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Book Review (reviewing Bruce A. Ackerman & William T. Hassler, Clean Coal/Dirty Air (1981))

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Clean Coal/Dirty Air is the story of a multi-billion dollar crap game in which the players seek to load the dice so that the regulatory numbers roll in their favor. The story began in 1970, when Congress, in adopting the Clean Air Act, ordered the Environmental Protection Agency (EPA) to set standards of performance for new stationary air pollution sources, including coal-fired power plants. It ends, for the purposes of this book, after EPA promulgated revised standards for new coal-fired power plants in 1979, but before these standards were affirmed by the Court of Appeals for the District of Columbia Circuit on April 29, 1981, in Sierra Club v. Costle.

Part I of this review summarizes the central themes and conclusions of the book. Part II evaluates the authors' analysis and conclusions in light of the decision in Sierra Club v. Costle. Since both the standards and the Act on which they are based are likely to be amended again, the book will be used and perhaps abused by advocates on all sides of the Clean Air Act debate.

The central thesis of Clean Coal/Dirty Air is that new source performance standards (NSPS) for coal-fired electrical power plants cost far more and reduce sulfur oxide emissions far less than they should. The authors argue that Congress gave little or no coherent direction to EPA on this issue in adopting the Clean Air Act in 1970 and amending the Act in 1977. EPA, in turn, was more sensitive to a political cost/benefit calculus than an economic or environmental one, particu-
larly in revising the NSPS for power plants in 1979. The authors believe these governmental actions resulted from the efforts of a peculiar coalition of eastern high-sulfur coal producers, the United Mine Workers union, and environmental groups. Ackerman, a professor of law at Yale Law School, and Hassler, a 1980 graduate of that law school, use the NSPS issue to make broader observations about the proper role of Congress, EPA, and the courts in pollution control.

The book is organized in two overlapping parts. Half of the volume, a critical history of the NSPS for coal-fired power plants from 1970 to 1979, traces the legislative and administrative struggles that led to the present NSPS. The other half uses the NSPS debates to evaluate the strengths and weaknesses of the institutional mechanisms involved in federal agency rulemaking. According to the authors, the development of the NSPS was characterized by ineptness and confusion about basic goals.

The Clean Air Act of 1970 required EPA to promulgate primary air quality standards to provide "an adequate margin of safety . . . to protect the public health," and secondary standards to protect the public welfare. Congress also required states to submit implementation plans to EPA to meet these standards. Although the Act allows states to adopt combinations of control strategies, this freedom does not apply to new sources. Section 111 of the Act, as written in 1970, required new sources to achieve a level of control that "reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated."

In 1971 EPA established an emissions standard for new coal-fired power plants at a uniform 1.2 pounds of $S_2$ per million BTUs of heat value. To comply with this standard, utilities that intended to burn eastern coal (high in sulfur) had to install an untried emission control technology—flue gas desulfurization or "scrubbers." Utilities that relied on inherently low-sulfur western coal could meet the same standard without using scrubbers. Eastern coal producers feared that many midwestern utilities would use western coal to fuel their new plants as a less costly alternative for complying with the NSPS. According to the authors, EPA could have initiated a planning process for

the consideration of long range costs and benefits of scrubbing, and
could have tried to develop sophisticated physical coal washing tech-
niques in the interim, but failed to do so.\textsuperscript{12}

When Congress began considering amendments to the Clean Air
Act in 1976, debate concerning stationary sources focused on a judicial
decision that construed the Act to prevent the deterioration of air qual-
ity in regions where the air was already cleaner than required by na-
tional ambient air quality standards.\textsuperscript{13} Although the issue of NSPS for
power plants received little attention, it prompted the formation of the
clean air/dirty coal coalition. Eastern high-sulfur coal interests per-
ceived that a requirement forcing the use of scrubbers for all new
power plants would cause many utilities, that might otherwise rely
solely on low-sulfur coal to comply with NSPS, to use cheaper high-
sulfur coal. Environmental organizations, such as the Natural Re-
sources Defense Council and the Sierra Club saw forced scrubbing as a
means of reducing total plant emissions even further than under the old
standard.\textsuperscript{14} The House left each side with the perception of a partial
victory by drafting the committee report to require scrubbing, but mod-
ifying § 111 to permit alternatives to forced scrubbing. In the Senate,
however, amendments to the Clean Air Act died at the end of the 1976
session.\textsuperscript{15}

