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A SERIES OF UN-BREATHABLE EVENTS: THE CLEAN AIR ACT AND THE TRANSFORMATION OF ENVIRONMENTALISM IN AMERICAN SOCIETY

A Capstone Experience/ Thesis Project

Project in Partial Fulfillment of the Requirements for

the Degree Bachelor of Arts with

Honors College Graduate Distinction at Western Kentucky University

By

Chelsea E. Kasten

Western Kentucky University 2011

CE/T Committee:

Dr. Patricia Minter, Advisor

Dr. Ouida Meier

Professor Travis Wilson

Approved by

Advisor

Department of History

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ABSTRACT

Clean air legislation was first passed in the United States by Congress in 1955 and has since been amended in 1963, 1965, 1967, 1970, 1977 and 1990. The Clean Air Act was created to ensure that Americans were not being unnecessarily exposed to harmful air pollutants. It is the legislation that allows for the regulation and control over air pollutants and the sources that release those air pollutants. This legislation is important to the maintenance and improvement of air quality in the United States. Without the Clean Air Act to regulate pollutant sources, the air could be toxic to vulnerable populations in the U.S., if not toxic for the U.S. as a whole, causing different cancers and health issues. Air legislation has been passed in the United States because of the public demand for Congress to protect public health. Had it not been for these social pressures Congress had no reason to take action with legislation. This legislation changed as American society was transforming with a new awareness and environmentalism.

Keywords: Clean Air Act, Earth Day, smog, air pollution, environmentalism, clean air legislation

Dedicated to the people who make up my world, the most loving and supportive friends and family I could ask for. May we continue to breathe cleanly, always.
iii

ACKNOWLEDGMENTS

This project would not have been possible without the support, knowledge and dedication of so many people. I am grateful beyond words to my CE/T advisor, Dr. Patricia Minter, for all of her assistance with this project. Her dedication to her students and willingness to have weekly meetings as well as many email conversations throughout this process allowed me to create this thesis. I would also like to thank my committee, Dr. Ouida Meier and Professor Travis Wilson, for all of their time and support. I could not have asked for a better advisor or committee.

Many thanks to the Honors College and Western Kentucky University for a creative and enthusiastic intellectual community that helped contribute to my project.

Finally I would like to thank my incredible family and friends. Without them this thesis would not have been possible. I would not be the person I am today, nor would I have been able to produce the work that I did without them. Everything I do is for them, for they make up my world.

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Chapter 1

Introduction

"This situation does not exist because it was inevitable, not because it cannot be controlled. Air pollution is the inevitable consequence of neglect. It can be controlled when that neglect is no longer tolerated." These were the words of President Lyndon B. Johnson when he signed the Air Quality Act of 1967 at a time when growing concern over the environment, especially air pollution, was of particular interest to the U.S. government and the people of the United States.

Being able to breathe in air is one of the single most important functions of the human body. The human brain begins to shut down from lack of oxygen after three to four minutes of air starvation. With oxygen being an essential ingredient for the body to function, air pollution is a cause of concern. While starvation of oxygen altogether causes the brain to die and organ failure, exposure to air pollution is associated with numerous effects on human health. These effects include lung, heart, blood vessel, and brain impairments. How an individual's health is affected by air pollution varies but there are different groups of people who are at a higher risk of illness than others. The groups most at risk for air pollution are the elderly, infants and children with developing lungs,

¹ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011).

pregnant women (who are breathing dirty air to their unborn fetus), and individuals who suffer from serious heart and lung diseases.²

Air pollution can cause both short and long-term health effects. Short-term effects are usually immediate and often reversible when exposure to the pollutant ends. Eye irritation, headaches, dizziness and nausea are all associated short-term exposure. Long-term consequences of air pollution are not immediately evident. They are not reversible when exposure to the pollutant ends. These health risks include decreased lung capacity and cancer resulting from long-term exposure to toxic air pollutants. Air pollution can affect the skin, eyes, and other body systems but primarily affects the respiratory system. All forms of air pollutants can negatively affect the lungs. The lungs are the organ which absorbs oxygen from the air and removes carbon dioxide. Lung damage due to air pollution hinders this process and helps lead to respiratory illnesses like bronchitis, emphysema, asthma, and cancer. Weaker lungs can add additional strain to the heart and circulatory system. There are scientific techniques for assessing health impacts of air pollution making use of air pollutant monitoring, exposure assessment, dosimetry, toxicology, and epidemiology.³

It was an incident in Donora, Pennsylvania in 1948 that brought the issue of air pollution into the American consciousness. On October 29th of that year an inversion, where a cold air mass traps warm air near the ground, occurred. The inversion caused

² "Effects of Air Pollutants – Health Effects," *U.S. Environmental Protection Agency*, http://www.epa.gov/apti/course422/ap7a.html (accessed 2 January 2011).

³ "Effects of Air Pollutants – Health Effects," *U.S. Environmental Protection Agency*, http://www.epa.gov/apti/course422/ap7a.html (accessed 2 January 2011).

smoke from the local steel and zinc mill to be trapped around the town of Donora. The smog covered an eight-mile area surrounding the town located 25 miles southeast of Pittsburg. The residents were used to living in a smoky environment, believing it was the cost of industry and a healthy economy. Seeing barren yards and hillsides and having to repaint homes to counteract the effects of corrosive smoke on individual homes and businesses was part of the life in a town that was mostly employed by the steel mill.⁴ When the smog first settled none of the residents thought twice about the dense smog. However, the smog, unbeknownst to the residents, contained sulphur trioxide which is a deadly gas created when sulphur dioxide comes into contact with the air. The smog was also laden with small metal particles from the plant. The mill continued to operate day and night as the smog continued and did not shut down until several days of the constant smog as illness began to hit the town –continuing to fill the air with more toxic pollution. By the time rain fell to help clear and lift the smog twenty residents had died as a result of the pollution and 6,000 of the 12,000 residents had fallen ill, complaining of chest pains and an inability to draw in deep breaths. The local hospitals were filled to capacity and the city was unable to evacuate its residents as they had ordered all persons to stop driving their vehicles to stop air pollution from car exhaust. The residents of Donora could not draw in enough clean oxygen. Emergency services were forced to go home to home and offer residents three to four puffs of oxygen from air tanks before moving on to the next home. There were not enough air tanks or medical services to do more for those

⁴ David Templeton, "Cleaner Air is Legacy Left by Donora's Killer 1948 Smog," *Pittsburg Post-Gazette*, http://www.donora.fire-dept.net/1948smog.htm (accessed 25 January 2011).

who were not critically ill.⁵ The death and illnesses caused by the Donora Smog received national coverage and caused a new awareness of the American people to the danger of air pollution. This new heightened awareness of the environment and the tragedy of Donora followed Congress as it began making legislative proposals for air pollution and scientists began studying the ill effects of air pollution.



Image 1: "Donora At Noon"
Source: https://eee.uci.edu/clients/bjbecker/SpinningWeb/donora1910a.jpg

The health hazards of air pollution, as demonstrated in the Donora incident, make it understandable and desirable for regulations and restrictions on air pollution to minimize health concerns. In the United States it was not until 1955 that the first Federal legislation was passed regarding air pollution. Known as the Clean Air Act, it is a Federal law allowing for the regulation and control over air pollutants and the sources that release

⁵ "20 Dead in Smog; Rain Clearing Air as Many Quit Area," New York Times, 1 November 1948.

them. The Clean Air Act was created to ensure that Americans had clean air to breathe and minimal negative health effects due to air pollution.

After passage of the Air Pollution Control Act in 1955, subsequent pieces of legislation were passed in 1963, 1965, 1967, 1970, 1977, and 1990. Each Act has strengthened Federal authority over the regulation of air pollution —ensuring that state and local governments follow the laws and policies outlined in the Act. The Clean Air Act is critical to establishing limits on air pollution and the continued improvement of air quality in the United States. It is also important to the maintenance of air quality in the United States. Without its passage and transformation, the United States would be choking on its own pollution.

Congress began proposing air pollution legislation in 1949 following the Donora Smog. Air pollution control bills were introduced in the House by members of the Pennsylvania delegation as a reaction to the demands of the state's residents who were awakened to environmental concerns after Donora. These efforts by the representatives of Pennsylvania were more in reaction to the demands of constituents then as a real effort to address air pollution. Growing problems of smog in Los Angeles, California created support for Federal action by the California delegation. The added pressure from California helped ensure that interest in the issue of air pollution stayed and grew in the 1950s. Multiple bills were introduced in the early 1950s to promote research of air pollution but none of the bills went far or survived committee if they made it that far in

the House. The first committee hearings did not investigate the issue of air pollution until 1954 and finally passed the Air Pollution Control Act of 1955.⁶

The first piece of legislation, the Air Pollution Control Act, passed in 1955 and provided funding for Federal research in air pollution.⁷ It was not until the executive branch became involved and gave its support to air pollution legislation that Congress passed its first bill. This legislation funded money for research that explored the scope of air pollution as well as the sources. It did not allow for the Federal interference with State regulation of air pollution.⁸ It was not until later legislation was passed that the Federal government would take on a more active role.

In 1963 Congress passed the first Clean Air Act, the first Federal legislation passed regarding air pollution control rather than just research. The Act authorized research into techniques for the monitoring and control of air pollutants. It also established a Federal program within the U.S. Public Health Service. The Act was signed by President Lyndon B. Johnson in December of 1963 after the assassination of President Kennedy one month earlier. Johnson was a strong supporter of environmental improvements and would sign the 1963, 1965 and 1967 air acts.

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⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 85-92.

⁷ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

⁸ "History of the Clean Air Act," *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 2 January 2011).

⁹ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

¹⁰ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

The Motor Vehicle Air Pollution Control Act was signed October 20, 1965. It established the first emission standards on light-duty vehicles to be set by the Secretary of Health, Education and Welfare. The standards went into effect for 1968 vehicles. The Act also called for the air pollution control between the countries of North America.

Continued research was required on vehicle emissions of sulfur dioxide. 11

In 1967 Congress passed the Air Quality Act to expand the Federal government's activities. Areas subject to interstate air pollution transport were placed under the enforcement of the Federal government. For the first time the Federal government conducted ambient monitoring studies and stationary source inspections. The 1967 Act also authorized larger studies of air pollutant emission inventories, ambient monitoring techniques, and control techniques. The needs of the state drove much of the early Federal air pollution control policies. Early legislation was significance for problem identification and definition. Congressional committees were created to explore the range and type of problems faced with air pollution and laws were passed to research different parts of air pollution. With this research came more support and understanding of what needed to be done in order to effectively address the issue of air pollution. By enacting early legislation, Congress established a Federal beachhead in an area of policy that had

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¹¹ Ida Kubiszewski, "Motor Vehicle Air Pollution Control Act of 1965, United States," *The Encyclopedia of Earth*, 21 August 2008,

http://www.eoearth.org/article/Motor_Vehicle_Air_Pollution_Control_Act_of_1965,_United_States (accessed 10 March 2011).

¹² "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

previously belonged to the state and local governments. This became a stepping-stone toward later, more powerful laws.¹³

The first Earth Day in 1970 marked a major turning point in American society's awareness of environmental problems and the need for action to remedy those problems. ¹⁴ In answer to the heightened public environmental awareness President Nixon and Congress passed the Clean Air Act of 1970. The Clean Air Act of 1970 was the largest amendment ever passed regarding air pollution. The amendment caused a major change in the Federal government's role in air pollution control. At the same time that the new Clean Air Act Amendment was passed the Environmental Protection Agency was established under the National Environmental Policy Act and implementation of the Clean Air Act fell under EPA control. ¹⁵ The 1970 Act marked a huge turning point in clean air legislation but it was soon recognized that a new amendment was needed to accommodate industries and states as they adapted to new regulations.

The Clean Air Act Amendment of 1977 was a response to industries that had not yet met regulations set in the 1970 Amendment. It established the Prevention of Significant Deterioration Regulations, which set up to prevent corrosion in air quality that already met the standards set under the National Ambient Air Quality Standards

¹³ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 84-85.

¹⁴ Paul G. Rogers, "Looking Back; Looking Ahead The Clean Air Act of 1970," *EPA Journal*, January/February 1990.

¹⁵ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

(NAAQS).¹⁶ The National Ambient Air Quality Standards are standards to control the, "wide-spread pollutants from numerous and diverse sources considered harmful to public health and the environment. The Clean Air Act established two types of national air quality standards. Primary standards set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against visibility impairment, damage to animals, crops, vegetation, and buildings."¹⁷ The 1977 Amendment had more provisions added to deal with states that did not achieve national objectives, unmet auto emissions standards, and with measures to prevent deterioration of clean air areas to prevent acid rain.¹⁸

The Clean Air Act Amendment of 1990 modified and extended Federal legal authority provided in the 1963 and 1970 Acts. ¹⁹ The 1990 revision addressed five main areas of concern: air-quality standards, motor vehicle emissions and alternative fuels, toxic air pollutants, acid rain, and stratospheric ozone depletion. ²⁰

Throughout the entire history of clean air legislation environmental events have occurred as constant reminders to Americans of the need to improve and clean the air.

While the incident in Donora was by far the worst and most extreme example in the U.S.,

¹⁶ "Clean Air Act," Branch of Environmental Assessment,

http://www.boemre.gov/eppd/compliance/caa/index.htm (accessed 12 January 2011).

¹⁷ "Technology Transfer Network National Ambient Air Quality Standards (NAAQS)," *U.S. Environmental Protection Agency*, 22 March 2011, http://www.epa.gov/ttn/naaqs/ (accessed 6 April 2011).

^{18 &}quot;Clean Air Act," The Environment a Global Challenge,

http://library.thinkquest.org/26026/Politics/clean_air_act.html?tql-iframe (accessed 18 January 2011).

19 "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa history.html (accessed 13 April

¹⁹ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 Ap 2010).

²⁰ Legislation, a look at U.S. air pollution laws and their amendments, http://www.ametsoc.org/sloan/cleanair/cleanairlegisl.html (accessed 13 April 2010).

throughout U.S. history. Only with the encouragement and pressure of the executive branch did Congress compromise and pass clean air legislation. When Presidents showed an interest in the environment and helped pressure Congress to deliver results then the subsequent legislation was produced. There was also a transformation in the willingness of the Federal government to interfere with state and local authority over air pollution control, recognizing the issue of air pollution as a national one. The economic costs of the Clean Air Act played a role in the government's willingness to pass meaningful legislation that would both reduce and improve air pollution and not overly strain industry and the economy.

This thesis contributes to the understanding of air legislation by offering a clear explanation of the unique and significant social pressures that prompted action by the Federal government to take control of and transform air legislation. Air legislation has been passed in the United States because of the public demand for Congress to protect public health. The timetable for the legislation is the result of a transformed and more informed public who, with the occurrence of major historical events and the emergence and development of modern day environmentalism, demanded the direct action of the executive and legislative branches. Without social pressures the government had no cause for action against air pollution. What were these social pressures that prompted legislation against air pollution? What events brought about these social pressures? What

occurred in politics as a result and what were the economic factors that all impacted clean air legislation in history?

Chapter 2

Smog and Death: Air Pollution Control Act of 1955

Environmental law originated shortly after World War II. The body of American environmental law reflects the many rules citizens have imposed on themselves to govern their complex relationship with nature. In environmental law, lawmakers draft and enact legislation that manages mankind in order to protect the environment. Richard J. Lazarus, a leading contemporary legal commentator, said that, "environmental law regulates human activity in order to limit ecological impacts that threaten public health and biodiversity."²¹ Keeping the purpose of environmental law in mind, early air pollution control bills introduced after the Donora incident helped signal Congressional interest in the air pollution problem.²² Donora spurred the desire for research on air pollution and its affect on an individual's health. Fear of a costly and dramatic expansion of Federal authority impacted the kind of legislation in the 1950's that Congress was willing to pass. The interest was in researching air pollution and its effects on health, not in taking regulating powers from state and local governments.²³

²¹ Karl Boyd Brooks, Before Earth Day The Origins of American Environmental Law 1945-1970 (Kansas: University Press of Kansas, 2009), 5.

²² Christopher J. Bailey, Congress and Air Pollution: Environmental Politics in the USA (Manchester and New York: Manchester University Press, 1998), 90.

²³ Christopher J. Bailey, Congress and Air Pollution: Environmental Politics in the USA (Manchester and New York: Manchester University Press, 1998), 90.

With the memory of Donora still strong in the American consciousness, an event overseas revamped the fears of Americans and the desire for cleaner air. The London Smog of 1952 was one of the worst air pollution disasters in world history. In the week that the smog persisted in London it is estimated that some 4,000 people died. Over the course of the two and a half months following the smog an additional 8,000 died from health issues relating back to the smog.²⁴ In December of 1952 Great Britain was experiencing a cold snap. People were using more coal to heat their homes and were releasing more air pollution into the skies. London's history of coal use for domestic purposed goes back as far as 1550. As early as the 13th century European industries burnt 'sea coal' contributing to thick smog that was constantly overtaking London. Particularly during the Victorian Era coal use grew rapidly as this was a large period of industrialization for London. Throughout all of this time residents complained about the smog, saying that it stank and hurt people's lungs. Exceptionally thick smog was recorded in the winters of 1873, 1880, 1882, 1891 and 1892. The next recorded incident was in 1948, the same year as Donora. Somewhere between 700 and 800 people were killed because of this smog but until 1952 it was widely believed that people died of unusually cold weather, not because of polluted air. From research conducted after the smog it was concluded that the London Smog contained large amounts of metallic particulate matter, including high levels of zinc. Zinc can damage cells in the body. Zinc

²⁴ "The Lethal London Smog Event 5th-9th December 1952," *World-Weather-Travellers-Guide.com*, http://www.world-weather-travellers-guide.com/london-smog.html (accessed 25 February 2011).

was absorbed into the bloodstream and contributed to the deaths of victims. Low levels of zinc are healthy and therapeutic for zinc deficiencies but are toxic when taken in high doses.²⁵



Image 2: Police officer controlling traffic during the London Smog Source: http://ty.rannosaur.us/wp-content/uploads/GreatSmogof1952.png

The London Smog was caused by several factors. The unusually cold weather caused homes to burn more coal in their grates to keep warm. There were a large number of factories in the London area operating on coal and oil that continued to add more pollutants into the atmosphere. No wind was blowing in the region to sweep away the smog and the air pollutants. This lack of wind allowed pollutant levels to build up in the area. The temperature inversion prevented natural vertical dispersion of air pollutants into the atmosphere. Temperatures remained near freezing for the entire period and humidity

²⁵ "The Lethal London Smog Event 5th-9th December 1952," *World-Weather-Travellers-Guide.com*, http://www.world-weather-travellers-guide.com/london-smog.html (accessed 25 February 2011).

was almost 100% from the 6th of December until the 9th. In July of 1952 electric trams had been replaced in the city by thousands of diesel burning buses. As a result London was exposed for the first time to high levels of diesel emissions into the atmosphere. Most business owners were unable to operate during the smog. Because the smog was so thick public transport stopped, people stopped driving their cars in the dense smog, and people remained indoors, trying to keep the smog was coming in. Tiny soot and other smog particles were impossible to keep from homes. Incidentally, this helped to contribute to people dying at home in their beds.²⁶

On the 5th of December visibility began to drop, until people were only capable of seeing a few feet in front of themselves.²⁷ All transportation was brought to a standstill as people were incapable of seeing enough to drive or navigate. People were forced to walk around in the middle of the day with lanterns and flashlights in order to see. This incident was the scale of Donora times thousands more. Had it not been for the unusual weather and the resulting inversion that trapped the polluted air within London the London Smog of 1952 would never occurred. However, had the inversion never taken place, then the social outcry for legislative action might not have occurred when it did and could have resulted in a worse environmental event later in history. 28 "This smog event made the public acutely aware that smoky air can kill, but the government at the time was reluctant to do anything to prevent future smog until public demand for action became too great.

²⁶ "The Lethal London Smog Event 5th-9th December 1952," World-Weather-Travellers-Guide.com, http://www.world-weather-travellers-guide.com/london-smog.html (accessed 25 February 2011).

²⁷ "The London Smog Disaster of 1952. Days of Toxic Darkness,"

http://www.portfolio.mvm.ed.ac.uk/studentwebs.session4/27/greatsmog52.htm (accessed February 25,

²⁸ "The London Smog Disaster of 1952. Days of Toxic Darkness,"

http://www.portfolio.mvm.ed.ac.uk/studentwebs.session4/27/greatsmog52.htm (accessed February 25, 2011).

Consequently, four years later in 1956, "extensive legislation was passed through parliament that would ultimately lead to substantial reductions in fossil fuel emissions in large cities, not only in London, but across the modern world."²⁹

Following the London Smog of 1952 there was an article in the New York Times reported that a report on the Donora Smog of 1948 was going to be sent to the Laborite Member of Parliament, Norman Dodds. Dodds had requested the assistance from the United States by sending the report so that Great Britain could prepare its campaign against London's smoke-laden smog- referred to as fog in Great Britain at the time as they had not yet made the connection that while fog is defines as droplets of water vapor suspended in the air near the ground. Smog is a combination of fog and smoke with other pollutants – essentially polluted fog. However, initially following the incident in London, Great Britain did not make the distinction between fog and smog. That would come later with more knowledge, some of which was provided in the Donora Report. By the end of December, Great Britain was still discovering how many people had died as a result of polluted air. While in 1948 the U.S. government carried out a full-scale investigation into the cause of the deaths in Donora, London was still not investigating and Dodds complained that the British Government needed to act as the U.S. and investigate extensively.³⁰ The incident in Donora stood as the beginning of death by smog for residents in industrial areas and Great Britain turned to the United States for aid in its new crisis. Air pollution was not limited to the region of Donora or the United States. Air patterns, unable to be controlled or manipulated by man, travel around the globe. As a

²⁹ "The Lethal London Smog Event 5th-9th December 1952," World-Weather-Travellers-Guide.com, http://www.world-weather-travellers-guide.com/london-smog.html (accessed 25 February 2011).

³⁰ "Donora Report to Aid Britain in Smog Fight," New York Times, 29 December 1952.

result the issue of air pollution was a global one, tying nations together as the United States and Great Britain discovered when both experienced inversions.

The events in London would be so catastrophic and symbolic of the hazards of uncontrolled air pollution for public health that, to this day, the London Smog of 1952 is listed as one of the most significant environmental events to occur. It holds roots with the origins for what brought about modern air pollution regulations. The Environmental Protection Agency, the regulatory agency charged with enforcement of environmental legislation and regulation in the United States since 1970, lists the London Smog of 1952 and the 1948 Donora incident as major air pollution episodes that impacted air pollution legislation.³¹

In 1966 *The New York Times* wrote an analytical article comparing the similarities of the events in Donora and London and the impact of the inversions. Although the death toll was much lower in Donora, the article states that had the inversion occurred in New York City, experts estimated that it would have killed 11,000 and four million would have taken ill. ³² The London incident had awakened the United States to the threat to large cities similar to London and helped spur further research. Combined with what had already occurred in Donora, no one would forget the threat that hovered over every major city in the United States if it failed to clean up its air pollution. The fact that the article was written 14 years after the London Smog and 18 years after Donora shows just how large of an impact the two events had. Events this close together and so costly to human

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³¹ "Origins of Modern Air Pollution Regulations," *U.S. Environmental Protection Agency*, http://www.epa.gov/apti/course422/apc1.html (accessed 1 April 2011).

³² Robert Alden, "1948 Donora Smog Killed 20; London Toll Was 4,000 in '52," *New York Times*, 26 November 1966.

life are remembered and learned from. Donora was the first smog event recognized as killer smog caused by air pollution. London followed as a much larger indication of the severity of air pollution in major cities and the United States took the warning of London to heart.

In 1954 Senator Thomas Henry Kuchel, a Republican from California, and Senator Homer E. Capehart, a Republican from Indiana, sought the help of President Dwight D. Eisenhower, encouraging him to convene an interdepartmental committee to investigate possible actions regarding air pollution control. Both senators were instrumental in the passage of the 1955 Act. At the urging, Eisenhower created an ad hoc Interdepartmental Committee on Community Air Pollution under the Secretary of the Department of Health, Education, and Welfare with the Surgeon General as the chairman.³³ Administrative support was imperative to the focus of Congress on a bill for air-pollution control. Executive interest in air quality lent vital political support to legislating efforts. Twice Eisenhower sent messages to the 84th Congress, which took office in 1955 with new Democratic majorities, where Eisenhower recommended air quality action. Congress responded by uniting generous liberals, still channeling the New Deal spirit of using government spending to solve public problems, with determined partisans, who wanted to gain electoral advantage as they approached the 1956 campaign season.34

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³³ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 94-95.

³⁴ Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 134-135.

President Dwight Eisenhower grew up in the state of Kansas and was known throughout his life to have a fascination with tales of the Wild West. However, the fascination of the West did not transcend into a fascination or concern over the environment or pollution. Eisenhower was a military man who saw the environment as something that should be used. When approached about supporting the issue of air pollution, Eisenhower conceded because he saw the potential of air pollution to be used strategically in politics.



Image 3: President Dwight D. Eisenhower Source: http://www.notquitecountrygirl.com/president_eisenhower.jpg

³⁵ "Dwight D. Eisenhower," *The Dwight D. Eisenhower Foundation*, 2000, http://www.dwightdeisemhower.com/biodde.html (accessed 10 March 2011).

³⁶ "Which Were the Least Environmental US Presidents," *Ecohearth Come Home to the Earth*, http://ecohearth.com/eco-zine/eco-heroes/1614-the-least-environmental-us-presidents.html (accessed 27 April 2011).

