A Cabin on the Mountain: Reflections on the Distributional Consequences of Environmental Protection Programs

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Thank you for that very kind introduction. The University of Kansas plays Indiana University in the NCAA basketball tournament tonight, so you were merciful to omit one detail: that I am a Hoosier, having grown up in Southern Indiana.

Tonight I am going to make a few remarks about the general issue of the distributional consequences of environmental protection programs. Then I want to save some time at the end to respond to your questions, either on that topic or more generally, about what we at EPA are doing to protect the environment.

First, let me say that it is a great pleasure to be back in academia again. When I was first appointed to the government, one of my friends who previously had been in public service wrote me that eight years of academic politics should be good preparation for Washington. I’m afraid he was a little over-optimistic; they play a bit rougher in Washington.

In any event, it is a great pleasure to be here. Being back in academia reminds me of an old line that I use to stimulate discussion in my environmental law class on those cold winter mornings in New Haven when it is difficult to get a dialogue going:

Question: What’s the difference between a developer and an environmentalist?

Answer: The environmentalist already owns a cabin on the mountain.

Like most black humor, this example contains a grain of truth, but also a subtle falsehood, both of which are related to our topic of the distributional consequences of environmental protection.

The aspect of the line that is true, I think, is that if we own a cabin on the mountain, we are more likely to be actively involved in environmental protection; or put another way, our wealth position affects our tastes. (It is wonderful to be among academics again, so that I can talk in the jargon in which I think, without feeling an obligation to translate into English, as I sometimes have to do in Washington!) As we become wealthier, not only as individuals but also as nations, environmental amenities and preservation of the natural order to pass on to our children and grandchildren tend to increase in relative standing among our values.

I have always thought that the phenomenon of the taste for environmentalism increasing with increasing wealth was really simply an application of a basic principle of psychology identified by Abraham Maslow as the hierarchy of human values: If you are worried about where your next meal is coming from, or if you need decent housing, medical care, or a job, other less immediate concerns, such as environmental protection, are not quite as high up on your scale of concerns. However, once some of those more pressing needs are satisfied, environmental values have a chance to come to the fore.

Whatever the reason, as a descriptive matter, it is a historical fact that low-income groups and racial minorities have been less actively interested in environmental protection than other groups. This has not only been shown empirically in public opinion surveys, but it was confirmed anecdotally through my own experience teaching at Yale Law School. I have had many blacks and other minority students elect to take the other courses that I teach, but in my first seven years of teaching at Yale, I never had a single, black student sign up for Environmental Law. I did, however, in my eighth year, so perhaps things are beginning to change—or maybe I’m just improving as a teacher!

To date, however, there has not been the same level of interest among minority groups in environmental protection as in other areas of the law. That, I think, captures the true side of the cabin-on-the-mountain story: You’re more likely to be an environmentalist if you already own a cabin on the mountain.

The other side of the story, the false side, is the implication that environmental protection is just another special interest. (This implication is all the more dangerous because it is only an implication, not an argument that stands up and comes at you directly). The claim that environmental protection is just another kind of “rent-seeking,” or the use of political power to feather one’s own nest, has been made in several different versions.

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The political version of the rent-seeking hypothesis is the contention that environmental protection programs are created by and for the benefit of professional environmentalists. I heard a version of that claim this morning in the Congress, when one very conservative congressman was inveighing against the 1990 Clean Air Act Amendments, which he blamed on the political power of what he called the "Environmental Party" in the United States.

It certainly is true that environmental groups have become a potent political force in the United States. The twelve major environmental groups today have a base of about 13 million contributors, and they raise about $500 million annually. When one compares our environmental situation with that in Eastern Europe, one of the most striking differences is the presence in the United States and Western Europe of strong, well-organized citizens' groups concerned with protecting the environment.

These private groups, or NGOs (non-governmental organizations), play a crucial institutional role in our system by insuring that the government keeps its promises to protect the environment. Indeed, historically much of what we have done at EPA has been done in response to citizen's suits brought by environmentalists. However, in my opinion it would be a crucial mistake to assume that just because environmental groups play an important institutional role, environmental protection is simply a matter of pressure groups (ab)using the power of government to redistribute wealth in their own direction.

