

ESSAY: AGRICULTURAL PRODUCTION AND ENVIRONMENTAL POLICY: HOW SHOULD PRODUCERS RESPOND?

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Seven years ago I wrote a book for Iowa farmers titled *What Farmers Need to Know About Environmental Law*. The project was funded by the major Iowa commodity organizations and presented an array of information on a variety of new subjects. The book illustrated several things. First, there were many environmental issues important to farmers and agricultural landowners. In other words, there was a lot of grist for the mill. Second, the project showed that Iowa's producer organizations were concerned about the environmental performance of our agricultural system and recognized the value of educating their members on these issues. Third, the project showed that environmental issues play a significant role in shaping agriculture's future.

We have come a long way in the seven years since the book was published, both in the continuing expansion of environmental issues important to agriculture and in the recognition by farmers and the agriculture sector of the impact of law on performance. The issues are not new today. Instead, they are usually *the* news in the morning's headlines. Today, the issues are, "where are we headed?" and "what will the future bring on environmental issues?"

The title for this essay is *Agricultural Production and Environmental Policy: How Should Producers Respond?* As I began to develop this essay, two things came to mind. First, producers, not law professors, must decide how to respond. The most that I or any legal advisor can do is to offer suggestions and advice. My second reaction was to ask, "respond to what?" Clearly the question a person is responding to influences the answers that result. The following are possible answers to the question, "what are producers responding to?"

If farmers are responding to the responsibility and challenge of environmental stewardship that comes with the ownership and operation of agricultural land, then the answer should be for farmers to accept the challenge. Stewardship, like producing the food and fiber upon which people around the world depend, is part of the responsibility of being a farmer. Farmers are helping protect their own future by

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accepting the challenge of stewardship. American agriculture can not expect to harvest the bounty of growing export markets, new industrial uses, and other increased demands for its production if it is not willing to give the time, expense, and effort to protect the resources upon which agricultural production is based. Aldo Leopold said something to the effect that “the land is the well and agriculture is the pump. We have spent too much time improving the pump and not enough time taking care of the well.” That is the basis for environmental protection and why agriculture should accept the challenge.

If producers are responding to those who blame farmers for all the environmental problems in the countryside, such as water pollution, wildlife habitat loss, and draining of wetlands, then the response should be to look at the facts. Respond with information about the true nature of agriculture’s impact on the environment and with measured reports on the extensive evidence of agriculture’s greatly improved performance in recent years, whether in the success of the CRP, the WRP, conservation compliance, or the swamp buster program. We can never expect to win over all the critics, but we must be willing to address the issues they raise and respond with evidence of agriculture’s improving performance.

If producers are responding to a society that is increasingly aware of environmental issues and hoping for a higher standard of agricultural accountability, then the response should be to recognize and accept the challenge. Educate the public about the benefits of farmers’ stewardship and explain why the public must help bear the cost of expanded efforts to protect natural resources. In our rush to reform federal farm programs -- to create the so-called freedom to farm -- we should not ignore the question of how the cost and responsibility of soil conservation will be apportioned without public financial supports for producers. While there is no reason to assume that farmers will drop soil conservation efforts if no farm programs exist, we should not be so foolish to believe the public’s desire for soil and water quality protection will disappear just because farm programs do. Nor should we deceive ourselves into thinking there are no measures society can use to “require” soil and water protection even if they are not attached to a check. Agriculture should be wary of trading a system of public supports for regulatory expectations.

If producers are responding to those who promise relief from the attacks of faceless bureaucrats and the burden of unneeded laws, then the response should be to be wary of false friends who may bear empty promises. Agriculture can not and should not expect to be treated differently or to receive “special” protections if the environmental impacts in question are real. Agriculture can ask only to be treated fairly. Whether the issue is the over-hyped controversy about property rights or efforts to reform soil conservation laws, farmers should be leery of new protections that are “radical changes” in American law.

