BUILDING BRIDGES BETWEEN OLD ADVERSARIES:
THE U.S./IRAN ENVIRONMENTAL LAW EXCHANGE

Highlights...

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The terrorist attacks on the United States on September 11, 2001 were a shocking tragedy for the entire world. Citizens from more than 60 countries were among the more than 6,000 people killed by these cowardly acts of barbarism. In the wake of this global tragedy, the world has an even keener appreciation of the importance of building bridges between former adversaries to help mobilize global action to combat the scourge of terrorism.

Professor Robert Percival, the director of Maryland’s Environmental Law Program, has been working with the Search for Common Ground, a Washington-based, non-profit conflict resolution organization, on a project to assist Iranian professors and nongovernmental organizations in the development of environmental law and environmental education in Iran. Percival traveled to Iran in May to present a Workshop on Environmental Law at the University of Tehran. On September 11, the day of the terrorist
attacks in the United States, Maryland was preparing to host a group of Iranian environmental professors who had come to the United States as part of this exchange program. Rather than canceling the Iranians’ visit to Maryland on the following day, the law school used it as an opportunity to facilitate the healing process as the community struggled to cope with the implications of the terrorist attacks.

The group who visited the law school included Dr. Mohammad Takhtshid, Dean of the Graduate Faculty of Law and Political Science at the University of Tehran; Dr. Simin Nasseri, Professor of Public Health and Environmental Engineering at Tehran University; Victoria Jamali, a retired professor in the Faculty of Environment at the University of Tehran who is a founder and member of the Board of Directors of the Women’s Association Against Environmental Pollution; and Dr. Manouchehr Tabibian, a professor of environmental urban planning in the Graduate Faculty of Environment in the University of Tehran. Each of the visitors had met Professor Percival when they participated in the Workshop on Environmental Law in Tehran in May. Also accompanying the group was William Miller, a former U.S. diplomat who had been nominated to be U.S. ambassador to Iran prior to the seizure of the U.S. embassy in Tehran in 1979.

The Iranian professors explained that their families in Iran were quite worried about them. After phoning their families from the law school and assuring them that they were safe, the visitors reported that people in Iran were shocked by the news of the attacks and that they were “in mourning.” The professors then participated in luncheon forum for the Maryland faculty at which they discussed the situation in Iran and their work in the U.S./Iran environmental exchange project. Following the faculty lunch, the Iranian visitors participated in a student reception hosted by the Maryland Environmental Law Society. They then attended Professor Percival’s Environmental Law class where they discussed environmental problems in Iran and how different approaches to environmental regulation could be used to respond to them.

Reception for participants in Workshop on Environmental Law, University of Tehran.

The Workshop on Environmental law held at the University of Tehran in May was cosponsored by the university’s Faculty of Environment and Faculty of Law and Political Science. Serving as faculty for the workshop were Professor Percival, Professor Richard Lazarus of the Georgetown University Law Center, and Bern Johnson of the Environmental Law Alliance Worldwide, who is based in Eugene, Oregon. Participants in the workshop included approximately 40 Iranian professors, government officials, environmentalists, and students.

The workshop was structured to provide a series of lectures on aspects of environmental law (pollution control law, natural resources law, environmental enforcement, the role of nongovernmental organizations, and international environmental law) followed by afternoon interactive sessions in which workshop participants discussed current environmental controversies in Iran. These controversies included the construction of a superhighway between Tehran and the Caspian Sea, air pollution in Tehran, and transboundary pollution in the Caspian Sea.

Environmental problems have become a source of considerable public concern in Iran. There are now 232 nongovernmental organizations (NGOs) in Iran who focus on environmental issues. The country has a very young and highly educated population, which is fueling the growth of a thriving civil society. By large popular majorities, the country has elected and re-elected President Muhammad Khatami, who is considered a reformer who now enjoys the support of a reformist majority in
Environmental Law Clinic Fights to Create A Lead-Safe City for all of Baltimore’s Children

by Steve Solow*

There is no established safe level of lead in the human body, and even the smallest exposure has the potential to cause harm—especially in small children and pregnant women. High levels of lead can cause serious disability and even death. 90% of the homes in Baltimore have lead paint on their walls, a condition that has lead to the lead poisoning of thousands of the City’s children. The Maryland Environmental Law Clinic has joined with the City of Baltimore to fight the problem of lead paint in Baltimore’s neighborhoods.

Lead poisoning can result from either inhaling dust from lead based paint or ingesting paint dust or chips. Most homes built before 1950, and a substantial number of homes built before 1978 when the federal government banned lead paint, have lead based paint. Lead paint chips, cracks, or crumbles which turns into dust and spreads around a house, coating anything and everything including toys, pets, and dishes. Children are especially vulnerable because of frequent hand-to-mouth contact.

Yet, less than 13% of Baltimore children aged 0-6 have been tested for blood lead levels. Just blocks north, south, east, and west from Baltimore’s well-polished inner harbor, a lead-poisoning epidemic plagues the city. Lead paint poisoning affects 7,000 Baltimore children every year. The U.S. Department of Housing and Urban Development reports that children in Maryland, especially Baltimore City, are four times as likely to be exposed to lead versus the national average, and 15 times more likely to develop lead poisoning. 85% of the Maryland’s lead poisoning cases come from Baltimore, with over half of those cases coming from three “hot zones” in the city. In Park Heights, Sandtown, and Middle East, 70% of children tested for lead-poisoning have been exposed to lead. Lead-poisoning is indeed a silent killer, slowly poisoning Baltimore’s children.

Children are most at risk because those under the age of six are particularly susceptible to lead poisoning due to their rapidly developing bodies. Once it enters their bloodstream, lead disrupts the proper functioning of the brain, nerve cells, kidneys, digestive system, reproductive system, and the formation of blood cells. Lead also interferes with their ability to absorb iron, a mandatory building block for brain and nerve development. Even low level exposure can damage or impair a broad range of functions including sight, hearing, learning ability, and coordination.

Since 1994, the Environmental Law Clinic has been working to help abate lead paint in housing units in Baltimore city and the state of Maryland. Starting last year, Clinic Director Steve Solow had the Clinic join the enforcement efforts of the Baltimore City Health Department’s (BCHD) Environmental Health Code and Enforcement Attorneys.

Environmental Health Code and Enforcement Attorneys bring civil and criminal enforcement proceedings against...
landlords who fail to comply with court orders to abate lead affected rental units. Clinic students, pursuant to the Maryland student practice rule, serve as Special Code Enforcement Attorneys in enforcement cases filed against recalcitrant landlords.

Since the beginning of the City’s enforcement efforts in January 2000, Environmental Health Code and Enforcement Attorneys along with Maryland law students, have filed over 180 civil enforcement cases. In most cases the landlords enter into plea agreements to pay fines and get the lead abatement work done promptly, rather than face high fines and prison terms if they continued to ignore the City’s abatement orders.

Approximately 40 abatements have already been completed as a result of the enforcement actions. In addition, the attorneys have collected thousands of dollars in civil penalties. It is hoped that these enforcement cases will encourage other landlords to complete abatement work promptly. The work of the City was also aided by other legal work by last year’s clinic students, who helped draft the city’s first administrative plan for lead enforcement. The administrative plan was crucial in stepping up enforcement efforts, because the plan enables the city to conduct administrative searches for lead paint and file contempt sanctions against non-compliant landlords. With nearly 1000 active lead paint violations in the city, the student attorneys are excited by the challenges that wait ahead.

The City’s overall strategy calls for Maryland students to continue their enforcement work along with a series of other steps. These include a grant program to support lead abatement, a program of strategic demolition of vacant and distressed properties in target areas that contain lead-based paint, temporary and permanent relocation services to families affected by lead poisoning, and expansion of outreach, education and lead testing activity by the Baltimore City Health Department.

Clinic students will continue to work to make Baltimore a city where no homes have lead paint, where no children are plagued by lead poisoning, and where landlords do not offer rental properties to families unless they are safe and habitable.

*Steve Solow is Co-Director of the Environmental Law Clinic at the University of Maryland School of Law.

FIRST JOINT ENVIRONMENTAL LAW/HEALTH LAW SEMINAR DEBUTS: TOBACCO CONTROL AND THE LAW

Linda Bailey, '92, is co-teaching the seminar with Professor Percival on Tobacco Control and the Law.

