

## Exploring Multi-Disciplinary Approaches For Protecting the Global Environment



*Using videoconferencing, this year's Comparative Environmental Law and Politics course brings together 26 law students, 17 honors students from the University of Maryland's Department of Government and Politics and professors Robert Percival, Miranda Schreurs and visiting Chinese scholar Hu Jing.*

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# FILM FESTIVAL HONORS ENVIRONMENTAL FILMMAKERS

## Student Movies Featured at “Law and Film” Conference



### *Golden Tree Awards*

On March 1 the Maryland Environmental Law Program hosted its annual Environmental Law Film Festival to honor student filmmakers in Professor Percival’s Environmental Law class. For the past four years students in this class have formed small groups to make short documentary films about environmental issues they select. This year the student filmmakers had an added incentive: their best films were showcased to a broader audience at a conference on March 31 on “The Impact of Film on Law, Lawyers, and the Legal System.”

Each year the films illustrate the remarkable creativity of Maryland’s environmental law students, both in their selection of topics and their approaches to filmmaking. Seven films were made by students this year, including “The Disappearance of the Eastern Oyster,” “Ethanol: Fueling Maryland,” “The Hunt for High Quality H2O,” “Terrapin Man Saves the Bay,” “Animals in Captivity,” “The Tragedy of the Commons,” and “Snakeheads.”



*Golden Tree for "Best Picture" presented by Acting Dean Richard Boldt to Evan Isaacson, Alva Wright and Khushi Desai*

After the films are shown in Professor Percival’s Environmental Law class, they are submitted to an independent panel of judges who vote for “Golden Tree” awards in eight categories. The awards were presented to students at the Film Festival on March 1.

This year’s Golden Tree award for Best Picture was presented by Associate Dean Richard Boldt to student filmmakers Khushi Desai, Chad Harris, Evan Isaacson, and Alva Wright for their film “The Disappearance of the Eastern Oyster.” The film explores the factors that have contributed to the oyster’s precipitous decline and what is being done to rescue it. The film also won Golden Tree awards for Best Narration and Most Educational Film, and it was nominated for awards for Best Achievement in Sound, Best Use of Humor, and Best Interviews.

“The Hunt for High Quality H2O” won the Golden Tree award for Best Use of Humor. In this film students Mark DeVry, Karla Schaffer, James Goodwin, David Mandell, and Michael Craven trace the sources of Baltimore’s drinking water. Their visit with a video camera to a city reservoir raised official suspicions, which are dispelled later in the film by one’s antics cavorting in a swimsuit in the school’s courtyard fountain.



*David Mandell, Karla Schaffer and Mark DeVry with Golden Tree for "Best Use of Humor"*

Lauren Bregman, Jesse Martin, Marissa Merrick, Laura Pacanowsky, and Mayumi Sakoh won Golden Trees for Best Original Film Footage and Best Achievement in Sound for their film “Animals in Captivity.” The film featured a visit to the Baltimore Zoo by animal rights sympathizers and interviews with visitors to the zoo and their children.

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## MARYLAND STUDENT AWARDED ABA ENVIRONMENTAL FELLOWSHIP



*Officers of the New York State Bar Association Environmental Law Section present award to Winston Martindale. (from left to right) Luis Guarionex Martinez, Miriam Villani, Winton Martindale, and Jean McCarroll.*

Winston Martindale, a second year law student, is the recipient of a 2006 Minority Fellowship in Environmental Law awarded by the New York State Bar Association's Section of Environment, Energy, and Resources Law. As a Fellow, he will spend the summer of 2006 working for EPA Region 2's main regional office in New York City. In addition, Winston will be attending the annual meeting of the New York State Bar Association's Environmental Law Section, and participating in monthly dinner meetings. He will be assigned two mentors from the environmental bar and will receive a \$6,000 stipend.

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## STUDENT WINS NATIONAL WILDLIFE AND CONSERVATION LAW WRITING CONTEST



**Natalie Havlina**

Natalie Havlina, a third year law student, was the winner of the 2005 Wildlife and Conservation Law Writing Contest sponsored by the Southeastern Association of Fish and Wildlife Agencies (SEAFWA). Her paper is titled "Can't We All Just Get Along? Lessons About Conflict, Compromise, and Consensus From Wolf and Grizzly Reintroductions." The prize for winning the contest was an all-expense paid trip to SEAFWA's annual meeting on October 16-19, 2005 in St. Louis Missouri. Natalie sat in on the proceedings of SEAFWA's legal committee. Natalie said "having studied the federal laws concerning biodiversity in Professor Goger's Biodiversity Seminar the previous spring, it was fascinating to get a glimpse into the state management perspective on wildlife law."



## Film Festival (continued)



***Golden Trees for "Best Original Film Footage" and "Best Achievement in Sound" presented to Marissa Merrick, Laura Pacanowsky and Lauren Bregman***

"Ethanol: Fueling Maryland" won the Golden Tree for Best Interviews for students April Birnbaum, Corianne Iocavelli, Daniel Orlaskey, and Lauren Willis. The film examines the debate over subsidies to promote this alternative fuel through interviews with a Maryland state delegate, a farmer, and a representative of a trade association. The film also was nominated for awards for Best Original Film Footage, Best Narration, and Most Educational Film.



***Lauren Willis, Corianne Iacovelli, April Birnbaum and Dan Orlaskey with Golden Tree for "Best Interviews"***

Filmmakers Mohammad Alwazir, Winston Martindale, and David McMurray took home the Golden Tree award for Best Acting in their film "The Tragedy of the Commons." In the film the students acted out a historical illustration of Garret Hardin's famous theory. The film also featured a guest appearance by Maryland law professor Andy King explaining property law. Inspired by the film classics like "The Wizard of Oz," the film's time travel scenes were shot in black and white.

In "Terrapin Man Saves the Bay" by Lisa Mannisi, Jill Morotchie, and Amber Widmayer, Student Bar Association President Jason Smith played a caped turtle superhero crusading to prevent nonpoint pollution from reaching the Chesapeake. The film was nominated for awards for Best Original Film Footage, Best Acting, Best Narration, and Best Use of Humor.

Independent filmmaker Erin Miller made the film "Snakeheads," which explores efforts to combat a particularly aggressive invasive species of fish. Her film won a Special Judges Award for Scariest Frame of Film.

Following the Film Festival, copies of the environmental law student movies made during the last four years were submitted to Professor Taunya Banks, the organizer of the Law and Film conference, which was held at the Law School on March 31 and April 1. The conference brought together law professors, filmmakers, film critics and film industry officials to explore issues related to the impact of film on law, lawyers and the legal system. Seven of the environmental law student films that have been made during the last four years were shown at the conference.

Professor Percival made a presentation to the conference on "Making Movies in the Classroom" and City Paper film critic Bret McCabe commented favorably on the quality of the student films. Percival explained that the purposes of the film projects are to give students an appreciation of how difficult it can be to communicate complicated issues of environmental law and regulatory policy to a wider lay audience and, quite simply, to make Environmental Law even more fun.



***David McMurray with Golden Tree for "Best Acting"***

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# Environmental Law Clinic and NRDC Settle Atrazine Litigation

by Professor Kerry Rodgers\*



*Environmental clinic students take a boat trip with Riverkeeper Bob Gallagher on the West and Rhode Rivers near Annapolis and the Chesapeake Bay.*

The Environmental Law Clinic is celebrating a settlement of a federal citizen suit in which the Natural Resources Defense Council (NRDC) claimed that the U.S. Environmental Protection Agency (EPA) had failed to comply with the Endangered Species Act (ESA) to ensure that EPA's continued registration of the herbicide atrazine will not jeopardize 21 endangered species in the Chesapeake Bay region, the Midwest and the South. Working with co-counsel Aaron Colangelo, a Staff Attorney at NRDC, the Clinic pursued this case for more than three years, preparing a notice of intent to sue, filing a complaint, conducting discovery, briefing disputed discovery issues, and negotiating and drafting a settlement agreement between NRDC, EPA and the registrants of atrazine, intervenors led by Syngenta Crop Protection, Inc. The settlement agreement, which became final on March 29, requires EPA to consider atrazine's potential effects on certain endangered amphibians, reptiles, fish, and aquatic invertebrates nationwide.

Section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), requires federal agencies to ensure that any

action they authorize, fund or carry out is not likely to jeopardize endangered or threatened species or their designated critical habitat. The ESA implementing regulations in 50 C.F.R. Part 402 require federal agencies to consult with the U.S. Fish and Wildlife Service (FWS) (for terrestrial or freshwater organisms) or the National Marine Fisheries Service (NMFS) (for marine species) if an agency action "may affect" an endangered or threatened species. The regulations broadly define the agency actions subject to this consultation requirement. In a complaint filed in U.S. District Court for the District of Maryland in August 2003, NRDC alleged that EPA's registration, or licensing, activities for atrazine under the Federal Insecticide, Fungicide and Rodenticide Act triggered a duty to consult and that EPA had violated Section 7(a)(2) by failing to consult with FWS and NMFS to ensure that EPA's registration of atrazine will not jeopardize the loggerhead turtle, leatherback turtle, green turtle, Kemp's ridley turtle, shortnose sturgeon, dwarf wedge mussel in the Chesapeake Bay and its watershed, as well as 5 other endangered species in the Midwest and 10 in the South.

