

Neoliberalism, The Environmental Protection Agency, and the Chesapeake Bay

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Abstract

Neoliberalism, as the influence of economic considerations within the political process, has impacted environmentalism on a variety of levels. Without regulation, the neoliberal capitalist drive to maximize production, consumption, and profits is antagonistic to environmental sustainability. The influences that corporations and economic elites have within modern democracies holds substantial implications for the rigor and enforcement of environmental policies. Particular to the United States, the Environmental Protection Agency offers numerous illustrations of neoliberal influence within its history and policy practices. These influences inevitably impact the Agency's ability to accomplish the goals of their mission and purpose statements. As seen through regulations such as the Clean Water Act, neoliberal pressure has altered the priorities of government on a federal level to prioritize economic well-being over that of other social goods, such as environmental protection. The Clean Water Act prioritizes economic profitability over environmental protection through cap and trade policies, such as NPDES permits, and legitimizes pollution-causing behavior through TMDLs. Further, the act was weakened by neoliberal forces with the non-point source exemption created for the sake of avoiding economic harm to large industries and its shortcomings are visible within many of the nation's waterways, including the Chesapeake Bay. Through a case study, this project demonstrates how the neoliberal influences impacting the Environmental Protection Agency has resonated in its policies, like in the abilities of the Clean Water Act to sufficiently clean-up the Chesapeake Bay within its proposed timeline.

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General Audience Abstract

Corporate influence upon the functionality of government is highly visible within the area of environmental protection. Due to a business's desire to continue making money, environmental costs are typically not considered in their costs of production as they are shared publicly and not solely by business. This causes the need for environmental regulation, as corporate quests for profits often exploits environmental goods. Businesses, however, can alter the political process in an effort to stop regulations that will inhibit their profitability. Specifically, corporations and economic elites can utilize their access to fiscal resources to influence public opinion, education, and corresponding regulations in an effort to maintain their profitability. Regulatory bodies, such as the Environmental Protection Agency, fall victim to these influences. With these influences impacting its functionality, the Environmental Protection Agency has implemented market-based policies that further perpetuate this behavior, as these policies allow for meeting environmental-improvement goals while still allowing pollution and sponsoring the cheapest clean-up methods. These policies, like those within the Clean Water Act, do not always accomplish the goals of the Agency, as shown in the clean-up of the Chesapeake Bay. Corporate influence, within the construction of the act and its sponsored programs, has inhibited the clean-up potential of the Act within the Bay. Furthermore, with such corporate influence within American government and the Agency, this study asserts that the Agency has not been able to fully accomplish its goals and it is unlikely that it will be able to without significant fundamental changes in the future.

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Introduction

The struggle to implement governmental regulations to accomplish environmental protection and justice is visible internationally. Within the United States, significant efforts to establish regulations protecting environmental health began in the late 1960s. When President Nixon used his executive powers to establish the U.S. Environmental Protection Agency, it set the tone for federal environmental regulations for the decades to come. The mission of the Environmental Protection Agency, an Independent Executive Agency, is “to protect human health and the environment” (Our mission 2016). Their purpose is further described as “to ensure that:

all Americans are protected from significant risks to human health and the environment where they live, learn and work; national efforts to reduce environmental risk are based on the best available scientific information; federal laws protecting human health and the environment are enforced fairly and effectively; environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy; all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks; environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and the United States plays a leadership role in working with other nations to protect the global environment[.] (Our mission 2016).

Despite the clear, ambitious goals articulated within the Environmental Protection Agency's mission statement, the Agency's regulatory role has not necessarily been fulfilled historically. Many times, as to be discussed further, the Agency has been used to further political goals instead of for the purpose of environmental health and justice. Furthermore, with economic considerations largely contributing to policy construction and decisions to regulate, the needs and desires of businesses in quests to be profitable is often reflected within the Agency's performance, frequently compromising the Agency's mission and purpose.

Governmental concerns surrounding economic welfare and abilities to remain profitable became popular after economic theories, such as laissez-faire capitalism, were advocated as ideals for governmental roles in economies. The theories of capitalism oppose governmental regulations as they impede upon the market's ability to work naturally and efficiently. Neoliberalism, as a form of late modern capitalism, is an ideology that not only supports limited government regulation of the market, but encourages the influence of economic entities and elites upon policymaking. This mindset of people, which rose to prominence toward the end of the 20th Century within the United States, "presents itself as the cure-all for the world's social, economic and environmental problems" (Schreuder 2009).

Yet perhaps neoliberalism is not the actual "cure-all," especially in the case of environmental protection. Within the domain of environmental regulation, the influence of neoliberal ideals is not only observable within the Environmental Protection Agency's purpose statement as it promises to consider economic impacts within its regulatory proposals, but it is also evident historically in the Agency's political role and its approach to policymaking.

After analyzing the many characteristics of neoliberal ideologies and its impacts on environmentalism, this thesis will offer a historical account of the Environmental Protection Agency's creation and its corresponding role in accomplishing environmental protection. Through this process, this thesis theorizes that the influence of economic considerations, specifically in the form of neoliberalism, has impacted the ability of the Agency to not only efficiently combat the environmental problems faced by the United States, but to fulfill its mission and purpose statements as outlined above. To further demonstrate the impact of a neoliberal mindset upon the Environmental Protection Agency's performance, this thesis concludes with a case study in an effort to exemplify the presence of neoliberal ideals within the implementation, enforcement and success of the Clean Water Act. This single case study analyzes how neoliberal influences within the Clean Water Act have impacted the regulatory efforts surrounding the Chesapeake Bay's Health. The Chesapeake, as the nation's largest estuary, serves as a critical case in assessing the effectiveness of the Act's construction and implementation, as problems facing one of the nation's largest waterbodies are likely happening in other waters, too.

Chapter 1: The Landscape of Neoliberalism

A modern democratic government's efficacy is grossly impacted by many factors, including the phenomenon of neoliberalism. When the mechanics within the workings of a democracy are altered in any way, the risk of the policy process not functioning as intended becomes imminent. Specifically, within a modern democracy impacted by neoliberalism, the desires of a few are viewed as more important due to the financial influence they have within the policymaking process. When the desires of the few are prioritized, democracy and its functionality suffers. This is especially so within the realm of environmental regulation where protecting public health and human rights to natural resources tend to be sacrificed for the sake of more important policy endeavors, like economic growth and well-being.

Neoliberalism Defined

Neoliberalism, for the purposes of this thesis, will be defined according to David Harvey's characterization in *A Brief History of Neoliberalism*:

Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices (Harvey 2007).

This mindset, which grew in popularity towards the end of the 20th century, maintains that minimizing any impact the government may have on markets and trade while maximizing

economic growth and well-being is the best way to better the public good. In *Neoliberal Environments*, Harvey's definition is expanded upon to further elaborate the relationship of business owners with capitalism. Viewed from this broader perspective, neoliberalism "is an intensely political project, one in which economic elites more or less intentionally seek to increase their wealth and income, but also their political and economic freedom and flexibility by rolling back the redistributive reforms of the mid-twentieth century" (Heynen *et al.* 2007). Therefore, within a neoliberal mindset, economic elites, whether individuals or businesses, are able to use their monetary gains to influence the political process to better suit their interests. The behavior of those who are not economic elites is also changed, as humanity as a whole is encompassed by this fixation on ensuring economic well-being.

The influence that economics has within the political process under neoliberalism is not only what distinguishes it from other forms of capitalism, but also what makes it so potentially lethal to a functioning democracy. Wendy Brown explains that "neoliberalism is the [political] rationality through which capitalism finally swallows humanity," where a shift in desire for maximizing economic gain and growth debilitates democracy and its need for educated political participants. The neoliberal mindset not only enables this shift, but it promotes the "marketization" of all goods, services, and people (Brown 2015). This marketization is one of the principal characteristics of neoliberalism, as it adds market value to items (like environmental goods) to "exchangeable things that might not previously have been subject to a market calculus" (Castree 2010). When a society monetizes all goods, services, and therefore natural resources, items seem to lose their intrinsic value, or their value "in and of itself," due to the assigning of prices to an otherwise priceless item. The marketization of all goods originally viewed as having purely

“intrinsic value” inevitably assigns them an instrumental value, or the value that item has in enabling the acquisition of something else of higher value. As items lose intrinsic value and humans gain roles as market actors, this shifted mindset inevitably impacts the political behavior of all participants within the democratic process.

This shift in priorities within a neoliberal mindset impacts the way that constituents and corporations participate within the political process and their corresponding relationship with political figures. Drawing upon other democratic critics of neoliberalism, such as Sheldon S. Wolin, Brown argues that state economic policies “are also distressed by the ever-growing intimacy of corporate and finance capital with the state, and corporate domination of political decisions and economic policy” (Brown 2015). Similarly, James Galbraith extensively discusses the relationships between corporations and political figures, specifically the involvement of corporations in the political process in order to maximize their abilities to be profitable. Corporations strive to take advantage of favorable government programs, and work to have certain institutions, like regulatory programs or schemes of taxation, changed or pulled back for the sole purpose of making more money (Galbraith 2008). This anti-regulation principle is a distinct part of a neoliberal agenda as regulation interferes with markets. For instance, corporations typically oppose environmental regulation because these negatively impact their ability to maximize their levels of profit or expand their market share. Some scholars argue that government policies that encourage neoliberalism’s free markets cause corporations to continue to gain that strength, rendering neoliberalism a corporate success (Crouch 2011). The practices behind neoliberalism create a positive feedback loop of a self-manifested, self-sustaining system where, corporations invest their profits in the political process in hopes of furthering their profits. As profits grow,

more involvement in the political process can be afforded in an effort to yield more profits, and so on.

Neoliberalism, specifically its encouragement of specific types of corporate behavior, encourages a wide variety of changes within political relationships, a few of which that will be discussed in the following section. It encourages an approach to policymaking that labels the enablement of profitability and money-making as the best way to serve the public good. This neoliberal behavior is not only crippling to a working democracy, but it is also exceedingly noticeable throughout the politics and policymaking process within the United States today, especially in terms of environmental regulation and priorities. Noel Castree argued that the impacts of neoliberalism could best be measured by its engagements with the non-human world. In that sense, it is useful to analyze neoliberalism's impact on environmental quality and regulations as a whole in seeing the vast impact it has on the current political system and how it inevitably impacts the Environmental Protection Agency's functionality (Castree 2010).

Neoliberalism's Impact upon Environmentalism

Economic prosperity and growth has been prioritized over other social goods, like natural resources, well before neoliberalism became a prominent concept within American politics. As Paul Ekins noted, "the sacrifice of the environment to economic growth...has unquestionably been a feature of economic development at least since the birth of industrialism" (Ekins 1999). Neoliberalism, as a more recent form of capitalism, continues the trend of prioritizing economic well-being over other social goods, like that of environmental health.

The need to avoid regulation encourages the influence of policy decisions within a neoliberal mindset. Capitalism is often defined “by its drive to accumulate” as, since it is a grow-or-die system, growth and competition are necessary as a means of survival (Foster, Clark & York 2010). Profits are in turn invested to continue growth in order for the maximization of profits and to maintain survival within the market (Speth 2008). The desire to alter these regulations are especially noticeable in terms of environmental policies as they, when implemented, typically involve some sort of influence on production practices that may alter the rate of profitability. Capitalism’s “assaults on standards, funding for environmental programs and for mediation, and attempts to remove restrictions on capital’s access to nature has remained a focal point in American neoliberalism right up to the present-day, taking several forms” (Heyen *et al.* 2007). These forms of influence, like altering how natural resources are viewed and utilized within a society, have lasting impacts that can be viewed on multiple levels of policymaking.

The neoliberal mindset prescribes a type of interaction with natural resources where a resource’s instrumental value is assessed as a means for production and consumption of profitable goods. Martin Heidegger articulates one of these interactions, specifically in the tendency to view natural resources as mere materials and opportunity for economic growth. The industrialization of agriculture is a prime example, as one of mankind’s original interactions with nature became mechanized for the sake of mastery and monetary gain. He claims that “even the cultivation of the field has come under the grip of another kind of setting-in-order, which sets *upon* nature. It sets upon it in the sense of challenging it. Agriculture is now the mechanized food industry” (Heidegger 2008). Components of nature previously viewed as having purely intrinsic value now have instrumental value as resources. These resources, however, are in finite amounts within

nature. If a business runs out of natural resources to utilize for production, in a capitalist economy, it will move or expand elsewhere in order to gain a continuation of its profits. Corporate allies on a global scale and the development of trade unions encourage mass production and mass consumption of goods (Mirowski & Plehwe 2009).

This tendency of constantly utilizing or endangering natural resources for the sake of profits has earned capitalism the label of being a system of “rifts and shifts.” Due to its reliance on short-term profit, capitalism causes a rift, or a wedge, between human society and natural conditions and resources. Further, capitalism encourages shifts either technologically or geographically once opportunities for profit in one area have been depleted. Geographical shifts often occur when the natural resources necessary for a business’s profit are depleted. When the environmental requirements of one area no longer support the needs of a capitalist enterprise, it moves or expands to a new area until that area is also depleted or contaminated (Foster, Clark and York 2010). Transnational corporations develop global webs of production and commerce while using means like Free Trade Agreements to keep profits as high as possible (Karlner 1997). Technological rifts, comparatively, involve technological advancements to enhance profitability when resource depletion becomes a problem.

The boundary-expanding implications of these rifts and shifts are one of the many reasons why environmental sustainability is not possible under neoliberal capitalism. Signs of ecological stress do not and will not cause a voluntary injunction of consumption of goods as corporations will continue to move, grow, and adapt in an effort to maintain profits. The growth and spread of dangerous corporate behavior will not stop despite environmental harm or ecological hazards, as the market is not able to naturally include those costs within its system. “Once the economic

system begins to approach not just its regional boundaries but planetary boundaries, the mounting ecological debt will become ever more precarious, threatening an ecological crash” (Foster, Clark and York 2010). James Gustave Speth agrees, as he concludes that success is determined by economic growth, but economic growth “is the enemy of environment” due to its lack of concern for environmental goods. If the consumption of natural resources or damage to the environment is part of a business’s means of production, economic growth within neoliberalism will always be prioritized over that of environmental well-being, leaving “the economy and environment [to] remain in collision” (Speth 2008).

Further, the neoliberal market system does not allow for the “monetization” of all interactions between businesses and environmental health. In addition to the assignment of instrumental value to “priceless” natural resources, the market fails to account for environmental costs in other aspects. For example, markets today do not have all actors and participants present in that the populations that will receive the outcome of poor environmental decisions made today are not able to be represented. Future generations cannot participate in the current capitalist market, making their interests unaccounted for in current decisions. Since neoliberal capitalism focuses on current abilities to be profitable, it does not consider the rights that future generations have regarding access to environmental goods. This fundamental bias towards current generations and not future generations directly inhibits the ability of neoliberal mechanisms and policies to achieve sustainability. As Speth notes, “Sustainability requires that each generation consciously decide to redistribute sufficient resources to future generations, a process akin to redistributing resources within the current generations” (Speth 2008).

