

Earth Week Series: Imagine a Day Without Environmental Lawyers

Publications

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On this 52nd anniversary of Earth Day, I am not writing yet another, typically not very funny, riff on one of Shakespeare's most famous lines.^[1] Instead, I am inspired by one of the most popular of our blogs, written in 2017 by our talented former partner, E. Lynn Grayson, "Imagine a Day Without Water." To start our Earth Week series of daily blogs by our firm's EHS department, I offer words of hope and gratitude for the vast amount of work that has been done to improve and protect the environment – work done by lawyers, scientists, policy makers, and members of the public, to name a few.

Imagine what lawyers and scientists faced in 1970, the year of the first Earth Day. There was oppressive soot and polluted air throughout urban and industrial areas in the United States. The Cuyahoga River was so blighted it had caught fire. Although there was a new federal Environmental Protection Agency and two new environmental statutes – the National Environmental Policy Act and the Clean Air Act, one of the most highly complex and technical statutes ever written – both needed an entire regulatory structure to be created in order to be operationalized and enforced. This foundational work had to be done when there was not even an accepted method for determining, much less regulating, environmental and public health risk. Then two years later, in 1972, a comprehensively overhauled Clean Water Act was enacted, followed within the next decade by TSCA, RCRA, and CERCLA, to address the consequences of past waste and chemical use, and to control their future more prudently. Other laws were also passed in that time period, including the Safe Drinking Water Act and the Endangered Species Act.

Although Earth Day was created in the U.S. – the idea of Senator Gaylord Nelson (WI-D) and supported by Representative Pete McCloskey (CA-R) (both lawyers) and grass roots organizers – environmental consciousness also was growing worldwide. The 1972 Stockholm Declaration, from the first UN Conference of the Human Environment, recognized the importance of environmental protection amid the challenge of economic disparities. That work, including of the United Nations Environment Programme, led to the 1992 "Earth Summit" issuing the Rio Declaration on Environment and Development, which adopted a focus on sustainable development and the precautionary approach to protecting the environment in the face of scientific uncertainty, and creating the United Nations Framework Convention on Climate Change, which itself led to the 1997

Kyoto Protocol and the 2015 Paris Agreement, as well as other global efforts focusing on climate change and resource conservation.

Thus, within a split-second on our earth's timeline, humans were able to tangibly improve and focus attention on the environment, through laws, agreements, governmental and private commitments, and public support. I note these developments, which were stimulated by lawyers on all sides, not to naively suggest that the global climate change, water accessibility, toxic exposure, and other environmental challenges that we face today can easily be solved, nor do I suggest that only lawyers can provide the solution. Instead, let's take hope from the fact that in fewer years than the average for human life expectancy, there have been significant environmental improvements in our air, land, and water, and our collective focus on preserving the planet has been ignited.

These past efforts have improved the environment – not perfectly, but demonstrably. The legal structure that helped make these improvements happen has worked – not perfectly, but demonstrably. Hopefully, we will continue to work on these issues, despite their seeming intractability, under a system of national laws and global agreements. The alternative is too painful to contemplate.

Closing on a personal note, our firm's Environmental Law Practice lost one of the best environmental lawyers in the profession, when Stephen H. Armstrong passed away last week. Steve was one of the first in-house environmental counsel I had the opportunity to work with when I began my focus on environmental law in the 1980s. He demonstrated how to respect the science, embrace the legal challenges, fight hard for your client, and always act with integrity. Although I was a young woman in a relatively new field, he consistently valued my opinions, supported my professional development, and with his deep, melodious laugh and sparkle in his eye, made working together feel like we shared a mission. And a "mission" it was for him; I have never met any lawyer who cared more or wrestled harder about their clients' position, while always undergirded by a deep reverence for doing the right thing. Once he joined our firm more than a decade ago, he continued being a role model for all of us. Our firm's Environmental Law Practice, and all those who worked with him, will miss having him as a devoted colleague, friend, and mentor. Our earth has been made better for his life on it.

[1]"The first thing we do, let's kill all the lawyers." William Shakespeare, *Henry VI, Part 2*, Act IV, Scene 2 (circa 1591).

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