



## Commemorating Earth Day with a Little Legislative History

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Friday, April 22, 2022, marks the 52<sup>nd</sup> Earth Day and anniversary of the modern environmental movement’s origins (<https://www.earthday.org/>). These are interesting times to reflect upon this annual event amid a steady stream of scientific warnings about the danger we pose to ourselves, maybe even a “ghastly future” due to climate change (Bradshaw et al., [January 13, 2021](#); Ehrenreich, [March 18, 2021](#); IPCC Sixth Assessment, [February 27, 2022](#); Plumer and Fountain, [November 11, 2021](#); Plumer and Zhong, [February 28, 2022](#); Plumer, Zhong and Friedman, [February 28, 2022](#); Zhong, [April 4, 2022](#); Plumer and Zhong, [April 4, 2022](#); ). This article summarily reviews the legislative history of an incredible era of far-reaching environmental policy success; a commemoration more observance than celebration.

### Background

A brief stroll through some pre-history traverses the environmental catastrophe that was the Dust Bowl in the 1930s (*farmdoc daily*, [October 24, 2019](#); [November 7, 2019](#)) and the post-war period in which wartime technological advancements ironically converted to commercially produced synthetic fertilizers, pesticides and other components of the agricultural technological revolution (see e.g., Erisman et al 2008; Braun et al 2022; Martín et al 2019; Cochrane 1979). Early voices raising concerns included Aldo Leopold whose profound call for a land ethic in America remains a powerful read (Leopold 1949 and 2020), and Rachel Carson, whose book *Silent Spring* grabbed the Nation’s attention and helped catalyze what would become the modern environmental movement (Carson 1961 and 2022).

It was the political and public impact of two events in 1969 that have received much of the credit for catalyzing the modern environmental movement. On January 28, 1969, an oil rig off the coast of Santa Barbara, California exploded and released thousands of gallons of oil for a month. The explosion was powerful enough to crack open the sea floor in multiple places and was largely the fault of inadequate safety measures by the corporation operating the rig. Not six months later, sparks from a train ignited an oil slick and driftwood on the heavily polluted Cuyahoga river in Cleveland, Ohio. The sparks ignited a fire on the river that engulfed two railroad trestles and became legend (Mai-Duc, [May 20, 2015](#); Thulin, [April 22, 2019](#); Hamilton, [January 28, 2019](#); Spezio 2018; Clark and Hemphill 2002; Boissoneault, June 19,

