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The Lilliputians of Environmental Regulation: The Perspective of State Regulators

Michelle C. Pautz

University of Dayton, mpautz1@udayton.edu

Sara R. Rinfret

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5 The Regulatory Interactions of the Lilliputians

Our exploration of the Lilliputians' perceptions and their regulatory enforcement style has brought us to the nature of the actual interactions they have with their regulated counterparts. The day-to-day experiences of the regulators with the regulated community are central to understanding environmental regulation on the front lines, and Beth's story illuminates the importance of these regulatory interactions.

For six years Beth worked for the division of hazardous waste at a state regulatory agency in the Western United States. Wanting to expand her understanding of the other environmental media, Beth recently accepted a position with the agency's surface water program. She has found surface water regulations to be much more challenging than the hazardous waste program because the regulations are not as descriptive as hazardous waste regulations and the regulated community population is far larger in the water program. Her state's office of surface water ensures compliance with the Clean Water Act, which mandates that bodies of water are swimmable and fishable. While some of her colleagues fill their days sampling streams, rivers, and lakes, she works directly with wastewater treatment plants. For her first few months, she was accompanied by a colleague and fellow regulator, Ted, to get her feet wet and receive on-the-job training.

Beth learned very quickly from Ted that a positive, cooperative approach with the regulated community goes a long way. Ted stressed that it is best not to come across as a technocrat. Apparently, the regulator in the position before her—Adam—was extremely technical, incapable of speaking in laymen's terms, and did not particularly enjoy dealing with the public or facilities; indeed, Beth had heard plenty of stories about the difficulties this regulator faced. For Beth, the job of a regulator consists of working cooperatively with regulated facilities to make sure they understand the regulations and to help them achieve and maintain regulatory compliance. Even though she is the regulator, Beth has learned that both parties—the regulator and the regulated—have to work together, for compliance and cooperation results in better outcomes than confrontation does (although that is not to say that confrontation cannot be useful from time to time).

Perhaps most reflective of Beth's approach is the nickname her regulatory counterparts have bestowed on her, "smiley"; however, she is embarrassed to reveal her nickname. Although many individuals might appreciate such a nickname, Beth is worried that if too many people, particularly in her agency, discover her nickname they might think she has been captured by the facilities she is supposed to regulate. A member of her former division was recently accused of looking the other way when it was revealed that a manufacturer was grossly mishandling hazardous wastes. According to the local news media, the only logical conclusion was that the state agency was in bed with business. Although Beth's nickname might fit her cooperative disposition, it is also potentially dangerous to outsiders who might assume she is in cahoots with the facilities she regulates.

Even though the media portrayal of Beth and her colleagues generally is not positive, she maintains that if you have an "enforcer" attitude, you are likely to have tense, less productive interactions with a facility. But if you smile and provide helpful yet informative instructions, you are respected. Accordingly, the latter approach is preferred, leaving Beth with the positive outcomes she seeks. Over time, these positive interactions with the regulated community lead to good relationships, and these relationships frequently result in better environmental protection.

As with Emily, the importance of perceptions helps to explain why Harry and the Lilliputians embrace a combination of intention-based and precision-based regulatory styles. The Lilliputians' perceptions and regulatory style are also related to the interactions they have with facilities on a routine basis. Regulatory interactions in the U.S. environmental policy arena are generally thought to be adversarial (cf. Wallace 1995; Fiorino 2006; Eisner 2006; Kettl 2002), which is understandable when we consider the power dynamics inherent in the traditional regulatory model (Kagan 2004). Regulation, at its most basic level, creates tension between parties because one party commands another what to do through various incentive structures. These dynamics, combined with what we know from studies of front-line workers who demonstrate the challenges they face working with their clients, the immediacy of their interactions, and the direct impact on the public/client groups, make these interactions difficult from the start (cf. Riccucci 2005; Lipsky 1980; Maynard-Moody and Musheno 2003).

This chapter examines the interactions between the Lilliputians and their regulatory counterparts. We discover that the interactions—at least from the regulators' perspective—counter commonly held perceptions that the U.S. environmental regulatory apparatus is adversarial. Instead, the regulatory interactions continuum we present at the end of this chapter provides support for the conclusion that the Lilliputians prefer cooperative interactions and are desirous, at least to some extent, of partnership with regulated facilities.

Cooperation between the Lilliputians and the regulated community might be alarming to many outside the regulatory arena. Concerns arise that the Lilliputians might be captured by those they regulate because of their

"friendly" relationships. However, we argue here, in concert with others (cf. Cooper 2009; Makkai and Braithwaite 1992; Quirk 1981; Wilson 1980), that concerns of cozy relationships are overstated and positive interactions are desirable.