The issue did not arise again until the House and Senate Confer-
ence Committee on what became the 1977 amendments to the Act met
in a hurried rush before the summer recess. The Senate had added (by
a vote of 45-44) § 125 to the Act, which required retrofit scrubbers for
certain existing plants when a Governor or the President found that a
shift from “locally or regionally available coal” would result in signifi-
cant local or regional economic disruption or unemployment.\textsuperscript{16} When
the scrubber requirements for new plants were examined in the confer-
ce committee, § 111 was amended to permit EPA to require a per-
centage reduction from the level of emissions that would result without

\begin{footnotes}
\textsuperscript{12} Ackerman & Hassler, supra note 6, at 13-16.
\textsuperscript{13} Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C. 1972), aff'd by an equally
\textsuperscript{14} For example, “if a plant using one pound western coal were required to scrub at 90
percent efficiency, only 0.1 pound of $SO_2$ would be discharged.” Ackerman & Hassler,
supra note 6, at 37.
\textsuperscript{15} For a discussion of the attempts to amend § 111 of the Clean Air Act in 1976, see
Ackerman & Hassler, supra note 6, at 29-41.
\textsuperscript{16} 42 U.S.C. § 7425 (Supp. III 1979). See McCoy-Elkhorn Coal Corp. v. EPA, 622
F.2d 260 (6th Cir. 1980), for a judicial interpretation of § 125. This provision did not
directly address the concerns of eastern coal producers since § 125 also provides that before
any finding of economic disruption can be made, the final cost to the consumer must be
considered. The statute is clear that scrubbers should not be imposed if their cost would be
disproportionate to the protectionist benefits given to eastern coal producers. Ackerman &
Hassler, supra note 6, at 44-48.
\end{footnotes}
controls in addition to a ceiling on the SO$_2$ emission rate.\textsuperscript{17} The statute fell short of mandating scrubbers for all new plants. The legislative history also failed to clarify whether scrubbers should be required in all cases, the authors claim, leaving the meaning of §111 "hopelessly confused."\textsuperscript{18}

EPA responded to §111 with several voices. The Office of Air, Noise, and Radiation (the agency division responsible for developing program regulations in those areas) interpreted the amendments to §111 as a mandate for universal scrubbing. The Office of Planning and Management (the agency's research division) wanted to scrutinize the economic and environmental justifications for universal scrubbing. When EPA published its notice of proposed rulemaking in the Federal Register in September, 1978,\textsuperscript{19} the Office of Air, Noise, and Radiation plainly had the upper hand. The initial proposal would have required a 90 percent reduction from the level of emissions that would result without controls, in addition to maintaining the 1971 ceiling of 1.2 pounds of SO$_2$ per million BTUs.\textsuperscript{20} The Planning Office, however, produced computer models showing that 90 percent removal was not economically efficient. In addition, President Carter's Regulatory Analysis Review Group\textsuperscript{21} stressed that EPA had failed to show the environmental benefits of its proposal.

EPA then began to move toward a uniform 0.55 pound per million BTUs limit (without universal scrubbing) but was subjected to intense pressure by representatives of the eastern coal industry. The final rule was a variable emission limit, depending on the sulfur content of the coal burned. New plants must meet the 1.2 pound limit and, concurrently, remove 90 percent of the sulfur from stack emissions. If, however, the use of low-sulfur coal and scrubbing would result in emissions of less than 0.6 pounds per million BTUs, then the plant need reduce sulfur emissions by only 70 percent.\textsuperscript{22} The requirement that 70 to 90 percent of the sulfur in coal be removed dictated scrubbers at all new plants. EPA's final rule, the authors contend, is a standard that will do

\textsuperscript{17} ACKERMAN & HASSLER, supra note 6, at 54.

