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Clean Air Act Colloquium - Directions and Corrections in Clean Air Policy: Foreword

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COLLOQUIUM

Foreword to the Clean Air Act Colloquium

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The Pace Environmental Law Review's Clean Air Act Colloquium, entitled *Directions and Corrections in Clean Air Act Policy*, took place on April 23, 1996, at the Pace University School of Law. Representatives from industry, state and federal governments, and public interest organizations came together to discuss, from their respective points of view, the successes and failures of the Clean Air Act Amendments of 1990 (CAAA) and the necessary directions and corrections that must occur for the United States' clean air policy to be a success in the future. The pieces following this introduction are transcripts of the speeches given at the colloquium. We have attempted to preserve the integrity of the speeches, while making editing changes to adapt the speeches to a written form and adding footnotes where necessary or where the speaker wished to include supplemental information. The following provides a brief overview of the speakers' main points.

In her speech, Ms. Sansevero, an environmental engineer for the Environmental Protection Agency (EPA), evaluates the effectiveness of the Clean Air Act (CAA) as implemented by the EPA. She describes trends in emission rates of six principal pollutants, as well as their nature, sources, and health effects. Her examination yields this result: since the enactment of the CAA, the nation's air quality has improved tremendously.

While Ms. Sansevero gives a scientific assessment of the CAA's successes and failures, Mr. Sidamon-Eristoff provides a political commentary on the recent history of environmental policy. The election of President Clinton and Vice-President Gore in 1992 brought forth a phenomena unanticipated by the collective environmental movement: a backlash against federal regulations led by a conservative Congress. Are current regulations merely burdensome solutions to trivial problems? Mr. Sidamon-Eristoff answers in the negative by advocating vigilance among environmentally-minded individuals and politicians alike.

Mr. Driesen, a former Senior Project Attorney in the Natural Resource Defense Council's Air and Energy Program, explains five lessons learned from CAA implementation, focusing on the 1990 Amendments. Mr. Driesen discusses: (1) the need for the EPA to have political independence, (2) the need for detailed congressional decision-making, (3) the need for greater enforcement of state obligations, (4) the concept that emissions trading can be successful, and (5) the premise that environmental protection generates jobs.

Next, Elizabeth Morss, who specializes in environmental regulatory compliance, gives a speech as an introduction to the industry panel of the CAA Colloquium. She discusses the basic problem industry has with the EPA's programs and, in many cases, she defends EPA policy. The problems that Ms. Morss expands on are: extensive monitoring and record requirements, the burden on new construction and modification, the EPA's failure to meet statutory deadlines, and criticisms of state implementation programs. She also discusses the following EPA successes: market-based solutions, practical implications of implementing the CAA, and reaching out to industry and environmental groups before legislation is drafted.

While Mr. Riesel was a speaker at the Colloquium, he also provided a full length article entitled: *Forecasting Significant Air Act Implementation Issues: Permitting and En-*

forcement.¹ This article can be found in this volume at the end of the transcribed speeches.

Following Mr. Riesel's speech, William Rosenberg considers the Clean Air Act in light of the deregulation of the electric industry. He expresses concern over the fact that under the electric industry deregulation scheme, power utilities in the Northeast have the opportunity to forego the building of a cleaner burning plant, in favor of purchasing power from a cheaper Midwest coal-burning plant. This will create greater generation of electricity in the Midwest, thereby increasing air pollution. This pollution increase, in the form of acid rain, will impact most heavily upon the Northeast.

According to Shannon Broome, the 1990 CAAA have created challenges to regulators and industry. Issues such as air toxic standards, the Compliance Assurance Monitoring Program, and the problems of implementation still remain to be resolved. Over the next several years, regulators and members of concerned industries will have to make some rational choices based on the costs and benefits of various courses of action.

What is our clean air policy? Michael Finnegan, legal counsel to New York State Governor George E. Pataki, discusses policy considerations during an era of "devolution." Mr. Finnegan, in his keynote speech, explains the growing importance of state and municipal initiatives and highlights regulatory compliance achievements by local governments. With an insider's perspective, Mr. Finnegan describes measures contemplated by the Pataki Administration for New York State at the forefront in finding environmentally sound and economically viable solutions to air pollution.

Continuing with a focus on New York, Mr. Allen, Associate Director for the Division of Air Resources of the New York State Department of Environmental Conservation (DEC), expresses his concerns with regard to the 1990 CAAA and their inequities among the Midwest and the Northeast. Mr. Allen

1. Daniel Riesel, *Forecasting Significant Air Act Implementation Issues: Permitting and Enforcement*, 14 PACE ENVTL. L. REV. __ (1997).

comments on the complexity of the proposed amendments and the DEC's hope for more simplified amendments.

From a federal perspective, David Doniger, counsel for the EPA, evaluates the current achievements of the EPA, with respect to CAA policy, such as state compliance of carbon monoxide standards and the lowering costs of acid rain control compliance. Mr. Doniger also outlines his view on the future agenda and goals of the EPA, such as the containment of NO_x, the strengthening of air control standards, a focus on smaller particulates, and dealing with the climate change issue. Mr. Doniger stresses that these goals should consider both environmental and economic issues.

Ernie Rosenberg opines that the CAA, while ultimately good in purpose, is too overriding, stringent, inflexible, and is in need of reform. It wields too much power over the business process and is not helping to facilitate methodologies for compliance. If no reform takes place, then a whole new sector of the community not currently opposed to the Clean Air Act will feel its pain and strong opposition will be the ultimate product.

To close the Colloquium, Greg Wetstone, a legislative activist for Natural Resources Defense Council, gives an expose on suspect attempts by congressional members to subvert the goals and policies of the CAA. Powerful and entrenched members of Congress, acting on behalf of business interests, sought sweeping changes to the CAA by re-writing key statutory language. However, as Mr. Wetstone explains, their attack was thwarted by public awareness on environmental issues.

As you will see in the various speeches that follow, each group affected by the CAA and its regulations and implementing programs—industry, government, and public interest groups—has a different viewpoint on the successes and failures of the CAA and the 1990 CAAA. Additionally, the diverse groups all have their own distinct suggestions for improving clean air policy. However, all groups seem to agree on one common theme—the CAA is essential in the post-industrial United States, in order to preserve our health and environment.

The Pace Environmental Law Review wishes to thank Dean Richard Ottinger, Professor David Wooley, the Pace environmental faculty, all of the various speakers, and all of the PELR members, associates, and publishable notes for their work in making the Clean Air Act Colloquium a success.