LILLIPUTIANS AND THEIR REGULATORY INTERACTIONS

Regulatory interactions are significant because it is the interactions of those individuals on the front lines of policy (cf. Lipsky 1980; Maynard-Moody and Musheno 2003; Sandfort 2000; Riccucci 2005) and, more specifically, in regulatory contexts (cf. Hawkins 1984; Hutter 1997; Eisner 2006), in which the policy is actually carried out. In the context of regulation, compliance with environmental regulations—or any other type of regulation for that matter—is an ongoing process requiring routine, sometimes daily, interaction between the parties (May 2002; Sparrow 2000; Ayers and Braithwaite 1992). Regulators "put flesh on the regulatory skeleton" (Fineman 1998, 969). Moreover, "the ambivalence, tensions, and dilemmas prompted by the opposing interests in regulation are continuously worked out in the . . . decisions of field officers" (Hawkins 1984, 13). Accordingly, understanding these interactions is paramount in understanding environmental regulation.¹

With the frequency and significance of these interactions, the regulators and the regulated community develop interdependence in a host of regulatory contexts (McCaffrey, Smith, and Martinez-Moyano 2007; Braithwaite 1984; Hawthorne 2005; Khademan 1996, 2002; May and Wood 2003; Hutter 1997). And with interdependence comes expectations of one another and development of appropriate behaviors that define a regulatory culture (March, Schultz, and Zhou 2000; Meidinger 1987; Braithwaite 1995). Ultimately, this interdependence and behavioral expectations can lead to positive interactions between the parties.

Before investigating the benefits of positive regulatory interactions, let us consider what the Lilliputians have to say about their interactions. At this juncture, it is important to underscore a caveat of our work. We focus on the Lilliputians themselves, so, we are unable to provide insights here from the regulated community; therefore, our look at these regulatory interactions is only from the perspective of the regulators. However, with that said, it is still illuminating to consider the viewpoint of these regulators as they are half of the regulatory equation.

We asked these environmental regulators about their interactions with the regulated community, and some of our findings defy common assumptions that they are power-hungry, tree-hugging regulators. Recall that it was noted in Chapter 3 that 86 percent of the Lilliputians agree their interactions with the regulated community are positive, while only 2 percent disagree (11 percent are neutral).² In comparison, 76 percent of Lilliputians disagree that their interactions are adversarial, and only 4 percent agree (see Table 5.1).

Table 5.1 Assessment of Regulatory Actions

	My interactions with the regulated community are generally positive	My interactions with regulated facilities are best described as adversarial
Strongly agree	14%	0%
Agree	69%	4%
Neither agree nor disagree	11%	19%
Disagree	2%	50%
Strongly disagree	0%	26%

A state's commitment to environmental protection provides insight into these results. First, when we examine responses to the question about adversarial encounters, regulators across all the states do not think that their interactions are adversarial, but disagreement is most apparent in the trailblazer and mainstreamer states, in which regulators are more likely to characterize their interactions with the regulated community positively than regulators in lingers states. One might expect states with stronger environmental performance and capacity to have better interactions with the regulated community, as those interactions can translate into compliance achievements. In comparison, inquiries about positive interactions uncovered that regulators in states that are trailblazers and mainstreamers report the strongest positive interactions. The takeaway from these questions is the vast majority of state environmental regulators report that their regulatory interactions are good and most regulators do not think their interactions are adversarial. With the strong support for positive interactions, our focus shifts to the benefits that might result from good interactions.

BENEFITS OF POSITIVE REGULATORY INTERACTIONS

The following discussion suggests that positive interactions between regulators and the regulated community enable the realization of several benefits that enhance compliance. Further, we argue that adversarial interactions, wrought with tension, can transition into positive, productive relationships. Consider some of the advantages of positive interactions.

First, positive interactions lead to improved communication between the parties. Dialogue and open communication are fundamental to good regulatory interactions (Axelrod 1984, 1997; Posner 2000). If members of the regulated community and the regulator have helpful and constructive interactions, then the regulator is going to be more forthcoming with information, as will the regulated community (Pautz 2009a, 2009b). Information

asymmetry is rampant in environmental regulation, so the opportunity to narrow the knowledge gap will improve communication. Individuals at regulated facilities are frequently the ones who possess information about the latest pollution abatement technology, whereas the regulators are generally the individuals who can best explain the complexities of intricate regulations. With the reduction of information disparities, more open and honest communication is likely (Pautz and Wamsley forthcoming).