EPA is currently considering whether to reregister atrazine, which was originally registered in 1958 and is widely used in the U.S. Every year, millions of pounds of its active ingredient are applied to food crops such as corn, soybeans and sugarcane, and to non-agricultural lands including residential developments. Atrazine is persistent and mobile in surface and ground water, and it has been detected in air and rainfall samples even outside of high-use areas. EPA's risk assessments have acknowledged potentially harmful effects of atrazine on endangered fish, aquatic invertebrates and terrestrial and aquatic plants, and other data summarized by EPA found that atrazine may adversely affect endangered amphibians and reptiles.

In the settlement agreement, EPA agreed to a schedule for evaluating the effects of atrazine on the species identified in NRDC's complaint. Under the ESA implementing regulations, an agency's "effects determination" indicates whether Section 7(a)(2) consultation is required. If an agency concludes that its

## Environmental Clinic (continued)

action “may affect and is likely to adversely affect” a listed species or designated critical habitat, then formal consultation may be required. If an agency concludes that its action “may affect but is not likely to adversely affect” a listed species or designated critical habitat, informal consultation or an alternative consultation procedure may be required. The settlement agreement requires EPA to make effects determinations for atrazine with respect to all 6 species in the Chesapeake Bay watershed, as well as the Barton Springs salamander and the Alabama sturgeon, by August 31, 2006. EPA will make effects determinations with respect to 8 other species by February 28, 2007, and EPA will make effects determinations with respect to 5 species by August 31, 2007. In its effects determinations, EPA will consider the results of ecological water monitoring that atrazine’s registrants currently are conducting for submission to EPA.

The settlement agreement also facilitates NRDC’s and the public’s ability to participate in EPA’s effects determinations and in any formal consultation between EPA and FWS or NMFS regarding the 21 species at issue. For example, at least 30 days before EPA makes its effects determinations, EPA will provide NRDC with the monitoring data it has received relating to those determinations and post a public notice of the availability of that data. EPA also will consider any information that NRDC believes is relevant to the effects determinations and submits to the Agency.

Student Attorneys from four successive Environmental Law Clinic classes – Katherine Baer, Christie Biggs, Adrian Curtis, Jonathan Dowling, Dan Fruchter, Lev Guter, Sam Hawkins, Cortney Madea, Anne Merwin, Megan Moeller, Ulka Patel, Paige Poechmann, Alison Prost, Michelle Stanfield, and Amber Tysor – as well as local attorney and Maryland graduate Terry Harris and University of Maryland Medical School Professor Katherine Squibb worked on the case with Professors Rena Steinzor, Joanna Goger and Kerry Rodgers. Through their efforts, EPA soon will issue effects determinations for atrazine that hopefully will lead to more informed decisions and better protection for several endangered species.

*\*Professor Kerry Rogers teaches the Environmental Law Clinic.*

## Film Festival (continued)

Among the films that were shown at the conference was “The Death Project,” a film made by Jeremiah Chiapelli, Andrea Curatola, and Anne Merwin in 2004, which examines the environmental implications of human burial practices from ancient times to the present. The film won Best Picture at last year’s Film Festival. Other films from prior years’ classes that were shown at the conference included 2003’s Best Picture winner “The Permit Zone,” and “Eutrophication,” “Fertilizer Use and the Chesapeake Bay,” and “Talkin’ Trash.”

The student films received an enthusiastic response from conference participants, who urged that they be made available to a wider audience. One professor already has asked to use two of the films in her classes and Maryland’s Law Library will now be maintaining an archive of all the student films.

Judges for this year’s Golden Tree awards included Professor Taunya Banks, Professor Kerry Rodgers, Professor Kathleen Dachille, Assistant Dean Teresa LaMaster, alums Cortney Madea and Michael Strande, and former Best Picture winner Jeremiah Chiappelli.

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# Strait Jacketing Risk Assessment

by Professor Rena Steinzor\*

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*Professor Rena Steinzor*

## *The Regulatory Reform Underground*

Gridlock in Congress and frustration among regulated industries have combined in recent years to produce a vast underground dedicated to reform through administrative changes. While the administrative process is obviously a crucial – some would say primary – vehicle for implementing environmental policies, changes at the far right edge of the political spectrum strain the statutory framework to the point that they are anti-democratic, circumventing congressional intent and authority.

The most recent and powerful example of these efforts to eviscerate the protections embodied in the nation's environmental statutes was presented by the Office of Management and Budget (OMB) in the form of a *Proposed Risk Assessment Bulletin* (Bulletin) this past January. If adopted in anything close to its current form, the *Bulletin* will accomplish seismic changes in both the timing and substance of rulemaking, not just at the Environmental Protection Agency (EPA) but throughout the other agencies assigned to protect public health, safety, and natural resources.

The *Bulletin* announces that all risk assessments conducted with respect to public health, safety, and environmental issues must adhere to its requirements, but exempts drug approvals, pesticide registrations, and facility hazard assessments done in the context of licensing proceedings. This double standard has the

effect of exempting assessments that are generated by industry, although OMB never acknowledges this obvious double standard.

## *A Less Protective Process*

With respect to government risk assessments, the *Bulletin* would make three fundamental changes in the normal risk process:

**Conflation of Risk Assessment and Management.** In 1983, the National Academy of Sciences issued what has become a classic publication on risk assessment, *Risk Assessment in the Federal Government*, commonly known as the “red book.” A crucial and central point made by the panel of world-renowned experts was that risk assessment (predicting the nature and scope of the threat) and risk management (deciding what to do about the threat) were two distinctly different phases of decision-making and should not be either confused with each other or combined as a practical matter. The *Bulletin* casts aside this threshold premise, requiring that agencies engage in a search for management options before they settle on an assessment of the risk to be prevented. In essence, risk assessors will be forced to consider costs before they have characterized risks, ultimately subverting dispassionate assessments.

**Combining Apples and Oranges into Mush.** The *Bulletin* recognizes that estimates regarding pollution dispersion, human exposures, and adverse health effects are often generated by models, as opposed to actual monitoring. OMB also acknowledges that models invariably have uncertainties and flaws. Rather than allowing risk assessors to consider these uncertainties and flaws as part of a “weight of the evidence” scientific judgment, the *Bulletin* demands that where models are used to predict risk, agencies come up with a “central risk estimate” by calculating mathematically a “weighted average” of the models’ numerical results. This overly simplistic, mathematical combination of complex and uncertain approaches to predicting risk not only mixes apples and oranges, but blends them into a misleading mush.

**Ossifying Ossification.** It is hard to imagine that the regulatory process at EPA could move more slowly than it does now, but the *Bulletin* does its best to ossify ossification. Consider the following requirements.

- **All Diseases and Any Cause.** Risk assessments must account for all diseases or conditions related to the chemical or activity, not just the most serious or prevalent problems. They must also identify other causes of these adverse effects in order to determine whether the toxic chemical – or substance or practice – under assessment is a significant problem.
- **Baseline Risk and Exposure Analysis.** The *Bulletin* mandates that agencies establish a “baseline risk” for comparison with “risk associated with the alternative mitigation measures being considered.” In the toxics context, establishment of a baseline risk implies the creation of a “control group” of unexposed populations, a notoriously difficult task that undermines many epidemiological studies. If there is evidence that exposure at given levels cause disease, the further search for populations not exposed can only serve to bog down the risk assessment interminably.
- **Previous Risk Assessments.** The *Bulletin* further requires that agencies “find and examine previously conducted risk assessments on the same topic” and compare such assessments to the assessment they are currently conducting, whether or not the Agency believes such prior work is reliable.
- **Reproducibility.** Any scientific study used to support “influential” risk assessments must be “capable of being substantially reproduced.” This burdensome mandate will inevitably require the public release of any information about how a government-sponsored study was performed, including laboratory notebooks and detailed information about test subjects. It will also serve as a rich source of delay as entities potentially affected by the government’s risk assessment attempt to “reproduce” such findings.
- **No Observed Adverse Effect.** Of a piece with the “reproducibility” requirement, the *Bulletin* suggests that agencies consider only studies that define and document “no observed adverse effects,” as opposed to “no observed effect.” The definition of what constitutes an adverse health effect is subjective and invariably will result in controversy, more debate, and less protective standards.

### *Ossification by Litigation*

The *Bulletin* contains the standard boilerplate for executive orders: “[This Bulletin] is intended to improve the internal management of the Executive Branch and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.” However, because OMB relies on the Information Quality Act (IQA) for authority to issue the *Bulletin*, it could be read to define what a “correct” risk assessment must contain. The Fourth Circuit recently held that “requests for correction” under the IQA are not judicially reviewable because the Act fails to confer standing (“a right to correctness of information”) on any group or individual. The Chamber of Commerce has announced that it will seek a congressional amendment to reverse this decision. Even if these efforts do not succeed, and other circuits follow the Fourth, the prospect of answering interminable requests for correction will provide ample incentive for agencies to comply with its burdensome and unnecessary conditions.