Similarly, the neoliberal market has no ability to account for the externalities caused by capitalist modes of production since the environmental costs are shared communally instead of being purely a burden of the producer. When this cost is not realistically borne by the producer, the cost-profit ratio is skewed, resulting in mass private profits and shared environmental costs (Crouch 2011). The environmental costs are not actualized when calculating the costs of producing the good because they are shared globally and not accrued by the business itself. The costs and benefits within neoliberal capitalism are able to be easily observed within environmental policies. The costs, in the form of habitat degradation, poor air quality, polluted water, are shared by masses as those with the lesser economic resources. Comparatively, the monetary profits of the production are shared only by the economic elites themselves, leaving a significant skew in the cost-benefit analysis of production. The market further encourages actors to apply monetary values to “priceless” goods, creating a system where access to funds is necessary in order to indulge in and appreciate natural resources. Previously “free” natural resources, like clean water or air, are now only able to “be bought and sold by those with sufficient monetary access,” creating a system of commoditization of natural resources (Castree 2010). The ideology of neoliberalism, in its reliance on markets to dictate policy and constituent interactions, holds significant implications for environmental well-being purely in the failures of the market system itself. The absence of these considerations (among others) from the market system encourage the mass production of goods under capitalism, which enables high profits and high means of influence in political matters.

Corporate Involvement in the Political Process

Gar Alperovitz and James Speth identified the means through which corporations are able to involve themselves politically in order to secure favorable policy change. Indeed, as James Galbraith and Colin Crouch have suggested, corporate involvement within the political process is a key characteristic of neoliberalism, especially in the United States. They note:

The large corporation regularly 1) Influences legislation and agenda setting through lobbying, 2) Influences regulatory behavior through direct and indirect pressure, 3) Influences elections via large-scale campaign contributions, and 4) Influences public attitudes through massive media campaigns (Alperovitz & Speth 2011).

While Alperovitz and Speth's list may not be exhaustive, there are a multitude of ways in which corporate behavior of these sorts impact environmental protection initiatives within the political process. Furthermore, Speth suggests that the corporate involvement in politics within a neoliberal atmosphere is inherently antagonistic to environmental policies with actual rigor for environmental betterment. "In the United States today, the government in Washington is hobbled, corrupted by money, and typically at the service of economic interests, focused on the short-term horizons of election cycles, and poorly guided by an anemic environmental politics, a poorly informed public, and a pathetic level of public discourse on the environment" (Speth 2008). It is no secret to the public that corporate influence is impacting the regulations leaving Washington, D.C. Public opinion polls have repeatedly indicated that voters believe that elected officials serve the needs of corporate powerhouses instead of society as a whole (Girdner & Smith 2002). The utilization of their economic resources, like funding lobbying and election efforts, to shape policies favorable to their fiscal interests is a prime characteristic of a corporation's constant strive for profits within a

neoliberal mindset. A brief discussion further assessing how these behaviors impact environmental policymaking specifically will be helpful in understanding the environment in which current environmental regulations are constructed.

Corporate Influence in Agenda-setting and Lobbying

Access to the substantial fiscal resources of many profit-driven businesses enable them to participate within the political process in a variety of ways, including agenda-setting and lobbying efforts. In comparison to environmental advocacy groups, industries that are ranked as being the most environmentally harmful have significantly more lobbyists on Capitol Hill. In 2010, environmental protection groups were estimated to have around 80 active lobbyists working on the Hill, while the nine largest polluting industries had an excess of 80 lobbyists apiece (Collins 2010). Since a business will always opt for minimized expenses within a neoliberal approach, it is often much cheaper to change regulation than it is to change a firm's business model. Specifically, it is often less costly to hire lobbyists to advocate against new (environmental) regulations than to develop new production practices to achieve regulatory compliance (Vallianatos 2014). In turn, the legislative influence that a corporation has on Capitol Hill is incomparable to the influence of the average citizen, especially in terms of financing lobbying and agenda-setting efforts.

As Castree argues, advocating for policy concessions and deregulation is a prime characteristic of neoliberal behavior. This “withdrawal or diminution of government intervention in certain areas of social and environmental life in order to enable firms and consumers to exercise ‘freedom of choice’” is specifically what corporations (when at risk of decreased profit margins

due to environmental regulations) within the American society set out to accomplish (Castree 2010). In *Neoliberal Environments*, Harvey similarly asserts that this deregulation “coupled with the reductions in social safety net provisions” show severe and “evident consequences in spiraling social inequality” (Heynen *et al.* 2007). Not only is deregulation promoted by polluters through legislative means, “safety net” or precautionary approaches are simultaneously discouraged. Erring on the side of environmental caution may result in decreased production and is often criticized as stifling economic growth. It is this social injustice that makes neoliberal economic growth ecologically unstable, while corporate influence in agenda-setting and lobbying aims to convince policymakers that continued economic growth is actually favorable (Kovel 2007).

Agenda-setting is often sought when a business’s interests are not being fulfilled by existing policy, or are unlikely to be served by proposed policies. When corporate interests strongly oppose new rules or regulations, “they tend to engage in agenda blocking,” an effort to have the unwanted regulations retracted through legislative-process manipulation (Kamieniecki 2006). Such agenda-setting has implications on a grand scale, including policies that could decide the legalities of certain products, practices based on consumer and environmental safety. In order to keep sales up, corporations and business interests often seek to block or undermine rigorous environmental policies that place environmental quality and public welfare above corporate efficiency and profit. In the process, policy guidelines such as the Precautionary Principle (to be discussed in Chapter 3) are opposed or evaded as they shift the burden of proof in assessing environmental impact from government agencies and consumers back upon the producer (Rosenbaum 2013). Precautionary efforts will arguably reduce profitability for unknown environmental gain. Since neoliberal outlooks encourage profitability despite environmental

harm, a neoliberal mindset will certainly oppose precautionary policies that reduce their profitability for the sake of unknown environmental benefits. While these practices would certify product and practice safety, it arguably would have high fiscal costs, leaving many of the regulations suggesting such practices be blocked from agendas or lobbied against by the businesses that would be impacted (Speth 2008). Since these potential regulations could reduce profitability, resorting to inhibiting the regulations from being implemented reflects truly upon the tendency to tinker with democratic workings within neoliberalism.

Direct and Indirect Pressure of Corporations

Pressure from corporations can be felt upon both constituents and politicians alike. As Mark Hertsgaard claims, “regulation is an iffy thing. Corporations are constantly pressuring governments to relax environmental regulations if not eliminate them altogether. This pressure is often supplemented by bribery – most commonly, the legal bribery known as campaign contributions, which has turned many politicians in the United States into spineless corporate supplicants unwilling to bite the hands that feed them...” (Hertsgaard, 1999). This pressure takes many forms, like the threat of a corporation to move its facilities to another state or country in order to operate under less restrictive, and thus more favorable, environmental regulations.

Such corporate flight often has significant economic implications. Locally, this could impact job availabilities in the area while nationally, if a large business or numerous businesses left the country, it could certainly impact the GDP (Speth 2008). In the United States, for example, it is not in the federal government’s best interest economically to encourage a large, global business to abandon its operation domestically for another location abroad. Losing businesses to other

countries impacts domestic job availabilities, corresponding unemployment rates, and the ability to tax the business's production. Losing businesses to international competitors (where they can produce their goods at a cheaper cost) impacts the view of the United States within the global economy, further feeding into what Peter Newell refers to as "disciplinary neo-liberalism." He defines this particular subset of neoliberalism as a strategy based on the relationship of the country's economy in respect to other large, global actors. He explains that it is a subset of neoliberalism "whereby the scope for legitimate state action and progressive democratic politics is circumscribed by global trade and investment accords and the rights of capital over states." The pressure to avoid losing corporations to other jurisdictions (for the sake of keeping jobs and tax dollars where they are) exerts significant influence upon the development and implementation of environmental policies, especially in that of agenda-setting (Newell 2012).

Corporate Influence upon Elections and Campaigns

Having the means to contribute significant amounts to electoral campaigns is a unique trait of large corporations. Such contributions, which Hertsgaard referred to as legal bribery, exchange financial contributions for policy promises and even certain types of advocacy by officials once elected. Speth argues that it is this tendency that cripples the functionality of the US government in its most elementary phase. He explains:

There are many reasons why government in Washington today is more problem than solution. It is hooked on GDP growth – for its revenues, for its constituencies, and for its influence abroad. It has been captured by the very corporations and concentration of wealth it should be seeking to regulate and revamp, a pattern that has now reached alarming

proportions. And it is hobbled by an array of dysfunctional institutional arrangements, beginning with the way presidents are elected (Speth 2008).

Others argue that the problem is not exclusive to the executive branch, and is likewise prevalent amongst members of Congress. Corporate influence within the legislative branch is often found, especially in funding the reelections of incumbents. This behavior surely impacts voting behavior and public perception of all elected officials. Studies show that voters are less inclined to vote when they are more aware of the relationship that corporations have with elected officials. While “elected officials ‘represent’ the people, for the most part officials represent corporate America, their fundamental constituency” (Girdner & Smith 2002). This further exacerbates the issue of elected officials not representing the needs and desires of the republic, as if people are not voting, the needs and desires of the public are not being heard.

Empirical research also shows that there is a massive discrepancy between the financial clout of the different sides in the struggle over environmental policy. The amount of money spent by corporately-funded political action committees on financing campaigns is astounding when compared to those of environmental protection groups. A study by Greenpeace showed that, compared to the \$1.7 million spent by environmental political action campaigns in the 1991-1994 election cycle, political action committees from the largest polluting industries (coal, oil, automobile manufacturing) contributed 98% more in campaign cash. The total contributions from polluter political action groups totaled over \$23 million in that election (Collins 2010). This spending by political action committees continues to increase, similarly to the growth experienced between 1974 to 2005. This fifteen-fold increase within three decades accumulated to an increase from \$15 million to \$222 million in campaign financing (Speth 2008). The lack of publically

financed elections drives up the price of becoming a known-candidate significantly, making it hard for candidates without corporate ties to be viewed as a “serious” candidate. When a candidate’s campaign is funded corporately, the candidate will need to politically perform to the business’ or industry’s liking in order to maintain hopes of reelection or furthering of their political careers. A business is not going to be happy with an “investment” in a politician that does not yield results favorable to their ability to be profitable, which, in a neoliberal system, incentivizes the politician to act economically instead of what they democratically feel is correct. This indirect means of agenda-setting allows for substantial corporate influence within the political process, as the dependent relationship of politicians upon their campaign funders creates a system of politicians acting as the puppets of their corporate sponsors.

Large donors acquire significant leverage within the policymaking process as they provide essential financial resources to candidates seeking election or reelection. When an elected official makes a decision that is not supported by its major campaign donors, they risk “political suicide,” undermining the financial support necessary for reelection (Collins 2010). If incumbents performed to the wishes of their prominent donors, the donors are more likely to support their future political endeavors and reelection campaigns. While they mildly fear candidates aiming to expose promiscuous relationships with corporations, they mostly fear independent efforts that would help to disclose their loyalty and intimate relationship with corporations, or even “portray the incumbent as a miscreant and scoundrel who should be behind bars, not serving,” as described by Thomas Mann and Norman Ornstein. Incumbents are usually confident in their ability to “handle any incumbent they might face” as long as they have performed as their campaign contributors wish and are likely able to afford another pricey campaign (Mann & Ornstein 2012).

Without the financial means to obtain their job initially and to gain reelection, elected policymakers often lose their jobs. This prioritizes the need to act according to corporate desire's for the sake of a policymaker's future job security instead of acting upon what might be best for the public good. As expected, the neoliberal tendency of prioritizing economic well-being over that of political duties inevitably impacts the regulatory decisions of public officials.

Corporate Influence within the Media and on Public Opinion

In order to remain profitable, corporations must ensure that they are looked upon favorably by their consumers (who are often also voters) despite any downfalls they may have. These downfalls, such as environmental harm, could sway consumers away from purchasing their products unless they are convinced to do otherwise. As Morris Wolfe claimed, "It is easier and less costly to change the way people think about reality than it is to change reality" (Quoted in Nelson 1989). From a corporate standpoint, it is cheaper to sway consumers into thinking that their products and services are favorable instead of necessarily making their products and services actually that favorable. By influencing public perception of a business's practices or the state of environmental health as a whole, corporations are able to influence how constituents participate politically and fiscally. If voters are not educated on the severity of issues facing society, be it lack of transparency in production practices or misconstrued pollution levels, they are unable to accurately act upon them within the democratic process.

Naturally, corporations within a neoliberal society see the importance of public perception and knowledge in maintaining their money-making ventures, so they act accordingly. Most contemporary media is owned by or incorporates financial involvement from large corporations.

With financial influence involved in funding these operations, “conglomerates not only create potential conflicts of interest in reporting the news, but also ensure that the makers of the news take a corporate view” (Beder 1998). According to Herman and Chomsky, this stems back to the 1980’s, as deregulation encouraged corporate threats and takeovers within the media industry. Media outlets subsequently “lost some of their limited autonomy to bankers, institutional investors, and large individual investors whom they have has to solicit as potential ‘white knights’” (Gamson *et al.* 1992). *The New York Times* furnishes a ready example of this phenomenon of interconnection. Beder notes that its board shares members with powerful corporate boards, like Ford Motor Company, IBM, Bethlehem Steel, and Charter Oil to name a few, leaving it unlikely that these board-members share little or no influence in the type of news coverage produced by the news outlet (Beder 1998). Even subtle corporate influence upon media coverage can alter public perception surrounding current issues and events through what Judith Butler describes as “framing.” According to Butler, “although restricting how or what we see is not exactly the same as dictating a storyline, it is a way of interpreting in advance what will and will not be included in the field of perception” (Butler 2009). The media has such vast interactions with society that it has a large role in how voters conceptualize and feel about societal and democratic issues. With this ability to “frame” current events, a fiscally-influenced media can greatly impact the public’s exposure to events and problems. If voters do not know of a problem, or if they are persuaded to feel a certain way about a problem, then those feelings may correspond to their political actions. Their political actions hold implications for regulations that impact a corporation’s profitability, leaving a corporation incentive to skew their political actions within a neoliberal mindset.

Corporations have other means to “frame” issues to the general public and to political actors, such as utilizing think-tanks to cast doubt upon environmental issues through purportedly objective, scientific studies. Think-tanks are typically the offspring of rich foundations that “are ready to pay good money to pay people to sit and think.” Foundations such as the Scaife Foundation, who is financed by Gulf Oil with over \$100 million in assets, contributes to policy assessments in the form of serving as a think-tank (Beder 1998). By creating think-tanks in which they can control, corporate interests gain another subtle form of impact in the policymaking process. Policymakers often cite the work of think-tanks as evidentiary, science-based support in a decision they plan on making for or against proposed regulation. If a regulation seems dicey or unimportant to the general public, citizens are less likely to support a politician’s action upon it. By using think-tank research to cast doubt upon the importance of an issue, corporations hope to influence the public’s motivation to demand change in a policy area. According to Phil Lesly:

“People generally do not favor action on a non-alarming situation when arguments seem to be balanced on both sides and there is a clear doubt...The weight of impressions on the public must be balanced so people will have doubts and lack motivation to take action...Nurturing public doubts by demonstrating that this is not a clear-cut situation in support of the opponents usually is all that is necessary” (Quoted in Beder 1998).

