

Swim for the River

THE LAW

Key environmental laws.

Why they were enacted and what's happened as a result
(Environmental Science and Social History)

The Hudson River Valley is one of the first places where citizens experienced the environmental consequences of unregulated industrial expansion and chose to do something about it.



Early Storm King Mountain protest

The first modern environmental battle was fought over **Storm King Mountain**, which stands at the northern end of the river's scenic Hudson Highlands. In 1962 the Consolidated Edison Company (Con Ed) proposed to excavate the mountain to install the largest pumped-storage hydroelectric plant in the world. A small group of citizens filed a suit to contest it.

At first there were only six members of the group. Led by **Carl Carmer**, a writer and local historian, and Leo Rothschild, an attorney and chairman of the New York-New Jersey Trail Conference, they called themselves the

Scenic Hudson Preservation Conference. They fought Con Ed's plant on the grounds that it would do irrevocable harm to the environment.

The suit was initially dismissed, but an appeal in federal court won **Scenic Hudson** the right to sue for *potential* environmental damages. A 17-year battle ensued. The case created a **legal basis** for preventing environmental destruction rather than simply offering redress for damage already caused.

Elsewhere on the river, factories making automobiles, wire cable, and electrical components were causing systemic damage with their pollution. Industry saved millions of dollars in waste-disposal costs by using the Hudson as a sewer. General Electric discharged PCBs into the river, contaminating aquatic life. Paint from the General Motors plant in North Tarrytown colored the water. Chemicals and metal filings from the Anaconda Wire and Cable Company in Hastings-on-Hudson were pumped straight into the river. Dozens of other factories added their waste to the mix. Oil and sewage were common ingredients in the Hudson.

In the mid-1960's, before the sale of most Hudson River fish was banned for health reasons, buyers in New York City fish markets complained of stripers and shad that smelled and tasted like the pollutants they swam in. Angry fishermen

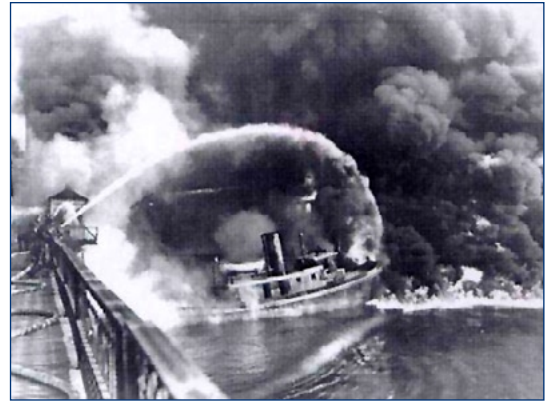


Contaminated fish

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led by Robert Boyle, a writer for *Sports Illustrated*, formed the Hudson River Fishermen's Association (HRFA) in 1966. Boyle suggested the association prosecute polluters using a little-known nineteenth-century law. The **Rivers and Harbors Act of 1886** made it illegal to alter the condition of a navigable waterway without government authorization. Offending parties could be fined \$500 to \$2,500.

Using this law, the fishermen had their first small legal victory in a battle against the Pennsylvania Central Railroad. The railroad was forced to stop dumping oil into a Hudson tributary, while the fishermen's association won a \$2,000 bounty for blowing the whistle. The group changed its name to **Riverkeeper** and continued to win small cases until the Harbor Act was superseded by more effective environmental legislation.



Fire on the Cuyahoga River



Rachel Carson

Nationwide, the 1960's brought new environmental awareness. Rachel Carson's book ***Silent Spring*** described the deadly effect of chemical pollutants in the environment. Companies exposed for using these pollutants tried to have the book banned. It went on to become a cornerstone of the environmental movement.

In 1968 the spacecraft Apollo 8 took the first **picture** of Earth from space. This famous image depicted the world as a delicate blue-and-white orb. The picture seemed to confirm an idea environmentalists were expressing: that the world, home to nature's diversity, was a delicate thing, in need of human protection.

One year later there was a massive **oil spill** off the coast of California, and hundreds of dead seals and dolphins washed up onshore. Several months later Ohio's **Cuyahoga River** caught fire from industrial pollution and burned for several days. The national media featured images of both disasters. Americans were appalled. President Richard Nixon, spurred by broad public support for environmental action, signed the **National Environmental Policy Act** (NEPA) on January 1, 1970. It was the dawn of a new era.

The purpose of the act was to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to



Earth from space

the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council on Environmental Quality." The act acknowledged the global impact of environmental problems,

started a recycling initiative, and made provisions for environmental advisors to the president. It led to requirements that developers prepare environmental impact assessments and that agencies seek public review on new proposals affecting the environment.

On April 22 a grassroots movement spearheaded by Senator Gaylord Nelson organized the first **Earth Day**. Intended as an environmental "teach-in" for schools across the coun-

try, it attracted widespread public interest. An astounding 20 million people in cities across the United States joined together to participate in Earth Day events.

In July the president and the United States Congress worked together to establish the Environmental Protection Agency (EPA) to enforce the directives of the National Environmental Policy Act. They also passed the **Clean Air Act**, which revised prior ineffective laws and set strong goals and guidelines for reducing air pollution.

The Clean Air Act identified six of the **most toxic pollutants** and required the EPA to find and set *primary* and *secondary health standards*. Primary standards are the level at which pollutants are considered harmful to humans. Secondary standards are the level at which they damage resources, such as livestock, crops, and other vegetation. The Clean Air Act also required the EPA to look for other potentially harmful toxins in the air and mandated that gasoline be lead-free by the mid 1980's.

In 1972 the **Federal Water Pollution Control Act** set standards for American water quality. The act's goals were "the elimination of the discharge of all pollutants into navigable waters of the United States by 1985" and an "interim level of water quality that provides for the protection of fish, shellfish, and wildlife and recreation by July 1, 1983."



