

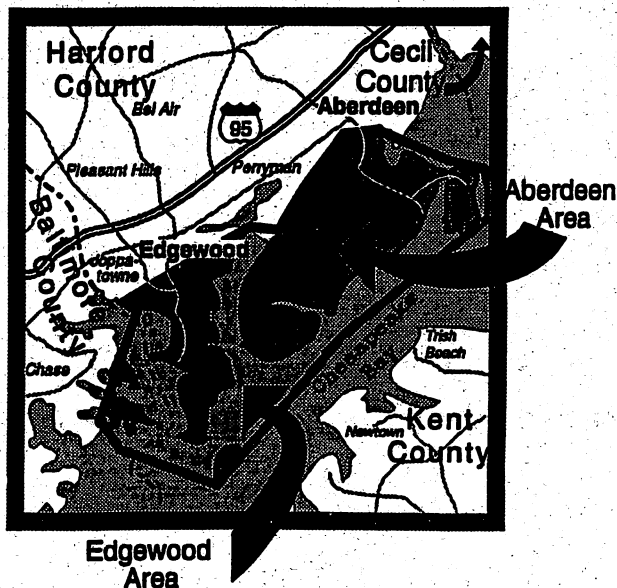
ENVIRONMENTAL LAW AT MARYLAND

University of Maryland School of Law

Summer 1995 No. 3

Environmental Clinic Wins Military Toxics Lawsuit

by Frederick K. Schoenbrodt, II*



Pictured above is the Aberdeen Proving Ground. Firing ranges at the base have lodged 20 million pieces of exploded ordnance in the rivers which lead to the Chesapeake Bay.

Maryland's Environmental Law Clinic has won an important victory in its efforts to speed the cleanup of toxic contamination generated by the military. In May 1995, EPA and the Clinic signed a consent decree requiring the agency to issue rules defining when spent munitions are subject to federal hazardous waste regulations. The decree successfully resolves a lawsuit filed by the Clinic in December on behalf of the Tides Foundation, which funds the Military Toxics Project, a national network of citizens who live near military sites. The Clinic represents the network as a result of its earlier work for the Aberdeen Proving Grounds Superfund Citizens' Coalition, organized to monitor the cleanup of one of the largest and most polluted military bases in the country.

The lawsuit was particularly significant because more than two million acres of land in the U.S. are currently designated as firing range impact areas by the Department of Defense. Whenever a fired munition lands, it poses two very serious threats to human health and the environment. First, upon explosion of a live shell or during the slow deterioration of a "dud" shell (UXO), a fired shell disperses its toxic constituents into the environment. This dispersion creates the

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long-term risk of toxic contamination of the soil, groundwater, and surface water. Second, the presence of an unexploded "dud" in the environment creates an additional acute risk of explosion. This second risk is especially serious, considering the volume of ordnance that lands off-installation and the risk of UXO contamination at Formerly Used Defense Sites owned by non-military federal agencies and private parties. Environmental risks from UXO will increase as the current trend towards transfer of military lands to non-military uses increases public access.

In response to this problem, Congress enacted section 3004(y) of the Resource Conservation and Recovery Act (RCRA). This section required the Environmental Protection Agency (EPA) to promulgate a rule defining when military munitions become "hazardous waste" subject to environmental regulation. Congress required EPA to propose this rule by April 6, 1993. However, because EPA had not proposed this rule, the Clinic filed suit against EPA in December 1994 in the Federal District Court for the District of Columbia.

On May 26, 1995, after months of negotiations and three court appearances, the Environmental Law Clinic and EPA signed a judicially enforceable consent decree. In the consent decree, EPA agreed to propose the rule by October 31, 1995 and promulgate a final rule by October 31, 1996. EPA also agreed to provide a letter promising to grant the Tides Foundation continued public participation in the substantive rulemaking effort.

As a result of the successful conclusion of its lawsuit, the Clinic will receive from the government an award of attorneys fees of more than \$12,500. While the terms of the settlement are favorable, the Clinic will carefully monitor EPA's progress in meeting the new deadlines. It will continue to represent the interests of the Military Toxics Project during the drafting of the proposed rule.

**Fred Schoenbrodt, a 1995 graduate of the University of Maryland School of Law, was the lead student attorney for the military munitions rulemaking litigation. In the Fall, he will be attending Infantry Officer's Basic Training Course at Fort Benning, Georgia.*

PROGRAM HIGHLIGHTS

The first six months of 1995 have been an active time for Maryland's Environmental Law Program, as explained in this newsletter. The Environmental Law Clinic successfully concluded its lawsuit to force EPA to determine when munitions become a hazardous waste and it is fighting for significant improvements in regulations implementing Maryland's new lead liability law.

The school's eighth annual Environmental Symposium produced a lively debate concerning increasingly controversial issues of environmental federalism. Papers prepared for the symposium by prominent academics and practitioners have been published in a special issue of the Maryland Law Review, which will soon be released. The newsletter reports on plans for the 1996 symposium, which will focus on issues involving the interface between science and environmental law.

The newsletter also reports on the activities of Maryland's Environmental Law Society (MELS), which expanded its pioneering purchases of emissions allowances at EPA's annual Clean Air Act auction in March. MELS was particularly gratified that six other law schools joined it in purchasing emissions allowances that also will be retired to reduce pollution.

This spring, Maryland's Environmental Law Program was recognized for the first time in *U.S. News & World Report's* annual ranking of law school programs, where it placed seventh. While the law school does not put much faith in polls, the university's basketball and football teams reportedly are envious.

The newsletter reports on new developments in the Environmental Law Program, including the inauguration of a new wetlands course, the hiring of Justice Department lawyer Susan Schneider as a visiting environmental law professor, and the promotion of the program's administrator. It also includes articles describing projects our faculty and alums are pursuing, including environmental law reform in Mongolia, remediation of contamination at Department of Energy facilities and Texas water law.

Environmental Federalism Featured at 1995 Environmental Symposium

by Kenneth O'Reilly*



Tom Ward, of Ward, Kershaw and Minton, center, enjoys lunch with students (from left to right) Mike Carlson, Rich Facciolo, and Matt Gilman

Persistent questions involving the proper role of federal, state, and local government in implementing and influencing national policy have gained renewed currency lately on Capital Hill as well as in the Supreme Court and the White House. On April 7, important aspects of those questions were aired in Baltimore when the University of Maryland School of Law hosted the annual Ward, Kershaw and Minton Environmental Symposium. Focusing on environmental federalism, the Symposium brought together several prominent legal scholars and practitioners from around the country who discussed emerging issues in environmental regulation as seen through the lens of federal-state relations. Many of the speakers prepared articles that will be published in an upcoming issue of the *Maryland Law Review*, which will be available later this summer.

Adam Babich, Editor-in-Chief of the *Environmental Law Reporter*, began the discussion with an examination of federalism issues surrounding hazardous waste control. After addressing the historical basis for federalism, Babich set forth five elements necessary for a successful program of co-operative feder-

alism in the regulation of hazardous waste under the Resource Conservation and Recovery Act (RCRA) and Superfund: (1) state implementation; (2) clear standards; (3) state autonomy; (4) federal policing of the process; and (5) application of the same rules to public and private entities. Babich reported mixed results from current programs but ended optimistically by suggesting that new tools provided by Congress -- requiring compliance by both state and federal government -- are evidence of the success of federalism in the hazardous waste arena.

