



P E N N S Y L V A N I A LANDOWNER

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If you don't know WHY it may be too LATE!

By Henry Ingram, Esq.

THE OTHER DAY while leafing through some periodicals I ran across a reference to the Pennsylvania Noxious Weed Control Law. Curiosity aroused, I looked it up and found that we now have a Noxious Weed Control Committee¹ which designates noxious weeds and directs our municipalities to eradicate them if the landowner doesn't do it himself. Besides conjuring up an image of a hunch of pompous bureaucrats sitting around a room in Harrisburg mulling over what weeds to designate, I got to thinking about environmental regulation generally.

As many readers know, I have been dealing with environmental regulations and regulators in Pennsylvania for more years than I care to count right now. I go back to before the Sixties and early Seventies, when the General Assembly laid the basic legislative foundation for cleaning up our air, water and land resources. The purpose then was to prevent air and water pollution and to make sure industrial activities were controlled so that public health and safety and the natural environment were protected. Indeed, Pennsylvania was the pioneer among states in air and water pollution control.

The benefits of this early legislation were obvious to everyone. Costs could be internalized by industry or passed on to customers and the environment was improved. In fact, a

broad consensus emerged. In May 1971 the voters of Pennsylvania overwhelmingly voted YES on the following ballot question for a Constitutional Amendment:

PROPOSED AMENDMENT TO THE CONSTITUTION No. 3

Shall Article I of the Constitution be amended by adding a new section guaranteeing the people's right to clear air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit?²

You may remember that this was in the dawn of the environmental era. Rachel Carson had amused the conscience of the nation with her somewhat hyperbolic book, *Silent Spring* and the first Earth Day was celebrated on April 22, 1970. In those days, many of us still had confidence that Government could solve all of our problems. We continued to cede more and more power and authority to Congress which in turn delegated that power to unelected and largely unaccountable regulatory bureaucrats.

What we didn't realize was that along with the higher taxes being imposed by the central government would come a whole series of new federal environmental statutes: the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, CERCLA or Superfund,

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1. Which by law, in case you're interested, consists of the Secretaries of Agriculture and Environmental Resources, the Executive Director of the Game Commission and two members of the General Assembly!

2. Although the voters were asked to vote on this narrow question, "somebody" tinkered around with the actual Amendment which reads: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

Needless to say, the actual language of the Amendment has been assented aggressively by regulators as creating broad powers in Government to control private property and been the source of much anti-development mischief.

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just to mention a few. States were coerced into bringing their own laws "up" to federal standards. If the states wouldn't go along, the federal agencies would preempt local control and come into the states to enforce the new environmental mandates directly.

Congress wasn't satisfied with just controlling pollution-causing activity. It also decided that it should begin to dictate aesthetic preferences and economic choices for ordinary citizens and landowners. We began to get

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things like the Wild and Scenic Rivers Act, the Endangered Species Act and the Historic Preservation Act and countless others. The purpose of these statutes was to preserve certain "natural values" by stopping development, not by controlling it. These statutes spawned regulatory programs that were foisted off the general public as "protecting the environment" and most ordinary citizens probably thought Congress was just trying to prevent industrial pollution. We know better now but to be entirely honest, it was us ordinary citizens who elected and reelected the people who enacted all these statutes and created enviro-police who enforce the regulations. We sat idly by while it happened.

Landowners in Pennsylvania began to wake up to what had happened when U.S. Army Corps of Engineers and the EPA began showing up in their backyards, doing more than just talking about wetlands. The alarm went off when, under Rails-to-Trails, reversionary interests in abandoned railroad rights-of-way were "suspended" and the former right-of-way suddenly became part of a fictional rail bank for future railroad use and, by the way, it will be used in the meantime by the public as a recreational trail. If your insurance

man, banker or machinery dealer tried to pull off a scam like Rails-to-Trails he'd be run out-of-town on a rail (except now, it's probably a park!). Why some legislator with the typical inside the Beltway arrogance and Gucci loafers can get away with this kind of scam defies logic or rational explanation. Are we all too dumb, naive or disinterested to do anything about it? That's what the people who are cramming all this down our throats must think about us.

I can sense some of you thinking to yourselves: "What's the big deal about Rails-to-Trails? Most trail groups don't have funding and municipalities don't have the money to pick-up the few parcels needed to complete the trail or to maintain or police it. These trails won't get off the ground." Like so many other things we let government get away with, our friends in the Pennsylvania General Assembly have come up with a solution — the Key 93 legislation which grabs realty transfer tax money from the General Fund and diverts it to "recreational projects" such as Rails-to-Trails. They'll let us pay for it! Are you getting it now? Government takes some of your property, lets others use it and makes you pay for it. Not only do we not

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run 'em out-of-town, we vote for 'em! The Music Man fleeced the suckers in River City but at least they got the trombones. Landowners get the hole in the donut.

