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Introduction

Dispute Resolution in a World of Uncertainty: A Symposium Introduction

On January 18 and 19, 2002, Penn State-Dickinson School of Law's Center for Dispute Resolution, in collaboration with the Agricultural Law Research and Education Center and the *Penn State Environmental Law Review*, presented its First Dispute Resolution Symposium. In a sense, the symposium was reconstructed from the ruins of September 11. The event had originally been scheduled for September 14 and 15, and the tragedy earlier that week forced its postponement. All of our speakers graciously agreed to appear at the rescheduled date, and registration for the January event was higher than it had been in September. Over 130 lawyers, scientists, farmers, environmentalists, government officials, community activists, agribusiness representatives and students came to Carlisle in the middle of winter to discuss the challenges that arise when agriculture, technology, and the environment intersect. We understood that the issues were controversial, and potentially divisive. But we were determined to seek common ground. Our efforts to live and work together would stand in stark contrast to the horrific attacks that had necessitated the symposium's postponement.

I think we succeeded. No, people did not emerge from our discussion having resolved all issues, or, to paraphrase Philip Harter's caricature of misguided dispute resolution techniques, striding arm-in-

arm singing *Kumbaya*.¹ But I think that our two-day discussion cultivated a better, common understanding of the issues and the processes through which they might be resolved.

I hope it is not self-serving to suggest that the symposium's success was attributable at least in part to its design. When our Center decided to stage a symposium, we determined that it should have three characteristics:

First, we wanted the symposium to be **collaborative**. The symposium emerged from a project involving Penn State University's Agricultural Law Research and Education Center, College of Agricultural Sciences, and Center for Research in Conflict and Negotiation, along with Juniata College's Baker Institute for Peace and Conflict Studies. Representatives of all of these endeavors were on the symposium faculty. They were joined by nationally recognized experts in law, science, agriculture, and conflict resolution from other fine institutions, whose efforts are reflected in the written work that appears in this issue. The symposium is therefore also **interdisciplinary**. The recent merger of The Dickinson School of Law with Penn State University, reflected by the *Environmental Law Review's* recent embrace of the Penn State name, was forged in part by the recognition that our inquiry cannot be limited to matters purely legal, and that true understanding of life's problems requires that we take advantage of the synergies afforded by a major research university.

Second, we determined that the symposium should be **interactive**. We were most fortunate in that regard in that the list of registrants for the symposium was every bit as impressive as that of our presenters: representatives of state, federal, and local government; leading farmers and environmentalists; distinguished practitioners and academicians. Those of us on the faculty were humbled to see the array of talent among those registered to attend, but also realized that the interactive design of the program would provide occasion for this distinguished group of participants to enhance the program. An opportunity for questions and discussion was built into each panel's presentation. And the hands-on workshops during the symposium's second day were designed to be fully participatory. We did not desire a program in which panels of experts would simply talk *at* a passive audience; rather, we preferred an exchange of information and ideas that would allow the participants to move forward to resolve conflict.

Finally, we wanted the symposium to be **productive**. As a major research institution, Penn State University is involved in the development

1. Philip J. Harter, *In Search of Goldilocks: Democracy, Participation, and Government*, 10 PENN ST. ENVTL. L. REV. 113, 113-134 (2002).

and exposition of ideas. As a major land grant university, we also have an outreach mission: to engage people in a discussion that will advance those ideas into productive action. We therefore thought we might use the first day of the symposium to develop a common understanding of the problems presented by the interaction of agriculture, technology, and the environment. From common ground as to the underlying facts, we could move on to principled problem-solving. And that is what we hoped to accomplish in our workshops during the second day.

While the challenges posed by concentrated animal feeding operations (CAFOs) are significant in themselves, we thought it best to use these challenges as a case study in the context of broader issues presented by the intersection of agriculture, technology, and economics. This symposium issue therefore begins as the first day of the symposium began—by establishing this broad context, with papers by Bruce Yandle,² Dan Tarlock,³ and Phil Harter⁴ that introduce the challenge of resolving technology-induced disputes in the midst of uncertain or changing science, uncertain or changing law, and volatile public perceptions. Our inquiry then moves from context to case study, with papers by Charles Abdalla,⁵ Ted Feitshans,⁶ and Mike Williams,⁷ describing the law and science regarding concentrated animal feeding operations. We narrow our focus further by examining the law, public perceptions, and alternatives for resolving CAFO-related disputes in Pennsylvania, with papers by Mike Meloy⁸ and Barbara Gray and Nancy Welsh.⁹ We conclude the published version of the symposium with a topside view by Peter Adler,¹⁰ in which he considers environmental

2. Bruce Yandle, *Creative Destruction and Environmental Law*, 10 PENN ST. ENVTL. L. REV. 155, 155-174 (2002).

3. A. Dan Tarlock, *Who Owns Science?*, 10 PENN ST. ENVTL. L. REV. 135, 135-154 (2002).

4. Harter, *supra* note 1.

5. Charles W. Abdalla, *The Industrialization of Agriculture: Implications for Public Concern and Environmental Consequences of Intensive Livestock Operations*, 10 PENN ST. ENVTL. L. REV. 175, 175-192 (2002).