If producers are responding to their own concerns about how farming may be affecting the environment and whether practices can be improved, then the response should be to do the right thing and use common sense. Embrace the advances of sustainable agriculture, such as those developed by Iowa State University researchers with the support of the Leopold Center, and consider the opportunities that new

production methods and crops offer. Consider carefully the location and operation of livestock facilities. Many of the legal issues that reach the courts could be avoided with the application of good judgment.

Farmers should not waste their time fighting society over whether environmental protection is a legitimate public concern. That river was crossed long ago and society's desire for clean water, safe food, and productive soil is ingrained in our national agenda. Undoubtedly improvements may be made in the operation or delivery of environmental programs, but farmers are fooling themselves if they think Congress will somehow relieve agriculture's supposed burdens or if they think farmers and the land do not share the benefits of these statutes with society and future generations.

From a practical perspective, the response to what farmers should do in light of the various environmental requirements is fairly simple. Producers should know the laws, understand what they require, and comply with them. We must recognize that law is the proxy for society's desires and the standard of environmental performance expected from agriculture is not something that can be disregarded by choice. While elections may bring changes in the orientation of Congress, public opinion polls show that strong public support for environmental protections has not wavered.

If I were to advise farmers about the future of environmental issues, my suggestions would be:

- First, accept the opportunities of sustainable agriculture by recognizing how it can improve your environmental performance and increase returns or cut costs.
- Second, be wary of efforts to "reform" the soil conservation system. The record does not show that farmers have decided to eviscerate the Natural Resources Conservation Service or to alter the working of local soil conservation districts. Political efforts to do so should be resisted. Sixty years ago Iowa and Secretary of Agriculture Henry A. Wallace wrote in the *1938 Yearbook of Agriculture*, "The social lesson of soil waste is that no man has the right to destroy the soil even if he does own it in fee simple. The soil requires a duty of man which we have been slow to recognize." In the last sixty years, Iowa and the nation have recognized that duty and developed laws and cost-sharing programs to make it real.

In Iowa and the Midwest, our rich heritage of soil resources and agriculture's historic commitment to protect these resources, is offended by these offers to "help" agriculture by letting some dirty their own nests and those of others. We have too much invested in our soil conservation systems in terms of the money spent on compliance and in the image of farmers as stewards of the soil to let our foundation be eroded by politicized reformed attempts.

- Third, farmers must face the reality of the changing nature of agricultural production. This affects society's view of what farming is and the reality of farming's impact on the environment. While it may be a controversial topic, all farms are not created equally. All swine operations are not the same, neither in their potential impact on the environment nor on local air quality. It might be easier to view all issues on a sliding scale with size being the only difference, but society does

not see it that way -- neither do the neighbors, nor state legislatures and environmental officials, nor would most farmers if they lived across the road.

This does not mean society should try to prevent development of large scale operations, however defined. Swine production is a critical part of Iowa's and the nation's agricultural economy which must be maintained. However, we must be willing to ask the correct, though difficult, questions, such as:

1. Is there an appropriate role for local involvement in location and siting through county zoning or other means?
2. Do state environmental rules on issues such as separation distances, and construction and operation standards adequately protect environmental resources?
3. Are the interests of neighboring landowners to be free of unreasonable odors and adverse impacts on their quality of life and enjoyment of their property adequately protected by the rules? If not, then is it reasonable to give operators who comply with the rules complete protection from nuisance suits as Iowa law now does?

• Fourth, agriculture in Iowa and the nation must accept the reality and appreciate the unrest, fear, and concern many people have about changes in the countryside. This is not a farmer versus city-folk issue. It is not an issue that can be resolved simply with new laws or regulations, or unfortunately, more money for research. And it is not a debate that will go away by wishful thinking or otherwise. It can only be resolved through study, communication, and exercise of good judgment. Even if these actions are taken, not everyone will be happy. As part of this debate over changes in agriculture, we also must ask a number of questions. Why are these changes happening? Why the rush to mega-sized swine facilities? Are producers getting the full story on the economic opportunities in swine production? Are expanding companies bearing full liability for the costs they may be imposing on society? Are questions of market access and packer relations adequately understood? In the years ahead, Congress and state legislatures will not be able to avoid addressing these issues.

