

ENVIRONMENTAL LAW AT MARYLAND

University of Maryland School of Law

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Environmental Law 1

Fighting for the Forgotten River

by Steven Solow*



From left to right: Melinda Kramer (3L), Steve Solow, Co-Director of the Environmental Law Clinic, Catherine Delorey (2L), Dan Smith (2L), Damon Whitehead, Anacostia Riverkeeper, Drew Brought (2L), Wade Wilson (3L), and Jeff Herrema (3L).

The Anacostia River has been called the "forgotten river" of Washington, D.C. But even that sad name does not describe the abuse that the river has suffered. It was not forgotten when developers, and the city, state and federal governments wanted a place to dump everything from human waste to PCBs. As a result, the River has some of the poorest water quality recorded in the Chesapeake Bay system. But now it has something else, a new voice in a growing chorus seeking to bring the river back to life: "riverkeeper," who will fight for the river.

The idea of a riverkeeper originated long ago in England. There, wealthy landowners would hire someone to keep watch over treasured trout and salmon waters. Modified in America to serve the public interest, there is now a National Alliance of River, Sound and Bay Keepers that works to protect some twenty waterways, from the Hudson River to San Francisco Bay, from Casco Bay in Maine to the Chattahoochee. In each of these places a "keeper" serves as a fulltime, privately funded, non governmental advocate for a waterbody.

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The first Anacostia Riverkeeper is Damon Whitehead, an experienced environmental lawyer who has worked with the Sierra Club Legal Defense Fund (SCLDF) and the Lawyers Committee for Civil Rights under the Law where he was the senior staff attorney for their Environmental Justice Project. While at SCLDF, Damon worked on litigation that led to the clean up of the Navy Yard facility on the Anacostia. The 64-acre Washington Navy Yard is the oldest continuously operated naval facility in the United States. For many recent years it was also a source of tremendous contamination of the Anacostia. Thanks to the SCLDF lawsuit, a settlement was reached that will require the Navy to remove heavy metals, PCBs, and other hazardous wastes that were once routinely allowed to enter the Anacostia.

What was . . . the beautiful Anacostia.

The Anacostia is a tidal estuary that once was home to a thriving sturgeon fishing ground. Bald Eagles nested along the river, feeding on the sturgeon and bass. Three miles from where the White House now sits, herring spawned on Beaverdam Creek. The name Anacostia is derived from a Native American word, "Anaquah(a)-tan(i)," meaning a town of traders, a name that had more meaning when the river's channel ran forty feet deep in the eight miles from what is now Bladensburg to its confluence with the Potomac River. Then, 100,000 acres of wetlands lined the Anacostia's 179 square mile watershed, eighty percent of which is in what is now Maryland. Then, a series of clear streams fed the River: Sligo Creek, Indian Creek, Beaverdam Creek and the Paint Branch, among others.

The death of a thousand cuts.

Over time, as the area grew and developed, the Anacostia was abused. By the 1950's it was mostly dead. The eagles were gone, because there were no fish to eat. At one point just about the only life in the river was a species of worm. Raw sewage flowed into the River when storm surges overwhelmed city sewers (as they still do), bringing organic waste, bacteria and toxins. One estimate is that more than a billion gallons of sewage enter the Anacostia each year. Sediment from agricultural runoff and construction filled the once deep river with silt, such that at low tide large parts of the river become mud flats. Fish migration was blocked by over 25 man-made barriers and over 98 percent of the tidal wetlands and 75 percent of the freshwater wetlands in the watershed were destroyed, many by the U.S. Army Corps of Engineers. Beaverdam Creek was no longer a prime herring run, but instead an eyesore of metal recyclers and junkyards.

While the Potomac was also badly polluted, over the past four decades it has benefited from some \$5 billion worth of clean up efforts. But the Anacostia simply received more abuse. While the Potomac flows past wealthy Maryland and

Virginia suburbs, the Anacostia divides Washington, D.C. from some of its poorest residents. That difference in constituencies may explain some of the disparity in resources dedicated to protecting the Anacostia. As the new Riverkeeper, Damon Whitehead notes, "While those who lived along the Anacostia River fished to put food on the table, the Anacostia received no help, just the occasional sign warning that the fish was unsafe to eat."

A change and some hope.

In 1998, the Clinton Administration designated the Anacostia River as one of seven priority ecosystems in the United States. That belated designation came after a host of groups had begun the fight to restore the Anacostia. The Riverkeeper joins the Anacostia Watershed Society, the Friends of the Anacostia, the Earth Conservation Corps and others, along with new efforts by local, state and federal agencies, to reverse 150 years of harm. Instead of destroying wetlands, the Army Corps of Engineers is engaged in its largest ever wetland restoration project. Sturgeon, striped bass, shad and herring are returning to the River. Eagles are nesting nearby and sixty pairs of great blue herons now make their homes on Anacostia River islands. Thousands of volunteers have removed tons of trash and plans are in the works for a path along the River that would ultimately hook up with existing paths to permit hikers and bikers to completely circumnavigate Washington, D.C. But much remains to be done, and the Maryland Environmental Law Clinic has been retained by the new Riverkeeper to help in his effort. His goals include plans to:

- Investigate point and nonpoint sources of toxic and organic pollution to the river and seek remedies to halt or limit further inputs
- Educate the community about the Anacostia River and solicit input and support for its restoration
- Advocate for no further reduction in the shore or banks of the River and restoration of the shore to its original characteristics where possible
- Participate in the planning process of development along the river and in its watershed and advocate for development that will promote restoration efforts

"The goal of cleaning up the Potomac River and the Chesapeake Bay cannot be met until the degradation and pollution of a principal tributary, the Anacostia, is addressed," says Damon, "and with the help of many hands I intend to move forward to address these problems." The Maryland Environmental Law Clinic is proud and excited to be a part of this endeavor.

**Steve Solow is the Co-Director of the University of Maryland's Environmental Law Clinic.*

BEHIND THE SCENES OF THE ENVIRONMENTAL LAW CLINIC

by Rena Steinzor*

THE CLINIC AS WATCH DOG

In real dollars, the Environmental Protection Agency (EPA) has received only a 15 percent raise in spending power since 1984, shortly before Congress passed massive and demanding reauthorizations of the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, the Rodenticide Act, and the Superfund statute. The states are in equally dire shape, coping with the "push down" of vast new regulatory programs. Behind the scenes, government in general and environmental agencies in particular are increasingly "hollow," unable to fulfill even rudimentary functions. Only the nation's relative prosperity has allowed federal and state regulators to keep a bright face on matters because at least they do not need to cope with the dire environmental consequences of burgeoning bankruptcies and neglected maintenance.

So it is not surprising, at least when you think about it, that the Environmental Law Clinic finds itself spending well over half its time serving as a watch dog over federal and state regulators. The role is not only extraordinarily challenging but thankless, at least in the short-run. Consider the following highlights of the last eight months of Clinic work.

Bethlehem Steel, Sparrow's Point

Like many states, the Maryland Department of the Environment (MDE) is hopelessly behind on renewing Clean Water Act permits for many of the state's largest dischargers. The most egregious example is the Bethlehem Steel plant at Sparrow's Point, which is among the top fifty dischargers of toxic metals into the nation's surface waters. The plant discharges 40 million gallons daily into the Patapsco River, which flows into the Chesapeake Bay. But the company's Clean Water Act permit was written in 1985 and expired in 1990. MDE has spent over a decade fretting about how to rewrite it.

As hard as it is to believe, it has become routine for companies to stay in full operation under expired permits because federal and state regulators do not get around to updating them. Cosmetologists, pesticide applicators, and the average motorist would never be cut such slack. In effect, Bethlehem Steel has



From left to right, Wade Wilson (3L), Bill Becker, Executive Director of STAPPA/ALAPCO, Rena Steinzor, Co-Director of the Environmental Law Clinic, Brian Higgins (3L), Drew Brought (2L), Jani Laskaris (2L), and Melinda Kramer (3L).

continued to expand and modify its operations, ignoring the standards that have been written into other companies' permits for close to a decade.

On behalf of the Cleanup Coalition, a network of local citizens' groups, the Clinic has intervened at MDE and EPA Region III, urging tough permit limits and an accelerated schedule for issuing a new permit. EPA has grown increasingly restive with MDE's delays, and we hope to get action on the permit before the end of the calendar year.

Diesel Engines and the Clean Air Act

In 1999, six major manufacturers of diesel engines signed a consent decree with EPA and the Department of Justice to resolve allegations that they had installed "defeat devices" in truck engines that enabled the engines to burn more fuel, and generate more emissions, than permitted under the Clean Air Act. The devices resulted in excess emissions of some 88 million tons of nitrogen oxide (NOx). To settle the case, the manufacturers agreed to accelerate the timetable for more stringent restrictions on engine emissions in an effort to recover the lost tons.

But the ink was barely dry on the decrees when the manufacturers came to EPA and Justice claiming that they could not meet their stringent schedule and intended to take advantage of an escape clause that allows them to postpone

reductions if they cannot find technology to meet the more rigorous limits. The Clinic has monitored these talks, and implementation of the decrees in general, on behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), two national associations representing air pollution control officials in the 55 states and territories and more than 165 major metropolitan areas across the country. The Clinic has analyzed the associations' legal options to force compliance with the decrees, helped its clients pressure EPA and the Justice Department to resist the manufacturers' demands, and is in the process of preparing a memo for STAPPA/ALAPCO members that are considering whether to follow California in imposing additional, more stringent requirements at the state level.

Triennial Water Quality Review

The Chesapeake Bay is Maryland's most valuable natural resource, bringing thousands of visitors and millions of dollars to the state each year. Preserving the Bay's ecology is a high priority for the public and for government. Incredibly, however, for over a decade, MDE neglected to comply with the Clean Water Act's requirement that it review and upgrade water quality standards on a triennial basis. Sued by the American Canoe Association and the Widener Law Clinic, the State began the review last spring. On behalf of the Anacostia Riverkeeper (see related story on page 1) and the Cleanup Coalition, the Clinic has prepared comments urging MDE to expand the scope and raise the bar of the standards it has developed, especially in the area of toxic pollution. The Clinic is also preparing a review of the overall effectiveness of MDE's water quality program.

A Successful Watch

The role of watch dog means the tedious study of highly technical documents that are not produced readily by the relevant bureaucrats. Watch dogs are resented, and resistance to their efforts is tangible, making the work take longer and requiring tremendous patience and perspective. It is difficult not to give up in frustration. In the end, the conviction that, without such a vigil, regulation would deteriorate even more rapidly has to be a matter of faith.

