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Agriculture and Environment in French Law

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AGRICULTURE AND ENVIRONMENT IN FRENCH LAW

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For a long time modern French agriculture has ignored environmental considerations. In the last five years, it has become evident that industrialized agriculture has been the source of new pollution. This pollution, mainly nitrates in the water, is due to the excess use of nitrogen fertilizers. In addition to the pollution problems, significant urban and leisure development pressures threaten much of the agricultural land. Even though 60% of the soil remains in agricultural production, rural areas have been transformed significantly.

Although the population in rural areas decreased for over a century, in 1982 the population census indicated an increase of 6.2% during the past decade. However, this increase has not occurred as a result of an increase in agricultural activity. Rather, it is linked with the differentiation of activities in rural areas. Agriculture is no longer the main activity in rural areas, which means new conflicts result among competing and different uses.

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In 1981 the French Society of Environmental Law organized a colloquium on the legal aspects of agriculture and the environment. This commentary provides an updated general view of the essentials about agriculture and the environment. The discussion is broken down into three categories.

I. THE REDUCTION OR TRANSFORMATION OF AGRICULTURAL LANDS

Currently agricultural land faces three competing land use situations which contribute in different ways to the reduction or transformation of agricultural soil.

A. *The Provision of Public Works and the Pressure of Urbanization*

Large-scale public works such as railways, highways, bridges, airports and nuclear plants consume more and more agricultural land. The land developed is often good agricultural land. However, judicial control in this field is insufficient.

An administrative judge controls the legality of the expropriation of land for these various uses. However, the judge is precluded from including in his decision the advantages or disadvantages of developmental alternatives. The judge cannot consider the direction of one highway as opposed to another. Nor can the judge consider the placement of the nuclear plant. Thus, there are very few cases where agricultural interests prevail over public interests. (See Le Verdon CE 7.11.80 p. 757, RJE 1981..1 p.44 about industrial zones.)

The expropriation code benefits some of those involved in agriculture. One such benefit is a provision which reduces the inconvenience to agricultural land owners. For instance, special financial help to farmers for relocation or reconversion is available.

B. *The Reassembly of Agricultural Land*

The aims of reassembly are to concentrate land for better agricultural production, to group parcels of land and to bring land and buildings nearer for exploitation. This policy has been conducted without any ecological concern for many years. Thus, reassembly has been detrimental for both natural conservation and scenery. The abuses include the destruction of hedges and slopes, as well as the filling up of ditches. In addition, such works had a very bad influence on ecological life. These abuses resulted in erosion, the modification of microclimate and the destruction of birds' habitats.

This is why a law in 1975 modified the rural code in favor of environmental protection.

As a result of the 1975 law, those involved in reassembly must protect the soil and natural equilibrium. The local commission deciding the reassembly of agricultural land must include an ecologist who often works closely with environmental associations. Since 1978, an impact statement has also been required for the reassembly of agricultural land.

C. Waste Land Problem

Approximately 8.4% of the agricultural land is considered waste land. This amount is increasing due to the desertification of agricultural land into waste land. Accordingly, a law in 1978 encouraged the reclamation of these waste lands. Under this law, a local plan is drawn up by the administration when the land is registered for agricultural use. Also, agricultural representatives are consulted for their input about the plan. If the land is not returned to agricultural use, the administration expropriates the land. If there is no plan or no registration of the land as waste land, a third party can ask the local administration to cultivate any waste land. However, the third party must prove to a specially appointed commission during a public inquiry that the land is really waste land. When waste is proven, the land owner has two months to decide whether or not he will cultivate the land himself or rent it to the third party.

II. AGRICULTURAL POLLUTION

Industrial farming, feedlots and mechanization are responsible for a substantial amount of water pollution, air pollution and noise pollution. In spite of the feasibility of controlling agricultural pollution, no specific legislation on agricultural pollution exists. Throughout all environmental law, it is possible to control most agricultural pollution. This can be seen in four sectors.

