

# The Environmental Movement in 1985: Between *NEPA* and 2000

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When I recently presented my “State-of-the-State” message to the New Jersey State legislature, I proclaimed that “1985 is — and must be — the year of the environment in New Jersey.” To show my commitment, I proposed a series of new and expanded programs to rid the state — once and for all — of the ravages of pollution. The centerpiece is the expenditure of \$450 million in the next fiscal year to clean up hazardous waste sites, phase out polluting landfills, and build modern, safe resource recovery facilities and sewage treatment plants. My opponents in this year’s gubernatorial campaign have similarly acknowledged the problem by advocating broad-based agendas for removing toxic wastes and controlling the sources of pollution.<sup>1</sup> The overall political consensus we have achieved should provide the support needed to enact programs that will amount to an environmental “Marshall Plan” for cleaning up New Jersey.

I believe it is equally true that 1985 is and must be the year of the environment for the entire nation. As we all must know, a sound environment is basic to all our other goals. It cannot be jettisoned in the fight to hold back the deficit.

1985 is a special year for environmentalists. It stands midway between the birth of the environmental era in 1970 and the start of a new century. Therefore, 1985 is a good year to take stock of what we have done, where we are, and most important, where we are going.

I consider 1970 the start of the environmental movement for two reasons. First, it marks the enactment of the grandfather of all modern environmental laws, the National Environmental Policy Act (“NEPA”) — the first bill to be signed into law on the first day of the new decade.<sup>2</sup> NEPA remains the foundation for all that

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1. N. Y. Times, June 3, 1985, at B4.

2. See National Environmental Policy Act of 1970, (“NEPA”), 42 U.S.C. §§ 4321-4347 (1982). For further discussion of these provisions, see *National Rifle Ass’n v. Kleppe*, 425 F. Supp. 1101 (D.D.C. 1976); *S.C.R.A.P. v. United States*, 371 F. Supp. 1291 (D.D.C.

followed because it made protection of environment "to the fullest extent possible" a duty of every federal bureaucrat, agency and department. NEPA led the way to dozens of state and federal laws.

1970 was also the year of the first "Earth Day" when the universality of the movement was first revealed. Tens of thousands put aside differences on partisan politics and the war in Vietnam to pledge commitment to the task of cleaning up this country.

We have made measurable progress since then, but there is much more that we can do collectively and individually. Let me take this opportunity to present my views as one Governor — the Governor of a state that "got there first" on pollution and now intends to get there first on cleaning it up — on where we are at this mid-point and where we still have to go.

I will begin by describing what I see as the central theme and basic strength of the environmental movement, and the reason it has not been a flash in the pan as its critics hoped and its friends feared. This strength is the universality of concern for the environment. Caring for our homeland is not a partisan issue. It has been embraced and betrayed by members of both parties. It is an issue that requires concern from Americans of every political persuasion. After all, protection of the soil, air and water that Americans use is more truly "national defense" than most major weapons systems. If we ourselves lay waste to our country, ravaging the land that is our home, what will there be left for "star wars" to defend?

Thus, the modern environmental era has never been the exclusive property of any one party or philosophy. Environmentalism has the capacity to span all shades of the political spectrum in a "rainbow coalition" that would make Reverend Jackson proud.

Nor is the environmental movement wedded to any one set of methods or code of regulation. There are as many routes to environmental quality as there are thinkers, doers, and innovators in this country. This is what I see as the unique strength of the movement.

1974); *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375 (D.D.C. 1973); *City of New York v. United States*, 337 F. Supp. 150 (E.D.N.Y. 1972); *Calvert Cliffs Coordinating Comm. v. Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971). See also *Recent Developments, NEPA — Requirement of Environmental Impact Statement from All Agencies*, 60 GEO. L.J. 1353 (1972); Comment, *NEPA Interpreted as Requiring Strict Procedural Compliance*, 12 NAT. RESOURCES J. 116 (1972).

It also helps to answer the apparent paradox of public support rising for conservation and conservatism in the same wave: diverse and eclectic beliefs can join behind one goal that transcends all other artificial categories. For as surely as pollution knows no boundary on a map — a point reiterated by each “acid rainfall” — so too the fight to stop that pollution knows no political divisions or reigning ideologies.<sup>3</sup>

These thoughts raise important implications for the second half of this era. Foremost, is that those who would polarize environmental debate by attacking the motivations, the good will, or the patriotism of others because they disagree on appropriate methods of environmental protection are false prophets we must quickly shun.

