

Environmental Politics and Law

Professor John Wargo

PS 215b/EVST255b

Lecture 2: Principles and Strategies

January 14, 2010

Problem Definition

- Air Pollution
- Water Quality
- Hazardous Lands
- Food Safety
- Consumer Product Safety
- Fossil Fuel Scarcity
- Loss of Biodiversity
- Climate Change

CENTRAL QUESTIONS IN ENVIRONMENTAL LAW

1. Level of Government Appropriate to Problem?
2. Branch of Government to Establish Law?
3. Level of Monitoring & Surveillance?
4. Access to Data: IPR, Secrecy, and Confidentiality?
5. Should Preemption Be Allowed?
6. Administrative Discretion vs. Statutory Criteria
7. Risk Averaging?
8. Burden of Proof & Standard of Proof
9. National Sovereignty to Regulate Foreign Hazards?
10. Choice Among Legal Tools & Strategies

**Imagine a Society With No
Environmental Law...**

**How Would You Design It to
Assure a Healthy, Productive and
Sustainable Future?**

Now Imagine a Society With Elaborate Environmental Law

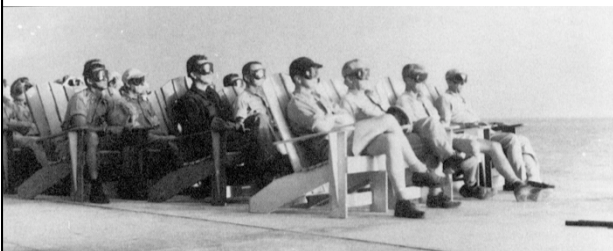
- Fractured by Problem and Media (Air, Water, Food)
- Fractured by Level of Government Responsibility
- Little Surveillance at Scale Relevant to Individual
- Evolves at a Snail's Pace in Response to New Evidence
- Provides False Sense of Security
- Difficult and Costly to Measure Effectiveness
- Highly Specialized in Sciences
- Highly Politicized in Implementation
- Poorly Supported by Non Profits
- Costs are Well Recognized v. Benefits Poorly Valued
- Trivialized by International Security and Terrorism

Cost of US Environmental Law?

\$300-400 Billion Per Year

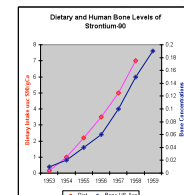
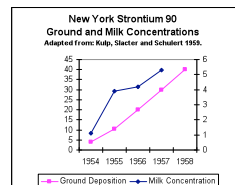
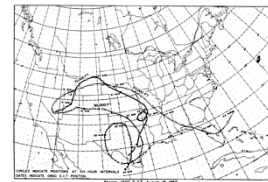
Knowledge and Power

Secrecy and Security



What You Don't Know Can Hurt You....

Number 1 Failure: Absence of Ecological or Systems Thinking

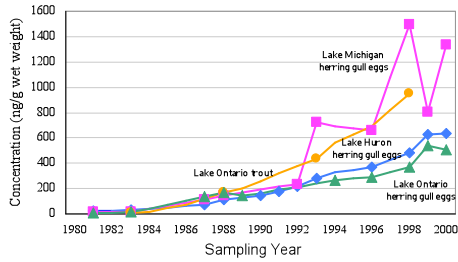


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Polybromated Diphenylethers

Figure 1. Concentrations of PBDEs in North American Wildlife



Sources: Norstrom et al. 2001; Luross et al. 2000
 Note: PBDE concentration for trout measured as ng/g lipid

Figure 7
 DDT in Breast Milk Around the World (1970s)

