

The Song and Dance of the 1990 Clean Air 'Act'

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THE CLEAN AIR Act of 1990 is law now, after House and Senate conferees reconciled their two air pollution control bills and passed the new version. However, the public -- and the planet -- are the losers. So is the democratic process. And the environmental movement.

Neither bill does much to stop or cut back the production of poisons. Administration and Congressional leaders met many times in secret during the last 18 months to craft these bills which deny citizens access to industrial decision-making and which concentrate authority in appointed bodies far from citizens' reach. Yet environmental leaders in Washington nevertheless have urged their constituents to rally behind these bills which they label as vital health and environmental protections.

MAJOR CHANGES NEEDED

There is ample evidence that major changes are necessary. In 1988, nearly 100 areas that are home to 135 million people exceeded the inadequate federal standards for ozone smog. Even more people experienced unhealthy amounts of carbon monoxide and particulates. The 1977 federal deadlines for reducing carbon monoxide, hydrocarbons and ozone were delayed until 1982, and then until 1987 -- and still have not been met. There has been "no statistically significant change in annual emissions of particulates, sulfur dioxide and nitrous oxide since 1982," says Dr. Barry Commoner. Chemical production has more than doubled over the last decade. The chemical industry now manufactures about 500 billion pounds of "products" and an equivalent amount of "wastes" each year. Many of the products and wastes are long-lived and toxic, and make their way into the air. Inhabitants of urban and rural communities in every part of the country have suffered immune system breakdowns and

deterioration of vital organs, as well as cancers and diverse diseases.

Previous "clean air" laws directed the Environmental Protection Agency (EPA) to protect the public's health. But for the last decade, the EPA has directed its efforts mostly into nurturing a "waste management" and "toxic dumping" industry and into keeping angry citizens at arm's length from polluters. Illness and premature death, the destruction of ecosystems and the undermining of the nation's productive capacity continue to be the price we pay by ceding to industry the sole right to decide what to produce and how to produce it.

THE BACKGROUND

During the 1980s, the Reagan-Bush administration forbade any attempt to put clean air on the agenda. Neither Congress nor the national environmental organizations overcame this ban.

When George Bush became president, he signalled that he wanted a new clean air law to be the "centerpiece" of his environmental presidency. In May 1989, the National Clean Air Coalition -- made up of the Natural Resources Defense Council, the Sierra Club, the Environmental Defense Fund, the National Wildlife Federation, the National Audubon Society and other conservation groups, along with the US Public Interest Research Group, the American Lung Association, some unions like the steelworkers and church groups like the National Council of Churches -- sent a letter to the President outlining what the law should cover.

The next month, the President summoned Congressional leaders, governors and, in his words "executives of some of the most important companies and business organizations in America, along with leading conservationists" to the East Room. He told them: ". . . we can break the stalemate that has hindered progress on clean air. And with the minds, the energy, the talent assembled here, we can find a solution . . . New solutions are close at hand . . . We can set an example for the rest of the world to follow . . . And this can be known as the year we mobilize leadership, both public and private, to make environmental protection a growth industry . . . Ours is a rare opportunity to reverse the errors of this generation in the service of the next."

Some Congressional leaders, especially Democrats, beamed. National environmental groups applauded, and expressed cautious optimism. "The words are refreshing, but the substance must match," the Clean Air Coalition said in a press release. Industry grumbled about costs and jobs, but seemed to accept the inevitability of some government action. (Abetted by the Reagan-Bush administration, industry had prevented any Congressional action on air pollution since 1977, and had blocked enforcement of the 1970 law and its 1977 amendments.) The press proclaimed a new era. "In Washington DC, This Is the Year for Clean Air," headlined *The New York Times*. "Bush Resolving Clash in Campaign Promises, Tilts to Environment," the *Wall Street Journal* confided.

What the press missed was that by the time the best minds and talents had gathered in the East Room, the Clean Air Coalition strategists already had decided to limit their goals, and wage a campaign on their adversaries' terms, The Coalition had chosen only to tinker with

the existing regulatory framework which legalizes industrial poisoning and which disempowers citizens. Intimidated by Congressional staffers and George Bush's delivery boys, its members acquiesced in granting additional authority to an agency, accountable only to the President, which over the years has done little of what Congress has ordered.

