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The Environmental Protection Agency Turns Fifty

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THE ENVIRONMENTAL PROTECTION AGENCY TURNS FIFTY

Jonathan H. Adler[†]

On July 9, 1970, President Richard Nixon informed Congress of his plan to create a federal environmental-protection agency.¹ In response to growing environmental concerns and perceptions of an “environmental crisis,”² Nixon called for a new executive-branch agency tasked with protecting the nation’s people and resources from pollution and environmental harm. Although many environmental programs and offices existed throughout the federal government, Nixon explained that “only by reorganizing our Federal efforts” would it be possible to “effectively ensure the protection, development and enhancement of the total environment itself.”³ In his reorganization plan, Nixon called for the establishment of a single agency, the Environmental Protection Agency (EPA), that would be empowered to “make a coordinated attack on the pollutants which debate the air we breathe, the water we drink, and the land that grows our food.”⁴

Creating this new agency required reassembling offices, bureaus and responsibilities spread throughout the federal government, including divisions within the Departments of Agriculture and the Interior, and

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1. See Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15,623 (Oct. 6, 1970), *reprinted as amended in* 5 U.S.C. app. at 202–07 (2006). The Reorganization plan, which became effective on September 9, 1970, also provided for the creation of the National Oceanic and Atmospheric Administration within the Department of Commerce.
2. See JAMES MORTON TURNER & ANDREW C. ISENBERG, *THE REPUBLICAN REVERSAL: CONSERVATIVES AND THE ENVIRONMENT FROM NIXON TO TRUMP 12* (2018) (characterizing the period in which the EPA was created as “a moment of environmental crisis”). While this was the widespread perception at the time, many environmental problems had begun to recede by the 1970s. See Jonathan H. Adler, *The Fable of Federal Environmental Regulation*, 55 CASE W. RES. L. REV. 93 (2004) (discussing misperceptions of pre-1970 environmental trends); see also JONATHAN H. ADLER, *ENVIRONMENTAL FEDERALISM IN AMERICA: LET FIFTY FLOWERS BLOOM*, ch. 2 (forthcoming) (manuscript on file with author).
3. See President Richard Nixon, Special Message from the President to the Congress About Reorganization Plans to Establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration (July 9, 1970), *available at* <https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html> [<https://perma.cc/KS6W-63RT>].
4. *Id.*

what was then known as the Department of Health, Education, and Welfare.⁵ Other offices were transferred from smaller agencies, such as the Atomic Energy Commission, the Federal Radiation Council, and the newly created Council on Environmental Quality.⁶ Although Nixon was on record opposing the creation of new federal agencies, the need for a more coordinated and effective federal response to environmental concerns justified a one-time exception.⁷

From its inception, the EPA's role and orientation was the subject of conflict and debate.⁸ Although President Nixon rejected proposals to create a federal environmental agency that would be simultaneously responsible for environmental protection and resource development,⁹ he nonetheless expected the Agency to integrate and balance environmental protections with economic concerns.¹⁰ Some members of Congress had other ideas, as did leaders in the rapidly expanding environmental movement.¹¹ In their view, the EPA should be an unrelenting champion of environmental protection and a counterweight

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5. See Russell E. Train, *The Environmental Record of the Nixon Administration*, 26 PRESIDENTIAL STUD. Q. 185, 188 (1996).
 6. The Council on Environmental Quality was established by the National Environmental Policy Act in 1969, Pub. L. No. 91-190, 83 Stat. 852, 854–56 (codified as amended at 42 U.S.C. § 4342 (2012)).
 7. See President Richard Nixon, *supra* note 3 (“In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.”). Interestingly enough, the proposal for a new environmental agency arose from a commission process initially designed to streamline federal bureaucracy. See RICHARD A. HARRIS & SIDNEY M. MILKIS, *THE POLITICS OF REGULATORY CHANGE: A TALE OF TWO AGENCIES* 227–28 (2nd ed. 1996) (discussing the debates within the Ash Council over the creation of a new environmental agency).
 8. See RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 88–89 (2004) (discussing the conflicts over the EPA's role).
 9. See MARC K. LANDY ET AL., *THE ENVIRONMENTAL PROTECTION AGENCY: ASKING THE WRONG QUESTIONS—FROM NIXON TO CLINTON* 29–32 (expanded ed. 1994) (discussing the Nixon Administration's consideration and rejection of a proposal to create the Department of Environment and Natural Resources).
 10. See *id.* at 33 (“The President and his aides expected the leader of the EPA to be a balancer and integrator, to pursue environmental protection in ways that were compatible with industrial expansion and resource development.”).
 11. *Id.*

to those agencies institutionally prone to support resource development and economic growth.¹²