At the risk of running out of space before I get to my point, I have to mention the latest scam, the National Biological Survey ("NBS") which is unfolding before our eyes right now. The NBS has been characterized in Don Hopey's Green Beat column as "the Clinton Administration's ecosystem approach to public land management." The idea here is

to survey all the ecosystems in the country so "rational" decisions on how and what endangered species should be protected. According to Mr. Hopey, "the NBS will catalog and map America's plants and animals to provide much needed information about the nation's biological resources." In reality, the NBS is a device to deflect criticism of Endangered Species Act enforcement debacles such as Spotted Owl (25,000 timber industry jobs lost) and the Coastal Gruntcatcher (hundreds of homes burned to the ground in California) and to set the stage for more government control over private property. These surveys are to be made on private lands as well, not just public lands as a reader might infer from Mr. Hopey's column. I can hear it now: "Just a little survey folks, we just want to see what you have here and put it in overall perspective."

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If you fall for that one, you should be ashamed. First of all, these are the same kind of people who do the Census. If Government can't even count people right, how is it ever going to count all the plants and animals? And if you haven't heard about "buffer zones," "habitat enhancement measures" or "no development zones," we might as well put you back up on the Turnip Truck! You should come up to Erie County and learn about Natural Heritage Inventories! (the state mini-version of the NBS).

Now I'll get to my point. PLA has achieved great success in alerting Pennsylvania landowners to the dangers of excessive Government land use regulation and environmental extremism. It has also been recognized as the leading advocate and defender of private property rights in Pennsylvania. PLA's early success and recognition was a direct result of its Posting Program. People across Pennsylvania who had become accustomed to accepting the hospitality of landowners for any number of recreational purposes, including hiking, hunting and fishing, were abruptly made aware of landowners' concerns when thousands of acres were posted. The Posting

1. I suspect that persons who are of that mind set don't have a "public" trail running through their backyards.

Program was instrumental in focussing public attention on excessive land use regulation.

In case you haven't noticed, landowners aren't having a whole lot of success in restoring reason and balance to environmental regulation. The trend continues toward expanding (at all levels) government control over land use and the voices of anti-development extremists are still being amplified by the

guess is the Commission doesn't want anyone asking about overregulation or questioning PFC policies at all.

Similarly, another argument used against posting is that individuals who participate may lose the benefits of the liability limitation granted to landowners who allow open access to their land for recreational purposes. That may be so but did you ever notice that if

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popular media and listened to by government policy makers. To me, it is difficult to understand why some landowners are reluctant or refuse to participate in the Program.

I know that landowners who have participated in the Posting Program have been criticized and even threatened by individuals and certain groups including persons who purport to speak for the Fish Commission and the Game Commission. PLA believes such opposition to posting should encourage not discourage landowners to participate in the Program. It means that posting is working. It's drawing attention not only to property rights issues but also to the growing concern of landowners about overregulation.

In typical fashion, the Fish Commission responds to posting by threatening to not stock segments of streams crossing posted property. The theory is that PFC regulations don't allow stocking if access is not open to the public. Isn't it typical of bureaucrats to hide behind their regulations? Do you think it would ever occur to them to change their regulations to recognize property rights? All the Posting Program requires is that persons seeking to use a landowner's property ask his permission (and of course, behave responsibly). Why does that bother the Fish Commission so much? My

Government gives you something, it always takes something back, usually more than it gives you in the first place. In this particular case, Government is trying to entice you to trade one of your fundamental freedoms and important constitutional rights, the right to control who comes in your property. In reality, the liability limitation provision was intended by the General Assembly to open more private land for recreational land use and not to benefit the landowner. Our Government wants to curry favor with voters by making your property open to the public and so it throws you a bone. It sounds a little bit like bread and circuses in the declining years of the Roman Empire, doesn't it?

Posting gets the attention of the people who like to use your land and the bureaucrats who love to regulate it. If enough people complain to their legislators about posting, it may even get their attention too. That is the point of posting. It begins to level the playing field in communication and forces public debate on land use issues. It is one of the few tools ordinary citizens have to communicate. It is an affordable and effective way for you to take a stand for your land and for private property rights.

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