

# 1. Introduction

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Many companies seem determined to persuade us how green they are. Consider IBM, one of the most committed and most widely recognized companies. Its formal policy begins: 'IBM is committed to environmental affairs leadership in all its business activities'.<sup>1</sup> It was the first major company to commit to a company-wide environmental management system, covering all its operations worldwide. Its policies include being an environmentally responsible neighbor, conserving natural resources, using processes that do not adversely affect the environment, and sharing appropriate pollution prevention technology.<sup>2</sup> And it has achieved real results: 50 percent CO<sub>2</sub> emissions reductions between 1990 and 2009, recycling 76 percent of its nonhazardous waste in 2009, and reducing its emissions of PFCs in manufacturing by 48.8 percent from 1995 to 2009.<sup>3</sup> This is business environmentalism at its best, achieving results and going well beyond regulatory requirements.

Of course, not all the examples one could cite would be quite so favorable. BP has worked very hard at burnishing its environmental reputation, claiming that their brand could be summed up by two words: 'beyond petroleum'.<sup>4</sup> Of course, these words now take on a richly ironic meaning about the company's current business travails, rather than its environmental commitment. Yet when weighed against what we now know to have been a reckless disregard of care and precaution in drilling operations, which were doubtless substantial contributors to the worst oil spill in US history, the sincerity of its commitment to business environmentalism has been seriously undermined. However, even in this admittedly selective worst case, the fact that the company wished to appear green and continues to claim its environmental commitment is of note. The mantle of business environmentalism appears to have some value even when the reality of it has been called into serious question.

More generally, there is good news about business environmentalism to be found. For example, many of the world's largest banks have agreed, via the Equator Principles, to provide project financing only for large projects that demonstrate environmental responsibility.<sup>5</sup> Our daily experience with consumer advertising provides an almost continuous exposure to business claims of greenness: imagine trying to get through a day without being told of the virtues of one or more wind energy suppliers. Interestingly, the company actions behind these claims are virtually all voluntary efforts by the companies

involved – voluntary in the sense that they are not undertaken in response to applicable government requirements.<sup>6</sup> Further, a distinction between goals and methods is useful here.<sup>7</sup> A company may voluntarily set environmental protection goals beyond those required in the prevailing regulations, or it may voluntarily take actions beyond those required. In either case, why are companies doing this? Does it really result in meaningful improvement of environmental performance? What policies are being implemented to support these efforts, and what policies should be?

Voluntary efforts have not always been so important, nor has their discussion always figured so prominently in company activity and environmental policymaking. In the US, the modern environmental protection era began with an almost exclusive use of public regulation to control the worst environmental harms, and for most countries this continues to be the primary approach to environmental protection today. This regulation seeks to limit, for example, air pollution and toxic waste disposal to levels that protect human health and the environment, and the same regulatory approach prevails in our efforts to protect special natural resource areas such as wetlands. By making rules against the activities that cause these risks, and enforcing the rules as best we can, we seek to protect the planet's ecosystem for ourselves, for future generations, and for the sake of its own existence. This regulatory approach to environmental protection is familiar, well established, and well developed. In the nearly 40 years we have been seriously working on environmental protection in the US, beginning in the early 1970s, this regulatory approach has given us many successes. Certainly the air, the water, and the land are cleaner than they were, even though they are not as clean as they could and should be.

Of course, it does not feel as though things are getting better at all; the environmental progress we have made to date is, in the press and the public mind, often overshadowed by new environmental threats and risks that we did not know of or consider when we started the modern era of environmental regulation. For example, consider climate change; it is surely our greatest environmental problem today, although it was largely unknown and unappreciated 40 years ago. However, the fact that it was unknown does not mean that it was nonexistent, but only that it was unrecognized. Similarly, our contemporary concerns with unsustainable levels of resource use or the rapid pace of species extinction were not well recognized 40 years ago. Our past success in tackling other environmental problems with good policy, partial though it is, should inspire some cautious hope that we can make progress on these as well.