\textsuperscript{18} Id. at 79-80.


\textsuperscript{20} The September proposal contained a percentage reduction requirement averaging 85 percent measured on a daily basis. However, EPA considers a requirement that a scrubber reduce emissions by an average of 85 percent every day to be equivalent to a requirement that the scrubber reduce emissions by an average of 90 percent over a longer period such as a month or year. The 90 percent figure is used in CLEAN COAL/DIRTY AIR and in this review. ACKERMAN & HASSLER, supra note 6, at 167 n.19.

\textsuperscript{21} The Regulatory Analysis Review Group was chaired by the chairperson of the Council of Economic Advisors and included economic and regulatory members. The Group reviewed "significant" regulations of the executive branch under the authority of Exec. Order No. 12,044, 3 C.F.R. 152 (1979). ACKERMAN & HASSLER, supra note 6, at 169-70 n.31.

little for the environment and cost the utilities billions of dollars over the next few decades.\textsuperscript{23}

The authors are particularly troubled by the alliance of convenience between eastern (high-sulfur) coal interests and environmental groups. The authors contend that EPA's standard requiring the scrubbing of all coal constitutes a multi-billion dollar bail-out for high-sulfur coal producers in the east. Western coal could meet very low emission rates without scrubbing. By requiring the scrubbing of inherently clean (i.e., low-sulfur) western coal, EPA was in effect protecting the markets of eastern coal producers from encroachment by western coal producers.\textsuperscript{24}

The authors maintain that the real environmental problem is not the local effects of sulfur dioxide, but rather the effects of long range transport of sulfur dioxide and its conversion into sulfate particulate, a precursor of acid rain.\textsuperscript{25} Neither Congress nor EPA have recognized the problem.\textsuperscript{26} The authors recommend focusing in the short term on old plants rather than new ones; coal washing at old plants, the authors argue, will reduce total sulfur dioxide in the atmosphere by a greater amount and over a longer period of time than scrubbing at new plants. In addition, the authors would have EPA simply reduce the numerical emission limits for existing plants, rather than require universal scrubbing for new plants. In the long run, they suggest, EPA should devote more energy toward research on the long term effects of SO\textsubscript{2} emissions and plan for their long term control. In the West, where protection of visibility is at stake, the numerical ceiling for NSPS is not an appropriate response because sulfates, not sulfur dioxide, interfere with visibility. The authors conclude that EPA should engage in more rigorous daily compliance monitoring, encourage shorter stacks so as to inhibit long range dispersion, and research the economic feasibility of retrofitting existing plants with scrubbers.

The authors argue that EPA ignored many of its own experts and focused on technology-forcing (rather than environmental protection)

\textsuperscript{23} Ackerman & Hassler, supra note 6, at 85.
\textsuperscript{24} Id. at 98-103.
\textsuperscript{25} Sulfate particulate is formed in the atmosphere from sulfur dioxide emissions. Sulfates reduce visibility in the western United States, and high ambient levels of sulfates in the eastern United States contribute to such problems as acid rain. See National Research Council, Atmosphere-Biosphere Interactions: Toward a Better Understanding of the Ecological Consequences of Fossil Fuel Combustion (1981). For a discussion of EPA's response to the acid rain problem see Ackerman & Hassler, supra note 6, at 59-78.
\textsuperscript{26} Several bills are, however, pending in the House and Senate dealing with the acid rain problem. See S. 1706, S. 1709, H. 4816, H. 4829, H. 4830, H. 4836 and H. 5055, 97th Cong., 2d Sess. (1981).
components of the Act in setting NSPS. The authors claim that EPA never seriously considered whether the costs of universal scrubbing were intolerably high. EPA has not defined the sulfur dioxide problem as one involving sulfates, and has not focused on the long range transport of pollutants. Indeed, EPA does not recognize sulfates as a "criteria pollutant" and thus has set no national ambient air quality standards for sulfates. Yet EPA, the authors note, is better equipped than anyone to make the technical judgments necessary to achieve statutory goals, define and redefine problems that exist, and research those problems.

