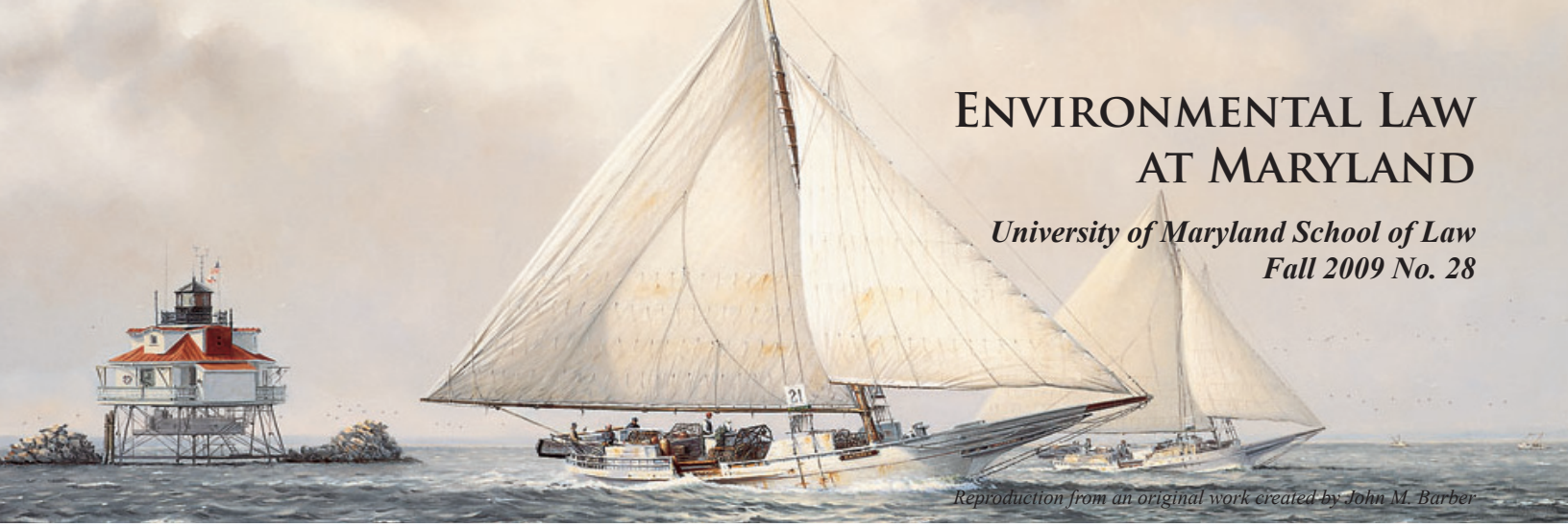

ENVIRONMENTAL LAW CLINIC HELPS SECURE PASSAGE OF HISTORIC ENVIRONMENTAL STANDING LEGISLATION IN MARYLAND

For twenty years, environmental organizations and community associations repeatedly attempted to broaden the state of Maryland's property-based standing requirements to enable citizens to challenge environmental permits. Finally, in April 2009, Maryland lawmakers passed an important bill that will expand standing requirements to challenge certain environmental permits and Critical Areas variance decisions. Governor Martin O'Malley signed the "Standing – Miscellaneous Environmental Protection Proceedings and Judicial Review" into law on May 19, 2009. The new law will streamline the permitting process in exchange for adopting federal standing requirements for individuals and associations to challenge inadequate permits and other environmental decisions made by government entities.

Working on behalf of Waterkeepers Chesapeake of Maryland, a group of Riverkeepers and Waterkeepers committed to protecting Maryland's rivers, streams, and the Chesapeake Bay, student attorneys in the Environmental Law Clinic were the primary researchers and drafters of this legislation. Clinic students worked countless hours researching standing laws in the other 49 states, attending coalition work group sessions, and quickly responding to research questions posed by various General Assembly members. The students also drafted testimony for witnesses who testified at the bill hearings; the witnesses were from a coalition comprising the individual

Clinic Director Jane Barrett (to right of Maryland State flag) and Clinic Law Fellow Tina Meyers (far right) flank Clinic students (left to right behind seated woman) Irene Hantman, Sylvia Chi, and Lauren Ciurca at bill signing ceremony for historic standing legislation in Annapolis.

Riverkeepers and other environmental organizations including the Chesapeake Bay Foundation, 1000 Friends of Maryland, and the Maryland League of Conservation Voters.

"The University of Maryland Law Clinic students deserve special kudos for the countless hours spent in drafting and researching the provisions of this legislation. Without their help, in addition to all the stakeholders

continued on page 2

In this issue . . .

Historic Legislation

cont'd from p. 1

involved, passage of this bill would not be a reality," says Michele Merkel, Chesapeake Regional Coordinator for the Waterkeeper Alliance.

"Standing" refers to an individual's or association's ability to bring an action in court. Federal courts and the majority of states require a potential plaintiff to demonstrate an injury-in-fact, a causal link between that injury and the relief sought, and that the injury can be redressed by the court. Maryland common law, however, uses a stricter standard, generally requiring potential plaintiffs to show a property interest distinct from the general public. Maryland also does not recognize an association's ability to assert standing on behalf of its members. In the past, these requirements have proved to be nearly insurmountable hurdles for environmental associations seeking to challenge regulatory actions in the state.

By passing this bill, Maryland legislators agreed to adopt the federal standing requirements that 44 other states have adopted for certain permit challenges. As a result, more individuals and various community and environmental associations will be able to challenge defective permits. While the federal test for standing is still a very high threshold to overcome, it does not require potential plaintiffs to own adjacent property. Now, more concerned citizens and associations can have a say in the effectiveness of environmental permits issued to industries in their neighborhoods. This is a huge victory, especially from an environmental justice standpoint.

For example, a Kent County Circuit Court judge ruled last year that the Chester River Association lacked standing to challenge the alleged dumping of phosphorus and other pollutants in the Chester River by an Eastern Shore chemical plant because the Association did not live within "sight or sound" range to be considered "aggrieved." Likewise, members of the Cedar Heights Community Association in Prince George's County have been largely powerless to challenge permits issued to industries in their neighborhood because the facilities are located approximately 500 feet across the road. A number of residents in this predominantly African-American community have complained for years of respiratory problems and issues with dust from the facilities coating their cars and clogging their home air filters.

As Delegate Maggie McIntosh, Chair of the Environmental Matters Committee and chief sponsor of the House bill explains, "The heart of this issue is environmental justice. Neighborhood organizations, environmental groups and others should have the same legal right to challenge state-issued environmental permits that impact their communities, in the same venue, and at the same time, as a company or permit applicant arguing in favor of the permits. This bill allows both sides to finally be heard in the Maryland State Courts."

Senator Brian Frosh, Chair of the Judicial Proceedings Committee and chief sponsor of the Senate bill, states, "Maryland for years has nearly barred the court doors when it comes to the public's right to challenge state environmental decisions. This bill helps bring us into the 21st century."

Del. McIntosh and Sen. Frosh deserve special thanks for sponsoring this bill and working hard to make federal standing for these permits possible. The General Assembly has shown that it is ready to bring Maryland into line with the majority of states regarding these permits. Passage of this bill is a giant step forward for Maryland and will allow greater citizen involvement in certain permitting processes.

This newsletter is published by the University of Maryland School of Law Environmental Law Program. Contributors to this newsletter include faculty, alumni, students, and friends.

IMPROVING CONTROLS ON STORMWATER DISCHARGES: ANOTHER VICTORY FOR THE ENVIRONMENTAL LAW CLINIC

On the eve of a contested case hearing before the Office of Administrative Hearings, the Environmental Law Clinic successfully negotiated a settlement agreement that requires the Maryland Department of the Environment (MDE) to make significant changes to the way it regulates development projects in Maryland. The Clinic represented the Waterkeeper Alliance and twelve individual Maryland Waterkeeper organizations who challenged the adequacy of MDE's December 2008 General Discharge Permit for Stormwater Associated with Construction Activity (General Permit), which regulates stormwater runoff from construction sites.

The General Permit applies to the majority of developments across the state and contains best management practices (BMPs) and other requirements for controlling stormwater runoff from construction sites. These BMPs are extremely important because they detail specific measures that developers can take to limit the amount of stormwater runoff from a construction site. When effectively planned and implemented, BMPs can drastically reduce the amount of pollutants entering local waterways and the Chesapeake Bay.