### *One Size Does Not Fit All*

The scope of the *Bulletin* – any public health, safety, or environmental risk assessment except drug reviews, pesticide registrations, and licensing proceedings, means that it would impose the detailed analysis that dominates cancer risk assessment on risk analysis of all kinds, including the Department of Transportation, the Federal Emergency Management Association, and the Army Corps of Engineers. Not only does this impossibly broad scope assure a poor fit between the supposed problem and the cure, but it is undertaken with no analysis whatsoever of the utility of the requirements. In other bulletins and circulars, OMB has required agencies to analyze in detail the usefulness of the information that it requires – but it imposes no such restrictions on itself.

Please note that OMB will accept comments on the proposal until June 15, 2006. Comments by the scientific community will be especially important.

*\*Professor Rena Steinzor is Director of the Environmental Law Clinic at the University of Maryland School of Law.*



# IMPROVING ENVIRONMENTAL GOVERNANCE IN CHINA

## *Environmental Law Professor Li Yan-Fang to Visit in Fall 2006*



***International Forum on Environmental Legislation and Sustainable Development held in Beijing.***

Environmental issues have become an important concern to both the public and the government in the People's Republic of China. In the face of rapid development and poor enforcement of existing environmental laws (see article by Jonathan Libber in this newsletter), environmental conditions have deteriorated so badly in some areas that riots have broken out as villagers protest environmental conditions.

Professors Robert Percival and Miranda Schreurs have been involved in a number of projects designed to improve environmental governance in China. When he visited China in March 2005, Percival met with representatives of the U.S. Embassy and the National People's Congress to provide advice on what priorities should be established for a project to translate U.S. environmental laws into Chinese. In November 2005, he returned to China at the invitation of the Environment and Resources Protection Committee of the National People's Congress to make a presentation at the International Forum on Environmental Legislation and Sustainable Development (IFELSD). The opening session of the IFELSD was held in the Great Hall of the People, which is located in the heart of Beijing adjoining Tianamen Square. While the opening session was being held, Chinese Premier Hu Jintao was greeting U.S. President George Bush in another portion of the Great Hall of the People.

Professor Percival's presentation focused on the legal evolution of U.S. controls on the management of hazardous waste and the remediation of releases of hazardous substances. While China has a great many detailed environmental laws, including regulations on

hazardous waste management, it does not have any comprehensive reporting or liability scheme comparable to the U.S. "Superfund" legislation. U.S. law requires prompt reporting of significant chemical releases to the National Response Center and it makes broad classes of parties responsible for cleaning them up.

The need for some form of national reporting and response legislation was illustrated in late November when a chemical factory in Jilin, China, released massive quantities of benzene into the Songhua River. This spill forced Chinese authorities to shut off for four days public supplies of drinking water to the downstream town of Harbin with nearly four million inhabitants. As the spill approached Russia's border with China, it became a major international incident and resulted in the resignation of Xie Zhenhua, the head of China's State Environmental Protection Agency (SEPA).



***Professor Miranda Schreurs addresses CCIED Environmental Governance Task Force.***

As a result of the benzene spill, Professor Percival was invited to return to China in December 2005 to make a presentation to a meeting in Beijing of the Environmental Governance Task Force of the China Council for International Cooperation on Environment and Development (CCIED). The CCIED is an international consortium of scholars from China, Germany, and other countries who are involved in a project to recommend improvements in China's environmental laws. University of Maryland Professor Miranda Schreurs is a member of the Environmental Governance Task Force. At the December Task Force meeting, Professor Percival made a presentation on how U.S. law requires for reporting and remediation of chemical spills, while Professor Schreurs presented a history of how various countries have handled perceived environmental emergencies. Percival and Schreurs then assisted the Task Force in prepared a series of recommendations for improving Chinese environmental law. These



***Professor Li Yan-Fang will be a visiting scholar at the law school in Fall of 2006.***

recommendations were then submitted to top Chinese officials. The Chinese government has now established national reporting requirements for chemical spills and it has pledged to spend more than \$1 billion to clean up contamination of the Songhua River and to improve the responsiveness of government agencies to environmental concerns.



***Percival presents copy of Statutory Supplement to Zhai Yong, Deputy Director General of the Legislation Department of the National People's Congress Environment and Resources Conservation Committee.***

During both his trips to China in November and December, Professor Percival met with staff from the new Beijing offices of the Natural Resources Defense Council and Environmental Defense. He also met with Wang Canfa and Xu Kezhu who manage China's top public interest environmental organization, the Center for Legal Assistance to Pollution Victims (CLAPV). Professor Hu Jing, who also works with CLAPV, is currently a visiting scholar at the University of Maryland School of Law where he is studying the operations of Maryland's environmental law clinic. Maryland has agreed to continue to host visiting environmental scholars from China after Professor Hu Jing returns to China in July. During the fall 2006 semester, Maryland will be hosting visiting scholar Li Yan-Fang, an environmental law professor from Renmin University School of Law. She is an expert on environmental impact assessment and she has written a book on public participation in China's environmental impact assessment process.



***Xu Kezhu, Dan Guttman, Li Yan-Fang, Professor Percival and Wang Canfa***

Maryland currently is in the early planning stages for hosting an international conference on environmental law clinics which will be held in early February 2007. It will include officials from CLAPV and other environmental clinics throughout the world.

Professor Percival's visit to China in December occurred shortly after the news had broken concerning President Bush's warrantless surveillance program. Because he teaches U.S. constitutional law, Professor Percival was invited to appear as a guest on CC-TV International's "Dialogue" program, which is broadcast live during prime time. Several people who watched the broadcast commented on how unusual it was for Chinese TV to carry a live program discussing the importance of civil liberties, the rule of law and limits on executive authority.

# Environmental Enforcement in China and Israel

by Jonathan Libber\*



*Participants at the Environmental Enforcement Conference held at Beidaihe, a resort in China.*

Last summer, I had the opportunity to make a series of presentations in the Peoples Republic of China and in the State of Israel about the U.S. Environmental Protection Agency's penalty practice. I was invited to attend an environmental enforcement conference in China by Environmental Defense (formerly known as the Environmental Defense Fund). Environmental Defense (ED), has received a private grant to train the Chinese environmental agency known as the State Environmental Protection Agency (SEPA). EPA has been actively supporting SEPA's efforts to develop an effective enforcement program, and ED's invitation was enthusiastically accepted. The trip to Israel was actually a vacation my family had been planning for a long time. I deliberately scheduled some free time during our various travels so that I could spend some time at the Israeli Ministry of the Environment. The Ministry had been trying to set up a visit to Jerusalem for me over the years but various issues got in the way. So I decided to just meet with them on the vacation and avoid all the complications that had been preventing me from coming.

## **Backdrop for the Visit to China**

After rapidly industrializing over the last 15 years, China is now the world's largest emitter of sulfur dioxide. It also emits similarly large amounts of nitrogen oxides and carbon dioxide. This stems from the fact that China currently consumes about 10% of the world's energy, second only to the United States. Most of this energy comes from coal. China is now the largest producer and consumer of coal in the world. Unfortunately, the emissions from China's coal fired power plants are only minimally controlled. China now has a major air pollution problem. The World Bank in 2001 reported that 16 of the world's top 20 polluted cities were in China. Of the 335 Chinese cities regularly monitored for air pollution, 40% fell

into the air quality categories that the World Health Organization considers unsuitable for long term human living conditions. China's rapid industrialization will only continue over the next decade only deepening China's environmental challenge.

One of the ways China is attempting to meet this challenge is to develop an effective environmental enforcement program. China's environmental agency, SEPA, is a newly established ministry. It was led until recently by Xie Zhenhua, a very dynamic leader in the Chinese government. He recently created a special environmental enforcement bureau within that ministry. In order to prepare them for the very challenging job ahead, he sought the help of the U.S. EPA. As mentioned previously, Environmental Defense (ED) has a grant to train the SEPA personnel on a wide range of issues. Many of the people SEPA brings over to China are current and former EPA officials. SEPA had become particularly interested in EPA's penalty program, and I was asked to attend a conference in Beidaihe to explain how our civil penalty program works.

It was important for the EPA to respond positively to this request for assistance not only because we have a responsibility to assist a sister environmental agency from a foreign country, but also because it was in our government's best interests to do so. The air pollution China generates frequently reaches our West Coast. Some of China's air pollution has even reached Chicago. And in the global economy of the 21<sup>st</sup> century, our two countries are closely linked. In 2004, we were China's top trading partner purchasing \$169.6 billion in Chinese goods. China is now the second largest holder of U.S. Treasury Securities at \$243 billion.

## **Beidaihe**

Most Westerners are unfamiliar with Beidaihe. Beidaihe is a seaside resort of the East Coast of China, about 150 miles from Beijing. It is well known in China as the place where Chairman Mao used to take the politburo in the summer to escape the heat and humidity of Beijing. This tradition is still maintained, and it is not unusual to see one of China's leaders in a local restaurant during the summer. It is a picturesque city which is also known for its large variety of migratory birds. It is a birder's paradise as species from all over Asia pass through at some time during the year. Unfortunately, Beidaihe is also affected by China's air pollution problem. The distinctive gray haze is readily visible throughout the city.