Ackerman and Hassler characterize Congress as inept for its failure to recognize and properly respond to the problem of sulfate pollution. Congress, they state, is best equipped to consider and reconsider the basic premises of national policy and respond to changes in the political environment. But Congress avoided, in their view, the obvious questions about the best response to the sulfur oxide problem. Rather than define explicit objectives for EPA, Congress gave the agency conflicting messages. The authors believe Congress should direct the agency to achieve certain general goals rather than attempt to specify the means to achieve those goals.

More broadly, the authors question the wisdom of Congressional attempts to move beyond what they describe as a New Deal agency. A New Deal agency is one to which Congress gives only general policy guidance. Administrative action is based on expertise; agency personnel are expected to deal with problems by utilizing expert knowledge. Congress facilitates this process by insulating the agency from central political control and from judicial oversight. While not suggesting that this approach is without faults, the authors criticize Congressional intrusion into administrative agency decisions by solution forcing.

This book was written when multiple challenges to EPA's revised NSPS were pending before the Court of Appeals for the District of Columbia Circuit. As a partial remedy to solution-forcing legislation, the authors suggest three principles of judicial review. First, the court should require EPA to engage in a complete investigation of competing

27. ACKERMAN & HASSLER, supra note 6, at 79-103. The authors interpret the final NSPS as a triumph of politics over environmental or economic rationality.
28. Id. at 107.
29. The authority to establish air quality standards for criteria pollutants is contained in 42 U.S.C. §§ 7408-09 (Supp. III 1979). A pollutant is regulated if the Administrator of EPA determines that it causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. §7408(a)(1)(A).
30. ACKERMAN & HASSLER, supra note 6, at 54-57.
31. Id. at 116.
32. Id. at 4-7.
33. Id. at 122-23.
34. Id. at 104-115.
policy approaches that are consistent with the statutory language. Second, the court should give the statutory text, which permits alternatives to scrubbing, much higher priority than the legislative history, which can be read to mandate scrubbing. Finally, the court should require the agency to coordinate its actions with those of other federal agencies. The authors conclude that under these principles the NSPS should be remanded to EPA.

II

The authors' analysis is provocative, but it is not the whole truth about NSPS. The authors' arguments are based on a textual analysis of § 111; which, the authors claim, does not require the agency to adopt a standard that mandates universal or "forced" scrubbing. By suggesting uncertainty about the meaning of § 111, the authors have created a broad range of alternatives for complying with the statutory mandate—a range that neither the Agency, nor the reviewing court in Sierra Club v. Costle, thought existed. While the authors are indignant at the political maneuvering involved in establishing the NSPS for coal-fired power plants in 1979, and the opportunity missed by EPA to fit the NSPS into a total sulfur dioxide control strategy, the authors' views on how NSPS should function in this instance do not square with the statutory intent.

In 1977, Congress amended the NSPS provision of the Clean Air Act, which previously required NSPS to reflect "the best system of emission reduction," to call for "the best technological system of continuous emission reduction." The legislative history indicates, with respect to all major new sources, that potential emissions would have to be reduced by a control system. This requirement applies to all NSPS, not simply to coal-fired power plants. EPA could not ignore the statutory command and embark on a novel sulfate control crusade in the case of coal-fired power plants without prejudicing all other NSPS. Section 111 of the Act, which requires EPA to establish NSPS for many sources, must be considered on its own merits, and not as part of a grand strategy for the control of an unregulated pollutant. To otherwise would invite the Court of Appeals to remand the NSPS to EPA.

35. Sierra Club v. Costle, 657 F.2d at 316 n.38.
38. See ASARCO v. EPA, 578 F.2d 319 (D.C. Cir. 1978) (where the court remanded EPA's attempt to redefine "source" for NSPS review).