The claim that environmental legislation represents rent-seeking by a different kind of special interest group was advanced in an article by Peter Pashigian of the University of Chicago School of Business. Pashigian looks at the voting record of members of Congress on the 1977 Prevention of Significant Deterioration (PSD) amendments to the Clean Air Act, which impose stringent air pollution control requirements on the so-called "clean" areas (primarily in the less-populated sunbelt). Pashigian's article tries to show that this stringent new environmental legislation passed only because of the votes of representatives from the North and Mid-West, who had never previously voted for any environmental legislation and were presumably only interested in imposing stringent environmental requirements that would primarily restrict industry from moving to other regions of the country in the sunbelt for competitive reasons.

Pashigian's analysis of congressional voting patterns is elegant, but I think that he overlooks an important point in interpreting his data. Most legislation is passed by a coalition representing people with different types of interests. Sure, there probably were some people voting to support environmental legislation for the anti-competitive reasons that Pashigian outlines, but there was also a core of strong supporters of the principles of environmental protection.

In one sense, Pashigian emphasizes the wrong half of his data. It is hardly remarkable that some representatives vote based on narrow considerations of self-interest. What is more noteworthy, however, is that others support environmental measures, even though they do not necessarily inure to their own direct personal benefit. The fashionable term in the political science literature these days for these other, non-selfish reasons is "public regarding reasons"; evolutionary biology literature calls it "altruism." The biologists have done a wonderful job in recent years in terms of trying to develop some of the biological and evolutionary roots of morality and ethics. There is a wonderful book by Robert Alexander, a biologist at the University of Michigan, about the biological basis of morality that focuses on indirect reciprocities and altruism. There is much of this altruism toward others, particularly future generations, behind environmental protection.

In my view, what is interesting and important is not that people sometimes act in their narrow self-interest—that we have known at least since Adam Smith, and probably since Cain and Abel. What is more interesting and significant for law and public affairs is that sometimes people can be motivated to act for the greater good of the community, even if contrary to their own, narrowly-defined self-interest.

From this perspective, it was not the narrow, self-interested votes that put the environmental legislation "over the top" in Pashigian's study; they are always there and were to be expected; the significant votes, the remarkable ones, were those that were cast against considerations of narrow self-interest because of allegiance to principle or out of an altruistic desire to serve the good of the community.

It is, I believe, a fundamental error to deal with environmental protection as simply a matter of people using political power or organization in order to use the power of government to re-distribute wealth in their own direction.

Implicit in a lot of what I have said is that not only those with cabins on the mountain (in the broader sense of privileged groups in society) benefit from environmental protection. Those with cabins on the mountain may more actively support environmental protection, but they are not its only beneficiaries. This is a very important point that has been brought to the fore in the last few years.

Perhaps the recent round of concern about the distributional consequences of environmental protection began in 1987 with the United Church of Christ study, which tended to show that hazardous waste sites were
disproportionately located in lower income and minority areas. It was reinforced a year ago by the University of Michigan Conference on Race and the Incidence of Environmental Hazards, which I am sure you are talking about a good deal here in this conference.

In response to the call that emanated from the University of Michigan conference, our Administrator at EPA, Bill Reilly, has set up a work group on environmental equity that has been doing a great deal of work, primarily in the research stage at this point, to try to contribute to our understanding of these problems. In addition to reviewing the literature, we are engaged in some original research to try to actually pin down what the effects of our programs are on particular groups and some of the results are quite interesting.

We find, for example, when we look at dioxin in rivers and streams, that subsistence fishers, those people who fish not for sport but in order to get food to eat, tend to eat a great deal more fish than our usual models predict. Therefore, a level of dioxin or other toxins in fish that might be deemed safe for those who consume an average amount of fish might not be safe for a group of people who are eating a great deal more fish than the usual average.

There is a lot of work that remains to be done in this area of protecting sub-populations that are either particularly exposed or particularly susceptible to environmental risks. We are beginning to try to refine our analysis to focus not only on the population as a whole, but also to consider the effect on particular subgroups.