In its letter to Bush, the Coalition focused on existing technologies. It assured the President that adequate machines are available now to "control" pollution. The Coalition did not try to get zero emissions, on the table even though this was a subject of deep discussion among proponents of the 1970 Clean Air Act. It did not demand safe substitutes, or a shift in the burden of proof to those producing new or questionable substances. Other than recommending slow (until 2030 AD) phase-out of some ozone destroyers, it proposed no bans, even of chemicals and industrial processes known to be killers. It validated "risk assessment" as a tool of EPA decision-making, along with "acceptable risk," and "cost" as part of the definition of "best technology." It also accepted cancer as the primary indicator for EPA to use to decide what action to take.

All of this contradicts positions taken by the national conservation and environmental organizations. For example, the Coalition's May letter to the President begins: "Our nation faces a crisis of deteriorating air quality . . . We urge you to adopt a program to achieve a national goal of clean, healthy air quality before the end of the 1990s . . . Passing an ambitious new clean air act is our highest environmental priority in Congress." Yet the Coalition proposed methods which would not clean much air this decade or the next. Its actions were hardly consistent with "crisis" or "highest priority."

CONTENT OF THE BILLS

The two clean air bills which emerged from the House and Senate total more than 1,000 pages. Their language is not simple, but it can be deciphered. One would not know this from the Press coverage. It does not appear that reporters, editorial writers or columnists who covered these 18 months of "clean air" politics actually read the drafts as they emerged. The journalists looked at "side-by-side" comparisons or relied on summaries of "goals" prepared by lobbyists on all sides. That made it easy for the various advocates to focus public attention -- such as it was -- on their "intents." Because there was no press scrutiny the advocates were able to pretend they were fighting valiantly for vital principles and public health while, in fact, they were bickering over gutless standards, irrelevant timetables and the best ways to insulate EPA further from the people. When the bills passed their separate houses of Congress, *The Boston Globe* declared them "a historic crackdown on air Pollution." *USA Today* announced that "a sweeping clean air law is [ordering] industry to eliminate airborne toxics."

But there was no crackdown, no sweep. The bills never were intended to give citizens new tools to help them force polluters to change their production methods or make amends for the great harm they already had caused. It was as if there has been no debate in Congress since the 1960s, as if epidemiological evidence has not been piling up, as if citizen organizers today are not demanding a new ethic and the laws to match which values people, community and ecosystems above ever more production.

The Coalition has not only embraced limited goals which contradict people's experience, but also has validated a regulatory structure which conceals, confuses and disempowers. Both House and Senate versions of the bill concentrate greater authority in the EPA and its administrator, even though EPA stands revealed as the protector of the polluters rather than of the environment. The Coalition went along with intricate defining mechanisms and permitting systems which legalize increased production and emissions of poisons. It agreed to complex timetables riddled with exemptions and extensions for the steel, oil, chemical and other industries. It accepted assumptions contrary to the science and practice of public health. Rachel Carson and many others over the last 30 years have explained the "chain of evil" which new synthetic chemicals and industrial poisons initiate. Carson warned about pollution's power "not merely to poison but to enter into the most vital processes of the body and change them in sinister and often deadly ways."

LONG TIME FRAME

In the air toxics section, for example, both bills substitute industry's "sort of best" technologies for public health standards that earlier laws had mandated. For the approximately 200 chemicals that would be regulated under the House bill, the EPA administrator has two to 10 years to promulgate technology standards. Eight to nine years after promulgation of each standard, the administrator must determine whether there is a "residual risk" and whether that risk is "acceptable." If so, s/he must set new health-based standards. The time frame is shown in the accompanying chart.

% Chemicals To Be Regulated	Time Until			Total Years Until Health Studied
	Technical Standard	Residual Risk Assessment	Automatic Extension On Request	
10% (n - 20)	2 Years	9 Years	2 Years	13 Years
25% (n - 50)	4 Years	8 Years	2 Years	14 Years
25% (n - 50)	7 Years	8 Years	2 Years	17 Years
40% (n - 80)	10 Years	8 Years	2 Years	20 Years

It will be the year 2000 before industry has to achieve even "almost best" technology for more than half of the deadly chemicals. It will be at least 2003 before this law will allow citizens to begin to weigh in with their feelings about which substances pose "unacceptable" risks, and to pressure for appropriate regulations. Citizens must wait until the 21st Century to debate industry experts over technologies, costs and availabilities, even though by then chemical production will have doubled once again. Even when the "residual risk" section kicks in, there are no categories for "no risk to anyone," zero emission, phase-outs and bans, unless such categories suit the whim of the EPA administrator and those in the White House

who are calling the shots. Finally, the President also is authorized to grant unlimited two-year extensions to any industry based on his own definition of technological unavailability and "national security."

