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## Susan Hunter, Richard W. Waterman, Enforcing the Law: The Case of the Clean Water Acts

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track, Burton ably aggregates these details into overarching themes and issues. This results in a fascinating overview of tribal water rights, the current state of negotiations, and the future issues facing the tribes, western states, and the federal government. As water resources become sparse in the western United States, Burton's study can serve as a thorough analysis of history's errors and successes in tribal water rights negotiations. Hopefully these errors will be accounted for in future adjudications and legislation, resulting in more thorough and fair settlements between tribes, states, and the federal government.

*Matt Larson*

**Susan Hunter, Richard W. Waterman, *Enforcing the Law: The Case of the Clean Water Acts*, M.E. Sharpe, Inc., Armonk, NY (1996); 249 pp; \$43.95; ISBN 1-56324-682-1, soft cover.**

Congress and President Clinton put forth a message that law enforcement must be strict and severe. With regard to the Federal Water Pollution Control Act of 1972, otherwise known as the Clean Water Act ("CWA"), this message is still not clear. There is unambiguous evidence that regulatory enforcement in the area of environmental protection has not been very effective. In *Enforcing the Law*, Hunter and Waterman evaluate the motivations of enforcement personnel, the constraints they face, and how they perceive the entities they regulate.

Hunter and Waterman argue that the level of the bureaucratic response directly correlates to the diversity of the regulatory environment. The authors conclude that the regulatory environment consists of the various actors that agency personnel deal with on a regular basis, the economic conditions relevant to the problem being regulated, the organizational structure employed by the various regulating agencies, the manner in which the agencies interact with each other, the way in which pertinent legislation is written, the demographic population for the regulatory action, and the nature of the externality being regulated. Each state and region deals with different geography, economic basis, population densities, and political pressures. Because the control of surface water pollution occurs in a large and diverse regulatory environment, the regulators operate flexibly in their approach, allowing for drastic variations by region.

The Environmental Protection Agency ("EPA") shapes the institutional setting with its largely discretionary role in both organization and rule making in the National Pollutant Discharge and Elimination System ("NPDES"). EPA functions with a centralized control by the Administrator and decentralized authority over its functional units. EPA's decentralizing tendency, its frequent delegation to the states, and the considerable discretion given to EPA officials accentuated the already apparent regional differences. EPA's dual contradictory objectives of national consistency and the accommodation of state and re-

gional goals has forced EPA to be more flexible in its enforcement and forced EPA officials to adopt a more pragmatic approach to navigate the two goals. For the enforcement of the NPDES, EPA establishes minimum standards but leaves many of the operational details of implementation to EPA regional offices and to the states.

Hunter and Waterman identify that bureaucratic discretion inherently performs a role in the application of pragmatic enforcement. Personal attributes and attitudes along with political factors influence the behavior of bureaucrats during their decision making process. Because of the discretion, rules are in place in the organization to guide the decision-making process and to limit the discretion of the employees. Additionally, organizational rules and norms constrain the individuals within. To find out more about the NPDES enforcers, the authors conducted a survey using EPA data. They found that the average NPDES enforcer is well educated in sciences or engineering, has children, is between the ages of thirty and thirty-nine, makes between fifty and seventy thousand dollars per year, highly participates in the election process, most took alternate transportation to work or car-pooled, and most kept their heat down to sixty-five degrees. Most enforcers are slightly conservative about economic issues and slightly liberal about social issues, but also agree with the statement that a clean and safe environment does not require drastic changes. Overall, NPDES enforcers are not radical either politically or economically. Interestingly only twenty-four percent of the respondents thought that water pollution was the most problematic environmental concern and should be the top priority of environmental enforcement. The average employee dealt with 52.8 permittees, the median being 30. Enforcement employees regularly conduct inspections and permit reviews; recommend and take corrections actions including writing warning letters, notices of violation, and administrative orders; and most perceive they have some or a great deal of discretion in these tasks. Almost half said they give some consideration to the condition of local economy when making decisions. Seventy-three percent said they take into account extenuating circumstances when determining how to enforce law. Given the NPDES enforcers outlook, it is not unexpected that they have adopted a pragmatic approach.

Hunter and Waterman determined that bureaucratic discretion actually coexists with the hierarchal political control of the bureaucracy. Bureaucratic discretion is an essential element of enforcement in agencies because of the diverse regulatory environment and unavoidably vague procedures and laws. Discretion, while criticized, has allowed for the enforcement of the CWA in a wide variety of complicated cases. While much of the criticism centers around the assumption that elected officials are passive in the bureaucratic process, considerable research has challenged this premise.

Three competing theories have emerged that propose a relationship between bureaucratic discretion and hierarchal political control of the bureaucracy. First, the most long-established argument is that discretion could promote a bureaucracy that is unaccountable to elected officials. Second, political hierarchy could diminish efforts at bureaucratic discretion. Third, elected officials would exert control from the top, constraining bureaucratic activities, while bureaucrats would exert some discretion while enforcing the law within a certain acceptable range. The authors set out to test these three models by examining the EPA water office using the methodological approach used by Wood and Waterman (1993, 1994) and taking into account the different enforcement philosophies of the regional offices. Hunter and Waterman found strong and expansive evidence of hierarchal political control across two of the three branches of the federal government, Congress and the Judiciary. They also ascertained that the budget, the most important hierarchal factor, is positively associated with enforcement actions. The authors determined no relation between employment rates or seasonal impacts on EPA's actions. The study suggested that the state of the economy, but not media interest, affected the NPDES enforcement. Hunter and Waterman asserted these findings enforce that bureaucratic discretion and hierarchal control coexist. Further, they found that the greater the number of inspections, the fewer the number of cases referred to the Justice Department, suggesting that the states that are more active with low-level enforcement are less active with high-level enforcement activities. Concerning Judicial Department referrals, they found that the greater the penalties, the more referrals to the justice department. The authors' analysis points to the third theory as the most viable explanation for these results. Because of the lofty goals of the CWA and the lack of funding and enforcement personnel, it is not surprising that EPA utilizes both broad bureaucratic discretion and a pragmatic approach.