During the fall semester 2001, the law school is having its first joint seminar between the school’s Environmental Law and Health Law Programs. The seminar “Tobacco Control and the Law” focuses on the legal and scientific history of efforts to control the health risks of tobacco use. It is being co-taught by Professor Percival and Linda Bailey, the associate director of the Centers for Disease Control’s Office on Smoking and Health. Among the issues the seminar is exploring are: how science has influenced regulatory policy, regulation of tobacco labeling and advertising, tobacco products liability litigation, regulation of environmental and workplace exposures to second hand smoke, the FDA’s evolving approach to regulating tobacco products, and international initiatives to control tobacco use. Students in the seminar are working closely with the University of Maryland School of Law’s new Tobacco Control Legal Resource Center. The Center, which was established with funds from Maryland’s share of the tobacco Master Settlement Agreement is assisting county and local governments with tobacco control efforts. Students from the seminar will make a presentation at the national conference on Tobacco or Health in New Orleans on November 27-29.
LIFE AT THE EYE OF THE HURRICANE
by Rena Steinzor*

Where were you at 9:35 a.m. on September 11? I was chugging down Rock Creek Parkway on my way to work at the Natural Resources Defense Council (NRDC), where I am spending my sabbatical year. It took a full ten minutes for the horror to penetrate and for me to recognize that I had best turn around and go home to Silver Spring. Clearly, no offices in downtown Washington would be doing business-as-usual on this dreadful day.

In the aftermath of the trauma, as people re-group all over the country, the environmental community is in a particularly difficult position. To give one telling measurement of the problem: late last week, the Senate Environment & Public Works Committee pledged to President Bush that it would make any changes necessary in the nation’s environmental laws to aid in the war on terrorism. The list of other ramifications seems endless: to curb our dependence on foreign oil, will Congress immediately authorize drilling in the ANWR? Have these events doomed any chance of obtaining more rigorous CAFE standards? With congressional leaders distracted by our relationship with the world, will regulatory reforms with potentially devastating consequences for EPA’s institutional credibility and integrity be enacted without anyone noticing?

It is hard to imagine that the American people would embrace such drastic changes, no matter how much we fear further assaults. The difficulty is that the nation’s anxiety may well compel us to forego any coherent and transparent process for considering such reforms, and the price we pay for that failure of democracy could produce ill-considered policies that will haunt us for decades – even generations – to come.

Insisting mindlessly that everything must return to "normal" and no changes should be made in any aspect of the nation’s regulatory system is not the answer. Reform is overdue and if we cannot postpone it in definitely. We can only hope, however, that the democratic checks and balances that have made us the most powerful country on earth do not fail us when we need them the most.

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

FOURTH CIRCUIT HANDS 1000 FRIENDS OF MARYLAND A DEFEAT

(from left to right) Wade Wilson, Margaret Clune, Rena Steinzor, Mark Sullivan, Jeff Herrema, Dru Schmidt Perkins, and Brian Higgins.

The Fourth Circuit Court of Appeals recently issued an opinion providing procedural but no substantive relief in 1000 Friends of Maryland v. Whitman, a case brought by the Environmental Law Clinic on behalf of a non-profit organization dedicated to the advocacy of smart growth policies throughout the State. The case involved a challenge to EPA’s decision to approve the Baltimore Region’s transportation plan without conducting photochemical grid modeling to ensure that the plan will not make Baltimore’s “severe” non-attainment problems worse. The City is one of the ten worst in the country for ozone and repeatedly experiences “code red” days during the summer months.

Jeff Herrema ('01) and Wade Wilson ('01) argued the case, with the assistance of Margaret Clune ('02), Mark Sullivan ('02), and Brian Higgins ('01). The 4th Circuit Court of Appeals panel of three judges, including Judge Luttig, Judge Traxler, and Judge Thornberg, was exasperated with EPA’s contention that it could model whenever it felt like it, but could not find enough guidance in the statute to impose a different schedule on the Agency.

“We are disappointed, but we are not sorry we took the risk,” said Rena Steinzor, the law professor who supervised Herrema and Wilson’s work. “It is a question of weighing the odds. It seemed improbable that EPA’s policies would ever improve in this area without a lawsuit, and the client therefore had little to lose.”
Dr. Manoucher Tabibia, professor of environmental urban planning in the Graduate Faculty of Environment, University of Tehran, at the Workshop on Environmental Law.

Parliament. However, reform efforts have faced great difficulty because Iran’s Council of Guardians, which controls the judiciary and has the authority to disapprove acts of Parliament, remains in the hands of hard-line clerics led by supreme leader Ayatollah Khamenei.

Among the objectives of the workshop was to assist in the development of environmental law in Iran and to facilitate the creation of a joint program at the University of Tehran that will enable students to specialize in environmental law. Following the workshop, the U.S. faculty worked with Iranian professors to help develop a model curriculum for such a program which the university hopes to launch next year.

Professor Percival was extremely impressed by the warmth and hospitality of all the Iranians he met, as well as with the level of environmental concern and the extent of the university’s commitment to developing a specialized curriculum in environmental law. He was particularly delighted to meet some of the leaders of the public interest movement in Iran, including founder of the nation’s oldest public interest organization, the Women’s Society Against Environmental Pollution. After spending a week in Tehran, the group traveled to the historic town of Isfahan for sightseeing and meetings with the leaders of other Iranian environmental NGOs.

Iran has not had diplomatic relations with the United States since the seizure of the U.S. Embassy in Tehran in November 1979. After holding U.S. embassy personnel for 444 days, the Iranian government released the hostages as part of a deal brokered in the closing days of President Carter’s administration. While in Tehran, the U.S. faculty visited the site of the former U.S. Embassy and they met with the Swiss ambassador to Iran who looks after U.S. interests in the country in the absence of diplomatic relations between the two countries.

In the wake of the terrorist attacks on the United States, the government of Iran has signaled that it would like to improve relations with the United States and to assist in the fight against terrorism. Tehran’s Mayor, who has been active on environmental issues, sent a personal note of condolence to Mayor Giuliani of New York. Secretary of State Colin Powell has described these signals as “an opening worth exploring.” However, Iran remains on the State Department’s list of countries that support terrorism because of its support for some of the more radical organizations promoting the Palestinian cause in the conflict with Israel. It is hoped that the U.S./Iran collaboration on environmental issues will be a helpful step toward increased cooperation between old adversaries.
Once every seven years, each faculty member has a chance to spend a sabbatical year away from the law school. A sabbatical provides faculty with a valuable opportunity to enrich their careers through a change of scene, a chance to recharge batteries, and an opportunity to pursue long-deferred projects. During the 2000-2001 academic year, I spent my sabbatical teaching at Harvard Law School and in Scotland, speaking at several conferences, presenting an environmental law workshop in Iran, playing baseball at Yankee Fantasy Camp, and attending Apple Computer’s school for educators.

After spending the summer teaching Comparative Environmental Law at the University of Aberdeen in Scotland, I arrived at Harvard Law School in fall 2000 to teach Environmental Law and a seminar on Transboundary Pollution and the Law. The Harvard law students were terrific. They were grateful and enthusiastic consumers of all things related to environmental law.

I greatly appreciated the opportunity to do historical research in the Harvard Law Library’s collection of the papers of Justice Oliver Wendell Holmes focusing on the interstate nuisance disputes the Supreme Court heard in the early years of the twentieth century. This research helped me prepare a paper on the rise and fall of the federal common law of interstate nuisance, which I presented at a faculty workshop at Harvard in December. At the end of the semester, the Harvard students surprised me with the delightful gift of a copy of Dr. Suess’s book The Lorax, inscribed with personal notes from all the students in my Environmental Law class.

Fall in New England is one of the great environmental spectacles in this country. I particularly enjoyed a trip to Vermont Law School to speak at the New England regional conference of the National Association of Environmental Law Schools. A highlight of the trip was a hike with faculty and students to a ridgetop picnic spot with a spectacular view of the spectacle that is fall in Vermont.

In October I spent ten days in Jordan attending the World Conservation Congress as a member of the Commission on Environmental Law of the International Union for the Conservation of Nature. This Congress, which is held every three years, brought together environmentalists from every corner of the world. Queen Noor, widow of Jordan’s late King Hussein, opened the Congress with a moving address in the old roman amphitheater in downtown Amman. Hearing about the progress of environmental law throughout the world was heartening, particularly now that the United States appears...
to be retreating from global engagement on environmental issues.