6. Theodore A. Feitshans & Kelly A. Zering, *Federal Regulation of Animal and Poultry Production Under the Clean Water Act: Opportunities for Employing Economic Analysis to Improve Societal Results*, 10 PENN ST. ENVTL. L. REV. 193, 193-216 (2002).

7. C. Mike Williams, *CAFOs: Issues and Development of New Waste Treatment Technology*, 10 PENN ST. ENVTL. L. REV. 217, 217-248 (2002).

8. Michael M. Meloy, *An Overview of Nutrient Management Requirements in Pennsylvania*, 10 PENN ST. ENVTL. L. REV. 249, 249-294 (2002).

9. Nancy Welsh & Barbara Gray, *Searching for a Sense of Control: The Challenge Presented by Community Conflicts over Concentrated Animal Feeding Operations*, 10 PENN ST. ENVTL. L. REV. 295, 295-322 (2002).

10. Peter S. Adler, *Science, Politics, and Problem Solving: Principles and Practices for the Resolution of Environmental Disputes in the Midst of Advancing Technology, Uncertain or Changing Science, and Volatile Public Perceptions*, 10 PENN ST. ENVTL. L. REV. 323, 323-344 (2002).

dispute resolution principles and practices that have proven successful, even in the midst of advancing technology, contradictory science and law, and volatile public perceptions.

As a neophyte in this subject matter, I approached the symposium aware of the complexity and uncertainty of the law pertaining to CAFOs. I naively thought, however, that science would provide answers through which we could find a principled way out of the dilemma. Alas, by the middle of the symposium's first day it was evident that science presents no clear cut solutions, that the science is every bit as complex and uncertain as the law, and that the challenge to those interested in dispute resolution was in finding ways to deal with this uncertainty. As Phil Harter, Bruce Yandle, and others point out, CAFOs are by no means the only context in which uncertainty in law and science add to the complexity of the challenge.¹¹ The frustration presented by the intersection of industry and the environment in an atmosphere of legal and scientific uncertainty, combined with a sense that one lacks opportunity for meaningful participation in the resolution of conflict, can lead to what my colleague Eileen Kane describes as "democratic despair."

But unlike some other controversies at the intersection of law and science, such as genetic engineering, global climate change, or the siting of nuclear power plants,¹² CAFOs avail themselves of local solutions. Rather than being entirely at the mercy of national and international standards, people affected by CAFOs may seek out local solutions that, while not eliminating uncertainty, deal with issues of trust and self-determination in a constructive manner. In one of our Saturday workshops (entitled *Collaborating to Develop CAFO-Related Township Ordinances*, in which Mike Meloy and Christine Kellett joined me as facilitators), symposium participants listed twenty-seven challenges posed by CAFOs, ranging from environmental impacts (such as odor and water quality) to issues of control and enforcement. These challenges are, perhaps, prototypes of what Peter Adler calls "Type 2 problems" in which a clear-cut technical solution is absent.¹³ In some cases, differences regarding underlying values might pose what Adler calls "Type 3 problems," *i.e.*, problems of the most intractable kind.¹⁴ But we

11. Harter, *supra* note 1; Yandle, *supra* note 2.

12. See, e.g., Energy Corp. *ex rel.* Riverkeeper, Inc., v. U.S. Nuclear Regulatory Comm., pet. filed Nov. 8, 2001 (request for emergency shutdown of Indian Point nuclear power plant due to alleged vulnerability to terrorist attack). In this and similar matters, decisions with potentially serious consequences to a region or locality are in the exclusive control of federal authorities.

13. Adler, *supra* note 10, at 327.

14. *Id.* at 327-328.

nevertheless recognized the possibility of imperfect, but acceptable, solutions obtained through consensual and collaborative processes such as information gathering and dissemination, public fora, and mediation. And other workshops were simultaneously preparing participants to utilize such mechanisms. One workshop, conducted by Nancy Welsh and Celia Cook-Huffman, involved *Selecting and Managing the Right Dispute Resolution or Community Participation Model for Your Community*; the other, led by David Bidwell and Phoebe Sheftel, provided an *Introduction to Facilitation Skills for Public Officials*. We thereby concluded the symposium with practical strategies through which stakeholders might find their way out of the frustrations that arise when law, science, and economics collide on a field of uncertainty.

The introduction to this symposium would be incomplete without acknowledging the extraordinary contributions of several people. Professor Nancy Welsh, Associate Director of the Center for Dispute Resolution, not only contributed to the project that evolved into this symposium and co-authored an article that appears in this issue; she developed the concept of this symposium, enlisted most of our speakers and authors, and organized the symposium into a cohesive package. Above all else, it was Nancy's energy, enthusiasm, and organizational skills that brought this symposium to fruition. Nancy LaMont, our Director of Continuing Education and Outreach, handled the logistical matters, large and small, necessary to an enterprise of this nature. Both before and during the live symposium, she kept our efforts on track. Our speakers and writers not only contributed the fine papers found herein, they participated in our two days of events with grace, gusto, and aplomb. We also would like to thank Dean Peter G. Glenn for his supporting the symposium and the Penn-State Dickinson School of Law for hosting the symposium. Finally, we are grateful to the editors of the *Penn State Environmental Law Review* for both their assistance during the live symposium and the editing efforts that have produced this issue.

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