Next, Professor John Dwyer of Boalt Hall School of Law at the University of California at Berkeley, provided perspectives on the importance of the political, rather than legal, dynamics that inform federalism in the implementation of the Clean Air Act (CAA). Asserting that there is virtually nothing left of the judicial doctrine of federalism, Prof. Dwyer examined the importance of political resistance from the states as the federal government has shaped policy relating to land use and transportation controls, as well as inspection and maintenance of motor vehicles. He concluded that, while the constitutional significance of "states' rights" is essentially a dead letter, the states will continue to be significant players in environmental policy because of practical limitations on the federal administration of national programs, the need for local expertise due to the immense geographical diversity of the country, and the need for political consensus at the "retail level," that is, the level where the controversy and expense of environmental regulation is felt most acutely.

Professor David Hodas of the Widener University School of Law presented his observations on the triangular nature of the enforcement structure of the Clean Water Act (CWA) under which the federal government, the states, and citizen groups all play distinct roles. Prof. Hodas explained that most of the implementation and enforcement of the CWA has been delegated to the states. These states must engage in a significant degree of economic competition for mobile capital and economic development. As a result of this competition, many states have been extraordinarily lax in enforcing the CWA in an effort to create a more business-friendly economic climate.

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Because of limitations on the ability of the federal government to "overfile" cases in these states, Prof. Hodas concluded that vigorous citizen participation -- frustrated by legal developments and state obstructionism -- is necessary to restore acceptable levels of enforcement of the CWA.

Melinda Kassen, former counsel to the U.S. House of Representatives Armed Services Committee and now in private practice in Colorado, spoke next. She provided her evaluation of congressional attempts to force federal facilities to comply with environmental laws. Kassen explained that the penalty provisions in the Federal Facility Compliance Act fail to provide effective incentives to promote environmental compliance. First, the worst polluters, the Department of Energy (DOE) and the Department of Defense (DOD), have large overall budgets compared to the relatively small penalties imposed. And second, the nature of the budgeting process of these departments discourages compliance: fines are simply subtracted from the budgets of compliance divisions rather than those divisions that do the polluting.

Professor Oliver Houck of the Tulane University School of Law next outlined the dangers of delegating the wetlands permitting program of the CWA to the states. Prof. Houck explained that wetlands, which are a finite resource serving vital environmental functions, are routinely undervalued in the process of economic development and planning. Because of aesthetic factors and limited recreational value, wetlands are politically vulnerable to planners and are often targeted for development by industrial and real estate interests. Prof. Houck argued that, as a result of this vulnerability, significant safeguards for wetlands protection must accompany any proposals for state control over issuance of development permits.

Erik Olson, Senior Attorney for the Natural Resources Defense Council, recounted the poor record of state implementation of the Safe Drinking Water Act (SDWA). Noting that illness from unsafe drinking water is still widespread, Olson explained that the success of the federalist approach to safe drinking water ended shortly after 49 states took on implementation of the SDWA. Many states have been slow in adopting standards for drinking water, and the record for compliance is not any better. Olson observed that threats by the Environmental Protection Agency to withdraw program approvals have been unsuccessful,

due in part, to strong lobbying by state water utilities. Olson concluded by explaining that the traditional rationales for state control -- local expertise and state autonomy -- were unconvincing when compared to the need for a baseline of federal protection of drinking water.

Professor A. Dan Tarlock of the Chicago-Kent College of Law spoke about federalism conflicts that arise in attempts to promote biodiversity. Despite the federal Endangered Species Act, Prof. Tarlock argued that biodiversity is difficult to achieve under a federal program for three principal reasons: first, federal intrusions on state sovereignty tend to promote conflict rather than cooperation; second, uniform national standards are not possible in an area that is habitat-driven and inherently local; and third, standards for land use and water rights are traditionally regulated by the states. Prof. Tarlock concluded that a different conception of federalism is required for an effective biodiversity-promotion program.



Cliona Kimber takes a break to relax during the symposium

Professor Cliona Kimber of the Law Faculty at the University of Aberdeen, Scotland provided her observations on the differences in environmental federalism between the European Union and the United States. Prof. Kimber cautioned that it is important to remember the economic rationale for the European Union when considering the success of environ-

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mental protection efforts. Both in the areas of legislative competencies and enforcement capacity, the United States has a much better developed environmental protection program than does the European Union. For example, in the United States, the authority to promulgate and enforce regulatory standards is relatively clear. In contrast, the European Union makes use of directives that must be implemented by the member states. When those directives are not followed, enforcement is slow, sporadic, and uncertain. Prof. Kimber believes that the successes and failures of the United States provide a valuable empirical resource from which to draw lessons for the emerging programs of environmental protection in the European Union.

Professor James Krier of the University of Michigan Law School proposed a reconsideration of the nature of uniform national standards when promulgating environmental regulations. Prof. Krier suggested that uniform federal emission standards be replaced by federal standards of uniform costs and benefits. Using an economic rationality model, Prof. Krier asserted that some areas of the country are too clean and others are too polluted, noting that environmental standards are already non-uniform across the country because of missed deadlines and varying levels of enforcement. Prof. Krier concluded that uniform standards should be defined differently from the way they are defined today, possibly by providing uniform economic burdens on the states or different timetables for compliance.

Professor Peter Menell of Boalt Hall questioned the wisdom of proposals for a national uniform standard for environmental marketing. Noting that the general public and even experts in the field disagree on what characteristics of products make them "environmentally friendly," Prof. Menell proposed an economic model for green marketing that would use costs as an indicator of environmental performance. Such a model would incorporate cost assessments of the sites where products are used and disposed to evaluate whether a product is environmentally desirable. Under this proposal, uniform federal standards would be inappropriate and unwieldy.

Professor Jerome Organ of the University of Mis-

souri-Columbia School of Law was the final speaker. Analyzing state statutes that limit state environmental regulatory standards to the floors established by federal regulation, Prof. Organ discovered several patterns in legislative drafting that resulted in uncertainties as to their scope. These state "ceiling statutes" are often unclear with respect to the regulation of particular industrial sources, particular pollutants, and the significance of ambient standards. Prof. Organ proposed model language that would take account of these variables and, if implemented, would reduce much of the uncertainty and litigation associated with state ceiling statutes.

**Kenneth O'Reilly, a 1995 graduate of the University of Maryland Law School, will be serving as a law clerk for Judge Catherine C. Blake, U.S. District Court for Maryland.*

Do you have an opinion or commentary on any of the articles in this Newsletter? We would love to hear from you! Send your response to:

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WHAT'S HAPPENING

JUSTICE DEPARTMENT LAWYER SUSAN SCHNEIDER JOINS PROGRAM AS VISITING PROFESSOR

The Environmental Law Program will welcome Susan Schneider as a visiting professor during the fall semester 1995. Ms. Schneider is a senior attorney with the Environmental Enforcement Section of the U.S. Department of Justice's Environment and Natural Resources Division. An honors graduate of Brown University and Georgetown's National Law Center, Ms. Schneider will teach in the Environmental Law Clinic. She brings to the clinic broad litigation experience acquired during eleven years handling environmental cases for the Justice Department and six years as an attorney with the federal Public Defender Service in the District of Columbia.

ENVIRONMENTAL PROGRAM ADMINISTRATOR PROMOTED

In recognition of the important role she has played in the development of the Environmental Program, program administrator Laura Mrozek has received a long overdue promotion. Laura has been a vital part of the Environmental Program since its inception in 1987. Beginning as a secretary for Professor Percival and the Environmental Clinic, Laura has assumed an expanding range of responsibilities during the eight years she has been with the program. Students and faculty alike have particularly high praise for her efforts, which have included the development of an environmental job database, organizing program activities, including the annual environmental symposium, editing this newsletter, and serving as the key contact person for law students, adjunct faculty and environmental alums. Congratulations, Laura, on a well-deserved promotion.