After finishing the semester at Harvard, I flew south to attend New York Yankees Fantasy Camp at the team’s spring training facility in Tampa, Florida. It was a real thrill to get to play baseball surrounded by many of my childhood heroes from the great Yankee teams of the 1960s and 1970s (Tom Tresh, Roy White, Graig Nettles, Joe Pepitone, Mickey Rivers, Hector Lopez, Oscar Gamble, Johnny Blanchard, Al Downing, Bill Stafford, and Paul Blair). With former Yankee star pitcher Tommy John as the pitcher/coach of my team, I volunteered for catching duties. Catching a pitcher with 288 lifetime wins was a thrill, though the ball had to be retrieved as a souvenir every time he gave up a hit to a camper. While my ultimate batting average was nothing to brag about (particularly after the former Yankee pitchers started throwing real curve balls), I did drive in one of our team’s two runs during our 3-2 loss in the “dream game” against the Yankee old-timers.

In March I presented a paper on the history of transboundary pollution control efforts at the annual conference of the American Society for Environmental History in Durham, North Carolina. The conference gave me a chance for some interdisciplinary interaction with the burgeoning ranks of environmental historians. It also enabled me to gather information for my new seminar on Tobacco Control and the Law by touring the Tobacco Museum at the former estate of “Buck” Duke, founder of the American Tobacco Company and Duke University.

Later in March and in April I spoke at conferences in Virginia and California on the legal system’s use of scientific information. Then in May I headed to Iran to present a Workshop on Environmental Law at the University of Tehran (see related story).

As my sabbatical was ending, I attended Apple Computer’s Educator’s Institute at Northwestern University. Approximately 100 teachers from all parts of the United States and Australia spent five days exploring how the latest advances in computer technology can enhance the classroom experience. We initially were split into four-person groups and assigned the task of making an iMovie introducing the members of our group, a project that spawned considerable creativity and generated a highly entertaining evening of group film-watching. The rest of the week was spent collaborating on the design of multi-media educational projects displayed in a digital garden at the end of the institute.

After a year away, it is good to be back in a Maryland classroom again while looking forward to the spectacular new classrooms that we will be using next year in the law school’s new building.

*Bob Percival is Director of the University of Maryland Environmental Law Program.

NOTICE TO ALUMNI

Please contact Laura Mrozek about your change of address. You may email to: lmrozek@law.umaryland.edu or call 410-706-8157. Thank you.
Dean Karen Rothenberg welcomes guests to the Ward, Kershaw & Minton Symposium. Seated from left to right: Joanna Goger, Coordinator of the Symposium, Rena Steinzor, Director of the Environmental Law Clinic and Moderator, and Bruce Douglas with the Laboratory for Coastal Research, Florida International University.

On April 20, 2001, the Environmental Law Program hosted the 2001 Ward, Kershaw, and Minton Environmental Symposium in Westminster Hall. The symposium brought together a distinguished group of speakers to address the issues of sea level rise and coastal erosion, issues on the cutting edge of environmental law having huge implications for the future. Panelists and conference attendees included scientists, engineers, state, local, and federal government officials, property rights advocates, and environmentalists. These experts discussed the economic, political, social, and legal consequences of rising tides and eroding shores.

The causes and consequences of sea level rise were addressed, and response strategies from various states were presented and evaluated. The final panel addressed the balance of public and property interests in considering responses to coastal erosion. There was a general consensus among the panelists that sea level is in fact rising. Several themes recurred throughout the presentations, including the impact of current and future population growth in coastal regions, and the notion that history shows that it is necessary to start planning now for future coastal changes. In addition, there was a consensus that federal, state, and local governments must work together to develop response strategies.

The first panel provided an overview of sea level rise and its impact on coastal environments and communities. Bruce Douglas, a scientist and researcher with the Laboratory for Coastal Research at Florida International University, provided an overview of sea level rise and coastal erosion in the 21st century. He noted that the rate of sea level rise in the 20th century was ten times greater than the average over the last 2000 years. He also noted that the rate of sea level rise in the Delmarva region (the shores of Maryland, Delaware, and Virginia) during the 20th century was twice the global average. He explained that the long-term sandy beach erosion rate is about 150 times the rate of sea level rise.

Douglas explained that inundation has been one of the most significant effects of sea level rise, with several Maryland landmarks serving as examples of the effects of coastal inundation. Sharp’s Island in the Chesapeake Bay was once approximately 700 acres and has now disappeared, and Blackwater National Wildlife Refuge has lost over one-third of its total marsh area.

Douglas outlined the strengths and weaknesses of several erosion response strategies. He noted that beach nourishment and the building of artificial dunes accompanied by the planting of dune grasses is a method that works better in some places than others depending on the history of the shoreline. He noted that the larger issue involves who will pay for it and whether it is an economically sensible way to control erosion in a particular locality, as determined by the value of the coastal property and how much a community is willing to spend to maintain its value.

Regarding predictions for the future, Douglas argued that as temperature rises, there will be a thermal expansion of the oceans as well as melting glaciers, resulting in an increasing rate of sea level rise. He also suggested that the rate of sea level rise has been hidden by the holding of water as a result of the construction of dams and reservoirs. Therefore, he predicted that the rate of sea level
rise could double or triple in the next 500-1,000 years.

Chris Jones, a coastal engineer with Christopher P. Jones & Assoc. who has served as an expert witness in over a dozen cases related to coastal engineering and shorefront management, provided an update on the Lucas v. South Carolina Coastal Council case. He provided a background on the case and outlined the elements of South Carolina’s Beachfront Management Act of 1988 -- the Act which restricted development on the Lucas lots. He detailed the events that have taken place on these properties and surrounding properties since the Lucas case, including how the Act was amended in 1990 to allow construction seaward of the setback line if a permit was obtained. He noted that the state purchased the lots from Lucas after unfavorable decisions by the U.S. Supreme Court and the Supreme Court of South Carolina, and then resold the lots with conditions. He explained that the ocean shoreline along the community of Wild Dunes where the former Lucas property is located has experienced continuous fluctuations since the Act was passed as a result of inlet shoal migration and attachment. As a result, he reported that at least a dozen homes have been threatened or undermined, including a house built in 1994 on one of the lots formerly owned by Lucas. Two additional lawsuits were filed against the state as a result of the damage and the state’s prohibition on erosion control devices. Both were decided in favor of the State of South Carolina.

Jones argued that the Lucas case demonstrates that construction near inlets is risky even in areas where there is a pattern of long-term accretion. He further argued that building behind a setback line does not guarantee safety and that forty years of data is not enough to establish baselines and setbacks. He also noted that South Carolina made amendments to the Beachfront Management Act in 1999 prohibiting sea walls and revetments, providing a likely guarantee that more suits will be filed challenging the law in the future.

Dr. Donald Boesch, a marine ecologist and President of the University of Maryland Center for Environmental Science (UMCES) presented a report of the National Coastal Assessment Group for the U.S. Global Change Research Program. He was the co-chair of the Coastal Areas and Marine Resources Sector Team of the U.S. National Assessment of the Potential Consequences of Climate Variability and Change, and co-editor of the team’s October 2000 report. Boesch emphasized that climate change will not only cause sea level rise but will also result in wetlands losses, coastal flooding, changing temperatures, changing precipitation patterns, changes in the frequency of storms, and atmospheric changes. He suggested that these changes may be even more important to ecosystems and human populations than sea level rise.

He suggested that the science is becoming increasingly more reliable as scientific models substantiate trends in sea level rise. He reported that the Intergovernmental Panel on Climate Change (IPCC) put together a range of sea level rise predictions based on different models which determined that on average sea level will rise 0.3-0.4 meters or 30-40 centimeters, by 2100. He explained that the effects of sea level rise will depend on local conditions such as whether the land in a particular locality is rising or falling. He noted, for example, that most of the United States, including the Chesapeake Bay region, is subsiding. He argued that when relative rates of subsidence are added to expansion of the oceans and projected rates of sea level rise, sea level can be expected to rise by 0.4 - 0.7 meters or 2 feet in the next 100 years. He noted that this is significant when taking into account the amount of coastal real estate that is at or near sea level now.
He suggested that this change in sea level will likely cause inundation of tidal wetlands resulting in the loss of shallow water habitats, thus bringing about a new set of challenges regarding public/private ownership of coastal property and signaling the need for a management approach that goes beyond restoration and protection. When marshes and tidal wetlands are destroyed, the whole ecosystem is affected because these areas serve as a nursery grounds for fish, remove sediments and contaminants in the runoff, and serve as buffer between the land and water.