Twenty-four bills were introduced following Eisenhower's show of support for air-pollution legislation. Eisenhower encouraged Congress to pass a bill that would offer financial assistance to businesses that installed air pollution control equipment. On July 14, 1955 President Eisenhower signed the Air Pollution Control Act of 1955 into law. The law allotted five million dollars over the course of five years for research, training and technical assistance.³⁷ The first section of the Act plainly states where responsibilities for air pollution lie and the position of the Federal government, which was limited.

Section one states:

The policy of Congress to preserve and protect the primary responsibility and rights of the States and local governments in controlling air pollution, to support and aid technical research, to devise and develop methods of abating such pollution, and to provide Federal technical services and financial aid to State and local government air pollution control agencies."³⁸

The passage of the act marked the start of Congressional interest in air pollution.³⁹ The Air Pollution Control Act 1955 was the first Federal legislation involving air pollution to be passed by Congress. It funded research for scope and sources of air pollution.⁴⁰ The Federal government was not interfering with the duties and responsibilities of the state and local governments, which had been traditionally responsible for the issue of air pollution. The control and regulation of air pollution still

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³⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 96.

³⁸ "Public Law 159 Chapter 360 July 14, 1955 (S. 928)," United States Statutes at Large Containing the Laws and Concurrent Resolutions Enacted During the First Session of the Eighty-Fourth Congress of the United States of America 1955 and Proclamations, vol. 69 (Washington: United States Printing Office, 1955), 322.

³⁹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 97.

⁴⁰ "History of the Clean Air Act", *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 2 January 2011).

remained in the powers of the state and local governments. This act merely aided the state and local governments by performing research to better understand the causes and effects of air pollution. In no way was the government attempting to take over the control of air pollution from the state or local governments, nor was it taking a dual Federalist approach in trying to control air pollution jointly with the states. The 1955 Act began the important process of air pollution research. There was not sufficient knowledge or scientific research to fully understand the impact and consequences of air pollution in 1955. The Air Quality Act of 1955 provided the necessary foot in the door on the part of the Federal government to better understand air pollution and its effects on the American people.

Chapter 3

From Environmental Disasters to Literary Revolutions

More bills were introduced to Congress following the 1955 act as momentum for action against air pollution was growing. These bills being introduced not only extended provisions in the 1955 act but also attempted to expand the Federal authority over air pollution. There was a widespread belief that the primary authority of air pollution belonged to the state and local governments and this prevented legislation from being passed by the Federal government. No bills were introduced in 1956 but research into the effects of air pollution was conducted. It was soon apparent that much air pollution came from automobile exhaust. In 1957 the introduction of air pollution bills to Congress began once again. California in particular fought hard for the passage of more legislation but it lacked the support to pass any legislation that challenged the authority of the state and local governments. Congress was more willing in the 1950s to pass an extension on the Air Pollution Control Act of 1955. Because the act had already been passed and did not, in Congress's view, impinge on any of the rights to regulate by state or local governments, Congress was more receptive to the extension. In 1959 six bills to reauthorize the 1955 bill were introduced to Congress. The Senate in April 1959 passed

one of the bills that extended the 1955 act for another four years and allocated \$7.5 million annual authorization.⁴¹

In May and June of 1959 the bill approved by Congress and the five other bills that had been presented to the House were heard before a subcommittee. Testimony was heard from people in New York and Kentucky about how the 1955 act had helped prompt air pollution control activities within the states. Following these testimonies the subcommittee produced a bill that extended the 1955 law for two years and gave an annual authorization of five million dollars. The final result ended up being a four-year extension with the annual authorization of five million. President Eisenhower signed the Air Pollution Control Act Extension on September 22, 1959. In 1960 two committees held oversight hearings on air pollution and research results on air pollution. 42

By 1961, it became evident that those who fought for stronger involvement by the Federal government had an ally in the new president, President John F. Kennedy. President Kennedy, in a Special Message to Congress on Natural Resources said that, "we need an effective Federal air pollution control program now." Kennedy continued to encourage the passage of a strong air pollution control bill that would address the issues of pollution immediately. On October 9, 1962 President Kennedy signed the Air Pollution Control Act (Extension 1962) that provided a \$5 million annual authorization for another two years. This last extension was the last act that would be passed in an

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⁴¹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 90-104.

⁴² Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 103.

⁴³ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 103.

effort to maintain a limited role of the Federal government before the passage of a more involved bill.⁴⁴

The beginning of the 1960s marked a shift in elite and public perceptions on the issue of air pollution. There was an increase in public interest group activity, and there was a shift in power in Congress with new elections. The shift that occurred began as more information and research was brought forward that demonstrated how severe air pollution was. Following earlier legislation, not all states had enacted legislation for air pollution and what legislation had been passed varied greatly in its scope and effectiveness.

Although the economy had been on the rise since the Second World War, local and state governments were concerned that by enacting air pollution legislation they would be harming the economy. Enacting air pollution legislation meant that industry would have to part with money to comply with regulations and to meet standards. The economy and increase in wealth was more important than public health. There was a rise in public concern about air pollution in the 1960s. There was a huge increase in affluence following the war, particularly in the middle class, which was growing rapidly. The middle class felt strongly about having the best of life, a quality of life that included not suffocating because of air pollution.⁴⁵

The publication of Rachel Carson's *Silent Spring* in 1962 helped raise the issue of the environment. *Silent Spring* was an awakening experience for Americans and made

⁴⁴ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 90-104.

⁴⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 106.

them realize that the activities of man were causing irreparable damage to the environment and was also affecting public health. *Silent Spring* is an exquisitely written and well-researched book that captured the American audience and caused extreme concern for the environment. Rachel Carson helped change the course of history with her writing. Had it not been for the publication of *Silent Spring* the environmental movement could have been severely delayed or might not have developed as it did.⁴⁶

Carson was a well-known and established nature author when she published *Silent Spring*. Her other works were books which discussed the interconnectedness of nature and all life on Earth. Her previous publications allowed Carson financial independence and public credibility.⁴⁷ Her ideas of the interconnectedness of nature challenged an established idea in the scientific world that man was the center of the universe and the master of all things, which referred to the male species and not women. While today this theory seems absurd it was the norm at the time and showed that Rachel Carson was a revolutionary in her time.⁴⁸ She was also a former marine biologist who had worked for the U.S. Fish and Wildlife Service. Carson understood and was fully qualified to discuss the complex interconnectedness of all nature and how it depends on each link of life for the entire system to be successful. Carson had originally sought to write about the concerns of DDT use in 1945 when it was first made available for civilian use after World War II. However, Carson proposed to write an article for Reader's Digest and the magazine was not open to the idea. It was not until 13 years later in 1958 that Rachel

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⁴⁶ Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999).

⁴⁷ Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999)

⁴⁸ Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999).

Carson would begin writing about the dangers of DDT and she would spend the next four years of her life writing a book that would help transform the world. Indeed, after its publication *Silent Spring* would be compared to the Uncle Tom's Cabin for its impact on society and the response it generated. *Silent Spring* describes how DDT enters the food chain and accumulates in fatty tissues in animals, human being included, and causes cancer and genetic disorders. Carson explained that while DDT would effectively kill bugs and pesticides after one use for weeks and months upon its application to crops, it was toxic even after being weakened by rainwater. The DDT affected birds and other animals and contaminated the entire world food supply.⁴⁹

At first, Carson was charged with being an extremist for her work. Those who profited from the use of DDT were extremely angered and very resistant to the publication of *Silent Spring* and as a result attacked the author to try and discredit her to the American public. Due to her sex, Carson was attacked and criticized based on sexist beliefs and stereotypes. The attack on Rachel Carson has been compared to the attack on Charles Darwin when he first published *The Origin of Species*. Carson's credibility as a scientist was challenged and *Time Magazine* said she had purposely used, "emotion-fanning words" in her book. This added to the idea that she was a hysterical female with no accreditation to her findings. Carson was a strong woman however, who had understood that she was challenging an entire industry with her writing. She took four years to write her book because she knew that every paragraph and every word of what she said had to be flawless and true or else her entire book and reputation would be

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⁴⁹ "The Story of Silent Spring," *Natural Resources Defense Council*, 16 April 1997, http://www.nrdc.org/health/pesticides/hcarson.asp (accessed 6 April 2011).

discredited. There was irony and a sad truth in *Silent Spring*. As she was writing her last major work, Carson was battling breast cancer and succumbed to it two years after *Silent Spring* was published. Since then there has been research which points to a link between breast cancer and exposure to toxic chemicals. ⁵⁰



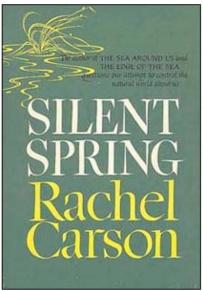


Image 4: Rachel Carson and Silent Spring
Source: http://www.blog.eliqueorganicskinfood.com/wp-content/uploads/2011/04/carson-silent-spring.jpg

Despite industrial efforts to discredit Carson and *Silent Spring*, the book was a huge success and received broad public support. The 1960s were an era of extreme activism on the part of Americans, particularly the younger generation, and Americans were ready to listen to the warning in *Silent Spring*. After the book had sold over a half-million copies CBS presented an hour-long program on the book. President Kennedy discussed *Silent Spring* in a press conference and appointed a special panel to investigate the conclusions of the book. The panel's investigation showed the utter indifference of

⁵⁰ Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999).

the industry and the validity of Carson's claims that pesticides were a danger to the environment and mankind. Following this investigation the first grassroots environmental organizations formed and Congress began to take action at the demands of constituents. Carson not only challenged the United States but the entire world as DDT was used in every country and *Silent Spring* was printed in multiple countries. Rachel Carson's book offers undeniable proof that the power of an idea can be far greater than the power of politicians. In 1962, when *Silent Spring* was first published, "environment" was not even an entry in the vocabulary of public policy... Her work, the truth she brought to light, the science and research she inspired, stand not only as powerful arguments for limiting the use of pesticides but as powerful proof of the difference that one individual can make."

"There is no question," a government expert on natural resources said following Carson's death, "that *Silent Spring* prompted the Federal Government to take action against water and air pollution -- as well as against the misuse of pesticides -- several years before it otherwise might have moved." The same year that President Kennedy ordered the panel to investigate the claims of *Silent Spring*, and the same year he was assassinated and President Johnson took over; Congress passed the Clean Air Act of 1963. *Silent Spring* helped push environmental legislation as never before. The same year that Carson published *Silent Spring* and stirred up the United States there was another smog disaster in London. The smog event was similar to Donora and the London Smog

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⁵¹ Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999).

⁵² Rachel Carson, *Silent Spring*, Introduction by Vice President Al Gore (Houghton Mifflin Harcourt, 1999)

⁵³ Frank Graham Jr., "Rachel Carson," *EPA Journal*, November/December 1978, http://www.epa.gov/history/topics/perspect/carson.htm (accessed 6 April 2011).

of 1952, taking the lives of an estimated 700 people. While this event did not occur in the United States, like in 1952 the event was reported in U.S. newspapers. It raised awareness and fear of Americans that something similar, something much larger than Donora, could occur at home. These events helped affect public opinion. With the increase in public opinion came more demands that the Federal government take action. ⁵⁴

⁵⁴ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 106.

Chapter 4

The Consequence of Neglect: The Clean Air Act of 1963

The Administration began to see that political capital could be made if the administration supported moves that would increase the Federal government's control over air pollution. In early 1963 President Kennedy, before his assassination on November 22 of that year, said, "In light of the known damage caused by polluted air, both to our health and to our economy, it is imperative that greater emphasis be given to the control of air pollution by communities, states, and the Federal Government." Members of Congress began to recognize that in order for air pollution control to be affective the Federal government needed a more active role in the control. The death of Senator Dennis Chavez of New Mexico, who had been the chairman of the Senate Public Works Committee and investigating and reviewing the research on the effects of air pollution, began a new era for the committee as Senator Edmund Muskie from Maine took over as chairperson. ⁵⁶

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⁵⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 106.

⁵⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 104-105.

Senator Muskie was a key player in the passage of early air legislation. The Democrat served as Governor of Maine from 1955 to 1959 and served on the U.S. Senate from 1959 until 1980. Senator Edmund Muskie was the chair for the Special Senate Subcommittee on Air and Water Pollution and poured tremendous amounts of energy into pollution law. Lobbyists and the national media took note of the actions of Senate on Capitol Hill and Muskie encouraged the national attention. Senator Muskie did not propose an air pollution control bill or even show a serious commitment to the issue of air pollution until he became the Chairman of the Subcommittee on Air and Water Pollution in 1963. "His skill as a politician lay in recognizing and acting upon the opportunities that chairmanship of the Subcommittee provide for establishing a reputation for leadership on an issue of growing national importance. Within a few years he had become known as the foremost congressional expert on pollution." Senator Muskie made air pollution and the environment one of his main issues as a Senator and was a guiding force in the pollution legislation that was passed while he served for his state.

Had it not been for the support and encouragement of President Johnson following the assassination of President Kennedy, there might not have been environmental legislation regarding air pollution. President Kennedy had been in favor of air pollution legislation but his death was a shock to the United States and the man who took over as President, Lyndon B. Johnson had to be a guiding light for the nation following the assassination of Kennedy. Fortunately for clean air legislation, President

⁵⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 122.

Johnson was a friend of the environment and not merely a politician looking for a way to win his next election.

President Lyndon B. Johnson grew up in the Texan Hill Country. He had a deep appreciation and respect for nature and land throughout his entire life because he had grown up playing around and in the wonders of the natural world. President Johnson's wife, Lady Bird Johnson, shared her husband's love of the natural world and encouraged his defense of it.⁵⁸

As President of the United States, Johnson felt a great responsibility to clean up and protect the environment and the natural heritage of the United States after watching it change to an industrialized nation with significant health problems as a result of pollution. Johnson signed over 300 conservation measures into law and helped form the legal basis of the modern environmental movement. ⁵⁹ One of his most significant contributions in this area was the signing of the 1963, 1965 and 1967 air pollution Acts and Amendment.

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⁵⁸ "Lyndon B. Johnson and the Environment," *National Park Service U.S. Department of the Interior*, http://www.nps.gov/lyjo/planyourvisit/upload/EnvironmentCS2.pdf (accessed 10 March 2011).

⁵⁹ "Lyndon B. Johnson and the Environment," *National Park Service U.S. Department of the Interior*, http://www.nps.gov/lyjo/planyourvisit/upload/EnvironmentCS2.pdf (accessed 10 March 2011).



Image 5: President Lyndon B. Johnson Source: http://cache2.allpostersimages.com/p/LRG/27/2704/XZFND00Z/posters/mcavoy-thomas-d-senator-lyndon-b-johnson-with-pet-called-little-beagle-jr-on-his-ranch.jpg

President Johnson was the first President of the United States to sign a Clean Air Act. The 1955 Act was not known as the "Clean Air Act" and had a different aim in its contribution to understanding air pollution. All Acts following 1963 were Amendments made to the original Act. On February 8, 1965 President Johnson said that, "we live with History. It tells us of a hundred proud civilizations that have decayed through careless neglect of the nature that fed them...We must not only protect the countryside and save it from destruction, we must restore what has been destroyed and salvage the beauty and charm of our cities." President Johnson understood the importance of conservation and preservation of the environment in order for Americans to sustain their way of life. As a result, Johnson dedicated a significant portion of his Presidency to the environment and

⁶⁰ "Lyndon B. Johnson and the Environment," *National Park Service U.S. Department of the Interior*, http://www.nps.gov/lyjo/planyourvisit/upload/EnvironmentCS2.pdf (accessed 10 March 2011).

was a strong supporter of environmental acts passed by Congress that helped preserve and protect the environment for present and future generations.⁶¹ President Johnson said that he signed the Clean Air Act of 1963 to, "establish the Government's obligation and to establish the Government's authority to act forcefully against air pollution."⁶² While Johnson could see the political positive and negatives of his involvement with this environmental legislation, he, unlike Eisenhower, was truly interested and concerned in the environment.

The Clean Air Act 1963 was the first Federal legislation to regulate air pollution control rather than just authority over research. It authorized the development of a national program to address air pollution related problems. It established a Federal program within the U.S. Public Health Service and authorized research into techniques to minimize, monitor and control air pollution. The 1963 Act expanded the Federal government's powers in a subtle way. It has similar language to the Air Pollution Control Act of 1955, as it still placed the primary responsibility of prevention and control of air pollution with the States and local governments. The difference in the 1963 Act was the added language that, "Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution." This change in legislation showed that in just eight years the

⁶¹ "Lyndon B. Johnson and the Environment," *National Park Service U.S. Department of the Interior*, http://www.nps.gov/lyjo/planyourvisit/upload/EnvironmentCS2.pdf (accessed 10 March 2011).

⁶² President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011). ⁶³ "History of the Clean Air Act", *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 2 January 2011).

⁶⁴ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 108.

ideas of responsibility over air pollution was shifting and the Federal government was taking a more direct role in air pollution regulation, prevention and control.⁶⁵

⁶⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 108.

Chapter 5

A Modern Dante's *Inferno*: The Motor Vehicle Air Pollution Control Act and the Air Quality Act of 1967

The early efforts of Congress to pass air pollution legislation helped continue the momentum from 1963 to 1970. Environmental awareness continued to grow and increased many Americans' demand for action. Industrial groups were also concerned with the idea of having to meet different states' air pollution regulations and began to lobby for the Federal pre-emption of state authority over air pollution. Almost immediately following the passage of the 1963 Act there were calls for more legislation to be passed and for Congress to take more action against air pollution. Congress reacted by passing legislation that was without question within the domain of the Federal government. In 1964 a law was enacted that required the General Service Administration (GSA) to establish emission standards for motor vehicles purchased by the Federal Government. As more research was conducted it became more and more evident that automotive car pollution was a significant contributor to the overall air pollution problem in the United States. Congress began trying to regulate car emissions without addressing air pollution in its entirety. 66

In 1964 Senator Muskie presided over nationwide subcommittee hearings that produced concerning reports that attributed half of the United State's dirty air to engine

⁶⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 125.

exhaust. President Johnson, however, did not believe that challenging the auto industry was a wise way to spend Federal monies. The most powerful and profitable industry in the United States, the auto industry was fighting the results of the subcommittees report by saying that their industry was better suited with state-based rulemaking. In 1965

Johnson urged Muskie to conduct discussions with the auto industry that would lead to the elimination of the auto exhaust issue. Muskie ignored the President's wishes and suggestions, and pressed for the nationalization of air pollution laws. The year 1964 marked the re-election of President Johnson and the Democrats won crushing congressional majorities in the election and would not lose the majority until the Vietnam War fractured the party. By 1964 Senator Muskie was receiving more and more national recognition as one of the pollution fighters of Washington. Air pollution legislation was on the rise and the Democratic Party was greatly enjoying a successful and well-supported term in power. Congress was ready to take further action against air pollution in the United States.

In 1964 a joint government-industry committee was created by the Department of Health, Education, and Welfare to speed the progress towards motor vehicle pollution control. Under the Clean Air Act of 1963 the committee was to begin its reports by the end of the year.⁶⁸ This committee ultimately led Congress to pass its next piece of clean air legislation.

The Motor Vehicle Air Pollution Control Act was signed by President Johnson on October 20, 1965. It established the first Federal emission standards on light-duty

⁶⁷ Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 137-138.

⁶⁸ "Air Pollution Panel Set Up," New York Times, 10 August 1964.

vehicles. The emission standards were to be set by the Secretary of Health, Education and Welfare. The standards went into effect for 1968 vehicles and called for the reductions of some 1963 base emissions. The Motor Vehicle Act required a 72% reduction of hydrocarbons, 56% reduction of carbon monoxide, and 100% reduction of crankcase hydrocarbons. The Act established the National Air Pollution Control Administration, which was responsible for future pollution control efforts. The national standards were modeled after standards already established in the state of California. The Act also called for the air pollution control between the countries of North America—the United States, Mexico and Canada. Continued research was required on vehicle emissions of sulfur dioxide.⁶⁹ The 1965 Act would be amended by the Clean Air Act Amendment 1970 but was the first act to attempt to drastically regulate emissions from vehicles Unfortunately, while the 1965 Act allowed for the Secretary of Health, Education and Welfare to step in when air pollution threatened the health of its citizens, it lacked enforcement provisions. No deadline was established for when the standards needed to be set or met but it was another step in establishing national standards. The act recognized for the first time the international dimension of air pollution. The Secretary of Health, Education and Welfare was directed to call a conference of state and local authorities if pollution originating from an area was affecting foreign countries. The Secretary was also given authority to bring a legal suit to abate air pollution that was affecting a foreign country if the polluting

⁶⁹ Ida Kubiszewski, "Motor Vehicle Air Pollution Control Act of 1965, United States," *The Encyclopedia of Earth*, 21 August 2008,

http://www.eoearth.org/article/Motor_Vehicle_Air_Pollution_Control_Act_of_1965,_United_States (accessed 10 March 2011).

area was not voluntarily forthcoming. It allowed for research into sulfur dioxide and motor vehicle exhaust as well as \$3.98 million for the purposes of the Act.⁷⁰

The Motor Vehicle Air Pollution Control Act was signed by President Johnson on October 20, 1965. The act allowed the Secretary of HEW to set emission standards for all new motor vehicles. No deadline was established for when the standards needed to be set or met but it was another step in establishing national standards. The act recognized for the first time the international dimension of air pollution. The Secretary of HEW was directed to call a conference of state and local authorities if pollution originating from an area was affecting foreign countries. The Secretary was also given authority to bring a legal suit to abate air pollution that was affecting a foreign country if the polluting area was not voluntarily forthcoming. It allowed for research into sulfur dioxide and motor vehicle exhaust as well as \$3.98 million for the purposes of the Act.⁷¹

Following this 1965 Act, 60 air pollution control bills were introduced to the House in 1966. The bills were presented by 56 different delegates from all over the United States which showed the growing concern over air pollution all over the U.S. Concern was also not limited to a single party but crossed party lines making it a bipartisan issue. Thirty-three of the bills presented in 1966 were Republicans and 23 of the bills were presented by Democrats.⁷²

In May of 1966 President Johnson issued an executive order that required all heads of Federal agencies to develop plans to install equipment at Federal facilities that

⁷⁰ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 125.

⁷¹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 125.

⁷² Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 117-127.

would control air pollution. While this marked the effective beginning of the Federal government's regulation of air pollution it did not make any large impact on the air pollution problem. In November of 1966 an inversion occurred in New York City. An estimated 168 people died as a result of the trapped air pollution and caused a push once again for more comprehensive pollution legislation. The was with continued smog episodes in cities like New York that kept pressure on Congress to continue passing clean air legislation.

Americans wanted Congress to take further action against air pollution, particularly after the inversion occurred in New York City in 1966. In three of his annual reports the Surgeon General highlighted the ever-present issue of air pollution. President Johnson, the strong supporter and believer in the environment, argued that further legislation was needed. Congress responded with an amendment to the 1963 Clean Air Act—the Air Quality Act of 1967.

In his remarks regarding the Signing of the Air Quality Act of 1967, President Johnson gave a powerful speech about the importance of clean air and the significance of the 1967 Act. He began his speech by quoting Dante's *Inferno*, when Dante spoke of dirty water and black snow coming from the sky. Johnson quoted it because he felt that the then 600 year-old vision of damnation was upon every major city of the United States. He asked whether, "We risk our own damnation every day by destroying the air

⁷³ Stuart H. Loory, "Conspiracy' of Nature's Forces Is Blamed for Smog," *New York Times*, 26 November 1966.

⁷⁴ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 125.

that gives us life?"75 Johnson spoke passionately about American's indifference and negligence toward the environment and how what had initially begun as a big city problem because of industrialization had now become an issue throughout the entire nation. At the time of Johnson's speech the United States put 130 million tons of pollution, or as Johnson called it, "poison" into the air every year. Johnson said that it totaled two-thirds of a ton for each individual who lived in the United States. He warned that, "Either we stop poisoning our air or we become a nation in gas masks, groping out way through the dying cities and a wilderness of ghost towns that the people have evacuated."⁷⁷ Under the new act the Federal government now had the authority to intervene when States rights were not "functioning efficiently." Johnson said that air pollution would be controlled when the American people asked that it be so. In signing the 1967 act Johnson proclaimed that, "it was here that America turned away from damnation, and found salvation in reclaiming God's blessings of fresh air and clean sky."⁷⁹ In Johnson's opinion, the new amendment to the 1963 act was the step that Americans needed to take in order to save their air.

Although President Johnson had strongly urged that the amendment set strong emissions standards for stationary sources, Congress passed an amendment with a regional rather than national focus. Under the 1967 Act, states were given the

⁷⁵ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011). ⁷⁶ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011). ⁷⁷ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011). ⁷⁸ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/671121.asp (accessed 2 January 2011). ⁷⁹ President Lyndon B. Johnson, *Remarks Upon Signing the Air Quality Act of 1967*, 21 November 1967,

responsibility of adopting and enforcing air-pollution-control standards within regions that were established by the Federal government. The Secretary of Health, Education, and Welfare was given the responsibility of Federal environmental protection programs and was responsible for determining the air quality regions throughout the U.S. ⁸⁰ States within each of the designated regions were responsible for setting and enforcing pollution control standards. These standards were established with "State Implementation Plans" or SIPs and through created pollution control agencies. The only time that the Secretary of Health, Education and Welfare really became involved in the process was if the States failed to act. He was then empowered to set the air quality standards and establish Interstate Air Quality Planning Commissions. Only when there was an, "immediate and substantial endangerment to the health of persons anywhere in the country?" did the Secretary have more enforcement powers under the 1967 Act. The 1967 Act did allocate \$428.3 million dollars in funding over a three-year period for Federal pollution control and it established a 15-member advisory board. ⁸²

The 1967 Act also expanded Federal government activities. Enforcement proceedings were initiated in areas subject to interstate air pollution transport and interstate meant that it fell under Federal authority. For the first time, the Federal government conducted extensive ambient monitoring studies and stationary source

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⁸⁰ Paul G. Rogers, "Looking Back; Looking Ahead The Clean Air Act of 1970," *EPA Journal*, January/February 1990.