The EPA officially opened its doors on December 2, 1970.¹³ Its first Administrator, William Ruckelshaus, took quickly to the role. He vigorously pursued the enforcement of federal environmental laws, including the newly enacted Clean Air Act.¹⁴ Indeed, during the first sixty days of the EPA's existence, it "brought five times as many enforcement actions as the agencies it inherited had brought during any similar period."¹⁵ The new agency quickly made its presence felt.

Though Ruckelshaus may have hit the ground running, not all of his successors would pursue enforcement with the same vigor, nor would every subsequent administration support expansive conceptions of the federal government's role in addressing environmental pollution. President Ford "effectively disowned the EPA" during his brief tenure in office.¹⁶ The Reagan Administration, in particular, sought to curtail the Agency's footprint on the American economy.¹⁷ Others with more environmentally friendly reputations have also sought to balance economic and environmental concerns. Even the Obama Administration risked an environmental backlash by overruling an EPA decision to tighten air-quality standards, reportedly due to concerns about the political fallout.¹⁸

Virtually all human activity has an environmental effect, so environmental concerns are omnipresent in modern society.

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12. *Id.* The EPA itself was also initially staffed with many people who saw themselves as "shock troops committed to stringent environmental regulation." HARRIS & MILKIS, *supra* note 7, at 231 (quoting former EPA official Joseph Krevac).
 13. See Jack Lewis, *The Birth of EPA*, EPA J., Nov. 1985, at 6, available at <https://archive.epa.gov/epa/aboutepa/birth-epa.html> [<https://perma.cc/5E94-F33V>].
 14. Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (1970). Although the 1970 enactment amended the pre-existing Clean Air Act, the 1970 law is generally referred to as *the* Clean Air Act because it erected the existing regulatory architecture for air-pollution control.
 15. See LANDY, ET AL., *supra* note 9, at 36.
 16. TURNER & ISENBERG, *supra* note 2, at 46.
 17. See LANDY ET AL., *supra* note 9, at 245–46 (discussing the Reagan Administration's desire to reduce environmental regulation); TURNER & ISENBERG, *supra* note 2, at 51–52 (discussing Regan's "blithe nonchalance" about environmental concerns).
 18. See Deborah Solomon & Tenille Tracy, *Obama Asks EPA to Pull Ozone Rule*, WALL ST. J. (Sept. 3, 2011), <https://www.wsj.com/articles/SB10001424053111904716604576546422160891728> [<https://perma.cc/6J6V-WHW7>]; see also Alex Guillen, *Obama's New Ozone Standard Has Greens Seeing Red*, POLITICO (Oct. 1, 2015, 4:12 PM), <https://www.politico.com/story/2015/10/obama-administration-tightens-regulations-for-smog-causing-ozone-pollution-214323> [<https://perma.cc/228A-QP4Y>].

Consequently, environmental regulations have the potential to reach all manner of economically productive activity, and such regulatory impositions are not always received warmly by those subject to regulation.¹⁹ President George H. W. Bush may have campaigned to be the “environmental president” in 1988,²⁰ but in 1992 he criticized environmental extremism as part of his reelection effort.²¹ As a candidate, Donald Trump went even farther, calling EPA regulation a “disgrace”²² and threatening to bring environmental protection “back to the states”²³—although as President he has touted the nation’s environmental leadership and proclaimed his support for “the cleanest air” and “crystal-clean water.”²⁴

In anticipation of the fiftieth anniversary of the EPA’s founding, the Coleman P. Burke Center for Environmental Law and the *Case Western Reserve Law Review* sponsored a symposium to look at the past, present, and future of the EPA.²⁵ The conference featured an array of environmental-law and -policy experts, including individuals who served in environmental-policy positions in each of the last four presidential administrations, as well as the current EPA Administrator,

