

# Pace Environmental Law Review

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Volume 14  
Issue 1 *Fall 1996*

Article 5

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September 1996

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### Recommended Citation

Constantine Sidamon-Eristoff, *Cherchez La Politique*, 14 Pace Envtl. L. Rev. 45 (1996)

DOI: <https://doi.org/10.58948/0738-6206.1364>

Available at: <https://digitalcommons.pace.edu/pelr/vol14/iss1/5>

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## *Cherchez La Politique*

CONSTANTINE SIDAMON-ERISTOFF\*

Christine Sansevero, who spoke on the previous panel on the effects of the Clean Air Act (CAA)<sup>1</sup> on environmental quality and our air over the years, tempted me to suggest that the environmental movement "declare victory" and cease agitating for improvements. Her thesis: things are getting better and better!

During the previous panel, you also saw a video of Congressman Tom DeLay (R-Tex.), basically stating that the United States has no environmental problems at all. He has never met a regulation that he liked, and he wants to get rid of them all. He, of course, has been well sponsored by the "Wise Use" movement,<sup>2</sup> of which more will be said later. Things are *too* good!

In actuality, my friends, both are wrong: the war to clean up and preserve our environment is never over. The environmental movement, in a mood to declare victory after the 1992 presidential election which brought Clinton/Gore into power, has had to remobilize after belatedly realizing that, by relaxing, they have very nearly lost the war as well as the battle.

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1. Clean Air Act (CAA) §§ 101-618, 42 U.S.C. §§ 7401-7671q (1994).

2. "The term 'wise use' is generally associated with efforts in the American West to oppose conservation initiatives and environmental protection laws. Those with a vested interest in timber, mining, and ranching laws have been the movement's major supporters and financial backers." *'Wise Use' Takes Aim in Wisconsin*, CAPITAL TIMES, May 25, 1996, available in 1996 WL 10526139.

The new President, having had very little exposure to, or interest in, the environmental questions so important to all of us, had an immediate perceived advantage in the eyes of many "enviros" due to his selection of Vice-President Gore, author of an entire book about the environment.<sup>3</sup> People like Bill Rosenberg and myself, who had worked for William K. Reilly and George Bush, were crestfallen, but our good friends were mighty cheerful. The subsequent political backlash and reaction, however, has been unprecedented and unexpected.

Since 1993, the Environmental Protection Agency (EPA) has been in gradual retreat. The Grand Coalition of conservationists and environmentalists, rod and gun club members, bikers and outdoors people, has splintered asunder and may well never be recreated.

Nevertheless, clean air as a cause or program has an additional constituency: those people who are worried about the health effects of air pollution. Open space, land use, overuse of the western range land, wetlands preservation, and endangered species preservation are all different elements of the drive for a sustainable environment. But clean air has an added, very vocal, constituency, which the American Lung Association epitomizes.

The CAA with its 1977 Amendments, and the major rewrite embodied in the 1990 Clean Air Act Amendments (CAAA),<sup>4</sup> essentially put the EPA in the middle of a huge series of public policy cross-fires. The EPA is supposed to protect the public with an ample margin of safety and, at the same time, not place an undue burden on industrial development and "progress." "Progress," of course, is defined in the eye of the beholder. Basically, the public wants to have its cake (clean air) and eat it too!

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3. ALBERT GORE, *EARTH IN THE BALANCE* (1994).

4. Clean Air Act Amendments of 1990 (CAAA), Pub.L. No. 101-549, 104 Stat. 2399 (1990).

The political problem, as is well stated in the current issue of *The Environmental Forum*,<sup>5</sup> which you have available, is that the easy part of the effort to restore clean air, which has been very successful, is over. As William K. Reilly said in a recent article,<sup>6</sup> instead of dealing with a relatively finite number of very large sources of pollution, you now have to reach down into all of our cities and towns, and affect people running dry cleaning establishments, bakeries, gas stations, printing shops and a whole range of activities that have never been touched heretofore. These are not large people, these are not people who normally hire lawyers, and, as Reilly points out, "they're upset."<sup>7</sup>