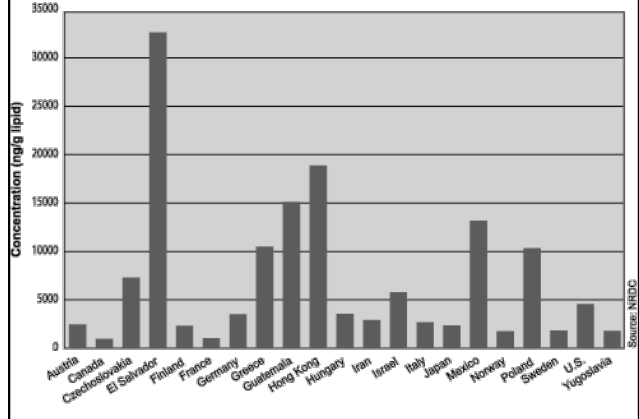
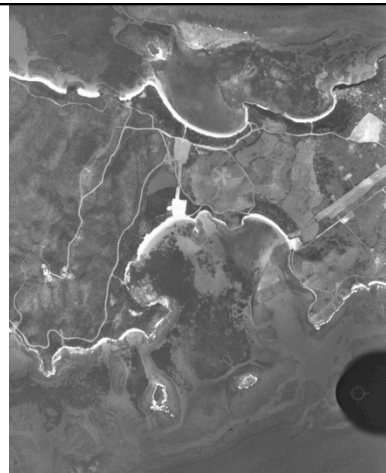
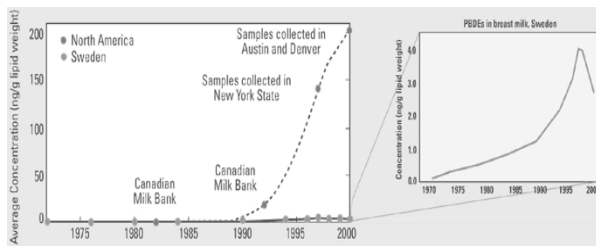
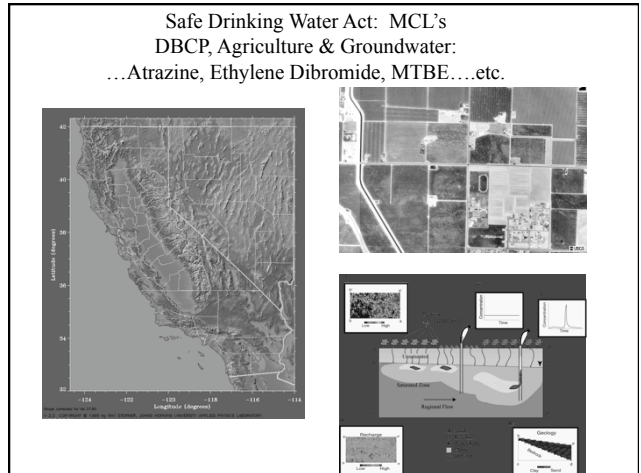
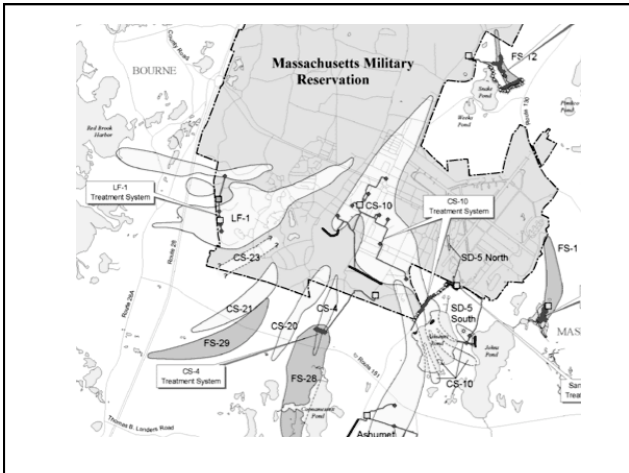
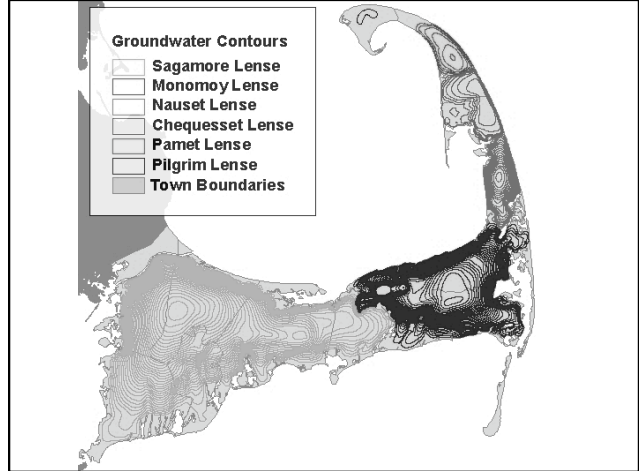
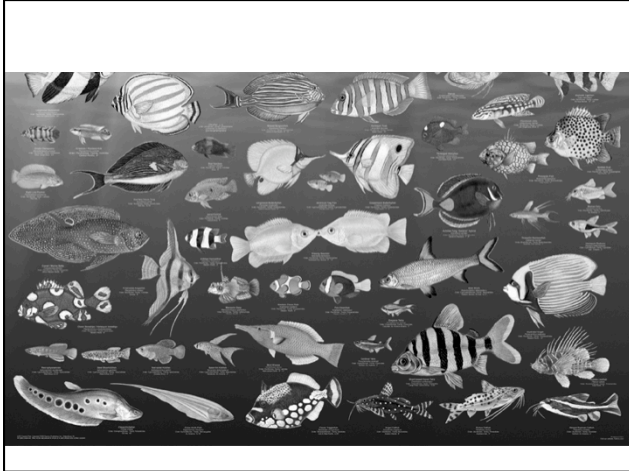