Sediment pollution is currently choking Maryland waters. More than 90 streams and rivers have been officially designated as "impaired" by excessive sediment, much of which comes from stormwater runoff. Construction sites account for approximately one-third of all sediment pollution in the Chesapeake Bay, and population growth will only compound these problems. More than one million people are expected to move to the Bay watershed in the next decade alone. This influx will result in additional stress on the watershed through increased development. Researchers expect that the amount of land converted from farms and forest to residential and commercial developments will increase more than 60 percent by the year 2030.

Increased sediment pollution has extremely detrimental effects on the overall health of local waters. Choptank Riverkeeper Drew Koslow, who served as an expert witness in the General Permit litigation, has seen these impacts firsthand:

"Sediment-laden runoff from construction sites can drastically alter the ability of a stream to support life. This mud prevents sunlight from reaching diminishing submerged aquatic grasses, smothers oyster reefs, and severely stresses fish," he says.

Clearly visible sediment in Church Creek and South River (photo courtesy of Drew Koslow)

The first line of defense against this increased water pollution is a strong, enforceable permit that can effectively manage stormwater and reduce runoff. The Waterkeepers alleged that MDE had not issued such a permit and the Waterkeepers were the only environmental groups willing to challenge the permit's sufficiency by requesting a contested case hearing on the matter.

In January 2009, the Waterkeepers began their determined effort to strengthen the General Permit. Only days before a scheduled prehearing conference, a number of large developers sought to intervene in the case. The administrative law judge allowed those developers that own sites subject to coverage under the General Permit to intervene for the limited purpose of raising financial and delay issues; i.e., the intervenors could present evidence that allowing increased public participation in the permitting process would lead to financial hardship for them or would delay their projects. The intervenors wanted MDE to finalize the General Permit in its original form as soon as possible—pending resolution of the contested case hearing, no developers could receive coverage under the General Permit. Instead, MDE had to issue individual permits, which are more detailed and time-consuming to draft.

continued on page 4

Stormwater Controls

cont'd from p. 3

Despite detrimental rulings on a number of legal issues, the Waterkeepers pressed on and the Clinic prepared for the hearing. At the last minute, the Clinic was able to negotiate out from under the intervenors and reach a significant settlement agreement with MDE.

The settlement agreement requires MDE to update the long outdated *1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control* no later than May 2010. This manual describes measures that developers must take to reduce runoff from construction sites. It is incorporated by reference in state regulations, giving it the force of law. MDE is committed to adding provisions that emphasize up-to-date measures reflecting current research and technology in the field of erosion and sediment control. MDE will also require more stringent review of permit applications for construction sites near impaired waters. In addition, MDE is committed to re-opening the General Permit when the U.S. Environmental Protection Agency finalizes its effluent limitation guidelines for stormwater associated with construction activity. Pursuant to the agreement, MDE has already acquired funding to hire additional personnel to help meet these requirements.

Taken together, MDE's commitments to improve its construction stormwater permitting program will result in real, measurable improvements in water quality throughout Maryland. The Maryland Waterkeepers applaud MDE's commitment to protecting the Chesapeake Bay and all of the state's watersheds from construction site runoff.

Special thanks belong to Clinical Law Fellow Tina Meyers, and student attorneys Joey Tsi-Yu Chen, Lauren Ciurca, Jennifer Dickman, and Julie Grufferman for working so diligently on this matter.

A NEW KIND OF ENVIRONMENTAL DIPLOMACY: A LECTURE TOUR OF CHINA FOR THE U.S. STATE DEPARTMENT

By Robert V. Percival

The email from the State Department arrived the morning after Inauguration Day. The U.S. government wanted to send me as an environmental law expert on a lecture tour of China. I could pick whatever topics I wanted to talk about. The only requirements were that I give as many lectures as possible for a period of two weeks and that I visit each of the five regions of China that has a U.S. Diplomatic Mission. After thinking to myself, "That's change I can believe in," I quickly jumped at the opportunity.

One complication was that the State Department wanted me to go as soon as possible. I had just started a crazy semester teaching first-year Constitutional Law and a Global Environmental Law seminar at Maryland, while making a weekly commute to Cambridge to teach Environmental Law as a visitor at Harvard Law School (a last-minute replacement for Cass Sunstein who had joined the Obama Administration). Shortly after my final class of the semester, carrying a briefcase full of seminar papers, I boarded a plane to Beijing. My trip, sponsored by the U.S. State Department's Undersecretariat for Public Diplomacy and Public Affairs, took me to six Chinese cities where I delivered 14 lectures in 12 days. In each city, the lectures were organized by U.S. Embassy or Consular staff who accompanied me and provided interpreters. One of the nice features of the trip was the variety of audiences that I encountered.

My first lectures were in Guangzhou, a sprawling south China metropolis of nearly 10 million people, formerly known as Canton. In Guangzhou, I spoke to faculty and students at two law schools and one Environmental Sciences department, practicing attorneys at the Guangzhou Lawyers' Association, and U.S. Foreign Service officers as the luncheon speaker at the U.S. Consulate. In Dalian, a coastal city in northern China just across the Yellow Sea from North Korea, I spoke to Chinese law faculty and students at the Dalian Maritime University Law School, and scientists at the Dalian Academy of Sciences. In Chongqing, a city of 20 million people in south-central China, I spoke to a diverse group of professionals at the Chongqing Academy of Social Sciences and to faculty and students at Southwest University of Political Science and Law.

Perhaps the most important audience I encountered was when I spoke at the Chinese Ministry of Environmental Protection as part of a training session for the heads of local Environmental Protection Bureaus (EPBs). Environmental protection efforts are highly decentralized in China, with local EPBs bearing the greatest responsibility for

environmental enforcement, the topic I addressed before a group of 50 EPB directors from 21 provinces of China. The group was really engaged in the topic and we had a great question-and-answer session that covered a wide range of topics, including civil and criminal enforcement, recovery of natural resource damages, obstacles to regulation, citizen suits, and permit fees. I also met several local environmental officials at a luncheon in Chongqing. They described persistent environmental complaints about the Three Gorges Dam, located 118 miles down the Yangtze River from Chongqing. Farmers are convinced that the dam has caused fundamental changes in local weather patterns, reducing rainfall in the area.

The topic that I addressed most frequently was "The Emergence of Global Environmental Law," a focus of much of my current scholarship. I also gave talks on environmental enforcement, toxic substances regulation, and "The Global Challenge of Responding to Climate Change." While the climate change lecture was the second most popular, in my lectures on every topic I took the opportunity to stress the importance of China agreeing to limit its emissions of greenhouse gases (GHGs). This inevitably provoked spirited discussion during the question-and-answer periods. Even Chinese environmentalists have not been thinking much about climate change, because they are faced with so many other immediate threats to public health from air and water pollution.

Prof. Percival with Prof. Li Ziphing and other environmental faculty and students at Sun Yat-Sen University School of Law in Guangzhou

As part of my climate change lecture, I showed a short clip from Al Gore's movie "An Inconvenient Truth" that simulates what catastrophic sea level rise would do to Beijing and Shanghai. Every time I showed this clip there were audible gasps from the audience, few of whom have seen the film, which Consulate staffers attribute in part to the fact that the title does not translate well into Chinese. At the Dalian Academy of Environmental Science, some faculty in the audience questioned whether climate change is real and, if so, whether it is caused by human activity, but most of the discussion focused on what could be done to respond to the problem. The audience seemed particularly interested in hearing about how the Obama Administration is changing U.S. climate policy and moving to establish a national program to control GHG emissions, something that should greatly enhance the U.S. bargaining position at the U.N. Climate Change Conference (COP-15) in Copenhagen in December.

China does not yet have a well-developed environmental bar, though there are some signs that one is emerging. Approximately a dozen of the 50 lawyers at my lecture before the Guangzhou Lawyers' Association were from the Association's Environment Committee. My argument about the importance of China agreeing to limit its GHG emissions at the Copenhagen conference sparked a vigorous debate concerning whether developed countries were using the climate issue to retard China's growth.

Although the Chinese government tightly controls the media, journalists have considerable freedom to report on environmental issues because the central government is emphasizing the importance of improving environmental protections. In Guangzhou, I was interviewed by journalist Luo Jinyu who writes for *Citizen Magazine*, a highly respected publication that has done some excellent investigative journalism. Her questions were fascinating and wide-ranging—lessons China can learn from the history of U.S. environmental law, trends in environmental law around the world, what role developing countries should agree to play in controlling GHG emissions, and how to reconcile economic development with environmental protection.

