

PERSPECTIVES FROM THE FIELD

Ethics in Environmental Consulting

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The field of environmental consulting has been around for decades, but in North America it began in earnest in the 1970s, partly in response to passage of the National Environmental Policy Act and similar federal and state regulations, and experienced rapid growth through the next several decades. Currently there are hundreds, if not thousands, of environmental consulting companies that range from one-person firms to large companies with thousands of employees.

Environmental consulting would perhaps be better characterized as ecological consulting as, for our purposes here, the field focuses primarily on identifying natural resources that are protected by local, state, or federal regulations. Environmental consultants typically identify and characterize such resources and help clients obtain permits under the variety of regulations that apply to such things as fish and wildlife habitat, rare species, and wetlands.

People with a wide range of backgrounds become environmental consultants, but most have a college degree in one of the natural resource disciplines, including forestry, fisheries, wildlife, biology, and ecology. Many graduates from these programs see working for a state or federal natural resource agency as “working for the resource” or “wearing the white hat.” Conversely, environmental consultants are often tagged as “wearing the black hat” and not supporting resource conservation.

From the beginning, then, environmental consultants are often perceived as being

less ethical, but is this charge accurate? Are environmental consultants ethically compromised—more willing to come up with the “right answer” in exchange for fat checks from clients—or is the situation much more complex? After nearly three decades as an environmental consultant, I would argue that, while all natural resource professionals face ethical dilemmas throughout their career, environmental consultants do face unique circumstances. In the following sections, I describe some of these situations and offer ways that I attempted to resolve the ethical challenges that have come with a career in consulting.

Seeking Guidance: Are There Rules of the Road?

As one embarks on a career in environmental consulting, are there rules of the road? Is there a secret handbook that will guide you along an ethical path as you engage ever more complex projects and situations over the life of your career? The answer, of course, is that no such rules exist, and one is forced to forge ahead with a mix of what you might have been taught in college, on-the-job training, and codes of ethics from the professional societies that consultants typically join, such as the Society of Wetland Scientists. While all these help, in my experience most ethical dilemmas are solved through following your own internal compass, which hopefully has been tried by your upbringing, readings related to ethics, peer-to-peer discussions, mentoring, and a healthy dose of experience.

Ethics in College

During my academic career, which included an undergraduate degree at one university and an advanced degree at another, professional ethics were never explicitly discussed to any great extent. I think that this was because of several reasons, including degree programs that were already overstuffed with technical coursework, faculty

with limited experience outside of academia, and the general discomfort that we all feel when discussing issues of personal morality.

The one exception to the scant attention paid to ethics was a professor during my undergraduate years who devoted an entire class to the ethical challenges that we might face in our careers. Coming from his own experience working for state and federal natural resource agencies, as well as positions within several universities, he told story after story regarding ethical challenges that he had personally faced. He ended the lecture early, noting that he hoped that he had given us a lot to think about, with the caution that each of us must develop our own moral compass and that we might be faced some day with deviating from that compass or quitting a job over an ethical issue. It was a quiet exit from the room as we, who were all hoping to just get a job in our field, were forced to consider that we might actually have to quit one in the future over personal or professional ethics.

On-the-Job Training

In the 1970s and 1980s, many consultants worked in small companies that lacked employee orientation programs, employee handbooks, or formal codes of ethics. As companies have grown in size, most now have employee handbooks and training programs that usually touch only briefly on ethics. Most programs, in fact, typically address only the consequences of unethical behavior and don't provide any real training in how to handle job situations ethically.

The first day of my first professional job, unfortunately, required me to face several ethical dilemmas. Working for a state agency, my supervisor—whom I greatly admired—started the day by saying, “Let me show you how to lie with a pencil,” as he proceeded to show me how to falsify

time sheets and expense accounts. His rationale was that our salaries were so low that it was somehow our right to make amends by working fewer hours than we reported and submitting reimbursement requests for miles that we hadn't driven and meals that we never ate.