The authors seem to discount the strength of the political mandate emanating from Congress in the 1977 Amendments. In describing EPA's internal views interpreting the "continuous emission reduction" language, the authors state:

[T]he critical point was that the clean air-dirty coal lobby had succeeded in push-
A fundamental premise of the Clean Air Act, and the Clean Water Act as well, is that the best technological systems should be incorporated into the design of new sources, irrespective of the marginal benefit to be derived from reducing pollution below "acceptable ambient levels." According to one analysis, Congress established the NSPS program to accomplish several purposes: 1) To minimize emissions from new sources in order to avoid new threats to public health and welfare, to assist in cleaning polluted areas, and to avoid deterioration of air quality in areas where it is still good; 2) to force development of pollution control technology; 3) to maximize opportunities for long-term growth by limiting the consumption of air resources by new sources; and 4) to provide nationwide uniformity of emission standards. Although the authors question whether NSPS are a proper response to the SO₂ problem, they do not examine whether EPA's NSPS program fulfills these purposes.

The NSPS program for coal-fired power plants constitutes only an ancillary part of a SO₂ strategy. EPA has established national ambient air quality standards for SO₂, and the primary control strategy for SO₂ is to be established via state implementation plans under § 110 of the Act. The authors note correctly that EPA has encountered considerable resistance to reducing sulfur dioxide emissions from existing power plants, and that the major task of reducing existing power plant emissions is still uncompleted. But the more stringent NSPS of 1979 were not intended to substitute emission reductions from new plants for those not obtained from existing power plants. The authors conclude that a reduction of SO₂ emissions from existing power plants is cheaper than something through Congress. Unless something spectacular was shown, it was wrong for an administrative agency to deny political activists the fruits of their congressional victory. Section 111, and especially its legislative history, had created a strong presumption for nationwide scrubbing, which was not to be offset by some technocratic mumbo jumbo.

ACKERMAN & HASSLER, supra note 6, at 79-80. The words of § 111 created more than a "legislative presumption" because technology forcing is an integral part of the Act's strategy for new sources.


41. For example, the authors state, "From the vantage point of the environment, it makes no difference whether a pound of sulfur oxide is emitted by a power plant built before or after some magic date." ACKERMAN & HASSLER, supra note 6, at 11.

42. See, e.g. 42 U.S.C. §§ 7470-7508 (Supp. III 1979) for provisions relating to the prevention of significant deterioration of air quality and plan requirements for nonattainment areas. These sections are applicable to SO₂ emissions.


45. ACKERMAN & HASSLER, supra note 6, at 65-69.

and more effective in solving the nation's SO₂ problem. Although they may be correct, this by no means suggests that EPA should not pursue a strategy of minimizing SO₂ emissions from new power plants as well. The strategies are not exclusive.

The authors contend that NSPS for coal-fired power plants should be creatively designed to reduce sulfate pollution, both to protect visibility in the West and to reduce total sulfate loadings in the East. According to the authors, EPA should have resisted "the urge to scrub" dirty coal and provided a mechanism to burn "clean coal." The authors provide no strategy connecting NSPS for sulfur dioxide emissions to reductions in sulfate concentrations in the atmosphere. Since EPA has designed NSPS to control criteria pollutants only—although the Act is not so limited—this task is admittedly difficult. The authors would have EPA shift its emphasis away from NSPS toward designing a grand sulfur oxide strategy that will encompass old plants and new plants. Such a strategy would require revision of the Clean Air Act, since EPA has continually focused on technology-forcing and forced scrubbing requirements for new plants and has not moved toward any comprehensive sulfur oxide strategy.

The book's recommended principles for judicial review of agency decisionmaking raise a number of questions. The authors' first principle, full inquiry, would have courts require agencies to examine all competing policy approaches consistent with the text of the statute, and fully articulate the rationale for their decisions. This type of full inquiry is unrealistic. In Sierra Club v. Costle, the D.C. Circuit court