The Chinese government is also making efforts to improve education in environmental law, requiring all law schools to offer courses on the subject. This has caused a bit of a shortage of qualified environmental law professors. At the Law School of the South China University of Technology (SCUT) in Guangzhou, Dean Hongyi Ge was particularly proud of the fact that his school has not one, but two, environmental law professors—whom he introduced prior to my lecture there.

In Chongqing, the Chongqing University School of Law held a dinner in my honor where I met university Vice-President Chen Demin, Director of the Institute of Sustainable Development; Wenge Zeng, Vice Dean of the law school; and Dr. Huang Xisheng, Deputy Dean and Director of the Environment and Resources Law Research Center of West China. They discussed their efforts to expand environmental law offerings at Chongqing University. Chinese law schools are now competing to

continued on page 6

A Lecture Tour of China

cont'd from p. 5

attract the top environmental law professors. Southwest University of Political Science and Law in Chongqing lost its top environmental law professor, Professor Cao Mingde, when he was hired to join the faculty of the China University of Political Science and Law (CUPL) in Beijing. Yet Professor Cao and his wife flew back to Chongqing in order to introduce me at my lecture at Southwest.

In Beijing, I participated in an environmental research roundtable at Tsinghua University's Center for U.S.-China Relations. Students from Tsinghua and Peking University discussed various research projects they are conducting and I offered some perspective on developments in global environmental law. The warmest reception I received was from my former students at CUPL in Beijing where I gave a lecture on "How Safe Is 'Safe'?" (I taught Environmental Law at CUPL in spring 2008 as a J. William Fulbright scholar.) After my lecture, the students who were members of CUPL's International Environmental Moot Court team took me out to dinner. I had encouraged them to become China's first students to enter this global competition and they advanced to the international quarterfinals in Florida last March.

Prof. Percival lectures at the China University of Political Science and Law in Beijing

The last stops on my trip were in Shanghai and Suzhou. In Shanghai, I gave an afternoon program at the U.S. Consulate that was attended by faculty and students from three local universities—Shanghai Jiao Tong University, the Shanghai University of Finance and Economics, and Tongji University. The audience was incredibly knowledgeable about U.S. environmental law, discussing the latest controversies over environmental standing in the United States. Some in attendance told me that they use my environmental law casebook (see next page).

In Suzhou, I addressed a group of scientists at the Suzhou Association for Science and Technology. Dr. Chen Yuqun, President of the Shanghai Academic Society of Ecological Economy (SASEE), introduced me. SASEE is a non-government research organization founded in 1989. Dr. Chen is an urban eco-economist who has been studying the impact of urbanization on the environment for a quarter century. My lecture sparked a discussion of how climate change already was affecting China and why its effects will be more harmful than beneficial. After my lecture, Ming Liang, President of the Association for Science and Technology, hosted a luncheon in my honor. In the afternoon I spoke to a wonderful audience of more than 100 students and faculty at the Suzhou University Law School.

These were the most intense two weeks I have spent in China during any of my many trips there. I am enormously grateful to the State Department for giving me the opportunity to take this trip and to the U.S. Foreign Service officers at the Embassy and each of the U.S. Consulates who spent their time assisting me. I am particularly grateful to the fabulous interpreters that the Embassy and Consulates provided for my lectures.

This trip gave me a rare opportunity to interact with faculty, students, environmental professionals, and government officials from all over China. I got a clear sense that the Chinese intelligentsia is starting to understand the importance of controlling its country's GHG emissions, even if the Chinese government continues to reject efforts to get it to agree to such controls at the upcoming Copenhagen conference. In my lectures, I criticized the argument that China should not have to control emissions caused by its production of goods for export as a virtual invitation to levy carbon tariffs on Chinese goods and as a violation of the "polluter pays" principle. Yet I noted that it would represent progress if it implies a willingness to control GHG emissions generated by its production of other goods. Members of some audiences seemed to be under the impression that the United States has invented secret GHG control technology that it is refusing to share with China. I sought to disabuse them of that notion while emphasizing the important market opportunities that the Copenhagen agreement should spawn for new solar and electric car technologies in which China is investing heavily. I also emphasized that China is making the transition from a developing to a developed country and that with this transition will come great global environmental responsibilities. As the Obama Administration seeks to return the United States to its former role as a global environmental leader, further cooperation with China will go a long way toward shaping the future of the planet's environment.

2009 WARD KERSHAW SYMPOSIUM TO FOCUS ON NEW IDEAS FOR REGULATING TOXIC CHEMICALS

The Center for Progressive Reform (CPR) and the Environmental Law Program will host a roundtable to discuss new ideas for regulating toxic chemicals in consumer products, workplaces, and the natural environment. The conference, titled *Regulatory Dysfunction in 3D–TSCA, CPSA, and the OSH Act*, will provide an opportunity for a small group of dedicated policymakers, advocates, and academics to discuss the future of toxics regulation within the framework of the Toxic Substances Control Act, the Consumer Product Safety Act, and the Occupational Safety and Health Act.

The roundtable will feature preeminent environmental law scholars from across the nation, as well as speakers from government agencies such as the Environmental Protection Agency, Consumer Product Safety Commission (CPSC), and the Occupational Safety and Health Administration. Cheryl A. Falvey, General Counsel at the CPSC, and Wendy Wagner of the University of Texas will present and lead discussions about comprehensive toxics reform. In addition, public advocacy experts from major organizations including the Natural Resources Defense Council, Environmental Defense Fund, AFL-CIO, and the IAW are expected to attend.

In the morning session, a panel of federal officials from the relevant agencies will discuss the pros and cons of existing regulatory mechanisms and the prospects for reform in their respective agencies. The remainder of the day will focus on topics of Identifying and Regulating Hazards; The Role of the Courts; Post-Market Surveillance, Monitoring, and Enforcement; and Future Challenges.

The roundtable is scheduled to take place on Thursday, October 8, 2009, from 9 a.m. to 3 p.m. in the Krongard Board Room at the University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, MD. For more information, please contact Catherine Jones at the CPR, (202) 747-0698 ext. 3, or cjones@progressivereform.org.

SIXTH EDITION OF PERCIVAL CASEBOOK PUBLISHED

On August 12, 2009, Aspen Publishers released the sixth edition of Environmental Regulation: Law, Science and Policy, Professor Robert Percival's environmental law casebook, along with its 2009-2010 Statutory and Case Supplement. According to Aspen, the casebook, first published in 1992, remains the most widely used environmental law text in U.S. law schools. Between 1992 and 2000 the casebook was on a four-year revision cycle, with new editions appearing in 1996 and 2000. Because of the rapid pace of developments in the field since 2000, new editions have been released every three years–in 2003, 2006 and 2009.

Research assistants who helped produce new editions of Prof. Percival's casebook and statutory supplement: (left to right) Helena Mastrogianis, Cheryl Cortemeglia, Emily Rohm & Sasha Millard

When Professor Percival began work on the first edition in 1988, he and his three co-authors were all teaching environmental law at different law schools: Chris Schroeder at Duke, Alan Miller at Widener, and Jim Leape at Utah. Schroeder is now on leave from Duke while awaiting Senate confirmation to be Assistant Attorney General for the Justice Department's Office of Legal Policy. Miller, who now is the Global Environmental Facility and Climate Change Coordinator for the International Finance Corporation, co-teaches a seminar on Energy Policy and Climate Change at Maryland as an adjunct professor. Leape is now the Director General of World Wildlife Fund International in Gland, Switzerland.

The latest edition of the casebook features 10 new case excerpts, four new problem exercises, and new material about the legal system's response to climate change in each of its 12 chapters. One major improvement in recent years has been that Aspen has greatly reduced its lead time for publishing revisions. This, along with careful advanced planning, allowed the authors to incorporate fully in the sixth edition an important Clean Water Act decision (*Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*) issued by the U.S. Supreme Court at the end of June 2009, just seven weeks before the casebook's publication.

MARYLAND ENVIRONMENTAL LAW SOCIETY HOSTS SECOND ANNUAL "FOCUS THE NATION" EVENT

By Kristen Weiss 4E

The discussion and oftentimes contentious debate over global warming is not a new one. In fact, the underlying science has been at issue for many years—until recently. With stronger scientific evidence, we now know that the Earth's temperature is rising and that human activities are part of the reason, and there is greater political will to take action to combat this.

