

## ESSAY

### Damage Control: A Field Guide to Important Euphemisms in Environmental Law

Oliver A. Houck\*

One of the reasons environmental law is difficult is that it can be so embarrassing. It is one thing to say that you picked up a speeding ticket or had to pay back taxes. It is another to admit that you are using the Hudson River for a sewer or that you cut loose fourteen hundred tons of toxins over Los Angeles last year. The result is the rise of a new vocabulary to soften the blow. Just as military experts talk of collateral damage to describe the impact of weapons gone awry, so virtually every agency and industry that whacks the environment has developed its own language of damage control.

The language is not accidental. Some years ago the U.S. Geological Survey's mining chief, smarting under the disclosure requirements of the National Environmental Policy Act, wrote to his environmental personnel objecting to their characterization of mined lands as "disturbed." Certainly, he went on, "there should be a better word than (sic) 'disturbed' to describe land utilized and altered in the production of coal." Fully warm to the task, his memo concluded:

When the Geological Survey has the lead in preparing environmental statements, inflammatory words such as disturbed, devastated, defiled, ravaged, gouged, scarred and destroyed should not be used. These are the words used by the Sierra Club, Friends of the Earth, environmentalists, homosexuals, ecologists and other ideological Eunuchs opposed to developing natural resources.<sup>1</sup>

Well said! Most of these conversations go unseen, of course, except for the results they produce, a set of euphemisms intended to blur the effects of strip mining, channel dredging, clearcutting, waste dumping and other dark features we would like to imagine were otherwise. Here are a few of the more important ones:

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\* Professor of Law, Tulane University.

1. Memorandum from Andrew V. Bailey, Chief, Branch of Mining Operations, U.S. Geological Survey to Environmental Section (Oct. 8, 1976) (on file with author).

1. “Borrow Material/Borrow Pit.” Who has borrowed what? The Corps of Engineers and your state Department of Transportation have borrowed some soil—in Louisiana, about 5000 linear miles of soil—to build levees and highways. The term borrow implies that they are only taking the earth (called “spoil material,” see also, “overburden”) temporarily, and that they will give it back. Any day now.
2. “Environmental Enhancement.” When is the environment enhanced? Well, when it is paved for visitor parking, for example, at a federal dam eliminating a run of salmon. Similar enhancements include the concrete picnic tables built under the Claiborne Overpass in New Orleans, Louisiana, a highway that took out an entire neighborhood and nearly one hundred, century-old live oak trees. The parking lot and the picnic tables are called enhancements.
3. “Even-Aged Management.” When is a forest even-aged? When all the trees are cut down at the same time. Leftist sympathizers call the practice “clearcutting.” The phrase “even aged” has a friendlier ring to it, like the 7-to-8 and 9-to-11-year-old divisions in your child’s little league.
4. “Good Science.” Under what circumstances is science good? When it supports your position. No amount of science that supports the contrary qualifies (see “junk science”), because there is always more research to be conducted and because with enough digging you can scrape up a scientist to disagree (supported by something called “The Freedom Institute,” another euphemism). For this reason, the mounting evidence that tobacco caused cancer was never good science for Philip Morris, and it will be a cold day in Hell before science is good enough to support efforts to reduce global warming, chlorinated hydrocarbons or anything else that requires really good science.
5. “High Occupancy Vehicle Lane.” HOVLs are the Department of Transportation’s answer to future highway congestion. Your state can get big money for new roads if it will dedicate one lane to “high occupancy vehicles.” In Louisiana, high occupancy has come to mean a vehicle with two persons, or the driver and a large dog (which, after all, may need a ride to the vet). This worries no one because, as most states have discovered, once the new roads are built the HOVLs tend to disappear anyway.
6. “Highest and Best Use.” The alert reader will note two adjectives here. The use is not just “highest,” and not just “best,” it is BOTH.

What could possibly qualify for such an accolade? Well, God, for one. And beyond that, virtually any act of desecration, as in forty miles of fast-food outlets through Houston, Texas. These all are higher and better uses because they make more dinero, and even if you don't use the land in this way you will be taxed as if you did. In this fashion, we are all encouraged towards higher and better uses.

7. "Land Farming." What gets land farmed? Industrial wastes, for one, including wastes like oilfield muds that test quite hazardous but that the federal government has done the oil and gas industry the convenience of labeling nonhazardous. Land farming is an innovative form of agriculture that bulldozes dirt over the waste pits and then discs them around, ensuring their safety for generations.
8. "Mountaintop Mining." Mining with a great view? Yes indeed, at least for a short while. When it is all over the entire mountain will have been pushed into the nearest ravine. See "overburden." See also West Virginia. If the ravine was little used, and now can be made into a trailer court, this could rise to the level of a mining enhancement, see above. It would also be, without doubt, highest and best use.
9. "Multiple Use." Whatever use has the most clout, rendering it, apparently, multiple. According to a consistent string of judicial decisions, there is no imaginable dedication to a single use that is not in fact "multiple." Indeed, one court found that committing 99.5% of the largest forest in America to timber farming was multiple use. The more money you stand to make from public resources, the more you like multiple use management.
10. "Nutrient Enrichment." We are all enriched by cow manure, pig dung, chicken droppings, and heavy doses of chemical fertilizers that have made an 8,000-square-mile dead zone at the mouth of the Mississippi River and are fast doing the same to the Chesapeake Bay and to coastal estuaries from California to Maine. Inland waters like Florida's Lake Okeechobee also suffer from nutrient enrichment. Florida eco-extremists and other doomsday advocates call it "pollution."
11. "Overburden." This term infers that something quite heavy and onerous is weighing down on the land. Something we would certainly do well to alleviate. What is weighing down the land in the case of mining operations is trees, grass, soil, fungi and thousands of living micro-organisms, tiny invertebrates and vertebrates per square yard. As you can imagine, taken in the aggregate, they can be quite burdensome. Luckily for us all, busy

strip-miners remove the overburden to access things of higher and better use underneath.

12. "Overmature." When are you overmature? When you have achieved your maximum growth rate, maybe as late as age fifteen? But probably earlier. At which point it is time to kill you before you take up the space of some youngster who is really putting on useful pounds? Some forests are full of overmature trees, many of them tall, some of them older than your uncle! These kinds of trees are also known as "waste." As stated in the original Tongass National Forest Plan, our mission is to eliminate the waste from "decadent" stands of "overmature" trees.
13. "Royalty Holiday." Is this Audrey Hepburn, as in *Roman Holiday*? No, this is EXXON, as in not paying its rent. EXXON and Texaco and the rest of the oil and gas industry regularly petition Congress for waivers of royalty payments (that they have contracted with the government to pay) on their federal oil and gas leases, usually with persuasive arguments that oil prices are too low, or too high, or in some other way threatening the survival of the industry. Surely, under these trying circumstances, you would waive any royalties EXXON owed you if it were drilling on your private land. Representatives from Texas, Oklahoma, and Louisiana feel the same way about royalties due from public lands. Consider it a well-earned holiday.

I hope that the examples provided will convey some sense of the vital role euphemisms play in the management of our natural resources. I recognize that, in a field this fertile, the above list is incomplete. Suggestions for the inclusion of additional euphemisms would be gratefully received at [ohouck@law.tulane.edu](mailto:ohouck@law.tulane.edu). My personal view is that there is really nothing wrong with the way that we treat our land that we cannot fix with a good dictionary.