

**“An American Policy Imperative:
Think Ecologically and Act Economically”**

**Jeff Smoller, president
Multi-State Working Group on Environmental Performance
Coastal Bend Bays Foundation
Corpus Christi, TX
November 14, 2007**

I would like to thank the Coastal Bend Bays Foundation for the invitation to speak and the opportunity to learn what you are doing for Corpus Christi's economic, environmental and community future.

Congratulations to those who are being recognized at this awards ceremony. I had a chance to speak with some of you and am impressed with your achievements and grasp of tonight's topic. A great politician – former speaker of the House Tip O'Neill from Boston – famously said “all politics is local.” He might have said just as well that most conservation good deeds are local. This is a theme I will develop tonight in suggesting that we need a new era of ecological law that responds to this century's needs, beginning in communities.

America faces a policy imperative to think ecologically and act economically. For America to retain its greatness we need policies that help communities of place and communities interest collaboratively address inter-connected ecological and economic needs. Indeed, America's future is tied to our ability to work together for the common good, like our founders intended, but with new tools and new attitudes that build partnerships and trust among our business, government, advocacy group and community sectors.

The best way I know how to explain the challenge is to share stories from my home state of Wisconsin.

My state is the home of Aldo Leopold, one of the greatest ecological scholars of the last century. His thinking connected flora and fauna; water and land; and land and man. His

observations described the risks of short term decisions and narrow views, be they are held by businesses, public officials or land owners.

Wisconsin also is the home of Gaylord Nelson, who was a great conservation governor and as a US senator founded Earth Day. Earth Day provided the political base for the basic requirements that lead to the improvement of environmental quality throughout our country.

In the mid-1990s Wisconsin began to ask how it could do an even better job of not only protecting but restoring the environment. We knew that environmental compliance rates would continue to improve into the mid to high 90 percent range and that we would have fewer and fewer serious violations.

Some of our firms were already performing above the minimum and we knew they could improve with the right set of policies. We also knew that our firms were in a highly competitive marketplace and needed to cut costs – including regulatory costs.

To make a long story short, we enacted a law authorizing regulatory experiments with a limited number of firms to explore how we could work together to create ecological and economic value for the community and the business. As these pilot projects were underway, we searched for innovative laws outside the United States so we could take next steps without re-inventing the wheel.

I will share three examples from that fit into our state motto of “Forward” and then explain a grass roots process aimed at Washington in 2009 and a report to the nation.

My first Wisconsin example is from Cook Composites and Polymers Company in Saukville. The company signed its first experimental agreement with the state in 2001. It focused on treating wastewater to make it no longer hazardous, on ceasing hazardous waste incineration, on minimizing waste, on preventing pollution and on collaborating with neighbors. Building trust with the community was important to Cook which was at odds with neighbors over noise and odors.

The first experimental agreement lasted five years and recorded reductions in particulate matter, sulfur dioxide, nitrogen oxide and carbon dioxide. Solvents were reduced from 1.7 million pounds to 1.2 million. Cook introduced new product lines of low pollutant coatings and polymers to help its customers reduce emissions.

My regulatory agency and the community also began to see the business as a partner with shared goals. Now in its second five-year agreement, we will leverage technical assistance from state and federal agencies and national organizations to help the business. We will develop flexible permits to encourage innovation and reduced time to market. And we will help Cook spread its sustainability advice throughout the state as a teacher and mentor to other businesses.

The experiment is a work in progress and there are other parts that benefit the firm and state. We have data to document results. In my view, the key take-away is a cultural one. We changed the way we were doing business by linking ecology, economy and community and learned that government could be a partner in “getting to yes.”

The parent company – Total – sent in a team from Paris to learn from it and share it around the world. <http://www.dnr.state.wi.us/org/caer/cea/ecpp/agreements/cook/index.htm>

My second Wisconsin example involves a law called Green Tier that came from ideas from overseas. The part of the law I will highlight is a charter. You probably know the word from charter schools or charters we learned in history – like the one given to the Hudson Bay Company. It’s basically government giving another entity a conditional right to act on its behalf.

Our intention was to apply the charter to a trade association in the hope of leveraging the capacity of that association to achieve results that government could not achieve. As a government regulator, we did not have the time, money, expertise or credibility to do what needed to be done. In other words, by thinking ecologically and acting economically we worked through a business association to achieve ecological goals.

I believe the idea for a Green Tier charter occurred to officials of the Wisconsin Builders Association when they were on a trip to Munich to learn about a policy called The Bavaria Pact

through which Bavarian industries self-regulate to pursue superior environmental results. Wisconsin borrowed some of its Green Tier ideas from Bavaria and we have had several delegations to the German state.

In 2005, the state signed a Green Tier charter with the Environmental Compliance Corporation for Development and Economic Vitality, Inc., which was created by the builders' group. Its shorthand is "EccoDev." The charter recognized EccoDev as an agent of the state for purposes of Green Tier and authorized the entity to work in a special way with the building industry to achieve environmental results that were greater than the basic minimum.