The goal of this essay is to discuss some of the major environmental issues as they relate to agriculture in Iowa and our society. In conclusion, let me review several of the important questions these issues pose for producers and their advisors.

First, there will be more public attention to agriculture's impact on the environment. The question is: how do we ensure society does not perceive agriculture as "unfinished business"?

No other economic activity makes such extensive use of vast quantities of natural resources as does agriculture. In America, farming and ranching take place on nearly 1 billion acres of land. However, the potential to cause environmental problems does not mean resource degradation must occur. Whether resource

degradation occurs depends upon the attitude farmers and landowners take toward the land and the farming methods used. Just as agriculture can harm the environment, it also can be a major force in protecting natural resources. As owners of most of the private land in the United States, farmers play a significant role in protecting environmentally valuable lands ranging from woodlands to wildlife habitat. Farmers and their organizations claim no one has a more direct or greater concern for the health of the natural environment than they do.

On the other hand, a number of environmentalists view agriculture as locked into an economic and technological system that encourages intensive practices and environmental harm. The issue here is one of contrasting perspectives on agriculture's impact on the environment. The difference in perspective is reflected in the policy debate. There are at least three central questions that will influence the debate and shape our national environmental laws:

1. Who should bear the costs of environmental protection, farmers or the public?
2. Which corrective approaches should be pursued, voluntary programs of education and financial incentives or strict regulations and enforcement of environmental standards?
3. Who should be given responsibility for implementing and enforcing the laws, the federal and state environmental agencies or the respective departments of agriculture?

How we answer each question will play an important role in determining the shape and effectiveness of environmental laws and their impact on farmers.

Second, there is a conflict between the agriculture being created and that which society desires. The question is: can or will an industrialized agriculture protect the environment?

Clearly, the public expects those in agriculture to perform many new roles: (1) as environmental stewards; (2) as producers of safe, abundant, and inexpensive food; (3) as preservers of rural culture; and (4) as engines of rural economic growth. In many ways, these are the same challenges the family farm and American agriculture has tried to meet in the past. But now, at a time when we expect more of farmers, the structure of agriculture and its ability to fulfill the public's expectations is moving the other way. We have an agriculture system that, in some ways, is in the last stages of industrialization, reflected in the growing size of farms and the utilization of new organizational forms in the production of food. This is especially true in livestock production. Contract feeding and large scale confinement facilities may result in an industrialized structure quite different than the family farm-sized operations that lawmakers had in mind when many original environmental laws and incentive programs were written. The question is: can the agriculture we are building yield the harvest we desire? Changes in production techniques and the structure of agriculture

will increase the potential for public scrutiny.

Third, Congressional action will create opportunities for dramatic changes in agriculture's responsibilities. The unanswered question is: how will the 1996 Farm Bill and the future reauthorization of laws such as the Clean Water Act affect how well agriculture protects the environment?

The most important developments may be ones of which we do not know the content. This year, Congress made major changes in federal support for agricultural producers. While the changes in the soil and water conservation provisions were minor, major issues persist about what will happen in 2002 if farm payments cease. In the next year, Congress will consider other laws that could greatly change the duties and obligations facing farmers and the way the nation will address environmental issues in agriculture. Legislation to be considered includes the Clean Water Act, which may result in enactment of new mechanisms for dealing with nonpoint source pollution from agriculture. The Endangered Species Act and the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) also are up for reauthorization. Every farm will be directly affected, depending upon the manner in which these laws are rewritten.

Fourth, property rights advocates will continue to challenge society's ability to protect the environment. The question is: will their efforts result in protections for farmers or will they lead to a backlash of more regulation?