Health issues are not on the table when it comes to auto and electric power plant emissions, either. Auto emissions are fixed according to "available" technology until about 2000 AD -- when the EPA administrator decides what further action will be necessary. The laws make no effort to force manufacturers to redesign engines, or even go back to low-compression engines of pre-World War II days which are inherently less polluting. They are counting on a shift to unproven "alternative fuels" and to electric cars, powered by electricity-generating plants.

The acid rain sections mandate reductions in power plant emissions. They introduce the concept of marketable permits: the selling of pollution "rights" among companies. Even the Clean Air Coalition says that such an approach requires "continuous source-by-source monitoring and strict enforcement," neither of which has been EPA's strong point over the years.

Some people are pleased that there is an amendment to the House bill which provides some benefits and training to people who may lose jobs because of the law. (For almost every provision in the bills, industry has threatened that millions of jobs would be lost, claims that are predictable and outrageous.) The amendment by Congressman Robert Wise is a nice enough gesture. But all it does is to give back 26 weeks of unemployment payments the Reagan-Bush administration and Congress took away, and grant some "job-search" benefits under Vice President Quayle's inadequate Job Training Partnership Act. It does nothing to protect workers and communities against industry and politician job blackmail. It does nothing to open debate on how the workers can contribute their expertise to transform these industries. It takes no steps toward even raising the idea that our citizenry must plan and carry out industrial transitions without forcing workers onto the scrap heap, without ruining and abandoning community after community.

NO NEW DIRECTIONS

These two bills give no inkling of any new directions the nation should seek. No part of the bills recognizes the need to stop building millions of new cars and trucks and to substitute less destructive, less costly transportation alternatives. There is occasional lip service to something called "mass transit," but no direction, no commitment and no funding. There is nothing to help people withstand the great power of the auto industry, or to encourage the leadership of the United Auto Workers to stop shilling for dirty air. Similarly, there is no commitment to national energy efficiency or to a transition to solar power.

The Coalition chose voluntary complicity when it agreed to play the inside game with the president's assembled best. The Coalition seems to value credibility with the politicians and the polluters more than credibility with the polluted.

The Coalition could have chosen otherwise. In the 1980s, thousands of community-based groups formed to stop the poisoning. They learned as they went along, They learned the

importance of identifying the poisoners and stopping the poisoning. They understood the need to counter job blackmail, to make the poisoners liable, to gain access to production and financial information to intervene in investment, technology and production decisions -- in other words, to challenge managerial prerogative. They learned the importance of dragging democracy past factory gates and board room doors. They understood that communities have to battle for resources to care for the afflicted and to build for an equitable and ecologically sound tomorrow. The local organizations have pursued strategies independently of national conservation and environmental groups, going up against the producers, waste dumpers, incinerator and highway builders, nuclear bomb makers, and agribusiness land destroyers.

If the talent in the East Room had set out intentionally to craft legislation aimed at undercutting these local citizen efforts, they could not have done better than these "clean air" bills. The bills are a slap in the face to the people mobilizing across the country to protect their families and communities.

But the Coalition won't tell. It forgot about its warning to the President that "the substance must match" the promises. The politicians won't tell. The polluters, whining to the end as they laugh up their sleeves, won't tell. And the reporters can't tell because they won't bother to read the text.

FALSE VICTORY

Now that the Clean Air Act is law, a great victory will be declared by the President, Congress' environmental leaders, the institutional environmental movement, and even by the polluters. The press will dutifully report these lofty claims, label the law a noble compromise, and call it "the best we could get." Lawmakers who voted for the bill will go home and say they were "for" clean air. The law and the political process that created it and which Coalition Chair Richard Ayres called atrocious will be hailed as a model. The locus of activity will shift to highly insulated regulatory agencies and appointed permitting boards, to detached scientific committees and unaccountable EPA offices, all far removed from community organizers who are trying to change the ways America does business. In procedures stacked against citizens and common sense, industry lawyers will challenge even the mealy-mouthed criteria in the bills which could save a tree or a bird here or there. A handful of environmental lawyers will valiantly try to hold the line. For the next decade and longer, the environmental establishment will pour money and effort into fighting the debilitating language, suffocating structure and stacked decks of what they have wrought.

