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National Defense and the Environment

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National Defense and the Environment

In the last chapter, Platt proposes solutions to the infectious disease situation. First, she suggests increasing the adequacy of health care systems; and second, she recommends heightened awareness of the causes of underlying communicative diseases. The combined effect of these suggestions will be the prevention of the further spread of disease.

In its entirety, this work provides a mechanism by which the novice may determine and understand the underlying causes of infectious diseases. Although often explicit, *Infecting Ourselves* communicates the necessity for public attention to this matter. Platt makes it clear that the devastating effect of communicative diseases cannot be ignored.

Sarah Ellen Scofield

STEPHEN DYCUS, *NATIONAL DEFENSE AND THE ENVIRONMENT*; University Press of New England, Hanover, New Hampshire (1996); (\$19.95); ISBN 0-87451-735-4; 286 pp. (pbk.).

Stephen Dycus' *National Defense and the Environment* provides a wide ranging overview of the relationship between U.S. environmental laws and their application by the military establishment. The book is written in a style which is easily understood by the average reader, thus, making it a useful guide for students, teachers, attorneys, and the general public alike. The author uses a minimum of confusing acronyms and explains legal citations. Case studies throughout the text provide valuable examples of the practical application of environmental laws in relation to national defense concerns. The book is organized into nine chapters containing general overviews of relevant topics and a conclusion summarizing the potential for harmonizing national defense concerns with protection of the environment. Three appendices provide a comprehensive listing of environmental cases involving national defense activities, government agencies, and private organizations. In addition, the extensive and thorough footnotes provide a valuable source of information for those wishing to delve further into the subject matter.

The end of the Cold War turned attention to the impact of the defense establishment on the environment at home and abroad. Dycus focuses on the need to reconcile national security interests with the need for environmental protection. He points out that official military policy requires that the defense establishment protect the environment as much as possible. This task is made more important considering the Pentagon controls over 25 million acres in the U.S., three quarters of which are important fish and wildlife habitat. The Department of Energy controls another 2.4 million acres.

Dycus first reviews the National Environmental Policy Act (NEPA) and resolves that it applies generally to military activities abroad with broad exceptions made for a variety of contingencies. NEPA also reflects Congressional concern for national security yet contains provisions for secret Environmental Impact Statements. Dycus concludes there is a need to resolve the conflict between national security and environmental protection during the planning process.

The next section addresses environmental regulation of the defense establishment. Citing various regulatory statutes such as the Clean Water Act, the Clean Air Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Noise Control Act, the author credits defense agency officials with efforts to comply with these regulations.

The author then turns his attention to Pentagon efforts to clean up environmental damage resulting from the Cold War. Dycus discusses the clean up of operating military bases and Department of Energy weapons complexes, including the disposal of nuclear wastes and plutonium. An overview of the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is presented in this context. The Defense Restoration Account pays for cleanups at operating bases separately from accounts established by Congress to clean up closed military sites.

The next section analyzes the special problems associated with military base closures and realignments. The estimated cost of cleaning up all closed bases runs over \$900 million. Funding for these projects comes from two special Defense Base Closure accounts which are separate from the defense budget. The author addresses the unique application of NEPA to base closures and realignments. NEPA review has been sharply curtailed under 1988 and 1990 legislation. However, political pressure keeps these activities funded since closed base property cannot be redeveloped until they are cleaned up or until restoration efforts are underway.

Protection of the environment during wartime is also considered. The law of war, U.S. military rules and regulations, and domestic environmental laws applicable during conflict are addressed. Examples of U.S. compliance with international law are also provided. Dycus points to an Army financed study which concludes that a successful indoctrination of pollution prevention initiatives into combat doctrine will enhance the fighting capabilities of military units. In addition, Dycus discusses specific waivers for "exigent situations" Congress placed into environmental laws. None have been officially invoked except during the Persian Gulf War when the Council on Environmental Quality (CEQ) waived NEPA regulations at the request of the Pentagon. The author concludes that environmental concerns must be

considered when tactical and strategic military decisions are made.

Dycus highlights the deference given to the defense establishment when applying environmental laws in the following section. Courts have been sensitive to issues such as sovereign immunity, plaintiff standing requirements, and the justiciability of claims. In addition, the EPA is barred from issuing compliance orders and from filing suit against other federal agencies for violations of environmental laws. Dycus discusses the awarding of attorneys fees and the possibility for criminal sanctions when citizen suits are filed under certain Acts and regulatory schemes.

Liability for environmental damage caused by the defense establishment is discussed in a related section. Limitations on government liability include sovereign immunity, the Federal Tort Claims Act (including the Discretionary Function Exception), and the *Feres* doctrine. The author also discusses claims against defense contractors and the "government contractor defense."

The author concludes with optimistic hopes for a balance between a strong national defense and protection of the environment. Dycus sees a "confluence of interests" between citizens concerned with protecting the environment and government officials becoming more sensitive to the problems faced. A commitment from all parties concerned is required to solve these problems. In particular, Dycus points out a series of legislative, administrative, financial, diplomatic, and individual challenges which must and can be met.

Michael Buchanan

ELJAN MACKAAY, DANIEL POULIN & PIERRE TRUNDEL (Eds.), *THE ELECTRONIC SUPERHIGHWAY: THE SHAPE OF TECHNOLOGY AND LAW TO COME*; Kluwer Law International; Netherlands (1995); (\$97.00); ISBN 90-411-0135-7; 193 pp. (hard cover).

The Electronic Superhighway, contemplates the nature of communication via computers and other interactive media by the year 2000. The authors suggest that the future of the electronic superhighway, will emerge from the convergence of five specified cultures, ranging from the entertainment industry to hardware and software producers, as well as three conceptual models. The cultures and models are discussed in depth, and predictions regarding their future implementation are made. Present examples of this interaction are provided as well as the probable future uses revealing how the cultures, models and technology will be instituted. The authors' concern is how the cultures, models and advancing technology will ultimately converge in order to mold our society. Additionally, the authors introduce a host of legal