States and municipalities have begun to enact legislation and ordinances addressing greenhouse gas (GHG) emissions in the absence of a national climate change program. The Obama Administration and Congress seem more poised than ever to take concrete action. Will the Waxman-Markey bill, introduced in March 2009, contain the right amount of compromise for Congress to pass it and still be an effective tool for combating the country's GHG emissions? This December's Conference of the Parties will meet in Copenhagen to discuss a post-Kyoto agenda. Will this finally be the year that the United States agrees to global collaboration? These are just a few of the topics addressed by the diverse and talented pool of speakers at the second annual Focus the Nation event, a symposium on the topic of "Climate Change and the Law" held at the University of Maryland School of Law on April 2, 2009.

Maryland Secretary of the Environment Shari T. Wilson

After introductory remarks by MELS member Kristen Weiss and moderator Professor Robert Percival, Maryland Secretary of the Environment Shari T. Wilson began with an overview of the Greenhouse Gas Emissions Reduction Act of 2009 (SB 278/HB315) passed by the Maryland General Assembly. Secretary Wilson, who is also the Chair of the Maryland Commission on Climate Change, spoke about the extensive process through which this legislation was developed and what it will ultimately accomplish: a 25 percent reduction in GHG emissions from 2006 levels by 2020. Not only does the new law create mandatory GHG emission reductions in Maryland, it sends a strong message to the federal government and other states across the country that global warming must be addressed immediately. Other state initiatives Secretary Wilson highlighted include the Regional Greenhouse Gas Initiative Cap and Trade Program (involving 10 northeastern and mid-Atlantic states, including Maryland), the 2007 Maryland Clean Cars Act, and the EmPOWER Maryland Energy Efficiency Act of 2008. These measures have already put the state on track to reduce GHG emissions by 12.5 percent.

Adjunct Professor Robert Means, co-instructor of the Energy Policy and Climate Change seminar at the School of Law, then provided a broad overview of the potential for federal action on global warming, and explained what he believes is a realistic timeline in which a national agenda will emerge from Congress. Seemingly, the time is right, right now, to pass a national GHG emission reduction bill. Newly elected President Obama quickly called for a mandatory, economy-wide cap and trade program to reduce GHG emissions. In addition, the President has a number of critical advocates in the House and Senate in favor of climate legislation, and last March the comprehensive Waxman-Markey bill, the American Clean Energy and Security Act, was introduced. Means accurately predicted that the Waxman-Markey bill would nevertheless meet great resistance in Congress and inevitably needs to overcome various hurdles from major industry supporters. He believes that a U.S. program to reduce GHG emissions will not realistically meet success before 2010.

Vernice Miller-Travis, Vice-Chair of the Maryland State Commission on Environmental Justice and Sustainable Communities, spoke passionately about the role of environmental justice in the climate change movement. Ms. Miller-Travis provided the audience with a new discussion framework called "Climate Justice"—the fair treatment of all people and freedom from discrimination through the creation of policies and projects that address climate change and the systems that create climate change and perpetuate discrimination. Truly a human rights and environmental justice issue, climate change places disproportionate burdens on people of color, low-income wage earners, and indigenous communities. Not only are these people the first and most significantly impacted by the negative effects of

climate change, they are the least responsible for the GHG emissions that contribute to the problem.

Ms. Miller-Travis, who recently met with EPA Administrator Lisa P. Jackson to discuss Climate Justice, had a more optimistic outlook than Professor Means on the likelihood of seeing a national GHG emissions reduction plan emerge in the near future. According to Ms. Miller-Travis, the EPA is "happily hard at work" in making various and significant changes to the way the U.S. approaches GHG pollution.

Chief Deputy Director and Staff Attorney at the non-profit Chesapeake Climate Action Network (CCAN), Diana Dascalu-Joffe offered an overview of the new frontier of environmental law in Maryland. She highlighted several recent victories for legislation that CCAN supported in Maryland, Virginia, and Washington, D.C., and in litigation under the Clean Air Act involving several of Maryland's dirtiest coal-burning power plants. Notable legislation includes: the Greenhouse Gas Emissions Reduction Act discussed by Secretary Wilson; a bill promoting Energy Conservation and Efficiency in local government buildings (SB 625); and a great hearing albeit unfavorable vote on the Mountain Top Removal Coal Mining bill (HB 1536). In addition, Ms. Dascalu-Joffe informed the audience of an upcoming, exciting piece of climate change legislation in the form of a cap-and-dividends bill from Rep. Chris Van Hollen, a Congressman from Maryland's 8th District. Lastly, she proclaimed that wind power has become cheaper than coal and that all Pepco and BGE customers can switch over to wind power, remain with their current electric utility provider, and save money while protecting the environment.

Baltimore City Councilman Jim Kraft (1st District) spoke about various environmental initiatives the Council has been discussing. A strong supporter of GHG emission reductions and a member of the Baltimore Office of Sustainability, Councilman Kraft has championed bills to ban plastic grocery bags, preserve green space, reduce litter, require energy efficient buildings, and promote efficient energy usage by consumers. He highlighted several exciting, upcoming initiatives to provide greater public transportation in and around Baltimore, which is an effective way to reduce carbon dioxide emissions from automobiles as well as reducing oil and other pollutant runoff that eventually makes its way into the Chesapeake Bay.

The symposium was serendipitously held on the two-year anniversary of the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which held that GHGs are "air pollutants" within the meaning of the Clean Air Act and that EPA has the authority to regulate GHG emissions from motor vehicles under the Act. To view a recording of the event, go to http://www.law.umaryland.edu/students/life/orgs/mels/focusthenation.html and click on the link for "Focus the Nation 2009."

Professor Steinzor's Capitol Hill Testimony Links Science and Regulation

Jacob A. France Research Professor of Law Rena Steinzor, who has written extensively on efforts to reinvent environmental regulation in the United States, as well as the use and misuse of science in environmental policy making, testified at an April 30, 2009, hearing on "The Role of Science in Regulatory Reform," held by the U.S. House of Representatives Committee on Science and Technology's Subcommittee on Investigations and Oversight. Steinzor offered three main points in her testimony:

- The Obama Administration and Congress should define a new mission for the so-called regulatory czar, Cass Sunstein, whom President Obama has nominated to head the White House Office of Information and Regulatory Affairs. "The regulatory czar's mission should be to rescue struggling regulatory agencies by helping them to obtain more resources and stronger legal authority," Steinzor testified.
- The Office of Information and Regulatory Affairs (OIRA) should stop reviewing individual regulatory proposals. According to Steinzor's testimony, "OIRA has plenty of work to do formulating regulatory policy and should leave the drafting of individual rule regulatory impact analyses and the making of final decisions to agency experts, supervised by Obama political appointees."
- The OIRA must stay out of science policy, because it is "not competent to propose science policy in the regulatory arena," Steinzor asserts.

Steinzor's congressional testimony is available at: http://www.law.umaryland.edu/about/documents/Steinzor_Congressional_Testimony.pdf

ENVIRONMENT GOES "0 FOR 5" IN SUPREME COURT'S 2008-2009 TERM

Environmental Issues Raised at Sotomayor Confirmation Hearings

By Robert V. Percival

During its 2008-2009 Term, the U.S. Supreme Court heard five environmental cases involving issues arising under the National Environmental Policy Act, the National Forest Management Act, the Clean Water Act, and the Superfund legislation. In each of these cases the environment lost. The winners were the U.S. military, the timber industry, electric utilities, the mining industry, and chemical companies and railroads. The respective losers were marine mammals, the national forests, fish living in proximity to power plants and mines, and taxpayers stuck paying for the cleanup of contaminated land.

When a baseball player goes 0-for-5 he has had a bad day and usually it is quickly forgotten. Few recall Lou Piniella going 0-for-5 in his final game as a Yankee (though he did get the game-winning RBI by hustling to avoid being doubled-up at first base on a ground ball), or Melvin Mora going 0-for-5 in his first game after becoming the father of quintuplets. But 0-for-5 for the environment in the Supreme Court is not so easily dismissed.

For one thing, five Justices voted against the environment in all five cases. It is not hard to guess who–Chief Justice Roberts and Justices Scalia, Thomas, Alito, and Kennedy. Of that group, only Justice Kennedy has seemed persuadable in environmental cases in recent years; he provided the crucial fifth vote for the environment in *Massachusetts v. EPA*, the important climate change case decided in 2007. This year's results confirm that if you have an environmental case and Justice Kennedy is not with you, you lose.