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19. In 1979, the Business Roundtable identified environmental regulation as more expensive than other forms of “social” regulation that were initiated in the 1960s and 1970s. *See* HARRIS & MILKIS, *supra* note 7, at 225 (“Of all the new social regulation, that dealing with environmental quality imposed the highest compliance costs on business firms.”).
 20. *See* LAZARUS, *supra* note 8, at 105 (noting that Bush’s position distanced him from the Reagan Administration’s environmental record, and drew a critical contrast with the environmental record of his Democratic opponent, Michael Dukakis); TURNER & ISENBERG, *supra* note 2, at 116 (same).
 21. *See* LAZARUS, *supra* note 8, at 127; TURNER & ISENBERG, *supra* note 2, at 86.
 22. *See* TURNER & ISENBERG, *supra* note 2, at 1 (quoting from an interview with Donald Trump in which he said of the EPA: “what they do is a disgrace”).
 23. Ben Adler, *Trump’s Budget Plan Is Completely Insane—and of Course It Would Screw Over the Environment*, GRIST (Feb. 27, 2016), <https://grist.org/politics/trumps-budget-plan-is-completely-insane-and-of-course-it-would-screw-over-the-environment/> [<https://perma.cc/87QS-56B5>] (quoting Trump’s response to a budget question during a CNN/Telemundo debate).
 24. President Donald Trump, Remarks on America’s Environmental Leadership (July 8, 2019), *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-americas-environmental-leadership/> [<https://perma.cc/F39V-KPR7>].
 25. Video of the symposium is available at: *Law Review Symposium & Coleman Burke Center for Environmental Law Conference: The Environmental Protection Agency Turns 50*, CASE W. RES. U. SCH. L. (Oct. 18, 2019), <https://case.edu/law/our-school/events-lectures/environmental-protection-agency-turns-50> [<https://perma.cc/HLG6-AJZ2>].

Andrew Wheeler. The articles from this conference are published in this special symposium issue of the law review.

After fifty years, the EPA is still concerned with maintaining and improving air and water quality, controlling and cleaning up hazardous wastes, and limiting the environmental toll of modern industry. Yet much has changed. The focus on larger, more conspicuous sources of environmental harms has given way to more dispersed, more diffuse, and often harder-to-identify environmental concerns.²⁶ Nonpoint-source water pollution and climate change have also brought environmental concerns, and their causes, closer to home for many Americans. Any illusion that environmental protection can be pursued merely by regulating some distant industrial source has been dispelled.²⁷

The Clean Air Act (CAA) is among the “most far-reaching,” and most successful, regulatory enactments.²⁸ The phase-out of lead from gasoline, in particular, stands out as a highlight of the Agency’s potential to advance public health through pollution control.²⁹ The CAA also provided the EPA with the legal authority to impose limits on vehicular emissions and to phase-out chlorofluorocarbons and other chemicals that deplete the stratospheric ozone.

The “heart” of the CAA comprises the provisions providing for the creation and enforcement of National Ambient Air Quality Standards that each metropolitan area in the nation is required to meet.³⁰

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26. See LAZARUS, *supra* note 8, at 227 (“[T]he brunt of much existing environmental law has been borne by large industrial facilities; relatively less attention has been focused on small, more localized sources [of environmental harms] . . .”).
 27. See TURNER & ISENBERG, *supra* note 2, at 13 (noting the “unanticipated scope” of federal environmental regulation); see also LAZARUS, *supra* note 8, at 88 (noting the tension between broad support for environmental regulations and a general unwillingness to bear the necessary regulatory burdens).
 28. See Janet Currie & Reed Walker, *What Do Economists Have to Say about the Clean Air Act 50 Years after the Establishment of the Environmental Protection Agency*, 33 J. ECON. PERSP. 3, 4 (2019).
 29. See ROBERT V. PERCIVAL, ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY (4th ed. 2003) (noting that lead phase-out is “widely viewed as one of the greatest environmental success stories, even by those otherwise critical of environmental regulation”); see also Richard G. Newell & Kristin Rogers, Resources for the Future, *The U.S. Experience with the Phasedown of Lead in Gasoline* (Resources for the Future Discussion Paper, 2003), <http://web.mit.edu/ckolstad/www/Newell.pdf>.
 30. See *Union Elec. Co. v. EPA*, 427 U.S. 246, 249 (1976) (characterizing provisions requiring state implementation plans to meet NAAQS standards as “[t]he heart of the [CAA]”); see also Lisa Heinzerling, *The Clean Air Act and the Constitution*, 20 ST. LOUIS U. PUB. L. REV. 121, 121 (2001) (“The National Ambient Air Quality Standards (NAAQS) form the centerpiece of what many consider to be this country’s single most important environmental program.”).

