

The National Agricultural Law Center



University of Arkansas  
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# Environmental Law: Federal Laws That Affect Agriculture

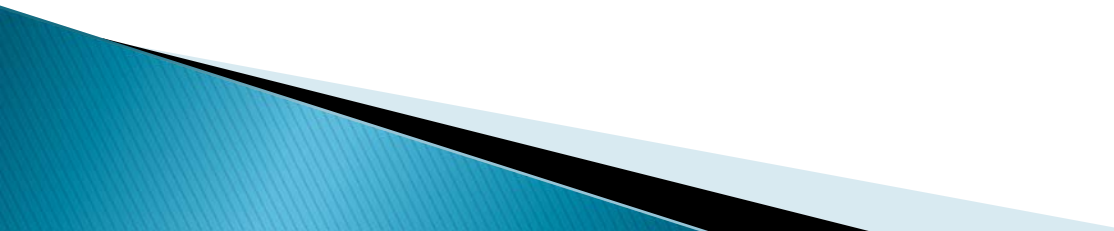
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# Why Are There Environmental Laws?

## Dust Bowl

- ▶ Severe dust storms causing major ecological and agricultural damage to the American and Canadian prairies from 1930 to 1936
- ▶ Caused by severe drought coupled with decades of extensive farming without crop rotation or other techniques to prevent erosion



# Why Are There Environmental Laws?

## Love Canal

- ▶ Discovery of 21,000 tons of toxic waste buried beneath a New York neighborhood, including schools, homes, and rental units.
- ▶ Result: "disturbingly high rate of miscarriages...Love Canal can now be added to a growing list of environmental disasters involving toxics, ranging from industrial workers stricken by nervous disorders and cancers to the discovery of toxic materials in the milk of nursing mothers." (1979 EPA Report)



- 56% of the children born from 1974–1978 had a birth defect.
- Chromosomal damage in 33% of the population (compared to 1 % in normal population) (1979 EPA Report)

# Why Are There Environmental Laws?

## Cuyahoga River

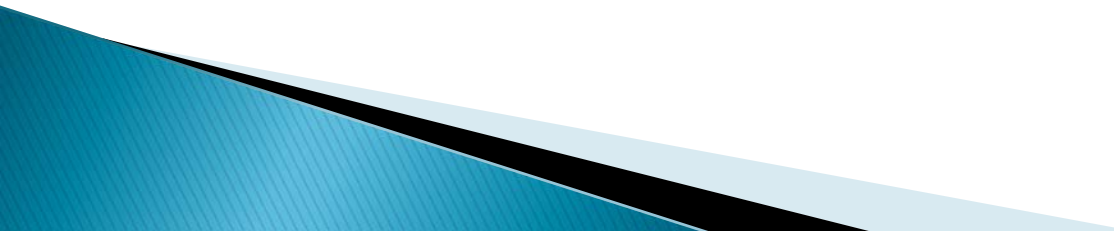
On June 22, 1969, an oil slick and debris in the Cuyahoga River caught fire in Cleveland, Ohio when sparks from a passing train ignited the river.

**Not the first time!** Fires occurred on the Cuyahoga River in

<i>1868</i>	<i>1883</i>	<i>1887</i>
<i>1912</i>	<i>1922</i>	<i>1936</i>
<i>1941</i>	<i>1948</i>	<b>AND 1952</b>



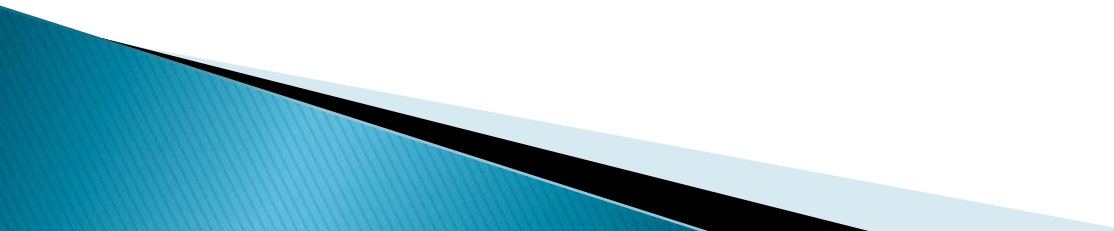
# Outline

- ▶ Clean Water Act (CWA)
  - ▶ Clean Air Act (CAA)
  - ▶ Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
  - ▶ Endangered Species Act (ESA)
  - ▶ Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
  - ▶ Conservation Programs
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# Clean Water Act (CWA)

