Environmental Policy and Law, 1 (1975)

Private Remedies for Transfrontier Environmental Disturbances. By Stephen C. McCaffrey. International Union for Conservation of Nature and Natural Resources: Morges, Switzerland. 1975. Pp. 157. $6.00. The eighth number in the IUCN Environmental Policy and Law Paper series is a scholarly study of legal problems to be overcome and alternatives to be chosen in seeking private remedies for transnational pollution. The author sees the private lawsuit for injunction or recovery of damages as frequently being preferable to efforts at the intergovernmental level to solve international environmental problems. In this way responsibility for pollution-related injuries may be determined through the relatively straightforward processes of private delictual law as opposed to the murky and often unenforceable rules of public international law. As a third alternative, the author suggests that states open their administrative decisionmaking processes to interested foreign parties on the same basis as they are open to their own citizens, so as to facilitate the prevention of transfrontier environmental disturbances before injury occurs. Professor McCaffrey’s detailed analysis makes clear that the way to a private law verdict in a case of transfrontier pollution is not an easy one. However, his thorough discussion of the problems of choosing a forum, of jurisdiction, of choice of law, of remedies, and of enforcing a judgment once obtained should be of practical value to an attorney seeking to develop litigation strategies in this field. Of course, the author’s conclusions should not be taken as Gospel. Thus, for example, he states that “generally speaking, jurisdiction could properly be asserted over a foreign defendant on the basis of the harmful effects in the forum state of his emissions”, a conclusion contradicted by a recent Dutch court decision in the Rhine River pollution case discussed elsewhere in this issue.

In addition to discussing the application of domestic law to transfrontier pollution cases, McCaffrey also considers the various international conventions relevant to such cases. He proceeds from this analysis to propose very useful elements of a future transfrontier pollution agreement. In general, this book represents a significant contribution to scholarly discussion and practical solution of the legal problems associated with transfrontier environmental disturbances.
The International Law of Pollution.
By James Barros and Douglas M. John-
Pp. xvi, 476. This work is a collection
of research and teaching materials re-
levant to the international law of pollu-
tion prevention and control. Except for
a brief introduction and occasional
notes, the volume is composed entirely
of excerpts from official and semi-offi-
cial documents, mostly international
agreements and decisions of national
and international tribunals. The Inter-
national Law of Pollution is not de-
signed for easy reading, but it is more
a reference work than a book to be
read from cover to cover. As such, it
is a useful compilation of essential ma-
terials in a most important field of law.

Control of Pollution Act 1974. By
a practitioner's guide to the United
Kingdom's Control of Pollution Act
1974, an omnibus environmental protec-
tion measure concerned primarily with
solid waste disposal, control of water
pollution, and noise abatement. In ad-
tion to a brief general introduction
and introductions to each major part of
the Act, the book presents each section of
the Act together with annotations
and other explanatory notes. The vol-
ume would be something of a puzzle
to non-British readers, but is a useful
tool for the practicing attorney.

A Clear View: Guide to Industrial
Pollution Control. By James Cannon.
$4.00. This is not only an interesting
but a useful book. It is designed to be
used by the concerned citizen who wishes
to determine for himself and his com-
munity whether the local industrial plant
is operating in compliance with laws
designed to protect the environment.
The emphasis on utility is clear from the
author's references to other publica-
tions — including publishers' addresses
and purchase prices — as well as from the
how-to-do-it approach of the book as a
whole — with chapters on "understand-
ing the problem", "gathering factory
data", "evaluating the data", and "having
an impact".

The author is not satisfied with de-
manding rights of citizen participa-
tion nor pleading for the citizenry to make
use of the rights it has. He is concerned
with transforming the citizen's abstract
legal right into a concrete social force,
by telling him how to find out what
legal requirements for pollution control
are, how to measure a particular indus-
trial plant's compliance with those re-
quirements, and what to do with his
conclusions.

This is a straightforward and re-
freshing book. Although it particu-
larly concerns the laws of the United
States, where provisions for citizen
participation are fairly advanced, it
provides a good example for other
industrial countries as well. The reader
is not likely to find any earthshaking
insights in its pages, but he may discover
that upon reading A Clear View he can
no longer rely upon the convenient ex-
cuse: "I'd like to do something about
pollution, but I just don't know how!"

Environmental Policy and Administra-
tion. By Daniel H. Henning. American
Elsevier Publishing Co.: New York,
This work is a courageous attempt by
one man to cover a very broad topic.
As would be expected, this has the
advantages and disadvantages common
to many such single-authored texts.

The advantages include a coherency
of style and treatment. Generally
handling his topics evenly, Henning
gives the intermediate amount of detail
suitable for making this work useful in
classroom instruction or as a primer for
people interested in getting an even,
light background in environmental
policy and administration.

His approach and scope also have
the traditional disadvantages. It is
doubtful that anyone could be familiar
with the wide scope of subjects which
Henning attempts to explore. As ex-
pressed in the Forward by Lynton
Caldwell, no such single authored work
exists for environmental policy and
administration and it is doubtful that
such a definitive text is possible, given
the complexity of the subject and its
still increasing range. Do not read
Henning to get the last word on each
area of environmental policy and
administration — the book is far too
short to attempt such an ambitious goal
(176 pages of text) and it is doubtful if
any man has such a fund of knowledge.
Also, given the scope of his topic,
Henning has of necessity relied upon
resource material within a limited time
span (generally until approximately the
end of 1972) making his book a bit
dated. A further weakness of the book
is Henning's reliance upon external
sources. Sometimes the reader is
subjected to a string of citations and
quotations, to which the author has
added only the minimum of transitional
links.

In summary, Henning has given us a
book with a wide scope, suitable, if
rather expensive, as a general primer or
for classroom use. Like many such
books, however, this one also has the
drawbacks of an occasional superfluity
of footnotes and quotations, dated
references and tantalizingly over-general
discussions.

Subvention oder Sonderabschreibung?:
Special Depreciation Allowances or
Subsidies?: Amortissements exception-
nels ou subventions? By Hermann Soell
Volume A 33 in the series, Beiträge zur
Umweltgestaltung. Erich Schmidt Ver-
lag: West Berlin, 1975. Pp. 68. This is
a trilingual edition, in German, English
and French, of a brief report by Profes-
sor Soell of the University of Regens-
burg concerning the useful utility of subsidies
and special depreciation allowances as
instruments for promoting pollution
control and other environmental
interests. Professor Soell confronts
three important issues: (1) the apparent
conflict between governmental support
for pollution control investments and
the principle that the polluter should
pay; (2) the relative utility of subsidies
and tax write-offs as means of govern-
mental assistance in the environmental
sphere; and (3) the question whether a
proposed provision for special de-
preciation allowances in the tax law of
the Federal Republic of Germany
would violate Article 92 of the EEC
Treaty, which prohibits the granting of
competition-distorting tax conces-
sions by member states.

In the course of an interesting
discussion, the author argues that the
polluter-pays-principle should not be
so rigidly interpreted as to prohibit
conceptually realistic measures for
temporary relief. He sees assistance
through the tax system as more effect-
ive and ultimately less expensive than
through subsidies, and concludes that
such measures would not be in conflict
with the EEC Treaty. His analysis is
concise but well-documented, and is
a useful contribution to this unglam-
orous but extremely important sector
of environmental law.

Also included is a resolution adopted
in February 1975 by the European Coun-
cil on Environmental Law endorsing the
conclusions reached by Professor Soell.

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