The Lilliputians reveal that information disclosure is not as much of an issue as traditional understandings of regulatory interactions might lead one to conclude. Only 11 percent of regulators indicate that it is difficult to obtain information from the regulated community, while a majority (53 percent) of regulators state that it is not difficult at all to obtain information (see Table 5.2). These results appear to be commonsensical as many of these regulators repeatedly indicate the desire to have positive interactions. Yet the Lilliputians are less enthusiastic about relying on the regulated community for insights and ideas concerning environmental protection. As such, discussions surrounding innovations in environmental policy often mention utilizing the expertise of the regulated community, which goes to openness in dialogue and information disclosure in the regulatory interactions. Accordingly, regulators were asked about relying on the regulated community for insights and ideas. Forty-one percent of regulators thought the regulated community could be relied on, while 19 percent disagreed. Here, it is important to note that a significant portion of regulators—40 percent—was neutral in response to this question. This finding might indicate a significant amount of uncertainty among regulators for reliance on the regulated community for insights.

A closer analysis of these results regarding open communication and information disclosure finds that environmental media is an explanatory factor.³ The Lilliputians who work in air or waste stressed that it is *not* difficult to receive information from facilities, and they can rely on the regulated community for new and innovative ideas. Perhaps this is because the Lilliputians who work within air or waste have complex regulations that

Table 5.2 Obtaining Information

	It is hard to get information about issues from the regulated community	Regulators can rely on the regulated community for ideas and insights
Strongly agree	1%	4%
Agree	10%	37%
Neither agree nor disagree	36%	40%
Disagree	49%	16%
Strongly disagree	4%	3%

have compelled them to work more closely with the regulated community to help them understand regulatory complexity.

Second, with improved communication, cooperation is enhanced. More open communication encourages individuals to be more forthcoming, and positive interactions characterized by cooperation are far more likely (McCaffrey et al. 2007; Pautz and Wamsley forthcoming). With the improved dialogue comes better understandings of one another and there is less tendency to cheat, deceive, and manipulate the regulatory interaction (McCaffrey et al. 2007; Pautz and Wamsley forthcoming; Pautz 2009a, 2009b). Additionally, enhanced cooperation leads to the resolution of conflict more easily (Kagan 2001). Since patterns of good communication and responsiveness have been established, when problems arise the parties are far better equipped (because of this shared history) to respond cooperatively and productively to the issue and resolve it with less conflict, thereby reducing adversarialism. Ultimately, cooperation in these relationships is desirable as parties come to have shared views and common goals (Gambetta 1988).

A significant majority, 83 percent, of the Lilliputians say their interactions with the regulated community are cooperative, whereas a mere 2 percent disagree.⁴ Cooperative interactions are hardly the expectation in regulatory interactions, given the common narrative that regulators are power hungry and eager to assert their environmentalism. An examination of Lilliputians' education helps to illuminate these results.⁵ More specifically, Lilliputians with a bachelor's degree or higher were most likely to stress that their interactions are cooperative. Since the majority of the regulators in this study have an undergraduate degree and some graduate work, it may be difficult to draw too many conclusions from this linkage; however, we might suggest that with additional education and training regulators may not find the regulated community so hostile.

Finally, enhanced communication and cooperative interactions strengthen regulatory culture, which facilitates compliance. Over time the interactions of the regulator and the regulated community cultivate mutual norms and expectations that are built on respect and trust of one another, which ultimately promotes compliance (Braithwaite 1995, 229). Therefore, it is understandable that a "substantial amount" of a regulator's time is "spent creating and preserving good relations" with facility officials (Hawkins 1984, 42). Yet, "the notion that the regulatory culture enhances compliance through social bonds between the regulatees and the regulators goes against traditional concerns about the capture of the regulators by those who they are supposed to be regulating" (Braithwaite 1995, 228).

Given the nature of our findings, we cannot provide empirical evidence of improved regulatory culture; however, if we recall the Lilliputians' perceptions of the regulated community, we see encouraging signs of improvements in regulatory culture. As noted in Chapter 3, some regulators hold the perception that most members of the regulated community intend to comply with regulations. Moreover, 83 percent of regulators have positive

interactions with them. Although we cannot make conclusions regarding the directionality of the influence, we think there are indications of productive working relationships built on communication and cooperation.

ATTRIBUTES OF THE BEST INTERACTIONS

To reinforce our discussion of regulatory interactions and the benefits of positive interactions, we come back to the nature of the actual interactions between the Lilliputians and the regulated community and consider how regulators describe them. Table 5.3 demonstrates that regulators say the *best* interactions occur when they and their facility counterpart cooperate with one another (93 percent agreed).

These results appear reasonable, and a Lilliputian from New Hampshire reminds us why the willingness to work together is essential:

Don't be the stereotypical pointy[-nosed] bureaucrat. Try to speak the regulated party's language or find some common ground. They will take you more seriously and try to work with you if they see you as genuine and reasonable. You can accomplish a great deal if they like (but respect) you, trust you, and are willing to work with you. Remember, as a government regulator, those you regulate also pay taxes that provide your wages. Always treat the regulated community with respect. In-your-face tactics are usually not necessary, well received, or effective. Wear the white hat until you need to wear the black hat. If you are a good regulator, you will know when it is time to display and use regulatory authority. Word spreads in the regulatory community.