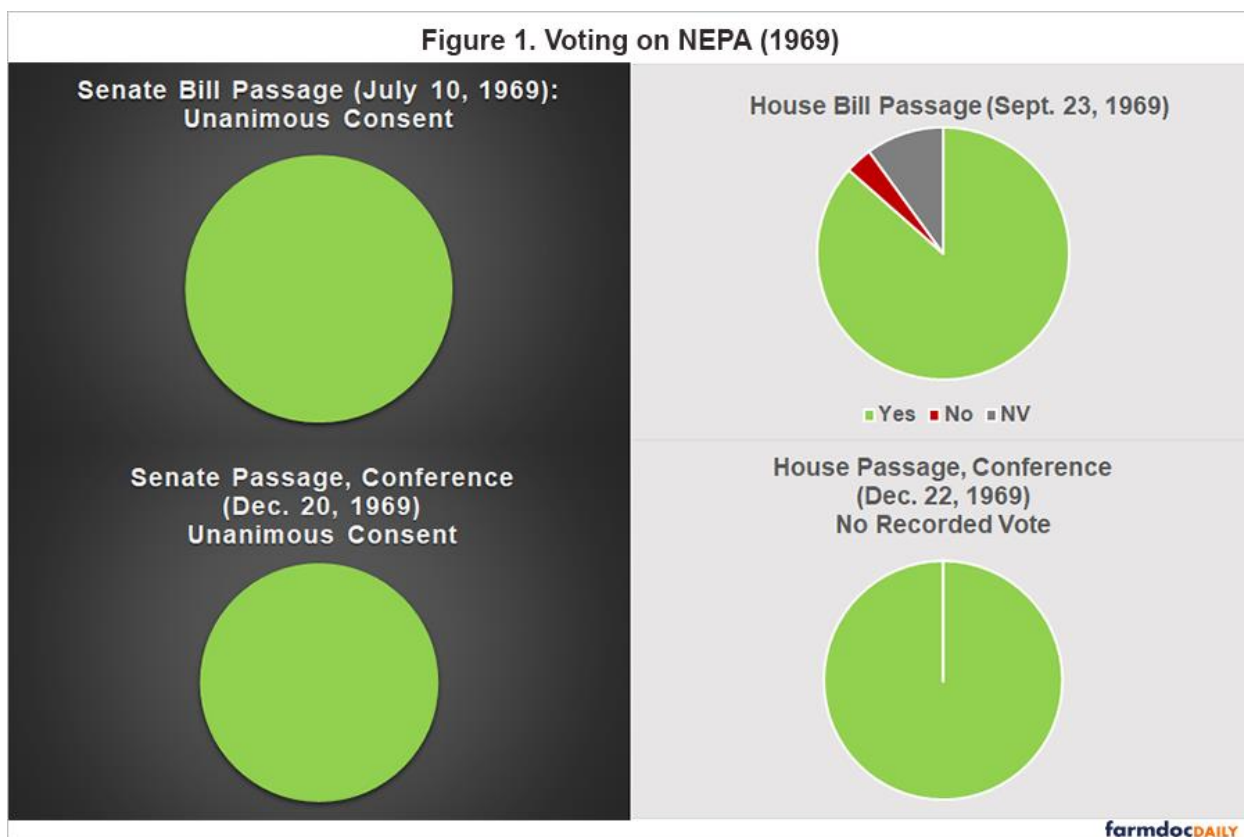
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2019; Cronin 2019; Stradling and Stradling 2008; Adler 2002; Silverstein 2009; Switzer 1997; Kagan 2001; Kraft 2000).