In the field of environmental policy, conservative think-tanks with substantial corporate backing are able to provide “credible ‘experts’” within policy disputes surrounding scientific claims. Policy debates over contemporary issues, such as global warming, illustrate the roles that think-tanks often play in casting doubt upon the legitimacy of environmental problems within policymaking. For instance, the magazine *Facts* (published by Business Wire) claimed in 1991

that “enhancing the Greenhouse Effect may be necessary for our survival” while the journal *Policy Review* (published by the Heritage Foundation) dubs environmentalism as “the single greatest threat to the American economy” (Beder 1998). By casting doubt on issues that impacts the public, corporate-funded think-tanks are adding to the crippling of democracy’s ability to combat environmental problems. Neoliberal ideals drive the need to alter the perception of these problems in an effort to avoid regulation and thus avoid a loss in potential monetary gain.¹

Public awareness of and information about the issues surrounding them is vital to the functioning of democracy. As Wendy Brown argues, “democracy may not demand universal political participation, but it cannot survive the people’s wholesale ignorance of the forces shaping their lives and limning their future” (Brown 2015). In addition to media and think-tank involvement, corporations have excessive means to produce and impact educational materials for mass distribution. Corporate financial support allows for the sponsorship, production, and distribution of educational materials to schools and the broader public. Beder argues that these materials offer the corporate view of environmentalism from an early age and work to weaken support for reduced consumption, more environmental regulation, or reduced corporate access to profitability. Advertisements are another means of influencing the education of the public about environmental issues. Children are specifically targeted both educationally and in advertisements because they are “consumer trainees.” They are the consumers of the future while they currently impact their parents spending via the “nag factor” (Beder 1998).

¹ Some scholars believe that right-wing think-tanks are responsible for encouraging the Public Choice Theory. This theory maintains that think-tanks, interest groups, and bureaucrats will continuously attempt to manipulate the government system to “feed their own purposes” (Toke 2000). These biased interpretations of current issues, specifically within environmental regulations, directly inhibits the ability of voters to make educated democratic decisions.

These public relations campaigns do not stop at targeting children's perceptions, as an entire industry (in "green" public relations campaigns) has been born within the corporate world. In 1990, over \$500 million was spent by US firms on public relations advice on how to portray their products and services as "greener" or more environmentally friendly. The top 15 firms within this industry collected \$90 million in fees for their environmental public relations services in 1993 alone. Beder notes that, instead of significantly changing businesses practices in order to earn a better reputation within society, "many firms are turning to public relations professionals to create one for them" (Beder 1998).

Even more recently, corporate initiatives to convince the American public that "change is on the way and that climate-change policy would be served by active participation on the part of major corporations" continue. Frequently, deliberate corporate re-branding is part of their larger environmental policy strategies. British Petroleum, widely known as BP, briefly switched their slogan to "beyond petroleum" in order to imply greener innovations on behalf of the corporation (Schreuder 2009). Green consumerism is another result of these public relations initiatives, as many scholars allude to shoppers who think they are buying environmentally-friendly products often fall victim to "greenwashing." Guy Pearse concludes in *The Greenwash Effect* that no real reduction in production-related emissions has occurred despite the advertisement of "green" initiatives by companies. He notes that "after more than a decade of green marketing campaigns in response to public concern about climate change, we might reasonably expect impressive results. Yet almost no major company examined [in this study] can credibly say that its overall carbon footprint is getting smaller" (Pearse 2012). In another quest to alter public opinion, corporate influences within a neoliberal mindset are encouraged to change public perception about

environmental problems and initiatives as a means to avoid putting political pressure upon policymakers to invoke change that will cost them in profits. By conveying a “green” message in their marketing strategies, consumers are persuaded that environmental issues are being handled and that their shopping choices are supporting environmentally-friendly initiatives. This helps maintain marketability while also downplaying the severities of the environmental harm that the corporation is initiating.

With a biased media of all types surrounding them due to corporate influence, it is certainly arguable that voters may not be adequately educated regarding the environmental issues the society is facing. Without sufficient education of the issues, there is not a significant mass or group advocacy for change that threatens policymakers enough to make them second-guess their corporate sponsors. This aids in the ability of corporations to set political agendas in ways that are favorable to their corporate needs, as the public is unaware of the environmental problems being caused by the governmental allowance of corporate practices. It leaves the majority of voters to seek out un-biased information on their own in order to become adequately knowledgeable about the environmental problems facing society, especially due to the products and services they indulge in within their everyday lives. Finding political participants that seek out their own unbiased information is difficult, as people feel that the information they are exposed to is genuine and adequately portrayed. This further feeds into a neoliberal mindset shared by corporations, politicians, and voters alike.

Conclusion

The interactions that corporations hold with political figures and voters are strategic in serving to their goals of profitability. These interactions are highly intertwined and allow many voters to be “kept in the dark” about important issues and policies. This situation creates a kind of political paralysis, carefully shaped by corporate advocacy and influence. As Collins puts it, “Given the relatively low level of public knowledge, concern and activism around the environment, it would be political suicide for any president to directly confront the nation’s major polluters” (Collins 2010). Thus, the chances that political figures within this system will push back against their corporate sponsors via environmental regulations are slim-to-none. This larger phenomenon inevitably impacts executive branch agencies like the Environmental Protection Agency.

It is no question that capitalism will hurt the environment because the markets do not allow for its protection. The neoliberal mindset’s countless impacts on the policy process, like influencing public perception and education of voters, contaminating the political process with fiscal incentives, and its constant prioritization of economic well-being over other social goods, skews the workings of democracy in countless dangerous fashions. The impacts felt by these democratic influences are observable across policy areas in American politics today. The larger question for this study, though, is if neoliberalism and its influences allows for the environmental regulations that are needed in order to combat environmental issues.

Chapter 2: Neoliberalism Within the EPA's History and Regulations

As neoliberal ideology has shaped environmentalism movements as a whole, it has also influenced and shaped the agencies tasked with environmental protection. Such influence is especially apparent in the creation of and regulations of the U.S. Environmental Protection Agency (EPA). Despite its short history, the EPA has not been immune from neoliberal influences in its quest to protect the country's natural resources and promote the environment's best interests. As it was cultivated and shaped with economic and political priorities over those of environmental and public health interests, the policies resulting from the Agency are less than capable of achieving the goals that they aim to achieve.

The Development of Environmental Regulation and Protection

Following World War II, American society experienced many significant shifts and transformations. The technology and economic growth that emerged after the War encouraged the rapid emergence of suburbs and shopping complexes. Increased access to goods enabled additional consumption and profits, encouraging further production and development. As technology advanced, like in the development of automatic washing machines, time allocated for domestic chores were lessened. When coupled with economic growth that allowed for more time off of work for the sake of leisure, Americans began to participate in recreational activities that encouraged interaction with the outdoors (Landy, Roberts & Thomas 1990). Citizens began to enjoy the National Park System that began in 1916, about 10 years after President Theodore Roosevelt signed the 1906 American Antiquities Act to preserve wildlife and public land

(Theodore Roosevelt and conservation 2016). Wildlife attractions, such as the Appalachian Trail, became increasingly popular as interests in camping, hiking, and experiencing the wilderness grew. Samuel Hays argues, “In the nineteenth century, wilderness areas had negative connotations as dark and dangerous places; now they were prized for their uniqueness amid an increasingly urbanized society” (Hays 2000). This increase in technology, and the greater mobility, production, and consumption it facilitated, not only contributed to environmental problems, like smog surrounding the newly developed suburbs, but the human interaction with the outdoors instilled a care for the environment within some sections of American society. When families were not camping, they were faced with environmental problems that had not yet been experienced at such an extreme. This urbanized society hosted problems that had not been a mere consideration before World War II, such as the need for trash management to accommodate for concentrated populations and wastewater treatment plants in popular cities (Hays 2000).

As a result of President Franklin D. Roosevelt’s New Deal, American society also witnessed a substantial growth in governmental action as a means to achieve social goals. The pressure to protect environmental resources became felt by politicians of both parties and on all levels of government. The Republican party felt especially torn about this new priority shared among the people, as “environmentalism risked antagonizing their traditional friends in the business community” (Landy, Roberts & Thomas 1990). While the forces of neoliberal ideals may not have been as apparent as they have become in recent decades, the influences held by neoliberal approaches on business’ behavior within the policy process had begun. Local governments heard most of the calls for help pertaining to the environmental concerns of the public, yet they lacked the administrative and technological requirements to respond. Samuel Hays

notes that cities often had difficulty combatting the high-funded research of industries with superior scientific and technical resources. States faced similar problems surrounding corporate involvement, as “their weakness was reflected in the degree to which they relied on representatives of industrial sources of pollution to shape and administer their programs” (Hays 2000). Citizens disliked seeing environmental resources harmed while local and state governments lacked the means to solve the problems. By the 1950s and 1960s, citizens began to seek a governmental remedy for the social harms caused by the deteriorating environmental health caused by large, wealthy polluters. This led to a federal role in monitoring and regulating environmental issues within Richard Nixon’s administration.

The Nixon Administration

Nixon won a close race in the 1968 elections where he claimed the presidency from the Democratic nominee, Hubert Humphrey and his running mate, Senator Edmond Muskie. Nixon made his policy priorities quite clear early on, especially within an address to his executives and campaign supporters, like those of Ford Motor Company. Settling the nerves of donors and setting the tone for his administration, Nixon declared, “Whether it’s the environment or pollution or Naderism or consumerism, we are extremely pro-business” (Daynes & Sussman 2010). By protecting business rights and reassuring an anti-regulation mindset, the neoliberal influence of economic factors immediately impacted Nixon’s actions in fulfilling his duty as president. The consideration of business and economic-wellbeing inevitably led to market-based solutions to social problems whenever economic growth or profitability was at risk. This neoliberal mindset

deeply influenced his policies and actions, especially in how he handled his political quests for reelection.

The California Oil Spill

Despite its underlying neoliberal ideology, the Nixon administration nonetheless raised the standards of environmental regulation to a level much higher than ever before. Environmental problems were becoming important and politically salient in states that accounted for a substantial number of votes in the electoral college, and Nixon was provided with an opportunity to prove himself to this environmentally aware audience just days after his 1969 inauguration. The hazards of oil-drilling leases granted and approved under Lyndon B. Johnson's Administration dramatically materialized during a catastrophic spill off of the coast of California. The Nixon administration immediately faced harsh criticism over the incident, as they took days to react politically in an effort to avoid "alienating traditional conservative allies." Efforts to avoid upsetting these conservative allies with a strict regulatory response concerning the problems offshore was prioritized over taking due-caution in handling the environmental damage of the leak (Flippen 2000). The newly appointed Secretary of the Interior, Walter Hickel, eventually traveled to the spill site as citizens became enraged that drilling was still ongoing while little was being done to stop the leak. Constituent outrage grew larger when Hickel did not demand an immediate injunction to temporarily halt drilling, but instead asked for a voluntary suspension of drilling in which only six of the companies complied (Flippen 2000).

In an effort to regain political support of the electorally important state of California, Nixon opted to join Hickel in California as the fury grew. J. Brooks Flippen argues that Nixon's actions

were carefully framed as a means to capture the attention of California citizens and the growing environmentalist movement: “Nixon, aware of the importance of California politically, waited for press photographers to arrive, and then promised action” (Flippen 2000). The next day, he and Hickel announced the complete suspension of drilling. Nixon, framing the issue for the American people to see, was able to announce his dedication to the environmental concerns through a national broadcast.

Craig Collins offers a discussion on the manipulation of environmental issues in directing and gaining public support. According to Collins, environmental problems rarely find themselves on the “front burner” of a president’s hot topics, like national security, economic growth, or foreign affairs. These issues, where the “action” of the administration is occurring, are more commonly the components of press headlines and what the administration is known for. Environmental quality and regulation, according to Collins, are instead “back burner issues” where action is typically not a priority unless a reputation-threatening disaster is imminent. Rather, administrations have historically preferred “peace and quiet” surrounding environmental problems and initiatives in an effort avoid the obligation of choosing between catering to citizens concerned about an environmental problem or the perpetrator, a potential monetary supporter, causing the harm. Collins notes that “instead of being at the center of national attention, [environmental] issues are supposed to stay off the evening news and fade quietly to the background.” These “back burner issues” are brought to the front burner if, and only if, absolutely necessary. This would be in times of actual crisis, like the events surrounding Three Mile Island, and in the opportunity to gain political capital (Collins 2010).

The Nixon administration's calculated response to the California oil leak was the first of many attempts to use environmental interests and policy responses as leverage for achieving other political goals. Following Nixon's seemingly genuine approach to solving the leak, skepticism grew surrounding just how genuine his actions were concerning environmental protection. While the administration argued that they had issued harsher regulations concerning drilling prior to releasing the drilling leases for resumption, the regulations faced no backlash from the industry. Traditionally, environmental regulations are met with industry protest and disapproval unless they make little real change. Responding to this apparent lack of industry opposition to Nixon's new regulations, by April, as drilling resumed, critics accused the administration of "waiting for the furor to pass and then continuing business as usual" (Flippen 2000). Once the media transitioned to other topics and citizens began to forget about the oil crisis that damaged California's beaches, drilling resumed and corporate profits began to flow again.

Democratic Senator Edmund Muskie, a long-time environmental advocate from Maine, promptly called for public hearings pertaining to the spill. This was one of many initiatives taken by Muskie that portrayed him as a threat to President Nixon's "business as usual" policies and future political endeavors. In the face of growing public awareness of environmental issues, Nixon needed to find a way to reel Muskie's initiatives within his own realm of control "because [environmental initiatives] affected his entire economic agenda" (Nelson 2014). As Russell Train, President Nixon's Chair of the Council on Environmental Quality, recalled, "Nixon always had Muskie on his mind," and for good reason (Flippen 2000).

Senator Muskie's long track record within senate subcommittees pertaining to environmental advocacy stemming back to John F. Kennedy's Administration rightfully made

President Nixon nervous. This advocacy, like his personal projects of the Water Quality Act of 1965 and the 1966 Clean Water Restoration Act, earned Muskie a favorable reputation with environmentalists that President Nixon lacked, a political deficit that might prove damaging to his hopes for reelection in 1972 (Landy, Roberts & Thomas 1990). Further intensifying the situation, as 1970 came to a close Muskie emerged as the Democratic party's top contender. In order to remain politically relevant in comparison to Muskie's strong environmental track-record, President Nixon strived to appease his "silent majority." Nixon's mainstream supporters, the "middle-class and working-class constituents," despite their hostility towards "anti-war, black power, New Left, and counterculture movements," surprisingly showed concern for environmental problems. Nixon's opportunistic approach was politically-calculated and not an isolated occurrence, as this resembled his overall approach to governing. Further, his strategy in an effort to "Split the Left" between the Keynesian, social Democrats and the Greens (who did not care about how the environment was protected as long as its health improved) paved the way for the development of a neoliberal, governing body of environmental concerns (Gottlieb 1993). This desire among citizens for environmental protection equipped Nixon with a political opportunity towards the end of his first term to cater to his supporters and maintain a competitive edge against Muskie's environmentally-friendly mantra.