We also consider an alternative to cooperative interactions by asking Lilliputians if the best interactions occur when facility personnel recognize that

Table 5.3 Best Interactions

	The best interactions occur when facility personnel and myself want to cooperate with one another	The best interactions occur when facility personnel recognize that I am the authority
Strongly agree	38%	5%
Agree	55%	27%
Neither agree nor disagree	6%	40%
Disagree	1%	24%
Strongly disagree	0%	3%

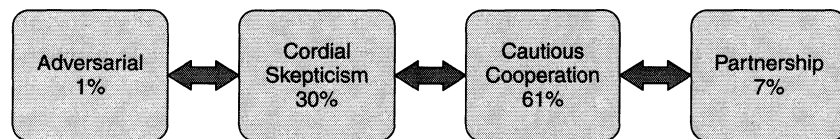


Figure 5.1 Interactions Continuum.

regulators are the authority. Only 32 percent of the regulators agreed that interactions were the best when they are recognized as the authority, and 27 percent of regulators disagreed.

However, the largest response group was neutral (40 percent). These results may indicate that although regulators prefer cooperation, they also retain the ability to be more authoritative and employ regulatory sticks as the need arises. Chapter 4's insights regarding regulatory enforcement style, along with other research that indicates mixed approaches to working with the regulated community, corroborate these findings. So far, we have seen some of the many dimensions of regulatory interactions, and the next section pulls together what we have learned about the interactions from the Lilliputians' point of view by offering a way to think more holistically about these interactions.

CONTINUUM OF REGULATORY INTERACTIONS

Regulatory interactions are complex, and classifying them—as is the case with regulatory enforcement styles—into either/or categories, is insufficient as it negates the complexity of these interactions. In an effort to advance our understanding of regulatory interactions, we developed a continuum to more succinctly categorize the interactions of the Lilliputians that allows for a more thorough look at the interactions of the regulators, but also presents a concise way of understanding the differences in regulatory interactions. We categorized the regulators into one of four categories based on their responses to questions associated with their regulatory interactions (see Figure 5.1).

There are four categories in this regulatory interactions continuum: adversarial, cordial skepticism, cautious cooperation, and partnership.⁶ In the following pages, we investigate these categories from the perspective of the Lilliputian.⁷

REGULATORY INTERACTIONS: ADVERSARIAL

On the left side of the continuum (see Figure 5.1), we begin with a category of interactions labeled *adversarial*. One percent of the Lilliputians fit this grouping because their day-to-day interactions with members of the regulated community are extremely difficult. The Lilliputians said outright

that their interactions are adversarial and not defined by cooperation. Further, regulators in this category are likely to see themselves as authority figures who demand compliance from regulated facilities or else there will be a litany of unpleasant consequences. Interactions are difficult from the regulator's point of view because the regulated community is not forthright with information and appears unwilling to communicate openly and honestly with the regulator. These communication challenges leave the regulator doubtful about what members of the regulated community tell the regulator. Moreover, the regulator is likely to question the regulated entity's motives associated with compliance, and the regulator adopts a mantra of triple-checking everything associated with this facility. Accordingly, these interactions often may be defined by confrontation, and the regulator is unlikely to hesitate about exercising threats and other more punitive means to maintain compliance.

As a result of these characteristics, there is not likely to be much of a relationship between the two parties, and it is doubtful the Lilliputian is going to do much to promote cooperation with his regulatory counterpart. Instead, the interaction will continue along as is and may even get worse since interaction after interaction is riddled with uncertainties which breed distrust. Remember Beth claimed her predecessor, Adam, could have been defined as one of the Lilliputians who has adversarial interactions with the regulated community. Beth reflected that Adam would never want to be in the presence of those he regulates and would spend the minimum amount of time necessary engaged with them. More fundamentally, Adam believed all facilities were bad. As a result, Beth learned from the same facilities that they had a strong dislike for Adam because of his actions.

After considering the description of this type of interaction, we should reiterate that only 1 percent of the regulators here fall into this category. In other words, 99 percent of the Lilliputians' interactions with the regulated community are not defined by adversarialism, despite some inaccurate presumptions about these regulatory interactions. Within the 1 percent, water regulators have the most adversarial relationship within our sample, but it is important to note that with a small number of regulators in this category, it is difficult to draw conclusions about the various factors that explain the individuals in this category.