Air pollution

The Water Act governed what could be discharged into any regulated body of water. Industry was required to use state-of-the-art technology to reduce emissions. But a loophole existed. In cases where technology was not yet available, industries could get temporary permits that allowed them to continue polluting. It was assumed that these permits, and the pollution they allowed, would be phased out by 1985.

The Water Pollution Control Act was an environmental milestone. It went beyond the idea of pollution *abatement* to pollution *prevention*. It also provided citizens with the right to sue any party, corporate or governmental, that violated its provisions. The act even prohibited discrimination against anyone who instigated or testified in a case. Revised and amended in 1977, the law came to be known as the Clean Water Act.

The United States finally had a system for determining and regulating pollutants that posed serious threats to public health. It also had, in the EPA, a federal agency dedicated to the research and regulation of these threats. Public awareness was high, "the environment" had entered the political vocabulary, and pollution prevention had become a national priority. At the same time the long-term consequences of unrestricted industrial dumping were, quite literally, surfacing.

In the 1960's, residents of a working-class neighborhood in the city of Niagara Falls, New York, complained of odors and chemical residues leaching into their basements and



Earth Day in Washington, D.C., 1970

lawn. The problem got worse but was given little attention until 1978, when Michael Brown, a Niagara Gazette reporter, wrote a series of articles about the horrors in a suburb known as *Love Canal*. Brown showed that Love Canal was built over a landfill containing 21,000 tons of chemical waste.

The Health Department began collecting samples. Blood from Love Canal residents showed chromosome damage, indicating an increased risk for cancer and reproductive ailments. Between 1974 and 1978, 56 percent of children born in Love Canal were found to suffer from a birth defect.

In 1978 President Jimmy Carter declared a state of emergency for Love Canal. The government moved 239 families out of the most dangerous area. In 1980 the entire region was permanently abandoned. Love Canal was not an isolated incident. In 1979 the EPA found thousands of sites across the country that posed threats to public health. It became obvious that pollution didn't just need to be regulated; in many places it had to be eliminated.

The federal authorities could not afford a thousand Love Canals, and taxpayers could not be expected to shoulder the high price of cleanups. Prior laws allowed the EPA to sue responsible parties, but in many cases, where sites had been abandoned for decades, it was difficult to locate the culprits.

New legislation was needed. On December 11, 1980, the *Comprehensive Environmental Response, Compensations and Liability Act*, also known as CERCLA, or the *Superfund Law*, was enacted. The Superfund law allowed the EPA to clean up threats to public health immediately and bill the polluter later. When no responsible parties could be identified, the EPA was authorized to cover all costs. A fund was created for cleanup, containment, litigation, and reimbursement. It was financed by a tax of 9.7 cents a barrel on domestic crude oil and imported petroleum products. Two additional taxes, levied on companies using dangerous chemicals, added to the revenue. Finally a small environmental tax of 0.12 percent was levied on the profits of corporations earning more than \$2 million a year.

The year the Superfund law was enacted the long legal battle over Storm King Mountain on the Hudson River came to an end. Con Ed agreed to scrap its plans to build its hydroelectric plant, reduce power-plant-related fish kills, and start a fund for environmental studies along the Hudson. In exchange the Hudson River Fishermen's Association agreed not to sue Con Ed for thermal discharge violations at its existing power plants. Though victory came at a price, the settlement stands as one of the most successful civil environmental actions. A handful of concerned citizens started a legal and political avalanche that wiped Con Ed off the mountain, preserving a part of the scenic Hudson River valley.

The legal framework was complete. Environmental law became a recognized specialty with three pillars to support it: the Clean Air Act, the Clean Water Act, and the Superfund law. For almost two decades environmental legislation enjoyed broad bipartisan support. Although funding, standards, and enforcement varied with each administration, the essential structure remained intact.

The quality of our environment has improved since the 1970's. The EPA has facilitated the cleanup of more than 900 dangerous sites. The complete phaseout of leaded gas was accomplished in 1995, and the average amount of lead in human blood has dropped more than 50 percent nationwide. Superfund fees were expanded under President Ronald Reagan and renewed under President George H. W. Bush.



Love Canal evacuation

In 1995 Congress balked at renewing the industrial taxes that supported Superfund. President Bill Clinton tried to reinstate them but was unsuccessful. The fund survived on its surplus until 2002. Since then it has been supported by general tax revenues, shifting the cost of cleanup from industry to individual taxpayers.

George W. Bush is the first president to attempt to roll back the enforcement of environmental law. He has appointed EPA administrators who cut back on spending and play down financial problems rather than asking for *reauthorization of the Superfund taxes*.

Today, according to the EPA, there are 44,000 potentially hazardous sites nationwide. The total Superfund budget has decreased in constant dollars from \$1.8 billion in 1993, primarily from polluter-related taxes, to \$1.2 billion in 2005, all of which is paid by individual taxpayers.

Under George W. Bush the EPA has also rolled back the *New Source Review*, a 1977 amendment to the Clean Air Act that required plants to receive EPA approval before they could expand operations that generate additional pollution.

In its report *Rewriting the Rules, 2005*, the environmental watchdog organization the National Resources Defense Council demonstrates, step by step, how the current Bush administration has led “the most thorough and destructive campaign against America’s environmental safeguards in the past 40 years.”

National policies are created and administered by the people we elect. The best way to improve and enforce environmental standards is to vote for people who are educated, aware, and care enough to make these issues a priority.

Your vote makes a difference. So do your ideas. The case at Storm King started with a small group of concerned citizens. If you want to change environmental policy, get organized, get involved, and educate your community.