We have seen examples of this Manichean tendency in a few government officials who labelled environmentalists as the lobby for weakening America — and why? Because they objected to opening up millions of acres in our national parks and along our coastline to unfettered energy development.<sup>4</sup> We have seen it also in those who insist upon a single orthodox path of regulation — even though new technology and a growing economy demand efficiency and flexibility in achieving our shared goals.<sup>5</sup>

What then is the public telling us by twice within four years overwhelmingly electing President Reagan, an avowed political conservative? What the public is telling us, I think, is that they want the individual freedom, private initiative and economic growth that President Reagan stands for, and at the same time want a better environment.

3. NEPA was sponsored in the United States Senate by Senator Henry Jackson of the State of Washington; it was signed into law on January 1, 1970 by President Richard M. Nixon.

4. For example, see 13 ENV'T REP. (BNA) (Current Developments) at 1509 (1983) where the chairman of the Wilderness Society, former Senator Gaylord Nelson, called “Interior Secretary's [Watt's] two years as steward of the nation's public lands a ‘disaster’ that ‘cannot be camouflaged by a colorful annual report.’ . . . Watt's record on public lands is almost totally negative and destructive.”

5. See, e.g. Costle, *Environmental and Regulatory Reform*, 57 WASH. L. REV. 409 (1982); *Regulatory Reform, 1979: Hearings Before the Senate Comm. on the Judiciary*, 96th Cong., 1st Sess. 56 (1979), and *Economic Efficiency in Pollution Control: EPA Issues “Bubble” Policy for Existing Sources Under Clean Air Act*, 10 ENVTL. L. REP. (ENVTL. L. INST.) 10,014 (1980); and see also the leading case in the area, *Alabama Power v. Costle*, 10 ENVTL. L. REP. (ENVTL. L. INST.) 20,001 (D.C. Cir. 1979), superseding 606 F. 2d 1068 (D.C. Cir. 1979) (per curiam) generally upholding EPA's “bubble policy.” See also Note, *Emission Trading and Banking Under the Clean Air Act after N.R.D.C. v. Gorsuch*, 34 SYRACUSE L. REV. 803 (1983) (discussing *N.R.D.C. v. Gorsuch*, 685 F.2d 718 (D.C. Cir. 1982)).

Many of you may find this a hopeless inconsistency. I do not. But I do see it as a great challenge to find the right balance of diverse and compatible ways to reach the desired results. This may well be the central challenge of the next fifteen years: to reconcile the public hunger for less intrusive government with its staunch commitment to environmental quality.

I believe that we can have both a better environment and a better, even smaller federal government. To do so, we need to choose budget cuts wisely, and not fall prey to "debtmail" that would have us slice away essential programs, such as Superfund and the EPA operating budget.

We also need regulation that encourages and rewards creative compliance with environmental standards. We do not want regulation that requires the same "regulatory fix" from everyone: we want "designer regulations" because one size most assuredly does not fit all.

We want regulation that minimizes the heavy hand of distant and unaccountable bureaucrats and maximizes opportunities for local communities and citizens to have a voice in their own fate. We need bureaucrats to heed the example set by William Ruckelshaus, who went to Tacoma, Washington to meet with all segments of the community before acting on pollution complaints made about a nearby smelter. Many of the residents faced a tradeoff between their health and their jobs.<sup>6</sup>

We want swift enforcement of laws and standards, but we don't want industry harassed or stifled. What we want is a system of incentives and penalties, carrots and sticks that encourages voluntary compliance. It is hard enough to put a policeman on every street corner; how can we post a scientist at the property line of every factory?

We want to get the federal budget under control but we must invest whatever it takes to rid our waters and air from further poisoning by hazardous waste. No dollar sign can be placed on human health, and the Office of Management and Budget is wrong if it believes otherwise. The environment is as much the basis for a sound economy as roads, schools and low inflation rates. That is why we must try the "creative financing" of infrastructure banking, dedicated trust funds, and limited privatiza-

6. Ruckelshaus, *Risk in a Free Society*, 14 ENVTL. L. REP. (ENVTL. L. INST.) 10,190, 10,192 (1984); see also Doniger, *The Gospel of Risk Management: Should We Be Converted?*, 14 ENVTL. L. REP. (ENVTL. L. INST.) 10,222 (1984).

tion.<sup>7</sup> We must also “make the polluter pay” and not force these costs onto the taxpayer. We can have more economic deregulation to cash in on the “miracle of the marketplace” — but environmental deregulation? Never. What the public wants is better regulation, not less.<sup>8</sup>

I am convinced that we can give the public what it wants and what we have promised since the first days of the environmental movement: economic growth with environmental protections, individual freedom with collective security from pollution.