Boesch concluded with the suggestion that President Bush’s recent decision to reject the Kyoto Protocol has raised public perception and elevated awareness about the issue of climate change. He also argued that the IPCC assessment has made a convincing case for raising the level of certainty about changes in climate and has created a new basis for understanding the long term climate record.

The second panel provided an overview of state responses to sea level rise. Jim Tripp, General Counsel for Environmental Defense, discussed the implications of sea level rise, coastal erosion, and global warming for Long Island, New York and Coastal Louisiana. He began his discussion by commenting that sea level rise is going to emerge and explode as a nationally important issue. He noted three trends that contribute to the importance of tackling the problem of sea level rise - the physical phenomenon of sea level rise, demographic trends that show people increasingly moving to coastal areas, and trends in property law throughout the United States. He argued that the Supreme Court’s recent jurisprudence in the takings area has complicated state and local government efforts to manage areas subject to sea level rise and coastal erosion. Tripp stressed the importance of understanding natural processes in order to take advantage of, rather than fight, these coastal processes, and he also stressed the need to come up with incentives for property owners to keep them from building on the coast.

Tripp first discussed coastal Long Island, New York. He noted that Long Island is densely populated by nearly 3 million people. He discussed federal efforts to protect the area from the effects of coastal erosion including the creation of the Fire Island National Seashore by the National Park Service and extensive shore armorng by the Army Corps of Engineers. Tripp argued that many of the Corps’ attempts to manage natural coastal processes have actually contributed to erosion. The State of New York has also attempted to use its state environmental conservation law to combat erosion by designating coastal erosion hazard areas where new development is prohibited and damaged structures may not be rebuilt. In reality, however, Tripp noted that development permits are rarely denied due to political and legal pressure to grant them.

Tripp predicted that increasing sea level rise will increase the incidence of coastal flooding on Long Island. He noted that the Corps has backed away from the construction of hard erosion control structures and has moved toward using beach nourishment. The Corps is currently conducting a study regarding a proposal to pump sand from offshore for use in front of existing homes as a protection measure — in effect — building an artificial dune out into the water. Tripp noted several concerns that his organization, Environmental Defense, has with this proposal. These include environmental concerns, concerns regarding the dune’s stability and whether the project is economically sensible, and the fact that the project would send a signal to developers that the land is safe when it is not. He argued that billions of dollars may be spent by the state and federal government on this project with the potential result of encouraging more development.

Tripp next discussed the impact of sea level rise on Coastal Louisiana -- an area containing 3 million acres of coastal wetlands or 30-40 percent of all of the coastal wetlands in the United States. According to Tripp, one million acres of wetlands have been lost in the last 100 years. The losses have resulted from sea level rise, the Corps’ management of the Mississippi River for flood control and navigation, and the construction of 10,000 miles of pipeline canals. If the rate of sea level rise accelerates, Tripp maintained that sea level rise will become an increasing threat to this area.

Tripp suggested that the situation in Coastal Louisiana is truly one of a kind, particularly because the anticipated loss of coastal wetlands in the area would be a national tragedy. He noted that a comprehensive restoration project is being considered that would take Mississippi River sediments and redirect them into subbasins that are eroding where the sediments can spread out naturally, thus replicating natural processes. The challenge will be to get the state focused on a comprehensive solution that will be credible to all stakeholders. According to Tripp, the estimated cost of the project would exceed the price tag on the Everglades restoration.

David Burke, Director of the Chesapeake and Coastal Watershed Service, Maryland Department of Natural Resources, reviewed the state of Maryland’s sea level rise response strategy. The goals of the Response Strategy
include gaining a better understanding of sea level rise and its impacts, determining Maryland’s current response capability, increasing public awareness, and enhancing the state’s ability to respond. The state of Maryland is characterized by vast low lying areas and population growth and development, making sea level rise respond a significant issue.

Burke discussed several examples of the state’s response strategies. In the Calvert Cliffs area of Calvert County on the western shore of the Chesapeake Bay, setback restrictions have been established. In Ocean City, beach nourishment has been implemented as an accommodation measure and will probably continue because of the importance of travel and tourism in that area. Finally, in Shady Side, also along the western shore of the Chesapeake Bay, bulkheads and revetments are used to contain shoreline erosion. Burke noted that Maryland does favor non-structural responses over structural responses.

Burke gave Maryland a grade of B- for its current efforts in this area. He commented that the state has had many successes, including the formation of a Shore Erosion Task Force, the Critical Area Program, local erosion setbacks, county flood plain ordinances, and an agreement among Chesapeake Bay watershed states to look at the effects of climate change on wetlands. Burke listed Maryland’s Tidal Wetlands Act as an area of improvement.

According to Burke, Maryland’s Shore Erosion Task force is considering non-structural v. structural options, land conservation zones where land would be purchased for conservation, erosion-based setbacks, and a process of mapping vulnerable areas and superimposing those maps on private and commercial infrastructure in order to assess the dollar impact of sea level rise.

Burke suggested that the true challenge facing Maryland is that most planning is done incrementally by local elected officials who are not always in their positions for an extended period of time. He argued that a more comprehensive, integrated approach is needed using outreach, technology, data and research to find hot spots. He also discussed the importance of incorporating sea level rise planning into existing agreements and ordinances. He noted that Maryland’s Tidal Wetlands Act gives Marylanders the right to hold back the sea and interrupt the natural progress. This is seen by property owners as a fundamental property right and it conflicts with some of the sea level response strategies that the state is considering.

Lesley Ewing, Senior Coastal Engineer, California Coastal Commission, spoke about the significance of sea level rise to coastal management in California. She began by describing the unique uplift that is occurring in California as a result of the action of plate tectonics. The result is that California is characterized by high coastal bluffs and uplifted marine terraces. According to Ewing, this coastal uplift has caused California’s rate of sea level rise to be below the global average at 1-2 millimeters per year, with negative rates in some areas. As global sea level rise increases, however, Ms. Ewing predicted that sea level rise will dominate over uplift so that California will be experiencing near the global average over the next 100 years.

Ewing described the huge amount of coastal development in California as well as the enormous wetlands losses the state has experienced as a result of dredging, filling, port development, and agricultural use. Ewing also provided background on the formation of the California Coastal Commission and the passage of the state’s Coastal Act in 1976. The main goals of California’s program include providing public access, protecting public coastal resources, and controlling development. She explained that sea level rise was not an issue at the time the Act was passed. She argued that despite this lack of recognition, the existing Coastal Act could be “morphed” into a sea level rise policy.
Ewing described several examples of California’s response strategies including breakwaters, sea walls, and revetments. She explained that California allows structures to prevent existing homes from the dangers of erosion. She emphasized, however, that the Commission attempts to minimize the impacts on public access that these types of structures cause by encouraging the use of low-lying structures. The Commission also encourages new structures to be sited in safe places at the outset, and requires homeowners to agree that they will not apply for a sea wall in the future. According to Ewing, this policy has not yet been challenged. The Commission has also been encouraging beach nourishment as an option, but the language in the Act is not strong enough to make it mandatory. The Act’s language states that beach nourishment should be encouraged, whereas sea walls and revetments shall be used to protect existing structures, thus creating a priority for how the state views private property and protection of the shoreline. She noted that there is no state program in place for the use of retreat or accommodation measures, and no funds are available for buying properties. She concluded by emphasizing that an economic analysis of the effects of coastal erosion and sea level rise is needed and she praised the state of Maryland for considering that approach.

Walter Clark, Ocean and Coastal Law Specialist with the North Carolina Sea Grant at North Carolina State University provided an overview of North Carolina’s regulatory and planning responses to sea level rise. Clark began by reiterating that most agree that sea level is rising. He continued to explain that even modest rates of sea level rise will have profound effects in North Carolina because the state has 300 miles of ocean shoreline and 1,700 miles of estuarine shoreline. A five foot rise in sea level would result in the inundation of 1.23 million acres of land. Clark noted that North Carolina is also experiencing dramatic increases in population, particularly in coastal areas. He explained that the damage caused by recent hurricanes has been exacerbated by sea level rise and he pointed to an image of homes along the North Carolina coast falling into the water as an example of the destruction.

Clark argued that North Carolina initially had a very proactive response to coastal erosion, but more recently the state is “struggling to stay ahead of the climatic, geological, and political curve.” In 1974, state legislation was passed in the form of the Coastal Area Management Act (CAMA). The Act has a both a regulatory component and a land use planning component and is implemented as a local/state partnership.

