

JANINE LANDOW-ESSER

Environmental Stewardship in Heart and Hearth

by Edward McClelland

Janine Landow-Esser has been involved with the environmental movement since the day it was born. In 1970, she was a student at the University of Wisconsin, Madison. That spring, Gaylord Nelson, a senator from the Badger State, announced the founding of Earth Day.

“It was a big deal, and the environmental issues were just hitting the forefront of everyone’s mind,” says Landow-Esser, 58, now an environmental lawyer with **Quarles & Brady LLP**.

Landow-Esser was a political science major, but she seemed destined to go into the

“Clean air was a big issue,” Landow-Esser recalls. “I am from Omaha, Nebraska, and I had a lot of relatives in Cleveland. When we would drive east on Highway 80 and you’d go through the northern Indiana-Gary area on the route, literally the sky would go from light to dark to light again, and that was pretty typical of what you would see in a lot of heavy industrial areas. Also, as I was growing up, Omaha was the center of the meat packing industry, and the water problems were severe in those days because, of course, the factories were using the rivers as their dumping grounds.”

laws had created a need for environmental lawyers. Landow-Esser spent six years in D.C., starting with the Federal Energy Administration, which became the Department of Energy under President Jimmy Carter.

Landow-Esser did environmental compliance work for the department’s projects such as the Strategic Petroleum Reserve, an emergency oil supply the government began stockpiling in the 1970s. The department decided to store the oil in salt caverns beneath Louisiana and Texas. Landow-Esser helped undertake an environmental review of whether the oil would ooze out of its containers or out of the caverns. Because the caverns had to be linked to the market by pipelines, she also reviewed the environmental aspects of the pipeline system.

Landow-Esser became a special assistant to General Counsel Lynn Coleman, who later was named the Department of Energy’s deputy secretary. As such, she worked in the same office as the second secretary of energy, Charles Duncan.

“That was interesting, because it was seeing the world from a different perspective: seeing how an agency’s run, seeing how decisions are made at the highest levels,” she says.

When Ronald Reagan became president in 1981, he announced plans to eliminate the Department of Energy. While he never carried out that threat, he cut the staff and the budget. Morale plummeted. In 1982, Landow-Esser’s husband, Jeff Esser, got a job in Chicago as chief executive officer of the Government Finance Officers Association. (The couple has two daughters: Erica, a veterinarian in Wisconsin, and Caroline, a senior at Dartmouth.)

It was a good time to leave the federal government, Landow-Esser thought.

‘What Does An Environmental Lawyer Do?’

When she began interviewing at Chicago law firms, though, “people kept asking ‘What does an environmental lawyer do?’ It was not a practice, at that time, that was widespread, in even the big law firms in town.”

She spent a year at Bell, Boyd and Lloyd, then two and a half years at Seyfarth Shaw, which had a group of environmental lawyers. After a dozen years at now-defunct Holleb & Coff, Landow-Esser arrived at Quarles in 2000.

“Environmental practice was really taking off



environmental field. As a senior, she was offered a part-time job with a professor in the environmental studies department. She researched the newly-passed Clean Water Act and edited engineering students’ papers on how to cure sediment in a local lake.

The early ‘70s were a time of burgeoning environmental awareness. Besides the Clean Water Act, Congress also passed the Clean Air Act to clear the skies of factory smoke. President Richard M. Nixon founded the Environmental Protection Agency. Marvin Gaye had a hit with “Mercy Mercy Me (The Ecology).” And one of the era’s most memorable TV ads featured an American Indian crying over the despoliation of the land.

After Wisconsin, Landow-Esser went to law school at George Washington University, expecting to become a labor lawyer. There, she encountered another signpost to her eventual calling.

“I took the first labor law course and hated it. And lo and behold, and really by accident, George Washington had a terrific environmental law program, one of the first in the country, and professors that really stood out in that area, and so I switched my interest back over there, kind of following what I started in undergrad. Really, I have never looked back since,” she says. “I said to myself, ‘When I graduate, I want to find a job in environmental law.’”

The federal government’s new environmental

in those years,” she says. “Not only were the Clean Air Act and the Clean Water Act becoming mature, but you also had the Resource Conservation and Recovery Act, the hazardous waste law that was passed, and the new Superfund statute. All these Superfund sites were being added to the national priorities list. Those were the days when every site meant lots of meetings, lots of lawyers. It was a busy time for environmental law. My practice, as I moved from law firm to law firm, matured, but it was a continuum. Since I’ve been in private practice, I’ve handled cases under virtually every one of the environmental statutes. And I also do OSHA work, which poses questions and problems concerning worker safety and health.”

Her clients have always been and continue to be industrial companies, real estate developers, and lenders on industrial sites. Most companies didn’t have an environmental lawyer in house in the early days, so they relied on outside counsel.

Keeping it Clean

As her practice has evolved, she continues to counsel clients on compliance issues, defend them in enforcement actions, negotiate sales and purchases of “gently used” industrial and commercial properties, and often oversees remediation work that they are undertaking.

One of Landow-Esser’s first clients was a Chicago spice manufacturer that used ethylene oxide to fumigate spices. The company had to satisfy both OSHA and the EPA. If it kept too much of the chemical indoors, the workers would have breathing problems. If it vented too much through its smokestack, it would pollute the air. Landow-Esser worked with the company’s engineers to find the right balance.

Landow-Esser’s remediation and transaction-related work involves negotiations helping to determine who will be responsible for cleaning up a polluted site and how the work will be done.

She has spent the last seven years working with a Florida steel galvanizer. The company once used ponds to capture its wastewater, which contained metals such as zinc and nickel that were used in the galvanizing process. When the ponds were built in the 1970s, they were considered state-of-the-art and permitted by the state’s environmental agency. As it turned out, they were porous, and leaked into the water table.

