



Who's Greener -- Democrats or Republicans?

Neither, apparently, and lawyers could not care less

By J. Daniel Hull, JD

WASHINGTON, D.C. -- Well what's the answer?

In olden times, just over 30 years ago in the mid-1970s, the environmental movement was still young, "environmentalists" were a troublesome new class of malcontents and eccentrics, and men were still men. Environmental legislation seemed highly partisan. Democratic majorities on both sides of Congress (until 1980 when the Senate changed) were the driving force behind new clean water and clean air amendments, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Response, Compensation, & Liability Act (CERCLA)/Superfund. Republicans, for the most part, aligned themselves with businesses and those industries charged with polluting natural resources. Starting during the Jimmy Carter years (1976 to 1980), and in later administrations of both parties, laws and regulatory apparatuses started piling up, and regulators in both the U.S. Environmental Protection Agency (EPA) and its state counterparts were often accused of getting carried away. By the mid-1980s, it was clear that environmental compliance and use of the "best available" technologies was -- while somehow "good" -- expensive and could even cost jobs.

The environment needed to have its day, before it was too late, said many of the Democrats. Some of this is crazy, and it's costing everyone, especially smaller businesses, too much money, said most Republicans.

Both sides had a point, and a point of view. Only lawyers, ironically, took no sides. In fact, we liked it. More statutes meant more rulemakings, more enforcements, and more interesting -- and lucrative -- work. In particular, Superfund, enacted in 1980, became a lawyers' relief act for hired guns and environmental professionals of all persuasions.

By 1981, things were murky, so let me provide some context and atmosphere. In 1981, the young Reagan Republicans swarmed like intoxicated but vengeful bees to the nation's Capitol and started to work there. They didn't even like to talk about the environment -- or anything that didn't involve fiscal management or revitalization of the military. At the time, I was a legislative assistant for a talented, highly respected, and moderate Republican Congressman from a Midwestern state with some staff so cynical and conservative that they regularly filed "American Indian" matters under "Environmental" -- because Native Americans were "part of nature."

"Put that in your pipe and smoke it, lib!" one young gloating Republican (a guy I'll call Wendell I had seen around my Capitol Hill neighborhood) told me in January 1981 after Reagan won. Wendell was upset about the cost to businesses of the new Superfund law, passed in the last year of the Carter Administration. That was a winter Sunday afternoon in a then-new bar called "Bullfeathers" two blocks away from the House office building I worked in and within staggering distance of my D Street apartment.



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In a sense, the 1980 election of Ronald Reagan marked the beginning of our current culture wars. To Wendell, calling me "lib" was the worst thing his mind could conjure. A young Republican calling you a "lib" in 1981 in Washington, D.C. was like being called a conscientious objector in 1942 during basic training in Biloxi. Wendell had seen me around before the election, but this time he saw red when I appeared at the long oaken bar in blue jeans with my tattered Harvard "Strike!" sweatshirt with the red closed-fist logo. Also, my best friend, an Oberlin graduate and serious Democrat, was crying in his Molson's about Reagan's election and the loss of the Senate to the Republicans. So, even though I worked for a Republican, Wendell, the Reagan guy, thought he had me pegged as a spy or imposter.

We humored Wendell until twilight, bought him a last beer, finished smoking our Camel non-filters, and then drove back to Alexandria in my Olds Delta 88 with the windows down, belching hydrocarbons and carcinogens into the cold January air all the way home. And even my Oberlin pal, back then, thought of recycling as a little joke. His empty beer cans stayed in my car until Spring. We both over-watered our lawns and used aerosol sprays. We refused to carpool or take Washington's new subway. My friend and I weren't really any more pro-environment than Wendell.

The Big Ones Get Passed

During the 1980s and early-1990s, regardless of who lived in the White House or controlled Congress, the major environmental statutes were passed in a seemingly endless flow. Eventually, environmentalism did become increasingly mainstream. Everyone, it was recognized, had a "right to pollute," but there were limits. And the questions became these: Who gets to pollute? How much? Do we have to disclose any of this?