The rights and privileges of EccoDev are numerous and include the development of a builders' environmental management system that has branding potential. As an instrument with state standing, it also has the potential to be a tool for self-regulation. And I would emphasize that self-regulation is not designed to be an easy way out, but something that's earned and has business value, both from a standpoint of reduced regulatory costs and market value.

The state has the confidence that not only will some routine requirements like erosion control be more efficiently met, but the industry will go far beyond what we could expect in areas such as construction materials recycling, post construction storm water management, habitat protection and development, sophisticated hydrologic planning and landscape enhancement.

<http://www.dnr.state.wi.us/org/caer/cea/environmental/participants/eccodev/index.htm>

The Green Tier charter is a tool and can be shaped to cover a supply chain, geographic area, specific contaminant, industrial park or entire business sector.

My third Wisconsin example involves a butterfly called the Karner blue and a partnership involving government, business, land owners, the military and children.

The Karner blue is a federally listed endangered species that commonly occurs in central and northwestern Wisconsin. Its range is restricted to those areas that support wild lupine, the food source for the Karner blue larvae. Under the law, denying the food source could be judged

incidental taking, exposing land owners, businesses, farmers, loggers, road maintenance crews and others to penalties.

Over eight years, 40 organizations have worked as partners to create and implement a Habitat Conservation Plan covering a quarter of a million areas. The plan takes into account the life-cycle needs of the butterfly and lays out the management practices that may be undertaken, and when they may be undertaken. The landowners and others are obligated to follow those plans and are subject to audit. But assuming they follow the plan and do what they say, they are legally protected. In other words, they have safe harbor even though they might be mowing, brushing, burning, plowing or harvesting – activities they need to perform as farmers, foresters, businesses persons or highway workers.

The Karner blue has been transformed from a potential private landowner villain into an insect folk hero. It is the subject of annual parades, bus tours, celebrations, costume contests and even temporary tattoos. Beyond the minimum, landowners are voluntarily creating Karner blue habitat, in 2006 producing conservation activities on 43 hundred acres. Another outgrowth of the collaboration is research that resulted in a more focused habitat area for the butterfly, reducing the range from nine million to million acres.

The partnership is considered to be one of the most successful collaborative ecological projects in the United States. <http://www.dnr.wi.gov/forestry/Karner/>

These three examples hint at the kinds of policies America needs for a legal framework that gets to an “ecological yes we can” to accompany the one that is an “environmental no you can’t.” Each example is within law. This was not the traditional regulatory law but contract law that allows negotiated agreements that can serve multiple parties with shared accountability who, as partners, create ecological results that reach beyond the status quo.

The law in each of these examples was not holding back the traditional can-do spirit of America, but liberating it. These laws empowered us to “make our best better” just like I tried to

do when I was a 4-H Club member in my youth. They also protected these collaborators from legal risks from those outside the agreements.

In the case of Green Tier, Wisconsin has been encouraged by the sustained success of these collaborative efforts and we are determined to develop even better tools to foster collaboration and superior environmental results. Our state is developing the next round of Green Tier tools in proposed legislation requested by leading Democratic and Republican Senators and guided by opinion leaders from around the state.

Based on these examples and Wisconsin's direction, here are some of attributes I see as ingredients of future laws and policy for America:

There is a desire to go above the minimum required and produce tangible results that include environmental restoration with the local community in mind.

There is a sense of partnership and community.

There is use of incentives, some from government and some market-based.

There is a respect for free-enterprise and property rights.

There is self-responsibility; the environment is not just government's job.

There is accountability, sometimes enforced by peers.

There is transparency, openness and two-way communication.

There is a default position if things go terribly wrong.

There are new roles and tools for government, business and citizens.

There is thinking beyond the legal and agency silos that limit creativity and effectiveness.

There is a willingness to deal with complexity and ambiguity.

Ecological and economic value is created by leveraging business and community.

A skeptic might look at these examples and conclude the outcomes did not justify the efforts. Each example took a lot of time and effort. The criticism would be unfair, short-sighted and a disservice to these pioneers, acting in America's can-do spirit, who are working to create a better system.

Over the last 20 years, reports have been issued, study commissions formed and summits held about the need to modernize America's environmental laws. Some efforts have been advocated by business, some by scholars, some by government and some by non-government groups, although there are fewer in the last category. In the mid-1990s several bills were introduced in Congress and the 104th Congress attempted wholesale changes that discouraged Congressional discussion since then as a result of over-reaching.

In the meantime, the federal and state governments tried experiments such as Project XL, Green Permits, Environmental Leadership Programs, Performance Track, Common Sense Initiative and Cooperative Conservation Initiative. Perhaps some of you attended the meeting on Cooperative Conservation here last year.