REGULATORY INTERACTIONS: CORDIAL SKEPTICISM

Lilliputians whose regulatory interactions are more positive than those defined by adversarialism fit into the category of interactions defined by cordial skepticism. Thirty percent of the regulators fall into this second category of regulatory interactions. Unlike the interactions of regulators and the regulated community in the adversarial category, these interactions may not be quite so confrontational. Communication and information sharing

are still likely to be strained in this category, thereby making interactions challenging, but there is some disclosure. The regulator may have experiences with the facility in which the regulated community sometimes discloses needed information freely, and other times obtaining information is more difficult.

For example, during a facility inspection, a regulator may request information, such as monitoring reports, and her regulatory counterpart might provide the information, but only after a specific request. And, if a printing operation, for instance, began working with a new ink supplier that impacted its emissions data, the facility official may not be as inclined to volunteer information for fear of the regulator finding fault with the emissions data. As a result, cooperation ebbs and flows; sometimes the parties are cooperative and other times they are not. Therefore, these interactions are far more pleasant than those defined by adversarialism—indeed, they may even be cordial—but they have their obstacles, leading toward some skepticism on the part of the regulator.

Over time, these interactions may improve, albeit slightly, because the nature of the interactions is less predictable. Regulators may have a pleasant encounter and experience a facility that is forthright with information one day and then find a disagreeable facility the next time. As a result, the interactions are likely to be cordial, but characterized by skepticism, as they are unpredictable. To reiterate, 30 percent of the Lilliputians fall into this category of interactions, which is not surprising given the variability of the regulatory enforcement styles uncovered in the last chapter. We find it encouraging, though, that 69 percent of the regulators in this study have more productive and cooperative interactions. Water and waste regulators are the most likely groups of regulators to have interactions characterized by cordial skepticism for reasons that are unclear; and, unfortunately, no other explanatory variables proved to be statistically significant.

REGULATORY INTERACTIONS: CAUTIOUS COOPERATION

The third continuum category, cautious cooperation, includes the Lilliputians who have somewhat positive interactions with their regulatory counterparts, but are cautious, perhaps because of previous difficult encounters or simply because these regulators can ultimately wield the proverbial regulatory stick. As a regulator from Rhode Island reminds us, “Often my interactions go well with those I regulate, but there is still room for a bad day.” A significant majority, 61 percent, of the regulators fall into this category of regulatory interactions. These regulators experience generally cooperative interactions with their regulatory counterparts, but, as the Lilliputian from Rhode Island reminded, bad interactions can happen; therefore, regulators would not go so far as to say their interactions are often positive and cooperative.

Interactions in this category generally have good communication, information sharing, and cooperation. Both parties disclose information readily, and the regulated facilities typically are forthcoming with information, particularly when compliance issues arise. Additionally, the parties look to each other to cooperatively achieve and maintain compliance with regulations. Regulators in this category typically have good interactions with their counterparts in the regulated community, but those interactions may vary. There is not complete information disclosure or open communication. Therefore, a regulator still retains some caution in his or her interactions with regulatory counterparts; thus, cooperation is cautious.

It is not surprising, based on what we have learned thus far about environmental regulators, that the majority of the Lilliputians fall in this category. Accordingly, there is little in the way of further insights from various factors, including environmental media or type of state agency, since the majority of regulators fall into this category. We are encouraged that so many regulators generally have positive, cooperative interactions with the regulated community because, as we have seen, regulatory compliance is frequently the result of ongoing interactions between the parties and positive interactions have the potential to lead to better relationships and maybe even innovation (Pautz and Wamsley forthcoming).

REGULATORY INTERACTIONS: PARTNERSHIP

Building upon the regulatory interactions that are cooperative, an additional 7 percent of regulators fall into the partnership category. From the point of view of regulators in this category, their interactions are superb, as they look to members of the regulated community not as adversaries but as partners in achieving environmental protection. Hallmarks of this category of interactions include the free flow of information between the parties and open, honest communication. The willingness of both sides to provide information and collaboratively address issues builds trust between them and establishes a solid foundation for cooperation. Over time, this cooperation leads to more than just productive interactions; it leads to partnership (Pautz and Wamsley forthcoming).

With a long-standing, positive relationship replete with cooperation, open communication, and information disclosure, seemingly significant issues are dealt with differently. One local municipality encountered a problem with one of its underground storage tanks, and it was not completely confident about what to do. The official decided it would be best if she called her regulator and asked for help. According to the facility official, the regulator was great and they worked together to stop the leak and devise a plan to prevent future leaks from the town’s underground storage tanks. The regulator was more than happy to help and appreciated that the official from the municipality called him for help; but he was not surprised—over the years,

they had built a good relationship in which both were straightforward with the other and worked together to maintain environmental protection. This example demonstrates that good interactions over time serve to reinforce positive experiences. After a history of positive interactions, the facility official wasted no time in calling her regulator to help address a compliance problem. Because the regulator worked well with the facility official, their relationship grew and attributes of their partnership were further solidified.

