

Restoring Hazardous Landscapes Science, Justice, and Law

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Environmental Politics and Law*

Lecture 7: February 4, 2010

Declaration of National Environmental Policy

- (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

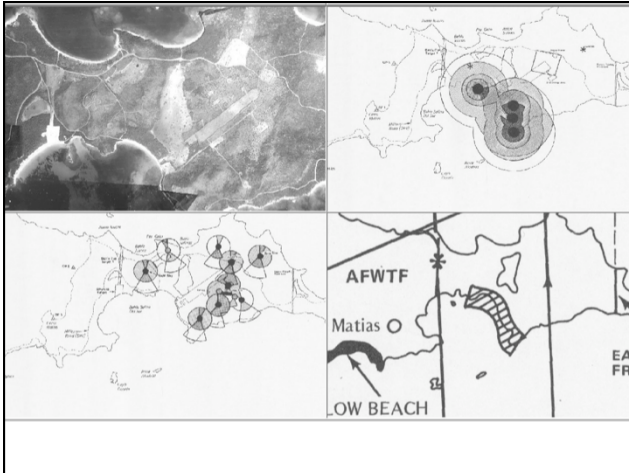
Declaration of National Environmental Policy

- Sec. 102 [42 USC § 4332].
- The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --
- (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;
- (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

Citizen Suit Provisions

- Clean Air Act
- Clean Water Act
- CERCLA
- RCRA
- EPCRA
- ESA

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Resource Conservation & Recovery Act 1976

- Comprehensive Program to Manage Hazardous & Non-Hazardous Wastes
- Cradle to Grave Tracking System
- Non-Hazardous Waste Landfill Restriction
- Hazardous Waste Land Disposal Ban (1984)
- Underground Storage Tanks
- Used Oils

Key RCRA Controversies

- Listing of Hazardous Waste Characteristics
- Mixtures: If a listed waste is mixed with non-hazardous waste, the mixture is hazardous
- (Dilution is not the solution)
- Used Motor Oils: Some are exempted, but toxic
- Household Wastes: Non Hazardous
- Mining & Oil Production Wastes Excluded
- Corporate Officials Can Be found Criminally Liable
- Citizen Suits: Individuals Can Bring Action in District Ct.

Between 1980 & 1986

- EPA Identified 27,000 contaminated sites
- 6 had been cleaned up
- The list was growing
- Congress was more than impatient....

Emergency Planning Community Right to Know Act (SARA 1986)

- Communities have a right to know about chemicals made by, stored in, and emitted from local businesses.
- Toxic Release Inventory created to track chemical releases to the environment.

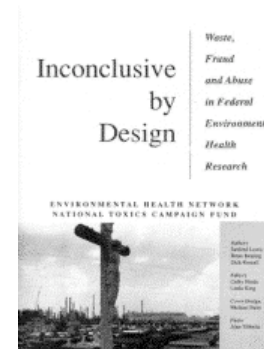
Superfund Amendments Reauthorization Act 1986

- Authorized \$8.5 billion for NPL sites
- Public Involvement Mandated
- Permanent Remedies Required
- Best Available Technologies Need Be Applied
- State Standards Apply if More Stringent
 - (No Preemption)
- Citizen Suit Provisions

Clean Up Now, Litigate Later

- Progress on Clean Up was stalled by litigation, permitted by CERCLA's citizen suit provision.
- Once EPA initiates an order to clean the site, it cannot be stopped by litigation of PRP's.

Centers for Disease Control Agency for Toxic Substances & Disease Registry



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Sanchez v. United States

- 2007 7,000 Vieques residents filed a federal suit, *Sanchez v. United States*, claiming that the Navy used a portion of the island as a firing range and weapons-testing ground it negligently exposed Vieques' population of 10,000 to dangerous levels of toxins.
- Government's Response: Sovereign Immunity

CNN VIDEO PART 1

Key Questions

- Defense Department Prior Knowledge
- Class Action
- Sovereign Immunity
- Causation

Clean Up?
\$4-45 Billion



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Wilderness Act of 1964 Public Law 88-577

DEFINITION OF WILDERNESS Section 2 c

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.

Wilderness...Further Definition....Section 2 Con't.

An area of wilderness is further defined to mean in this Act

An area of undeveloped Federal land retaining its primeval character and influence,

- without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which
 - (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;
 - (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation;
 - (3) has at least 5000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and
 - (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.



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Endangered Species Act 1973

PURPOSES-

The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species.

POLICY

It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

Section 9a Prohibited Acts:

It is unlawful for any person subject to the jurisdiction of the United States to-

- (A) import any such species into, or export any such species from the United States;
- (B) take any such species within the United States or the territorial sea of the United States;
- (C) take any such species upon the high seas;
- (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species ...
- (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;
- (F) sell or offer for sale in interstate or foreign commerce any such species;

Threatened (T) and Endangered (E) Species on/near Vieques

- T Iguana, Mona ground (*Cyclura stejnegeri*)
- E Manatee, West Indian (*Trichechus manatus*)
- E Parrot, Puerto Rican (*Amazona vittata*)
- E Pelican, brown (*Pelecanus occidentalis*)
- T Sea turtle, green (except where endangered) (*Chelonia mydas*)
- E Sea turtle, hawksbill (*Eretmochelys imbricata*)
- E Sea turtle, leatherback (*Dermochelys coriacea*)
- T Sea turtle, loggerhead (*Caretta caretta*)
- E Seal, Caribbean monk (*Monachus tropicalis*)

ESA and Economics: Utilitarian Balancing

- Statute requires designation of critical habitat at time of species listing
- Only 1/3 of all species have designated critical habitat
- FWS may decline to designate based upon economic considerations following an economic analysis.