WETLANDS COURSE TO DEBUT IN FALL

During the fall semester 1995, the Environmental Program will inaugurate a new course on Wetlands Law and Policy. The course will be taught by Thomas Grasso, an attorney with the Chesapeake Bay Foundation who is an expert on wetlands law. The course will focus on how law is being used to protect these vital yet rapidly diminishing natural resources, with particular emphasis on Section 404 of the Clean Water Act. Students in the seminar will take field trips to wetlands and they will meet with scientists and other professionals to consider the practical implications of government policies to protect wetland areas. Each student will prepare an independent research paper that critically evaluates government wetlands programs.

1996 ENVIRONMENTAL SYMPOSIUM TO EXAMINE INTERFACE BETWEEN SCIENCE AND ENVIRONMENTAL LAW

The 1996 Ward, Kershaw and Minton Environmental Symposium will explore a host of challenging issues that arise at the interface between science and environmental law. These issues include: what environmental lawyers need to know about science, standards for admission of expert testimony in environmental cases, and the debate over the consequences of human exposure to environmental contaminants. The symposium, which will be held in April 1996, will feature presentations by prominent scientists, law professors and practitioners.

Assisting With Environmental Law Reform in Mongolia



Professor Percival having dinner in ceremonial ger with Dr. Zambyn Batjargal (right), head of the Mongolian Ministry of Nature & the Environment, and UM economics professor John McCormick (center).

Environmental concerns are assuming increasing importance even in the most remote areas of the world, as Professor Robert Percival discovered when lecturing in Mongolia last February. Professor Percival spent a week in Ulan Bator, Mongolia lecturing on environmental law to a group of Mongolian government officials, educators, journalists and environmentalists. The lectures, which were held at the Mongolian Ministry of Nature and the Environment, were part of a two-week workshop on environmental policy sponsored by the Mongolian government and the project on Institutional Reform and the Informal Sector.

While Mongolia has some of the most spectacular natural resources in the world, it also has

severe environmental problems as a legacy of its formerly totalitarian government. Air and water pollution problems are particularly acute in the country's largest cities and severe overgrazing plagues the country's vast, pastoral commons. With the transition to democracy, environmental issues have become important public concerns, despite the poor state of the Mongolian economy. As the country makes the transition to a market economy, the Mongolian government is interested in developing new environmental laws to ensure that new mining and other industrial ventures do not exacerbate existing pollution problems.

While in Ulan Bator, Professor Percival delivered 22 hours of lectures over a five-day period. His

lectures sought to assist Mongolian policymakers with law reform by sharing lessons that can be learned from several decades of experience with environmental law in the United States. Percival also met with the leaders of Mongolia's Parliament, the Heral, to review and comment on drafts of proposed new environmental legislation.

One of the highlights of Percival's visit to Mongolia was a dinner in honor of the IRIS project, hosted by Dr. Zambyn Batjargal, Mongolia's minister of Nature and the Environment. The dinner was served at a government nature reserve in a ceremonial ger, a unique tent-like structure, used extensively in Mongolia because it can be easily disassembled and moved by roving herdsmen.

What's Ulan Bator like in February? Normally the average temperature there is -6° F, but a heat wave had pushed temperatures into the low teens during Percival's visit. While the country's energy minister thinks global warming may help the country, Percival found that grave concern over its potential impact among environmental and agricultural officials.

Percival returned to the United States impressed by the seriousness of the Mongolian government's commitment to adopt strong environmental protection measures. He stressed to Mongolian leaders the importance of communicating this commitment to foreign investors at an early stage in order to help ensure that companies investing in the country would be responsible corporate citizens.

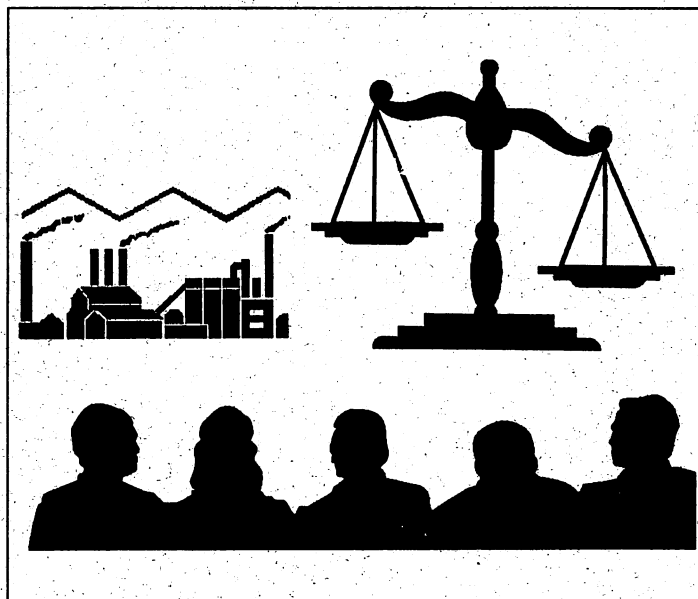
Environmental Justice and International Law: Where Do We Go From Here?

by Richard Glick*

It is time to inject international human rights law into the domestic debate now taking place in the United States on the subject of "environmental justice." At the same time, international discourse must also commence on the applicability of international human rights law to environmental justice issues.

"Environmental justice," perhaps better termed "environmental discrimination," involves the disparate exposure of members of racial and ethnic minority groups to environmental risk in the form of such things as air pollution and toxic waste. Because international human rights law serves to regulate the relationship between the United States and its own citizens, it is an invaluable tool with which to measure the progress of efforts to remedy this disparity. International human rights law scrutinizes the *status quo* in the United States through the lens of international rules that are not solely a product of the domestic social order that has propagated or tolerated environmental discrimination in the first instance. Moreover, the international discourse that must occur on the interpretation of international law norms and their applicability to environmental discrimination will involve institutions that are relatively independent of the domestic power structure.

The International Covenant on Civil and Political Rights, to which



the United States became a party in 1992, is of particular interest as a source of applicable norms. It is a treaty that prohibits racial and ethnic discrimination and should apply to discrimination with respect to environmental risk. It protects "civil and political" rights ranging from the "right to life" (art.6) to the right to be free from torture and cruel, inhuman and degrading treatment (art.7) to the right of ethnic and linguistic minorities to the enjoyment of their own culture, practice of their own religion and use of their own language (art.27). While the Covenant does not expressly address environmental matters, it has been interpreted to impliedly address environmental matters that constitute preconditions to or aspects of rights that can be derived from expressly protected Covenant rights. The Covenant expressly prohibits discrimination along the lines of race or ethnicity with respect to rights otherwise protected by the Covenant and with respect to state action. It also requires the state to act affirmatively against private

action in order to ensure that individuals enjoy Covenant based rights.

Many of the manifestations of environmental discrimination, such as racially and ethnically disparate exposure to hazardous waste facilities and incinerators, are complex in terms of the possible mechanisms of causation and remedy. The Covenant obligates

the United States to act with due diligence to determine the mechanisms of causation and to put in place effective remedies. The Covenant does not prescribe particular remedies and states are left to devise remedies that are appropriate to their national contexts. However, while the due diligence standard must be defined with respect to subsets of facts and circumstances, a remedy that meets the standards of the Covenant must ultimately be devised and implemented.