This is not, of course, an entirely new phenomenon. My first exposure to environmental protection, as a law clerk for Judge Bazelon on the D.C. Circuit, was in 1975 when one of the first great environmental protection cases was decided. The Ethyl Corporation v. E.P.A. case resulted in the ban on lead in gasoline.13 I can assure you that Judges Bazelon and Wright, who cast the crucial votes in that case, were very well aware that if the lead stayed in the gasoline, it was going to be the kids in the ghetto that were going to end up being the target.

There has been, therefore, an awareness of the distributional consequences of environmental protection for many years. It is coming into a much clearer focus than it has been in the past and that is very important, and much more work needs to be done. One of the reasons, I suppose, is that the stakes are much, much higher than we have realized.

We at EPA very recently pulled together, for the first time, a rough measure of the aggregate amount of spending of resources that goes into environmental protection in the United States annually in a report called the Cost of Clean.14 What we discovered is that we are spending about $100 billion a year on environmental protection. By the year 2000 that number will go up from $100 billion to $155 billion.

To put that into perspective, we are talking about 2.8 percent of the gross national product. Or, to put it more in perspective, Senator Moynihan recently pointed out that this is about half of what we spend on defense. Environmental protection, therefore, is a very major commitment of our social resources. It has gotten to the point where we can no longer ignore the distributional effects of such a major commitment of societal resources.

I am convinced that in the aggregate, the benefits are greater than the costs for environmental protection as a whole.15 There may be particular measures, of course, where we do not make a very good investment, and we do not get benefits that are really equal to the cost. Based on my experience, however, there are still plenty of opportunities where we get far greater benefits in the aggregate than the costs.

In my judgment, minorities and the poor probably benefit disproportionately from environmental protection measures. This is really not too surprising. Standard economic and public choice theory would predict that groups that are less powerful politically and economically would be more likely to be exposed to disamenities of all types. In any event, in this instance, those who are least able to defend themselves through the political and economic system are more likely to bear the brunt of the harms of pollution.

Disproportionately benefitting from environmental protection is only half the issue, however, since we would also have to consider the issue of who bears the costs. Of the $100 billion that we spend each year on environmental protection, a large percentage is passed along to consumers as part of the costs of goods and services, so there is a kind of hidden environmental tax built into the cost of everything that we buy. That raises the question of whether or not the costs of environmental protection might also be borne disproportionately by the poor.

My colleague at Yale, George Priest, has made an analogous argument with regard to the mandatory insurance component of products liability law.16 Priest argues persuasively that rather than helping the poor, strict liability in tort, such as in products liability law, actually harms the poor for several reasons. First, a greater percentage of their income goes into buying the insurance component of the price of goods which is imposed as a result of product liability law. Priest's second argument is that the poor are more likely to want to spend their money for something else rather than for liability insurance (an off-shoot of Abraham Maslow's point mentioned above). The third argument that Priest made,
although it may not be relevant here, is that in products liability, a major part of the recovery is for loss of income; so while the poor pay percentage-wise more to get the mandatory insurance that is imposed by products liability law, they recover less because their incomes are lower. The third argument is probably not analogous to environmental protection, but the first two probably are, at least in theory.

I can think of no reason to make an assumption other than that the cost of environmental protection is passed along uniformly. Prices of products, therefore, are probably borne disproportionately by the poor. Yet it is also probably true that if you gave them the choice, they might choose to spend that income on things other than environmental protection, which is Maslow's point again. On a more general level, it does go to a point that has made environmentalists very uncomfortable for many years. A number of years ago, Barry Commoner wrote (very eloquently) that every dollar we spend on environmental protection is a dollar less that is available to deal with infant mortality, or housing conditions or any of the other social conditions that ought to be remedied.17

In one sense Commoner's point is true, but one also has to be a little skeptical about whether the money we spend on cleaning up toxic waste sites really would go to dealing with infant mortality instead. As Senator Durenberger recently pointed out, there are very real political constraints on the degree to which these expenditures are really fungible. In any event, it is very dangerous to follow the strategy of making the advocates for one progressive set of changes the enemies of another progressive set of changes.