Figure 3. Trends of PolyBDEs in Human Milk



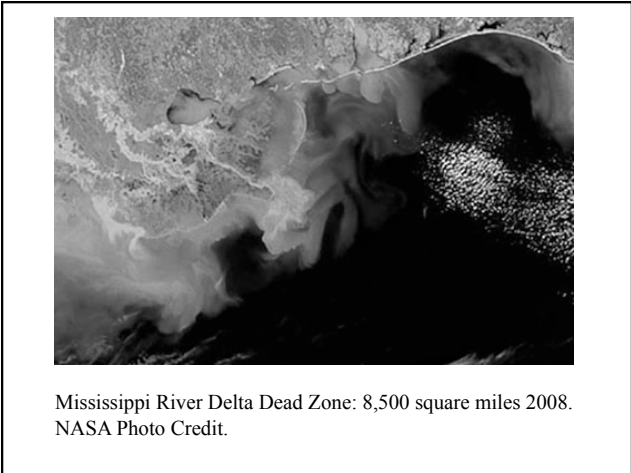
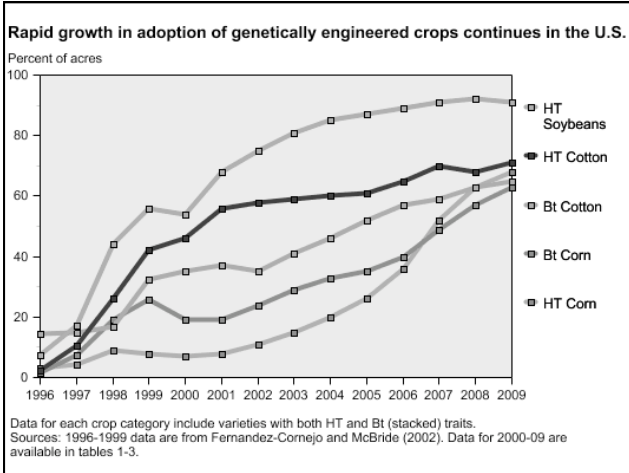
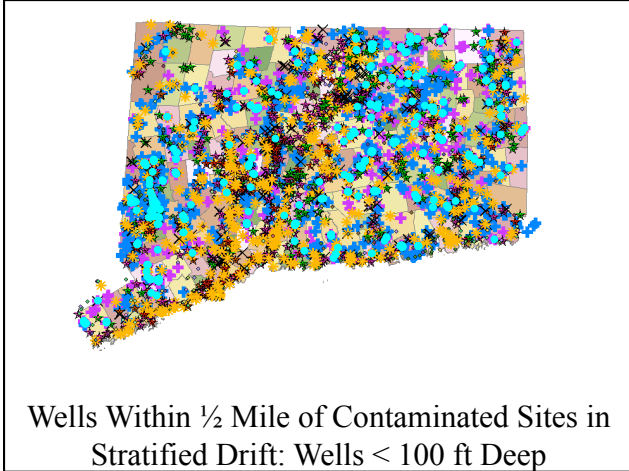
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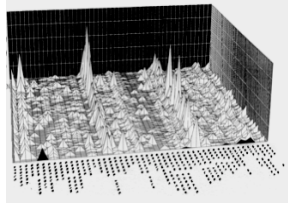
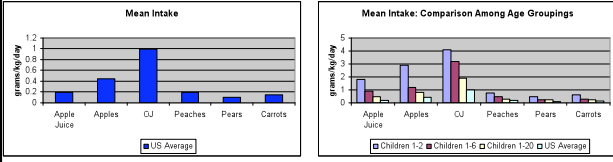