The Election of 1972

Senator Muskie made stronger federal environmental regulations a primary cause throughout his entire career in the senate. He strongly pushed for the 1967 Air Quality Act, which required the states to establish and enforce air quality standards based on scientific evidence

established by the federal government. The standards and means of improvement would be subject to review and approval by the federal government. Muskie strongly urged this “slow and cumbersome” approach, as proceeding slowly would allow for change without largely disturbing any industries. As his campaign for the presidency continued, the public perception of the 1967 Air Quality Act was less than favorable since, in the three years following the implementation of the act, not a single state implementation plan was approved by the federal oversight group. The “incremental approach to pollution problems” within Act, to be reauthorized by Congress in 1970, was perceived as weak due to the reliance on states to implement any changes and correspondingly enforce them. Critics claimed that Muskie’s Act allowed states “to keep standards permissive and enforcement lax” in an effort to maintain and grow its industries, inhibiting the results Muskie promised. As his favorably declined among voters, Muskie was quick to blame the Nixon White House for its inadequate implementation of the Act while the administration saw a political opportunity to appeal to environmentally-concerned voters. Nixon and his administration proposed “a more ambitious legislation” than that of Muskie’s Senate Subcommittee as it urged national emissions limits and health-based ambient air quality standards, adding to Nixon’s legitimacy concerning environmental matters (Landy, Roberts & Thomas 1990).

Quickly following the public’s discontent surrounding federal air quality mandates, Muskie’s hope for the Democratic nomination came to a screeching halt after a “three-pronged attack.” First, congressional subcommittees on environmental matters became increasingly harsh in their scrutiny of the 1967 Act, leading to the drafting of legislation that was even “more stringent and ambitious than Muskie’s proposal” (Landy, Roberts & Thomas 1990). Second, a Ralph Nader study group concluded that the 1967 Act was a sell-out to corporate interests since it did not

endorse a complete overhaul relevant to environmental regulation. The report, *Vanishing Air*, was devastating for Muskie as it chastised his policy approach of divvying regulation responsibilities to the states rather than creating a national, uniform standard (Eposito 1970). Third, the Nixon White House's calculated decision to promote such ambitious legislation in air quality regulation stole the spotlight from that of Muskie. The Nixon Administration's air quality legislation, being even more stringent than that proposed by the subcommittee, was one of the administration's first steps in proving serious to the public regarding the nation's environmental concerns (Landy, Roberts & Thomas 1990).

According to Craig Collins, however, these hits to Muskie's political credentials were not enough to convince Nixon that the senator would not be a threat in the upcoming 1972 election. Collins argues that the EPA as we know it was merely a "political makeover" devised by President Nixon's chief domestic advisor, John Erlichman, to improve Nixon's political image. Muskie's weakness following the failures of and reforms to the 1967 Air Act allowed Nixon opportunity to act on *Time* magazine's newly named "Issue of the Year." Erlichman convinced the president to make a seemingly meaningful environmental move for the sake of the election while not ruffling too many feathers amongst his political support in the business community. Erlichman quoted:

You know, there's this idea in it. Pretty easy, sounds like. You take a bunch of water pollution stuff that's currently housed over in the Department of the Interior; some air pollution stuff that's in Health, Education, and Welfare; some radiation stuff over in the Atomic Energy Commission . . . Lump them all together, call it the Environmental Protection Agency. Won't cost a cent because we're already doing all this stuff. You just lump it all together and suddenly you're a player. (Collins 2010).

This statement outlines the maturation of the environmental policies that began with Nixon's responses to previous environmental issues, like the California oil spill. It encompasses a balancing act between maintaining a favorable public image surrounding environmental protection while still giving top priority to business profitability and economic growth (Landy, Roberts & Thomas 1990). In this particular case, the balancing act resulted in an executive order that established the Environmental Protection Agency in 1970 (Flippen 2000). The Environmental Protection Agency, dubbed by Collins as a "political vehicle," was in essence created for the sake of reelection rather than a momentous landmark in gaining rigorous environmental regulation. He further argues that, since implementing environmental regulation was never the true purpose of the agency, later presidents have followed in Nixon's footsteps in only utilizing the "vehicle" whenever political capital is needed (Collins 2010). Especially in this sense, Nixon treated relevant environmental policies as he did much of his other "back burner" domestic issues – "as a means to an end" (Milazzo 2006). By claiming the environmental momentum of the Muskie campaign for himself, Nixon turned the issue to his electoral advantage. Acting as a "political opportunist" rather than an environmentalist, Nixon viewed environmental protection as a "fad," but one with "political rewards" nonetheless (Layzer 2002). Through his calculated environmental strategies, Nixon outmaneuvered the dedicated environmentalist as he seized his reelection. In fact, President Nixon "prided himself on modernizing Republicanism to meet postwar complexities" and his environmental posturing, including those within his second term, was a critical part of the project (Brooks 2009).

Appointing Administrators

The creation of the EPA equipped Nixon with a managerial tool pertaining to environmental issues. Further, his choice of administrators of the agency further enabled him to use the EPA in ways that would further other areas of his political agenda. This appointment decision proves to be very important, as the administrator has the power to regulate very powerful and influential corporations on a national scale within the environmental sector. Born of political rather than environmental motives, from its inception the EPA has fostered a favorable climate for neoliberalism, especially in the role of chosen administrators of the agency. Collins characterizes the strategies behind the administrator appointments as consistent with the broader neoliberal mindset that began to influence governance following World War II (Collins 2010).

Collins argues that, historically, the EPA had been unable accomplish grand environmental goals “without stepping on some very influential toes” (Collins 2010). Under these neoliberal conditions, elected officials who sponsor and advocate for ambitious environmental regulations risk losing the political and economic support of affected businesses (Girdner & Smith 2002). Now, similar to the 1970s, one of the ways a politician might “court political suicide” is “to become too serious about their efforts to protect the environment” (Collins 2010). In an effort to avoid “political suicide,” presidents tend to strategically select administrators that will keep environmental problems at bay, milk “any small efforts on behalf of Mother Nature for as much positive press as possible,” and avoid angering corporations with any regulations that could impact their current or future profits (Collins 2010). This influence simply does not allow for democracy to work as it should. If democracy aims to govern in the best interest of the public good, including the health and well-being of the environment, then the neoliberal capture of environmental issues,

like those displayed within the origins of the EPA, signals a gaping democratic deficit. When a decision, like an appointment to a highly-influential leadership role, is made in the best interest of a political gain (or, maintaining job security, rather) and corporate well-being, the environment will come in last place every time.

After the creation of the EPA as a new executive branch agency, President Nixon, like his successors, was allowed a great bit of influence over the agency in the form of administrator appointments. Since President Nixon still had a bit of political incentive to maintain his appearance as an environmental advocate as the 1972 election drew closer, he needed to appoint an administrator that would appear serious to environmentalists while not actually causing too much economic harm. The appointment of William Ruckelshaus as the first EPA Administrator was part of a larger effort to maintain Nixon's momentum within the environmental sector while sustaining his corporate sponsorship. Already part of the Nixon White House as the Assistant Attorney General within the U.S. Department of Justice, Ruckelshaus was well acquainted with Nixon's ideology and neoliberal approach to policymaking (Layzer 2002). Ruckelshaus was able to "hit the ground running in order to convince the public that the Nixon administration was serious about environmental protection" despite being "viewed with suspicion by the Democratic majority in Congress, the anti-Nixon press, and the environmental community" (Landy, Roberts & Thomas 1990). During the first two months of operation, the Ruckelshaus EPA brought a substantial number of actions against "known municipal and industrial violators" of water pollution laws, as he predicted that enforcement would be the quickest, cheapest way to gain legitimacy from environmentally-concerned critics (Layzer 2002). The number of pollution cases tried and heavy

finer levied for noncompliance within that two-month period totaled more than five times the amount of cases in a similar timeframe before the agency's enactment.

By appearing to hold these polluters accountable, Nixon's administration looked quite favorably to those concerned with environmental issues in a way that drowned out the fury from recently charged corporations. It helped him to gain legitimacy in clinching his reelection and Ruckelshaus was gladly reappointed as administrator in the following term where his initiatives slowed drastically, specifically with skepticism surrounding the scientific credibility of the agency (Landy, Roberts & Thomas 1990). Not only did the strict enforcement cease after Nixon clinched the election, but it also directly impacted the way that corporations began to interact with government officials. It did not take long for businesses to respond to Ruckelshaus's brief span of enforcement efforts, as the number of corporations within Washington, D.C. with "public affairs" offices rose from 100 to over 500 between 1968-1978. Corporations began investing in politically savvy CEO's and involvement within the political process, through means such as lobbying and Political Action Committees (PACs), to help prevent harsh regulations impacting profitability (Layzer 2002).

Following the first few months of implementation under Ruckelshaus's direction, the EPA quickly accumulated the pressure of too many responsibilities, mixed-messages from President Nixon, and the "effective industry maneuvering" around their accountability within environmental regulations. The creation of the EPA pulled vast responsibilities from numerous other agencies and groups that resulted in an overwhelming amount of expectations from such a young agency. As the agency was compiled of many different groups, a cohesive goal was hard to establish without a complete structural overhaul of the agency. Conflicting objectives from those who were

previously from vastly different agencies were observable within botched policies since each group was still fighting to serve their own agenda. Coupled with little and conflicting direction from the White House, the EPA quickly fell victim to corporate influence that casted doubt upon the scientific legitimacy of their otherwise enforceable standards (Landy, Roberts & Thomas 1990). This process countered and delayed the creation and implementation of environmental regulations that caused significant gridlock within the agency shortly after its establishment.

Unlike Muskie, Ruckelshaus's environmental-advocacy record was mixed, especially following his first term as administrator. Soon after his first position at the EPA ended, Ruckelshaus had numerous business ventures that named him "a pioneer of the 'revolving door' policy between government and agency that would plague the EPA for decades" (Vallianatos 2014). A revolving door, or specifically a figure that uses a role in public service to further the desires of a corporation (creating a positive feedback loop), exemplifies neoliberalism at its core. In the case of the EPA, his actions as a revolving door proved to be toxic within his later role as administrator, as his corporate ties influenced his duty as a public servant to enforce environmental regulations fairly and adequately against violators. Ruckelshaus was named senior vice president and director of the Weyerhaeuser Company, one of the larger timber and paper product corporations in the nation with a long history of environmental problems. Shortly after his time with Weyerhaeuser, Ruckelshaus returned to the EPA as its Administrator under the Reagan Administration.

It was during this second stint in the EPA that Ruckelshaus had his greatest neoliberal effect upon the agency. Collins argues that Ruckelshaus's participation in a consulting firm hired by The Coalition on Superfund, aimed at weakening the Superfund law alongside popular

corporate polluters such as Dow Chemical, DuPont, and AT&T demonstrates a strong conflict of interest (Collins 2010). Ruckelshaus's corporate interests with the consulting firm knowingly impacted a regulation that traded Ruckelshaus's and the corporations' profits over the safety of countless toxic waste sites across the nation. The original Superfund law, realistically aimed to adequately fund the cleanup of 400 toxic and hazardous waste sites nation-wide, was eventually weakened insofar that successful cleanup stories hardly exist. In fact, the EPA is unable to merely predict a total cost or time for when the cleanups will be made since successful, comprehensive cleanups have been so rare (Situ & Emmons 2000). Unfortunately, this was only the beginning of conflicts of interests concerning Ruckelshaus's continued influence politically within the EPA and his involvement with large corporate actors.

Under the Reagan Administration, this behavior was not necessarily objected as the White House wanted to reduce policy-impact on businesses as much as possible. Reagan "sought to curtail implementation actions by the EPA, to reduce sharply the agency's budget, and to impose new cost-benefit tests for regulations" in an effort to support his "Reaganomics" approach to governing (Kraft & Kamieniecki 2007). By neglecting to enforce environmental statutes and rolling back environmental regulations, Reagan's attempt to allow the market to function without regulations exploited environmental goods and protection. The neoliberal influences of both Reagan and Ruckelshaus further perpetuated a neoliberal culture into American, environmental policymaking within the following administrations. As the Clinton Administration came to a close, Ruckelshaus took on a new business venture within the waste management industry. Former EPA employee William Sanjour noted Ruckelshaus's involvement with the country's second-largest waste management company, Browning Ferris. Appointed the company's CEO with a

salary topping \$1 million annually, Ruckelshaus was tasked with cleaning up the company's environmental image in the face of a \$70 million lawsuit from the EPA surrounding landfill violations within the state of Louisiana (Collins 2010).

Soon, Ruckelshaus served as George H.W. Bush's environmental advisor during his presidential campaign, where he had significant influence on Bush's choice of who would head the EPA during his administration, landing "his friend and protégé, William Reilly, as EPA chief, and his former employee, Henry Habicht, as deputy EPA administrator" (Collins 2010). With the help of Ruckelshaus's connections, the \$70 million lawsuit facing the Browning Ferris Company (and newly hired Ruckelshaus) and the EPA was settled for a mere \$1 million. Due to his ability to drop the charges for thousands of violations of environmental regulations against the company, Ruckelshaus was promoted to president and CEO of Browning Derris within the next month (Vallianatos 2014).

Ruckelshaus introduced the "revolving door" concept within the EPA at its birth. According to E. G. Vallianatos, the relationships between corporations and the agency's administrators continued in the Carter and Reagan administrations. Vallianatos explains:

The Carter administration's EPA administrator, Douglas Costle, became chairman of Metcalf and Eddy, a company offering consulting services on hazardous wastes. Steven Jellinek, assistant EPA administrator under President Carter, joined a pesticide lobbying firm and for years used his strong connections with EPA scientists and managers to get expedited approval of toxic sprays, especially those made in Japan. Lee Thomas, the EPA administrator in the second Reagan administration, became president of Law Environmental, another hazardous waste consultant. Rita Lavelle, who compromised

EPA's hazardous waste program in the early 1980s, also became a consultant to the industry dealing with hazardous wastes (Vallianatos 2014).

Expectations for the role of the agency within policymaking were established within the Nixon Administration with the help of Ruckelshaus. The neoliberal influence within its foundation has been observed through recent decades. One of the most influential precedents, however, includes the acceptance of a corporate relationship with an actor that has a responsibility for environmental regulation and the public interest. The "mutual back-scratching" of corporations and environmental policymakers impacts the ability to establish environmental policies with rigor and allows for excessive corporate input in how to deal with the environmental problems that they create themselves (Vallianatos 2014).

Ruckelshaus set many standards within the early days of the EPA that inevitably shaped the role of the agency within coming decades. Further, with the support of Nixon, Ruckelshaus and the agency ensured that the construction of the agency and its goals were catered to the needs of business. The agency adapted a standard of constructing and enforcing environmental regulations in ways that were "safe" for businesses and the political goals of the executive branch. In order to remain "safe" to businesses in particular, the agency was neoliberally shaped to operate within the confines of a market for the sake of avoiding any economic costs. Limiting the market with environmental regulations was never an option to policy construction for the agency, as its neoliberal essence were implemented at the agency's very core. As favorability towards freedom within markets and neoliberalism grew in popularity through the Carter administration, the role of the EPA continued mostly unchanged through administrations (Adams & Kavanagh-Baran 1979). As Steven Brill quipped in *Harper's* magazine, "if you liked Nixon, you'll love Carter," especially

following the “double-digit inflation and rising unemployment rates” of the late 1970’s (Brill 1976; Switzer 1997). As expected within a neoliberal system, voters clung to the idea of economic security, growth, and well-being while making their democratic decisions in the 1976 Presidential Election, further perpetuating the influence of neoliberal ideas within the following presidential administrations.