International discourse must commence with respect to all of the legal elements implicated in the application of the Covenant to environmental justice issues, including the scope of protection, the obligation of due diligence, and the sufficiency of particular remedies. By "international discourse," I mean the generalized process by which a specific treaty provision is deemed applicable to a specific situation. Such discourse involves attempts by international

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actors, broadly defined --i.e., state organs, individual policy-makers, international organizations and non-governmental organizations -- to claim that a provision applies to a particular situation and the reaction of other international actors in response. From such an interchange, a consensus may or may not emerge. The formal rules of treaty interpretation are central to such a "debate" in that they are cited to support the various positions asserted.

The Covenant itself creates a "Human Rights Committee" composed of 18 members who sit in their individual capacities. The Committee performs several functions which allow it to both interpret the Covenant and to comment on the compliance of Covenant parties. Because its work creates a body of jurisprudence considered to be an authoritative (though not definitive) interpretation of the Covenant, the Human Rights Committee ultimately will function as the most important actor in the international discourse on environmental discrimination. However, it is unlikely to do so in the short term because of a shortage of resources and the resulting tendency to concentrate its work on matters involving the more traditional definitions of Covenant violations such as extra-judicial killing, disappearance, torture, and controls on free expression.

Consideration of environmental discrimination by the Human Rights Committee is not an essential element of the international discourse, but it should be established as a strategic goal. As the first phase of discourse takes place,

involving NGO's and to an increasing extent governments, it will crystallize the norms involved and raise the level of understanding of the issue and the attention paid to it. This process will ultimately secure a place for the issue on the Committee's agenda. Although in the first analysis the Covenant defines violations in terms of objective fact and does not require a demonstration of discriminatory intent, advocates should focus, as a matter of tactics, on attempts to apply the Covenant to cases of environmental discrimination where evidence of discriminatory intent is present. Such cases will be more readily acknowledged by the international community as falling within the definition of Covenant norms. For example, would anyone be surprised if the international community condemns as illegal environmental discrimination the placement of toxic waste dumps next to black townships by the former apartheid regimes of South Africa? That is perhaps the "easiest" case, but there are likely situations on every continent in which one racial or ethnic group now or formerly in control of government machinery has intentionally shifted the burden of exposure of environmental risk onto other racial and ethnic groups. After the debate has been joined by focusing on cases involving discriminatory intent, whether or not in the United States, the more difficult cases involving discriminatory effect alone can be effectively tackled by advocates. Perhaps in five years time, when the Human Rights Committee will next review the steps taken by the United States to fulfil its Covenant obligations, the state of the debate will be suf-

ficiently ripe for Committee consideration of U.S. performance of its Covenant obligations with respect to environmental discrimination. There is a lot of work to be done.

**Richard Glick received his B.A. from Macalester College and J.D. and LL.M., from New York University School of Law. He has been a Senior Fellow at the N.Y.U. School of Law's Center for International Studies. Mr. Glick was a speaker at an April meeting of the Maryland Environmental Law Society, from which this article was derived.*

MELS "Cleans Up" at Emissions Auction; SO² Fund Big Success

by Richard J. Facciolo*

Maryland Environmental Law Society (MELS) did it again. At the annual Environmental Protection Agency's auction of emission allowances MELS successfully bid on four tons of sulphur dioxide -- a four fold increase over the number of allowances MELS purchased at last year's auction.

The Chicago Board of Trade (CBOT) held the auction on Mar. 27 and offered over 197,000 allowances that "permit" the owner to emit one ton of SO² into the atmosphere. Bidders, who had to submit bids by Mar. 21, vied for three types of allowances: spot allowances for immediate use, 6-year advance for use after 2000, and 7-year advance for use after 2001. MELS submitted two bids at \$160 and two bids at \$150 in order to purchase one spot, one 7-year advance, and two 6-year advance allowances. These allowances will not be used nor sold. MELS simply intends to remove them from the market.

The total number of allowances sold was 176,400 at an average price of approximately \$130. Although utility companies topped the list for purchasing the most allowances, student organizations across the country represented 29 percent of the successful bidders. A total of seven schools including the University of Maryland captured a combined total of 17 allowances. That's 17 tons of SO² that will not go into the air.

The University of Michigan Environmental Law Society purchased the most allowances of any Environmental Law Society (ELS) but bid high at \$200 per allowance. In contrast, MELS paid an average of

\$155 per allowance, much nearer the weighted average as published by the CBOT.

The participation of seven ELSs in this year's auction attracted national attention. In its Mar. 31 edition, the *New York Times* reported on the participation by the various law schools. Shortly afterwards, I had a telephone interview with a reporter from CNN. The school also was contacted by several other reporters from around the country. Hopefully, the media attention given this auction will continue into the next year and encourage other ELSs to participate.

As for MELS, it intends on continuing its SO² fundraising efforts. Indeed, MELS' efforts have not only mobilized law students but have encouraged others as well. Professor Percival has received numerous inquiries from people seeking information on how to purchase allowances, including a prison in-

University of Maryland	4	\$155	\$ 620
Hamline University	3	167	500
Duke University	1	176	176
University of Michigan	5	200	1,000
Thomas M. Cooley	1	200	200
Env. Law Students Ass'n	2	205	410
New England Sch. of Law	1	350	350
Total	17	\$192*	\$3,256
*Weighted Average			

mate in New York State and a Los Angeles woman wishing to establish a memorial for a friend who died of respiratory disease.

A list of student organizations purchasing allowances, the number purchased, the average purchase price, and the amount paid is shown on chart above.

*Richard Facciolo is the past president of MELS and 3rd year law student.

Some Concerns about Radionuclides Contamination at DOE Facilities

by Wib Chesser*

One of the least discussed, least analyzed, and possibly least understood areas of environmental law is the area of radioactive waste and pollution. Perhaps the key reasons why this area receives so little attention are the lack of federal environmental laws specifically applying to these materials and the fact that the vast majority of these materials are found at federal facilities. Despite the lack of attention that these issues seem to have received, some of Congress' recent activities regarding these facilities and materials might signal significant changes in federal environmental law.

Background

A longstanding problem with control of radioactive waste and pollution is that current law is a hodgepodge of gap-filled and overlapping statutes, with many radionuclides (radioactive substances) falling under statutes oriented toward the nuclear power and weapons process, not environmental concerns. Of these process statutes, the Atomic Energy Act (AEA) is the most dominant. A further gap exists because several important environmental statutes, including the Clean Water Act and the Resource Conservation and Recovery Act (RCRA), exempt materials governed by the AEA and its associated statutes. Because pollution concerns involving these materials have received scant legislative recognition, according to EPA, "[n]o one knows exactly how many sites in the U.S. are contaminated with radionuclides, but the number may run in the thousands."

A large number of these sites are federally owned. The federal government produces much of America's uranium fuel. The U.S. Department of Energy (DOE) and its predecessors operated or operate facilities that enrich uranium and fabricate enriched uranium into fuel, and DOE is by far the nation's largest generator of radioactive waste and pollution. DOE is also conducting the nation's most expensive cleanup of radioactive waste and pollution at its sites across the country. (See map of many of DOE's fuel production facilities.)

Emerging Trends and Recent Responses

The trend in Congress, federal agencies, and the

courts has pointed increasingly toward applying environmental laws to radioactive pollution and waste. This trend is exemplified by the Federal Facility Compliance Act's (FFCA's) full and express waiver of sovereign immunity and application of RCRA to mixed wastes for DOE. Last year, as part of a more general evaluation of concerns about DOE regulation, Secretary of Energy Hazel O'Leary, in response to congressional hearings on regulation of nuclear facilities, agreed to form a Federal Advisory Committee to evaluate whether and how to impose external regulation of DOE's nuclear safety, including radioactive waste and pollution, both under RCRA and non-RCRA environmental law.