### Discussion: Legislative History for the Pillars of Environmental Law & Policy

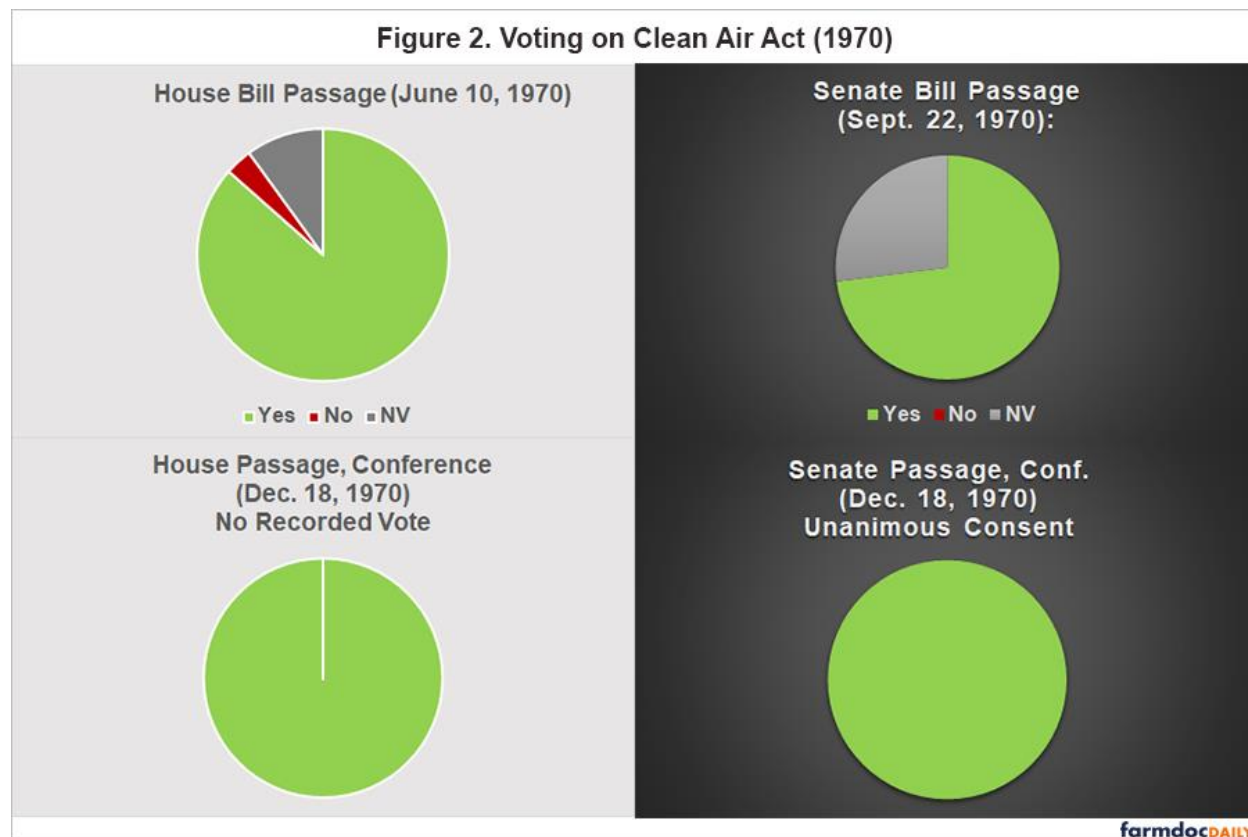
On January 1, 1970, President Nixon signed into law the National Environmental Policy Act (NEPA, [P.L. 91-190](#)), creating the Council on Environmental Quality in the Executive Office of the President and a system for assessing the environmental impact of federal agency actions. It had been introduced in the Senate by Senator Henry M. “Scoop” Jackson (D-WA) on February 18, 1969 (S.1075). The Senate agreed to the amended bill by unanimous consent (without a recorded vote) on July 10, 1969 (see, *Congressional Record*, July 10, 1969, at 19103). The House agreed to its version of the bill (H.R. 12549) on September 23, 1969, by a vote of 372 to 15 (43 not voting) (see, *Congressional Record*, September 23, 1969, at 26590). The Senate adopted the conference report on December 20, 1969, again by unanimous consent (see, *Congressional Record*, December 20, 1969, at 40427). The House followed suit two days later, adopting the conference report without a recorded vote (see, *Congressional Record*, December 22, 1969, at 40928). President Nixon signed it into law on New Year’s Day 1970, emphasizing the need for the United States to address pollution (Kershner, [August 27, 2011](#)). Figure 1 illustrates the voting on NEPA.



The first Earth Day was April 22, 1970. Unfortunately, it was nearly eclipsed by the Vietnam War. Possible portent; President Nixon announced the invasion of Cambodia on April 30, 1970, which was followed by the tragic shooting of four students at Kent State University on May 4, 1970 ([Lewis and Hensley 1998](#)).

Next was the Clean Air Act of 1970 which President Nixon signed into law on December 31, 1970 ([P.L. 91-604](#)). It had been introduced in the House by Representative Paul Rogers (D-FL) on April 27, 1970 (H.R. 17255) and in the Senate by Senator Edmund Muskie (D-ME) on September 17, 1970 (S.4358). The House agreed to the bill on June 10, 1970, by a vote of 375 to 1 (53 not voting) (see, *Congressional Record*, June 10, 1970, at 19244). The Senate agreed to its version on September 22, 1970, by a vote of 73 to 0 (see, *Congressional Record*, September 22, 1970, at 3312). On December 18, 1970, the House agreed to the conference report without a recorded vote and the Senate agreed by unanimous consent

(see, *Congressional Record*, December 18, 1970, at 42395 and 42524). Figure 2 illustrates the voting on the Clean Air Act.