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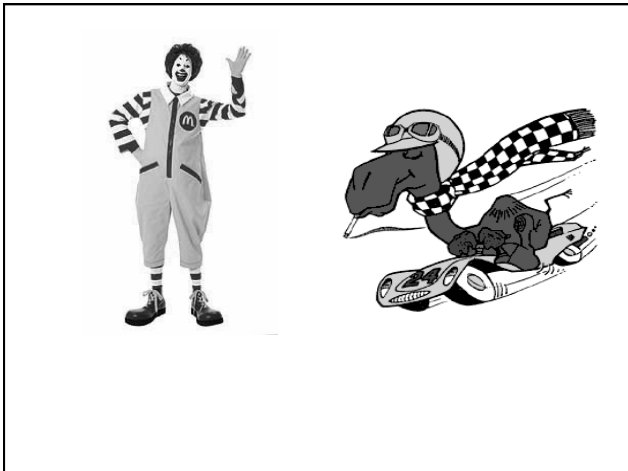
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What's in Your Food?

Where Does it Come From?



Risk-Benefit Balancing vs. Precautionary Standard



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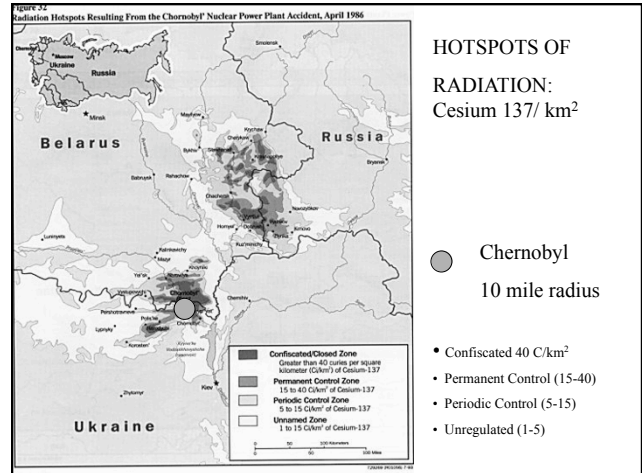
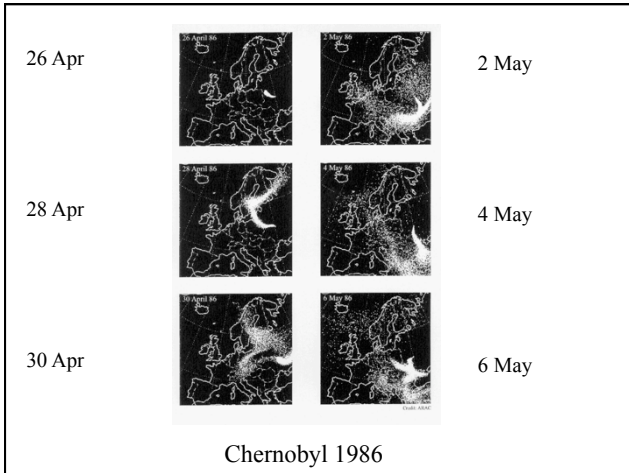
<p>WARNING CIGARETTES ARE A HEARTBREAKER</p> <p>Tobacco use can result in the clogging of arteries in your heart. Clogged arteries cause heart attacks and can cause death.</p> <p><i>Arteries clogged with plaque - result of cigarette entry</i></p> <p>Health Canada</p> <hr/> <p>Qualité classique, un goût unique Smooth Flavour, Classic Quality</p> <p>LES MARCHÉS IMPÉRIAL LITE IMPERIAL LIGHT CIGARETTES 1-800-311-2000</p>	<p>WARNING CIGARETTES CAUSE LUNG CANCER</p> <p>Every cigarette you smoke increases your chance of getting lung cancer.</p> <p>Health Canada</p> <hr/> <p>Londres - Paris - New York - Montréal</p> <p><i>Allan Ramsay & Compagnie Ltée</i> Montréal, Canada H3C 3L6 1-800-963-2832</p>
<p>WARNING TOBACCO USE CAN MAKE YOU IMPOTENT</p> <p>Cigarettes may cause sexual impotence due to decreased blood flow to the penis. This can prevent you from having an erection.</p> <p>Health Canada</p>	<p>WARNING CIGARETTES HURT BABIES</p> <p>Tobacco use during pregnancy reduces the growth of babies during pregnancy. These smaller babies may not catch up in growth after birth and the risks of infant illness, disability and death are increased.</p> <p>Health Canada</p>
<p>MACDONALD</p> <p>EXPORT 'A'</p> <p>25 Cigarettes • Full Flavour</p>	<p>MACDONALD</p> <p>EXPORT 'A'</p> <p>25 Cigarettes • Full Flavour</p>

Early Warning: Content Labeling

TYPE OF INGREDIENT... AND PERCENTAGE?