**Rena Steinzor is Co-Director of the Environmental Law Clinic.*

THE TROUBLE ON CLARKSON STREET

by Terry Harris*

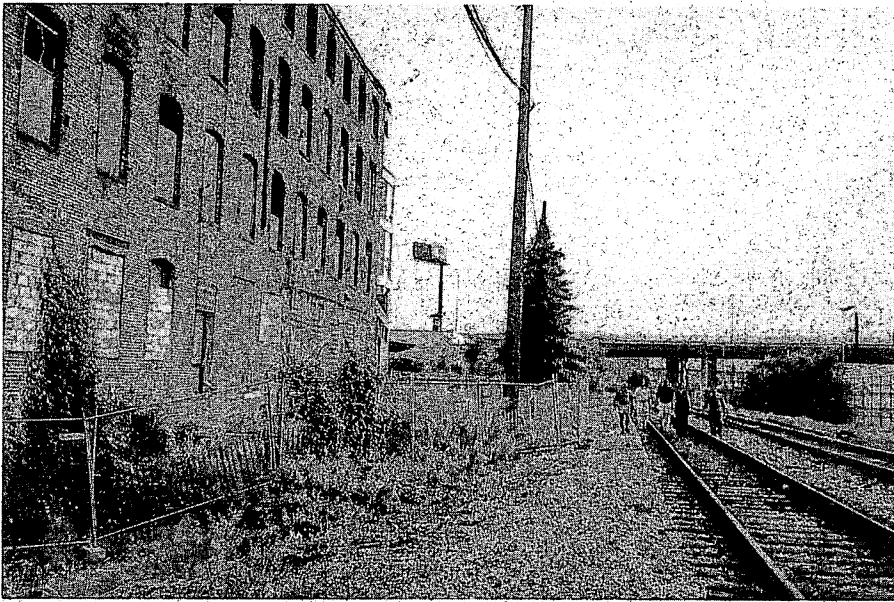
For years, residents on Clarkson Street in South Baltimore had worried about a run down dilapidated warehouse adjoining their rowhouse community. With more windows broken than not, the place was an eyesore, overlooking the railroad tracks on one side and a community of neat rowhouses on the other. Neighbors had noticed strange odors, oozing streams of discolored liquid, and late-night comings and goings from the building. Complaints had been largely ignored. That is until one complaint got through to investigators, namely that the building owner, Edward Birtic, had hired neighborhood children, paying them between \$10 and \$60 per day to move equipment and barrels of chemicals inside the warehouse.

On the evening of May 19th, an armada of emergency equipment, men in white jumpsuits, and other official personnel converged on the neighborhood. Pursuing the tip that potentially criminal violations of the hazardous waste laws were taking place, the group of state and local environmental officials were finally taking action, but not without causing great alarm among neighborhood residents.

The officials milled around on the sidewalk for awhile, confused about whether they had the legal authority to enter the building. To resolve this logjam, Dr. Peter Beilenson, the City Health Commissioner, ultimately declared a "public health emergency" at the site and emergency responders were able to remove over a dozen barrels of mysterious chemicals. The contents were later determined to indeed be corrosive and hazardous.

Meanwhile, City workers, none of them wearing protective equipment, gathered up a truckload of asbestos tiles dumped behind the warehouse, but were forced to bring the debris back when a local landfill refused to accept it. It took several days for the City to figure out how to properly remove such materials. Residents looked on with deepening fear and frustration as government officials were unable to communicate just how serious, or not serious, the situation was.

Despite new Mayor Martin O'Malley's expressed concern for the neighborhood, the attitude was lost on his staff, who were unable to calm the anxiety of community residents and instead generated more frustration and suspicion. Within days, Dr. Beilenson recanted his announcement that the situation threatened public health, claiming he had only made the declaration to get state hazmat officials into the building. City officials admitted that the warehouse was filled with foul-smelling debris, but also contended that residents had become "hysterical" over nothing. When residents called to report late-night traffic around the warehouse, the police who responded to the call started threatening to arrest the residents if they did not clear the streets.



Clinic students and community residents walk the railroad tracks adjacent to the abandoned warehouse on Clarkson Street.

By this time, however, the Cleanup Coalition, a network of Baltimore neighborhood groups concerned about environmental pollution at the street level and a long-time client to the Environmental Law Clinic, had arrived with reinforcements. Student attorney Mark Sullivan began corresponding with state and local officials, and helped residents organize a meeting to demand answers to the questions that still lingered after all the frantic activity: What was in the barrels? Was the warehouse empty? What would happen to the property in the future? What would happen to the owner of the warehouse whose activities had triggered such a troubling string of events?

The Clinic learned that attorneys with the City's Department of Housing and Community Development were successfully pursuing a renewal of a long-standing complaint for building code violations, demanding that the warehouse be brought up to Code immediately. Code provisions gave the owner two alternatives: tear down the building, or repair it to the point that it could be used for a fruitful purpose. While brought more than six years after the violations occurred, the lawsuit was still the most effective response the City had mustered to the situation. By the end of the summer, the City had settled with the building owner – requiring him to pay the city's expenses in the emergency response, giving him 7 days to clean the building of all

materials, and 30 days to bring the building up to code or to sell it to someone who would. Residents have since learned that the now-empty building is in the process of being sold. They are now waiting to hear what the new owner plans to do with it.

Meanwhile, the state's Department of the Environment issued a \$25,000 fine against the building owner for illegal storage and transportation of hazardous chemicals without the required permits. According to state and city officials, a criminal investigation is also underway.

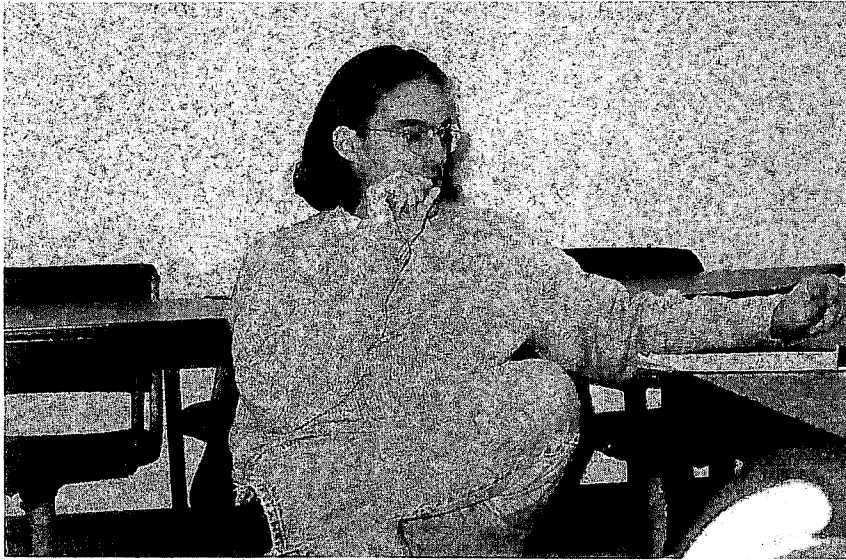
Late this summer, after the dust had literally settled, remorseful City officials sponsored a neighborhood cleanup on Clarkson street, sweeping the streets and removing trash in an effort to improve their relationship with local residents. Despite its happy ending, the incident revealed frightening gaps in the City bureaucracy's ability to deal with environmental problems. Much of the City's response can be characterized by miscommunications; haphazard and dangerous work practices; and inept, uncaring, or burned-out officials unable to deal with very real neighborhood concerns. Mayor O'Malley, who was elected with the strong backing of the Baltimore League of Environmental Voters and other environmental groups, clearly has his work cut out for him. Obviously, making the right noises at the top does not substitute for appropriate training, adequate funding, and an organizational structure that puts the public's health and safety first.

**Terry Harris is President of the Cleanup Coalition.*



Community residents living next door to the Clarkson Street warehouse keep a watchful eye over the neighborhood.

VOTED "BEST ENVIRONMENTALIST"



Third-year law student Terry Harris was named "Best Environmentalist" by Baltimore's *City Paper*. This comes as no surprise to the law school's environmental law program. For the past three years, Terry's group, the Cleanup Coalition, has worked closely with the environmental law clinic battling toxic polluters, state agencies and city bureaucrats on various environmental fronts. In addition, Terry keeps tabs on the legislature for his "green voters" through his work with the Baltimore City League of Environmental Voters. In his quiet, low profile manner, Terry has won the ear of lawmakers in City Hall and the State House, and the hearts of environmentalists throughout Maryland.

MARK YOUR CALENDAR!!!! THE 9TH ANNUAL ENVIRONMENTAL LAW PROGRAM WINETASTING PARTY

Date: Friday, November 17, 2000

Time: 6:30 P.M.

Place: Brune Room, Second Floor of Law Library
111 S. Greene Street, (just south of Paca)

R.S.V.P. to Laura Mrozek at 410-706-8157 or
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Environmental Accountability Symposium Focuses on Global Initiatives

by Robert Percival*

Creative initiatives for improving environmental policy around the globe were the focus of the Environmental Program's annual Ward, Kershaw and Minton Environmental Symposium. Experts from several countries discussed the emerging concept of "environmental accountability" and the many forms it is assuming throughout the world.

Global environmental accountability refers to a broad range of policies designed to ensure that institutions and individuals are held accountable for the full environmental consequences of their actions. The speakers discussed the meaning of environmental accountability, obstacles to promoting it, and creative mechanisms for overcoming these obstacles. The symposium reunited several scholars who participated in the Environmental Accountability program that the Environmental Law Program presented in March 1999 in Uganda in cooperation with the American Bar Association's African Law Initiative.

Several speakers discussed the difficulties other countries face in creating institutional mechanisms to promote environmental accountability. Ruth Bell, a former senior EPA official who is now the director of the International Institutional Development and Environmental Assistance (IDEA) Program at Resources for the Future, discussed the difficulties of creating effective legal institutions in societies without a strong tradition of respect for law. She observed that the United States is relatively unique in using law as "the glue that holds together a diverse society." Countries like China that do not have this tradition are finding it difficult to make the transition to a society governed by the rule of law. Bell noted that international environmental agreements like the Montreal Protocol on Substances that Deplete the Ozone Layer and the Kyoto Protocol to the Climate Change Convention require the development of effective environmental protection laws at the national level. Writing laws is of little value in societies without strong traditions of respect for law. She expressed concern over the effectiveness of national environmental action plans, noting that they can become meaningless exercises if they do not reflect a deep-seated consensus in society concerning the importance of environmental protection. Bell described a tree planting project in Armenia that has been successful because it engaged communities in contracting to give them a stake in the long-term survival of the trees.



Panelist Luke Danielson speaks with Jonathan Libber from EPA, Office of Enforcement

Luke Danielson, former director of the Mining Policy Research Institute in Montevideo, Uruguay, who is now the director of the Mining, Minerals and Sustainable Development Project at the Institute for Environment & Development in London, noted that accountability is not a universally respected concept. He noted that while teaching Environmental Law at the University of Chile, he discovered that there was no good word in Spanish that would translate the concept of accountability. This reflects in part the cultural discomfort that the concept causes in some parts of the world where respect for individualism are not nearly as powerful as in the United States.

Francis Situma, a professor at the University of Nairobi, discussed the prospects for improving environmental accountability in the 21st century. He noted that principles of international law (such as Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration) long have provided for holding countries accountable for transboundary environmental harm, but that their effectiveness has been limited because they "are couched in so general and futuristic language that it is hardly possible to discern any immediate concrete rights or obligations." He also decried the absence of institutional mechanisms for states to bring actions to protect the global commons.