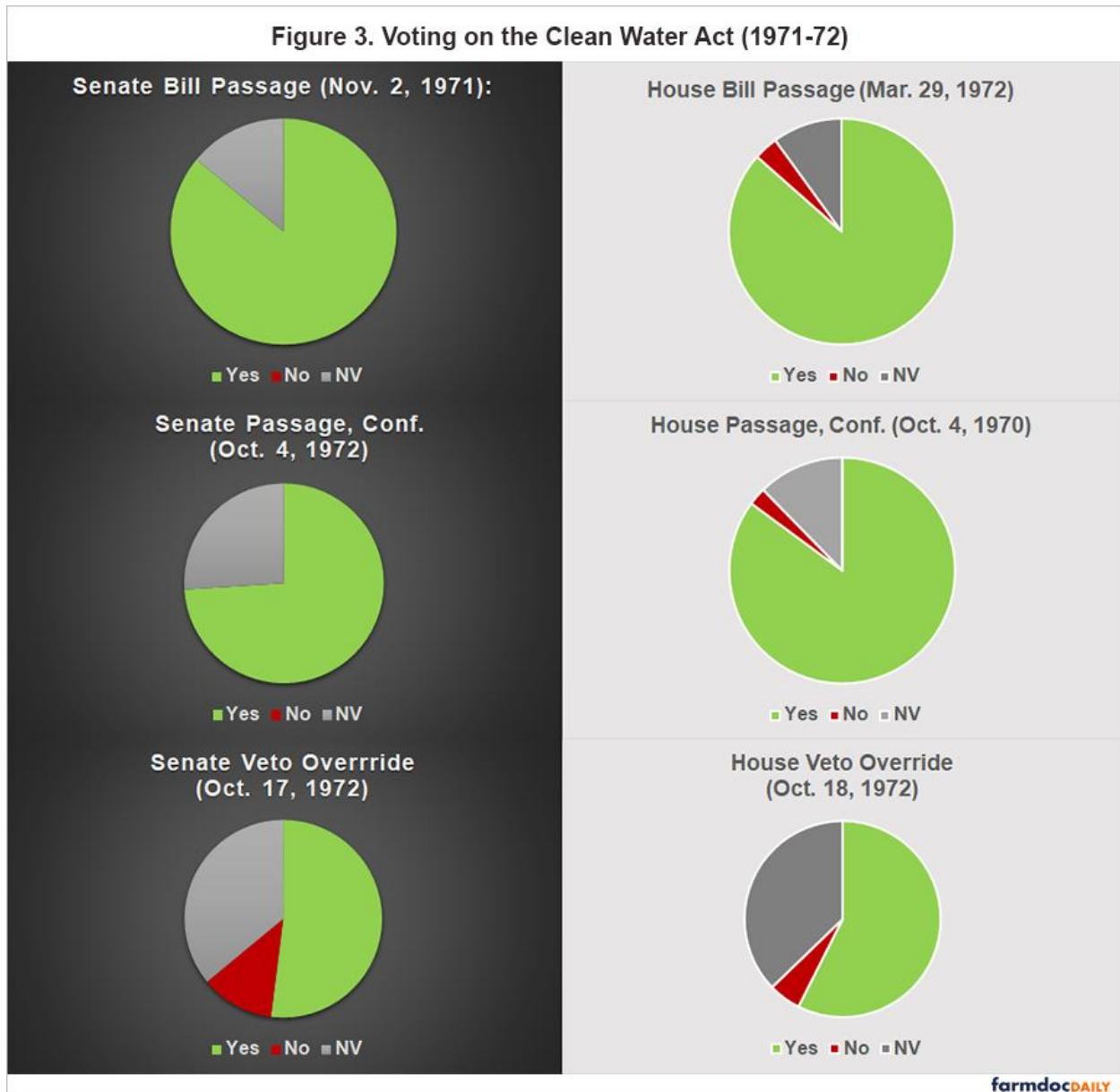
Prior to signing the Clean Air Act into law, President Nixon also created the Environmental Protection Agency. Technically, the President proposed Reorganization Plan No. 3 to create the EPA and the House allowed the plan to go into effect when it disapproved of a resolution to block the plan on September 28, 1970, without a recorded vote (see, *Congressional Record*, September 28, 1970, at 33884; *H. Doc.* 91-364; *H. Doc.* 91-366; *H. Rept.* 91-1464; *H. Res.* 1209; *S. Rept.* 91-1250). When the Senate approved the nomination of William Ruckelshaus to be the first Administrator on December 2, 1970, EPA was officially in operation (see, *Congressional Record*, December 2, 1970, at 39635; “The Origins of EPA,” [EPA History](#); Flippen 2000; Bosso 1987; Farber 2017). A brief, heady moment in American politics in which Nixon competed with Congressional Democrats to claim the environmental political mantle, it did not last.

