

## IN WITH THE NEW

## Why Can't We All Just Get Along?

By G. Tracy Mehan III

*"...a public policy field which is almost built on the absence of trust."*

— ROBERT (ROBBIE) ROBERTS,  
EPA Region VIII Administrator

Once chaired the Michigan Mercury Pollution Prevention Task Force, to investigate opportunities for phasing out mercury from products and processes which really did not require a neurotoxin as an essential component.

The Big Three auto companies participated in the effort, although they felt they had little involvement in the matter of mercury pollution, viewing it primarily caused by air deposition originating with coal-fired power plants, indisputably a huge source. I suggested to the auto representatives that they examine their vehicles, component parts, and industrial processes for any low-hanging fruit. They agreed to look into it.

A few weeks later the Big Three reported that domestic automobile production used 9.8 metric tons of mercury per year in convenience light switches under the hood and in the trunks of their automobiles and trucks. Moreover, they believed they could eliminate that entire amount in relatively short order, using alternative means of activating the convenience lighting. They saw it that the Society of Automotive Engineers developed a protocol evaluating the risks, benefits, and costs of any proposed uses of mercury in the future.

We declared victory, having purged this mother load of mercury, thus keeping it out of auto salvage yards and, ultimately, the aquatic environment.

I subsequently found out that the

foreign auto companies were already purging mercury from their own automobiles.

My experience with mercury and the Big Three informed my reading of Daniel J. Fiorino's excellent book *The New Environmental Regulation*, which provides a detailed history and analysis of American environmental regulation and continuing attempts at regulatory reform in the United States and around the world over the last three decades.

*The New Environmental Regulation* offers a systematic review and evaluation of "old" and "new" modes of regulation with pragmatic recommen-



**The New Environmental Regulation** by Daniel J. Fiorino.  
The MIT Press. 290 pages. \$23.

dations for moving the American environmental program to a much better place in terms of environmental performance and economic efficiency.

Fiorino guides the reader through the extensive research and academic literature on regulatory reform and experimentation, here and abroad, a vast treasure trove of information. He documents his narrative with extensive citations in the footnotes without interfering with the flow of his clear, succinct prose.

The Michigan mercury task force illustrated many of Fiorino's observations and ideas on the opportunities and challenges of collaborative partner-

ships between regulators and regulated which might be part of a "new" regulatory regime.

First, a new law or regulation actually banning mercury in automobile manufacturing was highly unlikely in Michigan or at the federal level. However, it might happen in Minnesota or Sweden. A multinational corporation, operating in national and international markets, has to adapt to and anticipate an evolving, sometimes volatile, regulatory environment. Proactive participation in a partnership with government and other stakeholders is a cost-effective way to navigate these shifting currents to the benefit of the environment, the pleasure of the company's customers and stockholders, and, more often than not, for the benefit of the bottom line if waste, unnecessary material, and legal risks can be reduced.

Second, the mercury task force exemplified a concept which Fiorino discusses at length — "process learning" — which effectively allows government and the companies themselves to understand and improve internal processes which can reduce pollution cost-effectively. Government regulators, consistent with congressional intent, are relatively ignorant of internal manufacturing processes, since the law directs them to focus largely on the externalities of pollution

and keeps them off the factory floor. By transforming both government and industry into learning organizations, collaboration can move the environmental agenda forward with lower transactions costs, legal entanglements, and political acrimony.

Finally, the Michigan effort was undertaken in blissful ignorance of the robust mercury elimination efforts underway overseas. Such cluelessness would be unlikely today since globalization has smacked everyone in the face these last 15 years. It is always helpful to understand the relative advantages and disadvantages of other countries' experience with alternative

modes of environmental regulation or voluntary partnerships. Benchmarking on a global scale is very productive and Fiorino's book is a good place to start.

According to Fiorino, the United States may no longer be on the cutting edge of progressive, results-oriented, and cost-effective environmental regulation. There is much to be learned from the "rise of the rest" of the world, to use a term coined by Fareed Zakaria of *Newsweek*.

Fiorino provides an excellent overview of international progress in designing regulation which is performance-based, collaborative, and grounded in mutual learning. In particular, he describes environmental regulation in the Netherlands, a country of 16 million, with a tradition of cooperation and consensus-based politics.

The Dutch use environmental "covenants" in which the government negotiates targets for pollution reduction by industrial sectors, such as chemicals and transportation, consistent with National Environmental Policy Plans.

These covenantal targets "define the expected contribution of the industry sector in achieving the national goals," says Fiorino. "Each firm then prepares a company environmental plan (CEP) that commits it to specific targets and timetables for environmental improvement."

In the Netherlands, says Fiorino, "government sets goals but allows industry flexibility in determining how to meet them rather than prescribing technologies or other specific means that may limit firms' discretion and discourage long-term innovation."

Fiorino embodies a blend of idealism and realism. He is optimistic in his belief that environmental regulation can deliver greater benefits at less cost and controversy. However, he is clear-eyed in recognizing that America is presently an inhospitable country for reform, which some critics charge is a Trojan horse in which deregulation might hide. His discussion of the literature on trust, or the lack thereof, and social progress is very perceptive. He quotes former state environmental

commissioner and EPA Region VIII Administrator Robbie Roberts for the proposition that the environment is "a public policy field which is almost built on the absence of trust." Why can't we all just get along?

However, Fiorino is quick to recognize that enforcement is a key element of environmental success in the past and will still be necessary in the future as a driver of forward progress. Still, he insists that the maturation of corporate environmental policies, the lessons learned from various "reinvention" efforts, and the success of information-based and cap-and-trade environmental programs offer a partial glimpse of a new regulation in this country.

Fiorino proposes an incremental program for evolving toward better environmental regulation. While acknowledging that "wholesale revisions are unlikely here," he suggests legislative changes giving regulators more discretion to innovate and pursue policy learning with industry. Such discretion could be used to promote innovation or new regulatory approaches through the use of alternative or performance tracks with differential treatment for "the better, proven environmental performers."

Emulating the Dutch by replacing existing regulatory provisions with environmental management contracts at selected sites, grounded on performance indicators, would be another way to migrate from old to new regulation. More broadly, performance agreements with industry organizations "would commit firms to achieving measurable results for performance indicators that are significant for a sector, especially for those that currently are unregulated." Such agreements would substitute for more conventional technology-based rules. Nonparticipants would be subject to the old rules of the game.

Again, Fiorino recognizes the success under the *ancien régime*. He is not

a revolutionary trying to roll back the entirety of the established order: "We should not discard the old regulation and the capacities it created, but adapt it to changes that have been occurring in environmental problems, economic relationships, and the institutional landscape. Trends among the leading private firms, as well as many public and nonprofit organizations, reflect a similar theme. It is time for a new environmental regulation that is more flexible, performance based, collaborative, and adaptable."

Daniel Fiorino is a classic liberal reformer who wants to use market or management tools to achieve politically determined ends. Fred Smith of the libertarian Competitive Enterprise Institute calls such people "free-market socialists." But Fiorino, the realist, may also be termed a democrat (small "d")

who recognizes that the American people are unlikely to abandon the ends of environmental protection notwithstanding their abhorrence of the present means which, for the time being, are costly and bureaucratic.

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One regret: Fiorino's excellent book is almost devoid of discussion of either the Clean Water or Safe Drinking Water Acts, poster children for the old regulation. Nor does it address unregulated, diffuse polluted runoff, so-called nonpoint source pollution, say, from row crop agriculture, a major cause of water quality impairments. These would be subjects worthy of this author.

Fiorino's vision of a new regulation is a compelling one which can lead Americans to the high ground of better environmental protection and economic vitality.

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