Professor Situma argued that non-governmental organizations have an important role to play in holding countries accountable not only for transboundary environmental harm,



Panelists Francis Situma and Owen Lynch

but also for implementing their international commitments, including Agenda 21's blueprint for sustainable development. He reviewed the difficulties states face in seeking to hold multinational corporations accountable for actions that may occur in the far corners of the globe and the problem of ensuring that the interests of future generations are protected by the present one. Situma noted that the environmental problems of developing countries are often directly caused by poverty, which itself compromises the institutional capability of these countries to ensure sustainable use of natural resources. He urged the Global Environmental Facility to expand its financial assistance program to focus more directly on problems of poverty in developing countries.

The difficulty of holding multinational corporations accountable was addressed in the context of the international tobacco industry by Linda Bailey, associate director of the Office on Smoking and Health at the U.S. Centers for Disease Control. Bailey noted that successful tobacco control programs in developed countries have spurred the industry to become more aggressive in marketing its dangerous products in developing countries. She reviewed the barriers developing countries face in developing tobacco control policies and how the World Health Organization is seeking to assist them through the development of a Framework Convention on Tobacco Control.

Several speakers addressed the accountability theme from the perspective of particular countries or regions. Professor Miranda Schreurs of the University of Maryland's Department of Government and Politics discussed the ongoing transformation of environmental law and policy in east Asia. Schreurs, who is an expert on international environmental politics, re-

viewed the remarkable growth of environmental cooperation among east Asian nations. Among the factors she cited as responsible for this cooperation were an easing of security/tensions, growing regional economic interdependence, increase in environmental awareness among the population of east Asia, and international pressures. While East Asian have not achieved the same high level of cooperation as the countries of Europe, a "loose" form of environmental cooperation is emerging in the region, facilitated by entities such as the UN's Economic and Social Commission for Asia and the Pacific.

Professor Judy Obire-Garna, of the Makerere University Faculty of Law in Kampala, Uganda, spoke about the meaning of environmental accountability in the Ugandan context. She discussed the environmental laws that have been enacted in Uganda, including the National Environmental Statute that established the National Environmental Management and gave it responsibility for coordinating the country's environmental protection policy. Uganda also has a Water Statute and Wildlife Statute and has a constitution that proclaims a right to a clean and healthy environment. Professor Obire-Garna emphasized that the principal challenge facing Uganda is how to implement the new environmental legislation and how to empower civil society to ensure support for environmental protection measures.

Speakers also focused on institutional reforms to improve environmental accountability. Luke Danielson argued that certain basic elements must be present for any institution to promote accountability: it must have some form of norms; entities to develop, interpret and apply them; and consequences must flow from the norms. He emphasized that each of these elements must be developed through processes regarded as just. Danielson concluded that no system will work without a high degree of voluntary compliance and that developing countries will not accept anything they perceive as an attempt by the developed world to impose its own values on them. Efforts to develop institutions to promote accountability require far more political courage in developing countries than in the United States, and they are handicapped by the difficulty of getting public access to reliable information.

Bruce Rich, a staff attorney with the Environmental Defense, discussed the struggle to promote transparency and accountability in export finance agencies. Rich argued that the guiding principle for promoting environmental responsibility in an age of economic globalization is to "follow the money." He likened export finance agencies to "black holes" that are invisible to the naked eye by whose presence has an enormous impact on the environment around them. These include the U.S. Export/



Panelist Miranda Schreurs speaks with guest at symposium.

Import Bank, which provides more than \$12 billion in loan guarantees annually, the Japan Bank for International Cooperation, which provides nearly \$25 billion in annual loan guarantees, Germany's \$20 billion annual Hermes agency and France's Coface. Rich noted that when the U.S. Export/Import Bank withdrew from China's environmentally controversial Three Gorges Dam project, other countries' export finance agencies stepped in to insure the loans, creating what Rich described as a kind of "global race to the bottom." Rich discussed efforts to persuade the OECD's Working Party on Export Credit and Guarantees to agree to incorporate environmental concerns into the policies of export finance agencies. He noted the irony that measures to increase the transparency of these agencies are being developed through a process that itself is secret.

Alan Miller, the team leader for Climate Change and Ozone at the Global Environmental Facility (GEF), reviewed the history of the GEF, which was founded in response to concerns of developing countries about the impact on them by the Montreal Protocol on Substances that Deplete the Ozone Layer. He explained the relationship between GEF, the World Bank and UN agencies and their efforts to promote sustainable development. Miller reviewed how GEF's policies are changing to promote "programs rather than projects" by establishing partnerships with developing countries that seek to dramatically transform the energy sector of developing countries. He noted that GEF is now supporting more small

and medium businesses enterprises, moving away from pure grant-making to equity-based loans and other risk-sharing arrangements and seeking to align GEF with more creative partners to leverage the facility's resources. Miller concluded that GEF appears to be uniquely placed to reach beyond the narrow convention-by-convention approach of most environmental agreements to address underlying problems of environment and development.

Owen Lynch, a senior attorney with the Center for International Environmental Law, spoke on the role of public interest lawyers in promoting global environmental and human rights accountability. Lynch, who is the director of the Program on Social Change and Development at the Johns Hopkins School of Advanced International Studies, argued that a fundamental problem with

efforts to promote sustainable development is the voicelessness of rural resource users in developing countries. He argued that every human, by virtue of being human, should have a basic right to participate in decisions that directly affect their conditions of life.

Richard Herz, staff attorney for Earthrights International, discussed efforts to use tort liability to hold multinational corporations accountable in U.S. courts for environmental damage caused abroad. He reviewed the history of the Alien Tort Statute and cases brought under it to redress human rights violations and environmental damage. These include lawsuits brought against Texaco for damage to the Amazon rainforest caused by oil drilling, litigation against



Alumnus Evan Wolff speaks with Panelist Jacob Scherr



The symposium draws a large attendance

Union Carbide for the Bhopal tragedy, and lawsuits against a U.S. mining company for operations causing harm in Indonesia.

David Wirth, a professor at Boston College Law School, discussed the role of private remedies in public international law. He noted that international law governs relations between states, and that private parties, corporations, and nongovernmental organizations generally are not subject to international law. Professor Wirth then examined areas in which this principle has been relaxed, including efforts to provide recourse for companies whose assets were seized by foreign governments. He noted that today private international disputes can be resolved through bilateral investment treaties and private arbitrations supervised by the International Center for the Settlement of Investment Disputes. Wirth discussed the dispute settlement provisions of the North American Free Trade Agreement and how they apply to compensation claims premised on environmental regulation. He criticized the lack of transparency of proceedings to adjudicate such claims, which is founded on a misapprehension that such claims are purely private remedies when actually they are founded on public law.

Jacob Scherr, a Maryland Law alum who is the Director of International Programs at the Natural Resources Defense

Council, discussed the role of citizen organizations in developing new approaches to the enforcement of global environmental commitments. He noted that studies of the implementation of international environmental agreements indicate that non-legal variables may play an even more important role than legal structures in determining the success or failure of environmental treaties. These include the involvement of non-governmental organizations, the media, and international financial institutions. Scherr reviewed international efforts to phase out the use of lead additives in gasoline, which have increased the ranks of countries banning lead additives from seven in 1994 to forty by 1999. He also described how the internet is being used to raise global concern about the environmental effects of shrimp farming.

Sandor Fulop, the managing attorney of the Environmental Management Law Association (EMLA) in Budapest, Hungary, focused on how public participation in the development and implementation of environmental policy can increase accountability. He reviewed the provisions of the Aarhus Convention on Public Participation in Environmental Decisionmaking, which was signed by 39 members of the United Nations European Economic Committee in June 1998. Fulop described the convention as founded on three pillars: the right to information, the right to participation, and the right to legal remedies. He discussed the work of EMLA, his public interest law practice, which is helping to provide pro bono services to clients with environmental problems.

The Environmental Program owes a special debt of gratitude to Maryland alumna Karin Krchnak ('93), director of the Population and Environment Program at the National Wildlife Federation, who served as coordinator of the symposium. While serving as director of environmental programs for the American Bar Association's Central and Eastern European Law Initiative, Karin participated in the Global Environmental Accountability Symposium that the Environmental Program co-sponsored with the ABA, which was held in Kampala, Uganda in March, 1999.

Copies of papers presented at the Symposium may be obtained by contacting Laura Mrozek, Environmental Program Coordinator, by mail at University of Maryland School of Law, 515 W. Lombard Street, Baltimore, Maryland 21201, or by phoning her at (410) 706-8157, or by email at: lmrozek@law.umaryland.edu. Videotapes of the Program can be purchased for \$35.00. Make your check payable to: Thurgood Marshall Law Library, University of Maryland School of Law, 515 W. Lombard Street, Baltimore, MD 21201.

**Robert Percival is Director of the Environmental Law Program at the University of Maryland School of Law.*

Environmental Accountability of Multinational Corporations

by Peggy Rodgers Kalas*

With little international oversight, multinational corporations are all too often left free to pursue their profits in developing countries without sufficient regulatory restrictions, resulting in human and environmental tragedies. Typically, the onus has been on host countries to regulate the behavior of transnational corporations ("TNCs") operating within their borders, even though the wealth and global power of a TNC often extends far beyond that of the host country within which it operates. In the countries where the companies are headquartered, governments are caught in the middle of global corporate investment policies and professed expectations that investment will advance human rights. Left with no opportunity to obtain reparation in their own domestic courts, plaintiffs injured by private actors have sought a forum in U.S. courts.

This has been recently demonstrated in the series of class action suits brought against Texaco by residents of the Oriente region of Ecuador and Peru -- mostly indigenous people -- in United States courts seeking relief for vast devastation to that region caused by decades of oil exploration and extraction activities of an oil consortium. These cases raise important issues concerning the appropriateness of a United States forum for litigation in which a foreign government is significantly interested, and the availability of a forum for foreign plaintiffs that have been harmed by multinational corporations.

In the class action suits, the plaintiffs alleged that Texpet, a Texaco subsidiary, dumped an estimated 30 billion gallons of toxic waste into their environment while extracting oil from the Ecuadorian Amazon between 1964 and 1992. Specifically, the plaintiffs alleged that instead of pumping the substances back into emptied wells, Texaco dumped them into local rivers, directly into unlined landfills, or spread them on the local dirt roads. In addition, they alleged that the Trans-Ecuadorian Pipeline, constructed by Texaco, leaked large amounts of petroleum into the environment, resulting in serious health effects from the contamination, including poisoning, skin rashes, and pre-cancerous growths.

Two separate class action suits were brought against Texaco in 1993 in the Southern District of New York. One suit, *Aguinda, et. al. v. Texaco, Inc.* ("Aguinda"), was filed by Ecuadorian residents of the Oriente region; the second suit, *Gabriel Ashanga Jota, et. al. v. Texaco, Inc.* ("Ashanga") was brought by Peruvian residents who lived downstream from Ecuador in conjunction with a federation of 36 indigenous organizations in Peru. The plaintiffs in both suits alleged violations of the Alien Tort Claims Act ("the ATCA"), as well as common law environmental claims, including negligence, public and private nuisance, strict liability, and trespass. Subsequently, the

dismissal of both cases rested on three foundations: (i) *forum non conveniens*, (ii) international comity, and (iii) failure to join necessary and indispensable parties in accordance with Federal Rules of Civil Procedure.