Neoliberal Influence within the Clean Water Act’s Creation

The Clean Water Act, one of the many environmental initiatives drafted by Congress during the Nixon Administration, was ostensibly meant to address the shortcomings of the 1948 Federal Water Pollution Control Act by implementing higher pollution standards and strengthening federal regulatory powers pertaining to the nation’s waterways. President Nixon, however, was not always onboard with Congress’s high ambitions, especially towards the end of the Vietnam War. President Nixon dubbed the 1970s as the time for environmental change as, in particular, water quality became a visible concern. He articulated that change must happen immediately, as it was “literally now or never,” but his actions surrounding the 1972 Clean Water Act did not correspond with his promises (Adler, Landman & Cameron 1993). Nixon was highly distracted with foreign relations issues regarding the bombing of North Vietnam and Cambodia, leaving the Clean Water Act low on the totem pole of items to tackle.

In particular, it was the Act’s heavy price tag that caused President Nixon to veto congress’s efforts. Nixon was thoroughly concerned about fiscal realities of the act, as the bill was going to cost Congress 3-times more than Nixon’s \$3 billion allowance. Nixon thoroughly opposed spending over \$18 million on the environmental cause in combination with the drastic societal and

economic impacts that full implementation of the bill would include (Adler, Landman & Cameron 1993). Offended by “the bill’s timetables and total disregard of economic costs,” Nixon tactically vetoed the bill on October 17th, Congress’s scheduled date for a 12-month adjournment (Layzer 2002). In his veto message, he stated:

I am also concerned, however, that we attack pollution in a way that does not ignore other very real threats to the quality of life, such as spiraling prices and increasingly onerous taxes. Legislation which would continue our efforts to raise water quality, but which would do so through extreme and needless overspending, does not serve the public interest. There is a much better way to get this job done (Adler, Landman & Cameron 1993).

To Nixon’s surprise, Congress was able to respond “with unusual alacrity,” as the Senate overrode Nixon’s veto by 52-12 within two hours of Nixon’s message. It did not take long for the House to follow suit, as they also overrode the veto by 247-23 the following afternoon (Layzer 2002). Despite Congress’s override, Nixon’s message clearly lays out the neoliberal assumptions of his approach to environmental policy, as he states that the economic well-being of constituents is a higher, more important service to the public interest than that of a natural resource. Senator Muskie realized this horrifying rationality in his response to Nixon’s decision, asking:

Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make possible life on this planet? Can we afford life itself? Those questions were never asked as we destroyed the waters of our Nation, and they deserve no answers as we finally move to restore and renew them. These questions answer themselves (Adler, Landman & Cameron 1993).

Despite overwhelming congressional support for the Act, President Nixon did not allow it to pass and be implemented without a fight. Even though Congress appropriated the funds for the implementation of the newly passed Clean Water Act, President Nixon utilized his discretion regarding the timing and importance of spending the funds. After the veto, President Nixon impounded \$9 billion of the Act's implementation fund for, what he argues, was a financial management technique used for the sake of slowing inflation (Nelson 2002). Even if this were the case, and he did not impound the money for the sake of attempting to control Congress, his prioritization of ensuring economic welfare continued the encouragement and validation of neoliberal approaches to policymaking. By ensuring that inflation would not increase drastically, President Nixon sent a strong message regarding his priorities of economic importance and environmental well-being that reflected accurately upon his environmental track record. Even though impounding was not a new strategy used by Presidents when forced to implement an act of Congress that they did not agree with, this case was quite severe and caught the attention of many. This case of impounding was challenged within *Train v. City of New York* [1975] 20 U.S. 35, where the U.S. Supreme Court ruled that the president had no authority to withhold the funds provided by Congress within the Clean Water Act of 1972. Not only did it force the president to spend the funds allocated (3 years late), but it set the standard for an intolerance of presidential impounding in the future.

Economic-Based Regulation & Their Flaws

Nixon's approach to environmental regulations incorporated a constant cost-benefit analysis of environmental improvement and economic costs. Further, the cost-benefit analysis

was heavily skewed towards maintaining economic growth and well-being, often leaving environmental regulations abandoned until their implementation would yield political betterment. This balance of economic costs and environmental protection has proven to be problematic in both theory and in practice. The purpose of instilling environmental regulations upon society is to incorporate the environmental costs of an activity within the activity itself, however within neoliberalism, incorporating these environmental costs is considered damaging to the function of the market system. When not incorporated within the costs of the activity, the environmental costs, or externalities, are shared communally and do not reflect back upon the producer of the harm in their profitability analysis. Thus, without the “true costs” of production incorporated, their calculations become skewed, and encourage continued production that otherwise, with the true costs incorporated, would be stopped due to it being too costly of an endeavor. Capitalism, and specifically neoliberal ideals, oppose all direct regulation that might impact how markets function, such as command and control mandates for compliance of environmental standards. In turn, market-based regulations become encouraged, as experts argue that they will create a market for environmental protection within itself, as they will serve as “instruments that encourage behavior through market signals rather than through explicit directives regarding pollution control levels or methods” (Hockenstein, Stavins & Whitehead 1997).

Robert Stavins, like many scholars, argues that instruments like tradable permits are able to encourage firms and polluting individuals to undertake pollution control efforts if implemented properly. The apparent advantage of market-based approaches to environmental regulation instead of command-and-control approaches is that these firms are self-motivated to participate in the market while simultaneously accomplishing policy goals (Stavins 1998). By incorporating the

environmental costs of production within the producer's costs, they achieve the environmental clean-up goals while the corporation remains as profitable as possible. Consistent with neoliberal ideas, economic-based policies are argued to maximize profitability while in compliance with standards as it minimizes the price to either reduce pollution production or pay to have the pollution cleaned up once it is produced. This indirect means of reducing the impact of production on environmental quality, however, does not change a producer's mindset regarding environmental harm. If the policy mandating the permits or market-based program were abandoned or no longer implemented, the producers are no longer motivated to implement their environmentally-safe production practices. Since the motivation is purely monetary, societal and corporate mindset has not fundamentally changed to view the harm of their practices on environmental well-being. By implementing the programs, the policy goal is achieved, but it is achieved in an artificial manner that requires infinite oversight and enforcement. As termed by Richard Schmalensee and Robert Stavins, market-based policies of this nature are "doing the right thing for the wrong reason" (Schmalensee & Stavins 2013).

As described thoughtfully by Sharon Beder, economic instruments come in two forms. First, price-based measures utilize fees and taxes in order to strive for fairer allocation of natural resources. In a system with price-based measures, a rate per unit of pollution would be mandated by polluters, such as a carbon tax. Within the market, a rational actor would determine the cheapest option for their operation: either paying the fee per unit discharged or improving their means of production to create less pollution. The second method, rights-based measures, allows for a set amount of pollution or "right to use environmental resources" that can be traded among participants within the market. The level of pollution allowed to be discharged is set by the

government and then the market allows the permits to be sold and purchased. Firms can decide to clean up their production to allow for less pollution (leaving some permits available to be sold to other firms) or they can use their allocated permits and buy unused permits from other polluters. This cap-and-trade concept was implemented within the European Union Emission Trading System in an effort to combat CO₂ levels and is currently the world's largest environmental pricing regime. The US is working towards implementing a similar approach to combat SO₂ emissions and curb acid rain problems worldwide (Schmalensee & Stavins 2013). The framework this market provides allows for cooperation in finding the cheapest pollution to clean up first instead of universal mandates (Beder 2006). Both of these approaches to environmental regulation engage a neoliberal mindset on multiple levels. These policies employ market-based solutions for policy goals in so far as the economic factors find it efficient enough to actually do so. The neoliberal influence is even more visible within the concepts behind tradeable permits as, while outsourcing environmental policy implementation to polluters, the policy encourages the profit of their modest environmental achievements.

Market, rights-based environmental tools in terms of the Clean Water Act were first implemented in §402 at the beginning of President Nixon's second term. The Act mandated that a level of acceptable pollution be set by the states in utilizing a Total Maximum Daily Load (TMDL) standard (Milazzo 2006). These standards set a ceiling for pollution amounts per day per receiving body of water from a point-source pollutant, like a specific factory's waste (Beder 2006). The EPA then used the state's TMDL to allocate the corresponding National Pollution Discharge Elimination System (NPDES) Permits to the water's polluters for each individual body of water or watershed. While the EPA allows the trading of NPDES Permits, water is highly traceable

which leaves trading a bit more tedious than permits where the discharges are not geographically limited, like within the Clean Air Act, for example (Beder 2006). Because water pollution is generally limited to a specific ecosystem and watershed, trading must be completed within a specific watershed or the clean-up and pollution levels of different bodies of water will not be uniform, as it should be under TMDL assessments.

Beder articulates the inabilities of economic-based policies to accomplish environmental goals adequately in *Environmental Principles and Policies*, outlining five characteristics of market-based policies that make them incompatible with rigorous environmental policies. As these policies aim at harnessing profit-seeking and economic efficiency to solve policy problems, they reiterate the neoliberal culture that spawned them by encouraging fiscal and business priorities over that of human and environmental health.

First, Beder asserts that the foundations of economic-based policies, like the EPA itself, were not built with the goal of environmental protection, advocacy, or well-being in mind. Rather, these policies situate environmental goals within the constraints of economic values (Beder 2006). Pertaining to TMDL levels, Collins articulates this weakness extraordinarily well. He argues “that pollution limits are not set to protect public health or maintain the ecological welfare of a given body of water. The degree of restriction imposed on a contaminant is not based on the dangers it poses. Instead, discharge limits are based on the cost of reducing a particular contaminant, given the types of treatment technologies available” (Collins 2010). These economic-based policies are not set with the environment’s best interest in mind, but instead they base the tax amount or permit levels on how much the technology costs for clean-up of either the production practices or the aftermath’s damage. While this could potentially achieve the policy goal if current technological

capacities are adequate and are implemented properly, it allows the entire premise of environmental regulation to be based on the priority of doing what is cheapest or most profitable instead of what might be necessary for environmental safety (Beder 2006).

Secondly, economic-based policies prioritize a business's right to profitability over the rights of individuals and communities to clean air or water. While not a common outlook upon human rights, Wendy Brown captures Michael Ignatieff's message thoroughly within *The Most We Can Hope For*, as he says "All that can be said about human rights is that they are necessary to protect individuals from violence and abuse, and if it is asked why, the only possible answer is historical" (Brown 2004). By neglecting to protect human rights as they are exploited for the sake of corporate profitability, economic-based policies put an instrumental value on a sector of human rights. This flaw impacts the mindset in which further policies are built upon, creating a slippery slope for poor policymaking. Economic-based policies encourage economic evaluation concerning cost-benefit analysis where human rights are given a monetary value and the analysis often allows for the sacrifice of those rights for the sake of a money-making venture of a business. This is showcased in programs like the tradeable permits, where economic well-being of business owners and polluters are given priority over what science determines is necessary for clean water.

Beder's third argument transitions from her second, as she asserts that there is a sheer lack of scientific understanding about how the Earth handles pollution, and in turn, what a "safe" level of pollution is. Tradeable permits, specifically, are based on mere estimates that are widely disputed and speculated. The environment's capacity to handle toxins produced and emitted by human activity is highly uncertain, yet policymakers wager on assumptions regarding this ability in deciding how much pollution is an acceptable amount approve and release (Beder 2006). In the

case of policies that charge fees per emittance, like carbon taxes, there is a lot of doubt surrounding if the money charged can actually correct the environmental damage caused by the practice. Not only is the money often used for other areas of government, but the price of the harm often is outweighed by the price paid by the polluter (Beder 1996). Paul Milazzo addresses these uncertainties, noting that policymakers “implicitly accept the idea that waterways will continue to absorb urban industrial wastes” but neglect to consider the uncertainties of the waterways pollution-capacity (Milazzo 2006). Not only do these policies violate the basic human rights of the citizens impacted by declining environmental quality, but these rights are abridged on the strength of mere *guesses*, not confident, widely-accepted scientific research. Landy, Roberts, and Thomas claim that the EPA has knowingly chosen to act based on uncertainty in dealing with programs like RCRA: “the EPA ultimately chose to impose quite modest requirements, but no one really knew what the public health consequences would be” (Landy, Roberts & Thomas 1990). Alternative precautionary approaches to environmental policy and regulation have been eschewed because they would impair the ability of businesses to maximize immediate production and profits. Without scientific justification that profits are being sacrificed within higher and stricter standards for actual environmental betterment, businesses often reject precautionary approaches.

Fourthly, market-based policies perpetuate neoliberal behavior within power and social relations. Polluters are still able to make money while (current and future) citizens across the globe share the impacts of their behavior. Furthermore, a vast majority of these businesses have a lot of money which allows them to “buy up entitlements, pay the highest charges, and exert most control over natural resources” (Beder, 2006). When this is coupled with the ability to remain profitable, this externalizes the (environmental) costs of the private entities’ production upon the community.

Without internalizing the costs of environmental harm adequately, a business will still view polluting as profitable. Since businesses will always go with their cheapest options to produce, they will not vacate practices causing environmental harm until it is too expensive to do so (Speth 2008). Further, these market-based solutions to environmental problems result in benefiting the market's most powerful market participants, usually businesses. This allows for the continuance of polluting as long as a penalty is paid while also accumulating the fiscal means necessary to remain active in the political process for the sake of preventing any additional regulations that may infringe upon profitability. Political involvement can not only influence the implementation of new policies, but it can also influence the permitting and "safety" levels set by the government. The markets do not have the slightest chance at solving any environmental problem if the participants are able to sway where the levels of each standard are set. With lower standards and laxer limits, less changes in the production process needs to occur, making permit prices decline as the demand for them drops (Beder 2006).

Finally, Beder argues that economic-based instruments require the commoditization of natural resources within the economic system instead of an economic system fitting to the constraints of natural resources. By conveying values to natural resources for the sake of determining supply and demand, the artificial appraisal of this value assumes "that parcels of nature can be bargained away like so many pork bellies without serious consequence" (Beder 2006). Martin Heidegger agrees with the impacts of assigning value to environmental goods, especially in the form of implementing market-based policies, as it encourages a view of the world that assigns natural resources to a role of a "standing reserve" for production and furthering economic growth. This commoditization puts a price tag on the right to pollute, in the case of the

Clean Water Act, a body of water that is shared by the public. The right to clean water and the right to pollute that water are assigned a monetary value for the sake of a cost/benefit analysis by regulators. Further, the market does not account for the rights of future generations or the irreplaceability of natural resources (Speth 2008). If an irreplaceable resource is completely consumed, the cumulative loss of these resources threatens human health for generations to come. This implication is simply incomparable to the temporary, privately-held wealth that market sometimes generates at the current time.

Neoliberal approaches, like that of market-based policies, do not tackle the problems of environmental harm at their core since they constantly incorporate economic factors within their structure. By considering economic well-being and harm, they not only preference profitability over human rights to environmental sources, but they allow for pollution despite the unknown environmental damage that it can cause. A neoliberal mindset inhibits policy approaches, such as injunctions of production practices, that may be what is best for human safety and environmental health despite the economic losses they could entail.