- ▶ Purpose: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."
- ▶ **How** does it function?
  - Authorizing water quality standards for surface waters
  - Assisting with funding for construction of municipal sewage treatment plants
  - Issuing National Pollution Discharge Elimination System (NPDES) permits for "point source" discharges of pollutants into navigable waters
  - Planning for control of nonpoint source pollution

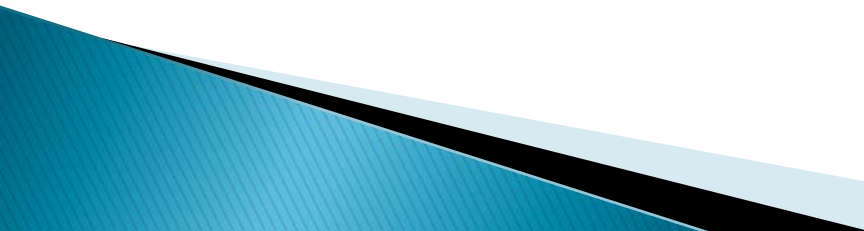
# CWA: Who's in Charge?

- ▶ Environmental Protection Agency (EPA) is the main agency
  - ▶ Other agencies involved include state environmental agencies and the U.S. Army Corps of Engineers.
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# Clean Water Act: NPDES Definitions

- EPA issues “National Pollution Discharge Elimination System (NPDES) permits for **"point source"** discharges of **pollutants** into **navigable waters**”
- *Point source discharges:*
  - Discharges from many manmade objects including pipes, ditches, tunnels, and airplanes, and **very large CAFOs and aquaculture operations**
  - **BUT NOT** return flows from irrigated agriculture, small feedlots, or sewage from certain ships
- *Pollutant:*
  - Broadly defined and includes heat, waste, soil, rock, chemical materials, and biological materials.
- *Navigable waters:*
  - Defined in the statute as the “waters of the United States”
  - Actually a controversial term that is further defined by agency regulations and conflicting judicial interpretations.

# Clean Water Act: NPDES Permits

- ▶ Permit applicant must provide quantitative analytical data identifying the types of pollutants present in the facility's effluent.
  - ▶ The permit will then set forth the conditions and effluent limitations under which a facility may make a discharge.
  - ▶ May also include discharge limits based on federal or state/tribe water quality criteria or standards that were designed to protect designated uses of surface waters, such as supporting aquatic life or recreation.
  - ▶ Permits contain industry-specific, technology-based and/or water-quality-based limits, and establish pollutant monitoring and reporting requirements.
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# Clean Water Act: Nonpoint Source

- “Planning for control of **nonpoint source pollution**”
- *“Nonpoint source pollution”*
  - Excess fertilizers, herbicides, and insecticides from agricultural lands and residential areas
  - Oil, grease, and toxic chemicals from urban runoff and energy production
  - Sediment from improperly managed construction sites, crop and forest lands, and eroding stream banks
  - Salt from irrigation practices and acid drainage from abandoned mines
  - Bacteria and nutrients from livestock, pet wastes, and faulty septic systems

# CWA: Nonpoint Source & Ag

- ▶ EPA reports that agriculture is “the leading source of water quality impacts to surveyed rivers and lakes . . . [and] the third largest source of impairments to surveyed estuaries.”
- ▶ No specific authority to prosecute for nonpoint source violations
- ▶ Instead, states assist and encourage producers to use best management practices to reduce or prevent instances of nonpoint source pollutants migrating into waters.
  - Managed on a watershed-by-watershed basis whenever possible.

# CWA: Wetlands

## ▶ **What is it?**

- Section 404 of the Clean Water Act establishes a permit program to regulate the discharge of dredged or fill material into the waters of the U.S., including wetlands; unless the activity is exempt from Section 404 regulation.
  - Many normal farming practices are exempt from Section 404.

