

# **ASSEMBLING A LOCAL TOOLBOX FOR RESOURCE PROTECTION**

Nancy R. Edmonson, City of Shoreacres, Shoreacres, Texas  
January 16, 2003

## **INTRODUCTION**

Since Americans first wakened to the reality of environmental degradation, individuals in affected communities have been keys to curbing damage to resources such as Galveston Bay. Without federal law and other tools to use, however, these people were hard pressed to maintain local environmental quality. The pattern in air and water issues in the 20<sup>th</sup> century has been local citizens' groups pressing municipalities to act through regulations, but large corporate or quasi-governmental entities (often large local employers) are generally too powerful for cities—particularly small ones—to control or even influence. Important federal laws passed in the last generation have finally provided some tools with teeth—the Clean Air Act, the Clean Water Act, and the National Environmental Policy Act, to name a few. Now citizens of even the smallest and most fragmented communities have federal and state legal tools at their disposal to protect local resources. Shoreacres has a population of only 1,500. Yet faced with the prospect of a container terminal for a neighbor and the associated destruction of the Bay, the same situation that Morgan's Point faced 30 years ago when the Barbour's Cut Container Terminal was built, the people of Shoreacres are in a very different position.

I am heartened to see recognition of the role of local communities in protecting the Bay through the theme of this conference, "Local Communities Leading the Way," because the environmental quality of the bay is intrinsically linked with the quality of life in our communities. The linkage goes both ways—harm the Bay, harm our communities and harm our communities, harm the Bay. The health of the two is intertwined.

## **THE PROBLEM**

The problem local communities face as stewards of the Bay has been crystalized by the fight against the proposed Bayport Container Terminal. The Galveston Bay system is ringed with numerous political entities—four counties and dozens of cities. Bordering upper Galveston Bay and its tributaries in Harris County alone, there are more than fifteen municipalities. Most of those cities are quite small, without the staff and financial resources to do much environmental regulating or policing. Let's be honest. If the communities under assault were one large city, its resources and political power could have killed Bayport years ago. But our small towns found themselves being attacked or at least ignored by the larger political entities that are supposed to be acting on our behalf. The citizens feel helpless, assuming they have no chance in a fight against entrenched

interests. Small town governments do not have the resources or the political clout to protect us and the Bay, most citizens do not have an organization in place to fight very long and protracted battles, and the resource agencies charged with protecting the environment and quality of life appear inaccessible or politically hogtied. Initiatives such as the Galveston Bay Estuary Program may provide useful technical information but provide little practical support on how to protect our resources against powerful entities whose goals are contrary to the citizens' well-being. So what's a small town to do? We went out to our proverbial garage, dusted off the rusty old toolbox, and peered in to see what might be useful.

## **TOOLS IN THE TOOLBOX**

Hey, and we found some useful tools. Some are wrenches, some are just tape measures, but all are useful. Keep in mind that all of these tools are more effective if wielded by a coalition of cities or other organizations. I cannot emphasize enough that the power of these tools is magnified by intergovernmental and interagency cooperation. On the local level, the Bayport fight has united many of the small city governments in this area in a way that has never occurred in the past. Take a few minutes and look at Mayor Natalie O'Neill's poster presentation titled "And So the Mayors Go to See the Colonel." Among other things, it summarizes how the cities have worked together for a common purpose over the last three or four years.

Ok, now let's divide our gear into four groups for discussion: federal, state, local, and private. I have time to talk about only a few examples in each group—there are certainly other tools available as well.

### ***Federal***

The National Environmental Policy Act of 1969 (NEPA) is like a slide rule (not that one typically finds a slide rule in a toolbox!)—a complicated measuring device. NEPA does not directly regulate impacts to the environment; instead, it provides the framework to ensure full analysis and disclosure of the impacts to the environment from a proposed project. The purposes of the act include "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment"—quite powerful but quite general. From a practical standpoint at the local level, NEPA provides a tool—the Environmental Impact Statement—to ensure that proposed projects that could affect the Bay or surrounding communities are publicly evaluated against a consistent baseline. In 1998, the Port of Houston announced its proposal to build the Bayport Container Terminal with minimal environmental evaluation. Public outcry from local communities forced the Corps of Engineers to conduct the full EIS process. Three years after the EIS was begun, the evaluation continues. While the EIS process as implemented by certain agencies could use improvement, the disclosure required by this process provides local citizens with data that we could never afford to develop independently.

Growing public awareness of concern for controlling water pollution led to the enactment of the Federal Water Pollution Control Act Amendment of 1972. As amended in 1977, this law has become commonly known as the Clean Water Act. This act regulates discharges into United States waterways, including Galveston Bay and its tributaries and tasks the EPA with the responsibility for implementing the act. The Clean Water Act is important to efforts to protect the Bay in numerous ways, including regulation of direct discharges as well as protection of wetlands. Direct application of this law typically lies in the hands of federal and state agencies, although the local governments should be the eyes, ears, and conscience of these agencies in their execution of the law. The local cities cannot just assume that someone else is taking care of water pollution issues.

## **State**

The State protects Bay quality through the Texas Commission on Environmental Quality (TCEQ), the General Land Office (GLO), and other state agencies for which many of you work. I don't intend to discuss the specific laws here, but simply want to mention that these agencies are available to the local governments for assistance. The biggest problem with the state laws and their enforcement at the local level lies with knowledge—many of us do not know what agency to call for what issue or which agency is ultimately responsible. For example, there was an oil spill (bunker fuel leaking from a ship) in the Bay that affected Shoreacres and neighboring cities about two years ago. We are still trying to untangle who was responsible for clean up vs. who is responsible for damages vs. who is responsible for sand replacement.