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“Taking” Endangered Species

- Section 9 expressly prohibits taking an endangered species.
- Take: “to harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”
- Also: To impair habitat that may indirectly cause death or injury by disrupting feeding, breeding, or other critical species functions.
- See www.earthjustice.com

FISH & WILDLIFE SERVICE JURISDICTION: MAY 1, 2003

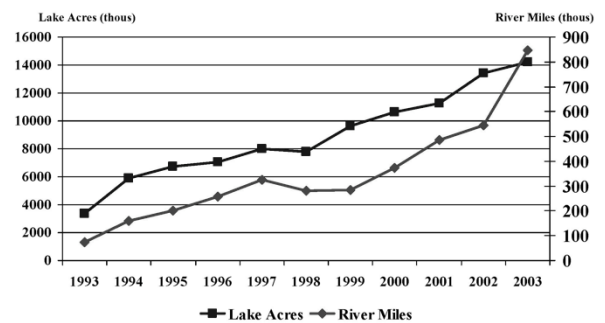


2003: *Navy Plans Mainland Bombing Ranges*

The Navy will expand its use of bombing ranges in Florida and elsewhere on the United States mainland when it abandons a site on the Puerto Rican island of Vieques in May.

N.Y.; Jan 11, 2003;
New York Times

Lake Acres and River Miles Under a Fish Advisory

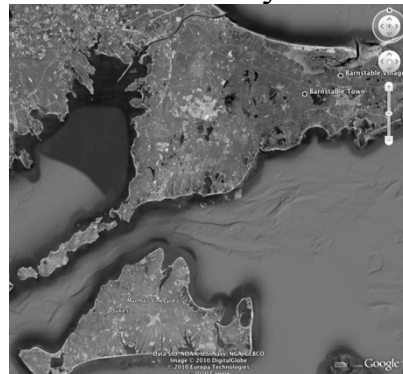


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Johnston Atoll
Pacific Islands National Wildlife Refuge



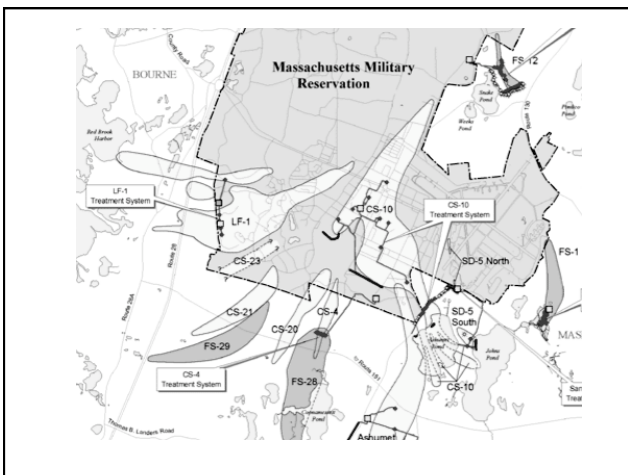
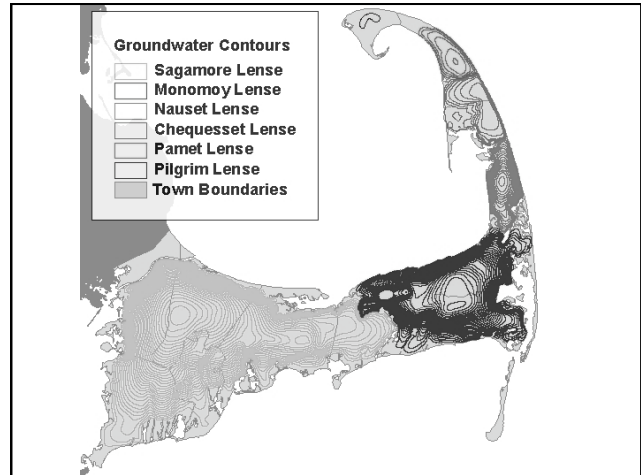
Massachusetts Military Reservation



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MMR 2...



13 Groundwater Plumes...Since 1993:

- 3000 pounds of solvents removed
- 1000 pounds of fuels removed from groundwater
- 8 Plumes Undergoing Treatment and Remediation
- 3 Plumes will have Treatment Facilities Built
- 2 Plumes Under Investigation
- 3 “Areas of Concern” Under Long Term Monitoring

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Vieques Lessons...

Knowledge is Power:

- Intellectual Property Rights: Classified Information
- Who Conducts Science
- How Does Knowledge Flow
- Interpretation Demands Expertise
- Science Normally Proves No Causal Relation
- New Evidence of Risky Behavior Generates Defensive Attitude in Government

Lessons Continued...

- Cold Warfare: Unanticipated Toxic Aftermath
- Costs of Cleanup Far Exceed Prevention Costs
- Decision Making Transparency Builds Public Trust
- Susceptibility: Income, Age, Exposure, Gender, Ethnicity, Location
- Security: Fear of Terrorism Has Trivialized Health & Environmental Concern of Government but Not the Public
- Security Has Many Forms: Physical, Economic, Health, and Freedom from Toxic Substances

How Should We Manage the Distribution of Costs

Land Use Decisions:

Industrial Sites
Highways & Truck Stops
Bus Depots
Waste Storage & Transfer
Sewage Treatment Plants
Airports
Port Facilities
Power Corridors
Communication Towers
Military Bases
Power Plants
Incinerators
Fuel Depots

Distribution of Benefits:

- *Water Supply Systems*
- *Sewage Treatment Plants*
- *Parks and Preserves*
- *Wildlife Refuges*
- *Schools*
- *Hospitals*