There is more to it than that, however. Not all of the decisions were 5-4. In fact, Justice Ginsburg was the only Justice to dissent in all of the cases. Justice Souter, who just retired from the Court, dissented in every case except for *Burlington Northern and Santa Fe Ry. Co. v. U.S.*, No. 07-1601 (May 4, 2009), where the Court, by a vote of 8-1, altered Superfund jurisprudence to reduce the share of cleanup costs paid by companies. Justice Stevens wrote the majority opinion in that case. Stevens, a decorated World War II Naval officer, also partially concurred in *Winter v. NRDC*, No. 07-1239 (Nov. 12, 2008), a decision that dissolved a preliminary injunction against the Navy's testing of sonar that could harm marine mammals.

Justice Breyer wrote a strong dissent against the Court's rejection of an environmental group's standing to challenge forest management regulations in *Summers v. Earth Island Institute*, No. 07-463 (Mar. 3, 2009). But he joined the majority in both the *Burlington Northern* Superfund case and the decision in *Coeur Alaska v. Southeast Alaska Conservation Council*, No. 07-984 (June 22, 2009), which allowed a mining company to avoid a prohibition on tailings discharges by characterizing them as "fill"—because they will fill a lake and kill all the fish. In two of the other cases Breyer partially concurred, advocating remands to reformulate the injunction restricting sonar testing in *Winter* and to give EPA a chance to explain its shifting views on cost-benefit analysis when setting effluent limits for cooling intake structures in *Entergy Corp. v. Riverkeeper, Inc.*, No. 07-588 (Apr. 1, 2009).

The Court's environmental decisions show a strong pro-business tilt among five of the Justices, who are concerned that environmental regulations may be unreasonably stringent. They are joined at times by Justice Breyer who also harbors concerns about overregulation, while expressing sympathy for the goals of the environmental laws. The Court continues to have particular antipathy toward the Ninth Circuit; four of the five cases were reversals of Ninth Circuit decisions. The fifth case (*Entergy*) reversed a decision by the Second Circuit that was authored by then-Judge Sonia Sotomayor, Justice Souter's successor on the Court.

Some have argued that the consistent thread running through the Court's environmental decisions is deference to the government. However, the government was the loser in the *Burlington Northern* Superfund case and the government unsuccessfully opposed Supreme Court review in both the *Entergy* and *Coeur Alaska* cases, in which the Court ultimately ruled in favor of regulatory changes made by the Bush Administration. Thus, the Court is being aggressive in setting its own agenda for what environmental cases it will review. So far the Court has agreed to review only one environmental case in the 2009-2010 Term, a decision by the Florida Supreme Court upholding a beachfront replenishment law against a regulatory takings claim by landowners (*Stop the Beach Renourishment, Inc. v. Florida Dept. of Envtl. Conservation*, No. 08-1151, *cert. granted* June 15, 2009). Few anticipated that the Court would agree to hear this case. Its decision to do so may signal renewed interest in reviving regulatory takings doctrine.

Sotomayor Confirmation Hearings

Justice Souter's retirement is unlikely to change the prospects for environmental interests in the Supreme Court. As noted above, his successor, Justice Sonia Sotomayor, authored the lower court decision that the Court reversed in the *Entergy* case. During her confirmation hearings, several Senators raised issues of environmental law, as they had during the 2005 confirmation hearings for Chief Justice John Roberts and Justice Samuel Alito. But Sotomayor was careful not to tip her hand concerning the substance of her views on these issues.

Democratic Senator Dianne Feinstein tried to get then-Judge Sotomayor to react to the Court's efforts since 1995 to restrict the scope of federal power under the Commerce Clause. Sotomayor responded only by describing her familiarity with the existing state of the law. She identified the factors the Court considers in applying its Commerce Clause doctrine and noted that these may have been broadened somewhat by the Court's decision in *Gonzales v. Raich* upholding the power of the federal government to prohibit the growing of marijuana. Sen. Feinstein responded by emphasizing the importance of Congress being able to use its commerce power to adopt environmental legislation such as the Endangered Species Act, the Clean Air Act, the Clean Water Act (CWA), and a new cap-and-trade program. While Sotomayor said that pending litigation raising challenges to these statutes made it impossible for her to comment directly, she added that the Court "has never disavowed the importance of deference to legislative findings with respect to legislation that it's passing within its powers under the Constitution."

> ***"This year's results confirm that if you have an environmental case and Justice Kennedy is not with you, you lose."***

Republican Senator Charles Grassley asked the most direct questions about environmental cases. He pressed Sotomayor to explain why no decision has been issued in the *Connecticut v. EPA* climate change nuisance case that was argued in June 2006 before a panel of judges that included her. In that case, several states are seeking to require utilities with coal-fired power plants to reduce their emissions of greenhouse gases (GHGs). While noting that she could not comment on cases pending before her, Sotomayor did say that some of the delay was due to the Second Circuit panel waiting for the Supreme Court to decide *Massachusetts v. EPA*, a suit challenging EPA's failure to regulate GHG emissions. Yet *Massachusetts v. EPA* was decided in April 2007, and over two years have elapsed since the appellate parties filed supplemental briefs addressing the impact of that decision. Now that Sotomayor has been confirmed, it is likely that the case will have to be re-argued, causing even further delay.

At the Sotomayor confirmation hearings Democratic Senator Ben Cardin of Maryland criticized the Supreme Court's *SWANCC* and *Rapanos* decisions narrowly interpreting the scope of federal authority under the CWA. He noted that more than 500 prosecutions of alleged polluters had to be dropped as a result of the decisions, and that Congress may have to amend the Act to reverse them. Sotomayor responded by saying that she and the Court recognize that deference is owed to the Congress in setting policy and making law.

Sen. Grassley pressed Sotomayor on the importance of property rights. He criticized the Supreme Court's *Kelo* decision holding that eminent domain can constitutionally be used to take private property for economic development projects run by private parties. The judge responded, "I share your view of the importance of property rights under the Constitution," and restated the holding in *Kelo*. When further pressed by the senator, she said that she was unable to comment in more detail. Sotomayor then observed, however, that "the question of what constitutes an actual taking is a very complex one, because there's a difference between taking a home, and regulation that may or may not constitute a taking."

Grassley also noted that the Supreme Court reversed Sotomayor's decision in the *Entergy* case earlier this year. In that case Judge Sotomayor had ruled that a provision of the CWA did not allow EPA to use cost-benefit analysis in setting technology-based effluent limits on cooling water intake structures at power plants. Sotomayor responded that she had applied general principles of statutory construction in interpreting the statute.

The confirmation hearings shed virtually no light on Justice Sotomayor's views concerning issues of environmental law—or other areas of law for that matter. This has been the pattern with Supreme Court nominee confirmation hearings since Robert Bork's. With Justice Souter's retirement it is fair to say that Justice Ginsburg now becomes the most reliable champion of the environment on the Court, while Justice Kennedy remains the decisive "swing" vote in most cases.

Fellow Tina Meyers Begins Second Year with Environmental Law Clinic

Clinical Law Fellow Tina Meyers has officially begun her second year of work with the Environmental Law Clinic at Maryland. Working under the seasoned guidance of Clinic Director and Law School Associate Professor Jane F. Barrett, Tina continues her duties supervising students and handling her own case work, which includes drafting pleadings, participating in administrative hearings and court proceedings, and interacting directly with clients. In light of the Clinic's extensive case load for the 2008-09 academic year, Tina's presence proved invaluable to the many successes the Clinic secured on behalf of its clients. Her diligence and dedication, as well as the long hours she often put in, contributed especially to last spring's legislative work product and the favorable Construction Stormwater General Permit settlement agreement the Clinic negotiated with the Maryland Department of the Environment (see stories on page 1 and page 3, respectively).

Tina Meyers at the swearing-in ceremony of the Maryland State Bar, June 2009

Tina graduated *magna cum laude* from the University at Buffalo Law School in 2008. Prior to law school, she worked in an AmeriCorps environmental program and as a paralegal in Chicago. Tina has been admitted to both the New York and Maryland bars.

Professor Barrett looks forward to Tina's growth in the Clinic and foresees Tina becoming an even greater asset to the students, clients, and the Environmental Law Program in general.

The Environmental Law Clinic, the Environmental Law Program, and the University of Maryland School of Law extend special thanks to The Keith Campbell Foundation for renewing its generous funding of this fellow position for 2009-10, especially in these difficult economic times.