According to Clark, CAMA created a Commission with legislative power to fill in the management gaps left by the state legislature. The Commission has identified specific areas for attention and protection called Areas of Environmental Concern which are further divided into Ocean Hazard Areas and Coastal Shorelines adjacent to wetlands, coastal rivers, and sounds. The CAMA also established development standards including a setback requirement for new construction, and a prohibition on hardening on ocean and inlet shorelines for existing development. Setbacks are established at a minimum distance from the first line of “stable natural vegetation.” Clark explained that the line of stable natural vegetation and setback lines will move landward as sea level rises, making more and more property unbuildable, and potentially increasing the amount of litigation.

Clark emphasized that North Carolina does not permit hard structures, but beach nourishment is allowed, and, if property is threatened with imminent danger, sand bagging is allowed. He noted that the construction of a resort and condominium called Shell Island will be the first major test of the non-hardening policy. The resort was built in an inlet hazard area at a safe distance from the inlet, but in the last fifteen years, the inlet has moved within a few feet of the resort. Because hardened structures are prohibited, the only remaining option is to relocate the inlet which would require excavation of coastal wetlands.

Clark also discussed the adverse impacts of sea level rise on estuarine shorelines. Unlike its ocean shoreline policy, North Carolina allows the use of hard structures behind tidal fringe wetlands. These structures block the natural migration of wetlands and result in a loss of habitat. The Commission attempted to prohibit hardening on the estuarine shoreline but it was met with fierce opposition because it failed to get the support of local government.

According to Clark, the land use planning component of North Carolina’s program has met with minimal success because it lacks a linkage with zoning enforcement power. He noted that the Commission is considering a possible amendment to the Act which would allow for a linkage between planning and zoning, and another amendment which would require local governments to restrict development within areas threatened by sea level rise.

Clark concluded by explaining that North Carolina has had an effective setback requirement and has been progressive in the implementation of its non-hardening policy on the ocean shoreline. He argued, however, that
the state has failed on the estuarine side. The estuarine shoreline will continue to be armored, with an adverse impact on fringe wetlands which are vital to the ecology and fisheries of North Carolina.

All of the state representatives on this panel agreed that the real estate market does not reflect the instability of the coastline. The speakers explained that there is a concern among the tourism industry and chambers of commerce in their respective states that notification of hazards would harm the market.

The third panel discussed some of the legal problems that arise when trying to respond to sea level rise, including the issue of regulatory takings. Brenda Smith, an associate attorney with Defenders of Property Rights, discussed the role of property rights in dealing with sea level rise and coastal erosion, particularly, the constitutional balance of burdens on the government and the property owner.

Smith presented the prospective of the property owner. She agreed that steps may need to be taken to combat sea level rise and beach erosion. She pointed out, however, that individual property owners should not alone have to bear the burden of paying for those solutions. She discussed the bundle of rights concept of property law and identified the rights of property owners to use their property and to exclude others. She described physical and regulatory takings, and discussed some of the recent U.S. Supreme Court and state court jurisprudence on the subject of takings. She discussed several creative responses states have taken to get around the Supreme Court's takings analysis, including the use of the public trust doctrine, the navigational servitude, and the doctrine of custom.

Smith stressed that the property owner's position is not one that seeks to deny the government the right to regulate to prevent coastal erosion, nor is it one that seeks to stop efforts to curb erosion. Rather, it is a position that ensures that property owners are adequately compensated if they cannot develop their land. She ended her presentation with a quote from Armstrong v. United States, 364 U.S. 40, 49 (1960) in which the U.S. Supreme Court stated that “[t]he Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

Jim Titus, the U.S. Environmental Protection Agency’s project manager for Sea Level Rise, presented a discussion of rolling easements and other tactics for balancing property rights and environmental protection. In his introduction of Titus, Professor Robert V. Percival compared Titus to a present day Paul Revere, providing a wake up call that it’s time to start planning for future sea level rise. His presentation focused on the importance of looking to the future so that possible solutions to sea level rise and coastal erosion can be mapped out now.

He noted that there is a policy choice to be made between protecting development through the use of shoreline armoring or beach nourishment, or protecting natural shores by letting the shore retreat. He suggested that the current regulatory response does not extend far enough into the future. He emphasized the differences between bay and ocean shorelines in terms of both problems and solutions. For example, he noted that the most likely method of protecting the ocean shoreline is beach nourishment, while seawalls are used most often to combat erosion on bay and estuarine shorelines. In addition, he suggested that state erosion policies appear to protect natural shores along the ocean, but not along the bay shorelines. He argued that the current momentum implies that sandy beaches will continue to dominate along ocean coasts, but that bulkheads will continue to replace estuarine beaches, thus squeezing coastal wetlands.

Titus explained that his objective is to develop a plan now that allocates those portions of the ocean and bay shores where the government subsidizes shore protection, where private shoreline armoring is allowed, where armoring is prohibited but soft engineering is allowed; where nature is allowed to run its course and beaches migrate inland, and where the government will subsidize inland retreat. He stressed that this decision must be made now for the benefit of property owners, developers, taxpayers, ecosystems, and coastal users. Otherwise, he insists that the entire shoreline will eventually be armored.

He discussed some of the responses to sea level rise, including the idea of holding back the sea versus allowing the sea to advance. He specifically described the concept of a “rolling easement,” a term borrowed from the common law of Texas, which is defined as a policy under which nature's migration has the right of way over a riparian owner's preference to hold back the sea. The policy could be implemented through the use of regulations prohibiting structures that interfere with the migration of the shore or through government purchase of a property right to take possession of the land when the sea rises by a particular amount. Texas, Maine, and South Carolina have enacted rolling easement policies along ocean coasts. Titus also compared the concept of rolling easements with setback policies. He noted that setbacks eventually fail
when the shore catches up, while the rolling easement moves as the shoreline moves. In addition, he argued that setbacks may present takings issues requiring compensation while rolling easements may not present takings problems. He recommended that states develop long term strategies for shoreline erosion that map out where the shoreline will be armored and where it will not be armored. He left the audience with this question: “are we going to do something today that will leave us with a healthy environment or are we going to have to say its too late – how far into the future does our responsibility extend?” Titus’ law review article, James G. Titus, Rising Seas, Coastal Erosion, and the Takings Clause: How to Save Wetlands and Beaches Without Hurting Property Owners, 57 Md. L. Rev. 1279 (1998) describes some of these concepts in more detail.

Professor Marc Poirier, Professor of Law at Seton Hall University School of Law, presented a critique of the national flood insurance program and the recent report on the program produced by the Heinz Center in April of 2000. He began his presentation by noting a paradox – he explained that the standard attack on regulations that affect property is that government is ganging up on a few people and depriving them of the use of their property. He opined that the “ganging up” works the other way because people buy very valuable property that has risks associated with it, expecting that when the inevitable disaster occurs, they will be taken care of through disaster relief and infrastructure.

Poirier explained that the flood insurance began as an attempt to protect people by subsidizing home ownership in flood-prone areas. According to Poirier, ever since the program began there has been a tension between this goal and the goal of making the program pay for itself so that home ownership in these areas is not subsidized. In the former scenario, people are living in coastal communities while depending on the largess of others.

According to Poirier, the flood insurance program makes no independent assessment of coastal erosion as a risk, and this is a major problem. For example, he explained that the same insurance rate may apply to two homes even though one may be in a higher risk zone (closer to the water) than another. Poirier noted that there have been attempts to address this weakness in the program but these attempts were all “derailed” because homeowners did not want to pay more, and wanted to continue to depend on the government’s largess. In 1994, there was a decision made to “study” the issue of coastal erosion and this is reflected in the April 2000 Heinz Report.

The Heinz report makes two primary recommendations -- to better map coastal erosion and to amend to the flood insurance program to account for coastal erosion in insurance rates. Poirier noted that one shortcoming of the report is that mapping and giving people accurate information about the risks may not change anything because it ignores many of the essential dynamics of land use. These include the notion that coastal homeowners do not believe that they will be affected, the fact that local chambers of commerce do not want to let the secret out about a risk when they are making money, and the concept of a “moral hazard effect” manifested in the fact that 15-20 percent more construction occurs in areas where the flood insurance program is being carried out because people feel safe to build in those areas. Poirier thus argued that this strategy “fails to get past the information stage to the social behavior stage.”