⁸¹ "Public Law 90-148 An Act Title I- Air Pollution Prevention and Control," *United States Statutes at Large Containing the Laws and Concurrent Resolutions Enacted During the First Session of the Ninetieth Congress of the United States of America 1967 and Reorganization Plans, Twenty-Fifth Amendment to the Constitution, and Proclamations*, vol. 81(Washington: United States Government Printing Office, 1968), 485-507.

⁸² "Air Quality Act of 1967, United States," *The Encyclopedia of Earth*, 22 March 2009, http://www.eoearth.org/article/Air_Quality_Act_of_1967,_United_States (accessed 9 January 2011).

inspections. By conducting inspections the Federal government was taking a very active part in air pollution control. It also authorized expanded research of air pollutant emission inventories, ambient monitoring techniques, and control techniques. The amendment was a successful step that provided a framework for more effective legislation in later years, which would involve an even greater role in the regulation of air pollution by the Federal government. He

The regional approach to air quality control, to be controlled by the states, was not a practical approach to the issue of air pollution as air pollution is not contained within the boundaries of a region but travels and affects the United States in its entirety. By 1970, less than 36 air-quality regions had been designated—there had been an anticipated 100 or more by 1970—and no State in the United States had developed an entire pollution-control program. There was no point in establishing regional pollution-control programs if the state over had no regulations and their air traveled over and made cleanup efforts pointless. The only way pollution control was going to work was to establish a national pollution-control program that had consequences for the states that did not follow regulations. National regulations were the only way to address air pollution. Anything else was wasted effort.

⁸³ History of the Clean Air Act, *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 2 January 2011).

⁸⁴ Clean Air Act Timeline: A Short History of Key Moments in One of the Most Effective Public Health Campaigns in U.S. History, http://www.edf.org/documents/2695_cleanairact.htm (accessed 2 January 2011).

⁸⁵ Paul G. Rogers, "Looking Back; Looking Ahead The Clean Air Act of 1970," *EPA Journal*, January/February 1990.

Chapter 6

A Day for the Earth: Earth Day 1970



Image 6: Caption from Earth Day 1970 depicting the fears of Americans if air continued to be dirty Source:

http://3.bp.blogspot.com/_wsB9TroLzXg/S9THylhmu2I/AAAAAAAAAAAG0/sRG_Cs8grYA/s160
0/EarthDay1970.jpg

In the 1960s the United States was a very revolutionary and active country. This was a period of American history that saw the Civil Rights Movement and the development of different peaceful tactics that could be used by individuals and groups in

various communities to help demand changes to society by the Federal government. These methods of seeking government change by social demand were ultimately used, not only for the Civil Rights Movement, but also for any cause that the American people wanted to address. From this came the idea for a movement that would help transform the environmental movement to a modern battle that firmly placed environmental concerns in Federal politics. By the late 1960s there was much more environmental awareness and a desire by the American people to begin repairing the environmental degradation that was being witnessed all over the United States. The only place that the environment did not seem to be a concern was on Capitol Hill. One Senator, who was well known for his support and love of the environment, took it upon himself to create a mass demonstration to draw the attention of the Federal government and hopefully firmly place environmental concerns in the politics. Democratic Senator Gaylord Nelson would create Earth Day in 1970. The event would sweep the nation and signaled to the Federal government and the world that the environment had become a modern movement that would remain a significant issue beyond a single day dedicated to the Earth. 86

Gaylord Anton Nelson was born June 4, 1916 in Clear Lake, Wisconsin. Nelson grew up in a small town where the outdoors was his playground. Nelson's family did not even own a radio until he was in high school and so his entertainment came from outdoor adventures when he was a child. He came from a family heavily involved in politics,

⁸⁶ A. Petruso, "Gaylord A. Nelson," *Encyclopedia of World Biography*, 2006, http://www.notablebiographies.com/newsmakers2/2006-Le-Ra/Nelson-Gaylord-A.html (accessed 26 April 2011).

including a great-grandfather who helped found Wisconsin's Republican Party and thus he learned early on about public service. After serving in World War II, Nelson served in the Wisconsin State senate from 1948-1956 and began establishing himself as an active politician. In 1958 Nelson became the governor of Wisconsin. It was during this period of Nelson's life that he recognized that environmental issues were often ignored by politicians, despite the environment's importance. Nelson's dedication and passion for the environment would become his life's work. Nelson would help the passage of the Clean Air Act 1970 with his environmental activism that would help spark political action. Nelson sought to change this attitude by his own actions as governor, and then later as U.S. Senator.⁸⁷

In 1962 Nelson was elected to the U.S. Senate and he carried his environmental idealism with him to office. Nelson would become known as a very independent-minded senator, although he was still well-liked in office. Nelson's record for supporting proenvironment legislation was well established throughout his entire term as a Senator from 1963-1981. Nelson wanted to affect change in the entire environment; he was a champion of the natural world. Any pro-environment legislation that was proposed in Congress was a necessary change for a better America in Nelson's mind. Nelson was concerned however, by the lack of environmental concern in Congress. Nelson spoke on the environment across the United States. He knew support existed for cleaning up the environment within the general public but he wanted to raise awareness and alert the Federal government of that support. With this in mind, Nelson created what became an

⁸⁷ A. Petruso, "Gaylord A. Nelson," Encyclopedia of World Biography, 2006, http://www.notablebiographies.com/newsmakers2/2006-Le-Ra/Nelson-Gaylord-A.html (accessed 26 April 2011).

environmental revolution that led to the passage of the Clean Air Act 1970.⁸⁸ Senator Nelson's most famous contribution during his time in the Senate was the creation of Earth Day in 1970. With the help of Earth Day Congress passed a significant number of environmental laws of the course of the 1970s.⁸⁹

Senator Gaylord Nelson's idea of Earth Day evolved over a period of seven years. In 1962, Nelson proposed that President John F. Kennedy go on a national conservation tour to raise awareness about the environment. Nelson had been concerned since he was Governor of Wisconsin that the environment was not an issue in politics. President Kennedy was in favor of the tour and took a five-day trip through eleven states in September of 1963. Unfortunately the tour was not successful in raising the awareness necessary to make the environment a permanent issue in politics. Indeed, it generated very little coverage or interest. However, the attempt became the seed that would convince Nelson to create Earth Day. Senator Nelson spoke to audiences in 25 different states about environmental issue of the course of several years between 1962 and 1970. It was clear to him that evidence and concern over environmental degradation existed all over the United States. It existed everywhere but in politics.

During an anti-Vietnam War demonstration in 1969 Nelson developed the idea of Earth Day. 90 The Senator was on a conservation speaking tour that summer. At this time teach-ins were spread all over college campuses in the United States to protest the war.

⁸⁸ A. Petruso, "Gaylord A. Nelson," *Encyclopedia of World Biography*, 2006, http://www.notablebiographies.com/newsmakers2/2006-Le-Ra/Nelson-Gaylord-A.html (accessed 26 April 2011).

⁸⁹ A. Petruso, "Gaylord A. Nelson," *Encyclopedia of World Biography*, 2006, http://www.notablebiographies.com/newsmakers2/2006-Le-Ra/Nelson-Gaylord-A.html (accessed 26 April 2011).

⁹⁰ Gaylord Nelson, "Earth Day '70: What It Meant," *EPA Journal*, April 1980, http://www.epa.gov/history/topics/earthday/02.htm (accessed 26 April 2011).

Senator Nelson decided he could organize a grassroots protest for the environment just like students were protesting the war. Nelson believed that if the environmental concerns of the general public were felt by the Federal government, if the energy of the student anti-war movement was transferred to concern for the environment on a large scale, then the people of the United States could firmly place the environment as a permanent political issue. Nelson did not know if he would be successful in his attempt but he believed it was worth the effort to try and see if the United States could start caring for its environment.

The Senator announced at a conference in Seattle in September 1969 that there would be a nationwide grassroots demonstration for the environment in the spring of 1970 and he urged people to participate. The reaction of the American people was instantaneous. Senator Nelson said that, "The wire services carried the story from coast to coast. The response was electric. It took off like gangbusters. Telegrams, letters, and telephone inquiries poured in from all across the country. The American people finally had a forum to express its concern about what was happening to the land, rivers, lakes, and air –and they did so with spectacular exuberance." For four months following Nelson's announcement two members of the Senator's staff managed Earth Day affairs out of Nelson's Senate office before he established a different office entirely for Earth Day planning. Ultimately it would not only be Earth Day itself but the coverage and excitement leading up to April 22nd that brought about change.

⁹¹ Senator Gaylord Nelson, "How the First Earth Day Came About," *Envirolink: The Online Environmental Community*, http://earthday.envirolink.org/history.html (accessed 26 April 2011).

⁹² Gaylord Nelson, "Earth Day '70: What It Meant," *EPA Journal*, April 1980, http://www.epa.gov/history/topics/earthday/02.htm (accessed 26 April 2011).

On November 30, 1969 the *New York Times* began reporting on the stunning response and preparation for the environmental event. The student protestors who had first sparked Nelson's idea for an Earth Day were very enthusiastic for the demonstration. A pep leader at the University of Berkeley, California, was quoted for yelling at a football rally that, "we want to stop the war, end pollution –and beat Stanford!" ⁹³ Concern over the environment was eclipsing the student concern and outrage over the Vietnam War. Students in 1969 felt that the war would liquidate itself and was far removed from the United States. Students also felt that student action was limited for the Vietnam War as there had already been large marches in protest. The environment, however, was not an issue across an ocean. Environmental degradation was a local issue, one that required immediate action and students, regardless of political orientation, could not be against a better quality of life from a healthier environment. Before Earth Day even occurred, students were taking actions. Students from all over the United States threw themselves enthusiastically to the environmental cause. There was a new willingness to take action and do something about the environmental ills in the U.S. The students saw a cause that they could fight for and a place where they could impact law. In a protest against air pollution, University of Minnesota students had a mock funeral for the gasoline engine. On top of the mock funeral, planned to dump 26,000 cans on the lawn of a manufacturing company to protest the use of the packaging. Law students from Stanford and the University of Texas began to explore alternative strategies for fighting despoilers of the environment in the courtroom. Boston University had a two-day

⁹³ Gladwin Hill, "Environment May Eclipse Vietnam as College Issue," *New York Times*, 30 November 1969.

campaign to teach ecology. Students from the University of Washington were preparing an 80-page report on ecological problems in the Puget Sound. The students were putting the report together on their own time. Student environmental groups were also forming on campuses across the nation in response to specific environmental concerns, ranging from polluted air to deforestation. The types of people concerned over the environment were not limited to sandal-wearing, blue-jeaned hippies. Environmental degradation was a cause that any student, any American, could connect to. One student was quoted in the New York Times as saying that, "we don't want to be labeled as 'conservationists' or 'antipollution.' Pollution and overpopulation are like a web, and pollution is just the symptom... Students were conducting meetings, lectures, rallies, picketing, research, pamphleteering, letter-writing, petitions, legislative testimony, and collaboration with public agencies and contacts with politicians."94 This student expressed a cause that Nelson wanted as many Americans involved in as possible. The student movement was a key to getting the older generations involved and informed. Anticipation was already growing for what students were calling the first "D-Day".95 of the movement –Earth Day. Senator Nelson's proposed demonstration was being received with open arms and support from students across the nation. These students helped organize Earth Day and made it the success that it was.

In mid-January of 1970 Senator Nelson accommodated a temporary space in Washington D.C. to establish an Earth Day headquarters outside of his Senate office.

⁹⁴ Gladwin Hill, "Environment May Eclipse Vietnam as College Issue," New York Times, 30 November 1969

⁹⁵ Gladwin Hill, "Environment May Eclipse Vietnam as College Issue," *New York Times*, 30 November 1969.

Nelson wanted to set up an independent organization, which was called Environmental Teach-In, Inc., because he felt that inclusivity was the key to the environmental day. It was important for the national office to allow people to act locally, not have a uniform national protest, because Earth Day was about old-fashioned political action. 96 By the time Environmental Teach was established Nelson suspected from the enthusiastic responses of students that he had a successful movement. Nelson selected a young man by the name of Denis Haves to coordinate all activities for Earth Day. 97 He staffed a steering committee composed of scientists, academics, environmentalists and students to assist for April 22nd. 98 The national office worked hard to support organizations as best they could, to publicize so that Americans would know about Earth Day, and encouraged citizens to explore local ecological problems and come up with their own solutions.⁹⁹ Through the national office the team conducted a national campaign via mail, telephone, advertisements and personal visits. This was all to generate as much local participation as possible. Conservation organizations, some wealthy donors and multiple small contributors helped pay for the funds that were needed to reach all of the communities. As of April 22 \$125,000 had been spent. Between 2,000 and 3,000 letters were being sent from the national headquarters a day in preparation for Earth Day. 100 Nelson credited the

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⁹⁶ "Introduction: the Earth Day story and Gaylord Nelson," *Gaylord Nelson and Earth Day: the Making of the Modern Environmental Movement*, http://www.nelsonearthday.net/earth-day/index.htm (accessed 26 April 2011).

April 2011).

97 Senator Gaylord Nelson, "How the First Earth Day Came About," *Envirolink: The Online Environmental Community*, http://earthday.envirolink.org/history.html (accessed 26 April 2011).

⁹⁸ "Introduction: the Earth Day story and Gaylord Nelson," *Gaylord Nelson and Earth Day: the Making of the Modern Environmental Movement*, http://www.nelsonearthday.net/earth-day/index.htm (accessed 26 April 2011).

⁹⁹ "Introduction: the Earth Day story and Gaylord Nelson," *Gaylord Nelson and Earth Day: the Making of the Modern Environmental Movement*, http://www.nelsonearthday.net/earth-day/index.htm (accessed 26 April 2011).

¹⁰⁰ Gladwin Hill, "Nation Set to Observe Earth Day," New York Times, 21 April 1970.

growing success with the spontaneous response by participants.¹⁰¹ Nelson claimed that once he made the announcement that there would be a national day for the environment, Earth Day practically organized itself.¹⁰²

Earth Day 1970 is seen as the day when the environment firmly became an issue in politics. Twenty million Americans all over the United States participated in the Earth Day celebrations. When Gaylord Nelson planned Earth Day he wanted to show the political leaders in Washington that there was widespread and deep support for the environment from the American people. In total, two thousand colleges and universities, ten thousand high school and grade schools, and several thousand communities, a total of twenty million Americans, participated in the first Earth Day. It demonstrated to the Federal government that the Nation as a majority deeply supported the environmental movement. It was a demonstration of the public support, energy and commitment that existed to save the Earth. ¹⁰³

The *New York Times* published an article on the environment, discussing how environmentalism was now "everybody's bag." In response to the concern and support that Earth Day was generating and the awareness of environmental degradation that it raised, members on Capitol Hill were suddenly proposing bills that would help protect and clean the environment. Members of Congress who had never expressed interest in the environment before were suddenly scrambling to be a part of a bill to help the cause. The

¹⁰¹ Senator Gaylord Nelson, "How the First Earth Day Came About," *Envirolink: The Online Environmental Community*, http://earthday.envirolink.org/history.html (accessed 26 April 2011).

¹⁰² Senator Gaylord Nelson, "How the First Earth Day Came About," *Envirolink: The Online Environmental Community*, http://earthday.envirolink.org/history.html (accessed 26 April 2011).

¹⁰³ Gaylord Nelson, "Earth Day '70: What It Meant," *EPA Journal*, April 1980, http://www.epa.gov/history/topics/earthday/02.htm (accessed 26 April 2011).

¹⁰⁴ E.W. Kenworthy, "Environment is Everybody's Bag," *New York Times*, 1 March 1970.

House of Representatives voted 228 to 150, refusing to even debate a bill that would have permitted the timber industry to increase its logging in national forests. The reasoning, expressed strongly by members of the House, was that this pro-industry bill was compromising other uses of the forests, such as recreation but also compromised the wildlife and fish populations in the forests. Suddenly industrial growth was not the only concern of Congress, they were considering the impact of an industry on society overall. Industries such as oil, steel, chemical and smelting began publishing brochures about their individual efforts to control pollution. Individual companies were making announcements, almost daily, about the infrastructure changes within companies as environmental control departments and ecology councils and other environmentally conscience departments and individuals were established as part of company structures. There was a need for companies to act quickly and show the general public that industries that had been harming the environment were aware that society was changing and industrial America was going to have to adjust with it. Magazines and newspapers were giving an unprecedented amount of coverage to the environment, pollution and cures to that pollution. In the article an enlightening quote was given which showed the new view of the environment and the relationship between the environment and mankind. "Environmental quality and human welfare are not two independent evaluations. They are two views of the same system of interactions. It is not possible for one to remain good while the other is bad." A new interconnectedness between human beings and the natural world was being felt as never before. The American people were excited about

¹⁰⁵ E.W. Kenworthy, "Environment is Everybody's Bag," New York Times, 1 March 1970.

Earth Day and the chance to show the government and the rest of the world that a change was coming; a better world was going to emerge, a cleaner one.

Nelson began Earth Day demonstrations on the evening of April 21st. He spoke to a packed audience at the Cooley Auditorium of Milwaukee Technical College. The Senator had been on a two-week speaking tour around the country to speak about the importance of the environment. In his speech, Nelson spoke of a new environmentalism that supported the well-being of all living creatures, regardless of an ability to pay for a healthy environment. Nelson encouraged local activism but also Federal action for a healthier environment. Air and water quality controls were necessary for a clean environment and that would only be achieved through Federal legislation. Senator Nelson argued that there were economic benefits rather than downfalls to installing anti-pollution technologies. In order for environmental legislation to be passed voters needed to lobby and vote for domestic environmental aims that Americans wanted Congress to pursue. ¹⁰⁶ This speech was a successful kickoff to the first Earth Day. It seemed appropriate that the man who had the idea of Earth Day was the first to give a speech for the demonstration at the beginning of the highly anticipated event.

Earth Day was celebrated with marches, demonstrations, and mock funerals of pollution, lectures, workshops, nature walks and other observances. This day marked "the dawn of a new era of "ecological politics" as well as a massive alert to the general public on environmental concerns. Events were not only planned by government officials

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¹⁰⁶ "Video of Gaylord Nelson: From Milwaukee Public Television: Earth Day speeches 1970 in Milwaukee," *Milwaukee MPTV Public Television*,

http://www.nelsonearthday.net/video/vha593 nelsonearthday.htm (accessed 26 April 2011).

¹⁰⁷ Gladwin Hill, "Nation Set to Observe Earth Day," New York Times, 21 April 1970.

in the Federal government but by school superintendents, mayors of cities, governors, the United Nations Secretary General also endorsed the event. ¹⁰⁸ Earth Day events were televised all across the US. Special Programs and regular shows focused on ecological needs and rallies that took place in Philadelphia, Miami, Madison, Wisconsin, Chicago and Washington D.C. Politicians gave interviews about what they felt was the significance of Earth Day and what the most pressing environmental concerns in the United States were. The *New York Times* reported that there were so many TV specials, summaries and schedule changes during the course of Earth Day that, "no single set of eyes could hope to keep abreast of all that was offered on the home screen, let alone radio." Americans could not ignore this movement even if they attempted to for it invaded every facet of everyday life. Not being blind to the excitement and activity going on across the nation, Congress was in recess for Earth Day. A large number of Senators and representatives, some Cabinet and sub-Cabinet members and all of the members of the President's Environmental Quality Council were across the United States participating in events. 110

In New York City, well known for its urban pollution, high air pollution levels and occasional smog banned all traffic from noon to midnight on 14th Street from Second Avenue to Seventh Avenue and from noon to 2 P.M. on Fifth Avenue between 59th Street and 14th Street. Crossing the Streets was also banned to motor vehicles. The city had decided to ban the use of the streets as part of the effort of the U.S. on Earth Day to dramatize the damage to the environment. The city reported that half of the city's air

¹⁰⁸ Gladwin Hill, "Nation Set to Observe Earth Day," New York Times, 21 April 1970.

¹⁰⁹ Jack Gould, "TV: The Campaign for an Unspoiled Environment," New York Times, 23 April 1970.

Nan Robertson, "Earth's Day, Like Mother's, Pulls Capital Together," New York Times, 23 April 1970.

pollution was the result of automobile emissions and New York wanted to demonstrate how much cleaner the city could be with fewer automobiles and thus fewer air pollutant emissions. When the decision was announced businesses were displeased. 111 However, these actions were a large victory for environmentalists. New York City is an important city not just for national businesses, but internationally. The closures of the streets made business difficult for the day but closing two main roads known for their excessive amounts of traffic in the heart of the city showed the new environmental consciousness that Senator Nelson had wanted to create with Earth Day was a success. The city of New York also asked all of its municipal agencies not to use cars except for emergency purposes to honor demonstrations. The city held many of its Earth Day activities on the streets that had closed down for the day from motor vehicles. One hundred environmental exhibits were planned on the closed streets and in Union Square. 112 Such events took place all over the United States; they were not unique to New York City alone. Nelson's idea of what he thought he could create as a national day of recognition and awareness for the environment had become a reality.

Earth Day encouraged collaboration between different people in society. Environmental Action sponsored a conference at the United Auto Workers Family Education Center. Air pollution from vehicles was one of the most discussed topics in workshops, speeches and informal conversations. The United Auto Workers joined together with the Environmental Action to lobby Congress for a strong air pollution control bill. The group delivered a 19-point plan to each member of the U.S. Senate. The

¹¹¹ David Bird, "Traffic Ban on Two City Streets in April 22 Pollution Protest," New York Times, 19

¹¹² David Bird, "City Announces Earth Day Plan," New York Times, 17 April 1970.

plan called for the regulation of automobile and industrial emissions and wanted to ban the internal combustion engine after 1975. The plan also wanted the government to enable the Department of Health, Education and Welfare with the power to establish set criteria for improved air quality in plants. Presentations were given expressing concern that workers in factories were suffering from headaches and fainted in a factory in New Jersey because the air was full of leaking carbon monoxide. There were also concerns of excessively loud machinery and air pollution that was causing a shortened life span of workers that was discussed during the day. Other workshops on Earth Day focused on research of air pollution as well as how to file suits against industries that was contributing to the pollution problem. ¹¹³ Earth Day was bringing together different groups of people to collaborate and propose ideas on how to solve pollution problems. Just as Senator Nelson had hoped these collaborations were stemming from local areas where residents were coming up with solutions to help their environment.

Not everyone in the United States was anticipating Earth Day with excitement but rather fear, annoyance and indifference. In Atlanta telegrams were sent out warning that Earth Day was potentially a Communist Plot because April 22 was also Lenin's birthday. \$1600 worth of telegrams was sent out at taxpayer's expenses expressing this concern. Comptroller General James L. Bentley was responsible for sending out the wires but announced on Earth Day that he would pay for the expense as he was running for Governor of Georgia and constituents were not thrilled with how he had spent Georgian money. The telegrams were sent to powerful political figures like President Nixon,

¹¹³ John Kifner, "Earth Day Group Zeros in on Autos," New York Times, 20 July 1970.

concerned with the upcoming Earth Day. 114 When New York announced the closing of the streets downtown the Fifth Avenue Association was one of the strongest opponents to the decision. The Fifth Avenue Association is comprised of 1,000 businesses on Fifth, Madison, and Park Avenues and around the 57th Street area. This association was opposed to the closings because it claimed that it set bad precedent and would harm business. 115 This marked a serious shift from the pre- Earth Day world where businesses were used to being placed ahead of the environment. Companies were worried because those planning events made it known that there would be demonstrations outside of locations that were known for contributing to the contamination of the environment. The Consolidated Edison Company, for example, knew that a demonstration was planned outside of their power plant. The company expressed concern that people demonstrating would, "get fired up emotionally and do something besides listen to speeches." ¹¹⁶ The company's smokestacks on the power plant were well known in New York City for contributing to pollution. Con Ed argued that it was working with environmental groups to fix its pollution problem but the company was still concerned about Earth Day. In response to the fears of this company, and others like it around the United States, police departments were alerted in the event that the peaceful demonstrations suddenly turn into something else. 117 These kinds of fears came from the people and industries that recognized that society was about the change and industry was going to have to change with it. Those changes would mean some financial loss if the Federal government would

^{114 &}quot;Anti-Earth Day Wire Cost Official \$1600," New York Times, 23 April 1970.

¹¹⁵ David Bird, "Traffic Ban on Two City Streets Set in April 22 Pollution Protest," New York Times, 19 March 1970.

¹¹⁶ David Bird, "Con Ed Worried About 'Earth Day," New York Times, 27 March 1970. 117 David Bird, "Con Ed Worried About 'Earth Day," New York Times, 27 March 1970.

act as a result of Earth Day and protected the environment. To be pro-business meant to be anti-environment and industries liked their money.

Earth Day surpassed even Senator Nelson's expectations. He had wanted to raise awareness and Earth Day struck the United States like a bolt of lightning, electrifying it with a deep current of energy and action for the environment. The *New York Times* eloquently explained the significance of Earth Day and its common link that all people shared. "It is also self-evident that pollution does not discriminate. The environment encompasses all Americans, for better or for worse —white and black, rich and poor, right and left. Unless all can live and work together for a better environment, all may suffocate together." No individual could say they were against clean air or water if they valued their life and the American people were ready to take back their clean environment. They wanted Congress and the President to act.