With this preamble, let me turn now to the principles which emerge from my reading of the past fifteen years that may help to guide us through the next fifteen.

First, just as a good environment is indispensable to a healthy economy, a growing economy is vital to environmental protection.

Second, getting the right laws enacted is only the first step; getting them enforced is just as important. I shall propose some ways to accomplish this herculean task.

Third, protecting fast-vanishing open space, farmlands, critical areas and just plain country side cannot hope to succeed against the forces of “sprawl” unless we embark upon a coordinated venture to retrieve and recycle our cities. Again, I offer some possible remedies.

And, finally, transboundary pollution is now such a growing and pervasive menace that we may have to yield some measure of traditional political autonomy, both interstate and international, to protect public health and the environment from such ravages as “acid rain”. We also must be mindful of practices that lead to international ecological disturbances, such as “desertification”.

7. See, e.g. Governor's Annual State of the State Message to the New Jersey Legislature (“Governor's Message”), (available in Columbia Journal of Environmental Law Office) at 15, which recommends establishment of an “Environmental Trust” to be funded with \$150 million — \$50 million in bond issue money plus \$100 million in newly committed funds. The Trust would be available to finance resource recovery facilities and other needed environmental facilities through low- or no-interest loans to municipalities and other agencies. Also proposed is the “privatization approach” to the construction of wastewater treatment plants by allowing private firms to contract with municipalities for the construction and operation of facilities.

8. N.J.S.A. 47: 1A-1 to 1A-4 (West 1984); see also New Jersey Chamber of Commerce v. Hughey, 600 F. Supp. 606 (D.N.J. 1985), and companion case of Fragrance Materials Ass'n. v. Van Note, 600 F. Supp. 606 (D.N.J. 1985) which struck down much of the act as unconstitutional due to federal preemption by less stringent OSHA standards.

I. A SYNTHESIS OF ENVIRONMENT AND ECONOMY: PAST THREAT  
FROM THE ENERGY CRISIS AND FUTURE PROMISE OF  
TECHNOLOGICAL INNOVATION

When I was a member of the New Jersey legislature in the early 1970's, the environmental bills I sponsored were repeatedly attacked by those who claimed that fighting pollution and protecting the environment would cost jobs and slow the economy. Some even went so far as to claim that "environmentalism" was an "elitist" anti-growth distraction, fit for well-heeled bird-watchers but not for serious politicians or the public they serve.

How wrong they were!

What I said then and still believe, was that a strong economy needs a clean, healthy environment if it is to continue to prosper. Otherwise we face the prospect of wasting valuable and irreplaceable resources for short-term gain. And in the long run such one-dimensional growth would serve to undermine everyone's health and prosperity.

Another concern I expressed was that a good environment was the predicate to attracting new and "clean growth" industries — the expression "high-tech" did not exist then — to balance our dependence on the so-called "smokestack industries". At the time, traditional blue collar industries were just beginning to decline, so their concerns were understandable, but misplaced. For New Jersey, the first planned industrial state, the conflict at times seemed intractable; today environmentalists, unions and surrounding communities are united behind New Jersey's Worker and Community Right to Know Act<sup>9</sup> — one of the most far-reaching environmental "full disclosure" laws in the nation. Clearly, we have come a long way in a short time.

Overall, we succeeded by teaching the public that economic growth and environmental protection go hand in hand. (Or should I say that we succeeded because the public taught the politicians of this basic verity?)

But no sooner, it seemed, were new laws on the books than a new threat appeared: an international energy crisis leading to rapid inflation and sluggish growth. Environmental laws were subjected to a constant barrage of attack and blame; the miracle is that, with very few exceptions, most withstood the onslaught.

9. N.J. STAT. ANN. § 34:5A-1 *et seq.* (West Supp. 1985).

The greatest attack came from President Carter, a professed conservationist. In 1979 he called for a crash program of energy development with massive federal subsidies to develop synthetic fuels ("synfuels") from strip-mined coal.<sup>10</sup> Environmental laws could be swept aside by a super-agency with awesome powers, the Energy Mobilization Board ("EMB"), all in the name of synfuel facilities of dubious value and staggering environmental and economic costs.<sup>11</sup> EMB threatened to run roughshod over "the careful balance of environmental controls that Congress, the federal agencies, and the states ha[d] laboriously created over the last decade."<sup>12</sup>

Happily, the EMB and most of the synfuels program never got off the drawing boards. Almost all environmental laws and programs remained in place. A combination of energy conservation, new discoveries, fuel substitutions and a more productive economy have broken the back of OPEC — and all this without a drop of synthetic oil or any super-agency to toy with our laws.