Jota v. Texaco, Inc., is a consolidation of the appeals from the *Aguinda* and *Ashanga* class action suits that had been dismissed by the New York District Court. On October 5, 1998, the U.S. Court of Appeals for the Second Circuit vacated the District Court's decision dismissing the lawsuits on jurisdictional grounds, and remanded the case for further consideration. Specifically, the unanimous panel found that in the absence of a condition requiring Texaco to submit to jurisdiction in Ecuador, the District Court's dismissal on the grounds of *forum non conveniens* and international comity was erroneous. In addition, the appellate court found that the District Court's reasoning regarding the plaintiff's failure to join an indispensable party was appropriate only to the extent of activities currently under the Republic of Ecuador's ("the Republic's") control. While it agreed that the Republic's motion to intervene had been properly denied, the Court of Appeals issued specific instructions that the District Court should reconsider upon remand in light of the Republic's changed litigation position.

In its Complaint, Plaintiffs stated that procedural barriers in Ecuador make it an inadequate forum. Such barriers include: (i) prohibiting parties from calling their own witnesses unless opposing parties agree; (ii) discovery limited to questioning conducted by the judge; (iii) no oral, direct or cross examination of witnesses is allowed; and (iv) no provision for class action suits. Following the Court of Appeals decision, Texaco consented to jurisdiction in Ecuador and therefore, the outcome of District Court's decision on remand will largely turn on whether Ecuador's remedies for environmental torts are deemed adequate. Although the New York District Court found that the application of Ecuadorian law by a New York jury was problematic, the Court has also found that recent events call into question the ability of an Ecuadorian tribunal to adjudicate in an impartial and independent manner. (On January 21, 2000, a military coup in Ecuador deposed the existing President, and recounted a resurgence of military activity controlling the judiciary. Based on these events, on January 31, 2000, the District Court ordered the parties to further brief the issue of whether an Ecuadorian court could effectively adjudicate the case.)

With weak domestic enforcement in host countries, victims of environmental abuses have no choice but to seek

redress outside their national legal system. Increasingly, foreign plaintiffs have brought actions for human rights abuses in U.S. federal courts under the ATCA, but not without some difficulty. Under the ATCA, a foreign citizen can bring suit for any human rights abuses that violate "the law of nations" or an international treaty to which the U.S. belongs. In bringing such claims, plaintiffs must get around two substantial hoops. First, under the doctrine of *forum non conveniens*, past precedents indicate that foreign plaintiffs cannot easily gain access to a U.S. forum. While courts have some discretion in cases involving foreign plaintiffs and domestic defendants, courts have tended to dismiss such cases. In fact, only one suit brought under ATCA against a private corporate defendant has survived a motion for summary judgment. See *Doe v. Unocal*, 963 F. Supp. 880, 897-98 (C.D. Cal. 1997) (where Burmese citizens brought suit against a Myanmar oil and gas enterprise and Unocal, alleging human rights violations in furtherance of the Yadana gas pipeline project in Burma).

Second, although the ATCA provides original district court jurisdiction over all cases where an alien sues for a tort committed in violation of customary international law or under a treaty of the United States, courts have construed the Statute narrowly, finding that it "applies only to shockingly egregious violations of universally recognized principles of international law." *Zapata v. Quinn*, 707 F.2d 691, 692 (2d Cir. 1983). Accordingly, in the application of the Statute to human rights violations, the holdings have been limited to situations such as torture and forced labor.

In the *Jota* case, plaintiffs have brought their case under the ATCA, but do not allege a violation of an international treaty. Therefore, to invoke federal jurisdiction under the ATCA, plaintiffs must establish a violation of customary international law. While it is established as customary international law that a state may incur liability from environmental damage that arises beyond national borders, the extent that this principle can be extended to corporations is unsettled. The question remains whether customary international law can be extended to include the right to a healthy environment.

The issues raised concerning the Huaorani's plight due to oil exploitation are just one example of numerous injustices by transnational corporations being repeated around the world. Unquestionably, oil development operations in the Amazonian rainforest threaten the very existence of the Huaorani people, and demonstrate the strong link between environmental degradation and human rights concerns. In the case of the Huaorani people, effective access to justice is near impossible. Most Huaorani have no experience with Ecuadoran laws and the legal system, do not speak the

language in which the laws are written, and have different values from other Ecuadorans. In addition, most indigenous groups lack the financial resources to pursue long-term litigation against multinational companies and governmental bodies.

How should developing countries balance the need for foreign investment against human rights violations and obligations to the environment? What recourse do indigenous peoples and other affected individuals have when the government has neglected their interests? Should host countries bear the burden of regulation and oversight of TNCs, when potential effects on humans and the environment violate international human rights norms?

Until recently, indigenous people and other groups similarly harmed by detrimental corporate practices have been repeatedly rejected from access to U.S. courts. By reversing a District Court decision dismissing the case, the ruling by the Second Circuit Court of Appeals in *Jota v. Texaco, Inc.* potentially opens the door for individuals harmed by transnational corporate actions seeking a forum in U.S. courts. The decision by the District Court upon remand will be closely watched as it may allow a forum for victims of environmentally abusive practices of TNCs whose conduct is found violative of international legal norms. Unless U.S. courts are willing to allow access by foreign plaintiffs, U.S. multinational corporations will have no incentive to discontinue their detrimental operations in developing countries whose need for foreign investment appear greater than their interest in preserving a healthy environment for their citizens. While class action litigation may not be a panacea for the grievances of victims of human rights violations and raises additional concerns (e.g., who defines the class, who has authority to speak for the class), it is the only tool available at present with the potential to provide at least some type of remedy to victims, and prod multinational actors into responsible action.

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U.S. Court of Appeals Strikes Down EPA's Use of the Linear Default Assumption

by David B. Fischer and Terry F. Quill*

In *Chlorine Chemistry Council v. Environmental Protection Agency*, the U.S. Court of Appeals for the D.C. Circuit dealt EPA a disastrous blow when it issued its unanimous decision on March 31, 2000. The decision filed by Judge Williams spoke clearly and forcefully in concluding that EPA violated the Safe Drinking Water Act's "best available" science provision in promulgating a zero Maximum Contaminant Level Goal (MCLG) for chloroform, a probable human carcinogen, as part of the comprehensive Stage I Disinfection By-Products Rule published in December 1998.

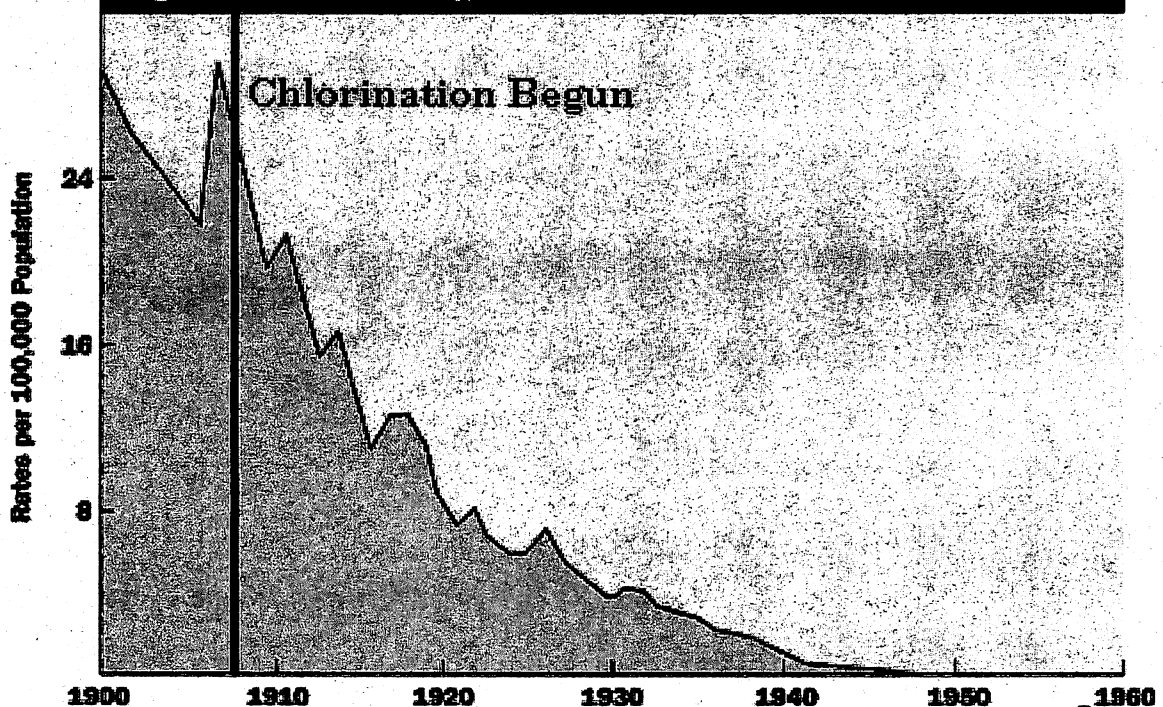
Setting an MCLG is an objective scientific inquiry to determine the safe level for a contaminant in drinking water and is the basis, in part, for the enforceable Maximum Contaminant Level (MCL).

The decision is clearly a seismic event in the history of U.S. environmental regulation that will have enduring ripple effects. The application of science, after all, is at the heart of many EPA regulations to manage chemical carcinogenic risks. For the

first time, EPA has been ordered by a court to abandon the *default*, non-threshold, linear mode of action for an equally protective, threshold, non-linear mode of action as the basis for arriving at an appropriate MCLG. As the court articulated in its opinion, "In promulgating a zero MCLG for chloroform EPA openly overrode the 'best available' scientific evidence, which suggested that chloroform is a threshold carcinogen."

In 1994, EPA proposed sweeping Stage I regulations of drinking water disinfectants and their disinfection byproducts. Of particular interest to the Chlorine Chemistry Council (CCC) was EPA's proposal to regulate the byproducts of chlorination. CCC is a business council of the Chemical Manufacturers Association (CMA), a co-petitioner in this case. Chlorine is used in 98% of U.S. drinking water systems that disinfect. In fact, chlorination of drinking water has been called the most significant public health advance of the millenium by *Life* magazine. Chlorine's use in drinking water, however, produces unwanted byproducts, predominantly chloroform.

Figure 1. Death Rates for Typhoid Fever in the USA



CHLORINE
CHEMISTRY
COUNCIL

Based on the state of the science in 1994, EPA proposed a zero MCLG for chloroform. EPA determined that there was strong evidence of chloroform's carcinogenicity and assumed, *in the absence of data to the contrary*, that chloroform could cause cancer at any dose. In EPA's judgment, science did not support a safe threshold for chloroform's carcinogenicity.

Importantly, the state of scientific knowledge on *how* chloroform acts as a carcinogen grew exponentially. Since the 1994 proposal, more than thirty toxicological studies were published on chloroform, including important contributions by Byron Butterworth of CIIT. In fact, the wealth of new data prompted EPA in March 1998 to request comment on a revised chloroform MCLG of 300 ppb. "Based on the current evidence ... EPA has concluded that a nonlinear approach is more appropriate ... than the [default] low dose linear approach used in the 1994 proposed rule."