A Summer at EPA's Water Enforcement Division

By Chris Montague-Breakwell '10
Recipient of the Laura Mrozek Public Interest Grant

Receiving a grant from Environmental Law Program alumni who gave in honor of Laura Mrozek's 2008 retirement allowed me to have a truly amazing summer. I worked at the U.S. Environmental Protection Agency's (EPA's) Water Enforcement Division in the Washington, D.C., headquarters. The Water Enforcement Division is responsible for civil enforcement, protecting the environment and human health by enforcing federal laws with respect to water. Civil enforcement includes EPA administrative actions and judicial cases referred to the U.S. Department of Justice (DOJ).

My work was split among lawsuits brought against alleged polluters, enforcement policy suggestions for other EPA branches, and analysis of the enforcement consequences of agency rulemaking. A typical day at work could include meeting with DOJ personnel to negotiate with a defendant, conference calls with EPA regional offices to discuss changes to EPA's Clean Water Act (CWA) guidelines–necessitated by the Supreme Court's decision in *Rapanos v. United States*, 547 U.S. 715 (2006)–or analyzing proposed rules for coal ash disposal. The attorneys I worked with are all ardent environmentalists, dedicated to protecting our nation's natural resources. Because the Division attorneys have more than enough work on their plates, the law clerks get real, substantive work to help ease the load.

My experience at EPA has shown me how clean water is an under-appreciated resource. In this country, we take for granted safe drinking water and clean sewer systems, yet the infrastructure bringing our water and taking our waste is under-funded. Much of the Water Enforcement Division's time is spent threatening lawsuits against municipalities to stop their discharges of raw sewage into our rivers and seas. Often the municipalities are not to blame—they simply cannot raise funds to pay to fix or upgrade their water treatment facilities. Unfortunately, work at this EPA division may only get tougher: water resource problems are

intensifying across all regions of this country. While demands for water resources increase to support population and economic growth, the supply is dwindling. EPA estimates that 36 states will experience significant water shortages by 2013. Population growth, urbanization, and climate change have all impacted available supplies of water.

While the CWA's goal of "fishable, swimmable waters" will continue to be difficult to achieve, I enjoyed the challenge from the little corner of my summer position. Working at EPA was great. I can't recommend it enough for other students pursuing an environmental concentration at Maryland. Thanks to the generous support of Environmental Law Program alumni through the Laura Mrozek Public Interest Grant, I was able to spend the summer gaining invaluable experience for my future career as an environmental lawyer. Please accept my sincere gratitude for what you have given me.

Summer law clerk Chris Montague-Breakwell, left, and supervising attorney Ben Bahk of the Water Enforcement Division at EPA

The Laura Mrozek Public Interest Grant effort was spearheaded by alumni Wade Wilson '01 and Joanna Goger '00.

ALUMNI PROFILES

MUD SEASON AND "COW POWER:" A FELLOWSHIP AT VERMONT'S INSTITUTE FOR ENERGY AND ENVIRONMENT

By Zhen Zhang '04

In Vermont, there are five seasons: spring, summer, fall, winter, and mud season. As I walk through the vibrant green wooded trails in summer, I wonder if mud season will ever end. Then I remember that mud season is basically year round, except when there is snow. Small streams course down the hills as I try to step on the most stable mud islands. I realize that I don't care if living in Vermont involves either mud or snow, because it is in this setting my mind hums with interesting discussions on carbon cap-and-trade, smart meters, reliability standards for the bulk power system, and renewable energy sources such as "cow power."

I am a fellow at Vermont Law School's Institute for Energy and Environment (IEE). I sought this fellowship because of my interest in energy law and my desire to develop a practice specialty in this growing field. Also, I will have the opportunity to publish. As one of the two fellows at the IEE, I am responsible for research, publications, and presentations that advance its mission of establishing and promoting sound policy for energy efficiency and reliability, as well as seeking solutions to U.S. dependency on coal and oil. We fellows also manage a team of eight research assistants who are either J.D. or Master's students. Required to earn an LL.M. in environmental law while a fellow at the Institute, I am also planning to obtain the optional certificate in energy law.

Vermont Law School established the IEE in 2005. The Institute's projects are numerous and varied. The projects that I have been involved include grant writing and coordination, and contributing to an ethanol policy report. In addition, I am researching the enforcement mechanisms used by the North American Electric Reliability Corporation, to which the Federal Energy Regulatory Commission gave the responsibility of creating and enforcing electric grid reliability standards after the 2003 blackout in the Midwest, New England, and Ontario.

I started classes in May 2009. Since then, I have not only enjoyed basic courses on how the electric grid works, but I have also learned about federal and state regulatory systems governing the electricity system and current policy developments in the renewable energy field. Most commonly known renewable energy types include wind,

continued on page 14

Energy Fellowship

cont'd from p. 13

solar, and geothermal, but the state of Vermont has also popularized "cow power." Although cow power doesn't sound glamorous—and it isn't, because it involves burning cow manure to generate electricity—it shows Vermont's creative efforts to increase the generation of electricity close to home, so that the state can be more independent if there is a blackout. Cow power also turns material that otherwise would go to waste into a valuable product. (For detailed information, visit the very catchy website at http://www.cvps.com/cowpower/).

Zhen Zhang

Taking classes and simultaneously working in the field is engaging and satisfying. I look forward to another couple of mud seasons and exploring new ideas on energy efficiency and learning about effective regulatory systems.

(Note: Zhen learned about this fellowship opportunity from a posting on the Environmental Law Program alumni listserv.)

MARYLAND ALUM WINS MAJOR CLEAN WATER ACT CRIMINAL PROSECUTION

Russ Bowman '05 as interviewed by Emily Rohm 2L

U.S. Coast Guard Academy graduate Lt. Cmdr. Russ Bowman '05 has been involved in a number of federal and state prosecutions during his tour of duty in Boston, Massachusetts, where he served in the First Coast Guard District Legal Office. These included courts martial and U.S. Department of Justice (DOJ) investigations. One of the most memorable experiences was the successful outcome of a Clean Water Act (CWA) investigation and prosecution in the *U.S. v. ExxonMobil Pipeline Co.* case.

In January 2006, an estimated 15,000 gallons of low sulfur diesel fuel (LSD) spilled into the Mystic River near Everett, Massachusetts, contaminating the Mystic and Island End Rivers and Boston Harbor. The spill was eventually traced back to two defective valves in ExxonMobil's Everett marine distribution terminal, where the oil tanker *M/V Nara* had docked to unload approximately 3.1 million gallons of LSD on January 9. Russ was appointed Special Assistant United States Attorney to investigate the accident, working with a team that included members from DOJ and the U.S. Environmental Protection Agency (EPA).

Drawing on his environmental—as well as international, constitutional, administrative, and criminal—coursework at the School of Law, Russ became intimately involved in the resolution of several contentious aspects of the case over the ensuing two and a half years. In the weeks immediately following the discovery of the oily, blue-green film covering several hundred square yards of water, the source of the leak was unknown and ownership of the oil was hotly contested. Russ served as the primary interface between the trial team and the Coast Guard wit-

Russ Bowman

nesses, including a chemist at the Marine Safety Laboratory that matched the spilled oil with fuel from a pipeline at ExxonMobil's Everett facility using a unique method of chemical "fingerprinting." Russ also served as the chief liaison between the prosecution and the Coast Guard witnesses who investigated and supervised cleanup of the spill itself, thereby marshaling the majority of the government's evidence against ExxonMobil.

The scenic Mystic River

The investigation also revealed that the cause of the spill was a defective valve in Berth 3 of ExxonMobil's Everett facility that did not close completely as a result of wear and tear, a situation that ExxonMobil was aware of. As a result of the leak, the coupling covering a valve in Berth 1—which had not been replaced in over 30 years and was badly corroded—burst and the oil flowed out of a containment pan and into the river. ExxonMobil employees failed both to monitor the pressure in the facility's pipes and to conduct required walk-through inspections during the transfer operations, either of which may have led to an earlier discovery of the spill, which lasted for approximately 12 hours.