This brief history teaches me that national economic security is necessary to sustain our momentum on the environment. Although the EMB and the assault on environmental laws were stopped, the issue was in great doubt for a time. We should never again become so vulnerable or so desperate. We must achieve energy independence by relying on conservation and co-generation, and developing alternative resources such as solar, geothermal and wind power.

Advances in science can provide a solution. It seems increasingly clear that economic growth and technological innovation

10. Comment, *The President's Energy Proposals: Dramatic Initiatives Plagued by Environmental, Constitutional Difficulties*, 9 ENVTL. L. REP. (ENVTL. L. INST.) 10148, 10149 (1979) ("President Carter spotlighted synfuels as the logical replacement for foreign oil because '[w]e have more coal than any nation on earth' quoting from 15 WEEKLY COMP. PRES. DOC. at 1240, contrary to the recommendation of Stobaugh and Yergin, *et al.* in *Energy Future: Report of the Energy Project at the Harvard Business School*, 1979, at 79-107 which recommended that principal reliance be placed on market forces and the promotion of energy conservation.).

11. 9 ENVTL. L. REP. (ENVTL. L. INST.) at 10,148, 10,150-53. ("President Carter's promise in his energy message to protect the nation's environment does not ring true when measured against the substance of his proposals for solving the energy problem. The coupling of a crash synfuels program, which risks unacceptable environmental consequences with an Energy Mobilization Board that has the potential power to run roughshod over carefully established environmental protection mechanisms may have won the President a public relations coup [but it] disregards another promising response: increasing efficiency in the use of fuels now available. . ."). See also, *96th Congress 1st Session: Environmental Issues in Limbo*, 10 ENVTL. L. REP. (ENVTL. L. INST.) 10,009 (1980).

12. See *supra* note 10.

are themselves powerful antidotes to environmental degradation. The "information revolution" makes possible more than just video games: this new American revolution enables us to escape the gloomy world described in *Limits to Growth* and *The Global 2000 Report*.<sup>13</sup> It helps to use all our resources — especially human creativity — more productively, with less waste and stress on ecosystems.

For example, can we have "throw away" containers — for those who want them — that are biodegradable and safe to burn in waste-to-fuel plants? I think we can. Can we have cars that are safe, efficient, and non-polluting? I know we can.<sup>14</sup>

Can we reduce the level of carcinogenic chemicals that now seem to be engulfing us everywhere we turn? Science and technology — integrated into an economy that values public health more than health profits — can lead the way to a more cancer-free world.

## II. TRANSLATING LAWS INTO ACTION: CLOSING THE "ENFORCEMENT GAP"

What is more frustrating than to see hard-won legislative triumphs undone by lax enforcement or lack of resources?

During the past decade and a half we have learned that enacting laws is no guarantee they will ever be put to use, regardless of who is in power or which party controls the White House or the State houses.<sup>15</sup>

13. MEADOWS, *THE LIMITS TO GROWTH* (1972); COUNCIL ON ENVIRONMENTAL QUALITY, *THE GLOBAL 2000 REPORT TO THE PRESIDENT OF THE UNITED STATES: ENTERING THE 21ST CENTURY* (1980).

14. THE AUDUBON ENERGY PLAN, 1984, Vol. II, D-5, citing von Hippel and Levi, *AUTOMOBILE FUEL EFFICIENCY: THE OPPORTUNITY AND THE WEAKNESS OF EXISTING MARKET INCENTIVES, RESOURCES AND CONSERVATION*, Table 2. See also von Hippel and Gray, *The Fuel Economy of Light Vehicles*, 244 *SCIENTIFIC AMERICAN* 48 (1981), in which the authors foresee the advent of one hundred mile-per-gallon automobiles before the end of the century.