Environmental protection is one of those rare, or "happy cases" as I call them, where things may appear to be more in conflict than they actually are—the kind of conflict that the scarcity hypothesis of economists posits. For example, many people think of environmental protection as being in conflict with economic development. I believe very strongly that is not the case. Protecting the environment is really a precondition for all human activity, including economic activity. Many progressive companies are finding that pollution prevention really pays. By preventing your pollution from being released into the environment, you are actually going to save enough to more than pay for the changes that are made.

While the evidence is not all in, I am convinced that the question of distributional consequences of environmental protection is probably a "happy case." On one hand, environmental protection probably improves the efficient allocation of resources because environmental protection prevents more harm from disease and other forms of damage than it costs. In that sense, it is a good investment of society's resources. Yet, at the same time that it is increasing allocative efficiency, it is also increasing distributional equity because the poor and other disadvantaged groups are probably, disproportionately, the beneficiaries of our environmental protection programs.

Now I want to emphasize that my positive or happy vision here is certainly not always the case. There are certainly circumstances, particularly in the international area, where we are asking a disadvantaged group to forego some kind of benefit to themselves in order to protect the global commons as a whole. Those situations cry out for some kind of offsetting compensation or burden-sharing by the beneficiaries. This is one of the rationales behind the debt-for-nature movement which we are seeing throughout the world and will be a subject of some of your discussions tomorrow.

My overall vision is that the increasing focus on the distributional consequences of environmental protection is a very good thing. It is long overdue. I am glad to see that it is coming about. Rather than being in conflict, I believe that greater attention and understanding of the distributional consequences of environmental protection is going to provide further support for a very strong environmental protection policy.

Thank you. I will be glad to try to answer your questions.

QUESTIONS & ANSWERS

Q. Would you comment briefly on EPA's efforts to manage its budget and its priorities and the relationship to risk reduction. I think this issue was raised originally in a report called "Unfinished Business," and I understand now there is a second iteration.

Elliott: Our administrator, Bill Reilly, asked our science advisory board, which is a group of outside scientists from academia and elsewhere, to take a look at all of our programs from the standpoint of the relative risk avoided. They came back with a major report that has stimulated a lot of discussion and debate. Bill Reilly gave a speech about this topic at the National Press Club. There also have been congressional hearings about it and a lot of focus on it.

The basic idea is that because we are already spending so much for environmental protection, we cannot afford to waste our limited resources on those situations where we do not have much benefit for the effort we put in. In the past, the environmental movement was probably not as good at setting priorities as at some other things. In the early days of environmental protection, we had what some have called the "Chemical of the Month Club." Some research would come...
out, an article would appear in the press, and EPA reacting to the publicity would gear up a regulatory effort in response.

As environmental protection has matured, that reactive approach to setting priorities needs to go by the board. Today we are making very substantial efforts to tie the assessment of relative risks into the budgetary process at EPA so that in setting priorities we get the greatest benefit in terms of risk reduction. The way we are doing that is through a strategic planning process, using strategic plans to consider relative risk-reductions and then trying to make that the basis for budgetary decisions. Trying to change anything in government is kind of like trying to turn the Queen Mary; it takes a very long time. Although we have made some headway in this direction, as was pointed out in our recent congressional appropriations hearings, our current budgetary priorities still do not line up very well with what we should be doing from a risk-based perspective. In part that is because we have statutory constraints. Our first priority is to follow the law. Even where we do have some discretionary authority, it takes time to redeploy resources in the areas where they would get the most benefit. At least we have begun to think clearly about where those areas would be and we have begun to take steps in that direction.

In the fiscal year 1993 budget, which we are now working on, we will be moving even further in the direction of a risk-based priorities system. Let me just give you a couple examples of what stacks up well from a risk perspective. Non-point source pollution, such as agricultural runoff, is a very high priority in the water area. Another interesting point from the Science Advisory Board’s relative risk report is that ecosystem damage, as well as human health, stacks up very high, although perhaps protecting ecosystems has not always been as high a priority from a political perspective. Indoor air pollution and drinking water are big winners.

Of course, the areas that end up not coming up so high on the relative risk scale are the waste (Superfund and RCRA) programs, which are relatively expensive for relatively little risk reduction.

