

**BEST OF THE BOOKS:  
REFLECTIONS ON  
RECENT LITERATURE IN  
NATURAL RESOURCES  
AND THE ENVIRONMENT**

by

Oliver A. Houck and G. Tracy Mehan III

ENVIRONMENTAL LAW INSTITUTE  
Washington, D.C.

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Environmental Law Institute  
1730 M Street, NW, Washington, DC 20036

Published September 2015.

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Printed in the United States of America.  
ISBN 978-1-58576-175-3

*For Lisa and Mary*



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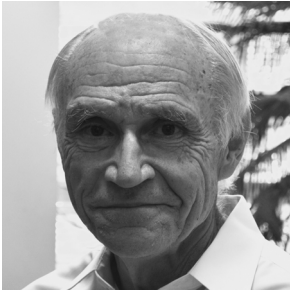
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## About the Authors



**Oliver A. Houck** is a Professor of Law at Tulane University Law School. His specialties involve environmental, natural resources, and criminal law. He is active in legal proceedings involving wildlife, wetland, coastal, and pollution issues and publishes regularly on these and related topics. He has published several books, including *Taking Back Eden* (on environmental lawsuits abroad), *Down on the Batture* (on the Lower Mississippi River), *The Clean Water Act TMDL*

*Program* (pollution control), and most recently *Downstream Toward Home* (on rivers of North America). He also has written extensively for academic journals and general interest publications.

Houck served as a federal prosecutor in Washington, D.C., and as National Wildlife Federation general counsel and vice president before joining the Tulane law faculty in 1981. He has since served on the boards of Defenders of Wildlife, the Environmental Law Institute, and the Environmental Defense Fund, an advisory board of the U.S. Army Corps of Engineers, and two committees of the National Science Foundation. He has also founded several public interest organizations in Louisiana and at Tulane Law School and has consulted on the development of environmental law in Cuba and other Latin American countries.

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## Acknowledgments

The authors would like to acknowledge with gratitude the work of Stephen R. Dujack for his editing and accommodation of our different writing styles, of Rose Edmonds for assembling the materials in this book, and of the Environmental Law Institute for its continuing interest in linking the literature to the law.



# Foreword

The book that follows is a series of essays and book reviews regarding environmental issues written primarily during the period 2005-2015. They were authored by Oliver A. Houck and G. Tracy Mehan III, two longtime observers and developers of environmental policy while serving in the government, the Environmental Law Institute, or other related assignments. These are thoughtful and insightful pieces that deserve the comprehensive treatment this book provides.

If you find yourself interested in the environment and thirsting for more information about what is meant by being an environmentalist, this is the book for you. If you want to understand the multitude of complex issues raised by different players in the debates—heroes and villains—then read on. What you will find is the rich and fascinating unfolding of a movement that in its modern form is now over 50 years old.

When the U.S. Environmental Protection Agency (EPA) was created 45 years ago, its purpose was to centralize and consolidate the federal governments' approach to environmental and public health protection in one agency. In cooperation with the states as implementers, EPA was to set standards to guide human and corporate conduct. Enforcing these standards would halt the environmental degradation that then gripped America. The public in the late 1960s and early 1970s was demanding that their health and environment be protected. Smell, touch, and feel pollution caused this public demand and the president and Congress answered to it.

Our initial efforts captured the essence of public demand for reform and we made remarkable progress. The automobile engines were remodeled to be much less polluting, watersheds were cleaned up, large point sources of water and air pollution from industrial facilities and municipal sewage treatment plants were brought under social control. Prodded by the public, we reformed our country's procedures for controlling toxic materials from their creation in the manufacture of products, to their transportation, use, and final disposal. All of this was done by a series of massive comprehensive statutes seeking to create a series of rules, controls, and deadlines that promised an America with greatly reduced health and environmental risk.

While we made remarkable progress in our initial efforts, the more bad stuff we removed from the environment, the more we studied what risks

remained, the more economic and other interests pushed back. To a certain extent, the public lost interest. This was inevitable; as the risks declined and the costs per element of risk reduced increased, the public demand waned.

Likewise, our progress flagged, but not because EPA lost heart or willingness to take on the economic interest impacted by the needed change. In a sense, EPA was a victim of its own early success. The air and water were visibly cleaner—Lake Erie was restored (temporarily it seems) and more and more cities witnessed blue rather than brown skies. The next generation of problems were more subtle or less visible.

The crucial element standing in the way of continued progress is the loss of public demand. It's the missing element in today's debate surrounding climate change. The public is aware of the problem and they want change, but they are not demanding it and therefore the political process is not responding as well as it did when this all began. In my view, something has to happen to trigger our democracy's galvanizing response to climate change. I can't predict what it will be, but as the evidence continues to build, something will happen like a global equivalent of the late 1960s Santa Barbara oil spill or the Cuyahoga River bursting into flames or the brown smog that enveloped America's cities. Something, or a series of somethings, will shake the world into action.

The essays in this book reflect where we are now in the struggle to harmonize our environmental and economic aspirations. Like many others, I have thought long and hard about environmental protection, I don't believe there is an inherent conflict between economic growth and environmental health. However, if we don't recognize the need for rules guiding human economic activity so as to minimize or limit its impact on the environment, our economy will fail and so will our environment.

Today, some resist rules created by governments to protect human health and the environment arguing that these rules impinge on individual freedom. The argument that rules restricting human activity are necessary to protect the environment are incompatible with human freedom wrongly equates freedom with license. In fact, freedom is a system of restraints, rules, regulations, norms, and customs that create a framework within which our health and the environment are protected and economic interests can be pursued.

This is not to say that all rules created to protect the environment are wise or effective or even fair. We have created a legal and political system where these rules can be challenged, and they should be. But the challenge should not be distorted by the claim that the rules are incompatible with freedom. To the extent the rules help to create a rational framework guiding our con-

duct, they are the essence of freedom. In fact, the framework is the “rule of law” we Americans so eagerly urge on the rest of the world.

I firmly believe if the rest of the world is to repair to our banner, we must show by example that our rule of law works and defines and enhances our freedom.

In fact, we need more and wiser laws. I was born in 1932. That year, there were just over two billion people on earth. Eighty-two years later, we have 7.3 billion people occupying our planet. In one lifetime, we have tripled our numbers starting just in 1932. In addition, we humans have more technology and more money to impact the other living things with whom we share this space. If these other life forms are to survive, we need rules to accommodate our desires with the rest of the living planet. It does bother my Jeffersonian belief in limited government to call for more rules, but facts always trump theory and these are the facts.

Read this book with that thought in mind and we’ll have some idea how close our framework of environmental laws and rules meet the standard of appropriately defining our freedom. After all, it’s been 40 plus years since most of these laws were comprehensively reviewed much less changed.

—William D. Ruckelshaus  
U.S. EPA Administrator, 1970-1973 & 1983-1985