” and urged restoration of the New Source provision.

The Government Accountability Office found that the reasons provided for weakening New Source Review by the Bush administration were based mainly on anecdotes provided by regulated industries. And the Washington Post revealed early in 2004 that some of the wording in the EPA’s new rule on mercury emissions had been lifted almost word-for-word from a proposal submitted by the lawyers for power companies.

In 2003, the amount of sulfur dioxide emitted into the air increased by 4 percent, all of it from coal-fired plants. The EPA and the DoJ continued to negotiate the cases Schaeffer had begun and, in 2004, settled with more oil refineries. The coal companies continued to hold out.

The month after his resignation, Eric Schaeffer, with backing from the Rockefeller Family Fund, founded his own nonprofit, nonpartisan policy group, the Environmental Integrity Project, to lobby for enforcement of environmental protection laws. All but giving up on lobbying federal regulators for enforcement of clean air provisions, Schaeffer’s group turned its focus on state governments, trying to develop “a trickle-up strategy.”


Derek Leebaert, *The Fifty-Year Wound: The True Price of America’s Cold War Victory* (Boston: Little, Brown, 2002). Here is a cost-benefit analysis of the Cold War that looks at both the dollar and human costs of defeating the Soviet Union.


Eric Schlosser, *Fast-Food Nation: The Dark Side of the All-American Meal* (Boston: Houghton Mifflin, 2001). Here is an account of how America’s indulgence in fast foods can affect health and nutrition. It tells you things you may not want to know about such as how much fat is in McDonald’s French fries and the lax standards regulating the raising and slaughter of the cattle that gave their lives for your hamburger.


**For Viewing**

*Bigger than Enron* (2002). This Frontline documentary from PBS on how the failure of congressional and regulatory oversight led to corporate fraud can be viewed online at www.pbs.org/frontline.

*The China Syndrome* (1979). This Oscar-winning film focuses on a reactor meltdown in a fictional nuclear power plant accident that threatened surrounding areas with radiation poisoning. Part of the film’s popularity was due to the real-life threats posed by the Three-Mile Island accident in the United States.

*Dangerous Prescriptions* (2003). This is another Frontline documentary on regulatory failures, in this case, the FDA’s carelessness in allowing inadequately tested prescription drugs on the market. It can be viewed online at www.pbs.org/frontline.

*Erin Brockovitch* (2000). This Hollywood film is a highly fictionalized account of a real case of toxic waste pollution in California.

*Immigration by the Numbers* (1998). This is a PBS documentary made by environmentalists who argue that the scale of immigration, in combination with the concentration of immigrants in a small number of populous states, has been a major contributor to suburban sprawl.

*Silent Running* (1971) and *Soylent Green* (1973). Apocalyptic visions of ecological disaster have inspired many books and movies. Both of these films are cult classics and *Silent Running* is considered by many critics to be one of the greatest of all sci-fi films. It is about the removal to outer space of the remnants of the Earth’s forests after the planet’s ecological collapse. *Soylent Green* is a detective story set in 2022 after overpopulation and pollution have created a massive food shortage on Earth.

*Silkwood* (1983). This is an Oscar-winning film based on the life of Karen Silkwood, a nuclear power plant worker in Oklahoma who died mysteriously in a car accident after challenging safety conditions in the plant.

*Super Size Me* (2004). This documentary made for theatrical release looks at the health impact of a month of eating every meal at a fast-food chain (McDonald’s). The public attention garnered by this comic treatment of a serious problem increased public discussion of whether government should require consumer warnings on fast and junk foods.

**Electronic Resources**

[www.epa.gov](http://www.epa.gov)
The home page of the EPA offers information on issues, organizations, and regulations. You can also find a guide to all major environmental protection projects in your state.

[www.ftc.gov](http://www.ftc.gov)
The home page of the Federal Trade Commission provides information on antitrust action, consumer credit privacy, and business guidance. You can also file a complaint online.

[www.cpsc.gov](http://www.cpsc.gov)
The home page of the Consumer Product Safety Commission offers updates on product safety problems and each month posts a list of recalled products, such as a McDonald’s giveaway for children (a bobble-headed figurine with high lead content in its paint).

[www.hanford.gov](http://www.hanford.gov)
Here is a toxic waste site with its own Web page! You can see photos of the site and get progress reports on cleanup and on the work of the Superfund.

[www.sierraclub.org](http://www.sierraclub.org)
This is the home page of the Sierra Club, one of the largest and most influential environmental interest groups. From this page, you can check on the environmental voting records of your members of Congress and see where they received their campaign contributions.

[www.fda.gov](http://www.fda.gov)
The Web site of the Food and Drug Administration contains information on all major areas of the agency’s work in food and drug safety, reports on current research, and pending regulations and legislation.
Search for the following articles in the InfoTrac database:


Kane, Tim D. “Deregulation California Style,” *USA Today* (magazine) (July 2001).


For more articles, enter

“Deregulation” in the Subject Guide;
“George W. Bush” in the Subject Guide, and then go to the subdivision “environmental policy”; and
“Clean Air Act” in the Subject Guide.

American Government Resources

Visit the Public Policy section of the Wadsworth American Government Resources Web site (politicalscience.wadsworth.com/amgov) for a variety of tools to help you explore regulation and environmental policy further. Included are simulations, video clips, Microcase exercises, and a wealth of other activities.