Congress, polluters and the president will move on to amend RCRA, to focus on energy, water and the rest of their "environmental" agenda. They will see the Clean Air Coalition groups sending out direct mail asking for money now that the clean air battle has been "won." This will reaffirm to them that despite all the polls, all the Earth Day hoopla, all the pundits who have declared this the "environmental decade," they still have little to fear from these groups working in isolation from the broader, community-based movement. They will be confident that, as they did with their song and dance in the clean air "act," they will be able to restrict the legislative agenda and manipulate the national environmental organizations.

The polluters will poison on. They will grow more powerful, and continue to get away, literally, with murder. They and the politicians will control debate, shape press coverage, limit what the public knows and keep their previous managerial prerogative intact. People, flora and fauna will go on dying from poisoned air, none the wiser for the experience.

The lesson here is not so much that the Clean Air Coalition lost, but that without having engaged in a real battle, it declares it has won. In fact, it lost in a way which did not educate or energize the nation, and which creates a false sense that mechanisms are now in place to bring "air pollution" under control. What must be recognized is that the Coalition never set out to stop the poisoning and destruction that have increased since national clean air laws were enacted in the 1970s. It did not try to ask publicly why this has been so. It did not seek citizen empowerment, or debates that would reveal the investment and production changes that would be necessary to "clean" the air. It never consulted community-based organizers to find out what laws they need.

MAKING THE COALITION ACCOUNTABLE

The Clean Air Coalition purports to speak and act on behalf of a broader environmental movement. Its leaders must, therefore, be responsive to that movement. They must be held accountable. They need help rethinking their strategies and reconsidering their complicity with the polluters and the politicians. They must start considering what political organizing will be required to stop the destruction of ecosystems and communities. The activists in the nation's communities must now demand that the Coalition members conduct an honest reassessment, by means of a process which involves local organizers on an equal basis.

The air struggle was a major setback. It would be a disaster if the process were repeated. It is time, therefore, for a moratorium on national environmental legislation. Environmental groups in Washington have neither the clout nor the will to get laws passed commensurate with the problems the nation faces. But they can take heart from citizens organizing everywhere -- from ordinary people taking real risks at the point of production and destruction. These citizens are forcing their way into corporate decision-making. They are raising aspirations by demanding phase-outs and bans, restorations and reparations, health testing and medical care, planned transitions during which wages and benefits continue. They are crafting new social compacts which protect workers and communities instead of discarding and destroying them. Over the next few years, after communities have won enough victories, the broader movement for environmental justice will be able to force Congress to affirm nationally what communities and workers have achieved locally. Perhaps if the national groups invest time and resources in working with people fighting to protect their regions and their communities, they will be able to figure out ways of joining forces to hasten that day.

Community activists do not want to argue with industry and government experts over "acceptable" risks. They do not want to be stuck in legal proceedings that are stacked against them and which are contrary to common sense. They do not want to be locked into timetables which protect polluters for decades. They do want to be able to protect their communities, their children, and ecological diversity. If they are going to risk their jobs and their livelihoods by crossing their local power structures, they want to do so in pursuit of

substantive changes in political power and production practices, not paper victories.

They certainly do not need to be sold out by the very institutions which in the past helped to raise the nation's environmental awareness.

In 1970, Congressman Ken Heckler from West Virginia declared on the floor of the House of Representatives: ". . . our nation has had a sad and frustrating history of weak-kneed inaction by those who've been charged with protecting the divine right of every citizen to breathe clean air . . . We can no longer afford the pussy-footing, artful dodging, delays, end runs, and outright flaunting of the intent of the legislation which has characterized the history of air pollution control."

Today, 20 years later, that history is sadder, that battle more frustrating, because of this latest charade. People must acknowledge what has taken place. People must learn some lessons for a change. only then can we make new history.