“In the days when they were doing this, they thought that this was proper handling of the material,” she says. “And so much of what we deal with, especially in the remediation side of this practice, is things that people thought were OK at the time they did them.”

The problem was discovered when the state was screening the property in response to the

Superfund law. The ponds were drained and dug up, and the soil was carted away. The company spent several million dollars on the project, but the groundwater still contained traces of metal.

“That’s the part that we continue to deal with now as we try to clean those up and get them down to—even though this water will be never used for drinking water—the standard we are required by the agencies to cling to is a drinking water standard,” Landow-Esser says.

On that project, Landow-Esser also put together a deal in which the steel galvanizer could sell the company while remaining responsible for its clean-up, says Michael Mostow, a colleague at Quarles & Brady. That required setting up a trust and an annuity to generate enough funds for the clean-up and getting permission from the EPA. It was an original solution to satisfying a reluctant buyer.

“Since then these deals have become more commonly done,” says Mostow. “There was no blueprint for us to get this done. We had to improvise.”

Landow-Esser also helps companies defend themselves against regulatory agencies and third parties.

She is currently representing National Gypsum, located on Waukegan Harbor, a body of water contaminated with PCBs left behind by Outboard Marine, a now-bankrupt company that manufactured boat motors. The harbor has gone through one round of clean-up conducted by Outboard Marine under orders from EPA. It is poised to undergo a second round.

Landow-Esser is helping National Gypsum defend against City of Waukegan claims that it bears responsibility for the clean-up.

“My client makes wallboard, so it has nothing to do with PCBs, which is the contaminant in the harbor,” she says. “However, the city has a theory by which it would like to say that my client, as well as the other industrial residents of the harbor, have contributed in some way to this PCB contamination. Obviously, we disagree strongly with that.”

Landow-Esser’s entire career has been about the environment. She finds that she can be more effective working with private industry than she was on the regulatory side, because industry actually does most of the work of eliminating pollution from blighted sites.

“I actually think that as a trusted advisor, I can be much closer to a client,” she says. “The clients are going to confide in me about their issues. We have, of course, the confidential relationship, and so working with my clients, I can assist them in both ongoing compliance with the law as well as dealing with some of the historical problems they have to face. We can also discuss any new problems coming

down the pike in a way that they never would with an agency person. As an agency, to a company, there’s always a certain amount of an adversarial relationship no matter how outwardly friendly things are. You’re never going to cross a certain line, whereas I can be an inside person, and that’s what makes this job fun. I can be part of the team that actually starts something and carries it out and gets it done. I really do have a sense of accomplishment when I complete a job done and get the approval letter from an agency or close a complex transaction.

“On more than one occasion, I have taken that letter and framed it in a little gold frame and sent it to my client or sent a bottle of champagne, because you do feel like you’ve climbed a mountain and made it.”

Right now, the mountain she’s climbing is in Ohio, of all places.

In a case that’s gone on for a dozen years, she is representing a manufacturer that sold its assets to a buyer but leased its factory with the agreement that the property would change hands once the original owner cleaned it up.

Landow-Esser’s client has had to pay for a soil investigation, soil removal, and groundwater investigation. It’s had to win approval for an alternative groundwater standard, and it’s gotten neighboring companies to agree not to use groundwater. Because of indoor air issues, it’s had to install air control equipment inside the facility.

“It took many years longer than anyone ever suspected it would take,” she says.

Rewving Things Up

With the election of Barack Obama, environmental regulation is expected to expand from focusing on small, polluted plots of land and relatively local issues to the global landscape, especially the role of greenhouse gases in climate change.

Large institutions, such as hospitals and others that have never had to worry much about environmental regulations, may have to start considering how much carbon their boilers emit. Starting this year, the EPA will use its authority under the Clean Air Act to require certain large companies to report their greenhouse gas emissions.

“It’s dealing with a contaminant, a pollutant that really has not been regulated in any serious way up ‘til now,” Landow-Esser says. “Everybody knows about carbon, but this isn’t a pollutant they’ve had to be worried about up until now. So, suddenly, you’re dealing with a whole new pollutant, and you’re looking at it in an entirely different way and at different levels than the rest of the contaminants that have been

regulated historically. A lot of companies and a lot of activities that haven't been regulated may begin to come under the agency microscope. There's a great deal of interest and a great need to keep up to date, to keep your clients up to date. It's definitely revved up since the new administration came in."

Landow-Esser's environmental interests extend to her own life.

Quarles and Brady recently moved to new digs at 300 N. LaSalle St. and designed its new space to follow LEED Gold standards. The offices use glass for interior wall space, allowing ambient light to flow from room to room. Light bulbs adjust to exterior sunlight, dimming during the day and brightening at night. To save water, the office uses low flow faucets and toilets; no Styrofoam cups or paper plates can be found. Recycling is broken down into plastic, paper, and waste. Computers shut off automatically at night.

Landow-Esser either takes a bus to work from her North Side home or drives a Lexus hybrid car. She is also on the board of Keep Chicago Beautiful, an organization whose mission is education on the environment and sustainability. It holds environmental workshops for teachers who then take the information back to their classrooms.

"All of my career has been about the environment, being creative, and achieving results for my clients," Landow-Esser likes to say.

She and other environmental attorneys have a lot to show for their work. America's air and water are much cleaner than they were in the early 1970s, when Landow-Esser's career and the environmental movement both had their beginnings. For proof, all she has to do is drive through Gary, Indiana.

"You don't notice any change now when you do go down there, and I still have clients in that part of the world. Part of it is progress; part of it is that some of the steel industry has left the area. I want to say a lot of it is progress." ■