It is difficult to overstate the importance of EPA's scientific conclusion. Setting an MCLG for chloroform at 300 ppb would represent a significant and precedential application of new science to establishing protective MCLGs. For the first time, EPA would be moving away from its long-held policy of establishing zero MCLGs for known or probable carcinogens. The Natural Resources Defense Council, among others, harshly criticized EPA's proposed revision asserting that EPA must set MCLGs for *all* carcinogens at zero.

Ultimately, EPA chose to ignore its own scientific conclusions in finalizing a zero MCLG for chloroform, citing the need for additional review and dialogue with stakeholders and deliberations with EPA's Science Advisory Board (SAB). EPA acknowledged the science, but stubbornly refused to *apply* it in setting a non-zero MCLG for chloroform.

Thus the stage was set for CCC to file suit against EPA in the U.S. Court of Appeals for the D.C. Circuit for violating the SDWA's mandate to "use the best available, peer reviewed science" in finalizing a zero MCLG for chloroform. In addition to CCC and CMA, the American Forest & Paper Association and the Society of the Plastics Industry, Inc. joined in the suit as well as ten drinking water utilities from throughout the country. The litigation also piqued the interest of the scientific community and the chair of a powerful congressional committee, resulting in the filing of two amicus briefs (friend of the court briefs) in support of CCC's position. One amicus brief was filed by a group of thirteen eminent scientists, and another by House Commerce Committee Chairman Tom Bliley.

On February 11th, a three judge panel heard oral arguments. The court was clearly frustrated by EPA's explanations for not applying the science in finalizing a zero MCLG for chloroform, illustrated best by Judge Silberman's question to the government

attorney: "Are you suggesting it was politically difficult so you didn't want to come out so quickly with what the science suggested?"

Following oral argument, EPA took the extraordinary step of moving the court to vacate the zero MCLG and not issue an opinion. In light of SAB's draft report on chloroform essentially endorsing EPA's non-linear approach, EPA no longer believed it could defend its zero MCLG. Although vacating the zero MCLG was certainly an important part of the relief CCC and other petitioners sought, CCC asked the court to reject the motion and issue an opinion so as to leave no doubt that EPA is bound by the legal and scientific constraints of the SDWA. The court's opinion was a resounding denial of EPA's motion.

In ruling that EPA violated the SDWA's mandate to use the best available science, the court made clear that best available science is the scientific evidence that is available at the time of a rulemaking. Whether or not it represents EPA's ultimate scientific conclusions is irrelevant. The possibility of contradiction based on future scientific data or peer review, even by EPA's own Science Advisory Board, are not legitimate bases for rejecting the science that currently exists. As the court noted, "All scientific conclusions are subject to some doubt...."

The court's ruling has had an immediate impact on other EPA rulemakings. For example, the proposed California Toxics Rule, which will impact numerous California sanitation districts including the County Sanitation Districts of Los Angeles County that chlorinate effluent, included stringent human health criterion for chloroform. The 5.7 ppb value was based on the default, linear mode of action for chloroform. However, in light of the court's opinion, the final rule will not include human health criterion for chloroform. Instead, EPA will issue revised criterion at some future date based on the now judicially endorsed non-linear mode of action.

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Superfund Recycler Exemption: A New Wrinkle in Superfund's Web

by Brian Perlberg*

For six successive years, Congress has made unsuccessful attempts to pass comprehensive reform of the Comprehensive Environmental Responsibility Compensation Liability Act (CERCLA), better known as Superfund. The Superfund program provides for the cleanup of the nation's worst toxic waste sites and major reform legislation was on the verge of passing in 1993, but minor differences between the Administration and Congress were enough to prevent the bill from passing. The change in Congress after the 1994 elections made reform attempts contentious and fruitless. EPA began a series of administrative reforms of the Superfund program in 1993 based on ideas in legislative proposals. These reforms have made Superfund faster, fairer, and more efficient in the cleanup of hazardous waste sites. The Superfund tax, used to finance the cleanup of the nation's worst toxic waste sites expired on December 31, 1995. The Fund has dwindled ever since and will be completely depleted in 2001.

Congress did pass piecemeal legislation to exempt recyclers from Superfund liability in November 1999. The Superfund Recycling Equity Act (SREA) passed as a rider to the D.C. Omnibus Appropriations Bill, P.L. 106-113 §6001; 42 U.S.C. §9627. The exemption primarily benefits scrap metal and battery recyclers. This relatively small change to Superfund illustrates both the difficulties in passing legislative reform, as well as the complications that arise from doing so.

SREA defines recyclable materials based on the type of product, use, and intended purpose. Recycled materials included are scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (but not whole tires), scrap metal, spent lead-acid, spent nickel-cadmium, and other spent batteries. The recycling exemption does not cover mills and facilities that reclaim recycled materials. Recycled materials must be considered "arranged for recycling" to qualify for the exemption. This means that recycled materials met a commercial specification grade; a market for the recyclable materials existed; a substantial portion of the recyclable product was used in manufacturing a saleable product; and the recyclable material could have been a replacement for virgin materials.

Additional restrictions apply to scrap metals and spent batteries. A recycler will not be exempt if there was reason to believe that the materials would not be recycled or there was reason to believe that

hazardous materials had been added to the recyclable materials. The exemption will also not apply if a recycler failed to use reasonable care in managing or handling the recyclable materials. Reasonable care is based on industry practices.

For transactions occurring from April 2000 onwards, arrangers of the recyclable materials have to take reasonable care to determine that the facility accepting the recyclable material was "in compliance of federal, state, and local environmental laws for recyclable materials." Recyclers have the burden to demonstrate that reasonable care was taken to gain the benefit of the recycling exemption. Reasonable care for selecting an accepting facility is not clearly defined in the law, but was not meant to be onerous. The Institute of Scrap

Recycling Industries Inc. (ISRI) has already drafted a suggested checklist for its members that list questions its members could ask accepting facilities to meet this requirement. EPA held public meetings asking specific questions concerning industry practices for ensuring accepting facilities' substantive compliance with environmental laws. Fed Reg., 37370 (June 14, 2000). Even though SREA was designed to curtail litigation, issues concerning which materials are covered and what is reasonable care in arranging for recycling

are likely to wind up in the courts. EPA may issue guidance on this subject, but may choose not to do so.

The most legally contentious aspect of SREA to date has not been about what the recycling exception covers or requires, but rather the application of the law itself. Section 127(i) of SREA states that the exception does not apply to "any concluded judicial or administrative action or any pending judicial action initiated by the United States." This is the exception to the exception that keeps recyclers within Superfund's liability scheme. But does SREA apply retroactively to cases not yet settled by States or private parties?

Senator Trent Lott (R-MS), co-sponsor of SREA, submitted written legislative analysis that stated that the law applies retroactively. 145 Cong. Rec. 14986, 15049, Nov. 19, 1999. But Senator Lott's covert legislative history drop has already been rejected as not true legislative history. The Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1998),

Even though SREA was designed to curtail litigation, issues concerning which materials are covered and what is reasonable care in arranging for recycling are likely to wind up in the courts.

established a presumption against retroactive application of law unless there is clear unambiguous expression of congressional intent. Moreover, the *Landgraf* Court ruled that statements by individual members of Congress are to be taken with a grain of salt.

In *United States v. Atlas Lederer Company* (S.D. Ohio, No. C-3: 91-309) (Feb. 16, 2000), Livingston & Co., Inc., a non-settling party, unsuccessfully argued for dismissal of claims by both the United States and private parties. The case was filed eight years before SREA was passed and therefore was a pending case under §127(i). Livingston argued that the lead acid batteries it sent to the lead scrap yard site were useful products and that SREA was a codified clarification of the useful product defense. Secondly, Livingston argued that SREA applies retroactively to actions by private parties. Thirdly, the spirit and intent of SREA dictated that the exception be applied to actions initiated by the United States.

The federal district court ruled that the recyclers' exemption does not apply to pending cases brought by the federal government nor to third-party contribution cases. This case of first-impression of §127(i) took an expansive view of the term "action" that includes numerous claims including cross claims, counter-claims, and third-party claims. Since contribution suits filed after an initial action by the United States drive much of Superfund litigation and settlement, this case is significant. Private parties would have a disincentive to settle with the United States if their contribution claims were lost.

In *Department of Toxic Substances Control v. Interstate Non-Ferrous Corporation et. al.*, (E.D. Ca. No. CV-F-97-5016, May 25, 2000), the court applied SREA retroactively as the United States was not a plaintiff to the case. The State of California brought an action under its state Superfund law and argued that SREA did not apply because its claim was a pending action under Section 127(i). California reasoned that states' close working relationship with the federal government under Superfund meant that state actions were included in "actions by the United States" in Section 127(i). Moreover, California argued that SREA didn't apply to past contamination because the law was intended to encourage recycling prospectively.

The court looked at the express language, structure, purpose, and legislative history of Section 127(i) in rejecting California's arguments. The presumption against retroactive application of a law established in *Landgraf* was overcome. The court saw more than just a "negative inference" and indicated that Congress knows how to include states in language, but chooses not to include states. Having the United States as a defendant in the case pointed out that the state and federal government

were not such close partners. Consequently, states and private parties may be left holding the cookie bag for potential costs attributed to recyclers, unless the federal government is involved. This is why many industry groups were and continue to be against SREA, as recyclers do not pay their fair share and transfer their costs to other parties. EPA could provide an "orphan share" to cover recyclers' contribution at sites. This is unlikely without specific funding and in light of a dwindling Fund.

Questions still remain regarding the retroactive applicability of SREA to pending action. For instance, what if a recycler is enjoined after enactment of the law in an action that was pending at the time of SREA's enactment? The United States' brief submitted in *Atlas Lederer* argues that a pending judicial action includes these subsequent events. Alternatively, what if the United States is enjoined as a plaintiff in a pending State case like *Department of Toxic Substances Control v. Interstate Non-Ferrous Corporation*? Although this "Back to the Future" argument for possible "pending actions" may never be made, these questions could wind up in the courts in attempts to blunt the effect of the recycling exemption.

The outlook for Congress to pass further changes to Superfund appears dead until the next Congress takes office. Senator Lott's push to pass the SREA as a rider led him to promise Senator Mike Crapo (R-ID) that he would not allow any other bills to come to the floor that fall short of comprehensive reform of Superfund. Senator Crapo is adamantly against Superfund's natural resource damages provision, as industries in his state owe millions in natural resource damages. Making major changes to natural resource damages is a decisive issue that would be a "show-stopper" for passing legislation. Therefore, the outlook for Superfund legislation to pass before the 2000 elections looks unlikely. On the other hand, all major environmental laws have been passed in election years. Moreover, Superfund and Brownfields legislation is a stated priority of Senate Public Works Chairperson, Senator Bob Smith (R-NH), and Subcommittee Chair, Senator Lincoln Chafee (R-RI).

