INTRODUCTION

Negotiation is a fundamental method of dispute resolution. After all, even most lawsuits are not decided by judges or juries. Instead, they are settled out of court by the parties themselves. Negotiation is also central to other forms of dispute resolution. For example, mediation (a device sometimes used for settling environmental disputes) is basically negotiation that is carried out with the assistance of a third party.

On one level, all of us are familiar with negotiation. We may bargain over trivial things, like what to order at a Chinese restaurant, or we may haggle over important items, such as the price of a house. Sometimes we bargain for ourselves; in other cases, we may represent clients or organizations. This sort of firsthand knowledge of bargaining is supplemented by observing negotiations that are carried out in the public arena. The bargaining over the hostages in Iran, the battle over the nuclear power plant in Seabrook, New Hampshire, the air controllers' strike in 1981—all such exchanges regularly provide us with lessons in how (and how not) to negotiate.

Yet, as commonplace as negotiation is in our personal and professional lives, few people have a coherent understanding of the negotiation process. Bargaining often is seen as an art—not a science—and perhaps a "black" art at that. Until very recently, only a handful of law, business, and planning schools have offered courses in the theory and practice of negotiation. Serious interest in negotiation is on the increase, however, and there is now a substantial scholarly literature on the subject. Economists, psychologists, and policy analysts have long studied negotiation, and they have been joined, if belatedly, by lawyers and other professionals whose work brings them into the field. Although it is impossible to summarize negotiation theory in a single chapter, we believe it is essential to introduce some of the most fundamental concepts and analytic tools before we turn to the practice of environmental dispute resolution.
A theoretical framework allows us to identify and judge a negotiator's key actions. Environmental disputes typically involve many parties and issues. Without some sort of conceptual chart, one is unlikely to fathom complex cases. Consider, for example, the Brayton Point case described in full in Chapter 8. In this case, a power company in southeastern Massachusetts had the capacity to sell its excess electricity to a consortium of New England utilities. When the price of oil rose in the early 1970s, the company was very interested in converting to coal, even though that meant possible violations of the federal clean air act. Air pollution standards, moreover, were not the direct responsibility of the federal Environmental Protection Agency; rather, they were the job of the Massachusetts Department of Environmental Quality Engineering. At the same time that the company was starting to negotiate with these agencies to get some relaxation of the standards, it confronted the attempts of the Federal Energy Administration to compel it to burn coal. It resisted these efforts, fearing that it could be required to use costly low sulfur coal and to install expensive scrubbing devices. Thus, while the company was seeking permission from two agencies to convert to coal burning—on its own terms—it was fighting the attempts of a third agency to mandate conversion. Also affected by the dispute were area residents who stood to suffer from increased air pollution but who were not, in fact, served by the power plant. Citizens in nearby Rhode Island also had much at stake, but they could hardly depend on Massachusetts officials to give their concerns the highest priority. Obviously, in complex cases of this sort, some sort of analytical framework is a prerequisite to identifying the interests, strategies, and tactical decisions of the parties.

A conceptual model also identifies the factors that encourage or inhibit negotiation. It thus can teach us how to revise legislation and invent new procedures so as to stimulate consensual dispute resolution. We are all familiar with disputes that linger months, often years, before they are resolved, even though the ultimate terms of the agreement were within the parties' hands from the start. It is important to ask why the dance of negotiation so frequently takes so long. In some instances, of course, one of the negotiators may want delay, but often the passage of time is expensive for all concerned. As you consider the following material, try to identify the conditions that lead to stalemate and delay. Can you devise solutions for these problems?

**Negotiation Analysis**

There are several perspectives from which negotiation can be studied. For example, much can be learned from careful descriptions of negotiation experiences. The extensive case studies in the following chapters are intended to illustrate the issues that arise and practices that are followed in environmental