The first ethical question was do I, like my supervisor, falsify my time sheet or expense account? Secondly, I asked myself whether I should report the behavior of my supervisor. I worked around the edges of the first question by asking several colleagues—including game wardens charged with upholding laws—how to fill out time sheets and expense forms and found that almost everyone was lying with a pencil. That is, with the exception of one senior staffer who said, "You've probably already been told how to lie with a pencil, so I'm going to show you how you're supposed to do it." That person became my mentor for my time with that agency. Rightly or wrongly, I didn't report my supervisor, but I knew that my time with the agency was going to be limited.

Professional Codes of Ethics

Many environmental consultants belong to more than one professional society, and I belong to several, including The Wildlife Society, the Society for Conservation Biology, the Ecological Society of America, the Society of Wetland Scientists, and the American Ornithologists Union. Involvement in such societies, however, is—in my experience—declining as younger consultants cite the cost of membership and the lack of direct relevance to their jobs as reasons for not joining. This is unfortunate, as most professional societies have written codes of ethics that members agree to adhere to as a condition of membership.

Although most societies have a code of ethics, they are typically very general and provide little guidance to environmental consultants as they negotiate the ethical situations that arise in their daily work. I find, then, that most professionals—including myself—can't recite the codes of ethics of their professional societies and have little practicable reason to ever call on them.

A notable departure from the norm can be found in the Association of Massachusetts Wetland Scientists. This nonprofit professional organization routinely addresses ethical topics during its periodic meetings and within its newsletters, where specific topics are discussed under a "What Would You Do?" banner. Although there are undoubtedly others, this is the only professional group that I belong to that routinely presents situations with potential ethical pitfalls and asks what the appropriate response should be. While extremely helpful, it is notable that there is often no consensus regarding what the ethical course of action should be.

Peer-to-Peer Discussions and Seeking Mentors

I have found that the best source of information regarding confronting situations with ethical challenges is peer-to-peer discussions. Talking through a situation with professionals who understand the ramifications of your decision is invaluable and can include peers with a stake in the situation—such as business partners or project team members—as well as individuals with no interest in the outcome of your ultimate course of action.

A special form of peer-to-peer consultation is seeking out and working with a mentor. This person is often a more experienced professional who has more years on the job than you do, but it can also include someone who takes a special interest in ethics and has thought through many of the ethical dilemmas that you might face.

An Internal Compass

Ethical decisions come down to what you do as a professional in any given situation, and that is ultimately based on personal decisions that are, or aren't, guided by an internal moral compass. As already noted, an internal compass can be tried through education, training, peer-to-peer discussions, and guidance from a trusted mentor. As an owner of an environmental consulting company with many employees, though, I was often called upon to serve as the mentor or to be the final de-

cision maker on a point regarding ethics. I found it useful, therefore, to spend time tuning and truing my own internal compass through wide reading in texts directly related to ethics and philosophy. While this may be more than the typical consultant needs to do, it is well advised for anyone who supervises other consultants or who owns a consulting company.

Common Ethical Dilemmas

Ethical dilemmas that consultants face come in a many forms, but most relate to delinquent regulated resources, working with clients, interacting with agencies, and regulatory compliance. Special case scenarios can also arise when providing expert witness testimony or when working with fellow professionals.

Resource Delineations

Environmental consultants are often tasked with identifying all regulated natural resources that occur within an area that is targeted for some form of development. Such resource delineations typically include mapping regulated wetlands, characterizing fish and wildlife habitats, and identifying rare, threatened, or endangered species.

One of the first ethical dilemmas that consultants can face is determining whether you are qualified to identify every regulated resource that occurs in a project area. Rare plants are a good example, and many consultants offer rare-plant surveys as a service. On the one hand, the work is usually more interesting than routine wetland delineations, and the money made conducting such surveys is welcome in any business. In my experience, though, very few consultants are truly expert botanists, and many walk past rare species without recognizing them as such. In addition, most regulatory agency employees have a limited ability to recognize rare species and tend to accept reports from most consultants if it appears that a good job has been done. It takes a strong inner compass, then, to turn work away and admit that you aren't properly qualified.

While wetland delineation is characterized as a science, it is not unusual for profes-

sionals to disagree on the exact jurisdictional limits of a specific wetland. It is not uncommon, either, for some wetland professionals to perform what is sometimes referred to as an *aggressive delineation*. I have heard some consultants say that they have an ethical obligation to their clients to come up with the most aggressive wetland line possible, knowing that regulatory agencies rarely question a delineation. In my experience, as well, many clients actively seek out consultants who are willing to provide an aggressive wetland line. Fortunately, in my experience such consultants are rare and their careers are often short-lived.