## ▶ **What normal farming practices are exempt?**

- Discharges of dredged or fill material associated with normal farming, ranching, and forestry activities, such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products or upland soil and water conservation practices. T
- his exemption pertains to normal farming and harvesting activities that are part of established, ongoing farming or forestry operations.

## ▶ **What happens if you violate Section 404?**

- Potential civil and criminal penalties
- Not eligible for farm program payments

# Clean Air Act (CAA)

- ▶ Purpose:
  - Federal law that regulates air emissions from stationary and mobile sources.
- ▶ How does it work?
  - Establishes National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants
- ▶ Who is in charge?
  - EPA

# CAA and Agriculture

- ▶ How does this affect you?
  - Right now, not too much. It's primarily aimed at factories, power plants etc.
- ▶ BUT!
  - The EPA is attempting to classify greenhouse gases (specifically carbon dioxide) as pollutants under the CAA
    - That would affect the farming industry greatly
    - Animal agriculture, row crops, aquaculture

# Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

- ▶ What does it do?
  - It establishes the general system of federal pesticide regulation
- ▶ How does it work?
  - Registration for all pesticides
  - Determination of “general use” pesticide or a “restricted use” pesticide.
- ▶ Who is in charge?
  - EPA

# FIFRA: Registration

- After a period of data collection to determine the effectiveness for its intended use, appropriate dosage, and hazards of the particular material.
- When registered, a label is created to instruct the final user the proper usage of the material.
  - If instructions are ignored, users are liable for any negative consequences.
  - Label directions are designed to maximize the effectiveness of the product, while protecting the applicator, consumers, and the environment.
- Periodic review of pesticides after registration

# FIFRA: Use Restrictions

- ▶ A “general use” pesticide is considered safe enough to be used by the general public.
- ▶ “Restricted use” pesticides can only be applied by certified applicators
  - Many states have established a system of examination and certification (at private and commercial level) for applicators who wish to purchase and use restricted use pesticides
  - Also, monitoring of the distribution of restricted pesticides.

# Endangered Species Act

- ▶ Purpose: To “protect and recover imperiled species and the ecosystems upon which they depend.”
- ▶ How?
  - Species may be listed as either endangered or threatened.
    - “Endangered” means a species is in danger of extinction throughout all or a significant portion of its range.
    - “Threatened” means a species is likely to become endangered within the foreseeable future.

# ESA: Who's in Charge?

- ▶ U.S. Fish and Wildlife Service (FWS) has primary responsibility for terrestrial and freshwater organisms
- ▶ National Marine Fisheries Service (NMFS) is responsible for marine wildlife such as whales and anadromous fish such as salmon.
  - Anadromous: “Fish ascending rivers from the sea for breeding”

# ESA: How are they listed?

- ▶ FWS considers five factors:
  - damage to, or destruction of, a species' habitat
  - overutilization of the species for commercial, recreational, scientific, or educational purposes
  - disease or predation
  - inadequacy of existing protection; and
  - other natural or manmade factors that affect the continued existence of the species.

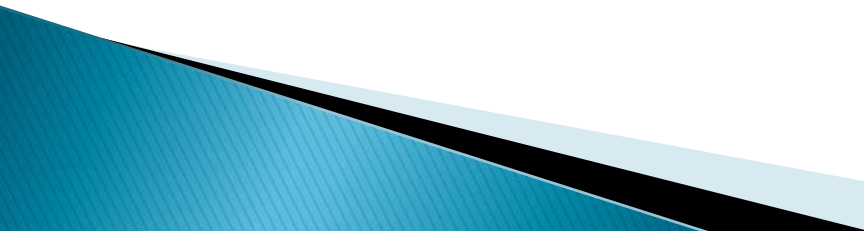
# ESA: Consequences of “Listing”

- ▶ The “take” of listed animals is prohibited
  - “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.”
  - “Harm” is “an act which actually kills or injures wildlife.”
    - Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”
- ▶ The interstate or international trade in listed plants and animals, including their parts and products is also prohibited

