

Professor and Students attack Water Pollution

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Law students and faculty are engaged in a review of standards and regulations which may be necessary to control non-point pollution of surface waters. Under the 1972 amendments to the Federal Water Pollution Control Act, the United States Environmental Protection Agency (EPA) provides federal funds for area-wide and state-wide water quality management programs which must address both point and non-point sources of water pollution. (Point pollution comes from a pipe; non-point is typically run off in open land.) Under the auspices of the EPA, a multi-disciplinary team of Madison campus professors and graduate students is working with state officials and elected representatives in Washington County, Wisconsin, to develop a proto-type non-point source pollution control program for Wisconsin and other states. Professor Church, recent graduate Bill Fahey and Donn Kremmel, a second year law student, are working with professors and graduate students from the Departments of Soils Science, Engineering, Geography, Water Resources, Agricultural Economics, Political Science, and Urban and Regional Planning.

The task of the graduate students in the natural science and engineering departments is to determine the impact on water quality of land development and farming practices in Washington County and to propose strategies to mitigate them. These proposals will then be evaluated as to their cost-effectiveness, political feasibility and institutional impact by the people in Agricultural Economics, Urban and Regional Planning, and Public Administration. The job of Messrs. Church, Fahey and Kremmel is to draft ordinances for consideration by the Washington County Board implementing the proposals.

While the process of developing management strategies is fairly straight-forward, much research goes into the final product; drafting acceptable ordinances is, of course, a complicated assignment. There are several significant issues to be dealt with.

One of these issues concerns the question of whether to prescribe certain development and farming practices or to set maximum quantities of soil loss per acre per year which cannot be exceeded by the developers and farmers. An ordinance of the first type can easily become overly complicated because the kind of practices required will vary with the soil type, slope, kind of crop grown, and proximity to water. An ordinance which establishes a maximum allowable soil loss is less complex, but would be difficult to enforce because of the expense involved in accurately monitoring whether a parcel of land is exceeding its allowable soil loss. The actual water quality impact of a given amount of soil loss has not been established; and the amount of soil lost per acre depends to a large extent on the soil type, slope, and kind of crop grown on a parcel of land. A farmer on hilly land, with highly erodible soil, may employ excellent soil conservation practices and still exceed soil loss limits while a farmer on flat land may employ no soil conservation practices and be within soil loss limits. This raises questions of equity and efficiency.

A second issue concerns the



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resistance of the agricultural community to government regulation. It is presently contemplated that the Soil and Water Conservation District (SWCD), will administer an ordinance directed at curbing soil loss from agricultural lands. In order for such an ordinance to be adopted in the county, a majority of the electors in the unincorporated area must approve it in a referendum. An ordinance, therefore, which prescribes farming practices in too much detail or which sets maximum soil loss limits too low will probably not be approved in the referendum, and will thus cause local efforts at regulation to come to naught.

A final difficult issue is the complex interrelationship of Federal, State and local governments in the field of regulating non-point source water pollution. The Environmental Protection Agency is the Federal agency responsible for achieving Congressionally mandated water quality goals. The Wisconsin Department of Natural Resources has the responsibility for achieving Federal water quality standards in Wisconsin. County Soil and Water Districts are presently envisioned as being the administrator of an ordinance designed to abate soil loss from agricultural lands. SWCD's are special purpose units of local government. The Soil Conservation Service (SCS), a department of the United States Department of Agriculture (USDA), provides personnel and other assistance to SWCD's. Thus, the SWCD's, to the extent that they make use of SCS assistance, must be responsive to some USDA direction in achieving EPA prescribed water goals enforced by the State. The task of remaining responsive is rendered difficult because federal and state agencies sensitivities shift in their attitudes toward proper regulation of pollution.

Working on the Washington County Project not only requires an understanding of numerous areas of the law, such as local government law, property law, and legislation. It introduces the law student to the process of solving problems with legal, scientific, political and economic dimensions.