15. See generally, NATIONAL WILDLIFE FEDERATION, *SHREDDING THE ENVIRONMENTAL SAFETY NET: THE FULL STORY BEHIND THE EPA BUDGET CUTS* (1982); Zwick and Benstock, *Water Wasteland* (1971); GENERAL ACCOUNTING OFFICE, *MORE EFFECTIVE ACTION BY THE ENVIRONMENTAL PROTECTION AGENCY NEEDED TO ENFORCE INDUSTRIAL COMPLIANCE WITH WATER POLLUTION CONTROL DISCHARGE PERMITS* (1978); New Jersey Public Interest Research Group, *ENFORCEMENT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II, 1975-1980* (1981). The GAO report found that "over half the permittees violated their permits during five or more months of the 15 month study period. Some instances of non-compliance involved significant violations of permit limitations for toxic substances. One permittee, for example, discharged 98 or more pounds of cyanide each month for five consecutive months, more than eight

This is one reason I support the direct right of the public to go to court and enforce the law. When regulators either will not or cannot do the job, it is up to citizens to do it. And the best form of "self-help" I know of is a broad "citizen-right-to-sue" law.

Citizen suit provisions have been enacted in some states and in many federal laws.<sup>16</sup> But barriers in the form of restrictions and red-tape remain. That is why I recommend a national right-to-sue law patterned after the best of the state laws. To be effective, this right must include the right to reasonable attorneys' and expert witness fees. It should also extend to participation in agency proceedings, where policies are made, to lessen subsequent litigation. To speed this initiative, I call upon the sponsors of this conference to work together for a federal right-to-sue act for presentation to the Administration and the Congress within a few months. The public should never again suffer the charade of strong laws with weak or collusive enforcement.

But our court system is already overburdened today. How could our courts handle an increased number of complex environmental suits? I recommend three approaches to the problem:

times the legal monthly limit. One day the permittee discharged over 340 pounds of cyanide." Janine G. Bauer, *The Development and Current Status of the Private Attorney General Doctrine in Environmental Protection: Causes of Action, Problems and Suggested Remedies*, (unpublished thesis paper, available at the office of the Columbia Journal of Environmental Law). See also 14 ENV'T REP. (BNA) Current Developments 1492 (1983). ("Dingell subcommittee to look for increase in EPA actions on enforcement, compliance."); *Id.* at 1723 (1984) ("Ruckelshaus calls EPA enforcement record 'terrible'; demands to see prompt improvement."); *Id.* at 2183 ("Alm says poor RCRA enforcement effort 'cannot continue'; orders regions to act.').

16. See, e.g. NEPA, 42 U.S.C. §§ 4321-4347 (1982); the Clean Air Act, 42 U.S.C. § 7604 (1982); the Clean Water Act, 33 U.S.C. § 1365 (1982); the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1413(g); the Deepwater Port Act, 33 U.S.C. § 1515 (1982); the Endangered Species Act, 16 U.S.C. § 1540(g) (1982); the Safe Drinking Water Act, 42 U.S.C. § 300(j)(8) (1982); the Noise Control Act, 42 U.S.C. § 4911 (1982); the Toxic Substances Control Act, 15 U.S.C. § 2619 (1982); the Resources Conservation and Recovery Act, 42 U.S.C. § 6972 (1982); and the Energy, Policy and Conservation Act, 42 U.S.C. § 6305 (1982). Among the state right-to-sue statutes, see Michigan's Environmental Protection Act, MICH. COMP. LAWS ANN. (West 1985) §§ 691-1201 to 1207, which is perhaps the best known; it is also one of the oldest and most studied. See generally Comment, *Michigan Environmental Protection Act*, 4 U. MICH. J. L. REF. 121, 358 (1970). At least eight states have similar statutes which authorize any citizen to sue to protect the environment without first proving a specialized injury in order to establish standing to sue. These include: CONN. GEN. STAT. ANN. §§ 22a-14 to 20 (West 1985); FLA. STAT. ANN. § 403.412 (Harrison 1984); IND. CODE §§ 13-6-1-1 to 6-6-6 (1984); MASS. ANN. LAWS ch. 214, § 7A (Michie Law Co-op. 1985); MINN. STAT. ANN. § 116B.01-.13 (West 1985); S.D. CODIFIED LAWS ANN. §§ 34A-10-1 to 15 (1984).

First, it is time to reconsider the establishment of special "environmental courts". Fifteen years ago, the idea of these courts was given scant attention, even though Congress was clearly interested in the concept.<sup>17</sup> With federal and state case loads now double and triple their 1970 levels, I believe the time for environmental courts in some form may have arrived.

Second, environmental mediation should be encouraged.<sup>18</sup> Rather than have cases that drag on for years at great cost to all, let the public present minor "grievances" to an environmental "Judge Wopner" without the need to retain legal counsel.