A. Protection of Soil Against Pollution

Even though soil pollution may result in environmental problems, such pollution is not directly taken into account in environmental law. The law affords water and air special protection because they are for collective use. However, soil is a landed property, owned for the private use of the land owner. Thus, no special environmental law protects soil from pollution. In addition, the protection of the soil is

not yet a collective duty, rather it is merely an individual obligation. The interrelationship between soil and underground water makes the pollution of the soil a problem which extends beyond the private interest in the individual parcel of property.

The 1975 law on wastes deals with the effects of wastes on soil. The first threat against soil comes from erosion. Soil erosion is not perceived as an important threat in France and no special legislation exists on the subject. Erosion can be prevented by special regulations directed at forestry and grazing in mountain areas. Similar regulations are present in seashore areas and are directed at the protection of forests and sand dunes.

B. Protection of Soils Against Pesticides

French legislation describes pesticides as "pesticidal products for agricultural use." Even though pesticides normally destroy insects harmful to cultivation, they may also be toxic to fish and birds, destroying the ecological equilibrium by their indirect effects. However, the ecological balance is not completely unprotected. A 1972 enactment extended the preexisting control of pesticides for agricultural use. The enactment controls manufacturing, sale and use of pesticides.

1. Control Over Pesticide Manufacture

In order to avoid distribution of environmentally dangerous products, the law instituted a type of approval system which makes commercial pesticides subject to authorization by the minister of agriculture. This requirement relates only to pesticides specifically listed. Before the product is authorized, it is examined and tested by three separate commissions. After testing, a ten-year permit is approved by the minister of agriculture. The permit can be withdrawn at any time during this period. Pursuant to a decree of July 13, 1979, concerning specified pesticides, a manufacturer can be required to periodically provide information on the quantity of the products sold in the market. The manufacturer may also be required to inform the administration of any subsequently discovered danger to man and his environment resulting from use of the permitted pesticide.

2. Control Over Pesticide Sales

Rigorous controls apply to the sale of agricultural pesticides. Products which have not been type-approved cannot be sold. Adver-

tising is also limited. Packaging and labels must carry, in a visible form, recommended doses and instructions for use.

3. Controls Over Pesticide Use

A special decree of February 25, 1975, restricted the use of pesticides. Any dispersal of the products must be avoided in dwelling areas, parks, gardens and buildings. The restrictions also apply to land used for livestock breeding, drinking water points, fish breeding points, aquacultural areas, rice fields, sea shores, hunting reservations, natural parks and natural reserves. The most toxic products require specific authorization prior to individual application.

Other areas besides those listed above may also be protected from pesticide use. Since the 1976 law on the Protection of Nature, the project (local state representative) is empowered to forbid pesticide use that poses a danger to the ecological equilibrium of the land.

C. Protection of Soil Against Fertilizers

Only recently has the law been modified to control the use of chemical fertilizers. The law of July 13, 1979, adopts the same principle as the law of 1972 regarding pesticide use. The enactment allows the use of manufactured products after controls and tests on the physical, chemical and biological components of the fertilizers have been conducted. However, a large number of fertilizers approved for free circulation by the EEC prior to 1979 are exempt from the new law. The sale of these exempted products, however, may be prohibited under the new law if subsequent developments reveal that these products pose a risk to man or the environment.

D. Agricultural Classified Installations

Many important agricultural activities are subject to France's general law of pollution of July 19, 1976, called the "law on classified installations for the protection of the environment." This legislation covers all polluting installations of industry, research and agriculture. The law regulates feedlots, traditional and artificial types of intensive grazing and the industries linked with the transformation of agricultural products. The livestock involved consist primarily of chickens, pigs, ducks and cattle.

Installations which create inconvenience and pollution for the neighborhood may be classified in one of two ways. The categories are based on the seriousness of the dangers caused by the given activ-

ities. The more dangerous activities are subject to authorization and the others to declaration.

