ENVIRONMENTAL LAW
Lewis & Clark Law School

VOLUME 55 WINTER 2025 NUMBER 1

ARTICLES

Nonpoint source water pollution is the largest cause of water pollution in the United States today. From harmful algal blooms to acid rain to red tide, the impacts of nonpoint source pollution are devastating for human and environmental health. In the last several decades, states and the Environmental Protection Agency have spent billions of dollars trying to address this pollution through the Clean Water Act's TMDL program. TMDLs have been derided for their lack of a coherent regulatory driver, but many academics have come to argue for their value as an example of information regulation: a regulation that requires the disclosure of information but does not impose significant regulatory burdens or requirements on the basis of this information. While information regulation is a favorite approach to environmental management, little evidence exists on whether it is an effective regulatory strategy.

This Article provides a critical assessment of the Total Maximum Daily Load (TMDL) program to concretely evaluate whether such information regulations lead to measurable improvements in water quality. Despite significant resources allocated to TMDL implementation, robust analyses evaluating its success have been lacking. For the first time, this Article presents a comprehensive quantitative analysis using nationwide data. The findings reveal that impaired waters with TMDLs in place have not shown marked improvements in quality over time, suggesting the ineffectiveness of this type of information regulation in environmental law. Based on these insights, the Article argues for several reforms to nonpoint source pollution and TMDL regulations, highlighting key aspects that undermine the effectiveness of information regulation more generally.

Examples of governments' failure to protect individuals from the devastating impacts of environmental degradation are widespread, and the ramifications are increasingly global, affecting transboundary concerns like human migration, food production and climate. The global nature of these problems calls for international

(2) recent, widespread use; and (3) current developments which merit further consideration of its implications and benefits.

Ultimately, in Part IV, I suggest that the precautionary principle is likely to hold continued value as domestic climate litigation further evolves. However, I advocate two opportunities to maximize its benefits. First, noting considerable diversity in how the precautionary principle is interpreted and its implications are understood, I suggest that future academic research can beneficially explore the effect of the precautionary principle, while judges and other legal practitioners can more explicitly specify how it is interpreted and applied in specific domestic contexts. Second, noting that the precautionary principle is closely related to considerations of scientific uncertainty, I advocate and explore means to better integrate insights from scientists, attorneys, and judges who operate at the science-law interface in complex climate change lawsuits.

How can we achieve a just, timely, and clean energy transition? The scholarly and policy discourse has centered on fostering technological innovation in power generation, overlooking critical obstacles in the transmission sector. Neglecting transmission issues has caused a significant delay in the transition to a decarbonized economy, with hundreds of gigawatts in the queue waiting for connection.

One of the biggest hurdles to transmission deployment is the lack of public acceptance. Citizens often resist energy infrastructure projects when they are imposed on them by planners and developers with little to no prior consultation or dialogue. I argue that expedited power transmission development to further just transition governance should include broad deliberative dialogues that engage communities. I explore ways of integrating deliberative mechanisms into power transmission planning. I compare minimal and broad deliberative planning opportunities, and their implications for democratic and procedural justice goals.

This Article explores local communities' interests when their lives collide with plans for energy infrastructure. Throughout this Article, I emphasize the need for institutional decision-makers to break silos and recognize the lives of local communities as more than just technical data to be fed into a planning or pricing algorithm.

The Article begins by detailing the challenges to power transmission planning, such as transmission bottlenecks and remote renewable generation. Then I analyze emerging energy democracy theory and its relation to transmission planning and civic engagement. I explore the advantages of addressing technical and social issues together and whether their current procedural