Secondly, Poirier noted that the report contains very little examination of the takings issue and the use of land use zoning strategies. He suggested that there is a real reluctance to examine these issues because the federal government does not want to regulate because they want states and local governments to do it, and state and local governments need the federal government to force them to regulate so that they can avoid takings liability. He argued that there should be more discussion about the toughest strategies. He supported the concept of the rolling easement as well as the idea of a rebuilding prohibition if a structure is damaged by 50% or more of its value. He also suggested that prohibitions on development along estuarine shorelines might be based on the protection of fish and game as a way of avoiding takings problems.

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

*Joanna B. Goger, '00 was the Coordinator of the Sea Level Rise & Coastal Erosion Symposium.
Environmental Enforcement in Vietnam
by Jonathan D. Libber*

In May of this year I participated with members of Vietnam’s government in an environmental enforcement conference in Hanoi. One of the main purposes of that conference was to assist the Vietnamese government in developing guidance to be used in the assessment of civil and criminal penalties. Since most of my twenty-two year career at the U.S. Environmental Protection Agency (EPA) has focused on penalty policy issues, EPA’s Office of International Activities (OIA) requested that I attend this conference. The American team consisted of Sarita Hoyt, the Southeast Asia expert at OIA, Harley Laing, former Regional Counsel of EPA’s office in Boston, James Carlson, the Vietnam director of the State Department’s Asian Environmental Partnership, and myself. The Vietnamese participants included representatives of the Ministry of Science, Technology and the Environment (MOSTE), the Ministry of Justice, the Ministry of Policy, the People’s Supreme Court, the People’s Supreme Organ of Control and the National Assembly. The section of MOSTE devoted to environmental protection was called the National Environmental Agency (NEA), and most of our interaction was with the NEA.

Background

It is difficult to appreciate the issues Vietnam is facing without providing some background and context. I suspect most Americans’ images of Vietnam are from the war. It usually consists of soldiers jumping out of helicopters, bombs dropping from B-52 bombers or the summary execution of a Viet Cong guerilla during the Tet Offensive. Not surprisingly, things have changed a great deal in the over quarter century since the Vietnam War ended. The collapse of the Soviet Union forced Vietnam to start privatizing its economy and look more favorably toward Western investment in the country. By privatizing agriculture, Vietnam went from a net food importer to the second largest exporter of rice in the world. As Western companies have discovered hard working, low cost Vietnamese workers (about $4 a week outside of the main cities) they have built more factories in Vietnam. Nevertheless, about 70% of the industry in Vietnam is run by the government. The government is very protective of its industries, and its number one priority is to preserve jobs regardless of how polluting and inefficient a factory might be.

The NEA consists of about 70 people even though it must handle all the environmental problems of a country of 77 million people. There is only one relevant Vietnamese statute here, the Law on Environmental Protection. Not only does this 14 page statute cover the control of pollution from all sources, it also attempts to deal with assessing the damages caused by pollution. Although the statute did provide for the promulgation of regulations when it was adopted into law in 1993, the NEA has not promulgated any. (Just for comparison purposes, in the United States, the environmental protection statutes administered by the EPA fill a medium size book; the regulations fill an entire bookshelf.)

The NEA appeared to be a very young agency. Of the thirty people I met with, only four looked like they were over 30 years old. Compensation for NEA staff was rather meager. I was told that an attorney working for NEA could expect a monthly salary of about $50. Some of the problems NEA faced were typical of third world environmental protection agencies: insufficient staff, inadequate training, difficulties with intergovernmental cooperation, low level and nonpayment of penalties, and lack of compliance at military facilities. In addition, the extreme poverty faced by most of Vietnam’s inhabitants makes environmental compliance a relatively low prior-

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ity. There did seem to be support for taking significant enforcement actions against foreign companies that pollute in Vietnam, particularly those firms that cause major oil spills.

Presentation of EPA’s Penalty Policy Approach

There are really two basic approaches to assessing civil penalties. The first is what Colin Diver, Dean of the University of Pennsylvania School of Law, refers to as the gestalt approach. There is no guidance involved. The enforcement personnel look at the case and say, “It feels like a $50,000 penalty.” This approach is usually based on a certain degree of experience, and it is not totally arbitrary. But it has significant drawbacks. The second approach is the penalty policy approach. Here the enforcement staff develop penalty guidance, and then all the enforcement personnel involved with the enforcement actions in that program apply that guidance. EPA has adopted the guidance approach and has a penalty policy for virtually every program we administer. Since the NEA was having difficulty developing its own penalty policy, EPA’s Office of International Activities thought it would be beneficial to have some experienced EPA enforcement people in Hanoi when the draft NEA policy was going to be discussed.

We first distributed copies of the EPA’s RCRA Civil Penalty Policy. We discussed how it worked and applied it to a few examples. Much of the discussion focused on the policy’s use of a matrix to assist EPA personal in determining the seriousness (gravity) of a violation. The RCRA civil penalty matrix is typical of EPA penalty policy matrices. It has nine cells with the potential for harm on one axis and extent of deviation from the regulatory requirement on the other axis. (See RCRA Penalty Matrix below.) Thus a violation involving a moderate potential for harm and a moderate deviation from the regulatory requirement would warrant a penalty in the $5,000 to $7,999 range. While EPA has adopted this approach in many of our penalty policies, this was a new concept to our Vietnamese hosts. With the help of our Vietnamese counterparts, we then developed a matrix for one of the programs NEA was administering so the staff could see how it might operate.

<table>
<thead>
<tr>
<th>Extent of Deviation from Requirement</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAJOR</td>
<td>$25,000</td>
<td>$19,999</td>
<td>$14,999</td>
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<tr>
<td>to</td>
<td>20,000</td>
<td>15,000</td>
<td>11,000</td>
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<tr>
<td>MODERATE</td>
<td>$10,999</td>
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<td>$4,999</td>
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<td>8,000</td>
<td>5,000</td>
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<td>MINOR</td>
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<td>1,500</td>
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To further illustrate the EPA’s approach, I demonstrated BEN, the EPA’s computer model that calculates a violator’s economic savings from violating the law. The cornerstone of EPA’s penalty assessment program since 1984 has been to recapture a violator’s economic savings in all assessed penalties. To facilitate this calculation, EPA introduced BEN, a user-friendly, reliable computer model in 1984. The model could not be used in Vietnam without modifying it to reflect Vietnamese tax law, inflation and cost of capital. But I was able to illustrate that a straightforward tool relying on readily available pieces of data could be effective in the assessment of penalties. My Vietnamese audience was surprised that the data and the model’s operation were so simple. Interestingly, some of the questions from the audience exhibited a keen insight into some of the model’s subtleties.

I left a copy of the computer model with the NEA, and one of their staff members has requested EPA develop a Vietnamese version of the
BEN model. But upon further reflection, it seems that a more simplistic spreadsheet approach might make more sense for Vietnam at this point in the development of its enforcement program. Subsequent to my visit to Hanoi, I developed such a spreadsheet program for Vietnam along with instruction sheets and an explanation. But one cannot just hand over the instruction sheets and expect the NEA staff to start applying it. It requires resources to translate the documents and train staff how to use the spreadsheet. Further, there are significant resource constraints on the EPA's part, and there are other issues that need to be addressed before the NEA can begin thinking about a Vietnamese economic benefit calculation approach. Thus, the Vietnamese economic benefit spreadsheet may not be available for a significant amount of time.

**Analysis of NEA’s Draft Penalty Policy**

We next turned to the NEA’s draft civil penalty policy. The guidance was in its fifth draft, and the NEA staff realized that it was not workable. One of the most daunting problems with the policy is that it required the NEA’s inspectors to determine the amount of human health and environmental damage, and then gain the violator’s agreement to the damage assessment. The inspectors were given ranges without any firm definitions or guidance. For example, one of the factors in determining an appropriate penalty would be if the pollution did “harm to 20 people at 31% up to 61% of health damage.” But there was no guidance to what 31% or 61% of human health damage might look like. The second problem was that the draft did not assess any penalty for potential environmental harm. Potential environmental harm is a major component in EPA’s penalty policies. EPA recognizes that actual environmental damage tends to produce larger judicially imposed civil penalties than cases involving potential harm. But if it is vital that any environmental enforcement program be able to deter wrongful conduct before it actually results in damage to human health or the environment. Thus violations that only involve potential damage can result in substantial penalties.

We suggested that the penalty policy instead focus on potential environmental harm instead of determining the amount of damage sustained by people or the environment. The Vietnamese Law on Environmental Protection did not actually address the potential harm issue. But the NEA was very interested in pursing the approach we suggested. The NEA representatives indicated that they would redraft the policy, translate it into English and send it back to us for comment.