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COASTAL BARRIER PROTECTION AT COAST ALLIANCE

by Lisa M. Shipley*

During my last semester in law school, I completed an Asper Fellowship at Coast Alliance in Washington, D.C. Coast Alliance is a small non-profit organization which is an alliance of members from a variety of environmental groups with coastal protection concerns. Their primary focus is on two federal coastal protection laws - the Coastal Zone Management Act (CZMA) and the Coastal Barrier Resources Act (CBRA). They have a three person staff - Jackie Savitz, Executive Director; Catherine Hazlewood, Counsel; and Jennifer leMat, Office Manager.



An egret relaxes by the wetlands along the Anhinga Trail at the Everglades Park in Florida.

When I applied for the Coast Alliance, it was not established with the University of Maryland School of Law Asper Fellowship Program. This meant I needed to get them approved as a qualified organization. Coast Alliance has a limited staff and I hoped by getting them on the Asper list, other law students would follow.

I chose Coast Alliance for two reasons. First, their small size appealed to me. By being one of a few people on staff, at least for four months, I felt I would get considerable hands-on experience. I was correct. Second, I wanted more experience with the issues they cover. Coastal wetland law revealed itself as my one true legal love in law school.

The Coast Alliance is the one organization in the country with a dedication to being a CBRA watchdog. To my knowledge, no other environmental organization has amassed such a great quantity of information on CBRA. I was amazed to see how many reports, maps, and briefs the Coast Alliance has compiled over the years on CBRA. Of all the statutes I was exposed to in law school, CBRA is my favorite. I was pleased to land an internship at the organization most versed in my favorite law.

During my interview, I learned that their staff counsel, Catherine Hazlewood, would be working exclusively on CZMA reauthorization and runoff issues. I was to be the CBRA person, at least for four months. They had a project in mind to do an inventory of the remaining undeveloped land protected under CBRA in Florida. The project was in the conception phase and it was my job to bring it to fruition.

At first, the project seemed simple, but as I attempted to make sense of the task I realized it was a huge endeavor. At times it even seemed impossible. The first three weeks were

spent examining the project purpose and trying to mold it into something achievable. One thing I decided during the first three weeks was that I would focus on non-otherwise protected area (OPA) units. Some CBRS units are designated as otherwise protected areas because they are protected by state or local laws and ordinances. I felt the units without OPA designation were most vulnerable.

The purpose behind the project was to complete all the preliminary research on CBRA protected land in Florida and make the information available to conservation organizations. The theory was to make it easier for the conservation organizations to purchase the land to remove it from the development arena by doing the initial legwork. The problem with getting started was that Florida has more CBRA protected land than any other state.

At this point, it might be helpful to better explain CBRA. CBRA works by prohibiting the expenditure of federal funds for infrastructure, roads, housing, and flood insurance in CBRA designated lands. Essentially, it discourages development by removing federal money. It also saves the taxpayer from paying for and rebuilding development on unstable coastal barriers. The land designated falls under the Coastal Barrier Resources System (CBRS). When CBRA first passed in 1982, the Department of the Interior Fish and Wildlife Service (FWS) created maps of the areas to be designated under the CBRS. The FWS established a criteria that the land must meet for inclusion - coastal barrier land with fewer than one structure per five acres. Once the coastal barrier boundaries were approved by Congress, they were assigned CBRS unit numbers. In 1990, with the passage of the Coastal Barrier Improvement Act, new units were added and others were expanded to include associated aquatic habitats.

The CBRS units have been under attack by private developers and Congress ever since designation for protection. There are two main threats to CBRA viability. First, is the fact that nothing in the law prevents local governments or private entities from developing on designated coastal barriers. So development has continued, albeit not at direct taxpayer expense.

The other threat to the viability of CBRA is that the law in its current form allows Congress to delete acreage from CBRS units by making boundary adjustments. Congress is not required by CBRA to consult with FWS or to make the boundary adjustments consistent with the goals of CBRA, which are to protect the coastal barriers from encroaching development at federal expense. Presumably the only reason to remove land from CBRA would be to qualify for federal financial assistance for development.

With the vulnerability of CBRA protected lands in mind, Coast Alliance decided that the only way to permanently protect the remaining undeveloped coastal barriers was to facilitate purchase of CBRA land. The project I was assigned was the first step towards accomplishing that goal.

Getting started proved to be a monumental task. I understood what I was supposed to accomplish and why. The difficulty came in determining where to begin to research such a vast amount of information. Initially, I thought the best way to attack the project would be to approach it from the federal level. I assumed this information had been catalogued by the federal government in preparation for passage of CBRA. Under CBRA, the law is the maps. By that I mean when a question arises about CBRA boundaries, the maps provide the answer because there is no textual description of the boundary lines. There is no exact way of determining in close call situations whether or not a certain parcel of property falls within a CBRS unit.

With no comprehensive compilation of the CBRS unit boundaries available at the state or federal level, I then turned to the individual county governments. I began by contacting the environmental protection and natural resource divisions of several counties. While a few had heard of CBRA, nobody had hard data on where the CBRA boundaries were drawn in their counties. I then turned to the property appraiser databases that I could find online, because all the information I needed was there. The difficulty was trying to determine which parcels in their databases were in CBRS units. Fortunately, some counties had property maps on their websites. In order to determine which parcels on the maps fell under CBRA, I realized I needed to go to the Division of Habitat Conservation of the Fish and Wildlife Service to get the current CBRS maps.

While at FWS, I worked with Paul Souza. He is known as the "keeper of the CBRA maps." As we were copying the large CBRS unit maps for Florida and discussing the law and its weaknesses, I realized the magnitude of the task I was about to start. The information I was about to gather had never been compiled before and could prove quite beneficial to those who work to protect our coasts.

Once I had the CBRS units maps, I used the geographic characteristics to roughly determine where the boundaries were drawn. I then cross referenced the maps with the county property appraiser maps on line. In one instance, I had to order the county maps and read them in person. That was quite a learning experience. For some counties, my method worked. I was able to retrieve ownership information, assessed and market values, property location, vacancy status, development status, and other pertinent information.

I completed nine CBRS units. As I mentioned earlier, the initial focus of the project was on large parcels of undeveloped land that were far away from development. The more information I gathered, the more development I found. I also noticed that most of the development was recent, all after CBRA's enactment in 1982 and almost all after the CBRA 1990 reauthorization. These development trends were discouraging. The worst possible scenario was indeed occurring. Private development on Florida's coast was progressing in spite of CBRA.

Although most of my discoveries were bad news for coastal barrier protection, there were some bright spots. For instance, in Volusia County, Florida the local government was in negotiation with several property owners to purchase the few remaining undeveloped coastal barrier parcels in the county. Another bright spot was in Broward County, where I discovered that a great portion of the coastal barrier was purchased by the Richard King Mellon Foundation. The Richard King Mellon Foundation is known for its philanthropic work for the benefit of the conservation of natural resources.

As the project progressed, I realized the legal significance of having this development and land use information at the disposal of Coast Alliance. I asked to have the project's focus broadened to include compilation of information on all parcels which fell under CBRA, regardless of the development status. I pointed out that the Coast Alliance could use this information in several ways. First, they would have potential indicators of future boundary adjustment proposals by Members of Congress. Once one of the subdivisions in a CBRS unit is fully developed and occupied, there is a high probability the residents would lobby their Congressman to get their property removed from CBRA.

Because if their property remains in CBRA, they would not receive federal flood insurance in the case of a hurricane or other disaster. The Coast Alliance could develop arguments against removal based on the property information gathered. For instance, the date of the development, in relation to CBRA passage, and how far inside the CBRS unit the property is, as opposed to a boundary property.

Second, the overall development trends could provide solid information to present at a CBRA reauthorization hearing. By showing that CBRA in its present form is not working in some Florida counties, perhaps the law would be strengthened. One such strengthening amendment would be to make it a requirement that all boundary adjustments must be made consistent with the goals of CBRA. A boundary adjustment made for the purpose of allowing homeowners, who built their houses after CBRS designation, to qualify for federal flood insurance is not consistent with the resource protection and taxpayer money saving goals of CBRA.

Third, if a subdivision is under current development in a CBRS unit, Coast Alliance can determine whether or not the property owners have been informed that their land is in a CBRS unit. If they have no knowledge, they could be informed that they will not qualify for federal flood insurance. Also, Coast Alliance could develop a grassroots campaign to stop the development by taking out ads in the local paper to inform the public of the coastal barrier destruction and the ramifications of building on CBRA land. This could be another method of stopping development.

Another way this property information could help Coast Alliance is that they could check to see if any of the recently built homes were inadvertently qualified for federal flood insurance. CBRA has no enforcement provision. The only mandatory compliance provision is a requirement that all affected federal agencies must send a certification of compliance to the Department of the Interior each year. If the Federal Emergency Management Agency (FEMA) issued flood insurance to a homeowner in a CBRS unit, Coast Alliance could sue FEMA for violation of CBRA.

These legally significant facts gave me renewed faith in my contribution to the project. I was allowed to expand the focus of the project and I gathered considerable information on nine CBRS units on the Atlantic coast of Florida. Towards the end of my Asper Fellowship, I stopped further research and created a spreadsheet of all the parcels of land that were arguably within the CBRS units I had researched. I say arguably because the boundaries are roughly drawn and there are no textual descriptions of the boundaries to make them exact.

Even though at first I questioned the legal significance of the project I began at Coast Alliance, I left with a great sense of satisfaction. As I look back, I enjoyed the freedom I had to develop the project. I was able to develop the research methods and to fine tune the focus as I went along. The legal significance of the work I was doing did not occur to me at first. However, I see now that the information I researched and left behind can be of great use to Coast Alliance in their battle to protect our coasts.

My time spent at Coast Alliance was a great learning experience. Initially, the CBRA project was intimidating. The scope of the task was enormous and I doubted the legal value of such information. I had thought all legal internships were comprised of statutory and case analysis. Looking back, I see that legal work can take on many different characteristics. I am glad I had the opportunity to gather some powerful information that can be used in the fight against coastal destruction. Coast Alliance now has more information on the CBRS units in Florida completed than even the federal government.

Another valuable thing I learned while at Coast Alliance is that I love working for the good guys. I realized that I could be happy fighting to protect the coasts and the critters that live there. The legal education I received could help me make a difference to a sea turtle or a manatee. I also realized that small environmental groups can have an incredible impact on legislation.

I left Coast Alliance with further developed research skills and a commitment to environmental law. My commitment to fighting the good fight will prove helpful as I embark on my legal career. I would highly recommend the Coast Alliance to other law students interested in hands-on coastal law experience.

Having just recently taken the three - day California Bar Exam, I am leaving the East Coast with a solid legal education and an emotional commitment to protect our coastal resources. From those who taught me at the University of Maryland School of Law, I received inspiration. From the women at Coast Alliance, I received practical knowledge of what it takes to fight the daily battles of resource protection. I will take that knowledge with me to California to help protect one of the few remaining coastal wetlands in Southern California - the Ballona Creek Wetlands.