Programs sponsored by the Coastal Coordination Council, such as the Coastal Impact Assistance Program and other grant programs, are useful tools for local cities to help directly preserve Galveston Bay. The City of Shoreacres was just last week awarded a grant from the Coastal Coordination Council to purchase a small tract of wetlands that feeds Taylor Bayou, which ultimately drains into Galveston Bay. Without grant-writing staff, these programs are difficult to find and pursue but can be very valuable. Speaking again about multi-jurisdictional cooperation, maybe the local cities should join together to jointly pursue preservation grant funding. The sum of such activity would almost certainly be greater than the parts.

The Galveston Bay Estuary Program (GBEP) is a tool also! The brochure for this symposium says that “the GBEP is a program of the Texas Commission on Environmental Quality, working with Bay stakeholders, such as local governments, federal and state agencies, industries, environmental groups, commercial and recreational interests, and the public to implement *The Galveston Bay Plan* (the Plan)—a Comprehensive Conservation and Management Plan for Galveston Bay.” Hey, this sounds great! And every two years, everyone can get together at the State of the Bay Symposium and exchange vital information.

But where is GBEP in the big fights surrounding the Bay—Bayport, industrial dumps, dredging, etc.? I'll be honest—I was three years into fighting Bayport, two years into serving on City Council, and

six months into being mayor before I had ever even heard of GBEP. I want to commend GBEP for the monitoring, scientific study, and communication it has sponsored, but we need more help and the Bay needs more help. Monitoring and study are for naught if slipshod industrial developments destroy the subject. Please don't practice "science in a vacuum." Be careful not to exclude city governments and citizens groups when tackling Bay-related issues by talking among yourselves in technical jargon or by focusing solely on the science issues. The science needs to be applied to be most useful.

## ***Local***

Municipalities can protect the Bay two ways: enacting ordinances and enforcing state laws. Realistically, the smaller towns are not likely to enact their own sets of environmental regulations. The resources required for writing and enforcing such ordinances simply aren't available. But interestingly, municipalities have the power to enforce all laws of the State of Texas. In other words, we can enforce all pollution laws—we can act as the TCEQ. I want to talk a minute about this, because this power is not widely recognized or used.

All local governments in Texas have the authority to enforce federal and state environmental laws or otherwise protect the public health and environment within their jurisdictions. The authority was provided to ensure that local governments could step in when the state or federal agencies do not enforce the environmental laws due to lack of resources, different priorities, or political considerations. For state laws, the authority to enforce water, air, and solid waste management laws is provided in Subchapter H, Chapter 7 of the Texas Water Code for actions by local governments with civil and criminal penalties. The local government can also recover attorney fees for the suit.

Do we have the resources to do this? Not now, but it is still a powerful tool more cities may need to use. The threat of cities enforcing the laws of the State of Texas on those who would damage the Bay may prove to be a huge hammer.

## ***Private***

In general, private tools are the power of the citizens formed into nonprofit organizational groups, such as the Galveston Bay Conservation and Preservation Association (GBCPA), the Galveston Bay Foundation (GBF), Coastal Conservation Association (CCA), and others. The power of some of these groups in protecting and improving the Bay is significant. They often have the advantage over agencies by being focused on fewer tasks. Interestingly, in my dual roles as a public official and a board member of GBCPA, I find that at times the information and power lying in the nonprofit organization are more significant than those available to an elected official.

One particular private venture that I want to mention today is the Baykeeper—the new kid on the block in Galveston Bay protection. To the local communities, it is another tool in our toolbox—kind

of our eyes and ears on the Bay. GBCPA was designated the Galveston Baykeeper in September 2001 by the Waterkeeper Alliance. The keeper concept began on New York's Hudson River where a group of commercial and recreational fishermen mobilized in 1966 to reclaim the river from polluters.

In 1992, a growing network of keepers that were spawning on water bodies around the country founded the National Alliance of River, Sound, and Bay Keepers, renamed the Waterkeeper Alliance in 1999.

A keeper is a nonprofit, citizen-based organization whose responsibility is to be the public advocate for a water body. A keeper's clients are all of the users of the watershed. A keeper can employ a wide variety of strategies to enforce environmental laws including conducting water quality monitoring, educating the public, and even leading litigation as a final step to enforcement.

The Galveston Baykeeper program is in its infancy. GBCPA hopes to formalize and expand the role of the Baykeeper in 2003. One of the first steps planned is the establishment of a hotline where people—such as boaters out on the water—can call and report problems on the Bay without having to know which of many agencies is the correct enforcement body. The keeper can then get the information to the right agency, as appropriate. As the program grows, this tool will become more familiar.

## **CHALLENGES**

While these tools are helpful, the local communities still face huge challenges. Effectively wielding the power we have takes time and money—both in short supply in small towns. The selection of the right tool or even the right agency can be a daunting task for nonprofessionals. With such a large estuary, issues arise that cross the administrative boundaries of many local governments and many more regulatory agencies. Who is responsible for oil spills? What if the oil came from a plant versus a ship? Who regulates impacts on the bay shore—the Corps of Engineers or the General Land Office? Is wetlands protection a responsibility of the local communities?

The problem applies to all of us here today. The criticisms I have leveled in this talk to many of you—agencies, GBEP, even the cities—haven't been made merely to cast stones. Instead, they are challenges. Let's not sit here and fiddle while Rome burns. We must take on all of the fights, both big and small, and we must do it together.