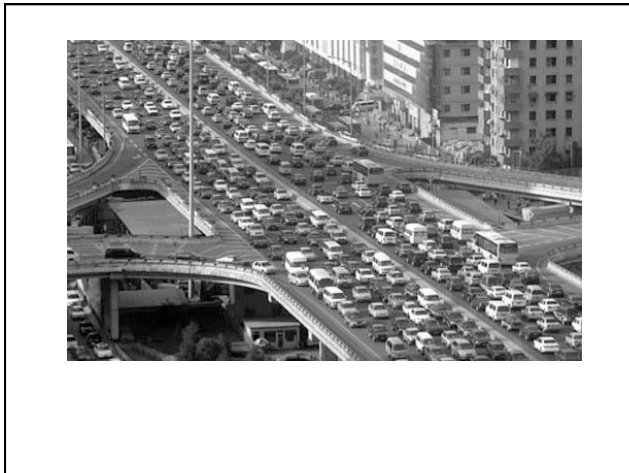
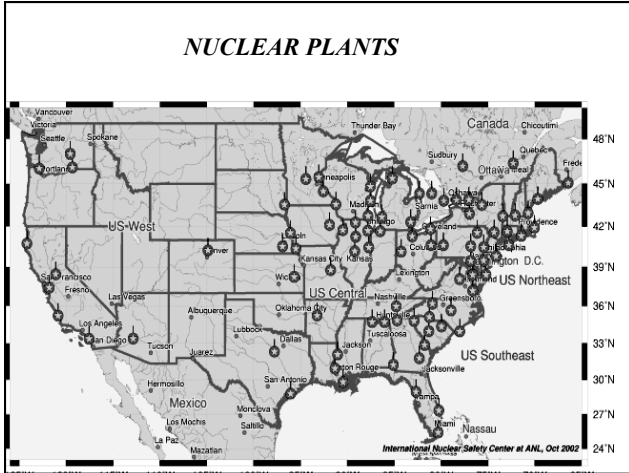
<p>ORGANIC INGREDIENTS</p> <p>OAT FLAKES (53%)</p> <p>APPLE (28%)</p> <p>PEAR (19%)</p>	<p>any ac unne Our f high vegeta nutrit</p>	<p>USE BY DATE ON ENI</p> <p>INGREDIENTS: 0-D MONOPAT MILK, LACTOSE, HIGH-OLEIC SAFFLOWER OIL, COCONUT OIL, SOY OIL, WHEY PROTEIN CONCENTRATE, CONTAINS LESS THAN 2% OF: POTASSIUM CITRATE, CALCIUM CARBOXYLATE, ASCORBIC ACID, POTASSIUM CHLORIDE, CHOLINE BITARTRATE, MAGNESIUM CHLORIDE, FERROUS SULFATE, ASCORBYL PALMITATE, TAURINE, INOSITOL, ALPHA-TOCOPHERYL ACETATE, MIXED TOCOPHEROLS, SODIUM CHLORIDE, ZINC SULFATE, NIACINAMIDE, CALCIUM PANTOTHENATE, COPPER SULFATE, VITAMIN A PALMITATE, THIAMINE CHLORIDE, HYDROCHLORIDE, RIBOFLAVIN, PYRIDOXINE HYDROCHLORIDE, BETA CAROTENE, FOLIC ACID, MANGANESE SULFATE, VITAMIN B12, BIOTIN, SODIUM SELENATE, VITAMIN D3, VITAMIN E, VITAMIN K3, VITAMIN PANTOTHENATE, VITAMIN B6, VITAMIN B1, VITAMIN B2, VITAMIN B3, VITAMIN B5, VITAMIN B7, VITAMIN B9, VITAMIN C, VITAMIN D, VITAMIN E, VITAMIN K, VITAMIN P, VITAMIN Q, VITAMIN R, 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VITAMIN WG, VITAMIN WH, VITAMIN WI, VITAMIN WJ, VITAMIN WK, VITAMIN WL, VITAMIN WM, VITAMIN WN, VITAMIN WO, VITAMIN WP, VITAMIN WQ, VITAMIN WR, VITAMIN WS, VITAMIN WT, VITAMIN WU, VITAMIN WV, VITAMIN WW, VITAMIN WX, VITAMIN WY, VITAMIN WZ, VITAMIN XA, VITAMIN XB, VITAMIN XC, VITAMIN XD, VITAMIN XE, VITAMIN XF, VITAMIN XG, VITAMIN XH, VITAMIN XI, VITAMIN XJ, VITAMIN XK, VITAMIN XL, VITAMIN XM, VITAMIN XN, VITAMIN XO, VITAMIN XP, VITAMIN XQ, VITAMIN XR, VITAMIN XS, VITAMIN XT, VITAMIN XU, VITAMIN XV, VITAMIN XW, VITAMIN XZ, VITAMIN YA, VITAMIN YB, VITAMIN YC, VITAMIN YD, VITAMIN YE, VITAMIN YF, VITAMIN YG, VITAMIN YH, VITAMIN YI, VITAMIN YJ, VITAMIN YK, VITAMIN YL, VITAMIN YM, VITAMIN YN, VITAMIN YO, VITAMIN YP, VITAMIN YQ, VITAMIN YR, VITAMIN YS, VITAMIN YT, VITAMIN YU, VITAMIN YV, VITAMIN YW, VITAMIN YX, VITAMIN YZ, VITAMIN ZA, VITAMIN ZB, VITAMIN ZC, VITAMIN ZD, VITAMIN ZE, VITAMIN ZF, VITAMIN ZG, VITAMIN ZH, VITAMIN ZI, VITAMIN ZJ, VITAMIN ZK, VITAMIN ZL, VITAMIN ZM, VITAMIN ZN, VITAMIN ZO, VITAMIN ZP, VITAMIN ZQ, VITAMIN ZR, VITAMIN ZS, VITAMIN ZT, VITAMIN ZU, VITAMIN ZV, VITAMIN ZW, VITAMIN ZX, VITAMIN ZY, VITAMIN ZZ</p>
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Organix Baby Food Infant Formula