*Jonathan Libber gives presentation at conference.*

### **The Conference**

The conference that SEPA had invited me to was for the leaders of the enforcement program in SEPA and the enforcement leaders of nine key provinces and municipalities. Over eighty Chinese enforcement personnel attended. The conference began with an opening address by the new enforcement bureau's chief, Mr. Lu Xinyuan. He reviewed in detail the challenges facing China's enforcement personnel, and introduced the speakers: Dan Dudek, an economist from Environmental Defense, and that organization's main point of contact between EPA and SEPA; Marcia Mulkey, an attorney and long time manager of various parts of EPA's regulatory program; and me. I was asked to participate because of my over 20 years of experience supporting EPA's civil penalty program. All of our presentations were sequentially translated into Chinese.

Dan Dudek gave an overview of what he saw as the issues the three of us hoped to address at the conference. He started off with a presentation of the economic motivation to violate the law. He pointed out that the largest penalties SEPA could impose for failure to complete an environmental impact analysis were the equivalent of only \$25,000. Yet the economic benefit from ignoring this requirement was many times greater than this for a major project. It was far more cost effective for the major players in the construction industry to ignore the requirement. Similarly, for the standard air, water and hazardous waste violations, penalties were capped at \$12,500 no matter how serious the violation. He argued strongly for penalties that would produce deterrence.

I followed Dan Dudek with a presentation on how penalties fit into the deterrence equation. I explained that the EPA's policy for the last 20 years has been to recapture any economic savings derived from the violations. I discussed the usefulness of penalty guidance and the financial theory behind calculating a violator's economic benefit from violating the law. Then I gave them a demonstration of the BEN computer model,

which is EPA's user friendly tool that calculates a violator's economic benefit from violating the law.

From the look on the faces of the participants, it was clear that the financial theory was a bit difficult to grasp. But I assured them that they did not have to know the theory in order to use the BEN model. The audience was a lot more focused when I ran the model on some simple hypothetical cases. I got the distinct impression that they were impressed with how easy it was to use and how quickly one could produce a realistic calculation of economic savings.

Interestingly, ED has produced a Chinese version of the BEN model that replaces the U.S. tax law with Chinese tax law and modifies the cost of capital and inflation to reflect the economic situation in China. The plan is for the enforcement personnel from SEPA, the provinces and the municipalities to start routinely calculating the economic savings even though the penalty caps in place will prevent them from recovering those savings in the penalty. In this way they hope to demonstrate to the leaders in China and the public at large that the penalty caps are undermining enforcement. I urged the audience to consider linking the extensive economic savings beyond the penalty caps with hospital admissions for respiratory ailments in the affected areas. The cost savings along with the health impacts would help drive home the point that the current penalty system just did not work. Finally, I emphasized to them that my presentation was not intended as the end of my relationship with them but the beginning. I urged them to contact me via my e-mail address, or to use our international toll free line to contact our helpline. (We even have two people at that helpline that speak Mandarin, and Cantonese, respectively.)

I had been warned that members of Chinese audiences often would avoid asking questions for fear of losing face if the question showed their ignorance, or caused the speaker to lose face if it showed his ignorance, both very serious cultural issues. In addition, some members of an audience might be afraid to ask a question for fear of upstaging a superior and causing him to lose face. Despite my invitation to interrupt my presentation with questions, not one person asked a question. Even with the warning I had gotten, it was unnerving to go through an entire forty-five minute presentation without any questions or feedback. At the end of the first day of the conference, we had a question and answer session. For some reason, the audience felt comfortable asking questions in this setting. We had a very free flowing, wide ranging discussion of the issues. After the discussion session, everyone assembled outside the lecture hall for a ceremonial photo. Where a person stood in each row was carefully dictated by protocol.



*Jonathan tours Great Wall of China.*

### Excursion

As a way of expressing its appreciation for Marcia Mulkey and me coming to China, ED treated us to an excursion to an area near Beidaihe. The first place we went to was the part of the Great Wall of China that meets the East China Sea at a city known as Shanhaiguan. In essence, this is the end of the Great Wall. While there are parts of the 6,000-mile wall that are accessible from the major cities of China, and visited by lots Western tourists, this particular piece of the wall was not near any of these cities. As a result, all the tourists were Chinese, except for us. That part of the wall is like a national park as there are a great many things to experience and do there other than viewing the wall. There are a number of historic buildings in the area that are related to the Great Wall such as the officers' quarters of the garrison that was once stationed there to defend the wall. One could also take a ride in a litter like the Chinese royalty used to take. The ride came with live music from a Chinese wind instrument. In contrast to the litter rides of old, the four men carrying the litter were intent on making the journey as exciting as possible. The four men moved the litter up, down and sideways in rapid succession making the ride anything but dull for the venturesome rider, and it was rather entertaining to watch.

Our second stop was at Cheng De, the place where the first emperor of China, Qin Shihuang, went to pray at the sea for immortality once the empire controlled all of China. (He was not entirely successful.) This is also sort of a park, but the structures and contents of the park were a fairly recent creation. We managed to arrive in time to see a re-enactment of some royal pageant complete with acrobats and four colorful lions. Each lion consisted of two very well coordinated men in costume. The movement was so lifelike that it was easy to forget that there were two people operating each lion. The park also featured peacocks, ostriches and some caged tigers.

### Backdrop to the Israel Trip

In contrast to China, Israel is a country of only six million people. While its neighbors have only minimally industrialized, Israel has fully industrialized. Unfortunately, along with that economic sophistication comes a full panoply of environmental issues. The State of Israel has developed the statutory authority to address these issues. But its fight against terrorism over the last six years had pushed environmental enforcement well down on the list of national priorities. Over the years, the Ministry or private citizens working with the Ministry had been in contact with me over penalty issues. About six years ago I had even helped them analyze some of their penalty decisions by calculating the economic savings and then comparing that with the actual penalty assessed. The assessed penalties were only about 1% of the economic savings. Subsequent legislation attempted to address the issue of benefit recapture. In fact, someone from the Technion in Haifa had developed an Israeli version of the BEN model. The Israeli model is called the Cherem Model. But the idea of routinely recapturing a violator's economic savings had not taken root in the Ministry.

The Ministry and some of the private citizens working with them had been trying to bring me to Israel to make a series of presentations for the Ministry, for the regulated community and for a Law School located in Netanya. These efforts had come close, but a combination of political issues and terrorism had interfered with those efforts. I decided to bring my family to Israel for our first vacation in nine years. Since the cost of getting there is substantial, we decided to stay for about three weeks. We did a lot of touring the first two weeks, but I deliberately left some free time in the third week to visit friends, shop and finally make a presentation at the Ministry.

### Presentation in Jerusalem

The Ministry is located on the outskirts of Jerusalem. The time I proposed was the last week of August. The Israeli school calendar is similar to ours in that there is a significant break during the summer with a lot of families taking their annual vacations the last week in August. But despite the timing issue, we had a very good turn out for the first presentation which focused mostly on staff. Although the Ministry's General Counsel, Ruth Rotenberg, attended, most of the assembled were from the Ministry's headquarters, but a number came from some of the regional offices around the country. Several of the participants were from environmental law firms in Israel which gave the presentation an interesting dynamic. On the one hand, I was trying to encourage the Ministry staff to try to recapture benefit by explaining how important it



*Jonathan and family at restaurant in Jerusalem.*

was for deterrence purposes. I had to be cognizant of the private attorneys' interests in keeping the penalties small. Despite this dichotomy, the presentation worked well. It went on for about two hours. In contrast with my presentation in China only one month earlier, the Israeli audience peppered me with questions. Israeli culture, which is quite secular, is still heavily influenced by traditional Jewish attitudes. One of them is to ask lots of questions if you want to understand something. The Rabbis observed over two thousand years ago that a bashful person cannot be successful in his studies. I did not notice any bashful people working for the Ministry. In addition, everyone there spoke English, and I think that facilitated the discussion.

The second presentation was much shorter and was for the senior managers in the Ministry. In Israel, a member of the ruling coalition in the Knesset is the Minister. He or she is the political leader corresponding to our cabinet secretaries in Washington. But for continuity, there is a professional leader of the Agency who is not directly connected to the legislative branch of the government. That person is much more involved in the day-to-day activities of the involved Ministry. Interestingly, the professional person leading the Ministry happened to be the ex-wife of Benjamin Netanyahu, the former and current leader of the Likud party. She and her senior managers attended the thirty minute briefing. While there were fewer questions than before, there was significant interest in what we were doing at the EPA in regard to benefit recapture.

### **Conclusions**

China's SEPA clearly has its work cut out for it. While its leadership seems both creative and dynamic, trying to change the culture in China to make serious enforcement

acceptable is a spectacular challenge. Yet if the leaders are willing to take China in that direction, great things can be accomplished. For example, in 2001, China eliminated all leaded gas in about 6 months time. But this is obviously much more than eliminating lead in gas. The economic cost of retrofitting their coal burning energy facilities with effective pollution control equipment will be staggering. Yet China's spectacular growth rate (9% in the first half of 2005) could conceivably sustain such an effort.

Israel's challenge is totally different but no less daunting. While the Ministry has the infrastructure in place to have an effective program, the economic, political and psychic impact of fighting the war against terrorism has taken its toll. With Hamas taking control of the Palestinian government, the faintly glowing embers of the Oslo process are now finally extinguished. Sadly, some of those who stand to lose the most are the Palestinian Arabs living in the PA controlled areas. For example, criminal elements in Israel have found Arabs living in PA areas willing to "partner" with them in illegally disposing of hazardous wastes generated by Israeli industries. The problems the Ministry faces will only get more challenging.