Deadly Distinction: Point and Nonpoint Source Pollutants

The impacts of a neoliberal mindset is quite evident in one of the EPA's first and most important regulations, the 1972 Clean Water Act. There were a lot of considerations in designing the Act, its scope of regulation, and any exemptions that would be included. As expected under within a neoliberal mindset, the Act was constructed with many economic implications in mind. Specifically, the differentiation between point source and nonpoint source pollution held large implications in determining the act's scope, especially pertaining to mining activities, agricultural

and city runoff, and construction practices. The Clean Water Act allows for the regulation of point source pollutants, such as a distinct pipe or ditch that discharges pollutants from a particular farm or industrial plant, however the Act was passed with an exemption for the emission of waste that “could not be traced to any discrete source” (Milazzo 2006).

During the act’s construction, ideas such as requiring states to implement controls on nonpoint source pollutants were considered briefly before being severely shut down. As expected within a neoliberal system, the Act’s framers focused more on the ease of implementation and degree of economic impact instead of the environmental need for regulation. The runoff levels from urban and rural communities at the time of the clean water act “contained a substantial-enough load of nutrients, pesticides, and other chemicals to render almost any waterway in violation of federal law” since the national standards were ambient ones (Milazzo 2006). Congress worried, however, that the economic impact of strict nonpoint regulations would be too harmful as “small farm communities would bear a crippling financial burden if mandatory nonpoint controls were instituted” (Milazzo 2006). With extensive lobbying by agricultural, forestry, and other industries, nonpoint source pollutants were differentiated from the more highly-regulated point source pollutants, with the agricultural industry (itself a major source of nonpoint pollution) receiving a distinct exemption within the Act itself. By allowing for the exemptions, the act lost its ability to regulate those industries for the sake of not hurting their business or ability to remain profitable (Switzer 1997). What the history and structure of the Clean Water Act demonstrates is how neoliberal ideologies crippled the attempt to impose regulation upon polluting corporations. In particular, Judith Layzer summarizes the neoliberal influences over Congress’s decision:

Thus, on the one hand, the business backlash was effective: by the late 1970's, Congress had substantially weakened the requirements of the Clean Air and Water Acts. On the other hand, both laws survived, and both they and the EPA itself continue to enjoy broad public support. (Layzer 2002).

Economic costs, such as the costs of technology, monitoring, and loss of profits of businesses directly caused Congress to make the non-point source exemption. Businesses were able to convince Congress that including nonpoint source pollutants in their new, strict, regulation would cripple their industries and cause economic despair to citizens nation-wide. By making the exemption, however, countless waterbodies have been afflicted with pollution that otherwise could have been regulated under the standards of the Act.

Conclusion

The EPA is built upon a flawed foundation that is so heavily influenced by corporations that their policies cater to their interests rather than that of environmental interests. As neoliberal ideals afflicts environmentalism as a whole, neoliberal ideologies have been built into the EPA's foundation since its origination under Nixon. The constant drive for profits within a neoliberal mindset has convinced policymakers and citizens alike that market-based approaches are fair and effective means to combatting social problems, like environmental harm. These approaches, however, still prioritize the social good of economic-wellbeing over that of other social goods and the protection of human rights to environmental health as a whole. Specific to the Clean Water Act, one of the EPA's prized regulations, electing for NPDES permits are not only environmentally dangerous but furthermore ineffective, especially with exemptions made pertaining to types of

pollution from particularly powerful industries. Neoliberal approaches have driven policies like NPEDS permits to be viewed as socially acceptable, when these policies are actually, in practice, incapable of accomplishing any substantial environmental improvement that would equate to environmental sustainability. Chapter 3 will be hosting a case study surrounding the Clean Water Act's success pertaining to the health of the Chesapeake Bay despite numerous fundamental flaws based in capitalism and neoliberal thought.

Chapter 3: Case Study—The Chesapeake Bay and the Clean Water Act

The Chesapeake Bay, a 200-mile long body of water, is North America's largest and most biologically diverse estuary (Ribado, Savage & Aillery 2014). This single case-study analyzes how the neoliberal-driven, non-point source exemption in the Clean Water Act has impacted regulatory efforts to maintain the Chesapeake Bay's health. The Chesapeake Bay and its watershed serves as a critical case in this area of study as it can serve as a critical test of a theory surrounding the impacts of the exemption (Yin 2014). If the Bay, the largest of the United States' 850 estuaries regulated by the Clean Water Act, is impacted by the exemption, there is reason to suspect that many of the other water bodies under the Clean Water Act's care are also impacted.

Introduction

The Bay and the Watershed

An estuary, such as the Chesapeake Bay, is a fairly unique body of water, known as “where the river meets the sea,” hosting a mix of both fresh and salt water (What is an estuary? 2015). This estuary, being the third largest estuary in the world, holds over 18 trillion gallons of water, received partly from the Atlantic Ocean and partly from its massive watershed (Facts & figures 2012). The Bay's watershed comprises a total of 6 states, including Maryland, Virginia, West Virginia, Delaware, Pennsylvania, and New York, and Washington, D.C., totaling over 64,000 square miles of land. This watershed contains several major metropolitan areas, including Baltimore, MD, Harrisburg, PA, and Richmond, VA (Chesapeake Bay watershed 2012). Over

17.9 million people resided within the watershed in 2014 and the population is expected to increase, as 150,000 people move into the watershed annually (Chesapeake Bay 2015).

The watershed itself holds over 100,000 creeks, rivers and streams that feed into the bay's 419 tributaries (Facts & figures 2012). Coupled with the watershed's estimated 2,700 plant and animal species, the area constitutes one of the most unique ecosystems in the world. These 419 tributaries include the Susquehanna River, Potomac River, and James River, which provide the bay with 80% of its freshwater (Chesapeake Bay 2015). Coupled with these larger rivers, the tributaries provide the bay with 51 billion gallons of freshwater daily (Facts & figures 2012). The 444-mile long Susquehanna River, originating in upstate New York, singlehandedly provides the bay with freshwater on an average of 19 million gallons per minute (The Susquehanna River 2016). These tributaries, coupled with the bay, comprise a surface area of 4,480 square miles, nearly twice the size of the state of Delaware (Delaware geography 2015). Furthermore, they yield an overwhelmingly large shoreline of 11,684 miles, which is longer than that of the U.S. West Coast (Facts & figures 2012).

The bay's ecosystem is no doubt unique and ecologically important. The wide array of finfish and over 173 species of shellfish call the bay and its tributaries their home. Not only is there a vast variety in water-species, but over 29 waterfowl species rely on the Chesapeake every year, with an estimated one million waterfowl that winter on the bay (Facts & figures 2012). The Bay is also economically important for local residents, specifically the seafood industry. Over 500-million pounds of seafood are harvested from the bay annually. This provides thousands jobs and millions of dollars in income to the area. A 2009 report showed that the Virginia and

Maryland's seafood industry earned \$3.39 billion in sales, yielding to \$890 million in income and providing an estimated 34,000 jobs to the local economy (Economic importance of the bay 2009).

Agriculture serves as another large industry within the watershed, as 10% of those 64,000 square miles is comprised of cultivated cropland (Ribaud, Savage & Aillery 2014). Cultivated cropland is ordinarily understood to include all land that is prepared or used for the sake of growing plants under human control and direction. The farms raising solely crops within the watershed make up about half of the 84,000 farms within the watershed. Coupled with the livestock and poultry industry (~42% of the farms), agriculture within the watershed produced over \$9 billion in sales in 2007 alone (Ribaud, Savage & Aillery 2014).

Over 6,000 industrial facilities and sewage treatment plants were established within the Chesapeake Bay Watershed by the late 1980's and it is estimated that the number has only increased since (Chesapeake Implementation Committee 1988). Ship building and repair are prevalent industries along the water's edge, while extractive industries such as mining are quite common in the inland areas of West Virginia, New York, and Pennsylvania. A 2012 report showed that employment within West Virginia's 184 active mines comprised of 10.5% of the state's jobs, yielding a 17.4% increase in GDP (Economic contributions of U.S. mining 2012).

The total economic worth of the industries directly related to the Bay, like tourism and fishing, topped over \$1.14 trillion in 2011 (Ask a scientist 2011). Within the watershed, growth of cities, suburbs, and industries such as agricultural practices and mining have sped drastically in recent decades and is expected to keep expanding. The Chesapeake Bay is thus ecologically and economically vital to both the region and the globe. Maintaining this "national treasure" is

important to the citizens surrounding the bay, but the massive watershed and industries impacting its health proves to be difficult in constructing adequate policies.

Pollution and the Research Question

Despite over 40 years of water regulation and quality protection under the Clean Water Act, the Chesapeake Bay is still failing many pollution assessments. The construction and implementation of the act has failed to meet national water quality benchmarks and deadlines, causing federal governmental interventions like TMDL implementation. In an effort to gain understanding about why the Act is not achieving these goals, this case study analyzes how Congress's exemption of non-point source pollutants from the 1972 Clean Water Act has impacted the Chesapeake Bay's health.

Specifically, this case study asks: how has the neoliberal, non-point source distinction within the Clean Water Act impacted conservation and pollution clean-up of the Chesapeake Bay? I theorize that the Clean Water Act's non-point source exemption has likely had no positive, and potentially even a negative, impact on the health of the Chesapeake Bay.

Literature Review

Industry Impacts of the Exemption

As Jacqueline Vaughn Switzer has extensively discussed in her book *Green Backlash*, the EPA's exemption of non-point source pollutants left a lot of responsibility to the states in improving water quality. Her analysis discussed the impact of the Clean Water Act (33 U.S.C. 1251 et seq.) and the subsequent State Nonpoint Source Management Program (Clean Water Act

§319). Congress made this amendment to the act in 1987 as the water quality benchmarks set within the 1972 Act were not being met (Switzer 1997). The agricultural industry is mostly exempt from the Clean Water Act's provisions, particularly in reference to what kind of pollution is regulated as a "point source" pollutant under the National Pollutant Discharge Elimination System (NPDES) permit program. The specific exemption for agricultural operations is listed within the Clean Water Act's §502(14) definition of a "point source" as:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

While the definition includes concentrated feeding operations (CAFOs), the agricultural storm water exemption does not allow for regulation of agricultural fields and cultivated lands. Switzer explains, "Nonpoint sources include runoff from fields or feedlots for livestock that contaminate water supplies." Unless the agricultural operation meets the conditions of being a CAFO (as determined by the EPA), the operation is, for all intents and purposes, unregulated on a federal level. This distinction was made, according to Switzer, in an effort "to focus the government's attention to more identifiable sources of water contamination" (Switzer 1997). However, when Congress saw that pollution levels were not improving as fast as they had hoped, they issued the State Nonpoint Source Management Program in the 1987 Amendments to the act. This shifted the responsibility of managing non-point, storm water runoff onto the States. Despite the Act's newest provision and corresponding implementation plans, "the EPA has identified agriculture as the

leading source of water pollution in the United States, causing river impairment, species endangerment, and fish kills” (Switzer 1997). Switzer leaves little room for doubt that “farmers have benefited” from the focus on point sources of pollution, “differences in the way each state reports its watershed health that lead to inadequate water quality data, discontinuity and lack of federal funding, and institutional conflicts” (Switzer 1997).

Sheldon Kamieniecki also addresses the issue of point and non-point pollution, concurs with Switzer’s observation of the need to focus on point source pollution due to its observability, as he argues that practices were primarily put in place within urban areas “where the needs and the problems were the greatest.” While some people in rural areas were upset that their areas were not receiving any enforcement, he acknowledges the opposition of agriculturalists regarding non-point source pollution and dredge and fill materials. These interests, according to Kamieniecki, were the ones catered to in the 1977 amendments of the act where no changes were made regarding the point source exemption, as those revisions dealt “directly with the needs and problems of small communities, rural areas, and agriculture” (Kamieniecki 1980).

The exemptions are further felt in other industries, according to Judith Layzer. She identifies non-point pollutant sources to include “farmlands, city storm sewers, construction sites, mines, and heavily logged forests” which have quite harmful impacts on water quality (Layzer 2002). Despite the pollution originating from a wide variety of sources, the harm to water quality is just the same, as “runoff from these sources contains silt, pathogens, toxic chemicals, and excess nutrients that can suffocate fish and contaminate groundwater” (Layzer 2002). Even though the point source pollutants are regulated, Layzer argues that the majority of US waterways will not be

able to accomplish adequate water quality goals with exemptions for large industries in place (Layzer 2002).

The exemptions benefit the profitability of a variety of industries, and some, like the fracking industry, have aimed to further their exemptions. For example, in the 2000s, Dick Cheney was thoroughly criticized by environmentalists during his time as Vice President when he was able to help Halliburton, a company in which he previously served as CEO, achieve an exemption for the fracking industry in the Energy Policy Act of 2005. Ernest Zebrowski and Mariah Zebrowski Leach explained the implications of this exemption thoroughly in *Hydrocarbon Hicksters*, as they discuss how Vice President Cheney used his Energy Task Force to create the exemption (Zebrowski & Leach 2014). Further, despite the industry claiming that it is safe for the environment, oil and mining activities contribute to a lot of water quality issues, like toxins present in bodies of water and the generation of more run-off. The exemption, known as the Halliburton Loophole, not only exempted these activities from The Safe Water Drinking Act of 1974, but also the Clean Water Act (Zebrowski & Leach 2014). For the purpose of this case study, it will be important to keep these exemptions in mind in terms of how these regulations have changed accountability and discharge amounts within these industries.

Clean Water Act Goals, Actions, and Results Concerning Non-Point Source Exemptions

In *Poison Runoff*, Paul Thompson addresses the Clean Water Act's goals and the implication of this exemption. He relates the ability of the Clean Water Act to achieve its fundamental goal of restoring and maintaining "the chemical, physical, and biological integrity of the Nation's waters" and the inability to manage the non-point source runoff. The original act

established the national goal of “eliminating the discharge of *all* pollutants into the nation’s waters by 1985,” with measured improvement of water quality based on water quality standards of the state (as Clean Water Act §303 dictates). According to Thompson, Congress gave the states considerable discretion in setting these “State Water Quality Standards,” with 2 requirements. First, water quality for the protection of fish and wildlife needed to be achieved by 1983 (popularly known as the “swimmable and fishable” requirement), and secondly, the water quality criteria needed to be based on scientific factors instead of technological feasibility. With the need to control non-point sources in mind, Congress first began delegating this job to the states through §303(d) of the Clean Water Act, where Congress specified that considerations of just point source pollutants in setting water quality standards were no longer acceptable. States must identify a Total Maximum Daily Load (TMDL) of pollutants in order to achieve applicable water quality standards including a margin of safety. These TMDLs must then be used, according to §303(e), in a “continuing planning process” that, along with the TMDLs themselves, were subject to EPA review. The intention of state control of non-point source pollutants was furthered in §208 according to Thompson, who argues that toxic runoff from a number of sources (like agriculture and mining) must be managed by the states under that portion. The EPA even published guidelines for identifying non-point source pollution and potential methods for combatting them. The EPA also “dispersed funds to designated state 208 planning agencies.” These provisions are crucial as they identify the state’s role in carrying out Congress’s intentions. Thompson summarizes the regulatory framework in these terms:

Under EPA’s regulations, states not only must identify water that do not meet water quality standards are and determine by how much those standards are exceeded; they also must

allocate allowable loadings between point sources/natural background sources, and further must distinguish nonpoint sources from natural background wherever possible. And the regulations further require states to allocate controls on pollutant loadings among WLAs [Waste Load Allocation] for point sources and LAs [Load Allocation] for nonpoint sources (Thompson 1989).