**Conclusion**

My visit to Vietnam was a fascinating experience both professionally and personally. I suspect I gained more from the trip than the NEA gained from my presentations and input. While it is not clear what the NEA will do with the information and insights we offered, we have at least started them thinking of some realistic alternatives in the assessment of penalties. But more importantly, we have initiated a dialogue on enforcement issues that is already bearing fruit in other areas. I recently e-mailed substantial amounts of information on EPA policy documents in areas of interest to the NEA. While the NEA faces daunting resource, political and training problems, we were struck by their sincerity and commitment to improving the environment in Vietnam. Our efforts will hopefully assist the NEA in building an effective environmental enforcement program.

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Jael Polnac is Director, Professional Program and Treatise Editor, Environmental Law Institute in Washington, DC.

Amy Santin works part-time as a research assistant, Carolina Population Center, University of North Carolina. Her son Henry will turn one in October.

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Jake Caldwell is Program Manager for Trade & Environment at the National Wildlife Federation in Washington, DC. In the spring, Jake will teach a seminar on Environmental Trade and the Environment at the law school.

Michael Caplan is Assistant General Counsel at EGEN International, Inc.

Stephen Dolan is an attorney with Norton Rose in Brussels, Belgium.

Catherine Giovannani is an associate at Steptoe & Johnson, LLP. Catherine represents Southern California Edison Company in its efforts to get the federal government to ensure just and reasonable rates for electricity in the West. Her son recently graduated, cum laude, from George Washington Law School.

John Kelly is an associate with Holland and Knight in Washington, DC, practicing commercial and real estate transactions, but says his environmental background is invaluable.

Michael Levy is an associate with Kenyon & Kenyon in New York.

David Lutz is self-employed with a practice in criminal, personal injury and immigration law.

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Jean-Cyril Walker is an associate with Keller & Heckman, LLP practicing environmental law representing industry and associations at the federal and state level.

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1996

Jocelyn Adkins is an attorney with the U.S. EPA, Office of General Counsel, International Environmental Law Office.

Michael Carlson is an associate with Corbin, Schaffer & Aviles in Severna Park, MD.

Fei Fei Chao is of counsel with Venable, Baetjer, Howard & Civiletti in Washington, DC, practicing patent law. Fei Fei represents clients from Taiwan, Hong Kong, China, Japan, Canada and the U.S. on IP related matters.

Richard J. Facciolo is an associate with Richards, Layton & Finger in Wilmington, Delaware.

Elizabeth Gaudio is a staff attorney with the U.S. Department of Veterans Affairs. Elizabeth was married in May this year.

Robert Hogan is an Enforcement Attorney in the NOAA, Office of the Assistant General Counsel for Enforcement and Litigation. His responsibility includes enforcement of our nation’s natural resources laws in the marine environment. Robert is married and has 2 children.

Susan Speer lives in Pittsburgh with her husband and has taken time off to raise her two children, Daniel and Rebecca.

Chris Van de Verg is General Counsel for Core Communications, Inc., in Annapolis, MD.

Susan Winchurch is a Real Estate Counsel for Giant Food. Susan handles all aspects of anchor tenants leasing and development matters.

1997

Carrie Bland is an Assistant State’s Attorney for Baltimore City’s State’s Attorney Office in the Felony Narcotics Division.

Pat Deem is an environmental associate with Verner, Liipfert, Bernhard, McPherson & Hand in Washington, DC.

Mike Gieryic is Assistant Regional Counsel, U.S. EPA, Region II, Kansas City, KS. He is married and has 3 children.

Ray Kempisty is Director of Communications, for the Archdiocese of Baltimore.

Jennifer Lundgren Lewis is in-house Counsel at Spectera, Inc., a national health care company headquartered in Baltimore.

Robin Schoeps Lewis moved to London with her husband, David Lewis, ’97. She’s in the process of finding a job and in the meantime checking out London and Europe.

Jared Littmann is Assistant County Attorney for Montgomery County, Maryland. Jared recently married.

Jane O’Leary is Assistant Director, Social Concerns, Catholic Charities.

Brian Perlberg is a legislative attorney for Howard County Maryland, County Council’s Office. In April 2001, Brian was appointed by Governor Parris Glendening to the Maryland Green Buildings Energy Efficiency Council. The Council will make recommendations to the Governor concerning mandating green building design for all state construction and leases, as well as establishing new requirements for state government in the areas of pollution prevention, alternative fueled vehicles, clean power generation, and a global warming gas reduction plan.

Rachel Schowalter is Associate Editor/Senior Staff Attorney at the Environmental Law Institute. She married UM alumnus Carol Jean-Baptiste in May 2000 and is living in Baltimore, telecommuting from home.

Howard Stevens is an associate with Wright, Constable & Skeen in Baltimore, MD.

Eric Veit is a litigation associate with Ober, Kaler, Grimes & Shriver. After prosecuting and defending criminal cases in the Marine Corps for 3 years after graduation, Eric left active duty and returned to Maryland to set down some roots. He is married and has 3 children.

Imoni Washington is an attorney for the National Association of Public Interest Law in Washington, DC.

Cheryle Wilson is an associate with Tydings and Rosenberg in Baltimore, MD.

1998

Todd Hooker is an associate at Lowenstein Sandler in New Jersey. Todd works on a broad range of matters, including those involving the intersecton between superfund and toxic tort liability in which damage, the increased risk of damage, to human health and the environ-
ment from exposure to toxic substances is at issue. Todd was recently named an adjunct Professor at Rutgers University School of Law where he will teach a seminar on Toxic Torts.

Michele LeFaivre is Staff Counsel with the National Association of Home Builders.

Loan Phan Nguyen is an attorney with the U.S. EPA in Washington, DC.

Joseph Pelletier is an trial attorney with Fair Housing Enforcement Division, Office of General Counsel, U.S. Department of Housing and Urban Development (HUD).

Jerrold Poslusny, Jr. is an associate with Cozen O’Connor in Cherry Hill, New Jersey.

David Thomas is an associate with Preston Gates Ellis & Rouveloas Meeds, LLP in Washington, DC.

Mary Ledwell Weidenbach is an associate with Riemer & Braunstein in Boston, MA.

1999

Stu Barr, ’99 and Tracy Spriggs Barr, ’00, met at the law school and were active in the environmental law program. They were married in May.

Stuart Barr is an Assistant County Attorney for Montgomery County Attorney’s Office. Stu married Tracy Spriggs Barr, ’99, this past May.

Nicole Bowles is an associate with Tydings & Rosenberg in Baltimore, MD. Nicole work consists of mainly Maryland land use law (zoning and special exceptions, variance hearings, conservation easement and case law research.)

Apple Chapman, ’99, and Paul Versace, ’99, were married in September. The wedding took place in the Black Hills of South Dakota.

Katy Byrne is a Code Enforcement Attorney with the City of Baltimore, Department of Housing and Community Development. Katy initiates civil actions and criminally prosecutes individuals who violate the Housing, Building and Zoning Codes of Baltimore City. Katy is married with 2 children.

Apple Chapman is a Staff Attorney at the U.S. EPA, Office of General Counsel. Apple married Paul Versace ‘99, this September.

Philip Diamond is an associate with Gallagher, Evelius and Jones in Baltimore, MD. He is married and has a 3 year old daughter.

Kimberly Dodd is an associate with Sidley Austin Brown & Wood in Washington, DC, practicing environmental, civil litigation and government contracts.

Chuck Dodge is an associate with Hudson Cook, LLP in Linthicum, MD.

Tom Fort is an Attorney-Advisor with the Navy Office of the General Counsel. He is married and has a daughter.

Peter Johnson is an associate with Dyer Ellis & Joseph in Washington, DC.

Mila Leonard is a associate with Cook Schuhmann & Groseclose in Fairbanks, Alaska. Mila’s first court appearance was an oral argument before the Alaska Supreme Court.
Yvette Pena is press secretary to Congressman Silvestre Reyes (D-Texas), chair of the Hispanic Caucus in Congress.

Bill Piermattei is an associate with Anderson, Coe & King in Baltimore, MD. Bill is married to Rebecca Zane Piermattei, '99 and they have 2 children.

Alison Rosso is Legislative Assistant with Congressman John LaFalce in Washington, DC.

Lori Schectel is an associate with the Environmental Practice Group at Bracewell & Patterson, LLP in Washington, DC.