47. ACKERMAN & HASSLER, supra note 6, at 67-68.
48. Id. at 74. The authors are convinced that scrubbing technology is an inappropriate method to control SO₂ pollution: "[S]crubbing is not only a costly way of providing the next generation with outdated machinery, but it will expose many northeasterners of the present generation to greater sulfur oxide concentrations than they would otherwise suffer." Id. at 73.
49. See Lead Industries Assoc. v. EPA, 647 F.2d 1130 (D.C.Cir. 1980), for a discussion of problems inherent in devising a national ambient air quality standard.
50. ACKERMAN & HASSLER, supra note 6, at 67-71.
51. Ackerman and Hassler object to incremental policy decisions, e.g., reduction of pollution at new plants through forced scrubbing, which fail to address the scientific basis of the regulatory problem. This argument may underestimate political realities, however. As the authors note:

At present, the EPA divides the country into 236 air quality control regions, each of which is responsible for forcing local polluters to meet local ambient standards. A rational approach to SO₄ [sulfates], in contrast, would require dividing the country into a smaller number of larger regions to take into account the realities of long-distance transport.

Any such change would encounter strong bureaucratic resistance.

ACKERMAN & HASSLER, supra note 6, at 65. The authors contend that this problem would be remedied if the policy debate over sulfates focused on ends rather than means. Id. This conclusion is not self-evident. An agency may be justified in pursuing incremental changes in policy which address one aspect of a regulatory problem if that is the only option which is politically feasible.
explicitly refrained from deciding whether a standard requiring scrubbing for all power plants is contrary to the Act, or whether § 111 requires universal scrubbing.\textsuperscript{52} Nor did the court decide whether the Act prohibits reliance on burning low-sulfur coal alone as a means of controlling emissions.\textsuperscript{53} Rather, the litigation focused on the appropriateness of the variable scrubbing requirement. On that issue, the court applied the principle of full inquiry, studying the record with “as hard a look as mortal judges can probably give its thousands of pages,”\textsuperscript{54} and upheld EPA’s regulations. To the extent that full inquiry means more than a hard look, the principle is constricted by the limited ability of the courts to probe the reasonableness of alternative technical proposals and the limited resources of agencies to pursue policy alternatives.\textsuperscript{55} The judicial review provisions of the Clean Air Act limit the courts to determining “if the result makes sense and [require them] to assume that nothing unlawful or irrational has taken place”—they do not require a determination of whether EPA’s choice was less reasonable than other possible choices.

The authors’ second principle of judicial review would give the statutory text priority over its legislative history in determining the meaning of the Act. This proposal is hardly new to statutory construc-

\textsuperscript{52} Sierra Club v. Costle, 657 F.2d at 316 n.38.
\textsuperscript{53} Id.
\textsuperscript{54} Id. at 410. The court’s opinion is 175 pages long, including 540 footnotes. Twenty-four charts and figures are attached as an appendix. The parties submitted briefs that total 670 pages in length, and the Joint Appendix is 5,620 pages. Id. at 314 n.22.
\textsuperscript{56} Sierra Club v. Costle, 657 F.2d at 410. The Clean Air Act has its own provisions defining the scope of judicial review. A court may reverse an EPA decision if the decision is 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations or short of statutory right; or 4) made without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary and capricious, (ii) an objection of central relevance to the rule was raised during the comment period or the grounds for that objection arose only after the comment period, and (iii) the errors are so serious and so central to the outcome that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made. 42 U.S.C. § 7607(d)(9) (Supp. III 1979). “The essential message of so rigorous a standard is that Congress was concerned that EPA’s rulemaking not be casually overturned for procedural reasons, and we, of course, must respect that judgment.” Sierra Club v. Costle, 657 F.2d at 391.