Third, and perhaps most fundamental to better enforcement, let's make our laws as self-enforcing as possible. We can do this by giving industries the flexibility they need to comply in the fastest and most cost-effective ways they can devise. Much has already been done in this regard.<sup>19</sup> But much progress awaits us. We have to make polluting the environment more expensive than not polluting. A system of "emission fees" will go far to equalize the competitive positions of responsible industries so that companies won't have to decide between shareholders and the public interest. It will also promote faster compliance. Polluters should not get "free rides" until or unless they are caught and forced to clean up. They should pay for every day they pollute.<sup>20</sup>

In the end, closing the enforcement gap means "closing the [ecological] circle" — so brilliantly analyzed by Barry Commoner.<sup>21</sup> It means we can "get there from here." The approach we need is a holistic one. It combines:

- spending money to back up our laws;
- deputizing the public to patrol their own environments;
- setting up special tribunals headed by expert "environmental judges" and mediators; and

17. Whitney, *The Case for Creating a Special Environmental Court System*, 14 WM. & MARY L. REV. 473 (1973); Whitney, *The Case for Creating a Special Environmental Court System — A Further Comment*, 15 WM. & MARY L. REV. 33 (1974).

18. Wald, *Negotiation of Environmental Disputes: A New Role for the Courts?*, 10 COLUM. J. ENVTL. L. 1 (1985).

19. See *supra* note 5. See also Note, *Overview of the Bubble Concept*, 8 COLUM. J. ENVTL. L. 137 (1982); Costle, *Environmental Regulation and Regulatory Reform*, 57 WASH. L. REV. 409 (1982).

20. UNITED STATES REGULATORY COUNCIL, *REGULATING WITH COMMON SENSE: A PROGRESS REPORT ON INNOVATIVE REGULATORY TECHNIQUES* (1980).

21. B. COMMONER, *THE CLOSING CIRCLE* (1971).

— forcing polluters to “internalize” pollution costs because the environment will never again be a “free good.”

### III. TO PROTECT THE COUNTRYSIDE WE MUST SAVE THE CITIES

We have been trying to save our cities for a long time. The usual prescriptions have not worked. Huge federally-funded “urban renewal” projects levelled vast stretches of the urban landscape and displaced thousands of people. Interstate highways chewed up neighborhoods and added to the human displacement. Suburban sprawl and the growth of “exurbia” have replaced farms with a patchwork of subdivisions and “strip development.” No wonder Americans by the millions travel to Europe to visit real cities.

In truth, the only answer to saving rural and surrounding open space as well as older, urban America is to save them both by reviving cities as places to live — not just to work in and depart from at 5:00 P.M.

We can and should re-invest in the infrastructure of urban areas so that the private sector — meaning simply, people and businesses — will keep returning. The federal spigot, however, has about dried up. Even if UDAG is saved in this next, deficit-ridden federal budget, we have to find alternatives. That is why I have proposed in New Jersey the creation of a State Infrastructure Bank to finance much-needed repairs and rebuilding of bridges, sewers and roads with low interest loans.<sup>22</sup> This bank would require that loans be repaid into a “revolving fund.” Thus, borrowers will use funds more wisely than if they received “free money.” We can ill-afford more environmental “porkbarrel.”

Additionally, we can enliven our cities with experiments that bring the middle class back to downtown. I have proposed a “transfer of development credits” to rehabilitate urban housing with private capital. When a suburban builder gains approval to construct expensive new housing in the suburbs he may have to buy the “credits” to do so from an urban area in need of improved housing stock. The suburb gets the housing it needs and the city gets a share of the profits to be used in rehabilitation.<sup>23</sup>

These plans merely touch the surface of innovation. Creative zoning, magnet developments and property tax relief can all help

22. *Governor's Message, supra* note 7 at 12-20.

23. *Governor's Message, supra* note 7 at 34.

make cities the human and cultural centers they once were and are again becoming.

#### IV. TRANS-BOUNDARY POLLUTION AND ECOLOGICAL DISASTERS: OUR DUTY TO LEAD

Barry Commoner wrote that "everything is connected to everything else."<sup>24</sup> The growing destruction wrought by acid rain shows us anew the folly of not heeding his warning. Today, when it rains, it burns. We now know, for example, that acid rain is not simply a matter of concern to New England and Mid-Atlantic states; it is a matter of national and international concern of a magnitude that few could have guessed only a few short years ago.<sup>25</sup> Lakes and streams are dead or dying from Maine to Florida, and westward into the Rocky Mountains, Washington and California. How ironic and tragic it would be to preserve a national wilderness and parks system only to find them devoid of life in their magnificent lakes, and their forests rapidly dying around them. Truly national action is needed *now* to combat this scourge of our natural heritage, just as national action so successfully combatted inflation and recession.

