



## Beyond Gridlock in American Environmental Policy

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For decades, the U.S. Congress has been gridlocked on environmental policymaking. Few new laws or significant revisions of established environmental laws have been passed, despite legitimate concerns about the continuing effectiveness of charter clean air and water statutes enacted in the early 1970s. Nevertheless, as we discovered in the research for our 2013 book *American Environmental Policy: Beyond Gridlock*, ongoing policy initiatives and struggles have shifted onto alternative pathways. In the states, the courts, and regulatory agencies, changes have continued to happen as the overall Congressional impasse has frozen into place foundational laws from the 1960s and 1970s. These laws defined the basic contours of a U.S. “green state” and biased policy changes toward a slow, halting movement in directions favored by environmentalists. Moving forward, legislative gridlock will likely remain, placing a greater premium on presidential actions.

### U.S. Environmentalism is Not Dying

Our argument offers a cautiously hopeful vision of recent U.S. environmental politics, in contrast to widely publicized doomsday laments about the “death of environmentalism.” Congressional gridlock holds in place earlier achievements such as the landmark U.S. environmental breakthroughs of the 1960s and 1970s, and the continuation of these laws enforced by the Environmental Protection Agency gives environmentalists strong high ground on issues such as waterway cleanups and reductions in air pollution. Gains have not been easy. Modern U.S. environmentalists have never achieved total victories, and advances in law and regulation have been contested every step of the way, forcing environmentalists to remain active in lobbying, rule-making, and court battles, where they often hold their own. Only in one respect does our research sound a pessimistic note, by questioning the dream of escaping politics espoused by “next generation” advocates who call for voluntary collaborations among business interests, regulators, and environmental advocates. Such an escape from politics is an impossible illusion.

### Explaining U.S. Environmental Politics

Why has gridlock in Congress on environmental policy proved so long-lasting? Concisely, a number of factors have come together in recent decades to make major legislative actions impossible. Increased partisanship has been marked in Congress since 1990, even as liberal ideas and social movements have weakened. Public opinion remains generally friendly to environmental goals, but with more ambivalence and partisan division and little intense support for strong new governmental steps. Media narratives and interest group mobilizations have spurred divisions on key issues, especially about what to do about the threat of global warming – a new kind of environmental threat quite different from the delimited problems of pollution and threats to species and habitats that came to the fore half a century ago.

Early twenty-first century America has a distinctively structured “green state” – a set of laws, institutions, and expectations dealing with conservation and environmental policy put in place in three time periods, with each added layer of state-building based on different core expectations.

- Pro-market liberalism held sway prior to 1890, favoring economic development interests over those concerned with environmental protection, as in the 1872 Mining Law.
- Conservation gained ground from 1890 to 1920, stressing the wise management of natural resources – as in the establishment of the national forests and the U.S. Forest Service.
- Preservationists and modern environmentalists took the initiative from 1964 to 1980, enacting major new laws preserving land and wildlife (as in the Endangered Species Act of 1973) and protecting human health (as in the Clean Air Act of 1970).

Understanding the layers of law, regulation, and social expectations laid down in different periods of green state-building is vital, because measures in one layer often conflict with those superimposed later. Such tensions generate many of today's controversies. And the layering of multiple orders without cleaning up past orders gives modern America's green state a labyrinthine nature. New policies often conflict with old; past ideas are embedded in earlier policy regimes resistant to change. For all interested parties, layering creates opportunities as well as constraints – and the conjunction of Congressional gridlock with embedded institutional tensions encourages groups to use different levers and pathways to fight for their interests.

### **Alternative Pathways – And a Warning about Voluntarism**

Despite gridlock in Congress, environmental policymaking is dynamic and has moved along five alternative pathways. States and regional compacts can act. New legal provisions can be inserted in must-pass Congressional budgets and appropriations – as, for example, efforts to open the Arctic National Wildlife Refuge to oil and gas drilling. The federal courts can undercut rules, or even strengthen rule-making authority, as did the Supreme Court in its 2007 ruling that the federal government has the authority and obligation under the Clean Air Act to regulate greenhouse gas emissions. And presidential administrations have long promulgated new or revised rules, as Barack Obama is currently doing, very actively, to deal with climate change.

Finally, business interests and environmental advocates or regulators often try to hammer out voluntary, collaborative agreements – which are quite fashionable these days. The appeal of trying to avoid gridlocked partisan political battles is obvious, but we find that these experiments could return America to the ineffectual world of policymaking without laws that prevailed before the 1960s. Too often collaboration with regulated interests yields only weak, unenforceable measures or rules that serve the most powerful regulated interests.

Because the forces of gridlock are unlikely to dissipate anytime soon, the regulatory powers of U.S. presidents will be of growing importance. Struggles will continue on multiple fronts, with contending interests continuing to spar in the courts, in state capitols, in Congressional budget committees, and in assorted voluntary forums. But U.S. presidents currently have the most effective tools at their disposal to ensure that U.S. environmental policy continues to move in a green direction in the era of global warming.

Read more in Christopher McGrory Klyza and David J. Sousa, *American Environmental Policy: Beyond Gridlock* (MIT Press, 2013).