Some of these voluntary programs have come under attack for over promising or under delivering. In reality, innovations and experiments often are poor cousins in government agencies and seen as distractions from other work so they have been handicapped.

Before continuing, let me be clear the environmental regulatory system has produced great results. Its basic standards should remain in effect and be enforced. But the new era of ecological law will not be one size fits all and use one basic tool. It will be about supporting innovative and efficient ways to go beyond the minimum, to deal with complexity and to restore ecological damage. Ecological damage builds each day and has been described in the book Restoration Economy as not just a threat but a business opportunity. <http://www.restorica.org> Profitable enterprises that restore and protect the environment are a business payoff for thinking ecologically and acting economically.

Since 1996, the Multi-State Working Group on Environmental Performance – MSWG for short -- has been learning from the difficulties encountered by these reform efforts and working to keep hope alive that America can develop policies that open the door to true ecological greatness while maintaining environmental standards.

Our network involves business, government, non-government and academic members. My co-president and head of our Policy Academy is a vice-president of Smithfield Foods that is striving to create a record of corporate social responsibility, including environmental responsibility. Mr. Dennis Treacy is in charge of pursuing that goal. He knows it makes business sense to pursue measurable goals in addressing challenges relating to environmental stewardship, animal welfare, employee health and safety and community involvement.

In the last three years, Smithfield recorded recycling 118 million pounds of cardboard, saving 250 million gallons of water and eliminating 716 thousand pounds of air pollutants. It has improved fleet fuel efficiency by 20 percent. Check out Smithfield's social responsibility report. <http://www.smithfieldfoods.com/Enviro/ARS/> Learn how it has turned environmental problems into business value. Last year the firm saved more than \$7 million due to energy and environmental stewardship.

In 2005, Mr. Treacy and another MSWG Policy Academy Regent, Virginia environmental commissioner David Paylor, supported a Harvard dialogue we co-sponsored to identify barriers to environmental policy innovation.

How important is innovation? Several years ago, I was at an economic conference and heard a speech by a scholar at the Council on Foreign Relations. His message: The only way America will remain a world economic power is for business, education and government to innovate in numerous areas, including regulatory policy. His simple message: "America must innovate, innovate, innovate" to economically survive.

The Harvard dialogue concluded there were three barriers to environmental policy innovation: Law, politics and culture. The discussants were from the business, government, non-government and academic sectors. They cited these problems: 1. Laws that are about minimums that become ceilings; 2. Politics that are divisive and poisoning; 3. Cultures that are risk adverse and too intellectually lazy to try something new.

And so in Atlanta in fall 2005, MSWG created The Path to Washington and a goal of “convening leaders for an ecologically sustainable America.” The Path involves four workshops in Utah, Wisconsin, New York City and Washington. It is sponsoring 36 dialogues that bring diverse interests together to respectfully discuss difficult issues. And it is calling for a dozen or so policy papers on issues about present and future problems.

Four workshops; 36 dialogues and 12 policy papers: That is what we hope to have under our belt by the time we prepare our report to the nation in fall 2009.

Each workshop has a focus. Utah was about grass roots action in communities. Wisconsin was about ideas from around the world. New York is about the financial sector. Washington is convening leaders.

Each dialogue has core questions but also encourages its sponsors to explore local needs. Some will be general in nature. Others will focus on a problem, a business sector or a geographic area. There will be at least one in each of EPA’s 10 regions.

White papers are focused on the goals of the Path. They will be on issues like product stewardship; supply chains; ecosystem services; environmental impact and ecological opportunity statements; restoration businesses; urban revival; working and defense lands; estuaries; and the financial sector. Through Mr. Treacy’s and Mr. Paylor’s leadership, we are partnering with the Environmental Council of States and EPA on a paper being done by Harvard and the University of Pennsylvania on the results achieved by performance-based programs being tested by the states and federal government.

MSWG is always looking for volunteers, partners and sponsors for the workshops, dialogues and papers. http://www.mswg.org/path_to_washington/

By now it should be clear that my trip to Corpus Christi is not only about honoring you. It is about making you both uneasy and hopeful. I want you to be uneasy because America is not living up to its true potential to address its ecological problems. I want you to be hopeful because

there are others with whom you can work to create a system in the best tradition of America that will help us “get to yes” and to solve those problems.

There is great untapped problem-solving capacity in our businesses, in our communities and in our people. It gives me hope to see what you have done in the Coastal Bend Bays region.

And yet you know and I know that much more could be done. Much more could be accomplished if laws were different, if the politics were different and if we in the business, government and non-government sectors cooperated more with each other when it was in our mutual or long term interest to do so.

I am not saying we need personality transplants. We each have interests to represent. I am saying that it would be great if we had a legal and political system that would give us the space and the help we need to make America the land of ecological opportunity as well as basic compliance. That is the America our forefathers envisioned. It is the America that Alexis de Tocqueville wrote about in *Democracy in America* in 1831. It is the America we can have again.

Thank you.