John Shoaff is an attorney with the U.S. EPA, Office of Prevention, Pesticides and Toxic Substances advising on standards and trade issues. John recently married.

Jennifer Brune Speargas is a associate with Saul Ewing, LLP, practicing commercial litigation. Jennifer was married in June, 2001.


Charlie Wagner is Director, Corporate Compliance, Constellation Energy Group (parent/holding company of Baltimore Gas & Electric Co.)

Michael Woodruff is an associate with Shanley & Fisher in Morristown, New Jersey.

2000

Brian Anderson is an associate at Venable, Baetjer & Howard in Baltimore, MD Brian is working on a pro bono asylum case via the Lawyers' Committee for Human Rights. He is married and has one daughter, Haley with another on the way.

Tracy Spriggs Barr is an attorney for Campbell Miller Zimmerman. She married Stuart Barr, '99, last May.

Jennifer Marie Bushman is with the Peace Corps in Bolivia, volunteering for the Microenterprise Development Program.

John Cannan is an associate with The Law Offices of John C. Murphy in Baltimore, MD.

Paul DeSantis is clerking for the Honorable Judge Raymond G. Thieme III on the Court of Special Appeals.

Kevin Flynn is an associate with Van Ness Feldman in Washington, DC. His firm specializes in energy, environmental and natural resource law. Kevin has moved with is wife to Bethesda, MD and in April had a baby boy.

Melanie Shepherdson Flynn is an attorney with Natural Resources Defense Council (NRDC) in Washington, DC.

Joanna Goger is a trial attorney at the Department of Justice, Environment and National Resources Division, Washington, DC.

Melissa Hearne is an environmental associate with Piper Marbury Rudnick & Wolfe, LLP. Melissa focuses on PSD permitting and emissions reduction credits under the Clean Air Act, wetlands, and NEPA.

Lee Ann Lezzer is an attorney in the litigation department of Funk & Bolton in Baltimore, MD.

Jennifer Marshall is a law clerk for Judge James Lombardi, 7th Circuit, Prince Georges County. Jennifer is married and has a son.

Mark Matulef is a Legal Honors Intern with U. S. Housing and Urban Development.

Sonja Mishalanie is an associate with Whiteford, Taylor & Preston, LLP practicing general litigation in their Virginia office.

Quang Nguyen is an associate with Lowe and Associates in Alexandra, VA. Quang’s work includes complex civil litigation, IP litigation and banking regulation.

Claudia Rozenberg is a Researcher for Center for Strategic Research, AFL-CIO.

Kerstin Schuster is a Presidential Management Intern (PMI) at the Social Security Administration in Baltimore, MD.

Lisa Shipley lives in California and works in broadcasting for Direct TV.

Cynthia Tippett is an associate with Zuckerman Spaeder, LLP in Baltimore, MD. Cynthia’s work includes white collar criminal defense and complex civil litigation.
Evan Wolff is Environmental Science Counsel to ISCIENCES in Rockville, MD. ISCIENCES is a technical environmental science group based in Michigan.

2001


Emily A. Berger is an associate with Fish & Richardson in Boston, MA.

John Celeste is a law clerk for Judge Alexander Harvey, II, at the U.S. District Court for the District of Maryland.

Sara Ruth Cohen is a policy analyst with the Department of Legislative Services in Annapolis, MD.

Michele Dunlop is an associate with Arnold & Porter in Washington, DC.

Jeffrey Herrema is an attorney at the U.S. EPA, Office of General Counsel in Washington, DC. In August, Jeff and his wife Dana had a baby boy.

Leslie Hill is an associate with Arnold & Porter in Washington, DC.

Gregory Hope is a Senior Environmental Engineer with the D.C. Department of Health working on the remediation of former and current military facilities.

Melinda Kramer is a law clerk with the Securities & Exchange Commission in Washington, DC.

Eric Letvin is Department Head, Natural Hazards Engineering, Greenhorne & O’Mara, Inc. in Greenbelt, MD.

Chad Littleton is a program analyst at the U.S. EPA in Washington, DC.

Gail Ordendorff is a trial attorney with the Department of Justice, Environment and Natural Resource Division in Washington, DC.

Michael Strande is an attorney for the Law School’s new Tobacco Control Legal Resource Center, a program created by the state with funds from the Tobacco Master Settlement Agreement.

Michelle Vanyo is a law clerk to the Honorable Lynne Battaglia, Maryland Court of Appeals.

Wade Wilson is an associate in the litigation section with Morgan, Lewis & Bockius in Washington, DC.

ALUMNI - JOIN OUR LISTSERVE

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MARYLAND STUDENTS PLACE FIRST IN NATIONAL ENVIRONMENTAL NEGOTIATION COMPETITION

Students from the University of Maryland's Environmental Law Program placed first in the Robert R. Merhige, Jr. National Environmental Negotiation Competition held in Richmond, Virginia. The competition was hosted by the University of Richmond, T.C. Williams School of Law. The team consisted of Greg Schaner, 3E, Chad Littleton, 4E, and Marcia Tannian, 2D.

\[\text{(from left to right) Greg Schaner, 3E, Chad Littleton, 4E, and Marcia Tannian, 2D}\]

ALUMNI PARTICIPATE IN THE "WANNA BE" SERIES ON ENVIRONMENTAL LAW

\[\text{(from left to right) Bob Percival, Director, Environmental Law Program, Karin Krchnak, National Wildlife Federation, Jonathan Libber, U. S. EPA, Marina Lolley Sabett, Venable, Baetjer & Howard, and JC Walker, Keller & Heckman.}\]

The Maryland Environmental Law Program and Career Services hosted the "Wanna Be" Series on Environmental Law. Alumni from our program gave advice, made suggestions, and answered questions. Karin Krchnak, '93, covered the area of both public interest and international environmental law, Jonathan Libber, '78, spoke about environmental government jobs, and Marina Lolley Sabett, '90, and JC Walker, '94, gave the law firm perspective. We would like to thank our terrific alums. The students were thrilled with the program.

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MARYLAND ENVIRONMENTAL LAW SOCIETY (MELS) BEGINS A NEW YEAR

MELS MEMBERS ATTEND THE NATIONAL ASSOCIATION OF ENVIRONMENTAL LAW SOCIETY CONFERENCE (NAELS)

Erin Hutchinson Smith, 3D and Chris Corzine, 3D, attended the NAELS Conference held in Houston, Texas. Erin was elected Regional Representative for Region 3 covering Maryland, Delaware, Pennsylvania and New Jersey. MELS plans to bid for the conference in the coming year. Committees are now being formed to work on the bid process.

2001-2002 MELS BOARD MEMBERS

Erin Hutchinson Smith, 3D, Chris Corzine, 3D, Kerri Roman, 2D, Alan Sachs, 2D, Shawn Steel, 3D, and Ariel Close, 3D.

Thank You BarBri

Again this year, we would like to pay special tribute to BarBri for contributing a free bar review course to MELS for their annual SO₂ fundraising. Proceeds from the BarBri Course, plus bake sales, made it possible for MELS to buy 7 tons of SO₂ at the 2001 auction. Since 1993, MELS has purchased and retired 61 tons of SO₂ and has been instrumental in encouraging other law schools to participate.
MAY 2001 GRADUATES WITH ENVIRONMENTAL CONCENTRATION

Twenty-one members of the class of 2001 received the Certificate of Concentration in Environmental Law at graduation.

Fron left to right back row: Steve Solow, Co-Director, Environmental Law Clinic, Emily Berger, James Benjamin, Chad Littleton, Wade Wilson, Michelle Vanyo, Gregory Hope, Timothy Manuelides, Jeff Herrema, Bob Percival, Director, Environmental Law Program, Jon Cusson, and Eric Letvin.
Fron left to right front row: Laura Mrozek, Program Coordinator, Sara Cohen, Leslie Hill, Mike Strande, Melinda Kramer, Gail Orendorff, and Rena Steinzor, Co-Director, Environmental Law Clinic.
Not shown: John Celeste, Catherine Delorey, Michele Dunlop, Christina Hayes, James Lichty, and David McClintock.

MARK YOUR CALENDAR!!!
THE 10TH ANNUAL ENVIRONMENTAL LAW WINETASTING

DATE: Friday, November 16, 2001

TIME: 6:30 P.M.

PLACE: Commons Room, Second Floor of Thurgood Marshall Law Library
111 S. Greene Street (between Pratt and Lombard Streets)

R.S.V.P. to Laura Mrozek at 410-706-8157 or lmrozek@law.umaryland.edu