I thought it would be interesting to see if you could match up environmental statutes with certain American Presidents and/or the Congress with which each contended during their administration. The results, to me, are really interesting, even though my methodology is admittedly a bit rough. For instance, the chart doesn't reflect during which years (or administrations) the legislation originated, or that rulemaking proceedings implementing statutes could have been aggressively pushed along by one president over another. Refer to the chart for a run-down of the major modern environmental statutes by U.S. President and composition of Congress at the time.

On balance, in my rough assessment, Reagan and his Congress "win" the green sweepstakes, at least in legislation passed. While it's true that you would expect to see most of the building block statutes in the earlier years, I am still amazed, as are many other environmental lawyers, given all of Bill Clinton's and Al Gore's overtures about new environmental programs and stepped-up enforcement, that so little happened legislatively between 1993 and 2000, particularly since adjustments to the Clean Water Act, Clean Air Act, and Superfund were badly needed. Maybe that's a good thing (especially if you're a conservative) -- or just a reflection of the end of the cycle of the first wave of modern laws.

Further, I wondered about enforcement. Did the U.S. Department of Justice and EPA lawyers take more action on water issues during times when Democrats held sway? My answer, in this case, is: More -- but not much more. In my first column for *Water & Wastewater Products* (July/August, 2005), "A Very Short History of Environmental Crime," I discussed a study done by two fine environmental lawyers, Steve Solow and Ron Sarachan, who analyzed criminal negligence prosecutions under the Clean Water Act between 1987 and 2000 (*See 32 E.L.R. 11153 (October 2002) for their study.*) Although the authors were not writing an article comparing administration track records on the environment, a comparison of prosecutions during six Reagan years and eight Clinton years is interesting. The prosecutions in this one select area are nearly the same: Reagan years average "7.7," while the Clinton years were "8.9."

Another fact reflected in the study is the number of clean-water, criminal-based

prosecutions against corporations during the Reagan and Clinton years. In the study they were exactly the same: nineteen each. (However, Reagan's years averaged 3 per year; Clinton's years averaged 2.2 per year.) Finally, in fairness to the Clinton-Gore administration, during those years, overall environmental criminal prosecutions were far more numerous. According to the Solow-Sarachan study, the Reagan administration averaged 90 per year, and the Clinton administration averaged 162 per year.

So neither political party, it would seem, has a monopoly on environmental issues -- including water issues -- and that's good. In any event, the federal government can be expected to enforce water and other environmental laws, regardless of who's in power. And that means that the environment and the environmental business are mainstream items for years to come.

Happy New Year and good luck in 2006.

Green Parties

Lyndon Johnson (D) Democratic Congress

1967 -- *Air Quality Act (AQA)*

Richard Nixon (R) Democratic Congress

1969 -- *National Environmental Policy Act (NEPA)*

1970 -- *Major amendments to AQA*

1970 -- *EPA created*

1972 -- *Clean Water Act (passed over veto)*

1972 -- *Amendments to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**

Gerald Ford (R) Democratic Congress

1974 -- *Safewater Drinking Act (SWDA)*

1975 -- *FIFRA amendments*

Jimmy Carter (D) Democratic Congress

1976 -- *RCRA*

1976 -- *Toxic Substances Control Act*

1978 -- *FIFRA amendments*

1980 -- *CERCLA/Superfund Act*

1980 -- *More FIFRA amendments*

Ronald Reagan (R) Democratic House/Republican Senate

1984 -- *Hazardous and Solid Waste Amendments*

1986 -- *SARA Title III/Emergency Planning and Community Right-to-Know Act*

1986 -- *SDWA Amendments*

1987 -- *Water Quality Act (CWA Amendments)*

1988 -- *FIFRA Amendments*

1990 -- *Clean Air Act Amendments (major changes)*

1990 -- *Federal Pollution Prevention Act (PPA)*

1990 -- *Oil Pollution Act*

George H.W. Bush (R) Democratic Congress

1992 -- *Federal Facility Compliance Act*

Bill Clinton (D) Republican Congress (starting in 1995)

1994 -- *The Browner Common Sense Initiative*

George W. Bush (R) Republican Congress

2002 -- *Great Lakes Legacy Act*

* *FIFRA was originally enacted in 1947.*

*This editorial originally appeared in the January/February 2006 issue of **Water & Wastewater Products**, Vol. 6, No. 1*

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