Thompson argues that the implied responsibility of the state's role in managing the non-point sources of pollution is further recognized within the EPA's means of regulating the plans themselves, as the states must also create and implement "Best Management Practices" in order to achieve the goals of §208. Here, §208 dictates under *Nonpoint Source Management and Control*:

The plan shall describe the regulatory and non-regulatory programs, activities, and Best Management Practices (BMPs) which the agency has selected as a means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals (40 CFR §130.6(c)(4)(ii)).

Where non-regulatory programs were not satisfactory to meeting the state's goals, the state was to resort to regulatory programs. Thompson argues that this deferral to the states was not successful in achieving the act's initial goals, as "areawide plans were not effective, and poison runoff generally remained unchecked" after implementation. Thompson asserts that Congress and the implementers at the EPA were too concerned about planning and not strict enough about implementation of the plans, especially when it came to non-point sources. He argues, "While the CWA [Clean Water Act] clearly required compliance with water quality standards regardless of

whether pollution derived from point or non-point sources, no specific controls were mandated for non-point sources, as they were for point sources” (Thompson 1989). While states have the authority to control this runoff, Thompson argues the regulations did not require them to do so. He claims that this was a blatant failure of the EPA to carry out its administrative duties, since the Agency had the ability to “punish” states that did meet regulatory goals. According to CWA §303(e), the EPA can withhold approval of NPDES permits for a state with insufficient §208 plans, those including non-point source runoff. Regulating the non-point source pollutants proved to be tricky, as the omission of non-point source pollutants was coupled with funding restrictions from Congress, and any regulations implemented to control non-point sources had to come from state budgets. Thus, if it was not a requirement, it is understandable why states were not as quickly to act upon them. When further funding was proposed by Congress in the 1987 amendments during the Reagan Administration for §208 programs (\$400 million over 5 years), the “EPA did not support any federal grants to state or local non-point source management officials” and President Reagan himself actively opposed the provision (Thompson 1989). Thompson’s insights make it important to analyze the role of the states’ within the Chesapeake Bay watershed and how they handled water quality goals surrounding the bay. Thompson concludes, “In light of this lethargic EPA attitude towards implementation of the 208 program and other efforts to control point runoff, it is no wonder that the pre-1987 law was not effective.” Further progress in reducing this pollution, according to Thompson, has been very slow (Thompson 1989). While the data informing Thompson’s analysis are a bit outdated, his analytic framework is valuable in the attempt to reconstruct the history and fundamental values of the Clean Water Act and the states’ roles in non-point pollution control.

Judith Layzer agrees with Thompson's association between the role of the President and Congress and the corresponding hurdles the Act encountered. Since the EPA neglected to employ all of the enforcement tools they had available to them, it crippled the idea behind the command-and-control principles of the Clean Water Act and its sibling act, the Clean Air Act. According to Layzer:

The command-and-control approach, which imposed uniform emissions standards on polluters, reflected the moral and political framing of the environmental issue: industrial polluters had caused the problem, and neither they nor government bureaucrats could be trusted to reduce pollution unless tightly constrained by highly specific standards and deadlines (Layzer 2002).

The Clean Water Act was initially weakened by the distinction between the non-point and point source pollutants, however the EPA's lack of enforcement further harmed its abilities to accomplish its goal. Coupled with the influence of Congress and the Executive Branch, implementation and enforcement of the Clean Water Act struggled from all angles. Layzer further argues that the Act "encountered hostility from the president, who wanted to weaken implementation of the law, as well as from its overseers in Congress, who berated it for failing to move more quickly." It is no surprise then that the Clean Water Act was not as successful in its implementation as hoped. Layzer concludes that "water quality modeling by Resources for the Future suggests that the Clean Water Act has had only modest impacts on water quality," which reflects the expectation due to the behavior of the agency, the states, and Congress and the President alike (Layzer 2002).

Ruth Patrick cites the successes the Clean Water Act has in cleaning up the Chesapeake within this study, especially in the realm of point source pollutants (Patrick 1992). Specific to the Chesapeake, John Talberth, Mindy Selman, Sara Walker, and Erin Gray assert that “significant reductions in pollution discharges from sewage treatment plants, factories, and other point sources have been achieved in the Chesapeake Bay watershed in the 1970s.” They allude to further reductions to be achievable with non-point source reductions, as “point sources are not the only problem” (Talberth *et al.* 2014). It will be important to assess the improvements of the act in the Chesapeake based upon whether the areas of improvement are in terms of reduction in point source or non-point source pollution levels.

Methodology

With this literature in mind, I will be utilizing a variety of resources to assess the implementation and effects of the CWA with respect to the Bay. These resources, such as government documents, records and websites; scientific studies, assessments, and reports; and resources published by non-profits will be implemented within this study. In order to fully assess the research question, I will answer a series of 4 smaller, incremental questions that should help ensure that no vital considerations were missed.

- What policy efforts have been aimed at the Chesapeake Bay, specifically?
- What changes has the Chesapeake Bay Watershed faced since the act and exemption was implemented?

- Has the health of the Chesapeake improved since the exemption was made (1972)? Specifically, what areas of the Bay's health saw improvement and what areas are still troubled?
- Would the Bay's most problematic pollutants be regulated under the Clean Water Act without the exemption in place (i.e., are the pollutants present within the Bay considered non-point source pollutants that, without the exemption, the Federal Government could regulate)?

Results

What policy efforts have been aimed at the Chesapeake Bay, specifically?

All of the states within the bay's watershed held responsibilities in developing State Water Quality Standards and corresponding implementation plans (Thompson 1989). Many of the state's programs relied heavily on federal funding through the incentive-based and voluntary approaches taken to combat pollution problems (Ribado, Savage & Aillery 2014). In order to entice pollution reduction, many states relied on funding from Congress to allocate subsidies for minimizing private costs of reducing emissions. These subsidies were handled through the USDA and their conservation offices, where Congress cut \$500 million worth of funding for these projects within recent fiscal years. State efforts in the form of subsidies faced heavy criticism once they did not work as well as planned. Critics, such as advocates for strict water quality regulations, disliked how subsidies were not directly targeted at reducing nutrient pollution. Not only was this a voluntary approach to combatting the problem, it did not involve any penalties for polluters that did not reduce their emissions. This "all carrot and no stick" approach to reducing the nutrient

runoff held no consequence for those who continued to pollute (Talberth *et al.* 2014). Nutrient pollution, like that of excess phosphorus and nitrogen, is a common externality of the agricultural industry that causes significant problems in waterways. Additionally, critics dislike the use of subsidies in developing agricultural Best Management Practices (BMPs) as they can be used to instill a wide variety of programs that may not always reduce nutrient runoff amounts. Additionally, the programs implemented by the subsidies are not managed on a watershed level, but more-so on a state level where the funds are managed. These subsidies are given out on a first-come, first-served basis instead of being geographically targeted and managed based on the region and relationship to the watershed to ensure “the greatest return for each dollar spent” (Talberth *et al.* 2014). Due to the funding constraints of the programs and uncertainty of their successes, many critics wanted something like a “nutrition tax” instead, except major pushback from involved industries prevented states from implementing those types of programs (Talberth *et al.* 2014).

Seeing as the Chesapeake Bay is the largest estuary in North America and in most policymakers’ back yards when they are doing work in Washington, D.C., the Chesapeake Bay earned special attention from the EPA and Congress. Coupled with ineffective state measures, the inability of the Chesapeake Bay to meet the Clean Water Act “clean water standards” drew national attention. This was first observed through the Chesapeake Bay Agreement of 1983, an effort to recognize the need to help the bay between the EPA, Maryland, Pennsylvania, Virginia, Washington, D.C. (The history of Chesapeake Bay cleanup efforts 2016). The aim of this coalition was to set nutrient and sediment reduction goals, but it also developed implementation strategies that encompassed purely voluntary approaches (Ribuado, Savage & Aillery 2014). This agreement was renewed again within the Chesapeake Bay Agreement of 1987, where the governments aimed

to reduce 40% of the nutrient pollution within the Bay by year 2000. The Agreement was further amended in 1992 to include the major rivers leading into the bay, as meeting the 40% reduction goal otherwise became doubtful (History of the commission 2015). The USDA involved itself in the efforts in reducing agriculture's negative impact on the water quality, and while there were some reductions in nutrient and sediment loads, the results were not substantial enough to achieve the overall goal by 2000, as the biological health of the Bay remained "poor" (Ribuado, Savage & Aillery 2014). The Agreement was yet again altered in 2000 when the 40% reduction goal went grossly unmet. New York, Delaware and West Virginia joined the clean-up efforts, where the members set a new goal of meeting the 40% reduction (specifically in nitrogen and phosphorus) and aimed to remove the bay from the Clean Water Act's "dirty waters list" by year 2010 (The history of Chesapeake Bay cleanup efforts 2016).

The watershed states had developed "Tributary Strategies" that outlined basin-specific implementation activities to reduce overall sediment loads. The efforts to reduce non-point sources, however, were purely voluntary approaches. In 2007, these local initiatives were reported as having "insufficient progress" toward reducing the load reductions. As 2010 approached, only 18% of the bay's tidal waters met the Clean Water Act's standards concerning dissolved oxygen and over half of the bay's streams received a "poor" health score at recorded monitoring sites (Ribuado, Savage & Aillery 2014).

William Baker, CEO of the Chesapeake Bay Foundation, had the opportunity to speak to the Subcommittee on Water and Wildlife within the United States Senate in early 2009. He pleaded for a group effort in managing pollution into the bay as the state plans were just not adequate, echoing the assessment of a *Baltimore Sun* headline, "The Bay is Dying, Scientists Say."

According to Baker, the states rejected a commission where the states would hand over their jurisdiction of handling water quality issues in 1982. The states opted to handle it amongst themselves in the Chesapeake Bay agreement of 1983, instead. This “multi-state/Federal team” clearly did not work, according to Baker as it was “simply a recitation of individual State actions.” The neoliberal, purely voluntary and incentive-based regulations for handling the non-point source pollution problems not only did not have the enforcement needed, but it neglected to treat the Chesapeake Bay as a cohesive unit, or an ecosystem in its entirety (Baker 2009).

President Obama recognized the need to shift attention to Bay, and decided to act accordingly. With the help of President Obama’s Chesapeake Bay Protection and Restoration Executive Order, the EPA established a TMDL “diet” for nitrogen, phosphorus and sediment emissions into “the Bay, its tidal rivers, and embayments” (Ribuado, Savage & Aillery 2014). Since the TMDL has been implemented, little change has been made by states in establishing “Best Management Practices” pertaining to non-point source runoff. Within the agricultural sector specifically, over 90% of the watershed’s cropland is in need of “additional nutrient management measures” as a part of their implemented Best Management Practices (Ribuado, Savage & Aillery 2014). The bay-wide TMDL was the latest effort in reducing the pollution plaguing the bay, resembling a “unit-based” remedy like Baker called for. The EPA is overseeing the cleanup effort, aimed at meeting 60% of the 2010 goals by 2017 and 100% of the goal by 2025 (Maryland Milestones 2015).

What changes has the Chesapeake Bay Watershed faced since the act and exemption was implemented?

The Chesapeake Bay Watershed faced a lot of changes throughout the 40-year time-period since the 1970s, especially in an increase of factors contributing to the amount and rate of runoff pollution. One of these changes, specifically, includes massive population growth, development, and urbanization. Since the 1950's the watershed's population has nearly doubled, increasing from 13.5 million to 17.9 between 1985 and 2012 alone (Population growth 2012). It is estimated that an additional 150,000 people move into the bay's watershed annually (Facts & figures 2012). Using that number to estimate population growth, experts predict that the watershed will host 21.4 million residents by year 2040 (Chesapeake Bay 2015). With additional people comes more waste, more lawns to fertilize, more food to grow, and more cars on the road. The dramatic increase in the number of cars used within the watershed is one of the leading causes of continued pollution in the Bay, as the pollution from cars settles and washes away with rain (Pollution 2012). Coupled with factory noncompliance with the Clean Air Act, the runoff of air pollution particles from motor vehicles comprises an estimated 25% of nitrogen pollution afflicting the Chesapeake Bay in 2016 (What is killing the bay? 2016). The water pollution associated with lawn fertilization, wastewater, food production, and extra cars is non-point source pollution, the exact kind that has proven to be unsuccessfully regulated since the Clean Water Act's implementation.

This impacts land use within the bay region drastically. It is currently estimated that forests cover 58% of the watershed's land, however an approximate 100 acres of forest land is lost each day for urbanized development (Facts & figures 2012). Logging and construction practices often go unregulated within the Clean Water Act due to the non-point source pollution it causes. Since

colonial times, the Bay has lost over one half of its forested shorelines alone (The bay watershed 2015). The loss of trees enables the speed of run-off to increase, further contributing to the run-off that has the ability to reach the bay. The loss of the role trees have while planted in these areas contributes to run-off amounts in itself, not to mention the extra sediment produced during the logging activities themselves (Development 2012).

The rate of development has been continuously increasing since the 1600s. Between the years of 1600 and 1950, a 350-year period, experts estimate that over 1.7 million acres of the bay's watershed was lost to development. Previously forested or land used for agricultural purposes began to be sold to businesses and construction companies for the sake of building housing communities, shopping complexes, and transportation infrastructure, like highways. This trend of development increased significantly through 1950-1980, where an additional 2.7 million acres were lost in a 30-year period. When considering development rates during the years of 1990-2000, where over 2 million acres were lost in that 10-year period alone, it is observable that the trend of developing lands in the area was becoming increasingly popular (The bay watershed 2015). Through later years into the 2000, development began to include farm land instead of just forested areas, as 64% of the development from 1990-2000 took place on previously agricultural lands, compared to 33% of forested land (Jantz, Goetz & Jantz 2005). As the agricultural industry within the watershed declined within recent decades, their land was of high demand to regional developers.

The loss of farm land changes the dynamic of how the land manages rainfall. When relatively undeveloped land, like forests and farms, goes from being vegetation and soil-covered and absorbent to asphalt-covered, runoff increases dramatically. While farmland potentially

contributes to runoff due to fertilizer application and soil erosion, scholars note that development of that land is actually more harmful to the amount of runoff an area experiences (Development 2012). Coupled with growth of cities and suburbs, loss of farmland is a real concern of ecologists and environmentalists studying the Bay due to the distinct runoff implications it holds (Stormwater runoff 2012). Despite a decline in overall mining activity within the area, continuation of practices without accountability due to runoff exemptions and an overall accumulation in runoff amounts still proves to be harmful to the Chesapeake (Lala, Moyo, Rehbach & Sellschop 2015). Specifically, the urban and suburban polluted runoff as a result of continued urbanization “is the only major source of nitrogen pollution in the bay still growing” (Polluted runoff 2016).

How has the health of the Chesapeake improved since the exemption was made?