Aerial view of Everett oil spill

As a result of the comprehensive investigation headed by Russ and attorneys from the DOJ and EPA, ExxonMobil pled guilty to a criminal violation of the CWA that resulted in a discharge of over 15,000 gallons of LSD and kerosene into the waters surrounding Everett. On April 30, 2009, U.S. District Judge Saris sentenced ExxonMobil to pay over $6.1 million, about $5.6 million of which is marked for donation to the North American Wetlands Conservation Act Fund and the Massachusetts Environmental Trust to fund wetlands restoration and water quality improvement projects in coastal Massachusetts. ExxonMobil must also reimburse the Oil Spill Liability Trust Fund for the cost of the Coast Guard's cleanup efforts. Russ was extensively involved in negotiating and structuring the plea agreement, which also includes a three-year probation period, and in drafting and negotiating a rigorous environmental compliance plan, which ExxonMobil is to follow as a special condition of its probation.

In addition to his successful involvement in the ExxonMobil Pipeline case, Russ assisted the DOJ with the first case to go to trial involving violations of the Act to Prevent Pollution from Ships (APPS). The APPS implements the 1973 International Convention for the Prevention of Pollution from Ships as modified by the Protocol of 1978—commonly known as MARPOL 73/78—a treaty signed by over 135 countries that limits the oil content of discharges from ships. In that case, Petraia Maritime Ltd. was found guilty of oily discharges from the *M/V Kent Navigator* without the proper pollution control equipment, and of falsifying records to conceal its illegal activity. Petraia was sentenced to pay $525,000 and to two years probation. Russ assisted the DOJ in readying the case for trial, including preparing Coast Guard investigators, Coast Guard investigative service special agents, and three expert witnesses to testify.

Russ says that his work on these and other environmental crimes prosecutions has been the highlight of his tour of duty in Boston. In July 2009, Russ joined the law faculty at the U.S. Coast Guard Academy, where he will teach criminal and maritime law. He hopes to create an Environmental Law Survey elective like the one he helped develop for the Massachusetts Maritime Academy.

Notes Russ, "I feel strongly that [Maryland's] environmental law program gave me the tools I needed to make a difference. I am grateful for the education and experiences I gained there."

ENVIRONMENTAL LAW IN CENTRAL AND EASTERN EUROPE: STEVE STEC '86

Several Maryland Law alumni are pursuing careers in the field of global environmental law, including some who graduated before Maryland's Environmental Law Program was established in 1987. One of these alums is Steve Stec, who graduated from Maryland in 1986. Steve is currently the Director of the Environmental Security Program at the Center for Environment and Security (CENSE) at the Central European University (CEU) in Budapest, Hungary. Prior to joining CENSE, he served for 11 years as the director of the Regional Environmental Center for Central and Eastern Europe.

Global environmental lawyer Steve Stec '86

An experienced instructor of environmental law and policy, Steve currently teaches as an adjunct in the Environmental Sciences and Policy Department of CEU. He also lectures extensively at other institutions, including regularly in a program at Venice International University that trains Chinese environmental officials, and serves as an Associate Scholar at Leiden University in the Netherlands.

Steve has written widely about environmental topics, including the importance of promoting public access to information to empower civil society and the relationship between environmental protection and global security. He is one of the authors of The Aarhus Convention Implementation Guide. Steve is the main editor for the Access to Justice Handbook under the Aarhus Convention and the principal editor of Energy and Environmental Challenges to Security, published earlier this year by Springer Publishing (a sampling of Steve's additional publications is included at the end of this feature).

Steve recently presented papers at conferences at the University of Amsterdam, University of Bologna, and Pazmany Peter University in Budapest. In February 2009, he traveled back to the United States to deliver a keynote speech at the 27th Annual Public Interest Environmental Law Conference at the University of Oregon. During the fall 2009 semester, Steve will serve as a visiting scholar and lecturer at Middlebury College and the affiliated Monterey Institute of International Studies in California.

An avid baseball fan, Steve lives with his wife and two children in Szentendre, Hungary, which he reports has the best baseball team in the country, and one of the best in all of Central Europe.

Recently published and forthcoming articles by Steve Stec:

- "Environmental Justice through Courts in Countries in Economic Transition," in Jonas Ebbesson and Phoebe Okowa, eds., Environmental Law and Justice in Context (Cambridge University Press: 2009).
- "Civil Society Turning 21 – Development of Environmental Civil Society Groups in the West Balkans," *Iustum Aequum Salutare* V. 2009/1, 67-84.
- "EU Enlargement, Neighbourhood Policy and Environmental Democracy," in Marc Pallemaerts, ed., The Aarhus Convention at Ten: Interactions and Tensions Between Conventional International Law and EU Environmental Law (Europa Law Publishing: 2009).
- "A River Ran Through It: Peace-Building on the Sava River in Post-Conflict Former Yugoslavia," in Carl Bruch, ed., Strengthening Post-Conflict Peace-Building Through Natural Resource Management, Vol. 6: Governance and Institutions (2010).

ALUMNI & STUDENT UPDATE

Phillip Hummel '08 published "Next Stop - A Cleaner and Healthier Environment: Global Strategies to Promote Public Transit" in 35 *Transportation Law Journal* 263 (2008). The article is a version of a paper he wrote in 2007 for Professor Percival's Comparative Environmental Law Seminar.

As part of an externship with the National Association of Environmental Law Students (NAELS), **Patience Burke '09** drafted The NAELS H2O Legal Response Guide, Volume 1: Jurisdiction Post-*Rapanos*, CAFO Storm Water, and Urban Storm Water and CSOs (available at http://www.vermontlaw.edu/students/Documents/students/ELS/H2OGuideTable_I.pdf). The litigation-focused Guide provides basic instruction on the federal Clean Water Act, which is implicated in the Waterkeeper Blueprint for Clean Water (see http://switchstudio.com/waterkeeper/issues/blueprint.html), and suggests fresh options for plaintiffs such as law clinics, citizens, and nonprofits to bring legal actions.

Patience Burke

Leila Ashkeboussi '11 and **Katie O'Malley '11** were jointly awarded an Albert Schweitzer Fellowship for an Environmental Justice and Civic Leadership Program designed to foster health and environmental stewardship ethics among under-served youth in George Washington Elementary and Diggs Johnson Middle Schools in Baltimore City. The project, which Leila and Katie will oversee during the 2009-10 academic year, involves teaching local students about environmental health issues, and aims to improve students' self-efficacy by allowing them to contribute directly to their community, to support the greening of Baltimore through tree planting and gardening, and to provide structured after-school activities. In partnership with the UMB Outreach Council (http://www.umaryland.edu/outreach/index.html), Katie and Leila have also begun providing career guidance to the students and are endeavoring to reinforce the schools' science and math curricula. For more information about the Baltimore Schweitzer Fellowship, visit http://www.schweitzerfellowship.org/features/us/bal/.

Schweitzer Fellowship recipients Katie O'Malley (left) and Leila Ashkeboussi

18th Annual Environmental Law Wine Tasting

Enjoy fine wines and light refreshments with your fellow alumni, faculty, and friends of the Environmental Law Program.

Friday, November 13, 2009, 6:30 p.m.

School of Law & Westminster Hall
519 West Fayette Street
Baltimore, MD

R.S.V.P. to Office of Institutional Advancement
410-706-2070
alumni@law.umaryland.edu

FACULTY ACTIVITIES

ROBERT V. PERCIVAL

PUBLICATIONS

Environmental Regulation: Law, Science & Policy (6th ed. Aspen Publishing 2009) (with Schroeder, Miller & Leape).

Environmental Law: Statutory And Case Supplement With Internet Guide, 2009-2010 (Aspen Publishing 2009) (with Schroeder).

"The Emergence of Global Environmental Law," 36 *Ecology Law Quarterly* 101 (2009) (with Tseming Yang).

"The Globalization of Environmental Law," 26 *Pace Environmental Law Review* 451 (2009).

"Climate Change and the Emergence of Global Environmental Law," Conference Work Paper, World Jurist Association, Twenty-Third Biennial Congress on the Law of the World (2009).

"Environmental Law Cases in the U.S. Supreme Court," in ALI-ABA Environmental Law Course of Study Materials 477 (2009).

"Georgia v. Tennessee Copper Company," in Encyclopedia of the Supreme Court of the United States (D. Tanenhaus, ed. 2008).

"Environmental Law in China," in *The ABA Environment, Energy and Resources Law Summit: 16th Section Fall Meeting Materials* (2008).

PRESENTATIONS

"Competing Judicial Philosophies: Why Don't All Judges Decide the Same Case the Same Way?" Supreme Court Seminar for Baltimore Teachers, Street Law, Inc. and the U.S. Supreme Court Historical Society, Baltimore, Maryland, Jul. 9, 2009.