*\*Jonathan D. Libber, a 1978 graduate of the University of Maryland School of Law, currently serves as a Senior Attorney in EPA's Office of Enforcement and Compliance Assurance. He has worked there for the past 27 years where he works primarily on civil penalty issues and financial issues that impact litigation. This article expresses the views and observations of the author and does not necessarily reflect the views of the U.S. EPA.*

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# Little-Known Federal “Information Quality Act” Hits Home

by Margaret H. Clune\*

## Introduction

Last June, the Maryland State Bar Association’s *Bar Bulletin* featured an article in its Environmental Law focus section entitled “*Bad Science*” in *State Regulations May Come under Federal Data Quality Scrutiny* available at [http://www.msba.org/departments/commpubl/publications/bar\\_bult/2005/june05/science.htm](http://www.msba.org/departments/commpubl/publications/bar_bult/2005/june05/science.htm) (last visited Feb. 2, 2006). The article brought into focus the potential local impacts of a little-known federal statute called the Data Quality Act. The Act, also referred to as the “Information Quality Act” (IQA), came quietly onto the legislative stage in late 2000 as an appropriations rider. Its stated goal is relatively non-controversial: it aims to ensure the “quality objectivity, utility and integrity” of information disseminated by federal agencies. To further that objective, the Act required first the Office of Management and Budget (OMB), and then the federal agencies, to establish information quality guidelines. The Act also required that agencies establish an administrative process to allow members of the public to request that agencies correct information falling short of these guidelines.

As implemented by OMB and used by regulated industry, the IQA has raised significant concerns among proponents of environmental, health and safety regulations. The MSBA *Bar Bulletin* article, and the petition upon which it relied to make its case, serve as compelling illustrations of several of these concerns.

## Ozone, the Clean Air Act, and VOCs in Paint

The article’s authors highlighted an IQA petition filed by one of their clients, the Sherwin-Williams Company. A year earlier, Sherwin-Williams, joined by the National Paint and Coatings Association (NPCA), filed an IQA “Request for Correction of Information” with the United States Environmental Protection Agency (EPA). In it, the paint industry challenged the adoption by states in the Ozone Transport Commission (OTC) of rules that would regulate emissions of volatile organic compounds (VOC) from certain paints and coatings more strictly than does the existing federal rule.

Maryland is among the OTC states striving to control ground-level ozone pollution – also known as “smog” – formed when VOCs react with oxides of nitrogen (NO<sub>x</sub>) in the presence of heat and sunlight. Ground-level ozone is one of the six criteria pollutants regulated under the Clean Air Act (CAA). It causes a range of adverse health effects, including shortness of

breath, increased susceptibility to respiratory infection, impaired lung function, severe lung swelling and even death. Data collected by the American Lung Association demonstrate that more than 8% of Maryland’s population suffers from asthma.

Under the CAA, states that contain areas that fail to attain the federally-mandated CAA levels of criteria pollutants must develop State Implementation Plans (SIPs), which EPA must then approve, so long as they meet statutorily defined criteria. SIPs set forth a variety of strategies for curbing emissions of criteria pollutants (or, in the case of ground-level ozone, its precursor compounds, VOCs and NO<sub>x</sub>) to levels within the National Ambient Air Quality Standards (NAAQS).

In 1999, EPA advised Maryland and other mid-Atlantic states that even all the control measures then contained in their state implementation plans (SIP) would not be sufficient to bring the states into compliance with the NAAQS for ozone. Additional measures would have to be implemented to further reduce VOC emissions – Maryland would have to cut an additional 13 tons per day. The state looked to what its 1990 base-year emissions inventory counted as the fourth largest source of VOC emissions in the Baltimore area – paints and coatings. As oil-based “architectural and industrial maintenance” paints and coatings dry or sit out in the open, they emit VOCs.

To help achieve the CAA ozone standard, Maryland implemented a paint rule based on an OTC model rule. The OTC model rule, in turn, was based on a similar rule adopted in Southern California in the late 1990s and throughout that state in 2000. The California and model rules regulate VOC emissions from AIM coatings more stringently than does the existing federal paint rule, also adopted in the 1990s. The NPCA and the Sherwin-Williams Company have fought the stricter state rules every step of the way.

## The Industry’s IQA Challenge to the Paint Rules

After unsuccessfully objecting to the paint rules during the state rulemaking processes, the industry filed an IQA petition with EPA. The supposedly inaccurate information to which the industry objected (and thus its ostensible ground for filing the petition) was a spreadsheet used by the states to help predict the VOC emissions reductions that would result under the new paint rules. In the state rulemakings where the paint industry raised the arguments it later made to EPA in its IQA petition, the

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states provided reasonable explanations for the supposed “errors” and further assured industry that the spreadsheet was neither the sole nor primary source of explanation of the emission reductions calculations used by the states in writing the rules.

More important than the ins and outs of the information claimed to be of insufficient “quality,” however, are the troubling implications of the petition’s logic. NPCA and Sherwin-Williams argued that a single document among the voluminous *state* rulemaking records in support of the AIM rules violates the *federal* IQA and that EPA should therefore reject any proposed SIP revision containing such a rule. As summed up by the *Bar Bulletin* article, “[t]o the extent a state needs to obtain EPA approval for a state rule . . . a state rule can become the subject of [IQA] scrutiny.” In other words, when EPA conducts its internal review of the state administrative records in support of the SIP revisions and subsequently proposes to approve the revisions, the agency “disseminates” the information in the state administrative records, *even if EPA never communicates that information to the public*.

EPA correctly rejected the Sherwin-Williams/NPCA petition, noting that in approving the state AIM rules, the agency was not “disseminating” the spreadsheet but was merely following its obligations under the CAA to approve state SIP submissions that meet the statute’s criteria. Sherwin-Williams filed an administrative appeal of EPA’s denial of its IQA petition, which EPA also denied, and sued EPA over the agency’s approval of Pennsylvania and New York’s paint rules in federal court. Sherwin-Williams later withdrew the lawsuit over the Pennsylvania paint rule, reportedly because state environmental officials threatened to publicize its actions, which it was pursuing while marketing itself as an environmentally friendly company. Nonetheless, the authors of the *Bar Bulletin* article argued that as the result of the Sherwin-Williams IQA petition and appeals, EPA agreed that an alternative methodology to the allegedly flawed spreadsheet could be used to calculate VOC emission reduction credits. Indeed, EPA has undertaken an evaluation of other potential methodologies for calculating the emissions reduction credits that states may take after implementing their paint rules, though it has indicated its decision to do so is not a response to the paint industry’s criticism of the spreadsheet.

## What’s Next for the IQA?

Whether or not parties can actually have their IQA cases heard in court (as distinct from merely filing suit) is currently the subject of much debate. Two federal district courts have already ruled that there is no judicial review of agency decisions on IQA challenges. This March, the United States Court of Appeals for the Fourth Circuit upheld one of those district court decisions. In agreeing with the lower court that the plaintiffs in the case lacked Article III standing to pursue their IQA suit, the court held that the IQA does not create a legal right to correctness of information. *Salt Institute v. Leavitt*, 440 F. 3d 156 (4th Cir. 2006).

The Fourth Circuit’s word in the *Salt* opinion, however, will not be the last. Industry proponents eager to ensure that they can proceed to court if they are unhappy with an agency’s decision on an IQA petition have made clear their intent to ask Congress to pass legislation specifically providing for judicial review of the Act. Whether or not the IQA is ultimately found by a court, or made by Congress, to provide for judicial review will undoubtedly determine the Act’s true potential for changing the landscape of environmental, health and safety law. The Sherwin-Williams Company’s attempt to use the IQA as one last chance to derail Maryland’s paint rule makes vividly clear that a little-known statute, seemingly of interest only to those most intimate with regulatory policy and/or administrative law, can have impacts so far-reaching as to affect everyone who breathes Baltimore’s summer air. It is therefore imperative that any legislation offered to make the IQA judicially reviewable be – unlike the IQA as originally passed – the subject of congressional hearing and debate.

*\*Margaret Clune is a policy analyst at the Center for Progressive Reform in Washington, DC. She is a 2002 graduate of the University of Maryland School of Law and has a Masters of Community Planning from the University of Maryland College Park.*

## NOTICE TO ALUMNI

The next issue of the *Environmental Law at Maryland Newsletter* will include the "Alumni Update." Please send any changes in employment or address to Laura Mrozek at [lmrozek@law.umaryland.edu](mailto:lmrozek@law.umaryland.edu).

Thank you.

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## ALUMNI PROFILE - PEGGY KALAS, '91



*Peggy Kalas, a 1991 graduate of the law school, is UN Coordinator for the Deep Sea Conservation Coalition (DSCC) in New York.*

### *Describe the career path that brought you to your current position with the Deep Sea Conservation Coalition.*

Prior to law school, I had a career with a nonprofit foundation, so my interests have always been somewhat geared to working with non-governmental organizations (NGOs). While in law school at Maryland, I focused on international and environmental issues, taking as many courses in both areas as I could. My first position as an associate was with a DC firm that specialized in international environmental and trade issues. So for a few years, most of my work involved lobbying activities concerning the Montreal Protocol on Substances that Deplete the Ozone Layer, and other environmental regulatory work. That was pre-kids. Once children came along, balancing everything added a different dimension, so we moved to New York for my husband's job. After a 3-year hiatus from the law (mostly changing diapers), I went to work with environmental practice groups of some large NYC firms. However, environmental practice in New York City is largely centered on litigation, and I much preferred regulatory work.