Q. Sort of a follow-up to that question, is it true that EPA’s internal management system counts and reports cases filed rather than actual environmental improvement?

Elliott: There was a system called the STARS System for enforcement in the regions that did exactly that. It counted numbers of cases. It tended to encourage filing more and more cases, including some little record-keeping cases. One of the first things we did when we took over was that we went to the Hill and said, "You know that this focus on enforcement case numbers is going on, and we would like to change it but you are going to have to realize that our numbers are going to go down."

We have been trying to develop some better indicators of the actual environmental benefit of cases filed. What that means is that we will be increasingly going to the use of criminal cases where we have the greatest impact. It takes much more time and effort to make a big criminal case, but it also has more effect in terms of deterrence.

Part of the problem is that throughout the 1980s, the whole dialogue about the effectiveness of EPA was based on numbers of enforcement cases: Were they up or down?

Q. You made a point that you thought that the poor were disproportionate beneficiaries of environmental protection. I am thinking that point assumes that benefits from environment protection are proportional to the harms that were being suffered, and that assumes roughly equal distribution of the gains of environmental protection. Has it, in fact, been the case that people who live in poor areas have benefitted equally from environmental protection? Or have the benefits been skewed in distribution as well?

Elliott: I do not think we know the answer to that question. I think that is a very good question. I think people are really only beginning to study that. I certainly did not mean to imply necessarily that the benefits would have to be evenly distributed. On the contrary, I think increasingly we are aware of sensitive populations and we are beginning to look at them and try to deal with them. Of course, the philosophy behind many environmental protection standards is uniformity, but I do not know that anybody has done much empirical work to show whether or not, for example, New Source Performance Standards (NSPS), a type of national emissions standards under the air program, are in fact applied equally across different industrial and geographic areas.

Q: I guess just in that particular area, it seems likely that the places where there is the most air pollution left after reduced emissions would be those urban areas where there is a disproportionate concentration of the poor, and as a consequence, they may not have benefitted that much from all of the emissions control.

Elliott: You are right that the areas that remain heavily polluted, what we call “nonattainment areas,” are primarily the urbanized areas. On the other hand, a great deal of the money that we are spending is devoted to trying to deal with those problems. For example, everybody’s car has a couple
hundred dollars of extra costs for pollution control equipment. One of the major justifications for those pollution controls is to try to reduce the pollution in the relatively few urbanized areas that are non-attainment. It is a fairly complex accounting task because you have to look at the relative distribution of both benefits as well as costs. That gets very complicated because, as you know, pollution is not one thing. We have many, many multiple measures of pollution, and many different pollutants that we regulate, so determining the relative distribution of costs and benefits from environmental protection programs throughout the population is a fairly complex accounting task.

As academics, we are just beginning to look at this problem. It certainly is worth scrutiny. Pollution problems tend to concentrate on urbanized, low-income areas. I think the benefits also tend to concentrate on urbanized, low-income areas, at least the health benefits and also the costs to some extent. It is a matter of sorting out which of those factors is dominant.

I have actually done some empirical work (I want to brag about that), although not in this area. One of the things I learned about empirical work is that you discover many things that are counter-intuitive. I would not be inclined to make a prediction as to which of those multiple factors is likely to dominate the others without some empirical basis. Those are the types of issues that EPA’s environmental equity working group is beginning to look at. I think we are ten or twenty years away from actually having those kinds of answers.

Q: Speaking of counter-intuitive empirical results of research and so forth, Inglehart and others have written about post-industrial values, and this evening you have spoken about the value of hierarchy perhaps as not being equally distributed among different income groups.

Without commenting on particular income groups, unless you wish to, I am very interested as a researcher in the field about how you feel as a person in a governmental position about the degree to which EPA, as an institution, and individuals within EPA, feel they have a mandate or do not have a mandate.

Do you think post-industrial values have, in fact, come to the fore and are they universally, or somewhat generally shared by the American public? Or are you leading the public? And to what degree?

Elliott: Until the very end, I was going to be able to answer the question with a simple “yes.”