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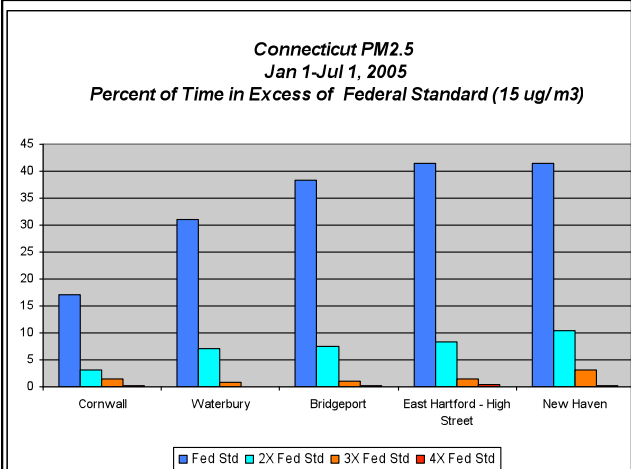
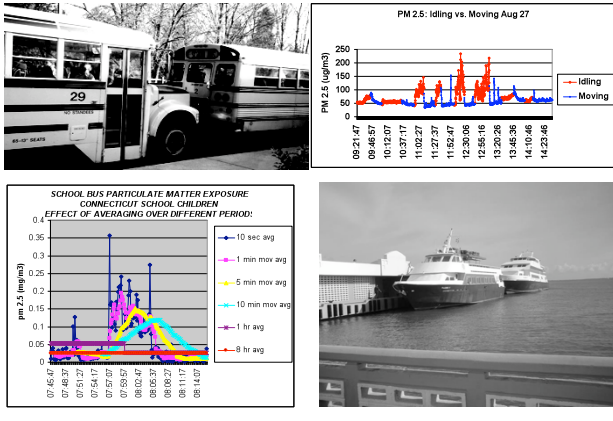
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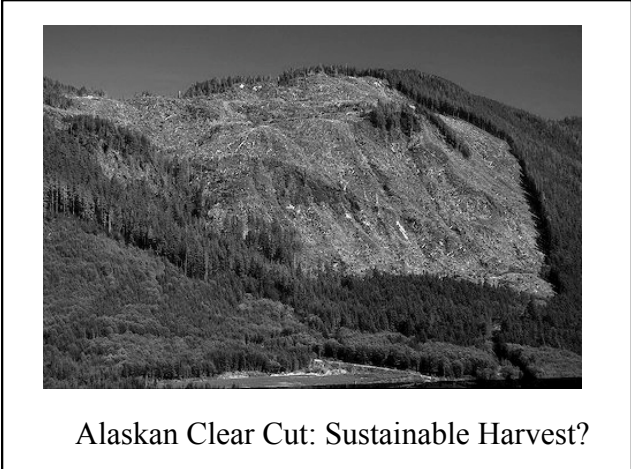
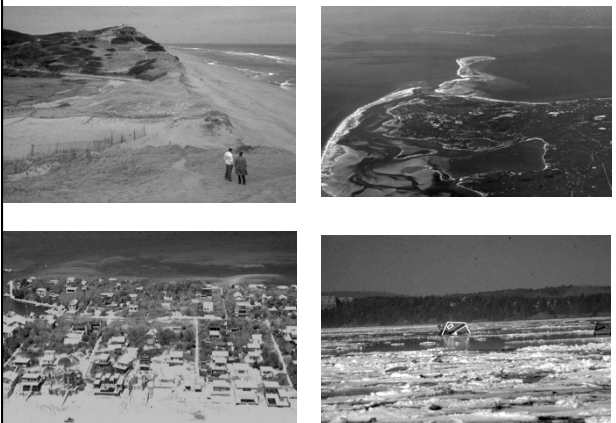
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The Trouble With Diesel