So fairly late in life, I went back to school to get an LL.M. in international environmental law from New York University School of Law, which in retrospect, was key in retooling for a career in international environmental law. While at NYU Law, I took a number of unpaid internships including at Human Rights Watch, and Natural Resources Defense Council, and published a few law review articles on various international environmental topics. This led to a consulting position with an NGO to develop a program on international environmental governance in preparation with the World Summit held in Johannesburg, South Africa in 2002. Much of the work I did with this organization was based at the United Nations, so this led directly into my current position as UN Representative and Coordinator for the Deep Sea Conservation Coalition.

### *Tell us about the Deep Sea Conservation Coalition and responsibilities with the organization.*

The Deep Sea Conservation Coalition is comprised of about 40 environmental NGOs from around the world, including Natural Resources Defense Council, Greenpeace, Oceana, Conservation International and many others. Our aim is for the UN General Assembly to adopt a moratorium on high seas bottom trawl fishing; a fishing practice where trawlers drag heavily weighted nets across the ocean floor, destroying ancient corals, seamounts, and leaving behind an ocean desert. Over 1,100 eminent marine biologists have signed a statement that this fishing practice is the most serious threat to the living resources of the deep sea. Surprisingly, this damage is caused by only eleven countries, mostly in Europe. Our Coalition argues that this practice is both illegal and unregulated fishing under a number of international instruments and principles (UN Convention on Law of the Sea, Fish Stocks Agreement, Convention on Biological Diversity, precautionary principle, and numerous UN resolutions) and should therefore be halted.

I am fortunate to work with some of the world's foremost scientific and legal experts on oceans, who also happen to be extremely generous with their knowledge. They are an amazing group of individuals – so it is a privilege to work on issues that I care about with such committed people.

In my present position, I am responsible for organizing all lobbying activities at the United Nations at government missions and during periodic meetings that are held at the UN to discuss oceans issues under the Law of the Sea Convention and other related instruments. In the Fall, UN resolution negotiations on oceans and fisheries will take place on a daily basis over a six week period.

### *What is a typical day on the job like for you?*

This is an important year for oceans at the UN, with a number of meetings geared to address a variety of oceans issues. Right now, I'm preparing for a week-long meeting to be held next week on the Fish Stocks Agreement. My week involves meeting with UN Mission representatives (I have been focusing on developing countries), where I present the DSCC position on some of the issues that will arise at the meetings. I am also preparing with my colleagues a submission (similar to a comment letter) to the UN Secretariat on Oceans and Law of the Sea. Once the meeting takes place, I'm responsible for coordinating all of our Coalition activities, including coordinating daily update meetings among the NGO representatives that are in town. Throughout the meeting, I act as an observer and disseminate updates to our Coalition members around the world. I also try to speak with different delegations



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throughout the week to press our position, and exchange information on what's happening "behind the corridors."

***What attracted you to the environmental field?***

No doubt about it — Bob Percival spurred my interest in environmental law. I had started at Maryland with a definite interest in international law, but it was Bob's survey class in environmental law where something clicked. How lucky I was to have access to someone like Bob Percival, at a time when international environmental law was still at its infancy. As of 1989, in the international environmental law course, only a handful of treaties had been ratified. Now, there are over 500 international, regional and bilateral agreements, to the point that a real problem exists concerning the overlap of treaties and the need for an improved and reformed environmental governance regime. Every year when Maryland's environmental program is rated in *U. S. News and World Report*, I'm so proud of how the program has developed under Bob's leadership.

***What attracted you to your current position? What do you enjoy the most about it?***

I love being able to meet on a daily basis so many interesting and committed people from around the world. And though admittedly, the UN has its problems, I truly believe in the need for a world forum to address global concerns. We have to start somewhere.

***What are the biggest challenges you face in performing your job? What are some of the accomplishments of which you are the most proud?***

The biggest challenge is the UN process itself. Because a consensus is needed, a single nation can block an entire region, or the whole UN plenary from adopting a position. In one-on-one meetings, some governments will say that they are supportive of a moratorium, but fail to speak out during negotiations because they are pressured from other governments. During final votes, which go late into the night behind closed doors (we have no access at these times), we must rely on friendly governments to report back on positions and movement among governments. It's usually a night of hand-wringing and many surprises (both positive and negative) as to the governments that ultimately support our initiatives.

***How did law school prepare you for your career? What do you wish you had learned more about in law school? What are the best ways for law students to prepare for a career in the environmental field?***

First and foremost is to have a good basis in legal research and writing. It also helps to have a solid foundation in the tenets of environmental and international law, which I received in law school. But I learned how to practically apply the law through my first legal positions after law school. Now, there are so many more environmental courses to

choose from. I would also recommend taking internships in the area in which you want to focus. This is the best way to get your foot in the door, make contacts, and often, these positions turn into permanent positions.

Also important is where you end up practicing after law school. Based on the experience of so many friends and colleagues, many lawyers end up practicing the type of law that they start off with in their first associate position. So choose your first position carefully, as one year can easily turn into five.

***How do you feel about the state of the environment? What do you predict will be some of the most significant developments in the environmental field in the years to come?***

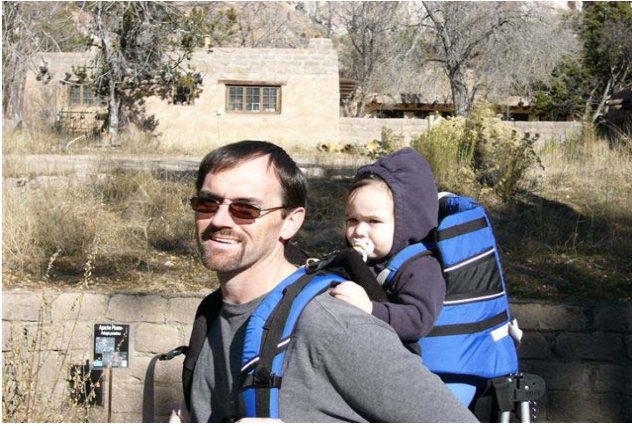
I believe we are facing many serious problems, and most egregious is global warming. As it progresses, it affects not only atmospheric changes, but oceans, desertification and loss of biodiversity. Some of these effects that we are seeing today include more rain and storms, a rise in sea level, and melting of polar ice caps. This means eventual flooding of low-lying countries, as well as a threat to coastal cities around the world, forcing some to migrate from their homes as "environmental refugees." So we urgently have to address this, individually and collectively, and governments must find the political will to make benchmark commitments in this regard.

Also, internationally, there is a huge governance gap on environmental legal issues, including in the realm of oceans conservation. As a Coalition, our long-term goal is the development of a new instrument or implementing agreement to the Law of the Sea Convention that would govern biodiversity and conservation of the deep seas, as this is an area that is presently not covered. Such an instrument could require environmental impact assessments prior to engaging in any activities on the high seas, similar to that required for land-based activities domestically.

***Is there a law school memory you wish to share?***

Probably most memorable from law school were the personal relationships, both with classmates and faculty. Since I met my husband at Maryland (he was a fellow classmate in the same section), I have many special memories. But in particular, my husband was one of Bob's research assistants for one of his books. Bob invited all his research assistants to his home in DC for dinner one evening — I got to tag along. That left a real impression on me (I still remember the special wines), but particularly, on the generosity of Bob to open his home to students. But it is typical of how the environmental program is run, the accessibility of faculty, the sense of community, and friendships made that are lifelong.

## ALUMNI PROFILE - STEVE GROSECLOSE, '94



*Steve Groseclose, a 1994 graduate of the law school, with his daughter Annabel, is Director of Global Environmental, Health & Safety for Advanced Micro Devices, Inc., in Austin, Texas.*

*Describe the career path that brought you to your current position with Advanced Micro Devices.*

That's a tortuous one. Immediately after law school (May '94), my wife Jael and I moved to Austin – jobless – to study for the bar. I ended up with a staff attorney position at the Texas Natural Resource Conservation Commission – a great job and training (if sink-or-swim qualifies as “training”). There I specialized in issues from water rights permitting to environmental audit privilege to settlement of enforcement actions with supplemental environmental projects. I broke up the TNRCC period with a Robert Bosch Fellowship through which I spent a year in Germany working on environmental technology transfer in the Environment Ministry and on environmental issues involved with privatization of former East German industrial sites in the successor agency of the Treuhand national trust. Not long after I returned to the TNRCC, Jael landed a job as Books Editor for the Environmental Law Institute in Washington, DC and headed back to the East Coast without me. I scrambled to find something in DC and was very fortunate to land as an associate at Piper & Marbury. There, I specialized in hazardous waste and hazmat transportation issues for an electric utility industry trade association. That involved regulatory advocacy, compliance counseling, and appellate work. Most importantly, I benefited from great mentors who instilled confidence in me. Ultimately, Jael and I came to realize that Austin was where we needed to raise our family. I was again fortunate to learn of an opening for an EHS attorney at Advanced Micro Devices (AMD). After a few years serving as AMD's counsel to the worldwide EHS program, the company prepared to spin off its flash memory subsidiary (Spansion), and the EHS Director went with it. I was asked to transfer from the Law Department to form and lead the new AMD Global EHS organization, which was created for the new AMD in May 2005.