Only a small percentage of the Lilliputians (7 percent) fall into this category, but that is expected. For a regulator to be in this category of the interactions continuum, her experiences with the regulated community would have to be overwhelmingly positive the vast majority of the time; yet we know regulators frequently encounter the proverbial “bad apple” (Bardach and Kagan 2002). Moreover, partnerships take time to cultivate, and we suspect regulators are hesitant to admit such strong relationships with their regulatory counterparts.

REGULATORY INTERACTIONS: UNDERSTANDING THE DRIVING FACTORS

Based on the continuum of regulatory interactions we established, we are encouraged to find 68 percent of the regulators in this study have interactions defined by cautious compliance and partnership. And only 1 percent of the Lilliputians have tense, adversarial interactions. The majority of the Lilliputians, therefore, have positive interactions with the regulated community, at least from their point of view. Before we continue with our arguments in favor of positive working relationships between the Lilliputians and the individuals they regulate, we first examine what factors explain where a regulator sits on the regulatory interactions continuum.

A Lilliputian’s gender, education, and state agency’s commitment to environmental protection provide important explanations for the driving elements of how regulators are categorized on the regulatory interactions continuum. First, when examining the differences between men and women, recall from Chapter 2 that 68 percent of the regulators are men. Many women have daily interactions, such as Emily did in Chapter 3, in which they confront skepticism from their regulatory counterparts; therefore, they are most likely to experience interactions that are cordial, but are also met with skepticism. Accordingly, interactions are often difficult until the facility official and the regulator begin to trust one another, possibly leading to a cooperative relationship. Conversely, men more frequently fell into the cautious cooperation classification—perhaps because male regulators fit the expectation of the regulated community. These findings are commonsensical since the vast majority of our respondents are men; thus, they have been able to forge a cooperative relationship over time and may not encounter the gender stereotypes that plague women regulators.⁸ Yet conclusions about

the influence of gender on the nature of regulatory interactions must be met with caution given the disproportionate number of men in our study.

The educational attainment of regulators is another important driving element of the continuum. A regulator with a bachelor’s degree or some graduate work generally finds his interactions defined by cordial skepticism, whereas individuals with a doctorate or professional degree (for example, a law degree) or high school diploma are more apt to have interactions that embody those of cautious cooperation. One might expect that additional education promotes more cooperative interactions, but that is not the case here—indeed, the relationship between education and types of interaction is a bit erratic. We attribute these findings to the fact that the majority of Lilliputians have college degrees and some graduate education.

Although it might seem that a state’s environmental commitment and capacity is important to understanding the continuum, one of the more interesting findings is that the classification of state environmental regulatory agencies (as trailblazers, mainstreamers, and lingerers) does not explain regulators’ placement in the cautious cooperation category on the continuum of regulatory interactions, as might be expected. These findings seem to counter the presumption that there are large notable differences in terms of environmental protection between states that are trailblazers and lingerers.

These findings also reveal that the regulators on the front lines may be sufficiently insulated from management’s influence and the political forces exerted on their agency. Front-line workers in other contexts have been found to be fairly removed from the influence of management (Ricucci 2005). In summary, regulators are generally positive about their interactions with members of the regulated community, but are still somewhat cautious in their interactions since their job in the existing regulatory regime is to verify compliance and enforce regulations. Our findings align with other studies of environmental regulators that find the interactions are far more positive than commonly presumed (cf. May and Winter 2011; May 2005; Pautz 2009a, 2009b).

Additionally, it is worth noting, in terms of positive interactions and desirability, where along the continuum most of the regulators fall. If we consider the continuum in terms of the left side representing more negative interactions and the right side representing more positive interactions, we discover 31 percent of the Lilliputians seem to have negative interactions, whereas 68 percent appear to have positive interactions. Admittedly, this is a simplistic division, but it does demonstrate that more regulators have positive interactions than negative, and we argue the tendency is toward more positive interactions. The distribution along the regulatory continuum is encouraging as we look at the broader context of environmental policy shifting from first-generation policies that are predicated on more adversarial encounters in favor of next-generation policies that necessitate closer ties between the Lilliputians and members of the regulated community. If we continue with the presumption that positive interactions are more likely to

result in better outcomes (as discussed in the opening pages of this chapter), let us now contemplate another facet of positive regulatory interactions—trust—as a mechanism for improving these relationships over time.

