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Northern Illinois University Law Review

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Symposium

New Directions in Environmental Regulation Affecting Development

Lessons in L.U.S.T.: The Complete Story of Liability for Leaking Underground Storage Tanks

Michael J. Maher and Sheila Horan 581

This article analyzes liability of owners and operators of underground storage tanks for tank leakage. Theories of liability include the federal Resource, Conservation and Recovery Act ("RCRA"), breach of contract, negligence, negligence per se, res ipsa loquitur, trespass, nuisance, and strict liability. Liability is analyzed in two factual scenarios: liability of past owners/operators to current owners for contamination of the site from prior operations; and liability of tank owners/operators for contamination that migrates off-site to adjoining properties.

The Illinois Superfund Law Prior to the Brownfields Legislation

James T. Harrington 609

This article examines the state of law for landowner liability caused by the release or threat of release of "hazardous substances" in Illinois prior to the enactment of the Brownfields Act. It demonstrates the inadequacies of not only Illinois Superfund law, but federal law's attempts to find landowners liable for environmental cleanup without having reasonable and knowable standards, known procedures, and reasonably predictable results. The article concludes by underscoring the fact that without remedying these inadequacies, viable land will remain undeveloped and unproductive, and will drain community resources.

Brownfields Bill Promotes Sweeping Changes

David L. Rieser 621

Potential Illinois landowners have been fearful of redeveloping urban industrial area since the advent of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"). Landowners feared the astronomical cleanup liability associated with purchasing contaminated property as well as the vigor in which the Illinois Environmental Protection Agency enforced such cleanup. However, this fear has now been abated to a degree, with Governor Edgar signing into law the Illinois Brownfields program. This article explores the need for such a program, and proceeds to analyze the program's objectives and application. The article ends by appreciating that there will be an experimental stage to this program and that the regulated community should pay close attention to possibilities of this program.

Luncheon Address

Joseph E. Svoboda 631

Siting, Justice, and the Environmental Laws 639

Rodger C. Field 639

Environmental justice is gaining momentum throughout the country. As a result, industrial development can no longer be determined solely by the dictates of one agency or entity. Environmental justice requires efforts of all to participate in the decision-making process to determine how industry will develop in the future. This article traces the history and themes of the environmental justice movement and examines that movement's impact on industrial development. Specifically, the article focuses on how the environmental justice movement affects future source-siting decisions and its ramifications on the various levels of government and on the industrial development. The article concludes by recognizing that the ramifications of environmental justice are so widespread that they must be handled by a coordinated effort between the different levels of government and community.

Rethinking Restoration: Risk Based Corrective Action and the Future of Economic Regulation 659

Gerald W. Phillips 659

The success of traditional environmental regulatory programs is clear. However, change is necessary in order to address the less obvious and more technically difficult environmental problems which remain. Risk based decision has been gaining support as an effective method of protecting human health and the environment. Risk management is a pragmatic and cost-effective decision-making tool. Risk management can efficiently improve environmental priority setting, encourage redevelopment of Brownfield properties, and maintain environmental protection.

Panel Discussion

Mark W. Cordes, Moderator

James W. Ford, Jr.

David L. Rieser

Al Wilson

Rodger C. Field

James T. Harrington

Michael J. Maher

Kathleen Deveau

Gerald W. Phillips 671

Comments

Title VI as a Means of Achieving Environmental Justice 693

Natalie M. Hammer 693

This Comment addresses racism in the siting of hazardous waste facilities. The Comment begins by describing the various studies that document the correlation between race and siting decisions, and the Comment concludes that race is a primary factor in environmental siting decisions. After analyzing the various attempts by minority plaintiffs to address this inequity, the author concludes that Title VI may be the best option for minority plaintiffs to achieve environmental justice.

From the Ground to the Sky: The Continuing Conflict Between Private Property Rights and Free Speech Rights on the Shopping Center Front Seventeen Years After Pruneyard 717

Ian J. McPherson 717

This Comment examines the intersection of property rights and free speech rights by tracing how the Supreme Court has dealt with this intersection in a shopping center context and in other contexts. The Comment proceeds to examine how state supreme courts have traversed the intersection in favor of property rights over free speech rights, and also how states that have not decided this issue will likely resolve it. Upon formulating an analysis practitioners can use in the future when arguing this issue in the undecided states, the Comment concludes that the best argument is based on how close a shopping center is to a downtown business district.

The *Northern Illinois University Law Review* is pleased to announce the Board of Editors, Assistant Editors and Staff for the 1996-97 academic year.

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We slowly drove, he knew no haste
I put away my fears
My labor and my leisure too,
Feel longer than the years.

We passed the school where many dreamed,
Their lessons scarcely done.
We passed the fields of blazing grain,
The setting of the sun.

Most people knew my passion well,
The humor and the fun.
I used those gifts that God gave me,
The challenge clearly won.

He said, if in his image I was made,
The journey is complete.
The spirit speaks--the difference keeps.
No reason shall we weep.

We slowly drove, he knew no haste.
A journey dignified and true.
I leave brand new the greatest gift,
Of love from me to you.

Dedication to Marla R. Dickerson

We dedicate this issue of the Northern Illinois University Law Review with great affection to the memory of Marla Dickerson. Marla, a member of the class of 1996, was a victim of the USAir crash that claimed the lives of 132 persons on September 8, 1994. Although she had completed only one year at the College of law, she left an indelible mark.

Marla's classmates and other members of the College of Law community remember her with great fondness and have expressed their feelings in various ways over the past few years. The National Association of Public Interest Law (NAPIL) chapter at NIU has been named the Marla Dickerson Chapter. Marla has left a very significant legacy in this regard. In its short history, the NAPIL chapter has become one of the most important student organizations at the NIU College of Law.

The most significant outpouring of affection for Marla occurred on September 22, 1994, when nearly 200 mourners attended a memorial service held in our Thurgood Marshall Gallery. Those who spoke at the service described Marla as a vibrant, caring, and thoughtful young woman who was determined to use her legal education in the public interest. In addition to expressions of love and remorse from her classmates and other members of the College of law community, we were also privileged to hear from members of her family. Although I would have wanted to make their acquaintance under different circumstances, I feel honored to know Marla's parents, Ralph and Gloria Dickerson, whose courage in the face of this terrible tragedy has been an inspiration to us all. At the memorial service, a member of the College of Law faculty read the foregoing poem authored by one of Marla's classmates, Carmen Clemons-Goodman, and Professor Leona S. Green.

The Board of Editors for this issue of the Law Review are Marla's classmates. I join them in remembering how Marla touched all of our lives and hope that this dedication serves in some small measure to ease the pain of her family and friends.

James J. Alfini
Dean and Professor