Yet, we will have to continue to expand our policy thinking beyond regulatory approaches. Beginning around 1990, many environmental policy thinkers began to consider that voluntary efforts should be added to the policy mix that had traditionally emphasized regulatory tools almost exclusively. This approach has been most highly developed in the Netherlands with the imple-

mentation of the system of covenants, although the idea of voluntary agreements with industry has now spread quite widely to many countries.<sup>8</sup> In the 1990s, the United States tried a number of voluntary programs under the general program of 'regulatory reinvention',<sup>9</sup> although the success of these programs has been much more mixed and many are no longer current. If the '70s and '80s were the classic period of environmental protection regulation, the period since the '90s has been one of widespread experimentation with voluntary efforts, sometimes to supplement regulation and on occasion to replace it. Business environmentalism is at the heart of these voluntary efforts. This book will offer a reconsideration of it, seeking to answer three core questions.

First, what are businesses doing in their voluntary environmentalism programs, and how is it working? Chapter 2 will consider how business, government, and civil society are using voluntary programs as an environmental protection strategy for business today. The discussion will move from the most voluntary programs to the least voluntary ones. Thus, I will first discuss voluntary sustainability reporting – the most voluntary efforts – then move on to consider private environmental performance standards, and environmental management systems. Finally, the chapter will consider the least voluntary of these programs, negotiated compliance, with special emphasis here on the Dutch environmental covenants. In addition to reviewing each type of program, this chapter will focus on the extent to which there is systematic empirical evaluation of how much each program is associated with improved environmental performance by its participants. Systematic empirical evaluation of the entire program is our best guide to future policy making, and this chapter will look primarily to these empirical studies, when they are available. However, qualitative evaluations and survey data will be used when they are the only material available, always recognizing their limitations. Two general conclusions emerge: first, these voluntary business programs have had a mixed environmental performance history, with some types showing substantial success, and some not; second, our knowledge is quite thin in many places, and much more work is needed in many areas to provide a firmer basis for evaluation or policy making.

The second core question for this book concerns why business environmentalism is important. Despite its mixed history and incomplete evaluation, business environmentalism continues to be needed, as Chapters 3 and 4 will discuss. Today's specific environmental challenges, together with the increasing worldwide recognition of the need to shift toward more sustainable societies, will require that we use business as well as regulatory efforts to make progress. These chapters, and indeed the whole book, argue that we cannot progress toward sustainability with regulation alone. Regulation provokes one kind of business response, but other, different kinds of business responses will

also be required, and only voluntary programs can inspire some crucial aspects of these. In addition to compliance with rules, we need innovation, cooperation, and continuous improvement that must come from businesses themselves. To get these, we need wise policy, based on well-designed voluntary and regulatory programs that are used in an effective policy mix. I reject the argument that the best policy is a choice between imperfect regulation and imperfect voluntary business programs; the best policy is a wise and effective mix of the best of both kinds of efforts. This book is concerned with the voluntary programs and, ultimately, wise policy for them.

Within the academy, and increasingly outside it, there is much contemporary discussion of private collaborative activity as a form of governance complementary to, but distinct from, traditional government regulation. Private governance provides a larger jurisprudential and social context for viewing business environmental programs and it will be discussed in Chapter 4. What do we know of private voluntary governance as distinguished from public government regulation? What can this knowledge teach us that is useful in understanding the uses and limits of private arrangements? Does it give any insight into where these activities may be headed, or any indications of how regulation should view them, both today and into the future? The 'new governance' discussed in Chapter 4 is not now a coherent body of learning which offers prescriptive solutions to problems. Yet it does offer a loose collection of interesting and potentially useful ideas, still forming and separating, which is suggestive of possibilities and insights for policy approaches to business environmentalism.