When Senator Nelson created Earth Day he helped create the modern environment movement. It demonstrated to the Federal government that the Nation was deeply concerned for and supported a healthy environment and a healthier United States. It was a demonstration of the public support, energy and commitment that existed to save the Earth and Earth Day helped bring about the change in politics that Gaylord Nelson dreamed of. Earth Day is still celebrated every April 22. By 1990 Earth Day was not only celebrated in the United States but in 136 countries. Nelson was awarded the Medal of Freedom in 1995 by President Bill Clinton for his environmental efforts and the creation of Earth Day. The Medal of Freedom is the single highest honor a civilian can receive

^{118 &}quot;The Good Earth," New York Times, 23 April 1970.

from the U.S. government. 119 Nelson's most memorable contribution to the United States was his idea and creation of Earth Day. Had he not had the foresight and understanding of what was needed in the United States to spark political interest and spread awareness of the environment across the country the United States would not have the environmental legislation in place that it does today.

¹¹⁹ A. Petruso, "Gaylord A. Nelson," Encyclopedia of World Biography, 2006, http://www.notablebiographies.com/newsmakers2/2006-Le-Ra/Nelson-Gaylord-A.html (accessed 26 April 2011).

Chapter 7

The Peak of Change: The Clean Air Act 1970

After the first Earth Day Birmingham, Alabama, a large iron and steel producing city of nearly 700,000 people, found itself smothered by smog for five days. People with respiratory problems were urged to leave the city until the smog lifted and motorists were asked to stay out of the downtown area. Six hundred and seven pollutant particles were suspended in each cubic meter of air (twice the one-day per year maximum proposed in national air quality standards). The smog lifted with the assistance of a rain-storm but the residents of Birmingham were left fearful of their health. This event the day after Earth Day was a strong signal to the Federal government to take action.

Senator Edmund Muskie urged, "An environmental policy which is designed to correct the abuses of the past, to eliminate such abuses in the future, to reduce unnecessary risks to man and other forms of life, and to improve the quality of our design and development of communities, industrial units, transportation systems, and recreational areas." Senator Muskie believed that Federal action like the Clean Air Act were good foundations to begin repairing damages made to the environment. He wanted

¹²⁰ James T. Wooten, "5 Days of Smog Ends but Worry Still Grips Birmingham," *New York Times*, 25 April 1971.

April 1971.

121 Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 188.

strong enforcement of legislation in order for statutes to be taken seriously. Muskie believed in using Congress's traditional appropriation powers to boost public spending in order to reduce pollution, restrict the sale of products that are harmful to the environment, and promote urban planning. Nixon and Muskie felt that the government could only be responsible for so much. The people of the United States and their associations, businesses, political associations, and educational institutions needed to be as involved, if not more so, as the government. At the end of the day the state of the environment would rest with the people of the United States and their willingness to improve and preserve it. Because of Senator Nelson and Earth Day 1970 the willingness of the American people had been displayed and it was not Congress's turn to assist American society in its fight for the environment.

Before the excitement of Earth Day exploded in the United States President Nixon showed little concern for the environment but seeing the political power behind millions of concerned citizens on Earth Day spurred Nixon to action. President Nixon was not a president overly concerned with the environment. He was a politician in a conservative political party and the elections of 1972 were already on Nixon's mind in 1970 when the enormous response to Earth Day 1970 occurred, signaling to Nixon that the environment was an important issue to Americans. Senator Edmund Muskie, who was a strong

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¹²² Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 188.

¹²³ "Domestic Politics Richard M. Nixon, 37th President," *American Experience*, The Presidents, Richard M. Nixon, PBS, http://www.pbs.org/wgbh/amex/presidents/37_nixon/nixon_domestic.html (accessed 9 September 2010).

supporter of environmental legislation, posed as a 1972 rival in Nixon's mind and Nixon as a politician saw the environment as a big political play that needed to be made for reelection. A new Clean Air Act Amendment was the sort of political play on the domestic affair front that could help widen Nixon's voting numbers in the upcoming election. If Nixon wanted to pass any domestic affair legislation in his presidency he had to have the support of the Democratic majority of Congress. Nixon wanted to have a political advantage and that meant that he needed to work with Congress on legislation that was likely to pass—it needed to be an issue that the majority of Congress supported, and the Clean Air Act Amendment was something that would be passed.¹²⁴

The Clean Air Act of 1970 is one of the most significant pieces of legislation ever passed. While he encouraged the passage of environmental legislation President Nixon insisted that all environmental proposals meet the cost-benefit standards set by the Office of Management and Budget as part of his New Federalist principle that encouraged fiscal efficiency. 125 Nixon wanted to restructure the American government so that money was directed away from the Federal government and moved toward the states and municipalities. Throughout his entire political careers Nixon practiced this New Federalism. He was opposed to large government programs, wanting to restore authority on the local level. This desire to better serve constituents on a local and therefore more personal level was as much political savvy as it was a true belief in New Federalism. Although Nixon increased domestic initiatives as President, he stood by his belief in

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¹²⁴ Fred Graboske, "Fred Graboske's response to Re-evaluating Richard Nixon: his domestic achievements by Joan Hoff," *The Nixon Era Center at Mountain State University*, http://www.nixonera.com/library/grabocke.asp.

¹²⁵ "Domestic Politics Richard M. Nixon, 37th President," *American Experience, The Presidents, Richard M. Nixon, PBS*, http://www.pbs.org/wgbh/amex/presidents/37_nixon/nixon_domestic.html (accessed 9 September 2010).

smart spending. By requiring environmental proposals to meet cost-benefit standards the President was helping to control Federal spending. 126

President Nixon wrote that, "Perhaps no single goal will be more importance in our future efforts to pursue the public happiness than that of improving our environment...strong governmental action will be required to materially improve our environment." President Nixon understood, as did men like Senator Edmund Muskie, that law reflected popular needs. 128



Image 7: President Richard Nixon signing the Clean Air Act 1970 Source: http://graphics8.nytimes.com/images/2010/04/21/business/nixon/nixon-articleInline.jpg? SQUARESPACE CACHEVERSION=1287079563289

¹²⁶ "Domestic Politics Richard M. Nixon, 37th President," *American Experience, The Presidents, Richard M. Nixon, PBS*, http://www.pbs.org/wgbh/amex/presidents/37_nixon/nixon_domestic.html (accessed 9 September 2010).

¹²⁷Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 188.

¹²⁸ Karl Boyd Brooks, *Before Earth Day The Origins of American Environmental Law 1945-1970* (Kansas: University Press of Kansas, 2009), 192.

In his State of the Union Address, President Nixon said that, "restoring nature to its natural state is a cause beyond party and beyond factions." ¹²⁹ He said that a clean environment was the birthright of every American and by taking action in 1970, Americans could reclaim that birthright. The new plan outlined by Nixon and Congress was not for a year, but was created to last as long as necessary to clean up the environment. He acknowledged that it was a costly endeavor, but Nixon argued that the price of pollution control is high and clean air and water was not free. "Through our years of past carelessness we incurred a debt to nature, and now that debt is being called." ¹³⁰ Nixon felt that the automobile was the worst pollutant for the air and so it was the main focus of the Federal government. Nixon said that the concern over the emissions of the automobile meant that there was going to be a demand that there be advances in the design and construction of the car engine, strong enforcement of regulations, intensity in air pollution research, and stricter standards regarding air pollution. In a not-so-subtle urging, Nixon made it clear that this was going to have to start with the individual to start affecting change in the environment. Without the help of the people of the United States there could be no effective change in the environment. To be effective the American people had to come together and reclaim a healthy environment for themselves and for future generations. 131 This attitude and infectious desire to be involved and generate change began with Earth Day of 1970.

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President Richard Nixon, *Annual Message to the Congress on the State of the Union*, 22 January 1970, http://www.presidency.ucsb.edu/ws/index.php?pid=2921 (accessed 2 January 2011).

¹³⁰ President Richard Nixon, *Annual Message to the Congress on the State of the Union*, 22 January 1970, http://www.presidency.ucsb.edu/ws/index.php?pid=2921 (accessed 2 January 2011).

President Richard Nixon, *Annual Message to the Congress on the State of the Union*, 22 January 1970, http://www.presidency.ucsb.edu/ws/index.php?pid=2921 (accessed 2 January 2011).

Had Nixon not seen the massive impact of Earth Day and that the people of the United States were aware and concerned for their environment, Nixon never would have been involved with Clean Air legislation and would not have made 1970 the year of the environment. He was reaction purely to the demands of the American public and as an elected official of the United States he understood that his job was to give the majority of the people what they wanted. What the American people were ready for was clean air. "It is said that no matter how many national parks and historical monuments we buy and develop, the truly significant environment for each of us is that in which we spend 80 percent of our time—in our home, in our places of work, the streets over which we travel." I realize that the argument is often made that there is a fundamental contradiction between economic growth and the quality of life, so that to have one we must forsake the other. The answer is not to abandon growth, but to redirect it. For example, we should turn toward ending congestion and eliminating smog the same reservoir of inventive genius that created them in the first place."

What Earth Day did was achieve a rare political alignment with Congress and the President of the United States. This marked the unification of both Republicans and Democrats who responded to the American concern over the environment by passing several large pieces of environmental legislation.¹³⁴

Congress was responding to the heightened public concern about environmental pollution which was symbolized during the demonstrations of Earth Day. The 1970 Act

¹³² President Richard Nixon, *Annual Message to the Congress on the State of the Union*, 22 January 1970, http://www.presidency.ucsb.edu/ws/index.php?pid=2921 (accessed 2 January 2011).

President Richard Nixon, *Annual Message to the Congress on the State of the Union*, 22 January 1970, http://www.presidency.ucsb.edu/ws/index.php?pid=2921 (accessed 2 January 2011).

¹³⁴ "Earth Day: The History of A Movement," *Earth Day Network*, http://www.earthday.org/earth-day-history-movement (accessed 1 May 2011).

was passed in as effort by Congress to initiate a new approach to regulating air pollution. ¹³⁵ Because of the failure in air-quality control within a regional system in the 1967 legislation, Congress recognized the need for a national air-quality control standard. The 1967 legislation also taught Congress that it would need to impose statutory deadlines for compliance with emission standards. ¹³⁶ In the 1970 amendments Congress signaled its firm belief that economic growth and a clean environment are not mutually exclusive. Prior to 1970 there was an assumption that there could not be economic growth without a resulting pollution, particularly in an urban area. Pollution was the inevitable price of progress. The 1970 amendment marked a shift in the attitude of the country regarding the relationship between the environment and economic progress. ¹³⁷

The Clean Air Act Amendment of 1970 preempted much of the authority of the states and expanded the range of pollutants to be controlled. It is said that an underlying purpose of the 1970 statute was to raise the environmental consciousness of the nation regarding the importance of air pollution control. The Clean Air Act Amendment of 1970 caused a major shift in the Federal government's role in air pollution control. It was the first major amendment made to the Clean Air Act. It authorized Federal and state regulations to limit emissions from both stationary and

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¹³⁵ Paul G. Rogers, "Looking Back; Looking Ahead The Clean Air Act of 1970," *EPA Journal*, January/February 1990.

¹³⁶ Paul G. Rogers, "Looking Back; Looking Ahead the Clean Air Act of 1970," *EPA Journal*, January/February 1990.

¹³⁷ Paul G. Rogers, "Looking Back; Looking Ahead the Clean Air Act of 1970," *EPA Journal*, January/February 1990.

¹³⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 136.

¹³⁹ Paul G. Rogers, "Looking Back; Looking Ahead the Clean Air Act of 1970," *EPA Journal*, January/February 1990.

¹⁴⁰ Legislation, a look at U.S. air pollution laws and their amendments,

http://www.ametsoc.org/sloan/cleanair/cleanairlegisl.html (accessed 13 April 2010).

mobile sources. Four programs were created to regulate stationary pollutant sources. The National Ambient Quality Standards (NAAQS), State Implementation Plans (SIPs), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) were the programs created for pollutant control. Enforcement authority was substantially expanded. The passage of the Amendment came at the same time as the National Environmental Policy Act that established the Environmental Protection Agency (EPA) in order to implement various requirements included in the 1970 Amendment. Four regulatory programs were created regarding stationary pollutant sources: The National Ambient Air Quality Standards (NAAQS), State Implementation Plans (SIPs), New Source Performance Standards (NSPS), and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). 142

Under the new legislation Federal and state regulations were developed to limit emissions for two types of pollution: stationary and mobile pollutant sources. 143

Stationary pollutant sources are pollutant sources like power plants and industrial buildings that cannot move. A mobile pollutant source is a moving source of air pollution like motor vehicles. The Environmental Protection Agency sets limits on certain air pollutants, including setting limits on how much can be in the air anywhere in the United States. This helps ensure basic health and environmental protection from air pollution for all Americans. Under the Clean Air Act the EPA also has the authority to limit emissions of air pollutants coming from sources like chemical plants, utilities, and steel mills. While

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¹⁴¹ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

¹⁴² "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010)

¹⁴³ "History of the Clean Air Act," *US EPA*, http://www.epa.gov/air/caa/caa_history.html (accessed 13 April 2010).

weaker pollution limits than those set by the EPA. All plans for reducing air pollution by state, tribe, and local agencies must be approved by the EPA. It is important for state, tribe, and local involvement in the clean air process as they are able to develop plans with special understanding of local industry, geography, housing, and travel patterns which are all factors in the concentration of air pollutants. States develop State Implementation Plans (SIPs) that outline how the state will control air pollution under the Clean Air Act. The Plan is a collection of regulations, programs and policies the state will use to clean polluted areas. The public and industries have to be able to comment on the development of the plan through a series of hearings. The EPA also assists these agencies by providing research, expert studies, engineering designs, and funding to support clean air progress. ¹⁴⁴

The Clean Air Act of 1970 was a warning from the United States Chamber of Commerce that anti-pollution laws could kill entire industries and that they government should be ready to pay for the consequences. The Chamber warned that if businesses were unable to meet standards because of a lack of technology or a lack of money would result in a closure of the business which means economic loss.¹⁴⁵

For all that the Clean Air Act 1970 was a major transition in the regulation and authority of the Federal government, the environment soon showed the United States that the air was not clear yet. From April to July of 1971 chemical smog hit along the Houston ship channel, which was one of the worlds' most polluted streams. More than 150 persons fell ill during the time that the smog lasted in Houston. The ship channel was

¹⁴⁴ Understanding the Clean Air Act, http://www.epa.gov/air/caa/peg/understand.html (accessed 19 May 2011).

¹⁴⁵ "Pollution Laws Called a Threat to Industries," New York Times, 19 May 1971.

lined with heavy industry for almost a 50-mile-long stretch. Houston city officials denied an air pollution problem. Nearly every person who fell ill from pollution had to be hospitalized. The factories on the canal (which go from Houston to the Gulf of Mexico) were estimated to have the capacity to produce 40% of the petrochemicals manufactured in the United States. There were two outbreaks of smog-related illness in Houston. One on April 22, 1971 when one hundred longshoremen became ill as they unloaded two ships. Yellowish smog over the canal caused the workers to collapse as they uncontrollably coughed and vomited. On June 29, 1971 more than 50 longshoremen, truck drivers, and other dock workers became ill on three different docks along the canal. This episode along the canal showed that, while the Clean Air Act 1970 had been passed, it was now time to implement the new law.

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¹⁴⁶ Martin Waldron, "Chemical Smog Plagues Houston," New York Times, 11 July 1971.

Chapter 8

The Time of Compromise: The 1977 Clean Air Act Amendment

Following the Clean Air Act Amendment of 1970, it was soon evident that the goals established were not going to be achieved by the original deadlines. Some communities and industries were having difficulties meeting requirements set by the EPA Administrator at the time, Russell Train. Most primary air standards were to be met by May 31, 1975. At the same time that communities and industries struggled to meet new standards for air pollution new evidence was developing about new threats from air pollution. There was an article published in *Nature Magazine* in June 1974 linking chlorofluorocarbon (CFC) emissions and depletion of the ozone layer. There were also concerns expressed about the ozone layer being damaged by nitrogen oxide emissions from airplanes. Between 1975 and 1976 a total of eight bills were introduced to Congress in response to fears of chlorofluorocarbons (CFCs). All of the bills sought more research into the issue so as to better understand this new threat in the sky to Americans. However, little action really resulted from these bills as society still struggled to meet the new regulations already established in the 1970 Amendment. 147

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¹⁴⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 184-185.

At the same time that some bills were being proposed for further research into air pollution, the steel, power and automobile industries wanted Congress to relax regulations established by the Clean Air Act 1970. In 1973 the U.S. Supreme Court ruled in *Fri v. Sierra Club* that the Environmental Protection Agency was to reject any State Implementation Plans (SIP) that did not prevent significant deterioration of air quality. State Implementation Plans are required by the US EPA that establishes regulations to meet clean air standards and requirements. SIPs include State regulations that have been approved by the EPA; State issued orders for individual companies for pollution control, and documented plans to meet air quality standards in specific areas. 149

By 1974, the EPA had divided the United States into three categories. The first was 'Class 1' and included areas that held national forests, parks and wilderness. The EPA would tolerate almost no change in existing air qualities in these areas. 'Class 2' areas were allowed some increase in air pollution levels to accommodate growing industrial areas. 'Class 3' areas would accommodate industrial growth so long as the national air quality standards were not broken. ¹⁵⁰

Industry groups in favor of a new Clean Air Amendment that would weaken the 1970 Act had an ally in President Gerald Ford, who was sworn in as President August 9,

¹⁴⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 185-186.

149 "State Implementation Plans," United States Environmental Protection Agency,

http://www.epa.gov/reg5oair/sips/ (accessed 25 April 2011).

¹⁵⁰ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 186.

1974. In January of 1975 the President proposed an energy bill to Congress that held significant amendments to the Clean Air Act of 1970. Known as the Energy Independence Act, Ford addressed the major concerns of industries. It proposed the final automobile exhaust emissions standards be postponed until 1982. It also proposed that utility companies in remote areas be allowed until 1985 to meet final emissions requirements, and allow large cities known for heavy automobile congestion until 1987 to comply with clean air standards. Ford also wanted to prevent the EPA from setting any air quality standards that were too stringent. 151 Environmentalists were outraged by this amendment but the Act did receive serious attention in Congress before not being passed. For senators like Senator Muskie it was a sign that an amendment needed to be proposed to the Clean Air Act that would not weaken the 1970 Act. At the same time an amendment needed to give industries the extension they felt was needed to meet new air quality standards. Those in favor of a new amendment that would not weaken the Act had to tread carefully as the momentum that had existed in 1970 was extinguishing. Legislators now felt that the cost of cleaner air might be too much for constituents and they sought to fight for their interests. Supporting air pollution control legislation was suddenly not as pro-American as it had been. Legislators had to be careful how they voted for they did not want to compromise the economic circumstances of constituents. 152

Revising the 1970 Act was a slow process in both the House and Senate. New evidence of the affects of air pollution, including new concerns over CFC's had to be investigated and studied in the new proposals. However, once the 1977 Act was passed

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¹⁵¹ E. W. Kenworthy, "Ford Asks 5-Year Freeze on Auto Emission Curbs," *New York Times*, 28 June 1975. ¹⁵² Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 187-188.

by Congress, the amendment successfully maintained the strength of the 1970 Act while giving an extension to industries to meet the new regulations. Automobile manufacturers were given an additional two years to meet the exhaust emission standards set in 1970. Industrial polluters were also given an additional three years to achieve the required emissions standards. The States that were not in compliance with the national air quality standards were given a further five years to come into compliance. Cities known for their excessive air pollution levels were given ten years to meet the standards.¹⁵³

Following the three classifications of air pollution areas set by the EPA in 1974, no deterioration of air quality would be tolerated in Class 1 areas. Specified levels of additional levels of pollution would be tolerated in Class 2 and no restriction would be placed on Class 3 areas so long as NAAQS was maintained. The 1977 Amendment also created the National Commission on Air Quality. The Commission would monitor the EPA and would provide the funds to research ozone depletion and CFC's. The commission had \$200 million from 1978-1981 to implement these provisions. ¹⁵⁴

Between 1970 and 1977 congressional interest in air pollution changed. Bill introductions and committee hearings came to Congress at a stable and low level. In 1971 thirty-nine air pollution control bills were introduced to the House and three were produced in the Senate. In 1972 only ten bills totaled were presented to Congress. All the bills presented to the Senate were meant to strengthen the Clean Air Act, but those presented to the House both strengthened and weakened the Act. Bills were introduced to

153 Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 164-174.

¹⁵⁴ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 164-174.

provide regulatory relief to industries as they struggled to meet the deadlines established in the 1970 Amendment. This period in air pollution history marked a small retrenchment on the part of Congress regarding authority. Reauthorizations, minor in their authority, were passed in 1973 and 1975. The newly created EPA had a difficult time achieving all of its deadlines as it gained power and industries felt the strain of the economic costs of meeting all the new regulations created under the 1970 Amendment. A small counter movement of industrial groups occurred and threatened environmental group's efforts to continue to expand Federal authority. The US was experiencing an economic downfall and an energy crisis as costs of oil rose. There was a call that the regulatory regime be reformed. Industrial groups wanted to challenge regulations as an energy crisis was occurring. Security 156

The 1970s marked an energy crisis that alarmed Americans. As U.S. consumption of oil rose to an all time high, U.S. oil production at home was declining. In 1973 when importation of foreign oil reached an all time high, the Watergate Scandal with President Nixon and his administration was in full swing. The scandal and its toxic climate of opinion gave little support for the policy formation to address the issue and create an oil embargo. The US was also faced with Arab-Israeli conflicts and growing tensions for the US with Arab nations. As a result of Israeli support by the U.S. the Middle East cut off exports of petroleum to the West. It did not immediately impact the U.S. but investors

¹⁵⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 164-174.

¹⁵⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 164-174.

and oil companies panicked and raised the cost of oil. ¹⁵⁷ As a result the cost of gasoline spiked at the pump and Americans were less willing to meet new environmentalist ideas born in 1970 when faced with resource scarcity. Americans were used to a certain way of life and when faced with a challenge of not having the natural resources to meet that quality of life the U.S. faced a predicament. It triggered an urging for the development of alternative energy sources but made it so that industries directly affected by the Clean Air Act Amendment 1970 also felt economic loss due to the energy crisis. ¹⁵⁸

Facing the energy crisis, bills were introduced to relax provisions of the Clean Air Act Amendments that legislators felt would have an adverse affect on energy consumption and costs. In the aftermath of the oil crisis in 1973, twelve bills were introduced to extend, suspend, or postpone standards and deadlines established by the 1970 amendment. Seven bills were introduced to allow the removal of air pollution control devices from bars and another six were introduced to postpone or prohibit the promulgation of regulations governing indirect sources. Only one bill was introduced after October 1973 with a pro-environment standing. By 1974 demands were being made that the 1970 Amendment be amended once more to address old and new concerns. 159

In 1977 the next inaugurated Democratic President Jimmy Carter asked Congress to accelerate its environmental cleanup. He sought energy technologies that would not undermine environmental goals already established. Carter also pushed forward the Clean Air Act of 1977 to extend the timetable. The compromise amendment to the Clean Air

¹⁵⁷ "The Mideast Oil Crisis – Energy Matters," *Oracle ThinkQuest Education Foundation*, http://library.thinkquest.org/20331/history/mideast.html (accessed 27 April 2011).

The 1970's Energy Crisis," http://cr.middlebury.edu/es/alternergylife/70's.htm (accessed 27 April 2011).

¹⁵⁹ "The 1970's Energy Crisis," http://cr.middlebury.edu/es/alternergylife/70's.htm (accessed 27 April 2011).

Act 1970 was introduced by the republican Senate majority leader Howard H. Baker Jr. of Tennessee and passed 56 to 38. 160 "During Carter's first months as President, he worked hard to defeat a drive by industry and labor to weaken the 1970 Clean Air Act, a measure that Nelson had vigorously supported, by weakening controls on automobile exhaust fumes and lessening protection of pure air over national parks." 161

President Carter grew up in Plains, Georgia. His father was a peanut farmer and his mother a nurse. Carter grew up with conservation ideals and the importance of maintaining a healthy environment. For the Carter family an unhealthy environment meant disaster for their very livelihood. Throughout his entire political career President Carter stressed the importance of ecology and greatly wanted to improve the environment and those desires and agenda can be linked with Carter's upbringing. 162



Image 8: President Carter Source: http://jamescarterbiography.com/images/jimmy_carter_3.jpg

http://www.whitehouse.gov/about/presidents/jimmycarter (accessed 27 April 2011).

¹⁶⁰ "A Commitment to the Environment," New York Times, 28 May 1977.

¹⁶¹ Burton I. Kaufman, *Presidential Profiles The Carter Years* (New York: Facts on File an Imprint of Infobase Publishing, 2006), 348.

^{162 &}quot;Our Presidents – Jimmy Carter," The White House,

On June 8, 1977, in a letter to Senator Edmund Muskie, President Carter spoke of the importance of the Clean Air Act and the maintenance of its authority with any new amendments.