"The Global Challenge of Responding to Climate Change," Suzhou Association for Science and Technology, Suzhou, China, May 15, 2009.

"The Global Challenge of Responding to Climate Change," Suzhou University Law School, Suzhou, China, May 15, 2009.

"Environmental Enforcement in the United States," U.S. Consulate, Shanghai, China, May 14, 2009.

"The Globalization of Environmental Law," Chongqing Academy of Social Science, Chongqing, China, May 13, 2009.

"The Globalization of Environmental Law," Southwest University of Political Science and Law, Chongqing, China, May 13, 2009.

"How Safe Is 'Safe'?" Graduate School, China University of Political Science and Law, Beijing, China, May 11, 2009.

"Enforcing Environmental Law Through Cooperative Federalism," Center for Environmental Education, Chinese Ministry of Environmental Protection, Beijing, China, May 9, 2009.

"The Global Challenge of Responding to Climate Change," Dalian Academy of Environmental Science, Dalian, China, May 7, 2009.

"The Emergence of Global Environmental Law," Dalian Maritime University Law School, Dalian, China, May 6, 2009.

"The Global Challenge of Responding to Climate Change," School of Environmental Sciences, Jinan University, Guangzhou, China, May 5, 2009.

"The Role of the U.S. and China in Confronting Global Environmental Challenges," U.S. Consulate, Guangzhou, China, May 5, 2009.

"The Emergence of Global Environmental Law," South China University of Technology Law School, Guangzhou, China, May 5, 2009.

"The Emergence of Global Environmental Law," Sun Yat-sen University Law School, Guangzhou, China, May 4, 2009.

"The Emergence of Global Environmental Law," Guangzhou Lawyers' Association, Guangzhou, China, May 4, 2009.

"Global Environmental Law on the 40th Earth Day," Harvard Environmental Law Society, Harvard Law School, Cambridge, Massachusetts, Apr. 22, 2009.

"The Globalization of Environmental Law," Fifteenth Annual Lloyd K. Garrison Lecture, Pace University School of Law, White Plains, New York, Apr. 1, 2009.

"The International Impact of Climate Change," World Jurist Association, Twenty-Third Biennial Congress on the Law of the World, Rus Hotel, Kiev, Ukraine, Mar. 24, 2009.

"Exporting Responsibility for Climate Change: China'' Pre-Copenhagen Gambit," Conference Chinese Development and Environmental Challenges, American University Washington College of Law, Washington, D.C., Mar. 26, 2009.

"Supreme Court Roundup," ALI-ABA Conference on Environmental Law, Bethesda, Maryland, Feb. 6, 2009.

"Legal Protection of Drinking Water," Beijing Water Management Delegation Training Course, Institute for

Global Chinese Affairs, College Park, Maryland, Jan. 12, 2009.

"Global Environmental Law and Poverty Alleviation," Sixth Annual Colloquium of the IUCN Academy of Environmental Law, Fiesta Americana Hotel, Mexico City, Mexico, Nov. 10, 2008.

"Who's In Charge: Interpreting Agency Regulatory Authority in the Era of Presidential Management," Symposium on Agency Statutory Interpretation, Michigan State University College of Law, East Lansing, Michigan, Nov. 7, 2008.

"Presidential Transitions and the Environment: Lessons from History," Conference on "The Future Environmental Agenda: Environmental Law and Policy Issues Facing the Next President," Duke Environmental Law and Policy Forum 2008 Symposium, Duke University School of Law, Durham, North Carolina, Oct. 24, 2008.

"How Safe Is 'Safe'? A History of Risk Regulation," Seminar on Epidemiology and Preventive Medicine, University of Maryland School of Medicine, Oct. 23, 2008.

"The War of the Worldviews: Precaution v. Reaction on the U.S. Supreme Court," Vermont Law School, South Royalton, Vermont, Sept. 26, 2008.

"China and the Environment – A Conversation with Experts on Environmental Protection, Development of Natural Resources, Energy Use, and Health and Safety," ABA Environment, Energy and Resources Law Summit: 16th Section Fall Meeting, Arizona Biltmore Resort & Spa, Phoenix, Arizona, Sept. 19, 2008.

RENA STEINZOR

PUBLICATIONS

THE PEOPLE'S AGENTS: REVIVING GOVERNMENT PROTECTION FOR PUBLIC, HEALTH, SAFETY, AND THE ENVIRONMENT (forthcoming from Univ. of Chicago Press 2010) (with Sidney Shapiro).

"The Constitution and Our Debt to the Future," chapter in BEYOND ENVIRONMENTAL LAW: POLICY PROPOSALS FOR A BETTER ENVIRONMENTAL FUTURE, edited by Alyson Flournoy and David Driesen (forthcoming from Cambridge Univ. Press 2010).

PRESENTATIONS

Participant, "Research Roundtable on Environmental, Health, and Safety Risks of Emerging Technologies," Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, Illinois, Apr. 23-24, 2009.

Testimony, "The Role of Science in Regulatory Reform," Hearing before the U.S. House of Representatives Science and Technology Committee Subcommittee on Oversight and Investigations, Washington, D.C., Apr. 30, 2009.

Keynote Address, "The Rebirth of Environmentalism," Public Interest Environmental Law Conference, University of Florida, Gainesville, Florida, Feb. 27, 2009.

Panelist, "Government Performance and Results Act, Regulatory Metrics, and Government Accountability," 2008 ABA Administrative Law Conference, Washington, D.C., Oct. 17, 2008.

JANE F. BARRETT

PUBLICATIONS

"Environmental Criminal Enforcement," Chapter 2 in ENVIRONMENTAL LITIGATION: LAW AND STRATEGY, Cary R. Perlman, Editor (ABA Section of Environment, Energy, and Resources 2009) (with Warren Hamel & Steven P. Solow).

PRESENTATIONS

Keynote Address, Annual Women's Symposium, Blank-Rome, LLP, Washington, D.C., Jul. 22, 2009.

Panelist, "Trial" and "Settlement" subject areas, Basic Practice Series, 17th Section Fall Meeting: ABA Section of Environment, Energy, and Resources Law Summit, Baltimore, Maryland, Sept. 26, 2009.

The Environmental Law Program awarded Certificates of Concentration to 13 students of the Class of 2009. Faculty, staff, and students and their families gathered for a celebratory reception on May 14 at the School of Law. Front row (left to right): Karla Schaffer, Robin Jacobs, Julie Grufferman, Deborah Scop, Suzann Langrall, Jackie McNamara. Back row (left to right): Dave Mandell, Tina Meyers, Prof. Jane Barrett, Prof. Rena Steinzor, Robert Maddox, Patience Burke, Jennifer Dickman. Not Pictured: Natalie Baughman, Lavanya Carrithers, Andrew Gohn, Nathan Hopkins, Shruti Kashyap, Elaine Lutz, and Teva Weissman.

The Environmental Law Program
University of Maryland School of Law
500 West Baltimore Street
Baltimore, MD 21201
www.law.umaryland.edu/environment

Non-Profit Org.
U.S. Postage
PAID
Baltimore, MD
Permit No. 2439

Comments and letters should be forwarded to the above address.

AN OPPORTUNITY TO DISCOVER CHINA: MARCH 12-20, 2010

In 2008 a group of 48 students, professors, alumni, and friends visited China during Spring Break when Professor Percival was teaching as a Fulbright scholar in Beijing during his sabbatical from Maryland. The trip was such a wonderful experience for those involved that the Environmental Law Program has decided to repeat it. We would like to invite you to join us on another Spring Break trip to China from March 12-20, 2010.

This could be you: Group from 2008 trip enjoys time at Great Wall

This trip will take us to some of the top tourist sites in China, including the Great Wall, the Forbidden City, the Temple of Heaven, the terra cotta warriors of Xi'an, and the Bund in Shanghai. It will also include meetings with professionals and NGOs who are working to combat China's immense environmental problems.

For a tentative itinerary, please visit www.eftours.com, using tour number 722628. Upon visiting the website, you may also enroll and make your first payment of $95.

The cost of the trip is an incredible deal because it includes roundtrip airfare, all transportation within China, all hotels, and most meals. Also, we expect to get a rebate of approximately $100 per person upon returning from China. During these troubling economic times, it may be comforting to read about the job-loss money-back guarantee policy that our travel agency, Education First, provides. You can view it at http://student-travel.eftours.com/landing/pages/guarantee.aspx.

***We hope you will consider joining us*!**