Continuing the trend, this year Congress raised several issues that affect laws governing radioactive pollution and waste. Reauthorization activities for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) have included hearings on federal facilities. Congressional debate has centered upon the scope of waiver of sovereign immunity, applicability of different provisions to federal facilities, and whether explicit applicability of Superfund to radionuclides will be included. In addition to Superfund, a recent Clean Water Act bill included an FFCA-like waiver of sovereign immunity and amended definitions of pollutants that include source, special, and byproduct materials, as these materials are defined under the AEA.

However, other recent legislation, as well as federal budget concerns regarding cleanup of the nuclear weapons complex, could potentially delay cleanup and compliance at DOE facilities. Despite the trends toward increased regulation of DOE and radionuclides, issues such as criminal liability for federal officials -- liability created by waivers of sovereign immunity like that in the FFCA -- have brought to the fore the question of whether Congress, and the nation, have the will and the means to ensure these cleanups. As a result, some of the debate has refocused on the impacts of laws like the FFCA and the potential results of continued increases in applicability of environmental laws to radionuclides and DOE facilities. Tension for DOE officials has further developed between civil and criminal liability under the FFCA

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and the limitations to compliance activity that could result from administration and congressional proposals to cut spending in these areas. For instance, DOE currently projects spending needs of approximately six billion dollars in fiscal year 1996 in order to meet its clean-up goals and obligations. But a House Committee recently passed a budget which, if enacted, would cut about seven hundred fifty million dollars from DOE's cleanup budget. Such a cut without changes in laws would likely increase DOE civil and criminal liability and decrease safety at DOE facilities.

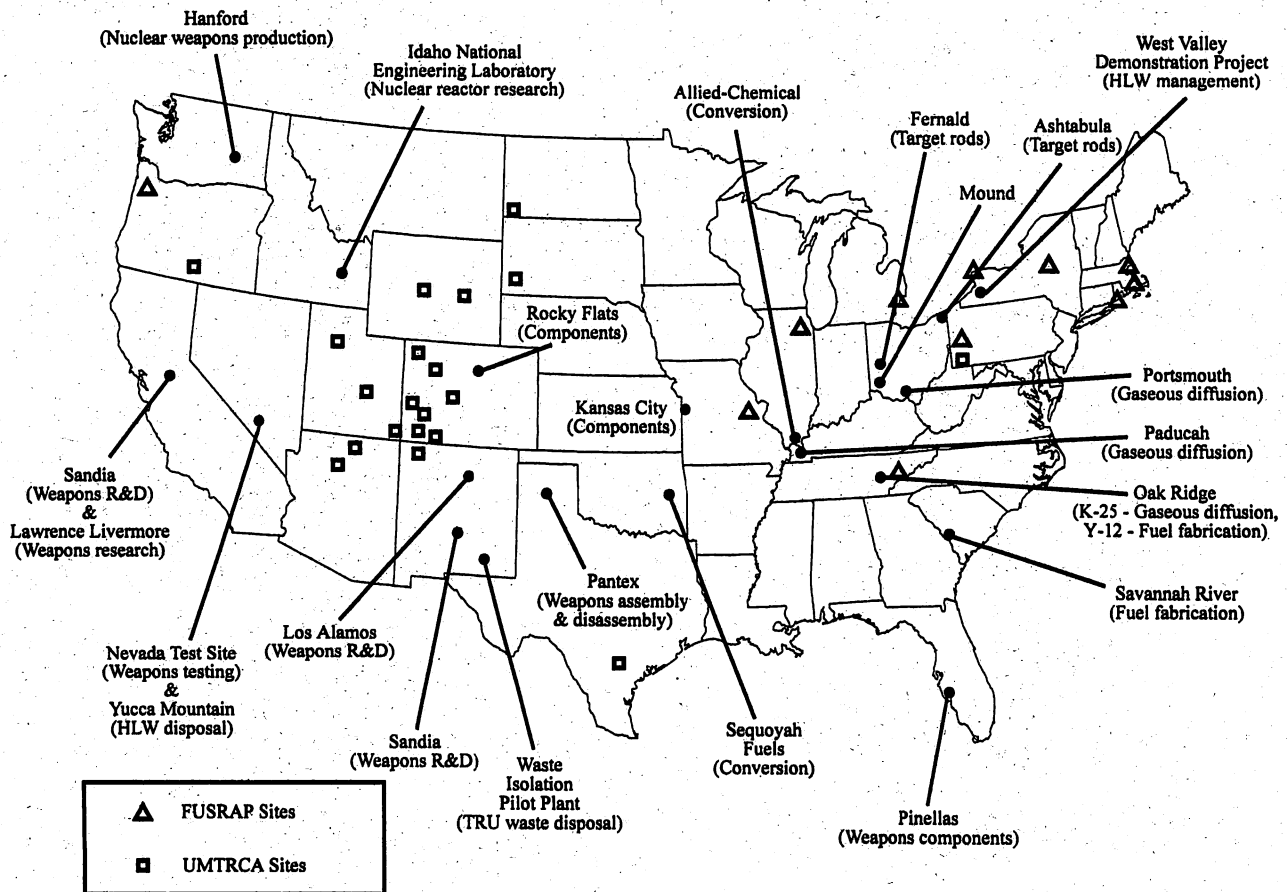
The debate may intensify as October 1995 approaches, the date when liability for DOE under the FFCA will take full effect. As these issues continue to capture legislative attention, Congress could refuse to waive federal sovereign immunity further or to continue expanding environmental statutes to cover radionuclides.

A Brief Reflection on the Implications of the New Approaches

Radionuclide and DOE issues could mirror the larger debate about the wisdom of current federal environmental laws. The argument for regulating DOE and radionuclides has often focused on a fairness and equality issue, the fact that the same waste and pollution laws that apply to industry and non-radioactive wastes should apply to DOE's facilities. New criticisms of existing environmental laws seem to reflect a general perception that cleanup and compliance in general under EPA and state environmental authorities are overly burdensome and inefficient. Following this logic, critics of the present DOE cleanup and compliance effort have begun to argue that, to address DOE's difficulties with cleanup and compliance.

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SELECTED DOE SITES



ance, the entire federal environmental scheme must be revamped, in order to mandate risk assessment and cost benefit-analysis drivers for all environmental activities.

While there is little debate that good environmental decisions must be made (especially with declining government budgets), risk assessment and cost-benefit analysis, at least as reflected in the comprehensive bills Congress is considering, seem inadequate drivers for cleanup and compliance: cost and risk, as applied on a regulation-specific or pollutant-specific basis under traditional methods, are not the only factors that are important to making decisions. Other important elements for determining and prioritizing environmental activities besides risk include preventive compliance concerns, economic development concerns, cultural concerns, and the views of affected citizens, especially those nearest facilities. Furthermore, it will be a monumental task to quantify costs and risks, especially in an old and complicated complex like DOE.

Further, careful consideration is needed before the entire existing environmental system is altered. While the interaction of existing statutes may seem inefficient, federal environmental laws as a whole are intended to serve a range of environmental concerns. For example, one of the purposes of RCRA was to prevent the appearance of future huge Superfund-like sites with unidentifiable responsible parties. Thus, at the time of passage, RCRA was to proactively "close the loop" on contamination, a purpose identified on the basis of efforts to address past contamination in the United States at places such as Love Canal. It is unclear whether simply applying risk assessment and cost-benefit analysis alone could fully account for such less quantitative benefits as potentially preventing future contamination.