"The Clean Air Act of 1970 which the Senate will soon consider is of critical importance to the success of our public health and environmental programs...More than 96 million people in at least 48 of our cities breathe air which exceeds the Federal health-based air quality standards. Asthma, chronic lung disease, respiratory illness, and cardiovascular attacks are among the health impacts which auto pollution can cause. These effects are particularly severe in children and in the elderly. We cannot hope to have a successful public health program in this country without a major effect to reduce pollutant levels in our air." ¹⁶³

President Carter understood the severity and threat that air pollution posed to the American public. He wanted to ensure that the public would be healthier, that the government was continuing to protect the public health. He realized that industry might need extensions to the regulations established in the 1970 Clean Air Act, but he still knew what was of the utmost importance to the United States, clean healthy air.

"Fortunately, however, auto emissions are controllable without jeopardizing our ability to meet fuel economy standards, adding substantially to the cost of automobiles, or costing our economy the jobs we so vitally need. While we have made some progress in reducing auto pollution, the technology is available to do better. The proposal which I submitted to Congress, like the Committee bill, will require use of emissions clean-up technology which is inherently more efficient than that being used today...Control of auto pollution also has direct bearing on economic growth and our ability to provide jobs in our cities. Each additional increment of unnecessary pollution –pollution which could be controlled –is wasting those air quality margins which would otherwise be available for development in our urban areas. The unnecessary relaxation of auto emissions standards and clean-up schedule proposed in the Griffin-

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¹⁶³ President Jimmy Carter, "Clean Air Act Amendments –Letter to Senator Edmund S. Muskie", 8 June 1977, http://www.presidency.ucsb.edu/ws/index.php?pid=7645 (accessed 2 January 2011).

Riegle amendment would exacerbate the already difficult choices which our cities now face in providing for both economic growth and protection of public health. It would also hinder our program to make increased use of coal...I want to reiterate my support for the Committee's provisions for protection of air quality in areas which are now cleaner than required by the primary ambient air quality standards, particularly our national parks and wilderness environmental quality. We can built those power plants which are needed without ruining the air quality of our national parks...I urge that you and your colleagues oppose any amendments which would weaken our ability to protect these irreplaceable resources." 164

The President believed that the economy and the environment could be improved without sacrificing one for the other. Carter would not allow Congress to set back progress on cleaner air in the United States, nor was he willing to cost hard working Americans their jobs. Carter wanted the United States to continue to grow, continue to industrialize and build new factories, without sacrificing clean air. The technology existed to prevent deterioration of air quality and with the existence of that air quality; Carter argued that there was no reason for new factories not to install the equipment. The President was keeping the future of the United States in mind as he addressed the concerns of the regulations and implementations of the Clean Air Act 1970. His job was to create a compromise that would benefit both the economy and the environment.

On April 18, 1977 the Carter Administration recommended a delay in enforcing automobile emission standards but overall called for strict regulation of air polluters. This includes economic penalties to those who do not comply with clean air laws. ¹⁶⁵

On June 9, 1977 the Senate reached a compromise on automobile pollution. It was a highly controversial issue within the Clean Air Act and the Senate agreed to delay

¹⁶⁵ Philip Shabecoff, "Carter Asks Delays on Auto Fumes," New York Times, 19 April 1977.

¹⁶⁴ President Jimmy Carter, "Clean Air Act Amendments –Letter to Senator Edmund S. Muskie", 8 June 1977, http://www.presidency.ucsb.edu/ws/index.php?pid=7645 (accessed 2 January 2011).

imposing stricter controls on car fumes, but not to weaken standards permanently. By this compromise the Senate rejected a different proposal favored by the automobile industry (which had been adopted by the House) which permitted a longer delay and an indefinite weakening of standards that manufacturers are expected to meet the Clean Air Act Amendment was seen as a victory for President Carter, who asked that weaker legislation be rejected. Under the compromise auto emissions controls were not called to be stricter until 1980 –giving the auto industry more time to meet regulations. The Senate compromise, however, refused to allow pollution of pristine air over national parks and other areas protected under the Clean Air Act. By protecting recreational areas the Senate was appeasing environmental groups. ¹⁶⁶

This amendment was primarily concerned with provisions for the Prevention of Significant Deterioration in areas attaining the NAAQS. It also contained requirements pertaining to sources in non-attainment areas under the National Ambient Air Quality Standards (NAAQS). Non-attainable areas were defined as geographic areas that do not meet one or more of the Federal air quality standards. These amendments established major permit review requirements to ensure attainment and maintenance of the NAAQS. States were failing to meet mandated targets set by the 1970 Amendment. The New Source Review was established to address older facilities that were "grandfathered" by the original law. In 1970, Congress had assumed older industrial facilities like power plants and refineries would be phased out of production. They were therefore exempted from the 1970 legislation. However, these old power plants and

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¹⁶⁶ Philip Shabecoff, "Senate Compromise on Car Fumes," New York Times, 10 June 1977.

¹⁶⁷ "History of the Clean Air Act", *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 13 April 2010).

refineries, which were major pollution contributors, continued to operate and emit pollution at higher levels than new facilities that were built with modern pollution-controlled equipment and lawmakers desired to act. The New Source Review requires old industrial facilities that want to expand to undergo an EPA assessment and install pollution control technologies if expansion plans produce significantly more emissions. ¹⁶⁸ Because of the technological challenges and overly ambitious deadlines combined with economic limitations the Clean Air Act Amendment of 1977 was created in part to meet the needs of industries faced with meeting new regulations. ¹⁶⁹

In his statement on signing the Clean Air Act Amendment of 1977 President

Carter spoke about the firm timetable laid out for the automobile industry and the strict
regulations for car emissions that were also achievable, especially now that the
automobile industry had gained an extension on its deadlines so that it could dedicate its
time to constructing cars that further clean air goals as well as improve fuel efficiency.

Carter spoke of the amendments specific focus on protecting areas of the country which
had already shown improvement under the Clean Air Act of 1970. Although the
government was continuing its protection of areas like national parks and national
wilderness areas, economic growth was still occurring but in an environmentally sound
manner. The Amendment allowed the EPA to establish monetary penalties equal to the
cost of a cleanup when industries failed to meet deadlines. Carter said that "industries
which delay installing abatement equipment will no longer be rewarded in the

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¹⁶⁸ Timeline of the Clean Air Act, http://edf.org/documents/2695_cleanairact.htm (accessed 12 April 2010).

¹⁶⁹ Legislation, a look at U.S. air pollution laws and their amendments,

http://www.ametsoc.org/sloan/cleanair/cleanairlegisl.html (accessed 13 April 2010).

marketplace."¹⁷⁰ Carter felt that the new amendment to the Clean Air Act established the framework needed by the EPA to effectively implement air quality in the United States and maintain that air quality one it was met. The end result of an effective EPA and air quality program was the improved health of the American citizens.¹⁷¹

Overall the basic structure of the Clean Air Act was not changed since 1970. However, it did show the beginning of the shift from the concerns over clean air as society met the new standards and an end to the legislative actions for stronger air enforcement. The 1977 Amendment was the ultimate compromise from Congress to appease both environmental groups who wanted to continue the momentum towards a clean society and industries who felt that they were being compromised as businesses with the new standards set by the Clean Air Act. Of course, as soon as the 1977 amendment was passed industrial groups wanted further extensions and regulatory relief. Environmentalists wanted to remedy defects in the 1970 and 1977 Acts and to address new problems with air pollution. However, because of a number of contributing factors another amendment would not be made to the Clean Air Act until 1990.¹⁷²

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¹⁷⁰ President Jimmy Carter, *Clean Air Act Amendments of 1977 Statement on Signing H.R. 6161 Into Law*, 8 August 1977, http://www.presidency.ucsb.edu/ws/inedx.php?pid=7946 (accessed 2 January 2011).

President Jimmy Carter, Clean Air Act Amendments of 1977 Statement on Signing H.R. 6161 Into Law, 8 August 1977, http://www.presidency.ucsb.edu/ws/inedx.php?pid=7946 (accessed 2 January 2011).

¹⁷² Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 198-200.

Chapter 9

A Stalemate and a Resistant Executive Branch

Ultimately one of the largest contributing factors to the lack of legislation by Congress from 1977 to 1990 was a deferential attitude by Congressman where no one wanted to address the hard issues of environmental legislation and where it should go after 1977. There was a constant struggle between those who sought to strengthen and those who sought to weaken the Act. Industrial groups sought to dispute any and all scientific evidence that could support the passage of stronger legislation. The economic cost of compliance with the 1970 and 1977 Amendments, and the continued costs industries argued, were too high for more legislation. 173

In the United States, to be pro-business means to be anti-environment because of the costs associated with becoming a green industry. Major industries spent millions of dollars during elections in this time period, seeking out those candidates who were probusiness. Candidates, regardless of party affiliations, were targets by industries if they were known to be pro-environment. Therefore, Presidents during this time who were pro-business were also anti-environment. Both Presidents Ford and Reagan were anti-environment and sought to weaken environmental legislation so that businesses could have less regulation by the Federal government. Environmentalists wanted to tackle the

¹⁷³ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 200-208.

¹⁷⁴ John B. Oakes, "To Vote Against Polluters," New York Times, 29 October 1982.

problem of acid rain and stratospheric ozone depletion. Despite the rejections and challenges of industry, evidence of acid rain increasing in American lakes and soil was becoming stronger. Groups felt that the EPA was developing a poor record for regulating airborne toxins and particulates. During this period of noncompliance the EPA claimed that 93% of industry was in compliance with the law in 1980. Those industries still struggling to meet compliances were power stations, the steel industry, and heavy metal industry. Ten years after the 1970 Act, the EPA reported that it had only established national emission standards for hazardous air pollutants for asbestos, beryllium, mercury and vinyl chlorides. National emissions standards for hazardous air pollutants for benzene, arsenic and radionuclide's had been proposed but not confirmed. The process of cleaning the air was taking longer than expected. Levels of ozone and nitrogen dioxide were still high although levels of particulates, sulphur dioxide, and carbon monoxide were being reduced. 175

In order to control acid rain there needed to be stronger regulations of sulfur dioxide and nitrogen dioxide. Politicians from northern and northeastern States in and around Appalachia and the Midwest tried to dispute the evidence being presented to Congress over the concerns of acid rain. The issue became international when members of the Canadian government presented evidence on acid rain during a hearing. ¹⁷⁶

In the 1980s the balance of power shifted. The Reagan Administration was opposed to Federal government regulation in general and environmental regulations in

¹⁷⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 210-211.

¹⁷⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 211.

particular. Reagan advocated revisions to the Clean Air Act that would minimize the involvement of the Federal government's involvement with air pollution. Reagan wanted to lighten the economic and regulatory burdens that the Clean Air Act had placed on industry. Particularly in 1981 Reagan pushed hard for Congress to pass an amendment that would weaken the Act and allow more flexibility for industry. ¹⁷⁷ On August 5, 1981 President Reagan sent Congress a list of eleven principles that would help guide the reform of the Clean Air Act. It called for more research on acid rain, an adjustment of automobile emissions to more 'reasonable' levels, new deadlines for NAAQS standards that would be more realistic in Reagan's opinion, and a restoration of State responsibility for air pollution control. Industrial groups were greatly in favor of these principles but environmentalists were resistant and outraged. However, Reagan failed to offer draft legislation, which left legislators in favor of reform without a concrete focus for new legislation. ¹⁷⁸ Congressional members in favor of stronger legislation were in a position to exercise control over environmental sub-committees but they lacked the parliamentary authority on the floor to go beyond that. Republican leadership could not be persuaded to schedule floor action. Meanwhile, those who sought to weaken air legislation lacked the access to prime policy-making subcommittees that enabled them to fashion new laws regarding air legislation. Congress was at a stalemate where interest groups could not get through but neither could anyone push through new legislation. ¹⁷⁹

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¹⁷⁷ Philip Shabecoff, "Congress," New York Times, 3 November 1981.

¹⁷⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 216.

¹⁷⁹ Philip Shabecoff, "Congress Divided on Clean Air Bill," New York Times, 11 February 1982.

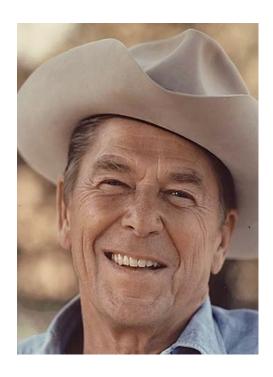


Image 9: President Ronald Reagan Source: http://www.themoralliberal.com/wp-content/uploads/2009/10/ronald-reagan2.jpg

President Reagan, in attempts to restrict the power of the EPA, reduced the Independent Regulatory Agency's budget, which did reduce the resources available for implementation but overall did not affect the Clean Air Act's specific prohibition of taking costs into consideration when establishing NAAQS. This meant that the executive orders that required a cost-benefit analysis of all new regulations by the EPA really did not affect the Clean Air Act. Public concern over the environment began to emerge once again in the mid 80s as environmental groups raised support from concerned citizens that the work that had been achieved in reducing air pollution in the previous decade would be useless with the deregulation of the Clean Air Act.

¹⁸⁰ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 200-208.

In 1982 the New York Times published an article warning voters before elections that voters needed to elect representatives who were pro-environment, which opinion polls showed was the overwhelming sentiment of Americans. The article wanted Americans to show, particularly President Reagan with his assault on environmental legislation, and Congressional members in favor of weakening the Clean Air Act, that the "environment is not for sale." The article showed that the public was not blind to the President's attempts to weaken the Clean Air Act. It spoke of Reagan's attempts in Congress, through the administrative agencies, and through budget cuts. The role of proenvironmentalists in Congress was all that had kept Reagan's attempts from successfully weakening the Clean Air Act. It was understood that there were needed improvements to the Clean Air Act but the New York Times article showed that the public was not seeking an amendment that would weaken the basic environmental protections established by previous legislation. 182

American concerns over the administration's suggestions resulted in Reagan softening his anti-environment rhetoric. Polls had been conducted in 1981 and confirmed by Reagan's own pollster that the great majority of Americans were in favor of strong environmental legislation, not reduced Federal control. Congressional members who voted in favor of weakening the Clean Air Act were weakening their positions in Congress. 183 President Reagan had been quoted as saying that the battle for clean air had been substantially won, a comment made on the same day that he had difficulty landing in a Los Angeles airport due to smog. The President was also noted as saying that eighty

 ¹⁸¹ John B. Oakes, "To Vote Against Polluters," *New York Times*, 29 October 1982.
 ¹⁸² John B. Oakes, "To Vote Against Polluters," *New York Times*, 29 October 1982.
 ¹⁸³ Philip Shabecoff, "Congress," *New York Times*, 3 November 1981.

percent of air pollution came from plants and trees. Members of the American public were shocked by such statements from the President of the United States regarding environmental health. Even though information remained to be discovered there was enough documented evidence by the 1980s to know that air pollution was a major contributor to serious human health issues. However, President Reagan famously said that, "when you've seen one tree you've seen them all." Environmentalists and Americans concerned with a healthy environment and human wellbeing saw that they needed to act to keep this extremely anti-environment President from harming environmental legislation that already existed. No one had any illusions that an amendment strengthening the Clean Air Act would be passed while Reagan was President but the public and pro-environment Congressmen would ensure that the Act was not weakened. 185

However, the administration also retreated from full-scale efforts to weaken environmental laws. During this time support for stronger environmental legislation rose from 45 to 58 percent between 1981 and 1983 and membership of environmental groups rose rapidly. ¹⁸⁶ In the late 1980s US media began devoting coverage to environmental issues like global warming and the Exxon Valdez oil spill in 1989 greatly raised proenvironmental support within the United States. ¹⁸⁷

Growing environmental concerns in the late 1980s would help prompt legislative action once again from Congress, along with the election of a new President in 1988 who

^{184 &}quot;President's Column," The Nation's Health, June 1981.

¹⁸⁵ Philip Shabecoff, "Clean Air Act: A White House Wind," New York Times, 23 October 1982.

¹⁸⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 227.

¹⁸⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 226-227.

wanted to distance himself from the administration where he had served as Vice President. This opportunity in history marked a 'policy window' in which Congress made its most current amendment to the Clean Air Act. 188 The election of a new Congress along with the new President also helped end the legislative stalemate. President George H.W. Bush wanted to deliver on the campaign promised which he had spoken so strongly about during the election. Bush wanted a Clean Air Act Amendment to be a priority. It was the environmental disaster with the Exxon-Valdez oil spill that helped raise public concern once again for the environment. Members of Congress could see that there were electoral benefits to acting on the concerns of the constituents and more members were therefore willing to pass a new Amendment. The percentage of citizens in favor of stronger legislation to protect the environment after the oil spill rose from 65% in 1988 to 80% a year later. Those who had sought to weaken the Clean Air Act were once again on the wrong side of legislation as momentum was once again in favor or strong legislation. The 1990 Clean Air Act Amendment would ultimately answer many unanswered question from 1977 but would raise new concerns in the process. 189

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¹⁸⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 200.

¹⁸⁹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 208-209.

Chapter 10

The Last Great Action of Congress: 1990 Clean Air Act Amendment

Due to lack of legislation regarding Clean Air, 1988 marked the worst smog levels in the United States for the decade. There was a demand that protection of public health by forcing change and requiring automobile industry develop clean fuel, new technologies, and new engines. In an article written by Senators Max Baucus and Joseph I. Lieberman and published in the *New York Times*, 60 billion to 100 billion in environmental damage is paid each year. Even effects of summer smog were seen in national parks. The American Lung Association estimated that \$40 billion a year in healthcare and other costs of illness and death caused by air pollution. ¹⁹⁰ The large gap between amendments was in part because President Reagan's administration placed economic goals ahead of environmental goals. 191 After a lengthy period of inactivity, the Federal government believed that they should again revise the Clean Air Act due to growing environmental concerns. The most recent of the Clean Air Act Amendments, the 1990 Amendment substantially increased the authority and responsibility of the Federal government. New regulatory programs were authorized for control of acid rain and for the issuance of stationary source operating permits. The NESHAPs were incorporated into a greatly expanded program for controlling toxic air pollutants. The provisions for

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¹⁹⁰ Max Baucus and Joseph I. Lieberman, "Ask the Asthmatics," New York Times, 22 April 1989.

¹⁹¹ Legislation, a look at U.S. air pollution laws and their amendments,

http://www.ametsoc.org/sloan/cleanair/cleanairlegisl.html (accessed 13 April 2010).

attainment and maintenance of NAAQS were substantially modified and expanded. Other revisions included provisions regarding stratospheric ozone protection, increased enforcement authority, and expanded research programs. 192

In March 1989 the Exxon Valdez tanker ran aground and spilled 11 million gallons of oil into Alaska's Prince William Sound, which is also the location of the Bligh Reef. It marked the worst environmental disaster to ever occur in United States History. More than 1300 miles of shoreline was damaged as a result of the spill. It disrupted the lives and very livelihood of all the residents as well as killed hundreds of thousands of birds and marine life. While the spill stopped after only a few days, the true amount of damage and the time of recovery had an unknown end date. More than two billion dollars ended up being spent on cleanup and recovery. The social outcry was as great as the cost of cleanup from the Exxon oil spill. It helped create an all new industry for environmental groups, science organizations, and experts in psychological trauma caused by oil spills. The Exxon oil spill was a crash course in the effects and losses of such a catastrophic environmental event and awoke Americans once again to the need for more and better equipped legislation. 193 The sight of millions of gallons of oil spilling into the ocean generated favorable conditions for legislators and a willingness on the part of the people of the US to pass environmental legislation. 194

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¹⁹² "History of the Clean Air Act", *US EPA*, http://epa.gov/oar/caa/caa_history.html (accessed 2 January 2011)

^{193 &}quot;Exxon Valdez Oil Spill (1989)", New York Times, 3 August 2010,

http://topics.nytimes.com/top/reference/timestopics/subjects/e/exxon_valdez_oil_spill_1989/index.html (accessed 2 January 2011).

^{194 &}quot;Exxon Valdez Oil Spill (1989)", New York Times, 3 August 2010,

http://topics.nytimes.com/top/reference/timestopics/subjects/e/exxon_valdez_oil_spill_1989/index.html (accessed 2 January 2011).



Image 10: Exxon Valdez Oil Spill
Source:
http://asapblogs.typepad.com/photos/uncategorized/2007/10/29/scotus_exxon_valdez_rumb.jpg

At the same time that the Exxon oil spill occurred, President George H.W. Bush was the newly inaugurated President of the United States. On June 12, 1989 President Bush pledged to rid the nation of dirty air by amending the Clean Air Act of 1970. It marked the end of White House indifference to the Act since the amendment made in 1977 with the support of President Carter. Although after making the statement President Bush made compromises with the automobile industry which environmentalists found disappointing. The end of White House silence, however, encouraged industries to think creatively about new technologies and challenged Congress to take action. The bill created two dramatic improvements over the existing law. One, utilities were required to cut discharges of sulfur dioxide (chief cause of acid rain) in half by 2000. The Reagan Administration had studied acid rain during its entire eight years in office but never took

action. The second improvement to the law required the gradual phasing in of natural gas. The bills largest weakness was that the provisions aimed at attacking urban pollution caused when hydrocarbons and nitrogen dioxide react with sunlight to produce ozone. This was the promise of the president. 195

During a speech in Helena, Montana, President Bush spoke about the importance of the environment and the significance of pollution. "The plain fact is this: pollution can't be contained by lines drawn on a map. The actions we take have consequences felt the world over. The destruction of the rain forest in Brazil; the ravages of acid rain that threaten not just our country, but our neighbors to the North and not just the East but the lakes and forests of the West as well. The millions of tons of airborne pollutants carried across the continents and the threat of global warming.... We cannot pollute today and postpone the cleanup until tomorrow." The significance and consequence of air pollution were understood in 1989 and President Bush dedicated much of his political campaign for president and the beginning of his presidency to clean air. President Bush was not an environmentalist however. 197 He was a politician much like Nixon who recognized the significance of the environment and realized that it was now a figurehead issue for Capitol Hill and would always is an issue for the President to address. To not address the environmental concerns of the time could potentially be political suicide for the presidential campaign. It did not matter how Bush felt about the environment

 ^{195 &}quot;Anger but Also Cleaner Air," New York Times, 25 July 1989.
 196 President George H. W. Bush, "Speech by President George Herbert Walker Bush," Republican for Environmental Protection, 1989, http://www.rep.org/news/GEvol8/ge8.1 Bush41.html (accessed 2 January

[&]quot;Which Were the Least Environmental US Presidents," Ecohearth Come Home to the Earth, http://ecohearth.com/eco-zine/eco-heroes/1614-the-least-environmental-us-presidents.html (accessed 2 January 2011).

personally, professionally he would have to address the environmental issues that

Americans were concerned about and were raising awareness of in order to be President.

To not deliver on at least some of the promises during the campaign would mean no chance of re-election.

President Bush's signing of the Clean Air Act in 1990 would be proclaimed by the New York Times as the "single most distinguished policy achievement" of the administration. 198 President Bush had presented the need for an amendment to the Clean Air Act as part of his campaign when he was running for election in 1988. He promised to be the "environmental president" and would be the first president to appoint the first professional conservationist to head the EPA. President Bush was deeply committed to environmental issues and believed in working with businesses to find innovative ways of improving the environment in an economically beneficial way. 199 President Bush signed the Clean Air Act Amendment 1990 on December 15, 1990. In his statement on the signing of the Clean Air Act Amendment 1990 President Bush spoke about the health benefits of the new amendment. "The result of this new Clean Air Act will be that cancer risk, respiratory disease, heart ailments, and reproductive disorders will be reduced; damage to lakes, streams, parks, crops, and forests will greatly be lessened; and visibility will be notably improved. As an added benefit, energy security will on balance be enhanced as utilities and automobiles switch to cleaner burning alternative fuels."²⁰⁰

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^{198 &}quot;George H.W. Bush Domestic Policies", American Experience-PBS,

http://www.pbs.org/wgbh/amex/bush41/more/domestic.html (accessed 2 January 2011).

^{199 &}quot;George H.W. Bush Domestic Affairs," American President,

http://millercenter.org/president/bush/essays/biography/4 (accessed 2 January 2011).

²⁰⁰ John Woolley and Gerhard Peters, "George Bush, Statement on Signing the Bill Amending the Clean Air Act," *The American Presidency Project-United States Document Archive*, 15 November 1990, http://www.presidency.ucsb.edu/ws/index.php?pid=19039#axzz1G2sIvw4k (accessed 2 January 2011).



Image 11: President George H.W. Bush signing the Clean Air Act 1990 Source: http://newstaar.com/wp-content/uploads/2011/03/cleanairact.jpg

In 1990 there was once again growing concern over environmental issues. Public concern rose as reports of acid rain, global warming, and fouled beaches filled newspapers and the environment became a main issue in the 1988 presidential election.

This gave Congress the opportunity to initiate a new amendment to the Clean Air Act. 201

The 1990 Amendment prohibited leaded gasoline in motor vehicles by the end of 1995. It also included acid rain control. The two main sources of acid rain are sulfur dioxides and nitrogen dioxides and these two pollutants in particular were focused on for air pollution reduction. Several options were offered to utilities to meet the standard annual emissions allowance limit. They had the option of using cleaner fuel, choosing lower sulfur coal, obtaining additional allowances, installing glue gas desulfurization equipment (scrubbers), using previously implemented controls, retire unites, repower

²⁰¹ Paul G. Rogers, "Looking Back; Looking Forward the Clean Air Act of 1970," *EPA Journal*, January/February 1990.

boilers, substitute phase II units, or compensate with phase II units. ²⁰² Congress recognized that Indian Tribes have the authority to implement air pollution control programs. The Tribal Authority Rule gives Tribes the ability to develop air quality management programs, write rules to reduce air pollution and implement and enforce their rules in Indian Country. Tribes may develop and implement only those parts of the Clean Air Act that are appropriate for their lands. ²⁰³ Section 812 of the 1990 Clean Air Act Amendments requires that the Environmental Protection Agency periodically conduct scientifically reviewed studies that assess the costs and benefits of the Clean Air Act. Central to the 1990 Amendment was the regulation and limits on urban air pollution, also known as smog, industrial emissions of toxic chemicals, and acid rain. It reformulated gasoline requirements and emissions trading. ²⁰⁴

²⁰² *Timeline of the Clean Air Act*, http://www.edf.org/documents/2695_cleanairact.htm (accessed 2 January 2011).