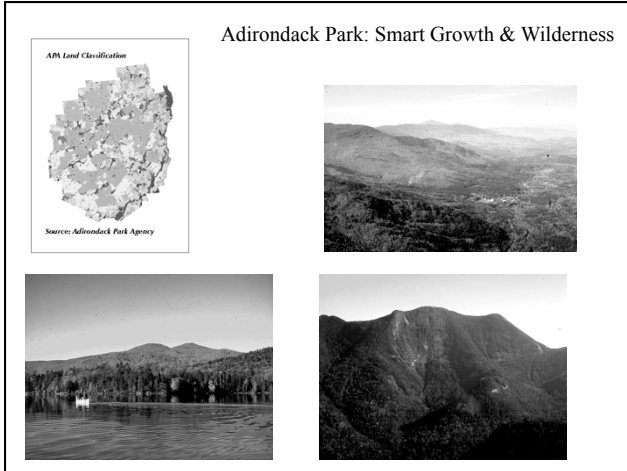
How Should Land Use Be Managed: Property Rights Public v. Private?



Alaskan Clear Cut: Sustainable Harvest?

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- Strategies to Effect Environmental Protection*
- Negligible Risk: “Reasonable Certainty of No Harm”: FQPA
 - Risk Ceilings: Acceptable Risks (Delaney Interpretation)
 - Risk Benefit & Cost Benefit Balancing: FIFRA, OMB ORA
 - Risk-Risk Trade Offs: Malaria/Pesticides
 - Pollution/Development Rights Trading:
 - Sustainable Yield Definition: MUSYA, Water Rights
 - Public Domain Access Restrictions: Wilderness Permits/Carrying Capacity
 - Density Restriction: Traditional Zoning
 - Land Use Segregation: Adirondack Park, California Coastal Commission
 - Disclosure and Transparency: NEPA, FOIA
 - Product Certification: Food Production Act, Tropical Timber
 - Technology Forcing: Delays: CAA
 - Restricting False Claims of Benefit: FFDCA
 - Tax Incentives: Discourage Consumption or Encourage Investments
 - Labeling: Fair Warning?

- Imagine a New Form of Law.....*
- a. Right to Know: Knowledge as Common Property
 - b. Precautionary Principle: Reasonable Certainty of No Harm
 - c. Protection of the Most Vulnerable: Children, Elderly, Poor
 - d. Riskiest First: Strategic Attention to Highest Risk
 - e. Standards of Proof: What Certainty of harm/safety demanded?
 - f. Burden of Proof: Public/harm or private sector/safety

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