On the last part, “Are we leading?” I think, yes, we are leading to some degree. It is interesting that during the last five years or so, the values of environmentalism have become core values among the American people as a whole. About seventy to eighty percent of the American people strongly support environmental values.

I mean if you go back and read Gifford Pinchot, around the turn of the century, he was saying things that are very similar to what the Brundtland Commission is saying today about sustainable development, but it was a very much a minority. Some of it was regarded as marginal, and it was certainly not a worldwide movement.

The striking thing today is that these values are essentially noncontroversial within the United States, but also within a large percentage of the world. Bill Reilly is quoted as saying that “EPA’s reputation increases the farther we get away from Washington.” I think there is a lot of truth to that. In Eastern Europe and Spain and other countries such as Mexico, people are really very much more interested in environmental protection than they were just a few years ago. It is really very rapidly becoming a worldwide movement.

Q: It helps to have CNN on your side?

Elliott: I do not know if that is it or not. It is an interesting question why environmentalism has increased so dramatically during our era. I think some of it has to do with the decline in the appeal of traditional religions for many people. In some ways, environmentalism does have aspects of a secular, scientific religion. It helps to define a person’s role or place in the order of the universe. It defines moral obligations, at least as to future generations. For some people, environmentalism performs many of the same functions of locating one’s self in both the moral universe and the temporal universe that were performed traditionally by religion. Yet, I do not think that environmentalism is inconsistent with our Judeo-Christian religious heritage.

Q: Do you basically see EPA expanding in personnel in order to meet this mandate?

Elliott: The notion of using law to transform the economy so that it is more compatible with the structure of the natural world is, after all, the project of environmental law on a worldwide basis. This is an incredibly ambitious attempt to use law as an instrument of social change. We have this little agency of 15,000 folks in Washington, which is tiny. It is not even a part of the Cabinet. Yet it has tremendous impact.

Much of that has to do with some of the legal techniques that we use, but also the political support that we have from both the American public and Congress.
EPA is trying to provide leadership. It is very serious about providing leadership, particularly in this Administration. Bill Reilly is very, very serious about providing national and even worldwide leadership on the environment. He believes that contributing to the intellectual, worldwide debate about these issues is probably the most important thing that we do. There is tremendous political support for environmental protection.

Q: Do you see foresee EPA becoming a Cabinet department sometime in the future?

Elliott: Yes, I do, although I do not think it is terribly important. President Bush has treated us as a Cabinet agency from the day he took office. Bill Reilly has been invited to Cabinet meetings. He has had unprecedented access to the President. We also spend a great deal of time over at the White House. There is a great deal of high level focus on EPA. That is really much more important than being a Cabinet department.

There are a number of Cabinet departments that do not have anything like the political clout or the political access that EPA has. Yet, having said that, I agree with the President that EPA belongs in the Cabinet, and I think we eventually will be there.

Q: Do you think the criticism that the United States' dragged its feet on the global warming convention or negotiations is unwarranted?

Elliott: The United States has certainly been interested in waiting until we have better understanding of the problem before making a major commitment to how we are going to regulate. Whether or not one ought to describe that as “dragging your feet” is another question.

One of the things that has not gotten quite as much focus is that the United States is spending $1 billion a year to study this problem. We are spending as much on studying global warming as the rest of the world put together. Basically the rest of the world is discussing this problem based on our science.

The other thing that we have, that most of the rest of the world does not have, is a track record on environmental protection. I travel to countries like Spain or those in Eastern Europe and talk about learning from the U.S. mistakes in environmental protection, because we made a lot of mistakes along the way.

I was at a conference at NYU last April where we were talking about learning from the twenty years of experience under the Clean Air Act, and as you might expect from an academic conference, people disagreed on almost everything. There was one thing that they all agreed on, however, and that was that we had definitely made a mistake, particularly with automobiles, by regulating on very short-term time horizons before we really understood the nature of the problems we were trying to solve.

There is a tremendous danger in the global warming area that we could make a $500 billion mistake. We are talking about really major sums of money and fundamental transformations in economies. We need to make sure that we do the right thing in these areas rather than act precipitously.