If President Nixon had competed with Congressional Democrats on environmental policy, he appears to have changed his strategy and political calculations after the 1970 mid-term elections failed to deliver for the Republicans (Flippen 2000; *The New York Times*, [November 6, 1970](#); [November 8, 1970](#); [November 12, 1970](#)). Failing to reap electoral gains from his political gamble, Nixon the consummate cynical politician fell back in line with corporate and business interests as he looked to his reelection bid in 1972. The August 23, 1971, memo by Lewis F. Powell Jr. for the U.S. Chamber of Commerce titled “Attack on the American Free Enterprise System” offers one perspective (Moyers, [September 14, 2012](#)). President Nixon nominated Powell to the Supreme Court on October 22, 1971, and the Senate confirmed his appointment on December 6, 1971; the vote was 89 to 1 (10 not voting) (see, [Supreme Court Historical Society](#); *Congressional Record*, December 6, 1971, at 44857).

In the fall of 1972 and on the verge of a landslide reelection, President Nixon vetoed the Clean Water Act and Congress overrode his veto. The Clean Water Act consisted of amendments to the Federal Water Pollution Control Act introduced by Senator Edmund Muskie (D-ME) on October 28, 1971 (S.2770). A companion bill was introduced in the House by Representative John A. Blatnick (D-MN) on November 19, 1971 (H.R. 11896). The Clean Water Act was agreed to by the Senate on November 2, 1971, by a vote of 86 to 0 (14 not voting) (see, *Congressional Record*, November 2, 1971, at 38865). The House agreed

to its version of the bill by a vote of 380 to 14 (37 not voting) on March 29, 1972 (see, *Congressional Record*, March 29, 1972, at 10803). Both chambers passed the conference report overwhelmingly on October 4, 1972; the Senate by a vote of 74 to 0 (26 not voting) and the House by a vote of 366 to 11 (53 not voting) (see, *Congressional Record*, October 4, 1972, at 33718 (Senate) and 33767 (House)).

