

# The Environment, the Establishment and the Law

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COURTHOUSE

The Environment, the Establishment and the Law Henkin

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AND JAMES STAPLES

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HOUGHTON MIFFLIN COMPANY · BOSTON  
NEW YORK · ATLANTA · GENEVA, ILL. · DALLAS · PALO ALTO

## INTRODUCTION

As citizens of a democracy, we are taught in school that there are forces in government looking after our interests. It is implicit that there may be disagreement as to what the citizens' interests actually are, but once clearly defined, some branch of the governmental structure is supposed to serve as our St. George, slaying whatever dragons beset us.

For those of us who cherish America the beautiful and the natural life that graces our lands and waters, there have come to light some revealing shortcomings in the safeguards on which we supposedly depend. The present volume presents in fearsome detail the inadequate way in which the federal pesticides regulations protect the natural landscape from the avalanche of chemicals released upon it by the agricultural and chemical industries.

Of all the chemicals in question, none has attracted more attention or engendered more controversy than DDT. We recognize it now as a classic Jekyll and Hyde compound, capable of enormous benefit to agriculture and other human interests, and at the same time responsible for shocking damage to natural ecosystems. DDT was first released for general insecticidal application in 1947, after its use for military purposes in World War II. It was quickly and widely acclaimed as a wonder drug efficient in controlling insect pests and disease carriers. How could man foresee its insidious, long-range effects on the environment, its lethal effects on non-target species? A decade of widespread and rather indiscriminate use produced a disturbing number of cases of wildlife loss. The alarm was finally and forcefully sounded in 1962 by Rachel Carson in her book *Silent Spring*. By that time the compound and its derivatives had permeated living organisms throughout the lands and waters of the world. Five more years were required for scientists to document the damage, which proved to be far more extensive than even Miss Carson had foreseen. In addition to killing such sensitive species as robins and trout, DDT in minute amounts was found to be inhibiting the reproduction of many other vertebrates, and some shell fish and other invertebrates as well. The peregrine falcons of Europe and America were virtually disappearing because of DDT induced weakness in egg shells. Some populations of terns, grebes, and pelicans were similarly on the wane. In laboratories scientists found that coho salmon, successfully introduced into Lake Michigan, were spawning normally but the fry were dying when they assimilated the DDT saturated fat in their egg sacs. Today, the evidence of insidious wildlife damage continues to mount.

But as the magnitude of the problem has become clearer, the governmental mechanisms for dealing with it have appeared more ephemeral. Complaints by ecologists and demands for remedial action by conservationists have been "referred" from branch to branch of government. The profit motivated chemical industry has continued to defend the manufacture and sale of DDT; legislators representing agricultural communities were reluctant to ban an insecticide so widely used on the farm. The general public has been interested, but not to the point of pressing for action.

A forum which could bring the whole grisly business into the open was finally found in Wisconsin, when the Department of Natural Resources was asked to conduct a hearing on whether DDT was a pollutant of the waters of the state. The Wisconsin hearing was recognized by all interested parties as a major test of pesticide control, and government, industry, and conservation interests mobilized for the showdown.

*The Environment, the Establishment, and the Law* tells the story of this Wisconsin hearing, mostly through excerpts of the actual testimony. The text reveals how seriously DDT has contaminated the ecosystems of America, and for that matter, the ecosystems of the oceans and other continents. It reveals with equal clarity how poorly the existing governmental structures have served to protect us and the environment from such chemical affrontery. The Pesticides Regulation Division of the U.S. Department of Agriculture is presented in an especially poor light. If this division is the St. George in Washington who is to protect us from pesticides, we had best bare our own swords and join the conservationists in the defense of environment. The lawyer Yannacone who conducted the Wisconsin case against DDT is far more capable of killing dragons than the responsible federal agents who are employed to do so.

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## **EDITOR'S NOTE**

On October 28, 1968, the Citizens Natural Resources Association, Inc. filed a petition and on November 1, 1968 the Izaak Walton League of America, Inc., Wisconsin Division similarly filed a petition with the Department of Natural Resources of the state of Wisconsin requesting a declaratory ruling on whether DDT was an environmental pollutant within the definitions of Sections 144.01 (11) and 144.30 (9) of the Wisconsin Statutes, by contaminating and rendering unclean and impure the air, land, and waters of the state and making the same injurious to public health and deleterious to fish, bird, and animal life.

Hearings began on December 2, 1968 before Maurice H. Van Susteren, Hearing Examiner of the Wisconsin Department of Natural Resources and concluded on May 21, 1969. Examiner Van Susteren is equivalent to a judge of a court of general jurisdiction. His decisions are confirmed by the seven-man Board of Commissioners of the Department of Natural Resources. If confirmed, the ruling assumes the binding effect of a court order. It can be appealed to the Supreme Court of the state of Wisconsin.

This book was written under the senior authorship of Harmon Henkin with background material and editorial advice furnished by Martin Merta and James Staples.

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