Since the 2010 changes have been implemented, the *State of the Bay* pollution indicator score has slightly improved annually, despite the Bay’s continued Health Index of a “D+” (Chesapeake Bay Foundation 2014). Despite the progress made in cleaning up the Chesapeake, like slowing sediment loss from agricultural and construction zones cited by the Chesapeake Bay Foundation’s *Chesapeake Clean Water Blueprint*, all milestones are still not projected to be met by the 6 bay states and Washington, D.C. by 2017. In fact, only 2 states and Washington, D.C. are on track to meet the 2017 deadline. New York and Pennsylvania are more than 10% off-track in reaching their nitrogen reduction goals, and Pennsylvania is also more than 10% off-track from reaching its sediment reduction goal. Virginia and New York are within 10% of being on-track regarding their sediment reduction goals, while Maryland is within 10% of reaching its nitrogen reduction goal. The most severe benchmarks that, at this rate, will be missed by the 2017 deadline

are in the sectors of agricultural runoff and urban/suburban storm water runoff, both of which go unregulated through the Clean Water Act due to the non-point source exemption.

The USDA argues that the Clean Water Act has facilitated significant reductions in polluting emissions from sources such as factories and sewage plants within the watershed, however the emissions from point sources like those are almost nonexistent to date (Ribuado, Savage & Aillery 2014). Health concerns among bay experts, however, have not subsided despite the control in point source pollutants. Dead zones have become a summer phenomenon within the bay, and, in 2014, the Chesapeake Bay experienced one of the biggest dead zones since record-keeping began within the 1980s. A dead zone is an area in a waterway where oxygen (O_2) levels drop under 2 mg/L^2 , a level that is unable to support the majority of marine life. Many animals, like crabs, cannot move fast enough to areas with sufficient oxygen levels, causing them to suffocate and die as zones of low oxygen seasonally expand (Warrick 2014). Causes of these dead or “hypoxic” zones “are linked to nutrient use (nitrogen and phosphorus) in agricultural production, cropping of leguminous plants, wastewater from human populations and industrial sources, and the burning of fossil fuels.” These nutrients become particularly harmful when they “runoff from farm fields, urban landscapes, or municipal wastewater” and land in water bodies where the phytoplankton consume it. This accumulation and consumption of these nutrients, eutrophication, causes algal blooms that ultimately create an oxygen-deficient area (Rabotyagov *et al.* 2014). Despite policy efforts, runoff is still feeding the 80% of the Bay and its tidal tributaries that are considered to be dead zones or “at risk” due to low oxygen amounts (Dewar, Cronin & Landers 2011).

Improvements have also not been seen in the Bay's signature blue crab populations, which plummeted from that of 756 million to 297 million between 2012 and 2013. While oyster populations increased slightly, the overall health of the Bay for shellfish populations is still highly questionable (Wiggins 2015). Over 70% of the bay is still impaired due to chemical contaminants from suburban, urban, and rural storm water runoff (Chesapeake Bay Foundation 2014). In February of 2016, Washington, D.C. placed one of the Bay's most popular seafood catches, Rockfish, on their "Do Not Eat" list. Recent rockfish testing from the Potomac River, one of the Bay's main tributaries, shows dangerously high polychlorinated biphenyl (PCB) levels. PCB, a known carcinogen originating from man-made industrial waste, is no longer produced, yet the PCB levels within the species is still increasing annually (Papst 2016). Now, species that have been victimized by pollution are treated as new kind of toxic hazard themselves. Other factors implying the health status of the Bay are going either unchanged or improving at a slower-than-acceptable rate. Grass beds historically covered over half of a million acres on the Chesapeake's floor, yet over 90% of the Bay's grass beds remained dead in 2011 (Dewar, Cronin & Landers 2011).

Pollution rates impacting the Bay, at its current rate, are still too high for the Bay to reach any benchmark goals in the upcoming 5-10 years. The pollution types that are causing the Bay's problems today are in the form of nutrients and sediment, with agricultural runoff alone contributing an estimated 42%, 58%, and 58% of the nitrogen, phosphorus, and sediment pollution respectively (Agriculture 2012). Wastewater runoff contributes at least one fifth to the overall nitrogen and phosphorus levels. Urban and suburban runoff, however, contributes to all three areas similarly to agriculture, with a contribution to nitrogen levels of 16%, phosphorus of 32%, and sediment levels of 28% (Chesapeake Bay Program 2007). The overall picture of the Bay's health

suggests that, while there have been slight areas of improvement, the Bay's outlook is still grim if significant change is not implemented swiftly. While progress is being made, the rate has been slow and it will likely plateau unless additional, more rigorous regulations are implemented to combat the pollution still entering the Bay's waterways.

Would these pollutants be regulated under the Clean Water Act without the exemption in place?

With the TMDL exemption in place, the EPA lacks the ability to regulate over half of the contaminants entering the nation's waterways. The agency estimates that only 49% of nitrogen pollutants, 35% of phosphorus pollutants, and 4% of sediment loads entering the Chesapeake Bay can be regulated directly through the Clean Water Act. This leaves regulation and mitigation of the vast majority of the Bay's pollutants to the states and multi-state coalitions (Ribado, Savage & Aillery 2014). Within areas where agriculture is most prominent, like Maryland's Eastern Shore, levels of pollution discharge into the Bay and its tributaries have changed little from the Clean Water Act's implementation to present day efforts. The discharge rates are also directly correlated with rainfall amounts. Since point-source pollutants remain constant despite precipitation levels, it is highly likely that sediment and nutrients (being transported by rainwater as runoff), is the pollution being discharged from those areas (Water quality assessment 2016). Yet since these pollutants are all directly correlated with runoff, they are considered non-point source pollutants under the Clean Water Act, leaving them exempt from federal regulation. Thus, the pollutants found with the largest impact on the Bay's health and its ability to pass its health assessments are non-point sources that fall under the control of the state's or other multi-state agreements.

Discussion

While the health of the Chesapeake Bay is improving by some measures, projections show that, unless more changes are implemented, it will not meet President Obama's Executive Order for Bay clean-up benchmarks. Though this study is limited in that it cannot conclude that the Bay would have made the benchmarks without the exemption in place, there is strong evidence showing that it would at least be *closer* to meeting the benchmarks without the exemption in place and with similar funding and implementation practices that the point source pollutants have received since 1972. The states are not able (fiscally) to implement the Best Management Practices necessary to combat these problems, nor are they being held accountable for not fulfilling the responsibility. Had the exemption not existed, and all pollution was treated the same (regardless of the cost of clean-up, the difficulty of monitoring, the industries that would be upset, etc.), it is likely that the success held in cleaning up point sources would have been shared with non-point source pollutants, too. These findings are important to the health of the Bay as, even though the health is improving, the improvements are likely to eventually cease once the point source pollutants are completely alleviated. Furthermore, it illustrates the disheartening impacts that private interests and monetary concerns can have in such a crucial issue, as a "national treasure" like the Chesapeake may never be completely healthy again due to loopholes and exemptions like the non-point exemption. In some cases, like in the mining industry, the impact private interest had in creating the exemption paved the way for further, more dangerous exemptions, like the Halliburton Loophole.

There are a few alternative explanations for the slowed health improvements of the Chesapeake. Firstly, global warming is known to play a huge role in the health of water bodies, especially those that suffer from dead zones. Climate change, causing warmer weather, further

inhibits the ability of water to hold oxygen which worsens dead zones. Thus, an increase in overall ambient temperatures within the region realistically could be worsening the dead zones present, however this trend would not impact the amount or type of pollution reaching the bay, but only making the pollution have a larger impact on the bay's health once it is there. Secondly, the increase in population that the watershed has seen in the past 3-4 decades could certainly contribute to the additional pollution that the Chesapeake Bay and its tributaries receives on a daily basis. While the increase in population may contribute to the amount of pollution the bay receives, the types of runoff (particles from air pollution, suburban and urban runoff, wastewater plants, etc.) are those that are exempt from the act. This would further justify the need to recall the exemption or find a national means of dealing with the issue. Further research in this area would be highly useful, especially in assessing how states are handling water bodies just to their own states. Another possible explanation of the slow reduction of pollutants in the Bay is because it is a multi-state effort due to the massive watershed. States may be doing very well in implementing their non-point source control means in their own states, however preliminary literature alludes otherwise. Even if they are succeeding in waters within their own borders, there are many US waterways that have interstate impacts, still justifying the need to investigate this issue further for an adequate, timely solution.

Conclusion

The health of the Chesapeake Bay, the nation's largest estuary, is still at a high risk of permanent damage despite national efforts made by motivated governmental actors, as seen within the Clean Water Act. The state of the Bay serves as an example of the roadblocks faced in the

quest to gain environmental protection, even when a governmental remedy is provided for the problem. Troubled by economic considerations, the Clean Water Act was weakened in its implementation in 1972 by making a distinction between point and non-point source pollutants, as the federal government forsook its regulatory capacity over non-point source pollutants. The states have proven to be unsuccessful in fulfilling their role in regulating these non-point source pollutants, furthering the tragedy of waters like the Chesapeake Bay. While this paper cannot conclude that the Bay would be in perfect health without these exemptions in place, it is highly likely that the overall health of the bay and its tributaries (along with countless other interstate waters) would be greatly improved.

Conclusion

The Environmental Protection Agency has been crippled by neoliberal influences since its creation. The neoliberal influences within the federal government have historically prohibited the ability of the Agency to adequately accomplish its goals within its mission and purpose statements. Some argue that within a neoliberal society “[t]he market ensures that everyone gets what they deserve” (Monibot 2016). In the realm of environmental protection and human rights to sustainable natural resources, this simply is not true. Due to the inability of natural resources to be fairly incorporated into the market system, true costs of production (like those of environmental harm) are omitted from cost-benefit analysis. Externalities are commonly inflicted upon the masses while profits from harmful means of production are privatized. This further fuels the system, as these large profits allow for participation in the political process to enable future opportunities for greater profitability.

The influence of neoliberal ideals have left a profound imprint upon Environmental Protection Agency since its very creation. Not implemented for the sake of actual environmental well-being, the Agency was part of a political strategy, a means of gaining reelection and for furthering President Nixon’s political and personal goals. More-so, the priority of economic well-being under a neoliberal mindset is highlighted within the Agency’s purpose statement itself, both in terms of aiming to protect economic growth within its policies and enabling communities to achieve economic sustainability under its regulations. From its core, the Agency is handicapped by the ways in which economic considerations are connected to the needs of the environment.

This mentality echoes the message that profitability and fiscal well-being is more important than natural resources and a healthy environment of today's citizens and that of future generations.

Presidents, following Nixon's precedent, have continued to shape the agency to align with their economic and political goals rather than enabling environmental betterment. Funding difficulties, policy manipulations through agenda-setting, and presidential appointments of revolving-door administrators have hampered the agency's ability to genuinely accomplish its purpose statement. In an effort to satisfy political forces that mandate economic stability and betterment for businesses, the Agency has resorted to market-based approaches to accomplish environmental regulation. These market-based policies encompass the neoliberal intention of avoiding the inhibition of business profits for the sake of economic well-being. This mindset within environmental protection, however, further endorses the idea that business rights are the government's priorities. By allowing them to continue to harm the environment for the sake of profitability and economic stability grants them a right to make money over the public's right to clean air, water, and environmental goods. Market-based policies frequently rest upon uncertain science and, coupled with poor legislative construction due to neoliberal influence, do not always result in environmental betterment.

The overall impacts that the neoliberal mindset within American policymaking is quite evident in many of the Environmental Protection Agency's policies, especially in the Clean Water Act. Within the Clean Water Act's construction, concern for industry well-being took precedent over the health of the nation's waterways. Excessive lobbying efforts convinced policymakers that including all pollution types under the regulation would be too difficult and expensive to monitor. Further, implementing a regulation that ambitious towards cleaning up all pollution types

would cripple industries and businesses nationwide. Corporate lobbying was able to persuade policymakers into compromising the nation's water quality by weakening the act with the point source/non-point source exemption. By focusing on point source pollution only, policymakers thought that substantial cleanup efforts would still be made without hurting any industries. While some waterways did see health improvements, their explicit decision to allow the continuation of harmful pollution practices for the sake of economic stability caused extensive environmental harm. This harm, like the pollution limits set by cap-and-trade policies, often involve many unknowns concerning the Earth's capacity to clean up the pollution naturally. By allowing the continuation of non-point source pollution in particular, the clean-up efforts of the Bay were significantly delay. In result, the health of a "national treasure" may never be the same. The destruction of the social good of environmental health is a direct violation of the human right to clean water, yet it has been sacrificed for the social good of economic-stability.² As visible within numerous other policies within the Agency and other departments of the federal government, neoliberal ideologies permit the prioritization of economic well-being over all other social goods.

The impacts of this instance of neoliberal influence is visible within the clean-up efforts of the nation's largest estuary, the Chesapeake Bay. Through the neoliberal, non-point source exemption, a majority of the pollution impacting the Chesapeake Bay has gone federally unregulated. Despite state efforts to meet health benchmarks, the Bay is not on track to meet its 2017 health goals. The actions taken by motivated governmental actors were not enough to enable

² The "human right to clean water" in this sense expands further upon the typical notion of a "right to clean drinking water," as the interactions between people and water (as a natural resource) are not limited to merely "drinking" purposes, but include interactions pertaining to the water in nearby environments where people work, catch fish for consumption, partake in recreational activities, etc.

the Chesapeake's clean-up to meet its multiple deadlines. In this case, governmental actors were motivated to create initiatives centered around gaining clean water, however their intentions faced several roadblocks centering economic considerations. Political motives changed the course of the Clean Water Act for the sake of the 1972 presidential election and the Act later faced a presidential veto due to its cost of implementation. The non-point source exemption was created in an effort to avoid disrupting industry, while budgetary cuts from Congress impeded the states from fulfilling the regulatory role that the exemption created for them. While a recent political initiative, the Chesapeake TMDL program, was implemented, it looks like the Chesapeake Bay's health may still fall victim to the Clean Water Act's neoliberal history. As another deadline is approaching in 2017, and projections show that the Bay's health will fail it yet again, it is important to consider the larger implications that neoliberal mindsets hold for future regulatory endeavors of the agency.

The Clean Water Act is not the only policy impacted by the prevailing neoliberal mindset in American society and politics and it is evident in many other aspects of environmental health. The loopholes, exemptions, and allowances of pollution-causing behavior will be exacerbated as corporations become more profitable and hold more power, especially in agenda-setting, within the political process. Their influence over the media and educational materials of both citizens and policymakers will continue to portray businesses as vital to society and harmless to the environment. As this continues, neoliberal approaches become even stronger contenders in the war between capitalism and environmentalism. Justifying the need of production and economic stability encourage the construction of policies that limit rigor for environmental protection and instead enhance profitability. The market under this mentality, then, fails to protect the

environmental goods that it claims it can. Neoliberal approaches are only effective means to accomplishing a goal if it can stimulate some sort of consumer demand to promise some variety of economic growth. The problem, however, is that “consumer demand and economic growth are the motors of environmental destruction” (Monibot 2016). As seen in the Chesapeake Bay, when a neoliberalism mindset prioritizes profitability over environmental health in construction of policies, the policy is quite arguably ineffective overall. This renders the Environmental Protection Agency, in an effort to accomplish its mission and purpose statements, unable to fully do so with neoliberal ideologies encroaching upon the interworking of American government and society.

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