

April 1996

Summary of the United States Seminar on Our National Environmental Laws

John R. Nolon
Pace University School of Law, jnolon@law.pace.edu

Follow this and additional works at: <http://digitalcommons.pace.edu/pelr>

Recommended Citation

John R. Nolon, *Summary of the United States Seminar on Our National Environmental Laws*, 13 Pace Envtl. L. Rev. 567 (1996)

Available at: <http://digitalcommons.pace.edu/pelr/vol13/iss2/11>

Summary of the United States Seminar on Our National Environmental Laws

PROFESSOR JOHN R. NOLON

John Nolon is a Professor of Law at Pace University School of Law, Co-Director of the Land Use Law Center, and a 1995 Fulbright Scholar.

My objective today is to summarize the discussion that took place at a seminar we held in the United States which described and evaluated our nation's environmental protection laws. The purpose of that seminar was to draw from that experience lessons that should help us, and perhaps Argentina, as we both consider how to improve the laws that affect natural resource use and conservation in our countries.

Although some national environmental legislation was adopted in the United States as early as 1955, the federal system of environmental law essentially began in 1969 with the passage of the National Environmental Policy Act (NEPA).¹ Earlier laws were essentially "model" acts, passed to assist or guide the states in controlling specific forms of environmental pollution or to protect specific components of the environment.

NEPA was an important and strategic beginning for our national environmental protection system. NEPA contains a broad policy statement, integrates environmental and economic policies, and commits all federal agencies to conduct environmental impact assessments before they undertake actions that affect the environment. NEPA did not impact state or municipal actions that affect the environment and, as a process, proceeded on a case-by-case basis affecting each federal action as it happened. Thus, despite its broad and

1. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370(d) (1994).

integrated policy statement, it fell far short of becoming a national system for comprehensive natural resource planning and protection.

Following the adoption of NEPA, the United States Congress passed specific legislation regarding clean air, clean water, occupational safety, industrial pollution, water pollution, pesticide control, coastal zone protection, endangered species, safe drinking water, toxic substances, resource recovery, ocean dumping, and radioactive waste control, among many other environmental topics.

The adoption of these laws began at the time of the first Earth Day in 1970 and continued apace for about ten years. During this decade, the basic fabric of the law was constructed. Since 1980, Congress has added provisions to these basic laws or refined their particular applications.

On one important level, these laws have been very successful in our country. In the ensuing twenty-five years, noticeable improvement in the quality of many U.S. environmental resources, particularly our water, has been achieved. Some reports credit these laws with eliminating over 90% of certain types of pollution from direct sources, that is, large, single sources of pollution, such as industrial plants or public sewer systems. Incidents of public health and safety dangers directly attributable to environmental pollution have declined.

As this system was constructed, the U.S. public was beginning to realize that there were serious dangers to health and safety resulting from uncontrolled environmental pollution. In the 1970s, Congress reacted relatively quickly to each separate environmental crisis, as the public became alarmed and petitioned national lawmakers for remedies.

The result of this piecemeal approach, predictably, was the creation of a piecemeal system. It contained a number of components that were never designed to be, or thought of as, a system of environmental protection. Like NEPA, which proceeded case-by-case, these national environmental laws emerged crisis-by-crisis.

Today, as a result, U.S. environmental laws are being reassessed. As a system, they are not working well. We are looking at them anew, wondering why they are not more efficient and cost effective. Bills pending in Congress call for their reassessment, subject them to cost-benefit analysis, and require the government to pay affected property owners for the diminution of land value that they cause. Like Argentina, we are looking for a comprehensive framework to integrate and organize the operation of these separate laws and to enable them to better serve the public interest.

Our challenge is to reinvent our environmental laws so that they are more comprehensive, integrated, responsive, efficient, and less burdensome. With the hindsight of twenty-five years of experience and with great respect for what our laws have accomplished during that time, the following comments and suggestions for the system's improvement are offered:

I. Establish Policy Objectives

We did the right thing by adopting a strong and comprehensive policy statement as part of the first significant national law we adopted: NEPA. This statement is broad, comprehensive, and respectful of development as well as environmental needs. It is a valid statement of policy for other countries to consider in drafting their own broad national policy statements committing the national government to environmental conservation and sustainable development.

II. Relying on Environmental Impact Assessments

NEPA properly directed all federal agencies to perform environmental impact assessments of their actions and became a valuable model for the states to use in adopting their own impact laws, which fewer than half of them subsequently did. This properly shifted governmental project planning from simple cost-benefit and engineering assessments to a more integrated process that took into account the environmental consequences of governmental actions.