The DOE nuclear weapons complex is only beginning to come rightfully within the purview of the existing environmental scheme. DOE should be subject to the same environmental statutes as everyone else -- statutes that were specifically designed to address problems like prevention of future Love Canals and which seem appropriate for contamination at sites like DOE's Hanford facility. Preventing future increased contamination of DOE's facilities should be assured to the extent possible; the current system of laws was created at least partially with prevention in mind. Risk assessment and cost-benefit

analysis should fully replace this system only when these factors can be shown as effective as the existing scheme.

Wib Chesser (J.D. Maryland 1993) currently serves as an Environment Counsel-at the National Association of Attorneys General, where he works on environmental compliance and enforcement issues for U.S. Department of Energy facilities. This article expresses the views of the author and does not necessarily reflect the views and policies of the National Association of Attorneys General or any of the Association's members.

Water Shortage on the Rio Grande: Developing a Regulatory Response in a Dry State

by Steve Groseclose*

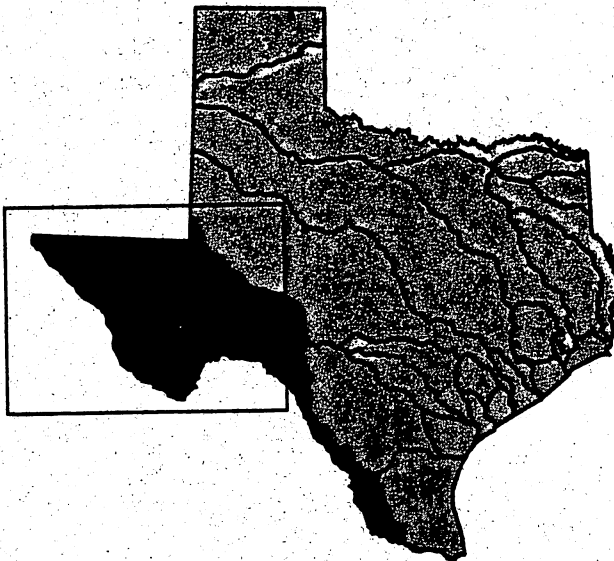
Water conflicts in Texas are legendary yet elemental: the primary issue is who gets what little water there is? The maximum average annual rainfall for any part of the state west of Austin is less than thirty inches. By the time you get to El Paso, which is a true desert city, the average annual rainfall is much less than ten inches. Even residents of central and east Texas who annually fend off flood waters are, ironically, threatened by the possibility of seasonal drought. But Texans have profound pride in the heroic notion that they can thrive in a climate that is mostly hostile to large scale human settlement. Consequently, growth and prosperity continue despite the hostility and other natural constraints. However, as a three year drought in eastern Mexico and west Texas enters its fourth summer, these natural constraints demand recognition.

Texas water law is a peculiar statutory entity tinged with vestiges of Spanish and Mexican civil law and the riparian approach of the common law. Allocation of surface water resources is centered on the principal of "prior appropriation" -- essentially a "first in time, first in right" priority system for claiming available water. It was adopted to promote the "beneficial use" of the state's surface water resources, primarily through irrigation of the more arid parts of the state. It is this system that provided the opportunity for the spread of desert towns such as El Paso and Laredo away from the immediate banks of the Rio Grande and created a multibillion dollar agricultural empire in the semi-arid Rio Grande Valley.

The appropriation system has evolved into an administrative permitting system under the jurisdiction of Texas Natural Resource Conservation Commission (TNRCC), where not only beneficial use but also environmental impacts and conservation practices are considered. A team consisting of a permit writer, a hydrologist, a conservation expert, and an environmental scientist analyzes each application. If an application is contested, as it invariably is, a water rights attorney, such as myself, is assigned and a public hearing is held.

Allocation of the Rio Grande's resources is a peculiar application of Texas water law and the current focus of TNRCC's water rights staff. The Rio Grande is unique because it forms the international boundary with Mexico. A 1944 treaty between the U.S. and Mexico assigns percentages of the flow from the Rio Grande and its tributaries to Texas and Mexico. Under the treaty, two major reservoirs, the Amistad and the Falcon, were constructed. An

international commission determines the annual volume of water that can be taken by each country, and TNRCC's Rio Grande Watermaster allocates the Texas share to water rights holders. The typical statutory water rights scheme has been tailored by court order to fit the unique supply conditions of the Rio Grande. Essentially, the river has become a managed water supply ditch; all flows released to Texas from the reservoirs are pre-allocated to specific end users.



The prolonged drought in the Rio Grande basin (as shown in the chart above) has resulted in dangerously low reservoir levels before the start of the summer dry season. Over the past three years precipitation in the Mexican side of the basin has been two-thirds of the region's average. The Amistad and Falcon reservoirs are at their lowest levels since they were built in the early 1950s. As of the beginning of June, Mexico had used up all but 3.5% of its annual allotment. The U.S. was down to 48%, but the peak irrigation season had just begun.

The crisis in Mexico is far worse than that in Texas. All reservoirs east of the Sierra Madre Occidental are nearly empty; as a result, cattle are dying and the agricultural season is already a complete loss. Mexican President Zedillo declared a state of emergency in April of this year for the states of Chihuahua, Durango, Coahuila, and Nuevo Leon; but no specific relief has been announced. North of the border, state regulation and marginally better conservation practices have, for the moment, prevented a crisis. However, fifteen Texas municipal water suppliers have already exhausted their allocations and are scrambling to purchase water on contract. There is no grass or water available for grazing, and in order to water their cattle, ranchers from El Paso to south of Laredo have been burning the thorns off cacti to unlock nature's final cache of moisture and nourishment. Unless abundant rains emerge, the Texas Watermaster will be forced at the end of June to

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prorate the claims of the largest Texas irrigation users. Eighty-five percent of Texas water rights in the region are owned by agricultural interests. If Texas agricultural users are cut back under a rationing system, the impact to the state economy could be \$500 to \$1500 million, depending upon the number of irrigation cycles affected.

Under the terms of the 1944 treaty, the signatory countries are encouraged to loan each other water in times of severe drought in one country and "abundant supply" in the other. While Mexico's impending crisis is much more severe than that in Texas, the supply allotted to Texas cannot be characterized as abundant. The United States denied a loan request made by Mexico, and Texas Governor George Bush, Jr. has told Mexican President Zedillo that he can not divest Texans of their water rights. However, he has reassured Mexico that every effort will be made to help Mexico meet immediate household needs if public health becomes endangered. To follow through on this humanitarian pledge, the governor will have to ask the multibillion dollar Rio Grande Valley agriculture industry to sacrifice. The political maneuvering will be tremendous.

Conservation practices along the Rio Grande are virtually nonexistent. Only one percent of farm irrigation canals and ditches are lined to prevent losses compared with eighty-four percent statewide. Only one percent of the farm acreage is irrigated with water-conserving sprinkler systems, compared to forty-three percent statewide. Conservation simply was not a concern when water rights on the Rio Grande were allocated. Reservoir capacities in the region were enormous compared with the demand, and no one had the foresight or political fortitude to conserve the wealth. By the time the Legislature provided statutory authority in 1985 to require conservation in all new water-rights permits, the Rio Grande had been fully appropriated for over a decade. The permitted uses have taken on the holy aura of vested property rights. Unless an existing water right is sold or amended, the TNRCC has no authority to modify the terms to require best conservation practices.

Administrative fixes are limited. TNRCC is developing incentives for conservation and the reuse of treated effluent (recycled sewage water). The conserved water that can be developed can provide incentives for investment in efficient irrigation systems and water delivery infrastructure improvements. While the potential savings are great, these

are long term solutions that cannot adequately respond to the immediate crisis.