When a farm is submitted to authorization there must be an impact statement and a public inquiry. The authorization given by the local representative of the state fixes specific technical requirements to be respected by the installation, taking into account the effectiveness of antipollution techniques, their cost and the characteristics of the surrounding area. When a farm is submitted to declaration, there is no public inquiry and the farmer has only to respect general requirements ordered by the prefect.

The list of activities submitted to the classified installations legislation is quite numerous. For instance, it concerns feedlots of more than 50 dogs, two thousand rabbits, five thousand poultry, and milk production of more than 7,000 liters a day. The regulation of pork feedlots constitutes the largest number of cases. Feedlots of more than 50 hogs are submitted to declaration and lots greater than two hundred are submitted to authorization.

One of the main problems is housing near agricultural installations. The administration may forbid a new pork feedlot installation near a house, but a recent decision of the Counsel of State gives farmers a right to contest the location of a house near an existing pork feedlot installation.

III. THE QUALITY OF AGRICULTURAL PRODUCTS AND PRESERVATION OF NATURE

A. *Organic Farming*

The quality of agricultural products depends on agricultural methods. The industrialization of agriculture and the excessive use of fertilizers and pesticides lead to a standardization of products without natural taste. Here, as elsewhere, the protection of the environment and the protection of consumers is the same fight. In France, a minority of people try to avoid the use of chemical fertilizers by utilizing only biological methods of farming. These organic farmers represent only 1% of the farmers. However, their numbers may grow since organic products are increasing in popularity. Indeed, demand currently exceeds supply.

Since 1980, organic farmers have organized in order to obtain official recognition. The agricultural law of July 4, 1980, legally recognized organic farming, called "agriculture without synthetic, chemical products." Special regulations are being developed by the Ministry of

Agriculture which will set the minimum conditions for organic farming. These conditions will apply to any farmer who wants to label a product as organic.

B. The Preservation of Nature

Nature conservation is often in conflict with farming. Farmers are always afraid of administrative planning for natural reserves or parks because they think that they will have to stop or reduce their activity in these areas. However, this concern seems unfounded because all legislation on preservation of nature contains specific reference to the right to farm. Generally, traditional farming activities are permitted in designated natural reserves. However, new activities or intensive farming is forbidden. In national parks farming cannot be forbidden but may be controlled, for instance, for grazing or for the use of fertilizers or pesticides.

IV. CONCLUSION

A court may hold a person liable for agricultural pollution. Compensation for damages is decided by a civil judge as for any pollution problem. However, there is no specific law about liability for agricultural pollution. Thus, a judge may award compensation based on a determination of an "abnormal neighborhood inconvenience" whereby the judge takes into account the nature of the surrounding environment. For example, he would reject a request for compensation for disturbance resulting from the installation of a piggery in a small rural community when the disturbance does not appear to exceed what exists normally in the rural environment. (Cass.Civ. 30 January 1963).

A kind of "right to farm" law was enacted in 1976 and in the 1980 Agricultural law. To protect the farmer against third parties, this law provides that no prosecution is possible against a polluter when the plaintiff comes to the place after the farmer (in other words when he comes to the nuisance). Additionally, such a suit will be unsuccessful if the agricultural activity has not been modified and is conducted in conformity with laws and regulations.

The 1976 law is unconstitutional as it deprives citizens of the right of access to the court, and is antiecological as it gives the farmer the right to pollute free from sanctions or other remedies. This law also applies to pollutions from industrial or commercial activities. Thus, the law is a sign of a serious regression from environmental protection law. For the reasons listed above the law should be

abolished.

In summary, the evolution of agriculture and environment protection appear to be in a conflict which is emerging as a major one in France. However, there is a slow evolution in the consciousness of agricultural groups concerning the future risk to soil and water posed by the excessive use of nitrogen fertilizers. This concern can lead to positive changes like the very recent agreement between the Minister of Environment and Minister of Agriculture to improve the environment in agricultural policy.