**Lisa M. Shipley is a '00 graduate of the University of Maryland School of Law.*

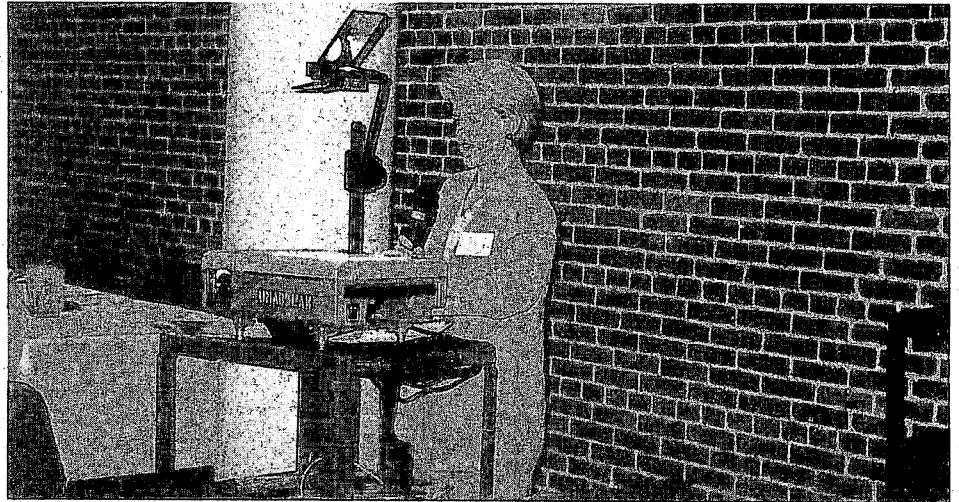
Tobacco Control: Development of International Public Policy

Authors: Michael Eriksen, ScD; Linda Bailey, JD, MHS; Lawrence Green, DrPH; Terry Pechacek, PhD. Office on Smoking and Health, Centers for Disease Control and Prevention, US Department of Health and Human Services.

Abstract: It is essential to move into the new decade understanding the policy grounding of recent successes in tobacco control and the need for a shift toward a global perspective. Tobacco control policies could have a tremendous impact on global health if implemented worldwide. Yet, as tobacco control policies experience success in the developed countries, the tobacco epidemic moves with increasing aggressiveness into developing countries. The critical barriers faced by developing countries and the important role played by non-governmental organizations, research institutes, associations and governments in the development of international policies are discussed.

The Importance of International Public Policy for Tobacco Control

In November 1999, tobacco control was recognized as one of the ten greatest public health achievements of the century in the United States. This reflects the dramatic reduction of smoking prevalence among adults from over 42.4% in 1965 to 24.7% in 1997. To meet the Nation's goal to reduce smoking prevalence among adults to 12% by the year 2010, it is essential to move into the new decade understanding the policy grounding of recent successes in tobacco control and the need for a shift toward a global perspective.



Panelist Linda Bailey speaks at the Global Environmental Accountability Symposium

U.S. historical experience shows that both programs and public policies are necessary and mutually supportive in preventing tobacco use among youth, promoting smoking cessation, and protecting nonsmokers from environmental tobacco smoke. Effective public policies that target the supply and most especially the demand for tobacco can make a significant difference in smoking rates. Reductions in smoking prevalence in the United States have resulted from a combination of factors. These include scientific evidence about health effects of tobacco use and environmental exposure to tobacco, public education, advocacy for nonsmokers' rights, restrictions on cigarette advertising, improvements in treatment and prevention programs, an improved understanding of the economic costs of tobacco. Other public policy changes include enforcement of minors access laws, legislation restricting smoking in public places, and increased taxation. Recent disclosure of the industry documents provide new opportunities for tobacco control programs and policy actions that address corporate intent to confuse, mislead, and obfuscate the public's understanding of the harm caused by smoking.

Yet, as tobacco control policies experience success in the developed countries and tobacco sales diminish in markets such as North America, Australia, and Europe, the tobacco epidemic

moves with increasing aggressiveness into developing countries. Tobacco consumption has dropped in most developed countries during the past 30 years whereas the trends in developing countries show dramatic increases in consumption for the same period. The World Health Organization (WHO) estimates that about 1.15 billion smokers in the world today consume an average of 14 cigarettes each per day. Of these, 82 percent live in low and middle income countries.

Such changes in the patterns of tobacco consumption will have devastating effects on future global health. For example, in 1998, about 3.5 million deaths worldwide were attributed to tobacco use. By 2030, smoking is expected to be the cause of 10 million deaths worldwide. Over 70 percent of these deaths will be in the developing world.

Critical Barriers to Tobacco Control in Developing Countries

Many developing countries face critical barriers in developing and implementing tobacco control policies. First, per capita consumption is growing in developing countries and the populations represent an attractive "untapped" market to

transnational tobacco companies. Second, the citizens of developing countries are less knowledgeable about the health effects posed by smoking. Third, many developing countries still suffer from infectious diseases and malnutrition. Tobacco-related illness complicates already fragile health status and drains an underfunded health system. Fourth, and perhaps most importantly, many developing countries have not yet built a foundation of political will for establishing and enforcing policies that treat tobacco commensurate with the harm that it causes. In many, the government is tempted by the "smoke ring" of tobacco -- employment, revenue, trade, advertising and promotion. Transnational companies bring with them the capital that is viewed as a source of advancement and progress. The dollars may appear to fulfill these hopes in the short-term, but the lessons that have been learned about the long term impact of tobacco marketing must be transmitted to these governments:

- * **Employment:** Employment may decrease in retailing and manufacturing if a country develops tobacco control policies, but the decreases will be temporary, and other employment opportunities will be created;
- * **Revenue:** Tobacco control does not diminish tax revenues from tobacco -- indeed, tobacco control almost always increases revenues;
- * **Trade:** Tobacco control and trade ought to be complementary -- a focus on demand has been a more effective tobacco control strategy than one on supply, but this could change with more experience in developing countries; and
- * **Advertising and promotion:** Advertising and promotion create demand for tobacco products and need to be restricted as part of a comprehensive tobacco control program.

A Global Perspective

Implemented on a worldwide basis, tobacco control policies could have a tremendous impact on global health. A recent World Bank report estimated that with a worldwide price increase in cigarettes of only 10 percent, 40 million people will quit smoking and eventually almost 20 million deaths would be averted. The price increase would reduce consumption by 384 billion cigarettes per year.

For governments considering how to invest their public health funds, research findings show that tobacco control is highly cost-effective as part of a basic public health package not only in developed countries, but also in low and middle income countries. Most effective, are policies that influence the demand for tobacco (discussed below). Evaluated policies that focus on the supply of tobacco are less plentiful and consistent, but they can address equity and other political issues in many countries.

Demand Reduction Policies

Price increases are recognized as the most effective strategy for reducing demand for tobacco products. They reduce smoking among youth more than among adults, and also help to narrow the smoking prevalence gap between rich and poor. Price increases tend to be implemented through excise taxes. Although many policy makers fear that raising taxes will reduce government revenues thereby harming the state, research findings have shown that these fears are largely unfounded. Economists conclude that the economic benefits of tobacco excise taxes far exceeds the cost. There may be a temporary income loss among producers and distributors, but there will be no dramatic need for downsizing.

Measures that ban or restrict advertising and promotion of tobacco, or increase public awareness and understanding of the harm caused by tobacco, such as prominent health warning labels and dissemination of research findings, reinforce price increases. Restrictions on smoking in the work place and public setting also are effective tobacco control policies.

Tobacco companies spend billions each year in the U.S. on marketing to recruit new smokers and, to a lesser extent, to convince current smokers to switch brands. Restrictions on advertising and sponsorship help to prevent the initiation of smoking, especially among teens. In addition, restrictions protect consumers from false and misleading advertisements about the pleasures of smoking and the wholesomeness of the product.

Cigarette labels are a source of information for the public which may contain health warnings, ingredients, and levels of tars and nicotine, and information on other harmful constituents. In most countries, mandatory health warnings alert the public to the dangers of smoking. Many of the traditional warnings attract little attention. In countries such as Sweden, Iceland, Norway and potentially Canada, however, the warnings are accompanied by pictures and have increased effectiveness.

A final effective demand reduction policy is that of nicotine replacement therapy (NRT) and other cessation interventions. Here in the U.S. we are making progress on ensuring access to such treatments for all smokers. Recently, the White House voiced support for helping current smokers quit. The Administration's budget proposed that every state Medicaid program cover both prescription and non-prescription smoking cessation drugs, removing a special exclusion now in law and requiring states to cover these drugs as they cover all other FDA-approved drugs. Private insurers and HMOs are making similar commitments to helping smokers quit.

Supply Reduction Policies

The World Bank Report concludes that supply reduction is a less promising approach to tobacco control. However, some attention to these policies may be warranted. Evaluated policies

that focus on the supply of tobacco are less plentiful and consistent, but they can address equity and other political issues in many countries.

For example, crop substitution is unlikely to be an effective tool for reducing supply because an alternative supplier is likely to step in. However, policies may be needed that address the importance of aid for the poorest tobacco farmers during transition to new crops. In developed countries with established trade and agricultural policies, subsidies for tobacco production ought to be reexamined. It is unlikely that such policies have a sound basis.

One positive supply reduction policy finding by the World Bank was in the area of smuggling. Smuggling often becomes a concern when cost differentials exist in neighboring areas (i.e., in border areas and in special jurisdictions such as military bases and tribal reservations). Unchecked smuggling results in loss of tax revenues and, in developing countries, may be an initiator of trade liberalization. Measures to prevent smuggling are effective tobacco control interventions. Measures that should be considered are more prominent tax stamps, local-language warnings on cigarette packages, and aggressive enforcement and prosecution.

Trade policies also influence supply of tobacco. Trade policies and tobacco control ought to be complementary. Through the Doggett Amendment, Congress prohibits the expenditure of tax dollars to support the export and promotion of cigarettes. The U.S. Department of State reinforced the Doggett Amendment and further guided U.S. diplomatic posts to assist and promote tobacco control efforts in host countries, stipulating that posts are not to challenge sound, non-discriminatory public health policies related to tobacco, and prohibiting posts from promoting the sale or export of tobacco products. In February 2000, the State Department provided additional guidance to diplomatic posts, encouraging them to engage in specific tobacco control activities.

Framework Convention on Tobacco Control

In 1996 the World Health Organization member states initiated a Framework Convention on Tobacco Control (FCTC). The FCTC is a legal instrument intended to address the global problem of tobacco use. Once the World Health Organization (WHO) adopts the FCTC (by May 2003), the convention and related protocols will be subject to ratification by member states. Topics that may be addressed in the FCTC and related protocols include youth access to tobacco, tobacco advertising and marketing, price of tobacco products, prevention efforts, environmental tobacco smoke, protecting farming communities, smuggling, and sharing information and research.

The U.S. Government is one of over 100 member states participating in the FCTC process. In contributing to the FCTC,

the U.S. is supported by the Administration's strong tobacco control policies, including:

- * Support for increasing the price of tobacco products so fewer young people smoke;
- * Support for effective programs to prevent tobacco use and treat tobacco dependence;
- * Support for restricting access and availability of tobacco products to young people;
- * Support for strategies and policies to reduce environmental tobacco smoke; and
- * Support for economic policies to protect tobacco farmers and tobacco dependent communities. (Additional information about the FCTC is available on WHO's website, <http://www.who.int/toh/fctc/fctcintro.htm> and a U.S. Government site, <http://www.cdc.gov/tobacco>.)