²⁰³ "Únderstanding the Clean Air Act", *US EPA*, http://www.epa.gov/air/caa/peg/understand.html (accessed 2 January 2011).

²⁰⁴ "Exxon Valdez Oil Spill (1989)", New York Times, 3 August 2010,

http://topics.nytimes.com/top/reference/timestopics/subjects/e/exxon_valdez_oil_spill_1989/index.html (accessed 2 January 2011).

Chapter 11

The Dirty Air Fight Continues: 1990 to the Present Day

The Clean Air Act 1990 addressed the questions that had been unanswered in the 1977 Amendment. It also addressed new concerns over urban air pollution, the EPA's inability to address toxic air pollution and addressed the concerns of acid rain. It was in the early 1990's that new demands began from environmentalists and industry groups alike. Environmentalists wanted more controls passed and industry complained about the costs of the 1990 law. More evidence of global warming also began in the early 1990's, an issue that is of the utmost concern in the present day, 2011. The issue of regulating greenhouse gas emissions remains the last great battle of clean air legislation for Congress.

After passage of the 1990 Amendment, Congress entered a period of policy fatigue until 1994 with a new election. Debates over air pollution were low key and major concerns were turned elsewhere toward the Gulf War and health care reform. Members of Congress simply lacked the energy to reopen new arguments over air pollution when the Clean Air Act Amendment 1990 had just been passed and its successes and failures were

²⁰⁵ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 238.

not yet known. ²⁰⁶ This general weariness with the issue of air pollution meant that most members of Congress were not willing to return to what they now viewed as an old battle. In 1994, the Republican Party captured the congressional majority and began a period of greater regulatory relief to industries, effectively ending the period of policy fatigue and becoming more pro-industry. Campaign promises to reduce the power of the Federal government began an effort by Republicans to weaken environmental legislation. There were specific initiatives by Republicans to weaken the Clean Air Act, both directly and through general regulatory reform. The 1994 election placed Republicans in Congress who had little to no commitment to existing clean air legislation. ²⁰⁷ The result was an attempt to reverse four decades worth of work. However, not all members of Congress supported these Republican efforts and there was a resistance to these attempts. ²⁰⁸

Part of the resistance to Republican efforts to weaken the Clean Air Act came from the fact that on an international scale, concern over global climate change prompted pro-environment action. It also helped keep national clean air concerns alive with the American public. Congress began to address clean air issues more, as evidence of the success and failings of the Clean Air Act 1990 were presented. Oversight hearings were conducted in 1993. The findings were presented in a report to Congress in November of

²⁰⁶ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 253.

²⁰⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 257.

²⁰⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 250.

1993. In the report the EPA was given an overall grade of B minus for the implementation of the1990 law. While given A's for the Acid Rain Program and the Stratospheric Ozone Protection Program, the EPA was given a D for its work on both SIPs and air toxins. Part of this grade and some of its unsuccessful implementations were connected to inadequate resources for implementation. The Clinton Administration was urged to address this lack of resources as Americans were still suffering from air pollution. This report gave Republicans the evidence they wanted to argue that the 1990 law itself was a problem. As Congress was fighting on Capitol Hill over existing clean air legislation, the international scene was making global warming and greenhouse gas emissions an international concern that kept the American public concerned over their public health.

On March 21, 1994 the United Nations Framework Convention on Climate

Change went into force. The UNFCCC established an, "overall framework for

intergovernmental efforts to tackle the challenges posed by climate change. It recognizes
that the climate system is a shared resource whose stability can be affected by industrial
and other emissions of carbon dioxide and greenhouse gases." Countries were joining
together to begin considering what needed to be done to combat and reduce global
warming and the inevitable global temperature increases that result from global warming.
Governments were to gather and share information on greenhouse gas emissions as well

²⁰⁹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 250-257.

²¹⁰ "Essential Background," *UNFCCC*, http://unfccc.int/essential_background/convention/items/2627.php (accessed 16 May 2011).

as new national policies and the most effective practices for reducing emissions.

Governments were also to launch new strategies to reduce greenhouse gases and adapt provisions for financial and technical support so that developing countries could also adapt their practices. What the UNFCCC signaled was developing, global commitment to air pollution and the need for global initiative to be taken to address global warming, which meant greenhouse gases.

The United States signed the Climate Change Convention on June 12, 1992. It was ratified October 15, 1992 and entered into force March 21, 1994. The Convention places the heaviest burden for fighting climate change on industrialized nations, since they are the source of most past and current greenhouse gas emissions. These countries are asked to do the most to cut what comes out of smokestacks and tailpipes, and to provide most of the money for efforts elsewhere. By signing the UNFCCC the United States was recognizing not only its national obligation to clean up its air, but an international one as an industrialized nation. It seemed that the United States was gathering itself to take the initiative once again to address its dirty air, to address the need to regulate greenhouse gas emissions in the United States, and not only help reduce air pollution in the U.S., but around the world. However, this was a false hope as Congress was at an impasse on the issue of greenhouse gases and was still dealing with

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²¹¹ "Essential Background," *UNFCCC*, http://unfccc.int/essential_background/convention/items/2627.php (accessed 16 May 2011).

²¹² "Parties & Observer States- United States of America," UNFCCC,

http://maindb.unfccc.int/public/country.pl?country=US (accessed 16 May 2011).

²¹³ "Facing and surveying the problem," *UNFCCC*,

http://unfccc.int/essential_background/feeling_the_heat/items/2914.php (accessed 18 May 2011).

forthcoming evidence of the 1990 Clean Air Act. The saving grace of the United States and its clean air during this time was the election of President Bill Clinton and his proenvironment administration.

In 1993, President Bill Clinton became President of the United States and would remain so for two presidential terms until 2001 when Republican George W. Bush was inaugurated. During the presidential campaign Clinton, during an Earth Day speech, said that Republican administrators promoted 'short-term tradeoffs' between jobs and the environment. Clinton admitted to shortcomings on environmental matters as Governor of Arkansas, but he was hampered by the shortcomings of other public officials. Although President George H. W. Bush had signed the Clean Air Act in 1990, Clinton had charged Bush with being, 'reactive, rudderless and expedient' concerning environmental matters. Clinton also charged Bush with promoting the idea that economic growth and environmental protection may not coexist. 214 This is a notion which Clinton disagreed with, and which he used his presidency to disprove. During the presidential election, one of the major issues was which presidential candidate was dedicated to improving the environment and who was more interested in helping industry. Modern environmentalism which emerged with Earth Day 1970 meant that Americans wanted Presidents to address environmental concerns. Clinton, when running for President, was charged with one of the worst environmental records in the country for a politician. Arkansas ranked from 1991-1992 as the very last state in the U.S. for environmental enforcement and

²¹⁴ Gwen Ifill, "Clinton Links Ecology Plans With Jobs," New York Times, 23 April 1992.

protection. Clinton's running mate, Al Gore, helped the American public believe in Clinton's dedication to improve the environment because of who he chose to serve on his administration. From when Al Gore entered public office in 1976 he had shown an unparalleled dedication to protect the environment and quality of life. He also believed in sustainable economic growth. Gore is also a known environmental writer, publishing *Earth in the Balance* in 1992, which serves as an analysis of the environmental challenges Americans face. Gore was one of the first within the Senate to call for research and action against global warming. Gore helped the Clinton Administration with every environmental initiative undertaken during its eight years in office, including some of the strongest air quality protections ever passed in the United States. President Clinton and Vice President Gore, working together, passed Executive Orders which helped establish the Federal Government as a model for "innovative, cost-effective environmental management." ²¹⁶

While Republicans had attempted to attack the Clean Air Act in the first session of the 104th Congress, evidence of strong public support for the environment forced such direct attacks to be curtailed. Still, when Congress assembled in January 1995 it was not lost how vastly different the Congress was from those that had helped create clean air legislation over the past decades. The new Republican majority was simply less sympathetic to the environment and the environmental groups who argued before

²¹⁵ Gwen Ifill, "Clinton Links Ecology Plans With Jobs," New York Times, 23 April 1992.

²¹⁶ "Vice President Gore: Strong Environmental Leadership for the New Millennium," *Vice President's Environment Initiatives –The White House.*

http://clinton4.nara.gov/WH/EOP/OVP/initiatives/environment.html (accessed 19 May 2011).

Congress for further legislation. Industry groups were given privileged access to

Congress with Republicans in power. Between 1995 and 1996 thirty-two bills were
introduced in the House of Representatives to extend deadlines, exempt specific
industries, offer greater flexibility or repeal the Clean Air Act entirely. In the Senate,
twelve bills were introduced to amend the Clean Air Act. All of the proposals would
weaken the 1990 law, although none of the bills in the Senate went so far as to suggest a
repeal of the law. Despite the fact that the Clean Air Act prohibits the EPA from taking
the costs of implementation into consideration when establishing National Ambient Air
Quality Standards, the House passed a reform bill in March of 1995 that required the
EPA to conduct cost-benefit analysis' for every proposed regulation it made under the
Clean Air Act. The House attached its version of the bill to a debt limit extension bill
when the Senate failed to agree on it. President Clinton vetoed the bill in November
1995. He felt that the bill was a threat to public health and welfare and he was upholding
his campaign promises to protect the environment and public health.²¹⁷

Republicans then began trying to attack the Clean Air Act through the annual appropriation process which meant drastic budget cuts and riders that waived environmental standards. It was an attempt to bypass the authorization process and these riders were included in long bills so that the cuts and riders were less visible. These efforts were ultimately unsuccessful, to the annoyance of Republicans.²¹⁸

²¹⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 257-262.

²¹⁸ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 257-262.

Efforts to weaken environmental legislation had to diminish as opponents of these efforts mobilized the American public, who were unwilling to sacrifice their public health. The Speaker of the House, Speaker Newt Gingrich (R-GA), did not want the Republican Congress to be labeled as anti-environment, as it could cost Republicans the majority based on the show of support from the American public for the environment. As a result, Gingrich created a task force to refine Republican attitudes toward the environment and to better project the party to society in March of 1996. The task force published a one page statement on the vision and principles of the Republican Party in regards to the environment on May 15, 1996. The statement failed to offer any specific actions the Republican Party could take. It just simply said that the Conservative Republican ideologies needed to be meshed with environmental protection. Based on the difficulties of achieving this, the Speaker of the House decided that during the 1996 election year the party needed to avoid initiatives to attack environmental legislation. The 1996 election saw a reduction of the Republican majority in Congress and in the 1997-1998 year there were a much diminished deregulation impulse for clean air legislation. Republicans were still trying to present a more pro-environment attitude.²¹⁹

When the EPA announced its plan to issue more stringent National Ambient Air Quality Standards in June 1997 opponents and supporters of the Clean Air Act once again drew battle lines to continue the fight for clean air legislation and the authority of the EPA to regulate emissions under the Clean Air Act. The same arguments that had been

²¹⁹ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 262-264.

used in the decades since the battle for clean air legislation began once again emerged. Supporters argued that new standards needed to be set to reflect the new scientific evidence that emerged. Opponents refuted the validity of the science and expressed concerns over the costs associated with new standards.²²⁰

Clinton and Gore's 1993 election had "renewed hope among environmentalists that the greening of Government has finally begun."²²¹ During his presidency, and despite his resistant Congress, President Clinton supported dozens of major environmental initiatives and had to repeatedly fight against a Congress that sought to undermine environmental protections. Clinton chose to focus on renewable energy sources and the development of alternative energy rather than new sources of fossil fuels. During his last three years as President, Clinton secured over \$3 billion in annual funding to research and developed clean energy technologies. "Throughout his tenure, Clinton and his administration argued that a strong economy and a clean environment are not mutually exclusive." With Clinton as President, and with strong public support, the EPA adopted its toughest standards on soot and smog, mandated reducing the level of sulfur in gasoline by 90 percent and ordered the reduction of emissions from tailpipes of motor vehicles. Right as he was leaving office after his second term in 2000, the Clinton administration targeted emissions from utilities and factories that were continuing to contribute to dirty air over national parks and wilderness areas. The Administration wanted to reduce harmful smog emissions from heavy motor vehicles like heavy duty trucks and diesel

²²⁰ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 264.

²²¹ Joel Makower, "From the Top Down," New York Times, 30 January 1993.

fuels by 90 percent. The Clinton Administration is also credited with launching the Climate Change Technology Initiative which spurred, "the development of clean air technologies to reduce greenhouse gas emissions that lead to global warming while saving money and creating jobs." During his eight years in office the Clinton administration secured more than \$13 billion for scientific research into the causes and possible solutions for global warming. ²²³



Image 12: President Bill Clinton and Vice President Al Gore Source: http://assets.knowledge.allianz.com/img/06 clinton gore 654 1 9500.jpg

On December 11, 1997, the Kyoto Protocol was adopted in Kyoto, Japan. The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change (UNFCCC). While the Convention encouraged

²²² Cat Lazaroff, "Sun Sets on President Clinton's Environmental Legacy," *Environmental News Service*,

¹⁹ January 2011, http://www.ens-newswire.com/ens/jan2001/2001-01-19-06.asp (accessed 18 May 2011). ²²³ Cat Lazaroff, "Sun Sets on President Clinton's Environmental Legacy," *Environmental News Service*, 19 January 2011, http://www.ens-newswire.com/ens/jan2001/2001-01-19-06.asp (accessed 18 May 2011).

industrialized nations to reduce greenhouse gas emissions, the Kyoto Protocol committed participating nations to reducing emissions. The Protocol went into force February 16, 2005. It sets binding targets for 37 industrialized nations and the European community to reduce greenhouse gases to 1990 levels from 2008-2012. Nations are expected to meet emission targets through national measures²²⁴, such as the Clean Air Act. The United States signed the Kyoto Protocol on November 12, 1998 but has since failed to ratify or enter the Protocol into force.²²⁵ This has largely been because of a resistant Federal government to regulate what is seen as the last great battle of clean air legislation, greenhouse gas emissions, on an international or national level.

A *New York Times* article from 1997 discussed how climate change was going to become an intergenerational issue in the United States. Climate change would not be entirely resolved in the near future given how difficult it was for President Clinton to convince Congress to approve of signing the Kyoto Protocol. In the article, it was skeptical that it would even be signed. Indeed, in 2011 the issue of global warming and greenhouse gas emissions is still not resolved on a national or international level.

Congress was resistant to policies that it felt had economic consequence —it was proeconomy and anti-environment. President Clinton had made a promise that the United States would not sign any climate change treaty that was harmful to the economy or failed to gain commitments from developing countries to also reduce greenhouse gas emissions. "The lawmakers' underlying fear is that the United States will end up

²²⁴ "Kyoto Protocol," *UNFCCC*, http://unfccc.int/kyoto_protocol/items/2830.php (accessed 19 May 2011). ²²⁵ "Status of Ratification of the Kyoto Protocol," *UNFCCC*,

http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php (accessed 19 May 2011).

shouldering an unfair share of the emissions reductions. That, they say, would lead to some kind of energy tax to curb consumption." In order for the Kyoto Protocol to be passed the Senate had to approve by two-thirds vote. While the House of Representatives gives no formal vote, it supplies spending for programs which also required approval by the House. 226

While President Clinton failed to convince Congress to ratify the Kyoto Protocol in 1997, he was successfully able to convince them to sign it, which marked progress in addressing greenhouse gases and any small victory helps the overall cause. Under the 1997 Protocol, 39 nations committed to reduce their greenhouse gas emissions but would not take effect until it was ratified by 55 percent of the nations emitting at least 55 percent of greenhouse gases. ²²⁷ Ultimately, the Kyoto Protocol would tie in with the Clean Air Act for the Clean Air Act is the legislation which politicians and the EPA have been, and are, trying to regulate national greenhouse gas emissions under, which would help in the international cause of combating global warming.

Part of President Clinton's strategy in dealing with a Congress resistant to environmental legislation was to issue Executive Orders. Executive Orders are, "a declaration issued by the President that has the force of law. Executive Orders are usually based on existing statutory authority and require no action by Congress or the state

²²⁶ Eric Schmitt, "Congress, the Kibbitzer at the Climate Table, Waits for Its Turn," *New York Times*, 1 December 1997

²²⁷ Cat Lazaroff, "Sun Sets on President Clinton's Environmental Legacy," *Environmental News Service*, 19 January 2011, http://www.ens-newswire.com/ens/jan2001/2001-01-19-06.asp (accessed 18 May 2011).

legislature to become effective."²²⁸ President Clinton did not try to propose new bills; he merely used the laws that already existed to help further protecting the environment.

On April 21, 1993 President Clinton issued Executive Order 12843 directing federal agencies to reduce ozone-depletion materials. On June 16, 1997, President Clinton publically approved of stronger, more protective air quality standards to better control pollution from ozone and particulate matter, smog and soot, and issued a memo to the EPA regarding implementation of those standards. On October 29, 1997, Vice-President Gore announced a U.S.-China initiative to help lay the groundwork for reaching common ground in addressing climate change and greenhouse gas emissions. On December 12, 1997, the United States signed the Kyoto Protocol; however, it must still be ratified before it takes effect. January 8, 1998, Vice-President Gore announced new partnerships for "Energy Star" with leading manufacturers of TVs and VCRs to help save Americans hundreds of millions of dollars in electricity bills as well as curb greenhouse gas pollution. This showed the attempts by the Clinton administration to join together environment and economy. February 12, 1998, Vice-President Gore announced that the administration had convinced auto manufacturers to voluntarily agree to produce a cleaner vehicle that would produce 70 percent less pollution. May 4, 1998, Clinton launched the Partnership for Advancing Technology in Housing. The partnership would help improve energy efficiency in homes, while reducing greenhouse gas emissions linked with global warming. July 25, 1998, President Clinton issued a directive to

²²⁸ "Legislation Database Glossary of Terms -Statutory and Regulatory Terms," *National Human Genome Research Institute National Institutes of Health*, http://www.genome.gov/15014431 (accessed 19 May 2011).

decrease energy use in Federal buildings and facilities in order to reduce greenhouse gas emissions as well as save taxpayer's dollars. Again, this demonstrated the administration's commitment to saving Americans money while protecting the environment. On October 27, 1998, President Clinton signed H.R. 8, the Border Smog Reduction Act, which prohibited entry into the United States of foreign vehicles that do not comply with state laws governing emissions. April 22, 1999, Vice President Gore announced a "regional haze" rule to improve air quality in national parks and wilderness areas so that visitors can enjoy unspoiled views of America's greatest natural treasures. On December 12, 1999, Clinton announced that the EPA was issuing is toughest ever standard for reducing air pollutants emitted from auto tailpipes –regardless of the classification of motor vehicle.²²⁹ Although Congress had been fighting over the Clean Air Act while President Clinton was in office, he was still able pass many Executive Orders and directives to continue to clean the air. His dedication to beginning to regulate and control greenhouse gas emissions helped give hope to the American public that, perhaps, the government would start to regulate emissions. For all the good that President Clinton was able to accomplish for clean air regulation, the election of President George W. Bush saw a deterioration of all that had been accomplished.

When President George W. Bush took office on January 20, 2001, there was little hope among environmentalists that global warming would be addressed or that the Clean Air Act would be amended. When Bush was Governor of Texas, the state had one of the

²²⁹ "Environmental Actions by President Clinton and Vice President Gore," *Earth Day 2000*, http://clinton4.nara.gov/CEQ/earthday/ch13.html (accessed 19 May 2011).

poorest environmental records in the United States. This was blamed on Bush as well on other politicians in Texas, being bankrolled by the state's worst polluters. ²³⁰ President George W. Bush repeatedly said, before he was President, that he opposed the mechanisms of the Kyoto Protocol which meant that, while he was President, there was little hope of either ratifying the Kyoto Protocol or amending the Clean Air Act to regulate greenhouse gas emissions.²³¹ In 2002, President Bush publically distanced himself from a report, conducted by his administration that charged humans with being the cause of global warming on the environment. The report was drafted by the EPA and sent to the United Nations with its findings. Despite this report, President Bush stated that he still opposed the Kyoto Protocol and initiatives against global warming. Rather than sign the Kyoto treaty, Bush proposed a voluntary measure that allowed for greenhouse gas emissions to continue rising with the goal of slowing the rate of growth. This report marked the first time that the administration acknowledged that greenhouse gas emissions would significantly affect the United States in future decades. The President could not publically acknowledge the report, without also stating that the United States would do something about global warming; something Republicans did not want him to do for they were still firmly pro-industry. For years, Bush had promoted that he would not take action on global warming and indeed, he did not while President of the United States. ²³²

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²³⁰ "Mr. Bush's New Look," New York Times, 17 April 2007.

²³¹ Cat Lazaroff, "Sun Sets on President Clinton's Environmental Legacy," *Environmental News Service*, 19 January 2011, http://www.ens-newswire.com/ens/jan2001/2001-01-19-06.asp (accessed 18 May 2011).

²³² Katharine Q. Seelye, "President Distance Himself From Global Warming Report," *New York Times*, 5 June 2002.

President Bush refused to ratify the Kyoto Protocol throughout his entire presidency, claiming that it would wreck the U.S. economy. He also complained that the treaty did not require other 'big polluters' like India and China to cut emissions. ²³³ This complaint did not recognize that India and China are seen as developing nations. The United States is also, by a large margin, the largest polluter in the world. As soon as he was inaugurated in 2001, the U.S. provoked widespread criticism from the international community when it rejected the Protocol. By 2002, 73 countries had signed the pact, including Japan and the 15 European Union states. ²³⁴ Yet, the United States has still failed to sign the Protocol, keeping its own economic interests and what it views as threats at the forefront of all its decisions.

In 2005 the film, *An Inconvenient Truth*, was released. The film followed former Vice President Al Gore as he campaigned to educate U.S. citizens about global warming. Gore was educating the public with a comprehensive slide show. ²³⁵ The documentary premiered at the 2006 Sundance Film Festival and was a critical and box-office success, winning an academy award for Best Documentary Feature and Best Original Song. *An Inconvenient Truth* marked a successfully rallying cry to protect the environment. ²³⁶ "The impact of *An Inconvenient Truth* is unprecedented. Since its release in 2005, the film has helped to galvanize governments, leaders, organizations and individuals worldwide to

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²³³ "Bush: Kyoto treaty would have hurt economy," Associated Press, 30 June 2005.

²³⁴ Vexen Crabtree, *The USA Versus the Environment Oil, Pollution and Kyoto*, 4 June 2002, http://www.vexen.co.uk/USA/pollution.html#World (accessed 19 May 2011).

A. O. Scott, "Warning of Calamities and Hoping for a Change in 'An Inconvenient Truth'," *New York Times*, 24 May 2006.

²³⁶ "Plot Summary for An Inconvenient Truth," *The Internet Movie Database*, http://www.imdb.com/title/tt0497116/plotsummary (accessed 19 May 2011).

take action on global warming. More than a billion people are now aware of the issue and have been motivated to act."²³⁷ In reaction to *An Inconvenient Truth*, President Obama created a new Assistant position to the President for Climate and Energy when he took office in 2008. The House of Representatives and the U.S. Senate both established a Select Committee on Energy Independence and Global Warming. Over 15 climate change bills were introduced in Congress following the documentary. The documentary effectively grabbed its audience; sparked fear for what was being done to the environment; its consequences; and helped raise concern over global warming and greenhouse gas emissions in the United States to new levels. The documentary helped raise public awareness but unfortunately President Bush was still not spurred to action against global warming.

²³⁷ "The Impact," *Climate Crisis*, http://www.climatecrisis.net/an_inconvenient_truth/the_impact.php (accessed 19 May 2011).

²³⁸ "The Impact," *Climate Crisis*, http://www.climatecrisis.net/an_inconvenient_truth/the_impact.php (accessed 19 May 2011).

²³⁹ Felicia R. Lee, "Scared of Global Warming and Eager to Spread the Fright," *New York Times*, 22 April 2006.



Image 13: An Inconvenient Truth
Source: http://upload.wikimedia.org/wikipedia/en/thumb/1/17/Aninconvenienttruth.jpg/220pxAninconvenienttruth.jpg

By 2005, during Bush's second term as President, the *New York Times* reported that government officials were telling the President that his passive approach to global warming and idea that industries would voluntarily reduce its greenhouse gas emissions were behind the times and would not work. Federal regulation was needed and everyone in the United States was going to have to make sacrifices to address emissions. The chief executive of General Electric, the largest company in the United States in 2005, even stated that mandatory controls on emissions of carbon dioxide were necessary and inevitable. This showed that even some of Bush's business allies were growing tired of his refusal to take action. This only furthered Bush's believe, however, that companies

could voluntarily regulate themselves. However, the truth was that General Electric and the handful of other companies which had expressed desire for regulation of greenhouse gas emissions was only a small slice of the economy. Industry as a whole would not voluntarily spend money to reduce emissions so long as there was a lack of regulation that favored businesses rather than public health. The Bush Administration, despite public pressure for legislation, was still claiming that there was insufficient evidence of global warming from greenhouse gas emissions from scientific evidence to warrant Federal regulation.²⁴⁰ Any hope of action regarding greenhouse gas emissions was with Congress, and while a proposal was expected on the floor in 2005, nothing was ever passed.