Although urban concentrations of some air pollutants had begun to decline prior to 1970,³¹ the CAA is widely credited with continuing to drive down ambient air-pollution levels over the past few decades,³² even as industrial activity and fuel consumption continued to increase.³³ Retrospective analyses conclude that some CAA regulations are likely the EPA's most cost-beneficial regulatory interventions.³⁴

More recently, and controversially, the CAA has been identified as a source of authority for the regulation of greenhouse gases.³⁵ This presents a challenge for the Agency, as the CAA was not written with carbon dioxide and other greenhouse gases in mind. The Act's core provisions focus on locally concentrated pollutants and a cooperative federalism model through which state and local governments develop plans to ensure that local areas meet national air-quality goals. Whatever the merits of this approach, it does not scale cleanly to the control of a ubiquitous and globally dispersed pollutant such as carbon dioxide. Yet because Congress has not seen fit to revise the underlying statutes, these are the tools the EPA has to address the issue.³⁶

A more rational approach to addressing greenhouse gases might task the EPA with developing a nationwide cap-and-trade system or, as Donald Elliott suggests, taxes or user fees.³⁷ Normally, one might assume congressional approval would be required for such a move, but Elliott suggests that the EPA may already have the necessary statutory authority to impose fees on carbon emissions. The EPA has arguably

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31. See ROBERT W. CRANDALL, *CONTROLLING INDUSTRIAL POLLUTION: THE ECONOMICS AND POLITICS OF CLEAN AIR* 19 (1983); see also INDUR GOKLANY, *CLEARING THE AIR* 137 (1999); Paul R. Portney, *Air Pollution Policy*, in *PUBLIC POLICIES FOR ENVIRONMENTAL PROTECTION* 27, 50–51 (Paul R. Portney ed., 1990).
 32. See Currie & Walker, *supra* note 28, at 4 (documenting the decline in air pollution between 1980 and 2015); see also Andrew Wheeler, *The EPA at Fifty Symposium: Keynote Address*, 70 *CASE W. RES. L. REV.* 883 (2020).
 33. See Currie & Walker, *supra* note 28, at 3 (“This decline in pollution has occurred even while primary sources of air pollution such as electricity generation, transportation, and industrial activity have continued to expand.”).
 34. See OFFICE OF AIR & RADIATION, EPA, *THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990–2020* (2011), available at https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.
 35. See *Massachusetts v. EPA*, 549 U.S. 497 (2007).
 36. For a discussion of the EPA's initiatives and some of the difficulties applying the Clean Air Act to greenhouse gases, see Jonathan H. Adler, *Heat Expands All Things: The Proliferation of Greenhouse Gas Regulation under the Obama Administration*, 34 *HARV. J.L. & PUB. POL'Y* 421 (2011).
 37. E. Donald Elliott, *A Critical Assessment of the EPA's Air Program at Fifty and a Suggestion for how It Might Do Even Better*, 70 *CASE W. RES. L. REV.* 895 (2020).

been less aggressive than some other federal agencies at seeking to expand its mandate. Indeed, it had to be dragged by the Supreme Court into regulating greenhouse gases at all.³⁸ The question for Elliott's proposal is whether the EPA is rightly wary of judicial review, or whether it has been too cautious in its willingness to use broad and powerful tools to address a looming environmental concern.

At the present moment, there is little prospect of an aggressive or innovative effort to re-program the CAA for greenhouse-gas-emissions control. As Administrator Wheeler has made clear, he sees the EPA as a direct agent of Congress, authorized and instructed to go as far as the legislature has instructed, and not an inch farther.³⁹ Consequently, the Agency is pushing states to meet long-standing environmental obligations, while simultaneously scaling back the more aggressive regulatory initiatives launched under the Obama Administration. As Joseph Goffman and Laura Bloomer explain, the EPA is abandoning the more "progressive" posture and adopting legal interpretations of the CAA and other statutes that would preclude more aggressive regulation.⁴⁰ Insofar as these new interpretations are accepted in the courts, it could be more difficult for the EPA to reverse course in the future, barring congressional intervention.⁴¹

Judicial review will be decisive in determining whether the Trump Administration's efforts to reorient the EPA are successful. This should not surprise anyone, for the courts have played an intimate role in the development of federal environmental regulation.⁴² Even if the EPA's regulations are challenged less often than some would suppose, as Cary Coglianese and Daniel Walters report, the most substantial and consequential rules inevitably end up in court, where the Agency,

38. See *Massachusetts v. EPA*, 549 U.S. 497 (2007).

39. Wheeler, *supra* note 32, at 887 (quoting former EPA Administrator William Ruckelshaus, who said that the EPA's mission "is to be as forceful as the laws that Congress has provided."). In response to questions at the conference, Administrator Wheeler further said that the EPA is acting on climate only to the extent authorized and directed to by Congress.