*Describe your current position – with whom do you work, what are your primary responsibilities?*

I direct Global EHS, AMD's corporate environmental, health and safety organization. AMD designs, builds, and markets microprocessors and related, integrated solutions. AMD was recently named the most innovative semiconductor company by Fortune Magazine and is in the midst of a tremendous period of growth. My organization has 10 direct employees in Austin, Texas, Sunnyvale, California, and Dresden, Germany. In addition, there are approximately 40 site-based EHS staff around the world reporting in through the global structure. We have manufacturing and R&D operations in 8 countries and sales offices and marketing presence throughout the world. There's a wide range of issues, including product and manufacturing process stewardship, new technology evaluation and integration, employee safety and well-being, and business continuity management. So these responsibilities require me to work across the matrix of the company.

*What is a typical day on the job like for you?*

The company is going through a tremendous period of transition and growth in a ferociously competitive market. At the same time, I'm building a new organization designed for those challenges. So nothing is quite typical right now. Days are generally a string of conference calls, meetings, and videoconferences with people from around the company.

*What attracted you to the environmental field?*

I came to law school after an uninspiring year as a process engineer in a chemical plant on the Houston Ship Channel. I had an interest in environmental law but was indecisive. Bob Percival's multidisciplinary approach to environmental law was captivating and helped me recognize that the field provided an endless variety of interesting, complex issues.

*What attracted you to your current job? What do you enjoy the most about it?*

The current job completes the progression from private practice counsel to in-house counsel to client. With each step I've been drawn closer to the decisionmaking, and I'm very attracted by the opportunity to advance EHS issues in a way that complements business objectives – e.g., we've driven product energy efficiency into position

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as a key competitive advantage, while also pushing a holistic approach to energy efficiency that spans product design, site development, manufacturing operations, and product performance. The most enjoyable part of my job is working with creative, intelligent people from around the world.

***What are the biggest challenges you face in performing your job? What are some of your job-related accomplishments of which you are the most proud?***

We're transforming from a small, underdog company to a large market leader at an extremely fast pace. These dynamics create many opportunities and risks that need to be addressed in the near term. The most significant challenge is to create a new organization and approach that transitions us from the historic regional, manufacturing-site focus to a truly global approach. There's a long way to go, but I'm proud of what we've done in my organization's first year because I think we have made some critical steps towards positioning EHS stewardship as a cornerstone and cultural bellwether for the company across the world. While there may be many aggravating moments in a given day, and the company seems never to stop for breath, it's never dull.

***How did law school prepare you for your career? What do you wish you had learned more about in law school?***

The most valuable, enduring asset that law school honed was the combination of critical analysis and the ability to assess issues from numerous perspectives (the latter being something I attribute to the environmental law program rather than legal education in general). These provide the basis for success in any field, regardless whether the specific, substantive knowledge acquired in law school becomes outdated. I'd also emphasize that pursuing a second discipline (environmental engineering) while I was in law school magnified the benefits.

I guess the cost of that focus on environmental perspectives was that I de-emphasized the non-environmental training. I wish I had given a bit more time to issues such as intellectual property, health care, and business law. I am exposed to those issues constantly, and a deeper grounding would have been valuable.

***What are the best ways for law students to prepare for a career in the environmental field?***

I think the most important thing for law students is curiosity for multiple perspectives on issues, as well as flexibility in career path. It's an ever changing field, and I could not have plotted a linear career path to a predetermined end goal. As for specific preparation, I think the best thing is practice – internships, clinic, and whatever job you are fortunate enough to land after law school. Take whatever opportunities come your way and do your very best with those. Other opportunities will unfold with time, though you may have to kick it from time to time.

***How do you feel about the state of the environment? What do you predict will be some of the most significant developments in the environmental field in the years to come?***

I am concerned by the pace of global development in the face of resource constraints and social/economic inequity. But I am hopeful that the growing strength of corporate environmental stewardship and the broader concept of corporate responsibility can steer the global market in the right direction.

From my perspective, the most significant developments will be the continuation and expansion of this trend. For example, in the mainstream of the electronics industry, corporate responsibility and environmental stewardship is an expectation that the marketplace is beginning to enforce up and down the supply chain. Future progress has to involve tapping into the intelligence and creativity of people around the world and the innate drive for socio-economic equity. Technology plays a strong role, so I'm especially excited by the potential of the technology sector's awareness of corporate responsibility.

***Is there a law school memory you wish to share?***

During my second year a friend's father invited me to lunch in the partner's dining room at Venable. He asked me what area of law I wanted to practice. I responded, "International environmental law." He told me I should grow up, be realistic and pursue a sensible practice like estates and trusts.

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# 14th Annual Environmental Law Winetasting



*Dean Karen Rothenberg with Paul Bekman, '71, (left) Chair, UM School of Law Board of Visitors, and Stuart Salsburg, '71, Member, UM Law School Board of Visitors, at winetasting.*



*Delegate Jon Cardin, '01, presented to Professor Robert Percival an "Official Citation" to the Environmental Law Program in recognition of its service to the State of Maryland.*



*Carl Jean-Baptiste, '97, and Rachel Schowalter  
Jean-Baptiste, '97, attend winetasting.*



*Apple Chapman, '99, and Paul Versace, '99,  
enjoy meeting "old friends" at wine party.*



*MELS Board Members, Megan Moeller, 3D, Mike  
McCarthy, 3D, Cori Iacovelli, 2D, Karla Schaffer, 2D,  
Dave McMurray, 2D, and April Birnbaum, 2D.*



*Geoffrey Washington, '97, with his girlfriend,  
enjoy the evening.*



*Professor Rena Steinzor with Tracy Steedman, '03.*



*Approximately 200 guests attended the winetasting.*



*Lonnie Kishiyana, '04, with his wife Kari, enjoy the evening.*



*Megan Moeller, 3D, and friend speak with her mentor, Terry Harris, '01 (right).*



*Students, alumni and faculty sample the wine.*



*Erica Zilioli, 3D, and Natalie Havlina, 3D, enjoy the evening with their friend.*



*Madeline Goger, daughter of Joanna Goger, '00, stays up late to party.*



*John Shoaff, '99, his wife, Laura and their daughter, speak with Professor Percival.*



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## NEW ENVIRONMENTAL SEMINARS TO DEBUT IN 2006-2007

During the 2006-2007 academic year, Maryland's Environmental Law Program will be offering two new environmental law seminars. During the fall semester 2006, J.T. Smith II will teach a new seminar that emphasizes practice skills applicable to the handling of cases involving liability for, and remediation of, releases of hazardous substances under RCRA and CERCLA. During the spring semester 2007, international energy policy experts Alan S. Miller and Robert C. Means will offer a new seminar on Energy Policy and Climate Change.

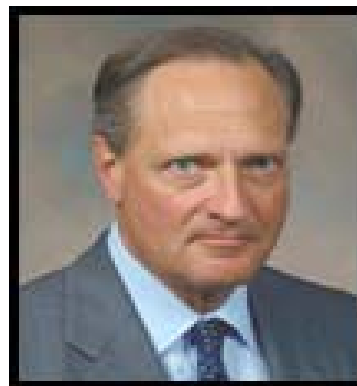


*Alan S. Miller*

The new seminar on "Energy Policy and Climate Change" will examine how energy law and policy are responding to the problems of global warming and climate change. It will consider what science reveals about the climate change problem, including the uncertainties in the science and the significance and role of dissent from the mainstream view of the science. It then will consider, given the current state of science, what actions should be taken to respond to these problems. Issues of timing and priorities will be considered, including the possibly long delay between the time when the actions are taken (and their costs incurred) and the time when their benefit is received, as well as competing priorities, especially those of the developing countries that would be most severely affected by a warmer world. The course also will consider technical and institutional responses to the prospect of climate change, focusing on electricity generation and transportation, the Kyoto Protocol and energy law and policy.

Alan S. Miller is a former lawyer for the Natural Resources Defense Council and a former visiting professor at the University of Maryland School of Law. He is currently an official with the International Finance Corporation in Washington, D.C., where he is involved in financing alternative energy projects throughout the world. He is a graduate of the University of Michigan School of Law. Robert C. Means is an international consultant who has been an advisor to several governments on energy issues. He is a former director of the policy office of the Federal Energy Regulatory Commission and a former professor at the University of Texas School of Law. He is a graduate of Harvard Law School.

Environmental Law 24



*J. T. Smith*

J.T. Smith's course will draw on his long experience representing clients in complex environmental compliance and remediation matters. The course will focus upon liability and cleanup regimes for hazardous substances and hazardous wastes and the respective approaches of RCRA and CERCLA to cleanup of past and present releases of hazardous wastes. While a seminar on Federal Regulation of Hazardous Wastes has been offered at Maryland in the past, J.T. Smith's course will have a new "practice" orientation. In addition to considering the major legal and policy issues raised by RCRA and CERCLA, the seminar will help students learn how to prepare comments in notice and comment rulemaking, how to conduct appellate challenges to rules, compliance counseling, the use of technical and scientific experts in rulemaking and in litigation, and how to negotiate environmental compliance and remediation claims with governmental authorities.