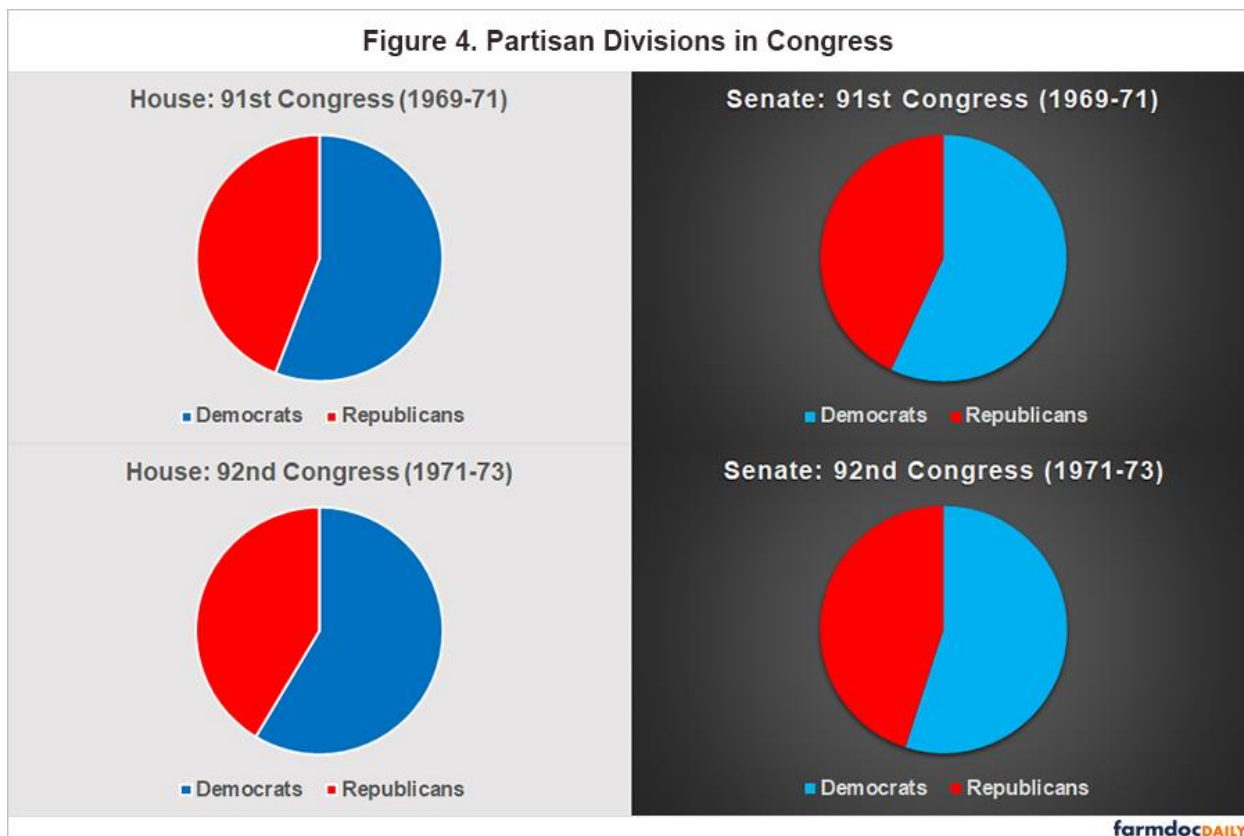
Despite the large votes in Congress, President Nixon vetoed the Clean Water Act on October 17, 1972. His veto message emphasized concerns with the costs of addressing water pollution and the budgetary implications, such as inflation and taxes (see, *S. Doc. 92-93; Congressional Record*, October 17, 1972, at 36859-60). The Senate voted to override his veto on October 17, 1972, by a vote of 52 to 12 (36 not voting) (see, *Congressional Record*, October 17, 1972, at 36879). The next day the House also voted to override the President's veto by a vote of 247 to 23 (160 not voting, 1 voting present) (see, *Congressional Record*, October 18, 1972, at 37060-61). Figure 3 illustrates the voting on the Clean Water Act.



For a summary perspective on the partisan divisions in these Congresses, Figure 4 illustrates the party caucus profiles in the House and Senate for the 91<sup>st</sup> Congress (1969-1971) and the 92<sup>nd</sup> Congress (1971-1973) (see, U.S. Senate, [Party Division](#); U.S. House of Representatives, *Congress Profiles: 91<sup>st</sup> and 92<sup>nd</sup>*). Notably, Democrats had majorities in both the House and Senate across both Congresses, but not overwhelming majorities. With 57 and 55 seats, respectively, Democrats did not have enough votes to



break a filibuster, which from 1917 to 1975 required 66 votes until the Senate lowered it to 60 in 1975 (see, U.S. Senate, [About Filibusters and Cloture](#)).



### Concluding Thoughts

Forged in the wake of an oil spill and by the flames of a burning river, history demarks the origins of the modern environmental on the first Earth Day, April 22, 1970, amid the troubles and turmoil of the Vietnam War at the end of the tumultuous 1960s. Within the first four years of its existence, the movement achieved an unparalleled, impressive legislative and political trifecta. The National Environmental Protection Act (1970), the Clean Air Act (1970), and the Clean Water Act (1972) were all enacted by strong, bipartisan votes across two congresses. In addition, President Nixon created the Environmental Protection Agency in 1970 with Congressional acquiescence. Such a rare collection of achievements “in the circumstances of politics” and disagreement that is the difficult deliberative process built in the U.S. Constitution can seem more distant in time than a mere fifty-two years (Waldron 1999, at 156; [U.S. Const.](#)). The past is a troubling statement on the current state of our politics and the legislative process when such achievements are unthinkable, and the previous era appears anomalous. It becomes far worse in the face of the climate change crisis that demands an ability to achieve far-reaching responses. A few things to contemplate as we commemorate this Earth Day.

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