Working with Clients

As noted earlier, some clients seek out consultants who will aggressively delineate wetlands and other regulated natural resources or who will conduct only cursory surveys for rare species. Each consultant has to make their own decision regarding whether to work for such clients. In my own experience, I encountered a client who wanted me to falsify wetland delineation forms and minimize wetland boundaries on his real estate development projects. His implication was that if I was willing to cooperate, he'd have an endless supply of work for me on his projects as well as the projects of like-minded associates. In my opinion, though, a consultant trades on his or her name and integrity and, if you compromise that integrity even once, your career as a consultant is over because you will lose all credibility with honest clients and regulatory agencies.

In another case, a surveyor was hired to locate the wetland flags that I placed on what turned out to be a very wet site. During the survey, however, the surveyor noticed the client moving my wetland flags to minimize the size of the wetlands. Hopefully I would have noticed the discrepancy when checking the surveyor's map, but in this case I benefited from the ethical behavior of a fellow professional.

Consultants also face ethical quandaries when it comes to billing clients for their work. One would think that the issue is relatively straightforward and that consul-

tants should bill only for time actually worked on a project. In this age of advanced technology, however, ethical dilemmas arise, such as what to do when you're driving to a project for one client while involved in a lengthy call with another client. Do you charge just one client for the time or do you charge both of them, essentially double-dipping and earning, say, two hours of pay for one hour of work? I don't have a ready answer for this quandary, but in my own practice I would normally charge the client who was getting actual consulting advice and not charge the client for the time spent simply driving. It would be a highly unusual circumstance, fortunately, where you would be faced with providing true intellectual services to two clients simultaneously.

Another practice that arises from time to time is a concept called *value-added billing*, where the consultant has a stake in the project's success and their monetary reward is tied to achieving that success. In some ways, this practice seems only fair. In my own experience, for example, a project proponent failed to get a required permit, thereby jeopardizing a multi-million dollar investment. With a little bit of work, though, I was able to secure the necessary permit, which allowed the project to go forward, making millions of dollars for the investors. Was it fair, though, that I was compensated only a few thousand dollars while the proponents made millions?

I believe that an environmental consultant's compensation should not be tied to the success or failure of a project, meaning that value-added billing—or bonuses upon receipt of a permit—are unethical. The consultant, instead, should strive to prepare as strong and accurate a permit application as possible so that regulatory agencies can make an informed permitting decision based on the merits of the project and then be compensated for only the time that it takes to actually prepare the application.

Interacting with Agencies

Interacting with agency staff is normally straightforward and without any significant ethical challenges. During my career,

though, I have faced ethical dilemmas that I never anticipated. For one, in the region where I work, consultants and regulatory agency staff have known each other for decades and in many cases we've become personal friends outside of work. On the one hand, years of knowing one another has led to a high degree of trust; but, on the other hand, agency staff will sometimes tell you things that are probably not appropriate for you to know or that present an ethical challenge.

I have been told, for example, that a project would not be receiving a permit weeks or even months before a formal regulatory decision would be made. This information, of course, can have grave implications for the individual project and its investors. Does one share this information with a client, risking a betrayal of confidence on the part of the regulator? In my case, I did not tell the client directly what I was told, but I conveyed that I had strong reservations about the likelihood of the project receiving its permit. This resulted in substantial redesign of the project, which was subsequently permitted. Fortunately, such instances are rare—in my experience—but it does point to the need to set boundaries with regulatory staff whom you come to know well.

A more unusual circumstance that I encountered involved a state wildlife biologist who was very game species oriented and had no interest in nongame species or rare, threatened, or endangered animals. On one project, for example, he specifically said something to the effect of "You'd better not find any rare turtles on any project that I have to review." Looking the other way with regard to such species would have endeared us to this biologist, but it would have violated the ethical requirement that the consultant identify all regulated resources to the best of his or her ability. In this case, rare turtles were found and duly reported during the permitting process for the project.

