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## Foreword

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# MISSISSIPPI COLLEGE LAW REVIEW

## FOREWORD

*Jane Hicks\**

Today, as a society, we cannot escape the knowledge that necessary and beneficial human activities often degrade our natural environment. We are acutely aware that the “business of life” — growing, packaging, transporting, and preparing food; producing consumer and industrial goods; providing information and services; and generating the energy required to conduct these activities — creates by-products which stay with us long after the “business” is concluded. The time has passed when we could either ignore the effects of human activities on the environment or blame adverse impacts solely on government and industry.

The publication of Rachel Carson’s book *Silent Spring* in 1962 is frequently cited as the event which sparked the environmental movement and, incidentally, the practice of environmental law as a specialization in the United States.<sup>1</sup> Although her main targets were pesticide manufacturers and government regulators who had encouraged the widespread use of synthetic pesticides, Carson believed that the public had a responsibility to learn about environmental hazards and to respond to them:

[W]e have put poisonous and biologically potent chemicals indiscriminately into the hands of persons largely or wholly ignorant of their potentials for harm . . . .

. . . . [W]e have allowed these chemicals to be used with little or no advance investigation of their effect on soil, water, wildlife, and man himself. Future generations are unlikely to condone our lack of prudent concern for the integrity of the natural world that supports all life . . . .

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1. See, e.g., Peck, *Comments on Judicial Creativity*, 69 IOWA L. REV. 1, 6 (1983) (“It was because Rachel Carson so excited and energized American people to protect the environment that a specialty of environmental law now exists in the legal profession.”). See also, e.g., Graham, *The Failure of Agency-Forcing: The Regulation of Airborne Carcinogens Under Section 112 of the Clean Air Act*, 1985 DUKE L.J. 100, 147; Guruswamy, *Integrating Thoughtways: Re-Opening of the Environmental Mind?*, 1989 WIS. L. REV. 463, 509; Houck, *With Charity for All*, 93 YALE L.J. 1415, 1442 (1984); Meyer, *The Environmental Fate of Toxic Wastes, the Certainty of Harm, Toxic Torts, and Toxic Regulation*, 19 ENVTL. L. 321, 382 (1988); Turley, *Legal Theory: “When in Rome”: Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 NW. U.L. REV. 598, 659 (1990).

It is the public that is being asked to assume the risks that the insect controllers calculate. The public must decide whether it wishes to continue on the present road, and it can do so only when in full possession of the facts.<sup>2</sup>

The American public responded to the challenges of Carson and others with a dramatic increase in environmental activism during the 1960's and 1970's. As new environmental hazards were discovered (or came to the attention of voters), Congress responded to the public's concerns. As a result, a legal specialty was born. Lawyers who hoped to develop their practices with an emphasis on environmental matters reacted with glee as they saw the practice opportunities expand, yet they also wondered whether it was humanly possible to keep up with the evolution of environmental law as Congress enacted statute after statute: the National Environmental Policy Act of 1969,<sup>3</sup> the Clean Air Act of 1970,<sup>4</sup> the Clean Water Act of 1972,<sup>5</sup> the Federal Environmental Pesticide Control Act of 1972,<sup>6</sup> the Toxic Substances Control Act of 1976,<sup>7</sup> the Resource Conservation and Recovery Act of 1976,<sup>8</sup> and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.<sup>9</sup> These, of course, are only some of the federal statutes that provide for pollution control and environmental protection. Environmental lawyers also have been required to master an abundance of federal regulations promulgated pursuant to those statutes, as well as state law, both statutory and administrative.

Just as members of our society as a whole have come to understand that all of us have environmental responsibilities, so too have the members of the legal community begun to learn that environmental law cannot be left solely to specialists. The breadth of federal and state regulation relating to the environment is too great for that; too many human activities are affected.

The subjects of the articles appearing in this symposium demonstrate my point. Martin Jelliffe and Alfred Light discuss two different aspects of third-party liability under CERCLA: the unsettling—to the uninitiated—idea that one might be liable for the costs of cleaning up environmental messes created by others just be-

2. R. CARSON, *SILENT SPRING* 12-13 (1962). Almost all environmental lawyers know about *Silent Spring* and its impact, but many (perhaps most) of them have never read it. Since the editors of the Mississippi College Law Review have been kind enough to afford me this forum, I will take the opportunity to make an unabashed plug for Carson's works. Carson possessed a skill that environmental lawyers particularly need and often do not possess—the ability to explain scientific information to non-scientists, particularly legislators and judges, in clear, compelling prose. Lawyers can learn a lot from Rachel Carson. William Zinsser, who knows good writing when he sees it, has high praise for *Silent Spring* and even higher praise for Carson's earlier book, *The Sea Around Us* (rev. ed. 1961). W. ZINSSER, *WRITING TO LEARN* 96-100 (1988).

3. Pub. L. No. 91-190, 83 Stat. 852 (codified as amended at 42 U.S.C. §§ 321-4361 (1970)).

4. Ch. 360, 69 Stat. 322 (codified as amended at 42 U.S.C. §§ 7401-7642 (1955)).

5. Pub. L. No. 95-217, 91 Stat. 1566 (codified as amended at 33 U.S.C. §§ 1251-1387 (1988)).

6. Pub. L. No. 92-516, 86 Stat. 993 (codified as amended at 7 U.S.C. §§ 136-136y (1988)).

7. Pub. L. No. 94-469, 90 Stat. 2003 (codified as amended at 15 U.S.C. §§ 2601-2671 (1988)).

8. Pub. L. No. 94-580, amended by Pub. L. No. 98-616 (1984), 90 Stat. 2796 (codified as amended at 42 U.S.C. §§ 6901-6992k (1984)).

9. Pub. L. No. 94-500, 94 Stat. 2767 (codified as amended at 42 U.S.C. §§ 9601-9675 (1982)).

cause one has loaned them money<sup>10</sup> or bought a company.<sup>11</sup> Ronald Rychlak<sup>12</sup> and Casey Jarman and Richard McLaughlin<sup>13</sup> examine a controversy over Mississippi's tidelands that will significantly affect thousands of people on the Mississippi Gulf Coast. Demonstrating the impact of environmental law on the "business of life" for lawyers and their clients—making loans, acquiring businesses, owning and developing properties—these articles should interest not only environmental lawyers and lawyers who represent clients with a direct stake in the subjects under discussion; they should interest all lawyers who wish to have a better understanding of the astonishing degree to which environmental concerns affect our lives and our practices.

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10. Jelliffe, *Lender Liability under CERCLA: A Game of Chance or a Game of Skill?*, 11 Miss. C.L. Rev. 39 (1990).

11. Light, *"Product Line" and "Continuity of Enterprise" Theories of Corporate Successor Liability Under CERCLA*, 11 Miss. C.L. Rev. 63 (1990).

12. Rychlak, *Thermal Expansion, Melting Glaciers, and Rising Tides: The Public Trust in Mississippi*, 11 Miss. C.L. Rev. 95 (1990).

13. Jarman & McLaughlin, *A Higher Public Purpose?: The Constitutionality of Mississippi's Public Trust Tidelands Legislation*, 11 Miss. C.L. Rev. 5 (1990).