In the issue of *The Environmental Forum*, Richard Ayres makes essentially the same point.<sup>8</sup> In his article, he points out that some important programs, such as the acid rain program, the stratospheric ozone protection program, and the motor vehicle programs, which push auto manufacturers to new heights in pollution control, have encountered little opposition.<sup>9</sup> Specifically, automobile emission controls (with the exception of the electric vehicle requirement) have not really been controversial.<sup>10</sup> Other programs have been highly controversial, such as the reformulated gasoline program, enhanced motor vehicle inspection and maintenance (I&M), and the employer commute options (ECO) requirements.<sup>11</sup>

As Ayres notes, almost without exception, "the programs on the second list are more intrusive - intrusive into how people do business, or into how they organize their private lives."<sup>12</sup> They limit individual choices and, as part of a natural and larger societal reaction to governmental intrusive-

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5. See Richard E. Ayres, *We Need New Regulatory "Software,"* THE ENVTL. F., Mar./Apr. 1996, at 38. Mr. Sidamon-Eristoff distributed the March/April 1996 issue of *The Environmental Forum* to the audience.

6. See William K. Reilly, *A Bold and Accomplished Leader,* THE ENVTL. F., Mar./Apr. 1992 at 28.

7. *Id.*

8. See Ayres, *supra* note 6, at 38.

9. See *id.*

10. See *id.*

11. See *id.*

12. *Id.*

ness, they are politically very difficult. At the same time, Ayres points out, as do many others, the objectives of the CAA remain popular. Public opinion polls indicate that the public overwhelmingly supports cleaner air and water, but, at the same time, believes that the regulatory system we have can be improved and made less burdensome.<sup>13</sup>

In the early 1970s, amid the euphoria generated by the first Earth Day and the passage of the 1970 CAA, environmental enthusiasts, particularly in our cities, made a point of attacking the automobile and its users, particularly in cities and urban areas. Unfortunately, the automobile had then, and still has, its supporters. An attack on the automobile, therefore, must be very carefully crafted and must receive political support from all quarters, or it will fail. The early State Implementation Plans (SIPS) for cities and states, were never really implemented, because few governments had the courage to implement them. I remember, in particular, having my neck stuck way out on the question of tolling the East River bridges in the City of New York, which was supposed to reduce traffic. In my opinion, at least at that time, it would have provided a stream of revenue which could have been used to maintain those bridges, all of which had real structural and maintenance problems. In the 1977 amendments, Congresswoman Liz Holtzman took care of that, making tolling of those facilities impossible.

Nothing much happened through the Reagan years on the clean air side until Bush was elected and became the "environmental President." Early on, he and John Sununu decided that they would push through the CAAA, since Bush had made a commitment to that effect. This was done with a great deal of 'strum and drang,' and, I think, quite effectively. Much of the language of the new amendments was extremely prescriptive. However, it was a natural reaction to the relatively loose language in the earlier Acts, which were seen by the environmental groups working on these questions as an opportunity for the EPA to backtrack. The more prescriptive the laws, the less opportunity for politics after enactment.

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13. See Ayres, *supra* note 6, at 38.

Having gotten the 1990 CAAA, the environmental side began to declare victory again, and politics, as usual, took its cyclical course. Groups like the Wise Use Movement, carrying the banner of property rights and freedom from regulation, but funded by all kinds of industrial coalitions, began to reappear. By the end of the Bush Administration, one could see the beginnings of a powerful coalition that was, unfortunately without opposition, beginning to affect the positions being taken by the Republicans who were making a real challenge in an attempt to take over control of Congress.

They ultimately succeeded, but during the 1993-94 political cycle they held a series of forums with local groups on what was wrong with our government, including, among other things, the environmental regulations and laws. Reading the write-up of the proceedings of those forums, the documents that formed the Contract with America's philosophical basis, you can search high and wide and not find input from any environmental supporter. The pressure all came from the other, very well organized side. I do not believe that the environmental movement, which has never really been close to the inner councils of Republicans, made any real effort to be part of the dialogue. You can find very little input from the "enviro" position.

Now the cycle turns again. Thanks to Congressman Sherry Boehlert (R.-NY) and his band of maverick Republicans, a successful rear guard action has been mounted with the help and support of a regvanized environmental movement. Again, this is all politics, and politics in the good sense of the word. It shows how different groups will maneuver to push our government structure in order to obtain advantages.

Madison, in that famous Federalist Paper No. 17, pointed out that our Constitution was going to produce a government of pressure groups and indeed it has. Never, never lose sight of politics. Whenever you don't understand why something is or is not happening, *cherchez la politique*. That's the lesson I have for you from the implementation of the 1990 CAAA.