The authors ascertained that states often play a larger role than the federal government in the implementation and enforcement of the CWA. Thirty-eight states have established their own programs that have either met or exceeded the requirements of the CWA and have established primacy for their NPDES programs, allowing them to principally control the CWA process. The states utilize three main organizational structures with regard to primacy: the "miniEPA" approach, or those who base their organizational structure on the EPA; the "superagency" structure that combines environmental programs with other programs; and the health agency model to administer water pollutant programs, used by those states that are often agricultural.

Bargaining and persuasion characterize the cooperative relationship between the states and the federal EPA. In its oversight role, EPA sends notices of violations to the states when a NPDES permit violation occurs. EPA interacts with the states regarding funding for various

state programs and EPA provides assistance to the states as needed. While not all are equally committed, the states have played an essential role in the permitting process, compliance monitoring, and enforcement. The states are typically more aggressive in issuing permits and performing inspections than they are at higher-level enforcement. Primacy states issue more NPDES permits, and states that employ the miniEPA structure issue the most major permits, followed by the superagencies, and then the health agencies, suggesting that organizational structures matter. While primacy states issue more permits, seventy percent of the enforcement activity occurred in just twelve non-primary states, showing that few states are as committed to aggressive enforcement as EPA. The regional organization of the EPA, primary delegation to the states, and the states' organizational structures all have significant consequences for NPDES enforcement. Hunter and Waterman assert that the direction of environmental enforcement has been toward the delegation of authority to the state level, which is a cause for concern if most states are not aggressively enforcing the CWA.

The role political influence plays at the state level accounts for some of the variations in enforcement among the states. States are highly political arenas and vary considerably in environmental support. Enforcement is more aggressive in states where public participation is higher, in states with more pro-environment representatives, and in states with more professional legislatures. Economic factors, interests groups, diversity of populations, differences in water usage and quantity, and perceptions of the sources of water pollution problems in each state provide a different explanation for variations amongst the states. Five of the six variables studied by the authors related to the level of NPDES enforcement response: demographic variables; water quantity and usage, and perceptions of the sources of water pollution problems; organizational structure; economic factors; and interest-group variables. Interestingly, the study showed no direct correlation between politics and the enforcement response.

Hunter and Waterman conducted a study looking at the percentages of phosphorous, dissolved oxygen, and dissolved solids constant in relation to demographic, water, and organizational variables to find out if the diverse regulatory environment relates to policy outcomes. They found that policy outcomes relate to the diverse regulatory environment in a negative manner, raising environmental justice concerns. The study also suggests that those states that utilize health agencies as opposed to miniEPA or superagency organizational structures have poorer water quality. Thus, organizational structure again does matter. Hunter and Waterman determined that states employ various and often dubious methods to measure water quality. Inconsistent measuring methods along with nonstandard and poor recordkeeping result in significant gaps in the enforcement process. The authors urge the states to adopt one or more consistent measuring tools.

Hunter and Waterman ascertained that because of the incredible diversity in the regulatory environment, strict enforcement is unlikely to occur, but implementing several steps could promote a strict approach. If EPA can obtain more funding, EPA could increase the number of enforcement personnel, making strict enforcement more feasible. Another step would be to fortify the provisions of environmental laws at both the state and federal levels. Additionally, EPA could make the burden of proof against violators more reasonable. Another change would be to ensure a portion of the money from civil penalties makes it to EPA or to the state environmental agencies. In addition, an increase in administrative fines and an increase in permitting costs would aid in strict enforcement. Hunter and Waterman found that to accomplish minimizing the variations of enforcement across the states we must promote the strict approach, utilize technological development, change the focus from outputs to outcomes, or change the focus of the NPDES enforcement to one that tries to internalize the costs of pollution.

Lastly, critics have said that environmental regulation has failed because the command and control regulatory approach is inflexible. The authors determined that moving toward an economic-incentive based method would offer a variety of different approaches that would aim at internalizing the external costs of pollution. According to proponents, this system would be more efficient, effective, and easier to implement. Hunter and Waterman conclude that in the framework of a diverse regulatory environment, economic incentives may be a more suitable system.

*Kathleen Brady*

**Carl J. Bauer, *Siren Song: Chilean Water Law as a Model for International Reform*, Resources for the Future, Washington D.C. (2004); 172 pp; \$33.95; ISBN 1-891853-79-1, hard cover.**

*Siren Song* provides an overview and analysis of the free-market Chilean Water Model in the context of international water reform. Bauer, a water researcher with extensive experience in Chile and elsewhere, brings a social science perspective to the largely economic discussion on water rights in developing Chile. The author takes the reader through background on the international water policy debate, an historical overview of the free-market Chilean system, the issues surrounding reform of the Water Code, a present-day analysis of its successes and failures, and a look towards the future.

This book evaluates the 20-plus year history of the Chilean Water Model in order to provide the reader with insight into the Chilean experience and to highlight the significance of Chilean water policy in the international arena. The Chilean Model has treated water rights as heavily privatized, fully marketable commodities, and the international