Chapters 5 and 6 will focus on the book's third grand question: what policies can we use not only to support but also to guide business environmental efforts? Specifically, Chapter 5 will consider supporting business environmental management systems by offering regulatory rewards to firms that use them. When should firms making voluntary efforts be given, for example, fewer regulatory inspections or greater flexibility in getting new permits? There is a substantial history of such rewards being given, and we will review it. Both the characteristics of the program and of the firm will be important considerations. While these rewards have not been a central feature in our policy, there is some evidence that regulators have exercised their discretion to use them reasonably well thus far. Chapter 6 will ask whether additional regulation is needed for business environmentalism. I will argue that we should not regulate the content of the business programs, but that we should regulate the accuracy of information companies provide about them. Here, we will consider information aimed at both green investors and green consumers. Current regulation reaches these issues, although for the most part obliquely and incompletely; the current regulatory systems for both kinds of information are fragmented and incomplete. Yet the regulatory authority to reach further exists, for the

most part, in the breadth of current law and regulation. What is needed is new policy to move regulators and others to so use the authority they have. The current weakness in policy is not really surprising; our regulatory regimes to protect both consumers and investors grew up at a time when environmental concerns were not central to the policy agenda. However, times have changed, as has the policy agenda, and robust regulatory response is now needed.

Chapter 7 then moves beyond these three questions to examine a most timely contemporary case study: climate change. This is the pre-eminent and predominant environmental issue of our time, and will be so at least for the next century – the elephant in the room. We are only beginning to understand and discuss it with the scope and seriousness it deserves. Business environmentalism has of course noticed and begun to respond, but it will have to be a much more engaged part of the whole social response which the scope of the problem requires. There are many voluntary business efforts now, and more are predicted. This chapter will use them as a lens through which to view the ideas presented in the whole book, but looking back through the lens, it will also use the ideas in this book to consider voluntary climate change efforts and policies to channel, direct and promote them. Following this, Chapter 8 will conclude that business environmentalism, even with its limits, has the potential to improve environmental protection and the pursuit of sustainability, but that realizing this potential requires that we implement wise policies.

## NOTES

1. See IBM Policies, Environmental Affairs, available at: [http://www.ibm.com/ibm/responsibility/ibm\\_polities.shtml](http://www.ibm.com/ibm/responsibility/ibm_polities.shtml) (accessed 26 July 2010). IBM is only one of many prominent examples that could be cited.
2. IBM Policies, note 1 above.
3. See IBM, *IBM and the Environment: 2009 Annual Report* (2009) 46–7, available at: <http://www.ibm.com/ibm/environment/annual>. These results are measured consistent with reporting according to the widely accepted Global Reporting Initiative standards, which will be discussed further in Chapter 2, Section A.
4. BP, 'About BP', available at: <http://www.bp.com/sectiongenericarticle.do?categoryId=9028308&contentId=7019491> (accessed 2 January 2011).
5. See The Equator Principles, available at: <http://www.equator-principles.com/index.shtml> (accessed 3 October 2008).
6. For an excellent introduction to the incentives for companies to get involved in green business, see Dennis D. Hirsch, *Green Business and the Importance of Reflexive Law: What Michael Porter Didn't Say* (2009) 18–24, available at: <http://www.cslsa.us/2009%20Abstracts/Green%20Business%20and%20the%20Law%20-%20Hirsch.2.pdf> (accessed 2 January 2011). Daniel C. Esty and Andrew S. Winston, *Green to Gold: How Smart Companies Use Environmental Strategy to Innovate, Create Value, And Build Competitive Advantage* (Yale Press 2006) is an excellent analytical treatment of what green business is and how firms do it.
7. Regine Barth and Franziska Wolff, 'Corporate Social Responsibility and Sustainability Impact: Opening Up the Arena', in Regine Barth and Franziska Wolff (eds), *Corporate Social Responsibility in Europe: Rhetoric and Realities* (Edward Elgar Publishing 2009) 12–13.

8. Eduardo Croci, *The Handbook of Environmental Voluntary Agreements: Design, Implementation and Evaluation Issues* (Springer 2005); OECD, *Voluntary Approaches for Environmental Policy: Effectiveness, Efficiency and Usage In Policy Mixes* (2003); Patrick ten Brink, *Voluntary Environmental Agreements: Process, Practice and Future Use* (Greenleaf 2002); OECD, *Voluntary Approaches For Environmental Policy: An Assessment* (1999).
9. For an introduction, see EPA, *Identification of Evaluation Criteria for EPA's Reinvention Programs, Final Report and Recommendations of the Reinvention Criteria Committee*, NACEPT (September 1999), <http://www.epa.gov/ocem/nacept/pdf/rccrpt1.pdf>, (accessed 26 July 2010).