# CERCLA

- ▶ **Comprehensive Environmental Response, Compensation, and Liability Act**
  - Also known as "Superfund"
- ▶ **What is it?**
  - Federal statute that deals with discharges of hazardous waste into the environment by "potentially responsible parties."
- ▶ **Why do we have it?**
  - to protect people, families, communities and others from heavily contaminated toxic waste sites that have been abandoned

# CERCLA: How it Works

- Provides a Federal "superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.
  - Potentially responsible parties who can be identified bear the burden of the clean up costs under joint and several liability.
  - For abandoned sites, or those where responsibility cannot be established, CERCLA created a fund to clean up abandoned hazardous waste sites.
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# Conservation Programs

- ▶ What are they?
  - Voluntary programs that address environmental issues by encouraging good stewardship and conservation practices on agricultural lands.
  - Typically, agricultural landowners receive funds for good stewardship and conservation practices

# Conservation Reserve Program (CRP)

- ▶ **What:**
  - Land retirement program designed to remove millions of acres of environmentally sensitive and highly erodible land from agricultural production.
- ▶ **Why:**
  - The predominate focus of CRP is to dramatically reduce the amount of soil erosion derived from agricultural production.
- ▶ **How:**
  - Producers enter into contracts for at least 10 years but no longer than 15 years in duration, and receive compensation from the government for removing the land from production and taking steps to prevent soil erosion.

# Wetlands Reserve Program (WRP)

## ▶ What:

- Land retirement program

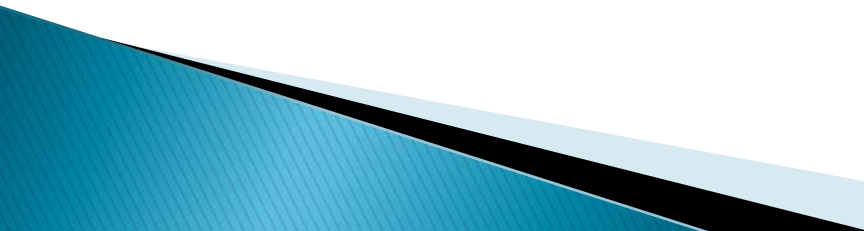
## ▶ Why:

- To protect, enhance, or restore a wetland on agricultural land.

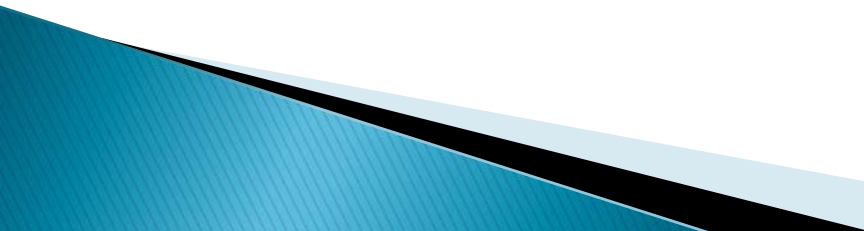
## ▶ How:

- Participants receive technical and financial assistance
- Long-term easement program under which producers may enroll for 10 years, 30 years, or permanently.

# Environmental Quality Incentives Program (EQIP)

- ▶ What:
    - Working lands program
  - ▶ Why?
    - Alleviate general conservation problems.
  - ▶ How?
    - provides cost-share payments to producers and landowners to plan and install structural, vegetative, and land management practices such as filter strips and manure-management facilities
    - Contains four subprograms: the Conservation Innovative Grants, Ground and Surface Water Conservation, Klamath River Basin, and Colorado River Basin Salinity Control programs.
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# Conservation Security Program (CSP)

- ▶ What:
    - Voluntary working lands program
  - ▶ Why:
    - Promote conservation and improvement of soil, water, air, energy, plant and animal life, and other resource concerns on private and Tribal agricultural lands.
  - ▶ How:
    - Provides financial incentives and technical assistance to agricultural producers who perform certain tasks
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# The Future of Conservation Programs

- ▶ Becoming a much larger focus of Farm Bill money
- ▶ Taking the place of direct subsidies

# For More Information

- ▶ Reading Rooms:

Pesticides	Environmental Law
Clean Water Act	Landowner Liability
Clean Air Act	Conservation Programs

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