

Widener University Delaware Law School

From the Selected Works of David R. Hodas

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Vantage Point

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VANTAGE POINT

We live in an enormously complex country that is part of an even more complex world that operates through interconnected natural, economic, energy, and social systems. Because “the world is more messy, more crowded, more interconnected, more interdependent, and more rapidly changing than ever before, the more ways of seeing the better. The systems thinking lens allows us to reclaim our intuition about whole systems . . .” Donella H Meadows, *THINKING IN SYSTEMS: A PRIMER* 6 (2008).

To be sustainable, our laws must be congruent to the economic, environmental, and social systems that define our world. However, our laws have not kept pace with our growing economy, population, and technological innovation. Adjusted for inflation our economy has more than tripled since 1970. In 2010, U.S. GDP was about \$14.5 trillion in an intertwined global economy of \$74.5 trillion. As we enter 2012, world population continues its exponential expansion: from 1 billion in 1820, 2 billion in 1930, 3 billion in 1960, 4 billion in 1974, 5 billion in 1987, 6 billion in 1999, to about 7 billion in 2011. U.S. Central Intelligence Agency, *the World Factbook* (Dec. 1, 2011) www.cia.gov/library/publications/the-world-factbook/geos/xx.html.

Our “modern” environmental laws, such as the Clean Air Act and the Clean Water Act, are now 40 years old. These environmental laws were designed to address specific environmental problems in discrete ways. The Clean Water Act treats water pollution, other than oil, but the Safe Drinking Water Act addresses drinking water. The Oil Pollution Act is a separate entity. Air pollution is addressed by the Clean Air Act, and hazardous materials by a variety of laws independent of one another, and each with its own definition of what is hazardous. Each environmental law operates in its own silo; each has different definitions and lists of regulated pollutants, and focus on different media—water, air, soil, food, pesticides, etc. None consider ecosystems as a whole. The National Environmental Policy Act had system thinking aspirations, but now only requires relatively meaningless procedural incantations about the specific effects of specific projects. The Endangered Species Act is sometimes used, controversially, as a proxy for ecosystem concerns. But it was not designed to carry the burden of managing complex systems.

In this issue, we challenged authors to consider how environmental, energy, and natural resource law could address problems as a part of complex systems. Complex systems are hard to manage. Our piecemeal legal system has few tools to support systems thinking. Our laws simply do not measure up to the challenges we face. Yet, there are many examples of efforts to identify and analyze legal issues within complex systems. Some are more successful than others, but, as each article in this issue demonstrates, smart lawyers are making progress in thinking about specific problems within the context of complex systems. Their systems perspective is a new approach to structuring environmental, energy, and natural resources law that could sustainably meet the challenges of our modern world.

The articles in this issue examine a wide range of complex systems: Britain’s integrated permit systems as a possible model

(continued on page 2)

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for sustainable approaches in the United States, wind energy and electricity transmission in the western United States, the global food system, water quality criteria across water sheds, fisheries, adaptive resource management of river systems, fugitive emissions in the Marcellus Shale air shed, the threat to organic farming from patent enforcement of genetically modified seeds, and flood control in the Red River. There are no easy answers, but thinking in complex system terms is the necessary first step to better law.

David Hodas
Issue Editor

ABA SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES CALL FOR NOMINATIONS

ENVIRONMENT, ENERGY, AND RESOURCES GOVERNMENT ATTORNEY OF THE YEAR AWARD

The Environment, Energy, and Resources Government Attorney of the Year Award will recognize exceptional achievement by federal, state, tribal, or local government attorneys who have worked or are working in the field of environment, energy, or natural resources law and are esteemed by their peers and viewed as having consistently achieved distinction in an exemplary way. The Award will be for sustained career achievement, not simply individual projects or recent accomplishments. Nominees are likely to be currently serving, or recently retired, career attorneys for federal, state, tribal, or local governmental entities.

Nomination deadlines: May 14, 2012

LAW STUDENT ENVIRONMENT, ENERGY, AND RESOURCES PROGRAM OF THE YEAR AWARD

The Law Student Environment, Energy, and Resources Program of the Year Award will be given in recognition of the best student-organized educational program or public service project of the year addressing on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2011 calendar year [consideration may be given to allowing projects that occurred in the 2010-2011 or 2011-2012 academic years]. Nominees are likely to be law student societies, groups, or committees focused on environmental, energy, and natural resources issues.

Nomination deadlines: May 14, 2012

STATE OR LOCAL BAR ENVIRONMENT, ENERGY, AND RESOURCES PROGRAM OF THE YEAR AWARD

The State or Local Bar Environment, Energy, and Resources Program of the Year Award will be given in recognition of the best CLE program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2011 calendar year. Nominees are likely to be state or local bar sections or committees focused on environmental, energy, and natural resources issues.

Nomination deadlines: May 14, 2012

These Awards will be presented at the ABA Annual Meeting in Chicago in August 2012.



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