TRUST AND REGULATORY INTERACTIONS

Again, we contend, along with others (cf. Pautz and Rinfret 2011; Scholz 1991; Ayers and Braithwaite 1992; May and Wood 2003; Pautz 2009b), that positive regulatory interactions are desirable. However, positive interactions do not materialize automatically between parties; rather, they take time to cultivate. Pautz and Wamsley (forthcoming) argue that trust provides a key component to regulatory interactions. Within our study, we build on this argument, suggesting that trust might be an additional vehicle to both explain and improve regulatory interactions.

But before we explore trust in this context, we must start with understanding trust even though a commonly agreed upon definition is elusive (Kramer 1999, 571; Rousseau et al. 1998). Of the many definitions of trust, several often-cited ones merit consideration. Gambetta (1988) states that trust is “the probability that [a person] will perform an action that is beneficial or at least not detrimental to [themselves and] is high enough . . . to consider engaging in some form of cooperation with [another]” (217). Mayer, Davis, and Schoorman (1995) maintain trust is “the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trust or, irrespective of the ability to monitor or control that other party” (712). Rousseau et al. (1998) define trust as “a psychological state comprising the intention to accept vulnerability based on positive expectations of the intentions or behavior of another” (395). Shaw (1997) views trust as the “belief that those on whom we depend will meet our expectations of them” (21). Moreover, trust does not simply exist or not exist; rather, it exists in varying degrees along a continuum (Thomas 1998).

We contend that the aforementioned aspects of trust could have a role in the environmental regulatory system. In particular, the conditions or behaviors associated with trust (vulnerability, risk, and dependence) are unquestionably part of the relationships between regulators and the individuals at the facilities they regulate. For example, a regulator is dependent on a facility for accurate information regarding outputs and emissions monitoring. The regulator faces some degree of risk and vulnerability when relying on the regulated community for information in making a compliance determination. From the other perspective, facility personnel assume risk and vulnerability when they openly communicate with their inspector about compliance problems. Moreover, facility personnel frequently depend on inspectors for interpretation of regulations and requirements.

Along with Kettl (2002) and Fiorino (2006), who contend that a significant issue in the current environmental regulatory regime is the lack of trust,

we asked the Lilliputians about trust of their regulatory counterparts. Sixty-five percent of the Lilliputians profess a “high level of trust” with those they regulate. Forty-four percent of the Lilliputians said they trust the facilities they work with 100 percent of the time, and 46 percent of the Lilliputians trust facilities more than half of the time.⁹ Only 8 percent of the regulators trust facilities less than half the time. We were rather surprised to find such widespread statements of trust in the regulated community from the regulators, particularly in light of common presumptions about regulatory interactions and hostility.¹⁰ These insights about levels of trust the Lilliputians have in their regulatory counterparts are intriguing and fit within a more recent avenue of inquiry in regulatory interactions; however, since our focus was more broadly aimed, we encourage future, more specific research into this dimension. We concur with Axelrod (1984), Posner (2001), and others who maintain that positive regulatory interactions and trust are interrelated (see also Pautz and Wamsley forthcoming).

Inevitably, an underlying concern is whether positive interactions between the regulator and the regulatee raise concerns of regulatory capture. We have argued (along with others) that there are benefits to positive regulatory interactions, and we are encouraged to find a significant majority of the Lilliputians have positive interactions with their regulatory counterparts. Yet there is a counterargument that must be considered about positive interactions. If a regulator’s encounters with the regulated community are cooperative and positive, are they positive because the regulator is lax because she has been captured by industry? The final section of this chapter turns to concerns of capture. We contend that agency capture, if present, is minimal, which is in keeping with numerous other studies that fail to uncover an empirical basis for capture (cf. Makkai and Braithwaite 1992; Quirk 1981; Wilson 1980) despite the seemingly prevalent tendencies toward capture.

CAPTURING THE LILLIPUTIANS? STEMMING CONCERNS REGARDING POSITIVE INTERACTIONS

Remember Beth was concerned that her nickname, “smiley,” might suggest that she is too lenient and chummy with the individuals she regulates. The findings from this chapter might lead to the conclusion that if a regulator has cooperative, positive interactions with individuals at regulated facilities—and garners a nickname like Beth’s—then a Lilliputian might become captured, negatively impacting the implementation of environmental policy.

Although fears of regulatory capture are understandable, we argue that they are overstated. But first we offer an explanation of capture. A pervasive fear that a regulator will succumb to the regulated community is the essence of capture. More formally, Bernstein (1955) says regulatory capture occurs when regulators become beholden to those they attempt to regulate. Furthermore, a regulatory agency or regulator could succumb to the control

of a range of outside influences from the community it is responsible for regulating. We concur with Cooper (2009), who asserts that “The simplistic version of capture suggests that the regulated industry simply takes control of the regulatory agency through a variety of means such that, as journalists frequently put it, the ‘watchdog’ becomes the ‘lapdog’” (Cooper 2009, 11).