No action will be complete without joining into a meaningful partnership with our neighbors, Mexico and Canada. Our powerplants, smelters, and automobiles are polluting their air and water and wiping out their lakes and forests as surely as their efforts to compete with us lead to pollution on our side of the border. International cooperation is as much a necessity here as it is in fighting world hunger and controlling the arms race.

In fact, resolution of these issues may help us find the means and the courage to settle other pressing international problems. To do so we must be willing to cede some degree of our traditional "sovereignty" to effective international bodies.

The principle has been tried at the interstate level where neighboring states have joined in "compacts" and "commissions" to resolve problems that cannot be resolved where each state acts

24. B. COMMONER, *THE CLOSING CIRCLE* (1971).

25. See generally *THE AUDUBON ENERGY PLAN* 1984; see also, N.Y. Times, Jan. 29, 1985, at C1, col. 1. ("A growing body of scientific research now indicates that acid rain is developing into a national problem, not simply a matter of concern to New England and New York's Adirondack Mountains.") Comment, *Acid Rain — The Limitations of Private Remedies*, 1983 S. ILL. U. L. J. 515; Lutz, *Interstate Environmental Law: Federalism Bordering on Neglect?* 13 Sw. U. L. REV. 571 (1983).

independently.<sup>26</sup> The Delaware River Basin Commission, for example, has supervised the allocation and clean-up of this four-state collective for many years.<sup>27</sup> While not everyone is satisfied with the results, all of us should be satisfied that we have gained far more than we yielded by joining this compact. We should try similar approaches in the fight against acid rain, where harmful pollutants carry no passports and observe no nation's territorial sovereignty.

In my roles as Governor of New Jersey and chairperson of the Coalition of Northeastern Governors ("CONEG"), I have placed the control of acid rain at or near the top of our collective agendas. In 1983 I called upon CONEG to endorse a plan to reduce sulphur dioxide ("SO<sub>2</sub>") — a key "precursor" to acid rain — nationwide by at least ten million tons (50%) by 1995. Each state should have the freedom to choose how to comply, but each state should contribute its fair share to a national SO<sub>2</sub> reduction program. As to financing this clean-up, I recommended that up to two-thirds of the capital costs of pollution controls should be defrayed through a combination of emission taxes on SO<sub>2</sub> and a "generation tax" on electric power consumption. Together, we estimate, these taxes would raise electricity rates by less than 1% — clearly an inconsequential amount for the benefit of reduced acid rainfall. Happily, of the seven CONEG states, all but one voted for this resolution.<sup>28</sup> Many other worthwhile proposals are also being considered and debated in the Congress and state houses of the nation.<sup>29</sup>

Whatever plan or combination of plans emerges, the important point is that the time for endless debate and interminable research has passed. We cannot await the final, definitive study before taking the steps we all must agree are needed. That is why I call upon Congress to make acid rain control the benchmark of its success in the next year. Along with the expansion and reauthorization of "Superfund", I can think of no area so deserving of Congressional time and energy. The Environmental Law

26. Lutz, *supra* note 25.

27. J. CANNON, *ACID RAIN AND ENERGY: A CHALLENGE FOR NEW JERSEY* (1984).

28. *Id.* at 21, 24-28.

29. See, e.g. H.R. 4906, introduced by Congressman Rinaldo, incorporating the New Jersey approach to acid rain reduction in national legislation; J. CANNON, *supra* note 27, at 24-28; and *Republican Platform Rewritten to Add Support of Environmental Legislation, Acid Rain Control*, 15 ENV'T REP. (BNA) Current Developments 635 (1984).

Institute can help by keeping a spotlight on the progress of these and other critical environmental priorities.

We must also join with other nations to fight the insidious process of ecological disruption taking place in the Third World. Like all of you I was astonished and horrified to discover the extent of suffering of the Ethiopian people during this continuing drought and famine. In New Jersey, thousands of people have opened their hearts and their billfolds to help the young, the old, the starving and diseased of Ethiopia.