Ironically, the short term path leads deeper into poor conservation practices. TNRCC is scrambling to streamline the permitting process through emergency rulemaking.

The goal is to provide maximum authority for Commission staff to quickly approve contractual re-allocation of the remaining supply to those who most dearly need it. The amendment process currently required for most sales of water rights is time consuming; a water conservation study takes at least thirty days, and public notice and hearing requirements can delay a simple, uncontested amendment for at least another month.

So in the third year of a desert drought I participate in the scramble to create an emergency response. Hopefully, the energy needed for this type of crisis management can be channeled into regulatory development of wiser long-term solutions. On a more optimistic note, perhaps this

painful experience will help re-establish respect in the people on both sides of the Rio Grande for the natural constraints to development.

It should be noted that the regulatory system discussed above does not apply to ground water. Ground water has remained a sacred cow of Texas property rights, beyond the state's control even though it is an essential component of municipal supplies: the Edwards Aquifer is the sole source for the city of San Antonio, which is larger than Baltimore. The English common law rule of capture prevails for ground water, although the Texas Legislature has crafted numerous political sub-units to regulate individual aquifers under politically tailored rules. It is a complicated story of Texas politics, and since the Legislature hasn't entrusted the TNRCC with jurisdiction, I have only discussed surface water -- a much safer subject.

**Steve Groseclose is an expatriated Marylander and a UM Law School graduate working as a Staff Attorney for TNRCC in Austin, Texas. He practices administrative law in the areas of water rights and water utilities regulation. The views expressed above are his own and do not reflect those of TNRCC, or many Texans for that matter.*

"Conservation practices along the Rio Grande are virtually nonexistent. Only one percent of farm irrigation canals and ditches are lined to prevent losses compared with eighty-four percent statewide."

Clinic Has Green Letter Year



Pictured above is Rena Steinzor, Director of the Environmental Law Clinic

The Environmental law Clinic closed out the year with a flourish. In addition to successfully settling its lawsuit against EPA over military munitions (see related page 1 story), the Clinic won a lawsuit upholding Maryland's mining law, which was appealed by industry to the Supreme Court. Cert was denied in May.

The Clinic also made substantial progress on its work for the Maryland legislature on environmental standing, winning much appreciated praise from Chairman Blount and Senator Frosh of the Senate Economic Affairs Committee, and from the Committee's legislative counsel, Carol Swan, a 1982 UM Law graduate.

The Clinic completed research for Howard County on enforcement concerns in preventing polluted

stormwater runoff. And, in perhaps the greatest challenge to our legal ingenuity, we continued our uphill struggle to strengthen the regulations which will implement Maryland's new Lead Poisoning Prevention Program Act. As this article goes to press, the Maryland Department of the Environment (MDE) forwarded proposed regulations to the Maryland Legislature's Administrative, Executive, and Legislative Review Committee, asking that they be approved on an emergency basis. Unfortunately, the regulations do not contain a workable mechanism for enforcing the cleanup provisions of the new law, and could result in cleanups which make the problem worse, exposing children to higher levels of lead dust than if the paint had been left undisturbed. The Clinic is currently exploring the possibility of mounting a challenge to the proposed regulations in a variety of contexts, including the legislature, on behalf of its clients who are parents and children vulnerable to the threat of lead poisoning.

The Clinic operates as a small public interest law firm providing representation to its clients on a year-round basis. The Clinic includes between 8-12 students, and their supervising attorney and professor, Rena Steinzor. In the fall of 1995, Susan Schneider will direct the Clinic, while Professor Steinzor is on a research leave.

Because of all of the above projects except the mining law challenge are ongoing, the Clinic's ability to do additional intake is limited, although the Clinic is considering doing additional work on Superfund reform for the Maryland Senate Committee.

At the Helm of MELS

by Richard Facciolo*

For the past year I have been the President of the Maryland Environmental Law Society (MELS). The experience has been both exhilarating and frustrating, but I would not hesitate to do it again given the time and opportunity. I have learned much while leading MELS and believe that the experience will be in some small way invaluable. Perhaps most disappointing to me, however, was my failure to follow through on many of the ideas and plans that I had hoped MELS would accomplish. Yet, when I look back, the disappointment is at least partially tempered by what MELS has accomplished during my reign.

As noted in the Winter 1995 issue of *Environmental Law at Maryland*, Fall events included a dinner panel discussion on environmental justice held jointly with the Black Law Students Association, numerous brown-bag speakers, and publication of *The Leaf*.

MELS continued to be active during the Spring semester as well. The brown-bag program hosted speakers from the Department of Justice, the Environmental Protection Agency, and academia. Issues discussed varied from domestic enforcement to acid rain to international environmental enforcement and treaties. Cliona Kimber from University of Aberdeen who spoke at the Ward, Kershaw and Minton Environmental Symposium (see related article this issue) took time to personally address MELS. Richard Glick who has contributed an article to this newsletter gave a very informative talk on international law

and environmental justice during MELS' earth week celebration in late April.

MELS continued to publish *The Leaf* as part of the student newspaper *The Raven*. Some of the events reported included the Environmental Law Clinic's suit against the EPA, which was subsequently settled; brown-bag lunch speaker and UM Law graduate She'k Jain; and the Environmental Moot Court team. Contributors included first, second, and third year students as well as graduates.

In March, a small but dedicated group of us participated in the Work-A-Day program promoted by the ABA. We spent an entire Saturday scraping, sanding and painting one of the offices of a local homeless shelter. By the end of the day we had transformed the office into a usable attractive work area. As far as I could tell this was the first time MELS had been involved in this type of community outreach.

One of MELS biggest accomplishments has been its success in purchasing and retiring sulphur dioxide emission rights. This year MELS was able to purchase four tons of sulphur dioxide at the annual EPA auction of allowances. During the fall semester, I encouraged other law schools to start their own program and many participated in the March auction. (See related article this issue.)

Beginning in the fall semester MELS will be fortunate to have Ali Alavi, Senior Environmental Analyst & Assistant General

Counsel for Clean Sites, as the ABA SONREEL Attorney Ambassador to the law school. The goal of Ambassador program is to create a relationship with members of SONREEL and law students interested in environmental law. Mr. Alavi has already committed himself in a number of ways: he will introduce members of SONREEL to members of MELS; provide at least one speaker; and be available to give guidance to students who have questions on the practice of environmental law. The program should prove to be a valuable connection between our academic life and the practicing world.

Finally, none of the above could have been accomplished without the unwavering dedication of Laura Mrozek, Administrator of the Environmental Law Program. Laura's enthusiasm, kindness, and open door policy often gave me the energy to persevere as head of MELS, and I thank her personally and on behalf of all members of MELS. Laura's invaluable contribution to the entire Environmental Program was recognized in February when the University officially named her as employee of the month. At the ceremony, Prof. Steinzor said it best, "We'd be lost without her. She's the heart of the Environmental Law Program and makes all of us feel like we are working on something wonderful, valuable and interesting. She takes great care of the students, and terrific care of [Prof. Percival] and me."

*Richard Facciolo is the past president of MELS and 3rd year student.

YOU CAN'T LEARN IT ALL IN THE CLASSROOM: An Externship with the EPA

by Michael K. Levy*

To complete my legal studies and involvement with the Environmental Law Program, I worked full-time during spring semester 1995 in the RCRA Enforcement Division of the Office of Regulatory Enforcement at the Environmental Protection Agency (EPA). Unlike the more traditional legal environment in the Office of General Counsel, my division was home to a mix of attorneys, engineers, and environmental protection specialists, all working to develop and implement enforcement policy in the area of solid and hazardous waste management. Like all student externs at the EPA, my experience provided real-world lessons in lawyering skills, involvement in the functioning of a major federal regulatory agency, and exposure to practical environmental law and policy.