The District of Columbia Circuit, which decided \textit{Sierra Club}, is particularly sensitive to the Supreme Court’s decision in \textit{Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.}, 435 U.S. 519 (1978), in which the Court stated that courts cannot impose additional procedural requirements on agencies that do not provide them and are not required by statute to provide them. \textit{Vermont Yankee} involved the Nuclear Regulatory Commission’s licensing procedures for nuclear power plants, and reversed a D.C. Circuit opinion. In unambiguous language, the Supreme Court warned the D.C. Circuit against straying “beyond the judicial province” by deciding what procedures will best further the public good. Id. at 549.
tion or judicial review—courts may refer to the legislative history only where the statutory text is not clear. Ackerman and Hassler distort this principle, however. They argue that § 111 should not have been read by EPA as a basis for protection of regional high sulfur coal interests, even though there was considerable legislative history to that effect. The legislative history is important in setting pollution standards, and to ignore congressional deliberations would create a risk of remand. There is no doubt that interest groups have an easier task in creating legislative history than in creating the actual text of the statute, but the committee reports and debate on legislation are useful—even necessary—in understanding the statute's meaning. Since their principle of "full inquiry" discounts the legislative history, moreover, Ackerman and Hassler would apparently allow wide-ranging judicial inquiries into policy choices by administrative agencies responding to ambiguous statutes. Professor Joseph Sax has advocated, and a number of states have adopted legislation that provides for similarly thorough judicial review of administrative decisionmaking. Strict judicial review would force a more detailed justification of the challenged agency decisions. The crucial question, however, and one left unanswered by Ackerman and Hassler, is whether the courts are even capable of more exacting scrutiny of such long and complicated records of administrative rulemaking.

The authors' third principle of judicial review would require courts to assure that agencies coordinate their decisionmaking with that of other interested agencies. Their underlying concern is that the results of congressional directives to one agency might undermine congressional policies expressed in other statutes and through other agencies. This is a valid concern, and Congress often requires coordi-

58. ACKERMAN & HASSLER, supra note 6, at 107-10.
60. E.g., Michigan Environmental Protection Act, Mich. Comp. Laws Ann. §§ 691.1201-07 (Supp. 1982). The Act permits any person to sue any other person who has caused or is likely to cause pollution, impairment, or destruction of the air, water, or other natural resource or the public trust therein. If the plaintiff can make that demonstration, the defendant may prevail only if he either rebuts that demonstration with evidence to the contrary or shows as an affirmative defense that there is no feasible and prudent alternative to his conduct and that such conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources. The trial on these issues is de novo. For an evaluation of the Act's effectiveness, see Haynes, Michigan's Environmental Protection Act in its Sixth Year: Substantive Environmental Law From Citizen Suits, 53 J. Urb. L. 589 (1976). See also West Michigan Environmental Action Council v. Natural Resources Comm'n, 405 Mich. 741, 275 N.W.2d 538, cert. denied, 444 U.S. 941 (1979).
61. ACKERMAN & HASSLER, supra note 6, at 110.
nation in rulemaking. However, the United States Code is full of statutes whose ultimate goals tend to conflict with one another. There is a limit to how much an agency can account for another agency's mission without undermining its own.

III

Those who battle in the trenches of Congress and the administrative agencies occasionally need criticism provided by outsiders. Unfortunately, while Clean Coal/Dirty Air is thoughtful and sometimes compelling, one must conclude that its microscopic focus on NSPS for coal-fired power plants has led the authors to view the principal actors in an overly harsh light and to miss some of the central themes of the Clean Air Act. The authors would, in addition, have given the revised NSPS a much harder look than the District of Columbia Circuit did in Sierra Club v. Costle. In so doing, they would give the courts far greater responsibilities in judicial review of rulemaking than courts can competently exercise. At the end of her long opinion in Sierra Club, Judge Wald observed:

Cases like this highlight the critical responsibilities Congress has entrusted to the courts in proceedings of such length, complexity, and disorder. Conflicting interests play fiercely for enormous stakes, advocates are prolific and agile, obfuscation runs high, common sense correspondingly low, the public interest is often obscured.

We cannot redo the agency's job; Congress has told us, at least in proceedings under this Act, that it will not brook reversal for small procedural errors. . . . So in the end we can only make our best effort to understand, to see if the results make sense, and to assure that nothing unlawful or irrational has taken place. In this case, we have taken a long while to come to a short conclusion: the rule is reasonable.

The entire process, then, is one to which those concerned, including Ackerman and Hassler, contribute partial truths. Small wonder no one is happy with the final result.

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63. Sierra Club v. Costle, 657 F.2d at 410.

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