

# The Impossibility of Harming the Environment

by Roy E. Cordato

“The ‘polluter pays principle’ states that whoever is responsible for damage to the environment should bear the costs associated with it.”

—United Nations Environmental Programme<sup>1</sup>

The “polluter pays principle” appeals to our sense of justice. People should be held responsible for their actions, and polluters who cause damage to others should “pay” for that damage. Furthermore, forcing polluters to bear the costs of their activities would enhance economic efficiency. In other words, appropriately applied, policies based on the principle face no trade-off between the efficient working of a capitalist system and environmental protection.

But as with most general principles, the devil is in the details. In this case the details relate to basic questions that any application must answer: How do we define pollution? Who is a polluter? How much should the payment be, and to whom should payment be made? The answers to these questions are at the heart of whether an application will be either just or economically efficient.

Most advocates of the principle never talk about harms to people. The statement above is typical. Polluters are those who “damage” or impose “costs” on the *environment*. This

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language is common. The U.N.’s “Rio Declaration on Environment and Development” states that “National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments. . . .”<sup>2</sup> (More on this below.) The “Draft International Covenant of Environment and Development” states: “Parties shall apply the principle that the costs of preventing, controlling, and reducing potential or actual harm to the environment are to be borne by the originator.”<sup>3</sup>

Ultimately terms like “environmental costs” and “damage to the environment” can mean anything a policymaker wants them to mean. Since all human activity involves altering (damaging?) the natural environment, the “polluter pays principle” as defined by its most vocal advocates can be invoked to justify taxing or regulating any consumption or production activity, and often is. Indeed this may be the point of using such nebulous language.

Closely tied to that principle are policies typically referred to as “market based.”<sup>4</sup> These policies are broken down into two categories, taxes and tradable permits. Both are seen as attempts to “make the polluter

pay” by attaching a fee to the polluting activities.

The taxation approach is most direct. The tax would be paid either in the form of an emissions fee or an excise tax on the product associated with pollution. The tradable-permits approach (also called cap and trade) would first have the government establish an overall acceptable level of pollution for an industry and would then distribute emission permits to firms in that industry. The total amount of emissions represented by these permits would add up to the overall level that was initially established. Companies could then buy and sell these permits based on their needs to emit the pollutant and their abilities to find pollution-abatement techniques. The point is that in either case, the polluters are made to “pay” for their polluting activities, either through a tax or through the purchase of permits from others in the industry.

While the moral case for market-based instruments is generally centered on the concept of making the polluter pay, the economic justification is based on the idea that using market-based incentives to accomplish environmental goals is more efficient than traditional command-and-control policies. Theoretically, polluters who must pay will have to consider all of the costs associated with their production activities and use resources more efficiently. Furthermore, they will have an incentive to find the lowest-cost methods for reducing emissions.

## Manipulated Definition

The problem is that, in advocacy and practice, the supporters of market-based instruments, like the supporters of the “polluter pays principle” more generally, manipulate the definition of cost to make it consistent with the vague concept of harm or damage discussed above. Economics attaches the concept of costs to human beings and individual decision-making. “Cost” refers to what must be given up when a person chooses one course of action rather than another, or when someone else’s activities prevent a person from choosing a course of action. For

example, in the case of a company’s polluting a river, the cost might be to downstream recreational users who have to give up or cut back on certain activities that the pollution is preventing them from pursuing. From this perspective then, pollution problems arise because the polluter is imposing costs on other human beings. It is human users of the river who bear the costs, not the river itself.

As with the “polluter pays principle” more generally, many advocates of market-based instruments misuse the economic theory by redefining the concept of costs and damage to apply to things rather than to people. But the environment does not incur costs. Only people do.

An article by David Pearce and Kerry Turner is typical. In the name of “making the polluter pay,” the authors call for excise taxes on the use of beverage containers. Their claim is that “*environmental damages* from packaging waste is not reflected in the prices of packaged products” and that “the size of the levy needs to be related directly to the *environmental damage* done by the production and consumption of the packaging, or to the costs of *restoration to the environment*” (emphasis added).<sup>5</sup> Nowhere is there a reference to costs or damage to actual people from the use or disposal of beverage containers. Unfortunately, such abuse of the concept of costs is not discouraged among economists. This article appeared in a respected and refereed academic journal.