40. Joseph Goffman & Laura Bloomer, *Disempowering the EPA: How Statutory Interpretation of the Clean Air Act Serves the Trump Administration's Deregulatory Agenda*, 70 CASE W. RES. L. REV. 929 (2020).

41. Of course, at the time of this writing, it is an open question whether the EPA's initiatives will survive in court. Trump's EPA's early record surviving judicial review is mixed at best. See Jonathan H. Adler, *Hostile Environment*, NAT'L REV. (Oct. 15, 2018, 10:33 AM), <https://www.nationalreview.com/magazine/2018/10/15/hostile-environment/> [<https://perma.cc/L5RK-HUVY>]; Cary Coglianese & Daniel E. Walters, *A Half Century of EPA Rulemaking in Court*, 70 CASE W. RES. L. REV. 1007 (2020) (noting the EPA's "particularly poor record" over the past several years).

42. Coglianese & Walters, *supra* note 41, at 1017 ("The courts have . . . proven a fixture in the history of the EPA's first fifty years.").

throughout most of its history, has tended to prevail.⁴³ Industry groups routinely challenge agency rules tightening controls or imposing new standards, even when the legal claims against the rules do not seem particularly strong.⁴⁴ At the same time, environmentalist groups stand at the ready to push the EPA to be still more aggressive, or to defend against efforts to weaken regulatory requirements.

The current moment may be particularly instructive because judicial review seems to have played a particularly important role when the EPA's leadership—or the White House to which it reports—has pursued particularly dramatic changes in environmental law. It is worth recalling that *Chevron USA, Inc. v. Natural Resources Defense Council*⁴⁵ resulted from the Reagan Administration's Clean Air Act regulatory-reform efforts, and that *Utility Air Regulatory Group v. EPA*⁴⁶ was prompted by the Obama Administration's effort to retrofit greenhouse-gas-emission controls into the Clean Air Act's stationary-source provisions.

Environmental-policy narratives often present simple morality tales in which noble activists seek to enlist the government to combat money-grubbing industrialists. To be sure, some environmental disputes fit that script, but plenty of others do not. The particular details of given regulatory measures often involve environmental trade-offs or pit one economic interest against another. A fight over gasoline regulation may pit environmentalists against industry, or it may pit ethanol producers against oil companies, or perhaps both conflicts occur at the same time.⁴⁷ Brian Mannix surveys some of the examples.⁴⁸

There is ample academic work documenting how economic interests have molded, and in some cases hijacked, environmental regulation to serve their own ends, sometimes at the expense of the very environmental values the laws purport to serve.⁴⁹ What is the EPA's

43. *Id.*

44. In some cases, the purpose of challenging rules is not necessarily to have the rules overturned as much as it is to delay their implementation, which can itself reduce the economic costs of compliance for regulated firms.

45. 467 U.S. 837 (1984).

46. 573 U.S. 302 (2014).

47. See Jonathan H. Adler, *Clean Fuels, Dirty Air*, in ENVIRONMENTAL POLITICS: PUBLIC COSTS, PRIVATE REWARDS 19 (Michael S. Greve & Fred L. Smith, Jr. eds., 1992) (discussing the special-interest battles behind the oxygenated-fuel and reformulated-gas provisions of the 1990 Clean Air Act).

48. Brian F. Mannix, *The EPA at Fifty: Time to Give Bootleggers the Boot!*, 70 CASE W. RES. L. REV. 1081 (2020).

49. For various examples of this phenomenon, see Stuart Buck & Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 HARV. ENVTL. L. REV. 177 (2002); Jonathan H. Adler, *Clean Politics, Dirty Profits: Rent-Seeking Behind the Green Curtain*, in POLITICAL

role in such disputes? One would hope the Agency resists efforts to commandeer its regulations for economic gain, and sometimes it does. Yet, as Mannix notes, in some cases the EPA appears to be a willing participant in the special-interest manipulation of environmental regulation, even if only to enlist additional political muscle in support of its other goals.⁵⁰

Those seeking to influence environmental regulatory decisions inevitably seek to buttress their policy positions with appeals to agency expertise. For decades, the EPA and other agencies have conducted cost-benefit analyses when developing and proposing major regulations.⁵¹ At their best, such analyses help maximize the net benefits new regulatory initiatives provide, furthering greater transparency and accountability about the EPA's major policy choices. At times, however, interest groups seek to manipulate these analyses to ensure a desired outcome.