J.T. Smith II is a partner at Covington & Burling in Washington, D.C. He has previously served as an executive assistant to the U.S. Attorney General and as general counsel of the U.S. Department of Commerce. Smith has extensive experience representing a wide range of industrial clients in complex environmental matters. He is a graduate of Yale University and Yale Law School.

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## TAKE THE CHALLENGE SUPPORT CANCER SURVIVORS



*Jane Barrett, class of 1976, with son, Chris*

This is to introduce you to an exciting charitable project on which I'm working – Challenge America Foundation's *Coast to Coast: A Run for Survivorship*.

Beginning in July 2006, Christian McEvoy, a high school teacher from Fairfield, Connecticut, and the son of my friend and law partner Jane Barrett, Class of 1976, will be running approximately 3500 miles across the United States, from California to Rhode Island, to raise funds and awareness for cancer survivorship. I have signed on as a volunteer to help make this event a success. My law firm, Blank Rome LLP, has also signed on as a sponsor and is providing *pro bono* legal services.

Our mission is to make the public aware of the fact that for many of the 10 million who make up the survivor community, cancer is still a long-term challenge and that more funds are needed for treatment and support programs for survivors and their families. The Yale Cancer Survivorship Clinic is the primary beneficiary of this event, but Challenge America Foundation is inviting high school students and others across the country to form relay teams to run with Christian along his route and raise money for non-profits focusing on cancer survivorship issues in their local communities.

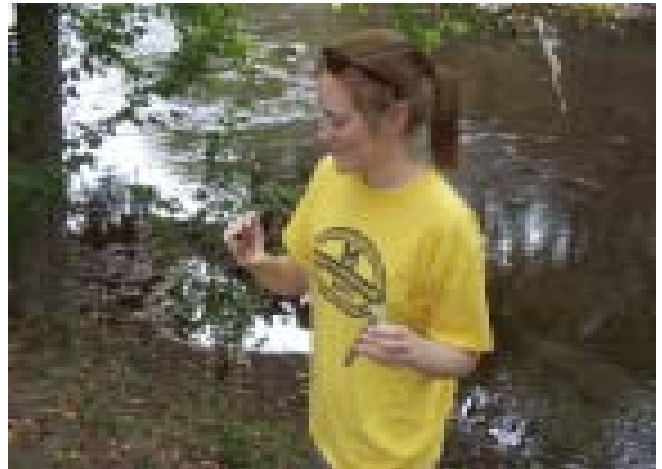
Please take a few minutes to check out the event website ([www.coasttocoastrun.org](http://www.coasttocoastrun.org)) and see how you can be part of *Coast to Coast: A Run for Survivorship*. If you wish to make a donation to *Coast to Coast*, you can do so on line by clicking on the "donate" link. Another option is for an individual or a group to "Buy a Mile" for \$100. We hope to sell each of Christian's 3500 miles so that every step of the run is done in honor of someone who has battled or continues to battle cancer. Also, we have long sleeve t-shirts bearing the slogan "gone running" available for purchase.

Jeanne M. Grasso, Class of 1994  
Partner  
Blank Rome LLP

# ENVIRONMENTAL STUDENTS MIX FUN WITH GOOD DEEDS



*Environmental students take a canoe trip on the Potomac River.*



*Student Karla Shaffer participates in Water Monitoring Program for World Water Monitoring Day.*

*Students tour University of Maryland Facilities Management with Vassie Hollamon, Associate Director of General Services.*



*Environmental Mentoring Dinner  
(left to right) Jonathan Libber, '78, Karin Krchnak, '93, Melanie Shepherdson, '00, James Benjamin, '01, Bill Piermattei, '99, Nicole Lacoste, '99, and Chris Corzine, '02.*



**American Bar Association  
Standing Committee on Environmental Law  
34<sup>th</sup> National Spring Conference on the Environment  
June 9, 2006 \*\* Baltimore, MD**

**ECOSYSTEMS, INFRASTRUCTURE and the ENVIRONMENT:  
RECONCILING LAW, POLICY AND NATURE**

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University of Maryland School of Law  
Ceremonial Moot Court Room, Main Floor

- 8:00 am: *Registration and coffee*

- 8:30 am: *Welcome:* **R. Kinnan Golemon**, Brown, McCarroll, LLP, Austin, TX and  
**Professor Robert V. Percival**, Director, Environmental Law Program, University of Maryland  
School of Law, Baltimore, MD

*Conference Goals and Introduction of Keynote Speaker:*

**David Hodas**, Professor of Law, Widener University School of Law, Wilmington, DE

- 8:45 - 9:30 am: **Opening Keynote Address: "Envisioning Land Use Policy: In Harmony  
or Conflict with the Laws of Nature," Bruce Babbitt**, Former Secretary of the Interior,  
Washington, DC

- 9:30 - 11:00 am: **"Disasters, Ecosystems & Infrastructure: Hurricane Season 2005"**  
What went wrong along the Gulf Coast and why - policy, natural resources impacts, political inputs.  
What is the role of wetlands in infrastructure preservation? Which laws influenced the outcomes of  
the hurricanes? Which laws will channel decisions for reconstruction?

*Moderator:* **Denise Antolini**, Associate Professor of Law, Williams S. Richardson School of Law,  
University of Hawai'i at Manoa, Honolulu, HI

*Speakers:* **Cynthia Drew**, Associate Professor of Law, University of Miami School of Law, Coral  
Gables, FL; **Monique M. Edwards**, Executive Counsel to the Secretary, Louisiana Department of  
Natural Resources, Baton Rouge, LA; **Leslie Carothers**, President, Environmental Law Institute,  
Washington, DC

- 11:00 - 11:15 am: *Networking Break*

- 11:15 am - 12:45 pm: **"Energy Infrastructure"**

Needs and challenges, supply and demand; coastal populations, ecosystems, and natural disasters;  
do environmental laws (CWA, NEPA, ESA, wetlands, CZMA, CAA) provide the environmental and  
ecosystem protection that society seeks? Federal/state relationships in energy infrastructure  
decisions; environmental justice; the range of infrastructure problems: refineries, liquefied natural gas  
offloading facilities, energy transport (pipelines, railroads, roads, ships), the electric grid, drinking  
water supplies, and sewage disposal.

*Moderator:* **R. Kinnan Golemon**, Brown, McCarroll, LLP, Austin, TX

Continue on next page

Continued

*Speakers:* **Robert Slaughter**, President, National Petrochemical and Refiners Association, Washington, DC; **Karl R. Rábago**, Director, Clean and Renewable Energy Group, Houston Advanced Research Center, The Woodlands, TX; additional panelist tba

· 12:45 - 2:00 pm: *Lunch (Krongard Room and Main Floor Courtyard)*

*Ceremonial Moot Court Room, Main Floor*

**Luncheon Keynote Address: “Ecosystem Services, Sustainable Development, and Economics: A Millennium Environmental Assessment Perspective,”** speaker tba

· 2:00 - 3:30 pm: **“Ecosystems, Infrastructure, and Risk”**

How is risk evaluated, accounted for, and allocated? Who bears the risk, who enjoys the benefits, and are these commensurate? Who evaluates, and how? Does the law put its thumb on the scale via subsidies and regulatory barriers? What are the proper roles of private market insurance, public insurance, subsidies, and tax policy? How does this panoply affect transactional and investment decisions?

*Moderator:* **Robert L. Brubaker**, Porter Wright Morris & Arthur LLP, Columbus, OH

*Speakers:* **Peter Steenland**, Counsel, Sidley Austin Brown & Wood LLP, Washington, DC; **Barry E. Hill**, Director, Office of Environmental Justice, U.S. Environmental Protection Agency, Washington, DC; **David Conrad**, Senior Water Resources Policy Specialist, National Wildlife Federation, Washington, DC

· 3:30 - 3:45 pm: *Networking Break*

· 3:45 - 5:00 pm: **“Thinking Outside the Box: Strengthening our Energy Infrastructure by Enhancing and Using Ecosystems Services”**

Sustainable development; the power of markets; new laws and new approaches; how can we appropriately value ecosystems and incorporate that value into infrastructure decision making? The use of law to harness the value of ecosystem services. How can law and society reconceive a city?

*Moderator:* **David R. Hodas**, Professor, Widener University School of Law, Wilmington, DE

*Invited Commentators:* **Robert Costanza**, Director, Gund Institute of Ecological Economics, School of Natural Resources, University of Vermont, Burlington, VT; **Daniel A. Farber**, Sho Sato Professor of Law and Director, Environmental Law Program, University of California School of Law, Berkeley, CA; **Motoko Aizawa**, International Finance Corporation, Washington DC (invited)

· 5:00 pm: Closing Remarks

· 5:30 pm: **CONFERENCE RECEPTION** (*Krongard Room*)

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FOR FINAL DETAILS AND TO REGISTER, IN THE COMING WEEKS PLEASE CHECK <http://www.abanet.org/publicserv/environmental> or contact Mary Jordan Mullinax at 202-662-1694, [MullinaM@staff.abanet.org](mailto:MullinaM@staff.abanet.org) for information or to receive a printed brochure.