The Important Contributions of NGOs, Researchers, Associations, and Others

Non-governmental organizations, research institutes, and associations play a critical role in the development of international policies through their domestic and international activities. With regard to the FCTC, there is an essential role for all involved parties. Treaty negotiation is a unique federal governmental process, but the U.S. Government will call on nongovernmental organizations (NGOs), researchers, associations and others to participate in the development and ratification processes for the FCTC.

Throughout the development process (1999-2003), these stakeholders will be asked to help by providing comments on the draft FCTC, disseminating information about the FCTC to their colleagues and affected parties, identifying opportunities to strengthen U.S. tobacco control policy as well as global tobacco control policy, and creating support for ratification with the public and legislators. The final outcomes of these activities are likely to reshape the tobacco control landscape worldwide for the year 2003 and beyond.

**This paper was presented by Linda Bailey, a '92 graduate of the University of Maryland School of Law at the Global Environmental Accountability Symposium held at the Law School on April 28, 2000.*

The Creation of a Land Use Junky: In Pursuit of Planning and Law Degrees

by Nicole Lacoste Bowles*

Three years of law school is draining enough. Why subject myself to an additional year of graduate work? I suppose that I am either a glutton for punishment or seriously interested in land use law. That is my personal justification for enrolling in a joint degree program between the University of Maryland School of Law and the University of Maryland School of Architecture's Urban Studies and Planning Program. This dual track has proven to be very interesting, challenging, and worth the extra year of academic life.

What is the dual program combining law and planning?

Maryland Law students are provided with opportunities for several joint programs including law and business, law and social work, and law and public policy. The law and planning joint program is relatively new, with few if any alumni. The program has received minimal publicity and is not even mentioned in the law school's recruitment publications or web site. I first learned about the program from Professor Power in 1998 during one of his Land Use Law class lectures. My concentration as a student was environmental law, so the further concentration on land use and environmental planning immediately appealed to me.

As a joint law/planning degree student, I have been able to take my legal interests in conservation easements, the preservation of open space, smart growth, and historic preservation and use them to enhance my understanding of their respective local applications. For example, my knowledge of zoning ordinances and the takings question, gained from property law classes, helped me tremendously with an academic land use planning project assigned to me as a planning student. My understanding of the pertinent zoning codes and constitutional property issues emphasized the strong correlation between the planning and environmental law fields.

How does an interested student apply for the joint degree?

To enroll in the joint degree program, an interested student must apply to the Urban Studies and Planning Program (URSP) separately from the law school. I applied for acceptance during the spring semester of my second year of law school so that I would be able to start planning classes during my third year of law school. The application requires an essay, letters of recommendation, and a completed standard

application form. The GRE requirements are waived for applicants that have a 3.0 GPA or higher. For more information on the Planning Program and an application for the graduate school, visit the Urban Studies and Planning Program website at www.bsos.umd.edu/ursp. Professor Jim Cohen (301-405-6795) is an excellent contact for anyone interested in speaking with someone in the department about the program.

A brief overview of the University of Maryland Planning Program

The University of Maryland's Urban Studies and Planning Program is housed within the School of Architecture at the College Park campus. The student body and faculty of the Planning Program are a diverse group of people with international, social reform, and grassroots activist backgrounds. Students and faculty work closely together exploring the changing character of metropolitan America and critical problems of 20th Century urban development worldwide. The degree requires the completion of 51 credits that include requirements in the concepts, process, context, and practice of planning. The core curriculum emphasizes student understanding of the political, institutional, and social context in which professional planners implement programs. It is the only planning department in the country to offer opportunities for internships and employment at the international, national, regional, state, and local levels of government.

In addition to the required core courses, each student chooses a specialization. Some of the specializations to choose from include environmental planning, land use, economic development, international development, social planning, urban design, housing, and historic preservation. Since my specialization is environmental planning, most of my electives are related to issues of smart growth, land use, and environmental protection at the local level.

An advantage of combining the law and planning degrees is a matter of time. By completing the two-degrees as a joint effort, each school recognizes nine credits from the other program. Nine credits earned in the planning program (with a B or higher grade) are transferred to the law school transcripts and nine credits from the law school (B or higher) are transferred to the graduate school transcripts. This allows a student to complete the two degrees in just four years, rather than the three years for law school and two years for the "Masters" degree if completed separately.

Where to go with two degrees?

The dual degree opened up an entirely new world of career opportunities for me. During my last semester in graduate school (Spring '00), the American Planning Association (a national professional organization similar to the American Bar Association, except for planners) selected me as its Congressional Fellow. I was chosen over other planning graduate students nationwide due in part to my law degree. This fellowship placed me for five months in Congressman Blumenauer's (D-OR) office working on national community livability and smart growth issues. The work required an equal blend of my planning education and environmental case law knowledge.

This past summer, I spent a month in Mexico City working with a team of student planners on an economic study of a small, dynamic community. My work focused on the legal aspects of the study, working along side a Mexican lawyer who, fortunately for me, spoke fluent English. The project was exciting and an excellent way to finish my degree. This study abroad program also fulfilled my planning studio requirement that is similar to the law school's clinic requirement - a hands-on, practical work experience for students with professor supervision.

After four years of school, I was fortunate to find a job that uses both my law degree and planning degree. I started a new job in August 2000 with Clarion Associates, a national land-use consulting firm, in Denver, Colorado. Clarion also has offices in Fort Collins, CO, Aspen, CO, Chicago, IL, Cincinnati, OH, and Philadelphia, PA. All of the associates and partners in the Denver office have both law and planning degrees. It was a perfect match! At the time of writing this article, I have only been on the job for two weeks. But already, I am involved in the redrafting of the land development codes for two cities and one county. And I can't resist the opportunity to brag... my new office in downtown Denver has a view of the Rocky Mountains!

So, the extra year of school was certainly worth the extra time and effort. It is an exciting time for me now. I have a new home where people look puzzled when I say I am an Orioles fan and not a Rockies fan, where most people think blue crabs come from Alaska, and where the mountain views make for spectacular sunset. If you have any questions, you may email me at nbowles@clarionassociates.com.

**Nicole LaCoste Bowles is a '99 graduate of the University of Maryland School of Law.*

I WANT TO HEAR FROM YOU!

Do you have an opinion on any of the articles in this Newsletter? Send it to me and I will publish it in our next issue.

Would you like to write an environmentally-related article for this Newsletter? I would love to hear from you. It will be published in the next issue due out in March, 2001.

You may email, fax or mail your article to the following:

Laura Mrozek
University of Maryland School of Law
515 W. Lombard Street
Baltimore, Maryland 21201
email: lmrozek@law.umaryland.edu
Fax Number: 410-706-4045

MELS MEMBERS VISIT HART-MILLER ISLAND DREDGED MATERIAL CONTAINMENT FACILITY

by Jeff Herrema*



MELS members and representatives from the Maryland Port Administration and Maryland Environmental Services pause for a photo-op on the landing at Hart-Miller Island.

To the passing boater, Hart-Miller Island is more of a curiosity than anything else. Unlike neighboring Poole's island, a pristine, and heavily-forested sanctuary that provides ideal nesting habitat for hundreds of the Bay area's Great Blue Herons, Hart-Miller Island is noticeably devoid of mature trees or any other native vegetation. The 1100 acre island, located in the Chesapeake Bay northeast of Baltimore, is almost entirely enclosed by forty foot earthen berms. They descend sharply toward the Bay's waters where they are reinforced by a formidable barrier of rip-rap.

Within the confines of the massive berms, however, there is a work in progress. When it is complete, officials from the Maryland Port Administration, the Maryland Department of Natural Resources, Maryland Environmental Services, and the U.S. Army Corps of Engineers hope to turn millions of cubic feet of dredged spoil into a multiple use wildlife preserve and recreation area.

The Hart-Miller Island Dredged Material Containment Facility is one of Maryland's solutions for keeping Baltimore Harbor free from sedimentation, and open to shipping. The island consists of two large "cells," a 300 acre South cell and a 600 acre North cell. Material dredged from Baltimore Harbor is transported by barge to the island

where it is pumped into the cells which act as large settling ponds. They are gently sloped, so as the water flows from one end of the cell to the other, the sediment is deposited along the way. On the far end of the cell, water quality is tested, and if it meets the applicable permit standards, it is discharged into the Bay.

Hart-Miller Island's South cell was filled to capacity in 1991. Currently, efforts are underway to remediate the cell for use as a wildlife preserve. The plans call for a variety of habitats, including open-water ponds, marshlands and upland habitat. However, the project is not without its problems. Phragmites, a non-native and extremely aggressive wetland plant, has overrun most of the South cell.

Despite annual efforts to burn it, and occasional herbicide treatments, the "Phrag" is still the predominant plant species in the South cell and on the rest of the island as well. In addition, the material dredged from Baltimore Harbor is contaminated with heavy metals and various toxics. This raises health concerns with respect to the wildlife that inhabit the island, and the people who will visit it in greater numbers as the remediation progresses.

Regardless of one's personal views on the project, and despite its potential drawbacks, most everyone would agree that the Hart-Miller Island facility is at least a good prototype for finding creative solutions that take into account the need for economic growth and environmental protection.

**Jeff Herrema is a third year law student.*



Dredged material from Baltimore Harbor gushes into the expansive North cell of Hart-Miller Island.

THE MARYLAND ENVIRONMENTAL LAW SOCIETY (MELS) GETS OFF TO A BUSY START



*MELS Board Members
(from left to right) Erin Hutchinson,
Marcia Tannian, Chris Corzine, Jessica Stuart,
Drew Brought, Margaret Clune,
(not shown) Melinda Kramer.*

*MELS draws a nice crowd for
first meeting.*



*MELS bake sale for SO₂
fund nets \$200.*

STUDENT ACTIVITIES



Environmental Law Clinic Students anticipate an "O's" victory at the law school's bullpen party at Camden Yards.

MELS members join in a reforestation effort in the Gwynns Falls drainage. The Chesapeake Bay Foundation sponsored the event.



The MELS tree-planting group leaning on their shovels (after their work was completed). MELS donated the shovels to the Chesapeake Bay Foundation for future reforestation projects.

CONGRATULATIONS!

NINETEEN STUDENTS GRADUATE WITH CONCENTRATION IN ENVIRONMENTAL LAW

Nineteen members of the class of 2000 received the Certificate of Concentration in Environmental Law at graduation in May 2000.



From left to right back row: Marvin Muller, Jennifer Marshall with her son Marshall, Sonja Mishalanie, Robert Percival, Director of Environmental Program, Claudia Rozenberg, Paul DeSantis, Quang Nguyen, Evan Wolff, Brian Anderson, Valerie Satterfield Csizmadia, Linda Coco, and Jennifer Bushman.

From left to right front row: Laura Mrozek, Coordinator of Environmental Program, Tracy Spriggs, Joanna Goger, Melanie Flynn, and Rena Steinzor, Co-director, Environmental Law Clinic.

Not shown: Melissa Hearne, Lee Ann Lezzer, Mark Matulef, Kerstin Schuster, and Cynthia Tippett.