One of society's most fundamental issues is the balance between private property and the state's power to restrict the use of property to protect the public health and societal values. The issue has a political dimension involving the form of the society created, and it has a constitutional dimension because of the Fifth Amendment's prohibition against taking private property for public use without compensation. Use and enjoyment of private property is a fundamental component of American life and a major factor in our economic freedom. But quality of life and success of the economy is greatly shaped by state action through environmental protection, land use planning, and protecting public safety.

As society develops, our understanding evolves as to what is recognized as private property and which activities are potentially injurious to the public. The agricultural community has a fundamental stake in this issue. First, a wide range of environmental issues involve public regulation of agricultural land. Whether it is wetland protection, disposal of animal wastes, controlling soil erosion, or preventing water pollution, important public goals can not be achieved without affecting the actions of private landowners. Second, in recent years a vocal "property rights" movement has emerged in the United States, comprised primarily of politically conservative groups and individuals, arguing for a strict interpretation of the takings clause. Laws such as the Endangered Species Act and wetland protections have been their prime targets. The movement's goal is to rewrite American property law to

place private desires of developing land above public welfare concerns and to require compensation to landowners whenever a regulation reduces the property value. Congress is considering laws requiring compensation when a regulation reduces the property value by a certain percentage, but the fate of such potential legislation is uncertain.

Constitutional protections for private property are of fundamental importance, but there are risks if the farm community responds by stating “if the public wants me to protect the environment, pay me.” The first risk is the position may be judicially incorrect and be rejected by the courts. Many state court rulings, including the Iowa Supreme Court’s rejection of a takings claim in upholding the state’s soil conservation law, show considerable precedent exists at common law and in statutes, for regulating farming practices. The second risk is in the clamor over “property rights” and “takings.” For example, we may fail to recognize the important public benefits agriculture receives in the form of public cost sharing of conservation, direct subsidies found in farm programs, and local property tax breaks such as homestead credits and special use valuations. By focusing on takings claims that the public cannot limit use of private property, farmers and landowners may risk a political backlash causing the public to re-examine agricultural support.

A final risk is if every policy debate on environmental protection is diverted into a referendum on “property rights,” the agricultural community may miss important opportunities to help society develop creative alternatives that accommodate the public interest and landowners’ desires.

Fifth, efforts to protect the environment coupled with local innovations will create exciting new opportunities for public-private solutions. The question is: will we use such innovative tools as conservation easements?

How do we create opportunities to improve the performance of agriculture and protect the environment? In recent years, the concept of sustainable agriculture has received increased attention. By combining concern about the environment with farming economics, sustainable agriculture presents a way to develop and sustain the producer’s natural concern for farming economics. Iowa has been a national leader in funding sustainable agriculture research. The results from the research, such as how to reduce nitrogen fertilizer use rates, are already being seen. By merging economics and environmental stewardship, sustainable agriculture holds great potential for the United States.

Sustainable agriculture is just one example of how we can look optimistically to our future. Perhaps the best example of private-public compromise is the increased use of conservation easements. Conservation easements operate by having the public acquire a property right in exchange for the landowner agreeing to permanently protect the resource or environmental values set out in the easement. Voluntarily purchasing a conservation easement is an effective compromise between regulatory approaches that force the landowner to do the same thing without compensation, and public acquisition of the property. Using conservation easements

leaves the property in private ownership and available for other compatible economic uses, while placing responsibility for funding on the public which reaps most of the benefits. The potential for conservation easements to promote environmental protection in agriculture is well-illustrated by the Wetlands Reserve Program (WRP). The farmer interest in the WRP has surprised many people and illustrates why these programs are effective. The nation must continue searching for ways to accommodate economic activity on private land while protecting important resources.

In conclusion, environmental policy is clearly a major factor shaping agricultural production. It creates responsibilities for individual farmers and landowners, and creates expectations for society. The main purpose of the law is to protect the productivity of our resources and guard our quality of life. While environmental regulations present challenges for farmers, the laws are reasonable statements of the stewardship ideal that we all should be able to embrace.