Bush not only refused to acknowledge reports on the dangers of global warming but also weakened the EPA to the point of uselessness. Through regulatory changes and bureaucratic directives the administration radically transformed the United State's environmental laws, specifically the Clean Air Act. The Bush Administration overturned New Source Review, a key component in regulating industry and air pollution. Under President Clinton, power companies were on the verge on signing agreements to clean up plants when the EPA found them to be breaking the law under New Source Review.

When George W. Bush took office he shifted that direction. By the end of 2003 the New Source Review was all but dead and the Clean Air Act was severely weakened. 241

Statistics prove that, just by abolishing this one provision, 18,000 Americans die annually

²⁴⁰ "Climate Signals," New York Times, 19 May 2005.

²⁴¹ Bruce Barcott, "Changing All the Rules," New York Times, 4 April 2004.

from air pollution.²⁴² While President Clinton's administration prosecuted the 75 worst power plants for its air pollution emissions, contributing to the increasing number of Americans with asthma, the same industry donated \$48 million to the president during the 2000 election and \$58 million after that time. One of Bush's first actions was to order the EPA and Justice Department to drop all lawsuits brought against industry during the Clinton administration. In protest of Bush's order, three enforcers in at the EPA resigned their positions. These three individuals served through both the Reagan and Bush administrations and the early George W. Bush administration. They were not Democrats and yet they were still outrages enough by Bush's actions to resign their positions because of the drastic measures he was taking to weaken the Clean Air Act.²⁴³

In a speech given by Robert F. Kennedy, Jr., a well-known and respected lawyer and defender of the environment, in 2005, the mindset of the American public and the dissatisfaction with President Bush and his anti-environmental agenda was clearly demonstrated. "I think more and more people are understanding- protecting the environment is not about protecting the fishes and the birds for their own sake but it's about recognizing that nature is the infrastructure of our communities for our children that provide them with the same opportunities for dignity and enrichment and good

²⁴² Robert F. Kennedy, Jr., "Those of Us Who Know That Americas Worth Fighting for Have to Take it Back Now from Those Who Don't," *CommonDreams.org*, 16 September 2005, http://www.commondreams.org/views05/0916-27.htm (accessed 19 May 2011).

²⁴³Robert F. Kennedy, Jr., "Those of Us Who Know That Americas Worth Fighting for Have to Take it Back Now from Those Who Don't," *CommonDreams.org*, 16 September 2005, http://www.commondreams.org/views05/0916-27.htm (accessed 19 May 2011).

health."²⁴⁴ Kennedy argued that Americans could not honestly speak on the status of the environment without speaking critically of President Bush. He held that it had nothing to do with political affiliation for American generations are not born into political parties and affiliations can change as people mature. The Clean Air Act had been a piece of bipartisan legislation and so arguments that it is a Democratic or Republican law are not applicable. Had President Bush been a Democrat Americans would be just as critical of his environmental actions for they are not protecting public health. "This is the worst environmental president we've had in American history."²⁴⁵ The Bush administration was making a concerted effort to destroy over thirty years of environmental legislation as was well demonstrated on the National Resource Defense Council website which showed over 400 major environmental rollbacks over a period of four years.²⁴⁶

²⁴⁴ Robert F. Kennedy, Jr., "Those of Us Who Know That Americas Worth Fighting for Have to Take it Back Now from Those Who Don't," *CommonDreams.org*, 16 September 2005,

http://www.commondreams.org/views05/0916-27.htm (accessed 19 May 2011).

²⁴⁵Robert F. Kennedy, Jr., "Those of Us Who Know That Americas Worth Fighting for Have to Take it Back Now from Those Who Don't," *CommonDreams.org*, 16 September 2005, http://www.commondreams.org/views05/0916-27.htm (accessed 19 May 2011).

²⁴⁶ Robert F. Kennedy, Jr., "Those of Us Who Know That Americas Worth Fighting for Have to Take it Back Now from Those Who Don't," *CommonDreams.org*, 16 September 2005, http://www.commondreams.org/views05/0916-27.htm (accessed 19 May 2011).

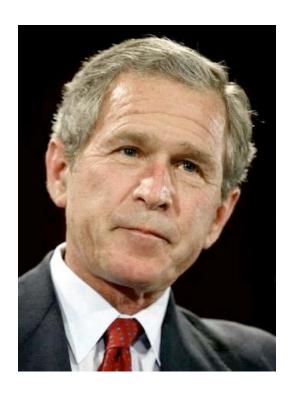


Image 14: President George W. Bush Source: http://scrapetv.com/News/News/20Pages/Politics/images-4/george-bush.jpg



Image 15: Protestor wanting regulation of greenhouse gas emissions and control of global warming

Source: http://blogs.reuters.com/environment/files/2009/07/bushposter.jpg

In 2003 Massachusetts along with several other states petitioned the EPA to regulate greenhouse gas emissions that contribute to global warming from new motor vehicles under the Clean Air Act. The states argued that since the Clean Air Act states that Congress must regulate, "any air pollutant that can reasonable be anticipated to endanger public health or welfare," the EPA was within its powers to regulate greenhouse gas emissions. However, the EPA denied the petition claiming that the Clean Air Act does not give the agency the authorization to regulate greenhouse gas. In addition, the EPA did have the authority to defer a decision until more research could be conducted. Research would be conducted on, "the causes, extent and significance of climate change and the potential options for addressing it."

The case went up to the U.S. Supreme Court. The case was argued on November 29, 2006, and the Supreme Court delivered its decision April 2, 2007. Justice Stevens wrote the majority opinion while Chief Justice Roberts and Justice Scalia wrote dissenting opinions. In a 5-4 decision, the Court ruled that the EPA could not decline to issue emission standards for motor vehicles based on policy considerations not enumerated in the Clean Air Act. The Clean Air Act gives the EPA the authority to regulation greenhouse gases.²⁴⁹ In the majority opinion the Court gave recognition of the

²⁴⁷ "Massachusetts v. Environmental Protection Agency," *U.S. Supreme Court Media OYEZ*, http://www.oyez.org/cases/2000-2009/2006/2006 05 1120/ (accessed 4 May 2011).

²⁴⁸ "Massachusetts v. Environmental Protection Agency," *U.S. Supreme Court Media OYEZ*, http://www.oyez.org/cases/2000-2009/2006/2006 05 1120/ (accessed 4 May 2011).

²⁴⁹ "Massachusetts v. Environmental Protection Agency," *U.S. Supreme Court Media OYEZ*, http://www.oyez.org/cases/2000-2009/2006/2006 05 1120/ (accessed 4 May 2011).

existence and threat of greenhouse gases. "The harms associated with climate change are serious and well recognized. The Government's own objective assessment of the relevant science and a strong consensus among qualified experts indicate that global warming threatens, *inter alia*, a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems, a significant reduction in winter snowpack with direct and important economic consequences, and increases in the spread of disease and the ferocity of weather events. That these changes are widely shared does not minimize Massachusetts' interest in the outcome of this litigation." The Court in its decision reasoned that the threat of global warming and the effects of rising sea levels, as a result, impacted the state of Massachusetts and gave them an interest in the outcome of the case. The Court also ruled that the EPA had failed in its responsibilities as an Agency. The EPA had made its decision on impermissible considerations.²⁵¹

"Given EPA's failure to dispute the existence of a causal connection between man-made greenhouse gas emissions and global warming, its refusal to regulate such emissions, at a minimum, "contributes" to Massachusetts' injuries. EPA overstates its case in arguing that its decision not to regulate contributes so insignificantly to petitioners' injuries that it cannot be haled into Federal court, and that there is no realistic possibility that the relief sought would mitigate global climate change and remedy petitioners' injuries, especially since predicted increases in emissions from China, India, and other developing nations will likely offset any marginal domestic decrease EPA regulation could bring about. Agencies, like legislatures, do not generally resolve massive problems in one fell swoop....but instead whittle away over time, refining

²⁵⁰ "Massachusetts et al. v. Environmental Protection Agency et al.," *Supreme Court of the United States*, October Term 2006, http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf (accessed 4 May 2011), 3. ²⁵¹ "Massachusetts et al. v. Environmental Protection Agency et al.," *Supreme Court of the United States*, October Term 2006, http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf (accessed 4 May 2011),5.

their approach as circumstances change and they develop a more nuanced understanding of how best to proceed." ²⁵²

Although the EPA would not make a dramatic impact on greenhouse gas emissions as globally emissions from other countries affected the United States emission levels, any small impact the EPA could make with regulations was a necessary start to change. "The Court attaches considerable significance to EPA's espoused belief that global climate change must be addressed."²⁵³ The Court was ordering the EPA to begin the process of regulating and reducing greenhouse gas emissions. The EPA was within its powers to do so under the Clean Air Act. "Because greenhouse gases fit well within the Act's capacious definition of "air pollutant," EPA has statutory authority to regulate emission of such gases from new motor vehicles. That definition –which includes "any air pollution agent...emitted into...the ambient air...,"§7602(g) (emphasis added) – embraces all airborne compounds of whatever stripe....Even if post-enactment legislative history could shed light on the meaning of an otherwise unambiguous statute, EPA identifies nothing suggesting that Congress meant to curtail EPA's power to treat greenhouse gases as air pollutants."²⁵⁴ The Clean Air Act allowed the regulation of any air pollution agent emitted into the ambient air and the Supreme Court informed the EPA that greenhouse gas emissions fit the criteria to be regulated under the Act.

²⁵² "Massachusetts et al. v. Environmental Protection Agency et al.," *Supreme Court of the United States*, October Term 2006, http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf (accessed 4 May 2011), 3. ²⁵³ "Massachusetts et al. v. Environmental Protection Agency et al.," *Supreme Court of the United States*, October Term 2006, http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf (accessed 4 May 2011), 4. ²⁵⁴ "Massachusetts et al. v. Environmental Protection Agency et al.," *Supreme Court of the United States*, October Term 2006, http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf (accessed 4 May 2011), 4-5.

This Supreme Court case was the first considering climate change. The decision handed down was a firm victory for environmentalists and legitimized concerns of global warming, being recognized by a branch of the Federal government. The decision will be used as precedent in other court cases around the United States for years to come. Indeed, *Massachusetts v. EPA* is being called the *Brown v. Board of Education* of the environmental battle for clean air. The Court ruled that the EPA had statutory authority to regulate greenhouse gases and failed to meet its obligations with its refusal. This decision defines a completely new area of responsibility for the EPA. The Agency is required to review requests for regulation of greenhouse gases set by within limits by the Supreme Court. "The Court's opinion also reflects sympathy with environmentalist beliefs and values to an extent rarely, if ever, seen in the Court's environmental cases." This gave the *Massachusetts v. EPA* decision special cultural and symbolic significance.²⁵⁵

Environmentalism values preventative measures to ensure a healthy environment for communities and future generations. This ideology believes in fitting in with the natural and social world harmoniously rather than dominating and taking. Typically, environmentalism encourages regulation to prevent and correct environmental harms. Within the Supreme Court those Justices who are typically seen as more sympathetic to environmentalism favor liberal access to the courts. They read a broad scope of Federal power and are seen as judicial activists, using the law to interpret law to fit society at the time. Those Justices who are typically against environmentalist ideas believes in the

²⁵⁵ Jonathan Z. Cannon, The Significance of *Massachusetts v. EPA*, 93 Va. L. Rev. In Brief 53 (2007), http://www.virginialawreview.org/inbrief/2007/05/21/cannon.pdf (accessed 5 May 2011).

limited power of the Federal government and practice judicial restraint in their decisions. Because of this ideology in interpreting the law the Justices vote within narrow constructions of regulatory authority. The Court's 5-4 vote demonstrates the different ideologies that were used in deciding the case. Justices Stevens, Ginsburg, Breyer, and sometimes Kennedy favor judicial activism for environmentalism. Justices Roberts, Scalia, Thomas, Alito and sometimes Kennedy practice judicial restraint. In the Massachusetts case Justice Kennedy sided with the majority of the Court. The majority opinion makes an early declaration that global warming is a real and serious threat. The rest of the opinion reinforces the implication. This statement shows that the Court agrees with scientists on the issue of global warming. Justice Stevens even recognized the global implication of greenhouse gases. Even in the dissent of the Court there is an acknowledgment of the existence of global warming. The dissent simply argues that while global warming a serious environmental issue it is something that should be addressed by Congress, not the courts. The Court's decision firmly places authority of greenhouse gas emissions with the Agency and leaves little room for how the EPA should deal with the issue. The Justices remanded the matter for further consideration by the EPA, however, the Supreme Court failed to dictate a specific outcome or establish any deadlines for the decision.²⁵⁶

With this Court decision the Judicial Branch of the Federal government had internalized environmentalist beliefs regarding climate change. This recognition

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²⁵⁶ Jonathan Z. Cannon, The Significance of *Massachusetts v. EPA*, 93 Va. L. Rev. In Brief 53 (2007), http://www.virginialawreview.org/inbrief/2007/05/21/cannon.pdf (accessed 5 May 2011).

legitimizes environmental concerns, regardless of what other branches of government attempted to say in regards of greenhouse gases. It was a victory for climate change advocates and helped strengthen both the authority of the Environmental Protection Agency and the Clean Air Act. 257

On May 14, 2007 President George W. Bush publicly directed the EPA to implement the Supreme Court's decision. The President ordered the EPA to develop regulations for reducing greenhouse gases from automobile missions. In his Executive Order the President states, "It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth."²⁵⁸ Initially this is seen as a large victory in the fight to regulate greenhouse gas emissions. It is an order that the EPA create regulations for greenhouse gases. However, the President did not state if the EPA also needed to regulate emissions under the Clean Air Act nor what the established regulations should require.²⁵⁹

²⁵⁷ Jonathan Z. Cannon, The Significance of *Massachusetts v. EPA*, 93 Va. L. Rev. In Brief 53 (2007), http://www.virginialawreview.org/inbrief/2007/05/21/cannon.pdf (accessed 5 May 2011).

²⁵⁸ George W. Bush, "Executive Order 13432-Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines," The American Presidency Project, 14 May 2007,

http://www.presidency.ucsb/ws/index.php?pid=75108#axzz1LUcNqv5n (accessed 5 May 2011). ²⁵⁹ Jonathan Z. Cannon, The Significance of *Massachusetts v. EPA*, 93 Va. L. Rev. In Brief 53 (2007), http://www.virginialawreview.org/inbrief/2007/05/21/cannon.pdf (accessed 5 May 2011).

Prior to the Executive Order that the EPA establish regulations for greenhouse gas emissions the Bush White House had refused to make public a report that had been conducted in 2007, revealing that, based on science, the government needed to begin regulating greenhouse gases as global warming posed a serious risk to the United States. President Bush refused to make the report public because the Bush White House opposed new government efforts to regulate greenhouse gases or any other environmental regulations. 260 Indeed, President George W. Bush lobbied to weaken Clean Air Act enforcement.²⁶¹ The EPA, under the Freedom of Information Act, had to release the report in response to a public records request submitted by the environmental trade publication Greenwire. 262 While the President had been able to ignore a report on the dangers of greenhouse gas, he was forced to address the issue because the Supreme Court had given Federal support for the issue and had ordered the EPA to regulate it. However, President Bush was addressing the issue of greenhouse gas emissions toward the end of his presidency. After the public direction to the EPA in 2007, Bush ignored the issue until he left office. President Bush left the Obama Administration a number of issues in regard to greenhouse gas emissions. Despite Bush's Executive Order in 2007 the EPA did not

²⁶⁰ Jim Tankersley and Alexander C. Hart, "Bush-era EPA Document on Climate Change Released," *Los Angeles Times*, 14 October 2009.

²⁶¹ "George W. Bush on Environment," *On The Issues Every Political Leader on Every Issue*, 20 April 2011, http://www.issues2000.org/celeb/George_W_Bush_Environment.htm (accessed 5 May 2011). ²⁶² Jim Tankersley and Alexander C. Hart, "Bush-era EPA Document on Climate Change Released," *Los Angeles Times*, 14 October 2009.

regulate greenhouse gas emissions as the Agency was severely weakened by the Bush Administration.²⁶³

By 2008, the *Los Angeles Times* was reporting that which was widely becoming public opinion that President Bush behaved as if he were above both science and the law. The American public felt that their public health was being threatened and that the system of checks and balances was powerless from stopping Bush. This opinion was followed after the EPA released a new standard for ozone from 84 parts per billion to 75. Scientists had recommended that a standard be no higher than 70 parts per billion. The higher limit failed to protect Americans from the damaging effects of ozone. Ozone irritates the lungs, worsens asthma and kills susceptible populations. This was handed down despite a ruling from the Supreme Court in favor of the environment and strong clean air regulation. By 2008, it was plain to Americans that President Bush would do little to help the environment and, "it's vital that voters replace him with someone who will reverse his extraordinary attacks on public health and environment as quickly as possible."

The American public was re-informed about air pollution during the Presidential campaign in 2008 as the world watched the 2008 Beijing Olympics and concerns about the air quality in China were expressed not only in the United States but throughout the world. This awareness kept the issue of greenhouse gas emissions within the Presidential

²⁶³ Jonathan Z. Cannon, The Significance of *Massachusetts v. EPA*, 93 Va. L. Rev. In Brief 53 (2007), http://www.virginialawreview.org/inbrief/2007/05/21/cannon.pdf (accessed 5 May 2011).

²⁶⁴ "Ozone Alert- In overruling the EPA, Bush again shows his disregard for the environment and the courts," *Los Angeles Times*, 17 March 2008.

election and candidates had to think, once again, about the demands of the American public and what should be done to address the issue.

In China during the 2008 Beijing Olympics, there was mass concern over athletes' health and performance because of the poor air quality in the country. As a result viewers saw worldwide as athletes from industrialized countries like the United States, Germany, Great Britain, and France emerged from planes with masks covering their noses and mouths to try and control the poisoned air they were breathing. Beijing is known to have episodes of smog because of the extreme air pollution in the city and the world could only watch and hope smog would not hamper athletic performance during competitions. ²⁶⁵

An article in *The Economist* in 2008 reported on the fears of competitors about China's air pollution. The author refers to the London Smog of 1952 when asking how bad air pollution is in China and what the economic and human effects of that air pollution are. The London Smog is referenced to place the Chinese problems in a western context that readers could follow. It was discovered that Beijing's poor air quality, while excessively high, was five times less during the Olympics than in London during the Great Smog, although this did not discredit the argument for air pollution control in China. ²⁶⁶ These pollution levels during the Olympics were promising for athletes staying

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²⁶⁵ Richard Baldwin, "The Great London Smog of 1952," *The Economist*, 20 August 2008, http://www.economist.com/blogs/freexchange/2008/08/the_great_london_smog_of_1952 (accessed 3 April 2011).

²⁶⁶ Richard Baldwin, "The Great London Smog of 1952," *The Economist*, 20 August 2008, http://www.economist.com/blogs/freeexchange/2008/08/the_great_london_smog_of_1952 (accessed 3 April 2011).

temporarily in Beijing but air pollution levels could rise and were a threat to residents. Continuous exposure to the air pollution also threatens the health of Chinese citizens and increases the risk of developing cancer and asthma, to name a few long term illnesses. The Olympics forced China to admit it did have an air pollution problem and allowed other countries to evaluate their own air pollution at home. To not address air pollution concerns during the Olympics endangered athletes and visitors of the games with respiratory problems. Indeed, as a result of China's extremely polluted air, some athletes with asthma chose to refrain from competing in the Olympics to save their health. ²⁶⁷



Image 16: Athlete arrives in China for 2008 Olympics wearing masks because of air pollution fears

Source: http://resources1.news.com.au/images/2008/08/06/va1237323166873/US-Cyclist-6183107.jpg

²⁶⁷ Richard Baldwin, "The Great London Smog of 1952," *The Economist*, 20 August 2008, http://www.economist.com/blogs/freeexchange/2008/08/the_great_london_smog_of_1952 (accessed 3 April 2011).

This combination of international concern over air pollution coupled with an upcoming election in the United States that could ultimately shift power within the Federal government from Republican to Democratic control kept the issue of greenhouse gas emissions as a main topic for political candidates. The American public was still concerned, even after decades of air pollution control, for their health and the proenvironment rhetoric that came from concerned citizens kept politicians motivated during the 2008 election.

When President Barack Obama was running for office in 2008 there were high environmental hopes that he would be able to address the issues that Congress had neglected since 1990. Among his campaign promises during the election were the promises to curb climate change, which meant addressing the issue of greenhouse gas emissions in the United States, which was seen as the major cause for global warming. With the election of President Obama the president of Environmental Defense, Fred Krupp, said that, "This election offers us the greatest opportunity we have ever had to change course on global warming." Environmentalists wanted an end to the excuse that it was too expensive to pass further environmental legislation, as well as the recognition that resources are limited and need to be preserved and not exploited. For almost 20 years, political polarization and a lack of leadership have left environmental protection in

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²⁶⁸ "High Environmental Hopes Riding on Obama's Green Promises," *Environmental News Service*, 5 November 2008, http://www.ens-newswire.com/ens/nov2008/2008-11-05-091.hml (accessed 13 May 2011).

²⁶⁹ "High Environmental Hopes Riding on Obama's Green Promises," *Environmental News Service*, 5 November 2008, http://www.ens-newswire.com/ens/nov2008/2008-11-05-091.hml (accessed 13 May 2011).

the United States burdened with obsolescent statutes and regulatory strategies. As a result, the country has failed to deal effectively or decisively with many pressing old environmental problems as well as newly emerging ones. There is accordingly an urgent need for innovative strategies for environmental protection that will break the political logjam and meet environmental challenges that have been increasingly complex."

President Obama was seen as a shining light at the end of what had been a very long and dark tunnel for a lack of environmental legislation. There was every hope that the 2008 election meant an end to anti-environmentalism within the Executive and Legislative branches of government. "The historic victories of President-elect Barack Obama and environmental champions in Congress create a new era of opportunity for environmental priorities."

The 2008 elections marked the resurgence of pro-environmentalism within the Executive branch of the Federal government. Environmentalism within the United States seemed to be peeking and the new President seemed ready and willing to take action for the environment.

²⁷⁰ "Background," *Breaking the Logjam: Environmental Reform for the New Congress and Administration*, 2007-2011, http://www.breakingthelogjam.org/CMS/ (accessed 10 May 2011).

²⁷¹ "High Environmental Hopes Riding on Obama's Green Promises," *Environmental News Service*, 5 November 2008, http://www.ens-newswire.com/ens/nov2008/2008-11-05-091.hml (accessed 13 May 2011).



Image17: President Barack Obama Source: http://1.bp.blogspot.com/_TeI_wOA62NQ/SREc_VZESQI/AAAAAAAAAAAEo/92VkyPIWZUY/s400/President+Obama.jpg

When President Barack Obama was inaugurated on January 20, 2009 he was entering a battle to regulate greenhouse gas emissions and control climate change that had yet to be resolved and which had been primarily weakened by the Bush administration. Curbing greenhouse gas emissions has been a priority of the Obama Administration since his presidential campaign. It holds that global warming presents both an environmental and economic threat nationally and globally.²⁷² One of his first

²⁷² Mike Wall, "EPA to Regulate Greenhouse Gas Emissions," *Live Science*, 24 December 2010, http://www.livescience.com/10928-epa-regulate-greenhouse-gas-emissions.html (accessed 19 May 2011).

actions as President was to appoint Lisa Jackson as EPA administrator. Under Jackson the EPA quickly argued an endangerment finding to position the EPA to use the Clean Air Act to regulate greenhouse gas emissions. Jackson also reversed the decision of the Bush Administration to not regulate CO2 emissions from new coal-burning power plants.²⁷³

One day after President Obama's inauguration the White House published the *Obama-Biden New Energy for America Plan, January 2009*. In the document the administration was establishing its plans to address energy and environment concerns. The administration acknowledged that these issues had gone unaddressed by the Federal government for far too long but they were ready to take action now. The New Energy Plan wanted to implement an economy-wide cap-and-trade program to reduce greenhouse gas emissions by 80 percent by 2050.²⁷⁴ Cap-and-trade is an idea of reducing carbon dioxide and other greenhouse gas emissions in a cost-effective way. A mandatory cap is placed on emissions. Each company within the United States would be required to have an emissions permit for each ton of carbon dioxide it releases into the atmosphere. A company is only able to emit a certain amount of pollution before it is capped. Companies who emit less than the maximum amount of pollution are able to sell their extra permits to companies who are unable to meet the cap. This allows for an overall

²⁷³ Mike Wall, "EPA to Regulate Greenhouse Gas Emissions," *Live Science*, 24 December 2010, http://www.livescience.com/10928-epa-regulate-greenhouse-gas-emissions.html (accessed 19 May 2011). ²⁷⁴ "Obama-Biden New Energy for America Plan, January 2009," *Council on Foreign Relations*, 21 January 2009, http://www.cfr.org/united-states/obama-biden-new-energy-america-plan-january-2009/p18306 (accessed 13 May 2011).

low emissions rate and helps create a large and dependable revenue stream.²⁷⁵ This idea is similar to the cap-and-trade system established in the Clean Air Act of 1990 that was implemented in the Acid Rain Program to control SO2 emissions.²⁷⁶ The result has been meeting the air pollution reduction goals that were set at an even lower cost than industry or the Federal government had anticipated.²⁷⁷

Also in the *Obama-Biden New Energy for America Plan, January 2009* the administration wanted to create millions of new green jobs that encouraged the development and use of renewable energy sources which would help reduce air pollution. The development of more green jobs would develop and deploy clean coal technology which would also help clean the air. The Obama administration was ready to make the U.S. a leader on climate change which meant being leaders in reducing greenhouse gases and cleaning up air.