The notion that polluters should be made to pay for the damage they cause is nothing more than an extension of the idea that people should be held accountable for their actions. This fundamental principle is made coherent by property rights. When person A does harm to person B, it is understood that A has done damage to B’s person or property. The appeal of a “polluter pays principle” is that A makes B whole again; that is, to the extent possible, he provides restitution, most likely in the form of monetary compensation, for B’s suffering.

It is right that environmental policy should make the polluter pay so long as it is grounded in these basic principles. Within this context ambiguity is greatly reduced about what

kinds of emissions or by-products of production processes should be characterized as pollution, who should be identified as a polluter, and what the polluter should pay and to whom. If a producer emits a substance, whether into the air, a body of water, or the ground, and those emissions cause health problems or cause damage to people's property, then those emissions would be correctly characterized as pollution and the company as a polluter. The payments that the company would be forced to make should go, not to the government in the form of a tax or to other companies to buy permission to pollute, but to those in the community who have suffered from pollution.

From this perspective pollution problems are the result of conflicts over the use of a resource. Persons A and B would both like to use the same resource for conflicting purposes. Usually the presence of private property allows for such conflicts to be resolved both peacefully and in a mutually beneficial way, even when the issue involves the environment. For example, on wildlife preserves owned by the Audubon Society it is not uncommon to see oil companies drilling for crude. While the Audubon Society and oil companies may want to use this land for what might first appear to be conflicting purposes, private ownership provides a strong incentive for the parties to compromise and resolve the differences. By leasing part of its land for oil exploration, the Audubon Society can gain revenues to purchase other lands while insuring that the drilling takes place in an environmentally friendly way. This is not the case on "publicly" owned lands, such as the Alaskan National Wildlife Reserve (ANWR), where any drilling is viewed as being at the expense of environmental concerns.

## Use Without Permission

In cases where someone decides to make use of another's property without permission, the problem is resolved by applying the simple rule that the person who owns (has

title to) the property is the one whose purposes prevail. This approach takes the focus off the physical environment, per se, and places it on human beings and their right to live their lives unmolested. An activity is polluting only if it harms others.

This approach to the "polluter pays principle" has two distinct and mutually reinforcing advantages. First it is consistent with the principles of liberty. Under a property-rights-grounded principle, people are free to pursue whatever production or consumption goals they desire so long as there is personal accountability for any and all damage to others or their property. Second, if generally invoked as a guiding principle of environmental policy, it will enhance economic efficiency and social welfare. Moreover, those involved in production activities will attempt to ameliorate problems before they occur. There would be a strong incentive to develop new technologies that eliminate or minimize pollution from the outset.

Environmental problems tend to arise when people are allowed to impose costs on others by degrading other people's property or by using property that is unowned. A property-rights-based "polluter pays principle" would go a long way toward solving many of these problems, first by seeing to it that existing property rights are enforced and by providing principled guidance for the privatization of currently unowned resources by courts and legislatures. It will be much easier for lawmakers and adjudicators of disputes to move in the right direction once the target is clearly identified. □

1. United Nations Environmental Programme, *Taking Action*, Chapter 2, p. 3.

2. "Rio Declaration on Environment and Development," Principle 16, The U.N. Environment Programme, found at [www.unep.org/documents/default.asp?DocumentID=78&ArticleID=1163](http://www.unep.org/documents/default.asp?DocumentID=78&ArticleID=1163).

3. "Draft International Covenant on Environment and Development," Article 11.6, World Conservation Union, found at [www.iucn.org/themes/law/the\\_draft\\_covenant.html](http://www.iucn.org/themes/law/the_draft_covenant.html).

4. For the distinction between market-based environmentalism and free-market environmentalism, see Roy Cordato, "Market Based Environmentalism and the Free Market: They're Not the Same" *The Independent Review*, Winter 1997.

5. David Pearce and R. Kerry Turner, "Packaging Waste and the Polluter Pays Principle: A Taxation Solution," *Journal of Environmental Management and Planning*, Vol. 35, No. 1, 1992, p. 6.