The problem with NEPA is that it proceeds one project, or government action, at a time. The same defect afflicts the NEPA-type laws adopted by the states. A watershed, river basin, transportation corridor, bioregion, community, state, or nation cannot be planned on a project-by-project basis. In the absence of development and conservation plans for natural regions, this case-by-case approach is highly inefficient. Without integrated plans to proceed from, individual project impact statements are necessarily redundant, wasteful, and time consuming. When fit together, they fall far short of a comprehensive analysis of, and approach to, regional development and resource conservation.

III. Adopt a National Land Use Policy

Our Congress considered, but failed to adopt, a national land use policy immediately after it adopted NEPA. Its failure to act was a major mistake. The National Land Use Policy Act² would have created a system of federal incentives to encourage states to develop comprehensive land development and conservation plans in conjunction with their localities.

These plans could have been subjected to environmental impact studies as they were developed. The results of such a process would have been to save considerable time and expense in later project impact assessments. Much of the assessment needed for project-by-project review would have been done, time could have been saved, and projects approved, modified or denied with greater certainty.

The National Land Use Policy Act would have built a framework for development and conservation planning from the bottom up. It would have encouraged localities to develop their land use plans and conformed state plans to this local input. Local plans, in turn, would have been influenced by state-wide resource concerns contained in the land use plans of the states. Federal policies and laws, such as pollution prevention statutes, could have been shaped to accommodate the

2. The National Land Use Policy Act of 1970, S. 3354, 91st Cong., 2d Sess. (1970).

planning of the fifty states, which, in turn, could have been influenced by interstate and national concerns.

Our federal environmental protection statutes have been particularly unsuccessful in addressing pollution emanating from smaller projects and development patterns generally. This proposed land use planning process would have brought environmental sensitivity to the development of urban and suburban areas and provided hope for abating and accommodating non-point source pollution.

This National Land Use Policy Act should have been passed by our Congress. Furthermore, it should have been enacted prior to NEPA, and contained the broad policy statement that would have unified national, state, and local conservation and development policy and actions. The National Land Use Policy Act is an example of how a proper context for environmental impact statements can be created.

IV. Fit Pollution Abatement Laws into a Framework

Because the laws adopted in the 1970s were developed in a piecemeal fashion, they resulted in an inefficient system, unnecessarily burdensome to regulated industries and landowners. The National Land Use Policy Act would have created a geographic framework for the implementation of these pollution abatement laws.

The comprehensive land use plans that would have been created under the National Land Use Policy Act could have been used to link pollution abatement laws to define geographic areas such as entire rivers, forests, or watersheds. Instead, today, they regulate parts of water systems and control only certain sources that contribute to air pollution. Further, they are administered by a large number of federal, state, and local agencies which creates redundancy, time delays, and unnecessary costs in the pollution abatement system.

The National Land Use Policy Act is an example of the way nature can provide a larger geographic context for organizing and implementing pollution abatement laws.

V. Make Available Land-Related Data and Scientific Information

If the National Land Use Policy Act had been adopted, it would have created a national clearinghouse for information relating to land use and resource allocation. Also, it would have made possible the creation of a national scientific agency to conduct research and establish standards for pollution abatement and resource use.

The lack of such data and the absence of a single, objective, and credible agency to establish standards are major defects in the U.S. system of land and resource use and conservation. Each country should make a commitment to establishing a land-related data collection and distribution network and a credible scientific agency to set pollution abatement standards and to interpret complex data to aid in dispute resolution among affected groups in environmental controversies.

VI. Establish Responsive Administrative Processes

NEPA created a process that was responsive and integrated, but which operated on a project-by-project basis. Regarding each project, all affected parties were allowed to voice their concerns before the project was approved. In the formation and execution of pollution abatement laws, our process has been less democratic and responsive.

Regulated industries have not been involved sufficiently in formulating abatement standards and designing methods of meeting those standards. The knowledge and expertise of affected industries must be gathered and respected in the regulatory process. They should be given a range of choices for compliance with standards that they understand, if not support. Abatement systems should be flexible and responsive to changes in conditions, knowledge, and technology.

VII. Integrate Environmental and Economic Policy

If these recommendations had been followed from the beginning, it might have been possible to integrate economic and environmental policy, as all nations must do if they are

to achieve sustainable development. Until such integration is achieved, policies for the development of highways, bridges, rails, power production and other infrastructure, export policies regarding renewable resources, and resource area use and conservation programs cannot be coordinated with environmental policies. Since these economic policies and programs dramatically affect the environment, such integration is essential.