Fears of capture permeate all regulatory arenas, not just environmental policy, yet definitive conclusions about its presence remain elusive. Indeed, Kaufman’s (1960) widely read account of the U.S. Forest Service spurs grave concerns of capture. And, as the Lilliputians’ interactions with the regulated community progress from ones defined by adversarialism to interactions defined by partnership, many outsiders, including politicians and the media, would suggest that regulatory capture is all but inevitable. Fears of capture stem from a host of concerns, including worries that a regulator will behave a certain way in the hopes of securing a job with industry or concerns that a regulator is simply complacent and ambivalent about the regulatory apparatus he or she is tasked with enforcing or even that a regulator is sympathetic to industry (cf. Makkai and Braithwaite 1992).

Although concerns of regulatory capture are not entirely unfounded, “in crude terms, the idea of capture is a dramatic overstatement or even simply inaccurate and also an insult that impugns the integrity of many good people who have spent their careers working for public interest in regulatory agencies” (Cooper 2009, 11). Wilson (1980) and Quirk (1981), among others, argue that regulatory capture is not common, and Makkai and Braithwaite (1992) find the presence of regulatory capture to be weak and situational. Croley (2008) not only refutes regulatory capture but points to how well the public interest has been served by regulatory bodies and their regulators. In the context of environmental regulation, we, too, raise doubts that capture should be an overriding concern with regulators.

The very essence of regulatory capture fears presumes the worst of civil servants and assumes that they are not ethical actors. Chapter 3 explored the common assumption that regulators simply sit around sipping their lattes, determining who to regulate; this portrait paints a dismal picture of regulators. However, despite this portrait, the vast majority of civil servants are upstanding, ethical individuals committed to their work serving the public (Goodsell 2004; Croley 2008; Mosher 1982). Inevitably there is the occasional regulator who disgraces the public service through unethical actions, but this is far from the norm. Often the tendency in the United States is to condemn public servants, yet day-to-day experiences remind us that the vast majority of civil servants serve the public despite the rampant bureaucrat bashing (Goodsell 2004). In terms of environmental regulators more specifically, we have seen thus far—particularly in Chapter 2—that the Lilliputians are dedicated public servants who are committed to their work and believe in the good that is achieved through environmental regulations.

The preceding discussion has called into question the concerns of capture regarding the insights about regulatory interactions from this chapter.

With the cooperative interactions the Lilliputians report in this study, the argument could be made that there is an opportunity to embrace more self-regulatory techniques in this policy realm as we look to the future of environmental regulations.

CONCLUDING COMMENTS

This chapter presents important implications for environmental policy. Even though there is much conjecture regarding the interactions environmental regulators have with the regulated community, we find those interactions are understudied. This chapter sheds light on these interactions from a wide array of regulators across the United States. Moreover, these findings provide insights into perceptions of and experiences with the regulated community, which are important for our final chapter, which considers alternatives to the traditional approach of command and control regulations in environmental policy. To help synthesize our findings, we present the regulatory interactions continuum as a foundation for understanding the future of regulatory interactions for state environmental regulators and the way they interact with facilities.

This chapter reveals that the Lilliputians have varying and complex interactions with the regulated community, and these interactions are important to understand because of the discretion regulators exercise in their daily work protecting the environment. When they are in the field assessing compliance, these regulators exercise discretion, which helps explain the different characterizations of regulatory interactions. Undoubtedly, the interactions these regulators have regarding the regulated community will impact their decisions in the field.

A key finding from this chapter is that environmental regulators across 17 states generally have positive interactions with the regulated community. Although 1 percent of the Lilliputians’ interactions might be adversarial and difficult, the message is that state environmental regulators might generally have positive interactions, which is important for environmental protection. Common perceptions of these regulatory interactions would have us think that these interactions are mostly on the left side of the regulatory interactions continuum, but our findings indicate the opposite: 68 percent of the Lilliputians have regulatory interactions on the right side of the continuum, and only 1 percent describe negative interactions.

In summary, the demands on front-line workers like Patricia, Gary, Emily, Harry, and Beth will certainly be different as next-generation policies are adopted, and these next-generation policies are more fully explored in the final chapter. But we see here that the Lilliputians and their regulatory counterparts work together and can trust one another (Potoski and Prakash 2004, 154). In their discussions about the transition in environmental policy, Fiorino (2006) and Eisner (2006) note that positive relationships and

trust are needed among regulators and the regulated community. Moreover, Potoski and Prakash (2004) discuss how next-generation environmental policies require former adversaries, who have been conditioned to detest the other because of the powers one party exerts over the other, to work together and trust one another (Potoski and Prakash 2004, 154). Accordingly, the perceptions, style, and interactions front-line regulators have with regard to the regulated community must be considered in any shift of the environmental regulatory structure.