But these efforts, while essential, do not go to the heart of the problem. Ethiopia, like its neighbors in Africa, is finding itself engulfed in the spread of the Sahara desert. Millions of people, mostly poor, are threatened with a natural disaster of partly human-made origins: desertification.<sup>30</sup> Desertification is occurring as the Sahara extends itself through the Sudan, Chad, Ethiopia and other unfortunate countries.

We in the United States may bear some of the responsibility. With the very best intentions, we have helped to finance efforts to extend the "green revolution" with agricultural development projects for these poor countries. In so doing we may have helped to upset the ecological balance there. Extensive overgrazing and over-planting of crops have produced mostly short-term gains, as our television screens have made vividly clear.

Throughout other parts of the developing world, American aid has sometimes been used to alter ecosystems drastically. The tropical rainforests, for example, are being devoured and depleted at a frightening pace.

Throughout the rest of the environmental era, therefore, we must be vigilant to the sometimes perverse effects of too much helpful "can-doism." We can and must help these countries to help themselves through a healthy ecology.

Thus, we must extend the spirit if not the letter of the National Environmental Policy Act into a kind of "International NEPA" whenever we consider programs of assistance to the Third World, including loans and loan guarantees. New hydroelectric projects, mechanical plows and tractors, modern irrigation and the widespread use of pesticides and herbicides: all must be measured

30. Joyner, *Towards Transnational Management of Desertification: The Eco-Politics of Global Concern*, 15 INT. LAWYER 617 (1982); Case Comment, *NEPA's Overseas Myopia*, 71 GEO. L. J. 1201 (1983); GLOBAL 2000 REPORT, *supra* note 13.

carefully for their long-run consequences in other countries as much as in our own, before we commit ourselves irreversibly.

Some may criticize these concerns as patronizing, just as some have criticized restrictions on the export of “infant formula” and chemicals found to be not safe enough for use in this country. I cannot agree. The era of *caveat emptor* has long since passed as a license for sellers to take advantage of consumers. We owe the same duty to the recipients of United States based or financed programs. Failure to do so will only lead to a bitter harvest of weakened nations ripe for civil war and foreign influence — even as we see their people sicken and die on the evening news.

The environmental movement, like all great humanist movements, is universalist to the core. It speaks to all people whatever their language or color or ideology, and our programs, to be successful, must respect that fact.

#### *Toward 2000: a Never-ending Agenda*

I have tried here to present my perspective on some of the most pervasive themes of the environmental era, particularly on issues of critical importance as we approach the next century. I chose not to discuss the various environmental laws that await congressional reauthorization, funding and fine-tuning. I also chose not to focus on one or two current environmental crises, such as the solid and hazardous waste crisis that we face in New Jersey and which so many of you face in your home states.

I felt that this space would be better employed by looking beyond the immediate crises. I have tried to focus on the underlying themes and universal truths that make this environmental movement so special, and which will strengthen and challenge us in the years ahead.

That is also why I stress the importance of economic growth as a predicate to growing environmental protection, the obverse of what we were saying a decade and a half ago. (I recall that a few ardent environmentalists even argued that we had to sacrifice growth to save the environment — which made me wonder whose environment were they protecting?)

It is also why controlling the federal budget must not be used as an excuse for sacrificing the much-needed investments in our environmental future. We must make these investments if we are to enjoy in good health and security the fruits of economic growth. And further, it is why environmentalists must be wary of

the seductive call of those who claim to have a monopoly on environmental truth.

For the environment belongs to no one person, nation, political party or philosophy. It is in harmony with conservatives as well as liberals, and it can be jeopardized by a Democratic president at a time of crisis, just as it can and must be protected by Republicans and Democrats alike in cutting the budget deficit. (For starters, I suggest elimination of the annual "porkbarrel parade" of costly and damaging "water projects" that continue to siphon off funds to help settle the West — as if this were 1885 and not 1985!<sup>31</sup>)

In the end, of course, there is no end to the environmental agenda — this year or any other. The more we learn the more we need to learn. And the more we must maintain the universality of the environmental movement, as the key to the last fifteen years of this century and beyond.

31. BUTLER, SANERA AND WEINROD, *MANDATE FOR LEADERSHIP II: CONTINUING THE CONSERVATIVE REVOLUTION* at 146 (1984) (Calling for the Administration and Congress to deauthorize wasteful "water projects that remain on the books," mostly dams and single-purpose irrigation projects, and for an end to federal subsidies for western water in favor of letting the beneficiaries pay most of the costs at market rates).