In 2009, the United Nations Climate Change Conference, also known as the Copenhagen Summit, occurred in Copenhagen, Denmark. The conference was held December 7-18 and was a gathering to develop a framework for climate change mitigation beyond 2012. The conference was also in reaction to the Kyoto Protocol

²⁷⁵ "Cap and Trade 101 What Is Cap and Trade, and How Can We Implement It Successfully?," *Center for American Progress*, 16 January 2008,

http://www.americanprogress.org/issues/2008/01/capandtrade101.html (accessed 13 May 2011).

²⁷⁶ "Clearing the Air the Facts about Capping and Trading Emissions," *United States Environmental Protection Agency*, May 2002, http://www.epa.gov/airmarkets/presentations/docs/clearingtheair.pdf (accessed 13 May 2011).

⁽accessed 13 May 2011). ²⁷⁷ "Cap and Trade 101 What Is Cap and Trade, and How Can We Implement It Successfully?," *Center for American Progress*, 16 January 2008,

http://www.americanprogress.org/issues/2008/01/capandtrade101.html (accessed 13 May 2011). ²⁷⁸ "Obama-Biden New Energy for America Plan, January 2009," *Council on Foreign Relations*, 21 January 2009, http://www.cfr.org/united-states/obama-biden-new-energy-america-plan-january-2009/p18306 (accessed 13 May 2011).

President Obama promised to end the inaction on regulating greenhouse gases as well as form a global agreement in Copenhagen to work internationally to address global warming. Despite his campaign promises and his initial fight to make his promises come true, President Obama has been faced with, "a Congress that is unwilling to move as far or as fast as he would like."

Under the Obama administration the EPA has been attempting to do what the U.S. Supreme Court ordered in 2007 –regulate greenhouse gas emissions under the Clean Air Act. April 17, 2009, the EPA officially adopted the position that greenhouse gas emissions pose a significant danger to public health and welfare. With this action the EPA was setting up to trigger a series of federal regulations against all of the major polluters who had been enjoying a large degree of unregulated freedom with the Bush Administration. It was believed that the EPA's findings would help prompt Congress to pass legislation to control greenhouse gas emissions. While President Obama had made it clear that he would prefer for Congress to take action, if it failed it was hoped that he would continue fighting for the environment by giving Executive Orders to curb some carbon dioxide and other emissions. Under section 202 of the Clean Air Act the EPA could be legally obligated to regulate greenhouse gas emissions if Congress failed to act. "Environmental advocates see the EPA as a critical backdrop in addressing climate change." 280

²⁷⁹ John M. Broder, "Obama Hobbled in Fight Against Global Warming," *New York Times*, 15 November 2009.

²⁸⁰ Juliet Eilperin, "EPA Says Emissions Are Threat to Public," Washington Post, 18 April 2009.

By September of 2009, the administration was tired of waiting for Congress to take actions and began moving forward to regulate emissions from hundreds of power plants and large industrial facilities. The proposed rules, regulated under the Clean Air Act, took effect in early 2011. They placed the largest burden on 400 power plants, requiring them to install the best available technology to reduce emissions. Failure would result in penalties. These rules apply only to those facilities emitting at least 25,000 tons of carbon dioxide into the air per year. These emissions are responsible for nearly 70 percent of greenhouse gas emissions in the United States. The proposal sparked fear and division within American industry who, as in the past, were unwilling to accept the regulation and the cap-and-trade system that the EPA was attempting to implement. While small businesses, farms, large office building and facilities which emit small greenhouse gas emissions are exempt from the new controls, 14,000 coal-burning power plants, refineries and big industry complexes would fall under EPA regulation. Large industry spokesmen immediately began to argue that the EPA lacked the legal authority under the Clean Air Act to categorically exempt sources from regulation.²⁸¹

In 2010, the United States was faced with a major environmental disaster. In the past, these events have helped improve the environment and indeed, the last environmental disaster had led to the passage of the Clean Air Act Amendment in 1990. On April 20, 2010, the Deepwater Horizon offshore oil platform exploded. By April 22, 2010, Earth Day, the platform sank 5,000 feet to the bottom of the ocean. This oil spill

²⁸¹ John M. Broder, "E.P.A. Moves to Curtail Greenhouse Gas Emissions," *New York Times*, 30 September 2009.

marks the largest marine spill in history, easily eclipsing the Exxon Valdez spill. It was not until July 15, 2010, that BP oil said it was successfully able to cap the oil well that was leaking into the ocean. It took a total of 86 days for this to occur. The BP spill is the U.S.'s worst environmental disaster in decades and threatened hundreds of wildlife along the Gulf Coast, including many endangered and protected species. The Federal government and BP have since been heavily criticized for its lack of initiate and immediate action. "The news of the spill triggered a four-month frenzy of despair and accusation: The response was too slow, the Gulf was dying, the beaches were filthy with oil, the economy was getting eviscerated, and the government was failing." The Federal government's actions in regard to the spill left many Americans disappointed and with little hope that there would soon be new environmental legislation to better protect the environment.

Within Louisiana and neighboring Mississippi alone at least 10 wildlife management areas and refuges had to attempt to prepare for the impact when the oil hit, as it traveled quickly along the U.S. coast. The Gulf Coast is also one of the world's richest seafood grounds and the spill threatened the livelihood of thousands of people along the Gulf. During the spill the well was releasing 200,000 gallons of oil into the ocean a day. Locals were frustrated for they felt that the government was not doing everything it could to assist with the spill and the pace of the response as well as the

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²⁸² "Deepwater BP Oil Spill," *Mississippi State University*, 13 January 2011, http://guides.library.msstate.edu/oilspill (accessed 19 May 2011).

Juliette Kayyem, "The game changer: One year ago today, politics collided with disaster recovery," *Boston Globe*, 24 April 2011, http://articles.boston.com/2011-04-24/bostonglobe/29469334_1_bp-engineers-blowout-preventer-oil-spill-responses (accessed 19 May 2011).

communication, or lack thereof, from the Coast Guard and BP officials. ²⁸⁴ The true impact of the BP oil spill to surrounding ecosystems will take months and even years to understand. The depth of the spill along with the use of chemicals that were used to break the oil down in the water before it reached the surface are an unknown environmental threat to the United States. By the end of May 2010 the state of Louisiana, the state closest to the spill, reported that 100 miles of its 400-mile coast had already been polluted, and they only anticipated more to come. A quarter of U.S. waters were closed to fishing in the Gulf of Mexico to clean up the area as well as try and save the wildlife as the impact on it was still not known. This cost the livelihoods of shrimpers, oyster-catchers and charter boat operators. Restaurants also felt the loss as their menus had to be adapted. Americans were also not coming to the areas for vacations as clean-up crews tried to minimize the oil spill. ²⁸⁵

One year after the oil spill, local residents reported their anger and frustration with both the BP oil company and the U.S. government for failing to provide the necessary aid for the tragedy of the oil spill is still felt in the Gulf. Locals say that BP has failed to properly communicate with locals as it attempts to continue to clean up after the disaster. When locals attempted to go and clean up the oil spill, they were hampered by the U.S. Coast Guard who shut down all vessels to check for fire extinguishers and life jackets, obstructing local efforts to mitigate the environmental damage. "Even at this late date the

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²⁸⁴ "Oil from massive Gulf spill reaching La. Coast," *Associated Press*, 30 April 2010, http://www.msnbc.msn.com/id/36800673/ns/us_news-environment/t/oil-massive-gulf-spill-reaching-lacoast/ (accessed 19 May 2011).

²⁸⁵ David Adam, "BP oil spill: death and devastation –and it's just the start," *Guardian.co.uk*, 31 May 2010.

sense of urgency is not there."²⁸⁶ And despite claims from the media that the damage is not as bad as originally anticipated, locals certainly see and feel the damage and it continues to threaten the environment. The Louisiana Shrimp Association has been quoted as saying that the Federal government is not in charge of the clean up, BP is. And BP had no sense of urgency. The Coast Guard, who locals feel should have the power to enforce clean-up efforts, is in the back pocket of the oil company. "They should be behind us and what we say and what we want to do. You try to go to an area and they want to run you off. This is America. You know, we are free. And these are our waters and our country, not BP's."²⁸⁷ Out of the \$20 billion dollars set aside for BP to say out for damages as a result of the oil spill, only \$3.4 billion has been paid. Residents also say a 'Gulf Plague' has affected residents, with people suffering from odd ailments and illnesses, particularly those who participated in the initial clean-up of the oil spill. Despite the claims of illnesses related to the spill, federal officials did not launch a long-range study of Gulf Resident's health until March 2011.²⁸⁸

The sad truth of the BP oil spill is that it did not have the impact on the Federal government that the Exxon Valdez oil spill had. There is still public concern and outrage for the environment and yet, Congress has still not passed any pro-environment legislation in reaction. The Exxon Valdez oil spill led to the passage of the last

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²⁸⁶ "Many Gulf Coast Residents Still Frustrated by Handling of BP Oil Spill," *PBS Newshour*, 26 April 2011, http://www.pbs.org/newshour/bb/environment/jan-june11/gulfcoast_04-26.html (accessed 19 May 2011).

²⁸⁷ "Many Gulf Coast Residents Still Frustrated by Handling of BP Oil Spill," *PBS Newshour*, 26 April 2011, http://www.pbs.org/newshour/bb/environment/jan-june11/gulfcoast_04-26.html (accessed 19 May 2011).

²⁸⁸ Karen Dalton-Beninato, "A House Divided; Louisianans, One Year After the Spill," *Earth Island Journal*, http://www.earthisland.org/journal/index.php/eij/article/a_house_divided (accessed 19 May 2011).

amendment to the Clean Air Act. It was hoped by environmentalists and the general public, concerned for the environment that a similar result would occur. To the dismay and anger of many, particularly those affected directly by the oil spill, there have been no such result.



Image 18: BP Oil Spill in the Gulf of Mexico Source: http://i.telegraph.co.uk/multimedia/archive/01647/oil-spill-BP_1647492c.jpg

In 2010, the American Lung Association published the State of the Air 2010 Report. It details the levels of ozone and particle pollution found in monitoring sites across the United States from 2006 to 2008. The report provides information on year-round particle pollution, short-term particle pollution, ozone pollution, the current cleanest cities in the US, the people most at risk, what needs to be done for healthier air

and supplies suggestions of what individuals may do to clean up the air.²⁸⁹ Currently ozone and particle pollution is the most widespread pollution and is one of the greatest causes of concern. Carbon monoxide, lead, nitrogen dioxide, sulfur dioxide and hundreds of toxic substances are also a problem for U.S. air health.²⁹⁰ "One in 10 people in the United States live in an area with unhealthy year-round levels of fine particle pollution."²⁹¹ While these numbers sound discouraging, it is an improvement over old pollution levels, although much remains that needs to be changed.

Reducing air pollution has extended life expectancy. Thanks to a drop in particle pollution between 1980 and 2000, life expectancy in 51 cities increased on average by five months. However, this does not mean that deaths do not result still from air pollution. The annual death toll from particle pollution may be even greater than previously understood. The California Air Resources Board recently tripled the estimate of premature deaths in California from particle pollution to 18,000 annually. Long term exposure to air pollution, especially from highway traffic, harms women. Exposure to particle pollution increases women's risk of lower lung function, developing chronic obstructive pulmonary disease (COPD), and dying prematurely. Busy highways are high-risk zones because of the constant large congestion of motor vehicles. Pollution from heavy highway traffic contributes to higher risks for heart attacks, allergies, premature

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²⁸⁹ "2006-2008," *American Lung Association*, http://www.stateoftheair.org/2010/key-findings/2006-2008/ (accessed 18 January 2011).

²⁹⁰ "Health Effects of Ozone and Particle Pollution," *American Lung Association Fighting for Air*, http://www.stateoftheair.org/2010/health-risks/ (assessed 18 January 2011).

²⁹¹"2006-2008," *American Lung Association Fighting for Air*, http://www.stateoftheair.org/2010/key-findings/2006-2008/ (accessed 18 January 2011).

births and the death of infants around the time they are born. New studies looking at the impact of traffic pollution, even in cities with generally "cleaner" air, expanded the concern over the health effects of chronic exposure to exhaust from heavy traffic. Ozone pollution can shorten life, a conclusion confirmed by the latest scientific review by the National Research Council.²⁹² New evidence shows that some segments of the population may face higher risks from dying prematurely because of ozone pollution, including communities with high unemployment or high public transit use. Truck drivers, dockworkers and railroad workers face higher risk of death from lung cancer and COPD from breathing diesel emissions on the job. Studies found that these workers who inhaled diesel exhaust on the job were much more likely to die from lung cancer, COPD and heart disease. Lower levels of ozone and particle pollution pose a bigger threat than previously thought. Lower levels of these all-too-common pollutants triggered asthma attacks and increased the risk of emergency room visits and hospital admissions for asthma in one study. Another study found that low levels of these pollutants increased the risk of hospital treatment for pneumonia and COPD. ²⁹³ As a respected organization the American public could hope that Congress would respond to the report and its findings, which obviously display a need for further air pollution legislation, particularly of greenhouse gas emissions. The EPA's announcement of regulating emissions under the Clean Air Act in 2009 was a major victory, however, since that time Congress has been

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²⁹² "Health Effects of Ozone and Particle Pollution," *American Lung Association Fighting for Air*, http://www.stateoftheair.org/2010/health-risks/ (accessed 18 January 2011).

²⁹³ "Health Effects of Ozone and Particle Pollution," *American Lung Association Fighting for Air*, http://www.stateoftheair.org/2010/health-risks/ (accessed 18 January 2011).

attempting to weaken both the EPA and the Clean Air Act. It claims that, despite following court orders from 2007, it is reading too expansive a view with its authority under the Clean Air Act and may not regulate greenhouse gas emissions as planned.

In 2009, the House of Representative narrowly passed a cap and trade bill to place limits on greenhouse gas emissions. However, the bill did not gain enough votes to pass the Senate and since that time the hope of Congress passing such a bill has diminished. Since the EPA has declared its intentions to regulate greenhouse gas emissions under the Clean Air Act, as mandated by the Supreme Court of the United States in 2007, political lines have been drawn within Congress as Republican and industry fight against the regulation, claiming it will harm the economy.²⁹⁴

When asked about stronger clean air regulations and answering the demands of the people for stronger environmental regulations while balancing a struggling economy in the present day, Congressman Jerry Costello of Illinois said that in his job he tries to, "be a reasonable advocate for a clean environment without crippling economic growth. Nobody is against clean air. However, the reality of our situation is that for at least the next several decades we do not have alternatives for fossil fuels for the vast majority of our energy production. We need to continue investing in renewable energy (wind, solar, geothermal, etc.), and I have been a strong supporter of doing so, but for the foreseeable future they can meet only a small percentage of our energy demand. While there are strong environmental advocates pushing for more stringent regulations of emissions,

²⁹⁴ Bryan Walsh, "Battle Brews Over EPA's Emissions Regulations," *TIME*, 3 January 2011.

there are also business owners and workers who have concerns about the impact these regulations will have on their jobs and livelihoods. We need to meld these two approaches and meet the needs of our economy in as an environmentally friendly way as possible."²⁹⁵

The year 2010 marked a very unsuccessful year for environmentalists in attempting to regulate greenhouse gases on either the national or international level. Because of the uproar of the regulations of the EPA, which were to take effect in early 2011, much of the year was anticipated for environmentalist to be on the defense to protect the EPA and its enforcement of greenhouse gas emissions. Despite all the years of scientific evidence and public concern over greenhouse gases, politicians are still disputing the validity and actual knowledge of greenhouse gases and global warming. Even with the tragedy of the BP Oil Spill in the Gulf, Congress was not reacting in the same manner that was seen with the Exxon Valdez Oil Spill. The EPA argued that it was implementing a gradual and careful regulation of emissions, beginning only with new plants, encouraging power plants to run more efficiently and to use cleaner fuels with the newest technology available to reduce emissions. States filed suit to block the EPA from regulating emissions, but thus far the federal courts have refrained from interfering with the EPA. Republicans began to propose legislation to block the EPA from controlling greenhouse gases under the Clean Air Act. President Obama had promised to regulate greenhouse gas emissions and, given the resistance met by Congress to pass clean air

²⁹⁵ Congressman Jerry Costello, email interview by author, 6 January 2011.

legislation of any kind, he has been forced to act with what means and power available to him. ²⁹⁶

On April 7, 2011, the House of Representatives passed H.R. 910:Energy Text

Prevention Act of 2011, to amend the Clean Air Act and prohibit the EPA from

regulating, taking action relating to, or taking into consideration the emissions of

greenhouse gases to address climate change or any other environmental purpose. The

bill would permanently halt EPA ability to regulate power plants, refineries and other

stationary source from greenhouse gas emissions. The House of Representatives defeated

nine amendments by Democratic sponsors to provide exemptions to the bills prohibition

of EPA regulations. Representative Costello was a supporter of H.R. 910. Currently

the bill awaits a vote by the Senate to determine its passage. Regardless of its outcome,

there is little doubt that should Congress pass the bill, President Obama will use his veto

power and throw it back to Congress. Franz Matzner of the Natural Resource Defense

Fund was quoted as saying that, "passage of this bill puts polluters ahead of the public

and stops the EPA from protecting the health of every American." 299

What the United States has witnessed since 1990 is a shift within Congress back to a 1950's ideology that approves of inaction toward the environment, and is stanchly pro-industry. Despite several presidents and a Supreme Court who have believed that the

²⁹⁶ Bryan Walsh, "Battle Brews Over EPA's Emissions Regulations," *TIME*, 3 January 2011.

²⁹⁷ "H.R. 910: Energy Tax Prevention Act of 2011," *Govtrack.us*, 9 April 2011, http://www.govtrack.us/congress/bill.xpd?bill=h112-910 (accessed 19 May 2011).

²⁹⁸Carolyn Berndt, "House Passes EPA Greenhouse Gar Preemption Bill, Amendments Fail in Senate," *National League of Cities*, 19 April 2011, http://www.nlc.org/news-center/nations-cities-weekly/articles/2011/april/house-passes-epa-greenhouse-gas-preemption-bill-amendments-fail-in-senate (accessed 19 May 2011).

²⁹⁹ Wendy Koch, "House panel rejects EPA's greenhouse gas rules," USA Today, 16 March 2011.

economy and the environment do not have to be mutually exclusive, Congress seems unable to take its final step in regulating greenhouse gas emissions. Indeed, with H.R. 910 Congress is directly defying the Judicial and Executive branches of government. This 1950's ideology, which has not been seen in such a degree since the beginning of clean air legislation, must leave the American public concerned for its public health. The year 2011 marks a 21-year gap where Congress has not been able to agree on passing this final, necessary legislation to clean up the air and protect not only Americans from greenhouse gases and global warming but the world.

William (Bill) Pedersen is currently employed at Perkins Coie and serves on counsel in the firm's Environment, Energy & Resources practice. He has been involved with the Clean Air Act since 1972 when he left a law firm for government work and fell into work with the EPA as Deputy General Counsel and Associate General Counsel for Air and Radiation before Pedersen became a partner at Shaw Pittman. Thus began his work with the Clean Air Act up to the present day where Mr. Pedersen is considered one of the foremost experts on the Clean Air Act. Since 1972 he has been involved as, "a legislative and regulatory counselor, as a litigator, and as an expert witness in virtually every important Clean Air Act issue for the last 20 years, including new source review, Title V permits, amending air quality standards, hazardous air pollutant regulation, new source performance standards, fuels regulation, state implementation plans,

the development and implementation of market based approaches, and enforcement of these provisions."³⁰⁰

Mr. Pedersen is a member of the *Breaking the Logjam Project*. *The Breaking the Logjam Project* was created to address the complete lack of environmental legislation for over 20 years and to address this 'logjam' with innovative thinking. In 2007, the New York University School of Law and New York Law School brought together over 40 environmental law experts to propose statutory and institutional changes and to comment upon the proposals. The legal question being addressed by the project is how government should organize itself to protect the environment rather than how much the environment should be protected. Mr. Pedersen is a leader in the Project developing analytical support for the next round of Clean Air Act amendments. Pedersen's efforts are to adapt the Clean Air Act to regulate greenhouse gases.

In a personal interview, Mr. Pedersen discussed the paper he wrote for the Project about regulating greenhouse gas controls. His argument is that everything you do to control greenhouse gases makes conventional pollutants better. We should amend the Clean Air Act to focus more on greenhouse gas controls and less on conventional pollution control. Solar and wind power release zero air pollutants. A zero carbon source means zero pollution while the alternative does nothing for it. When installing a scrubber

³⁰⁰ "Professionals: William (Bill) Pedersen Profile," *Perkins Coie Legal Counsel to Great Companies*, http://www.perkinscoie.com/bpedersen (accessed 10 May 2011).

³⁰¹ "Background," *Breaking the Logjam: Environmental Reform for the New Congress and Administration*, 2007-2011, http://www.breakingthelogjam.org/CMS/ (accessed 10 May 2011).

³⁰² "Professionals: William (Bill) Pedersen Profile," *Perkins Coie Legal Counsel to Great Companies*, http://www.perkinscoie.com/bpedersen (accessed 10 May 2011).

on a power plant CO2 still gets out into the air. Similarly, if you address greenhouse gas emissions by energy efficiency you have less than any kind of unit.³⁰³

When asked in an interview if Pedersen foresaw an amendment to the Clean Air Act in the near future, he was not optimistic. He said that there would be no amendment without carbon control written in and there would not be a carbon control program anytime soon. The existing act is not causing any problems and while in the next few years that could change with the continued severity of greenhouse gases nothing will be passed in the near future. Also in the personal interview, Mr. Pedersen stressed that greenhouse gases and global warming do need to be addressed by Congress. The Clean Air Act allows for some control of greenhouse gases but the United States needs to do more to address the problem. There needs to be more legislation to regulate air pollution, not less. The battle to regulate greenhouse gas emissions is the last known battle for air legislation. Arguments about the economic and social burdens are not applicable with the issue of regulating greenhouse gas emissions. One of the most striking things about the Clean Air Act since 1970 is that it has not made a difference in the texture of people's lives. People have not had to sacrifice in their daily life to reduce air pollution. It has been done by technology and fuel switching. Reducing pollution without large sacrifice helped with a sensible attitude in regards to clean air legislation. This current day and age is the age of the environment. Global warming and fishery depletion are real environmental concerns. Some issues will be a part of the United State's permanent

³⁰³ William Pedersen, telephone interview by author, January 28, 2011.

concern for at least the next fifty years. Nothing will happen, however, if the environmental issues are not at the top of the public's mind. Polls show most people would be in favor of a cap and trade system but few people likely understand the inconvenient details and how it would directly affect their lives because it is not in their consciousness. An amendment has not been made to the Clean Air Act since 1990 and Mr. Pedersen feels that part of this is because Republicans are more anti-environment, mostly because many environmental problems have been solved over the last 40 years, but this does not mean they no longer exist. There used to be a bipartisan consensus that environmental legislation was a good thing but it is no longer there. In terms of moving forward on greenhouse gas controls the Clean Air Act is no longer a bipartisan piece of legislation. There has always been Republican resentment toward the Clean Air Act and environmental regulation. It was seem often during the Reagan administration but it blew up in their faces. It is not the Clean Air Act itself anymore that would be calculated to spark a reaction from Republicans but global warming and greenhouse gas control does: something that escapes Pedersen. For whatever reason, greenhouse gas control is very unpopular with Republicans. 304

In 1968 Garrett Hardin presented the concept of the *Tragedy of the Commons*. The article is now accepted as, "a fundamental contribution to ecology population theory, economics and political science." The basic idea is that a resource held in common for use by all is ultimately going to be destroyed. In order to prevent this destruction man-

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³⁰⁴ William Pedersen, telephone interview by author, January 28, 2011.

³⁰⁵ "Tragedy of the Commons," http://oceanworld.tamu.edu/resources/oceanography-book/tragedyofthecommons.htm (accessed 19 May 2011).

kind must change human values and ideas of morality. The tragedy does not come from greed but from need. Air is a common resource which all humans need to survive but to fail to change human behavior and to allow the common use of air to dirty and degrade it will ultimately lead to the destruction of man, unless actions are taken to change behavior and protect the air that is necessary for life.³⁰⁶

There are limits "of partisan initiatives on environmental issues. Strong public concern for the environment, contested science and rising marginal costs of control, have made air pollution control policy such a sensitive issue that bipartisan consensus is needed to bring about change."³⁰⁷ In order for Congress to pass any legislation regarding clean air legislation, Republicans and Democrats must be willing to work together. Modern day environmentalism still exists in the United States; it just seems to have stumbled in Congress. The transformation of environmentalism and clean air legislation in the United States has been an ongoing process since the 1950s. Americans still care about their health and about their environment and they must now take action and show Congress that they are unwilling to accept legislation that threatens future generations of Americans with dirty air or inaction. Napoleon Bonaparte said that, ""Ten people who speak make more noise than ten thousand who are silent." It is the duty of Americans to use their voices to protect their environment and to ensure that the air they breathe is clean.

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³⁰⁶ "Tragedy of the Commons," http://oceanworld.tamu.edu/resources/oceanography-book/tragedyofthecommons.htm (accessed 19 May 2011).

³⁰⁷ Christopher J. Bailey, *Congress and Air Pollution: Environmental Politics in the USA* (Manchester and New York: Manchester University Press, 1998), 264.