Regulatory Compliance

Some ethical dilemmas can become quite serious and include potential legal ramifications. One example is observing viola-

tions of specific laws or conditions of a permit while a project is under construction. The question is, do you self-report the violation or do you either look the other way or seek to cover it up, hoping that it is never discovered. Examples of this situation that I have seen include inadvertently filling a wetland during construction where such fills were not included in the project's permit. Do you self-report the violation, do you leave the fill in place and hope that it isn't noticed, or do you remove the fill and restore the wetland, again hoping that it isn't noticed? When I have been involved in these types of situations, I have always opted to self-report the error, although this has not been popular with some employers or clients.

Expert Witness Testimony

Providing expert witness testimony often involves your testimony against the testimony of a fellow professional, either in the form of a deposition or during actual legal and regulatory proceedings. While it generally goes without saying that you need to be truly an expert in the topic to provide expert witness testimony, what is often not acknowledged is that our legal system is—in part—based on who makes the best case. With regard to expert witness testimony, this can involve being asked to harshly undermine the credibility of your opposing professional, and one can ask whether such behavior is ethical. For my part, I refrain from personally attacking the opposing witness and limit my critiques to their findings of fact.

When providing expert witness testimony, the attorneys who hire you may say, "We are not going to tell you what to say about the facts . . ." but then proceed to tell you what they'd like you to say. This can be the most intense of temptations since expert witness work is often the most highly paid work consultants do. I find that attorneys are usually only trying to help you clarify a particular point, but I have also experienced pressure to stretch a truth or to disparage an opposing witness. In these cases, I politely—but firmly—tell the attorneys

what I'm comfortable testifying about, and this has never been met with opposition. You are, after all, being asked to present yourself as a competent expert, so the last thing attorneys want is for you to appear hesitant or tentative in your testimony.

Working with Fellow Professionals

As already noted, a very few professionals are willing to provide aggressive wetland delineations, so consultants may occasionally find themselves working with such people. This might be a situation within your own company, your firm may be asked to serve as a subconsultant to another company, or you may be asked to work side-by-side with another firm. Ethical questions, where you disagree with a wetland delineation or you are asked to only delineate aggressive wetland boundaries, include reporting the other professional to clients or regulatory authorities and possibly quitting the project over ethical differences of opinion. I have had this happen only once in my career, and in that case my firm decided to quit the project rather than delineate wetland boundaries that we knew were aggressive at best and incorrect at the worst. Fortunately, I have never worked in a firm where I was asked to delineate resources aggressively or look the other way when such things as rare plants were discovered.

A challenge I have yet to resolve is working with regulatory agencies and multiple consulting firms in the area of rare-species surveys, and most notably with rare-plant surveys, where I wasn't in charge of the overall project. As noted earlier, many firms offer rare-plant survey services, although most consultants lack the necessary skills. I marvel, then, when regulatory agencies see spikes in rare-plant finds on a project in the areas covered by a legitimate botanist. Rather than recognize that the other consultants lacked the necessary skills, I've heard agency staff say things like "Lucky for you that your part of the project had all the rare plants." The ethical challenge here is do you work on such a project, playing along with the acceptance of sub-

standard survey work, or do you refuse to work on the project?

Discussion

Environmental consultants aren't the only natural resource professionals who face ethical challenges. Frankly, the ethical challenges that some of my peers working for state or federal natural resource agencies face would keep me up at night. I do believe, though, that environmental consultants make various forms of ethical decisions on a daily basis, potentially influencing the company you choose to work for, professionals that you associate with, and how you conduct your technical work.

I believe that you will have a more successful career, and you will be happier in your work, if you conduct yourself ethically at all times. To do that, you should always be on the lookout for ethical dilemmas in all your work and have ready answers for some of the more common situations that I've described. I also strongly recommend belonging to one or more professional societies and recognize that, in doing so, your behavior reflects strongly on your peers and your profession.

Ultimately, you alone make the decision of whether to act ethically. Although perhaps a timeworn expression, I have always remembered my grandmother telling me "Character is what you do when nobody is watching." If you remember this, you are much more likely to consistently act ethically. If nothing else, keep the bottom line in mind and remind yourself that environmental consultants trade on their name and reputation. If you sell your reputation even one time for the wrong reasons, you might find yourself cutting your career remarkably short.

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