As Wendy Wagner observes, EPA expertise has been under political and special-interest pressure from the outset.⁵² Despite such pressures, the EPA has often been able to maintain its independent expertise, sometimes with judicial support⁵³—but not always. Under the Trump Administration, as Michael Livermore explains, the EPA has departed from many of its traditional methodological practices with regard to cost-benefit analyses in ways that will make it more difficult to justify new regulatory measures, particularly those that generate substantial co-benefits.⁵⁴

Environmental concerns extend beyond national boundaries, as has the EPA's influence. From its inception, the EPA has undertaken to address international environmental concerns and, as Robert Percival documents, has influenced the development of environmental law over—

ENVIRONMENTALISM 1 (Terry Anderson ed., 2000); Todd J. Zywicki, *Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform*, 73 TUL. L. REV. 845 (1999); ENVIRONMENTAL POLITICS, *supra* note 47.

50. Mannix, *supra* note 48.

51. There are some notable exceptions, such as where the relevant statutes preclude the consideration of costs or a cost-benefit analysis. *See, e.g.*, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001) (holding that the EPA may not consider costs when setting the national ambient-air-quality standards).

52. Wendy Wagner, *It Isn't Easy Being a Bureaucratic Expert: Celebrating the EPA's Innovations*, 70 CASE W. RES. L. REV. 1093 (2020).

53. *See, e.g.*, *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020) (rejecting the EPA's attempt to alter eligibility requirements for science-advisory panels).

54. Michael A. Livermore, *Polluting the EPA's Long Tradition of Economic Analysis*, 70 CASE W. RES. L. REV. 1063 (2020).

seas.⁵⁵ Indeed, as Percival explains, the EPA has often “served as a role model for countries seeking to upgrade their environmental laws and policies.”⁵⁶ While numerous environmental problems remain, the United States remains a leader in air and water quality,⁵⁷ and the EPA’s technical and scientific expertise continues to command respect around the world.⁵⁸

The EPA’s international significance is only likely to grow in the years ahead. Global climate change, in particular, will command the attention of environmental agencies around the globe. Not all of the action will occur in the public sector, however. As Michael Vandenberg, Jonathan Gilligan and Haley Feuerman explore, private firms and institutions are playing an essential role in the reduction of greenhouse gas emissions and the deployment of low-carbon production methods.⁵⁹ These trends, they suggest, are facilitated in part by the “revolving door” between environmental agencies, advocacy organizations, and major corporations.⁶⁰

Insofar as the revolving door that Vandenberg and his co-authors describe is influencing organizational behavior in corporations and other institutions, it demonstrates how individuals working within existing institutions can affect environmental change. Yet the history of environmental law is hardly the sole domain of such institutional insiders. Those on the outside, protesting the inadequacy of existing laws, norms, or practices have always played an important role as well. As Emily Hammond documents, protest plays an important role in the development of environmental policy in both the legal and political realms.⁶¹ This is not a new phenomenon, however. It has been a part of the environmental-policy landscape for over fifty years. Indeed, it is worth wondering whether, without protest, such as the massive gatherings that occasioned the first Earth Day in April 1970, we would today be commemorating the EPA’s fiftieth anniversary.

Fifty years after that first Earth Day and the creation of the Environmental Protection Agency, it is worth reflecting on what the EPA has accomplished, and what has yet to be done. The Agency has had its share of successes, as well as failures, and it has been at the center of some of the most contentious and consequential policy debates

55. Robert V. Percival, *The EPA as a Catalyst for the Development of Global Environmental Law*, 70 CASE W. RES. L. REV. 1151 (2020).

56. *Id.* at 1151.

57. *See* Wheeler, *supra* note 32, at 887.

58. *See* Percival, *supra* note 55, at 1158.

59. Michael P. Vandenberg et al., *The New Revolving Door*, 70 CASE W. RES. L. REV. 1121 (2020).

60. *Id.*

61. Emily Hammond, *Toward a Role for Protest in Environmental Law*, 70 CASE W. RES. L. REV. 1039 (2020).

of the past half century. Learning from the EPA's first fifty years can help light the path for the next fifty, and help chart the future course of environmental protection.