I do not think there is any science that I know of that suggests that we are under such pressure that we have to do something this year or next year or the following year. It is not like this year is a tipping point or a threshold. Sometimes when you have those situations, you have to move very quickly, even if you do not fully understand the problems. Yet, here, I think, we are getting a very rapid development of the science.

In addition, the United States has actually taken some regulatory actions which will have the effect of basically stabilizing the growth of greenhouse gases between now and the year 2000. Our focus has not been just on one particular gas, which is CO2. It has been comprehensively on all the gases that contribute to the greenhouse effect. From a theoretical standpoint, the United States’ comprehensive approach is clearly what you want to do. This whole problem has very important international, political and competitive dimensions to it. I think the United States is definitely not shirking from dealing with this problem, but we just want to understand it, before we make a major commitment as to what we are going to do about it.

Q: Remember the criticism based upon the U.S. track record on acid rain. There also, the U.S. kept saying, “Let us study further.”

Elliott: But I think that is a good example. I will take that example as why we ought to wait. The acid rain trading program, which the Bush Administration proposed, broke the thirteen year logjam on amending the Clean Air Act. It will cost half of what it would have cost to get the same amount of reduction of acid rain under the bills that were considered by the previous Congress which simply mandated a flat approach on acid rain reduction.

By using the trading system that we had proposed and that was adopted by Congress, we are going to get the equivalent amount of reduction. We are actually going to do better than that because the single, strongest incentive in governmental
policy for energy conservation is the cap on the growth of emissions that is built into the Clean Air Act. Not only do we have a much more efficient technology in terms of saving billions of dollars to get those acid rain reductions, we have a very powerful incentive for obtaining energy conservation.

If we had reacted very precipitously and legislated too quickly, I am quite certain we would not have done nearly as well. Waiting to get the facts is not always a popular position. In some sense this is the more sophisticated version of the old “Chemical of the Month Club.” Something hits public attention, people become concerned about it and want to regulate it very quickly—ban it.

There really is a consensus among knowledgeable people that is a very dangerous strategy. Senator Moynihan told Bill Reilly when he first met him, “Beware of regulating based on middle class enthusiasms.”

Q: I was interested in your reference to the acid rain trading system. Does EPA support the use of economic incentives in other areas such as controlling water pollution from non-point sources?

Elliott: It is not just EPA, it is the Bush Administration. The Administration as a whole is very strongly committed to the use of innovative market-based incentive systems, not to replace command-and-control regulation totally but as a supplement to it. We think the acid rain trading system is a great example, and there will be opportunities such as the one you mention and others to innovative regulatory approaches in the future.

Thank you, it has been a great pleasure to be here.

Notes

* The views expressed in this article are those of the author personally, and not necessarily those of the EPA, the U.S. government or any other organization or group.

5. E. Elliott, J. Bloom & S. Swift, supra note 4, at 14; J. Bloom, supra note 4, at 7; R. Melnick, Regulation and the Courts: The Case of the Clean Air Act 8, 57 (1983).
6. At the same time, I do not deny the importance of organized political groups in determining the shape that environmental legislation takes. See generally Elliott, Ackerman & Millian, Toward a Theory of Statutory Evolution: The Federalization of Environmental Law, 1 J.L. ECON. & ORG. 313 (1985).
8. For an explanatory history of the PSD program see R. Melnick, supra note 5, at 73-76 (1983).
11. These voters are described in economic terms as "voters at the margin," and in political science terms as "swing voters."
20. I am indebted to Sheldon Novick of the Vermont Law School, an early environmentalist, for this characterization.
21. One of the early NSPS cases, Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 389 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974), held that EPA was not required to equalize burdens across various industries.
22. Schuck & Elliott, To the Chevron Station: An Empirical Study
23. THE ROPER ORGANIZATION, supra note 2, at 1-2.
25. See generally THE WORLD COMMISSION ON ENVIRONMENT AND
DEVELOPMENT, OUR COMMON FUTURE (1987).
26. See generally M. DOUGLAS & A. WILDAVSKY, RISK AND
CULTURE (1980).
27. See, e.g., E. BROWN WEISS, IN FAIRNESS TO FUTURE
GENERATIONS (1989).