For most of my four month stay, I researched and wrote briefs for cases before the Environmental Appeals Board. Each case involved important environmental issues, but preparing the arguments required techniques that all lawyers must master, such as studying legislative histories or reconciling plain language in a statute with regulations. One case that is being followed closely by the regulated community concerns the right of EPA to "overfile" in those states possessing authorized hazardous waste management programs under RCRA. A typical overfiling scenario involves a state environmental enforcement authority handing down a "slap on the wrist" penalty to a polluter, only to have the EPA later award its own penalty for the same violations. Another project involved preparing an argument for a point of law dealing with a proposed program -- instituting a field citation program for Underground Storage Tanks (UST) -- that has been tossed around for over seven years.

I was fortunate, in a sense, to have worked at the EPA during a time of great concern over the Contract with America and the Clinton administration's response to the majority's call for a roll-back of federal regulation. This turn of events has forced the EPA to re-evaluate its priorities and to justify all that it has done. The pressure to regulate in more cost-effective

ways is forcing development of different approaches. It was no surprise that I was involved in legal and policy research and strategy planning for novel methods of regulating entire industries with "enforceable agreements." This approach would keep industries out of the onerous burden of RCRA Subtitle C in exchange for mutually agreed upon regulations and enforcement provisions.

The externship exposed me to the daily operation of the EPA -- its hierarchy, its sources of information, and the problems associated with an overworked and under staffed agency. I learned why regulations take so long to promulgate, and I attended and observed meetings, presentations, and telephone conference calls. I saw the difficulty in bringing EPA people from different program offices to one table for problem solving. I was also involved with coordinating and working with the regional offices around the country. But perhaps the most educational part of my experience was exposure to the various statutes and regulations governing the protection of the environment in the very setting where these statutes and regulations are interpreted, written, and enforced.

The EPA offers many opportunities for law students: they can work for an Administrative Law Judge, the Office of General Counsel, various enforcement sections, or any of the large number of program offices. Because the EPA is stocked with young, dedicated people, a student extern benefits from the enthusiasm and variety of work around her and leaves the EPA knowing that a career in environmental law is a good choice.

**Michael Levy is a 1995 graduate of the University of Maryland Law School.*

Annual Environmental Wine Tasting

by Maureen O'Doherty*



Alumni from the Environmental Law Program (left to right) Jill Frost, Scott Waxter, Ruthie Allison Waxter, Karin Krchnak, Nancy Sellis & Leslie Allen, enjoy tasting the different wines.

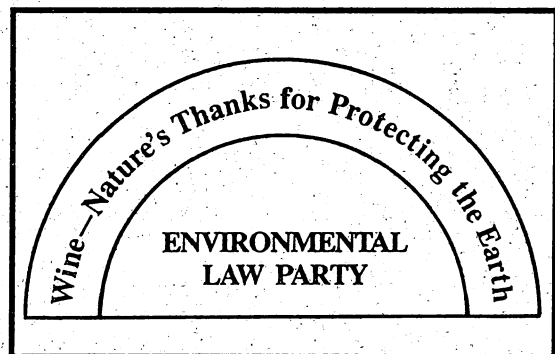
On May 2, 1995, Professor Robert Percival hosted the Third Annual Environmental Program Wine Tasting at the University of Maryland School of Law. This much anticipated event drew students, faculty, and alumni to an evening of conviviality and education. Inspiration for the wine tasting evolved from an informal tradition that royalties made by a UM professor from sales of his textbook to UM law students should be used to fund a party for the students. Because Professor Percival's students use his best selling environmental law textbook, he began the tradition of hosting an end-of-semester wine tasting. What started out in 1992 as an affair for environmental law students after their final class has evolved into a much larger event for alumni, faculty, and the environmental law students.

While tasting some of the 40 different wines, Bob educated novices and experts alike in the art of wine appreciation. Each bottle provided a story and a mini-lesson in what to look for in a good bottle of wine. Another valuable benefit of the occasion is that many environmental alumni return, renew old friendships

and share valuable information with one another. Graduates include not only local attorneys but those who work in the hinterlands of Connecticut, Virginia, and Washington D.C.

Bob has incorporated his love of wine in both his environmental law class and textbook. In class each student's name is written on a wine cork and placed in a large glass jar. He then draws the corks to determine which students to call. When discussing approaches to regulatory options in his environmental law text, one can find the following: "[I]n 1954, public concern over unidentified flying objects inspired the French village of Chateaufeuf-du-Pape, well-known for its famous wine of the same name, to pass an ordinance prohibiting flying saucers from landing within the village limits. . . . [T]his ordinance apparently has achieved its goal -- no flying saucers have landed in the village. . . ." In a note Bob explains that "[t]his incident has been made famous by a California winery, Bonny Doon Vineyards, which has named one of its wines 'Le Cigare Volant' (The Flying Cigar) because it is based on the traditional grape blend that comprises Chateaufeuf-du-Pape." Of course, Le Cigare Volant was one of the wine selections for the evening.

The connection between wine and environmental law is best represented in the slogan on Bob's wine tasting glasses: "WINE-NATURE'S THANKS FOR PRESERVNG THE EARTH," as shown below.



**Maureen O. Doherty is a 1993 graduate and is now practicing environmental law in Connecticut.*

Professor Robert Percival

Publications:

"Environmental Federalism," 54 Md. L. Rev. 800 (1995)

Environmental Regulation: Law, Science & Policy - 1995 Supplement (Little, Brown & Co. 1995)

"Looking for Common Ground," 12 Environmental Forum 44 (July/Aug. 1995)

Presentations:

Speaker on "Our Planetary Backyard: the Globalization of Environmental Law and Policy," Environmental Protection Agency Summer Institute for Teachers, Baltimore, Maryland, July 10, 1995.

Lecturer on "Environmental Protection Policy for the Developing World: Lessons from U.S. Environmental Law," IRIS-Mongolia Workshop on Environmental Policy, Ministry of Nature and the Environment, Ulan Bator, Mongolia, February 14-18, 1995.

Professional Offices:

Re-elected to three-year term (1995-1998) on the Steering Committee of the D.C. Bar's Section on Environment, Energy & Natural Resources Law.

Professor Rena Steinzor

Publications:

"The Reauthorization of Superfund: The Public Works Alternative," 25 ELR 10078 (February 1995)

Presentations:

Speaker on "The Implications of Environmental Liability for Local Governments," at a special MICPEL Conference entitled "It Ain't Easy Being Green: State and Local Environmental Issues of the Nineties," January 1995.

Speaker on "Maryland's New Lead Paint Law," at the Baltimore Housing Roundtable Lead Paint Workshop, March 29, 1995.

Panelist for program entitled "Point-Counterpoint: Who Wins in the Struggle Between Business vs. Environmental Interests?," at the Section of Environmental Law, Maryland Bar Association Annual Meeting, June 9, 1995.

Professional Offices:

Appointed as Senior Research Analyst for the Keystone Center Dialogue on Unfunded Federal Environmental Mandates.

Adjunct Professor Scott Garrison is working as a member of the minority staff of the Senate Subcommittee on Oversight of Government Management while on leave from EPA. In this position, Scott has been in the thick of the debate over "regulatory reform" legislation being considered by Congress. He will return to his position as the Senior Legal Counsel for EPA's Toxics and Pesticides Enforcement Division at the end of the summer.