

ENVIRONMENTAL LAW AT MARYLAND

University of Maryland School of Law

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PROGRAM HIGHLIGHTS

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Environmental Law Program*

*Robert V. Percival, Director,
Environmental Law Program
Rena I. Steinzor, Director,
Environmental Law Clinic
Laura Mrozek, Adm. Aide
Richard Facciolo, President,
Maryland Environmental Law
Society (MELS)*

This issue of the Environmental Law Newsletter reports on some of the exciting developments that have been taking place in Maryland's Environmental Law Program. Articles in the newsletter report on the activities of students in Maryland's Environmental Law Clinic, who have been working on an unusual joint project with university toxicologists to assist citizens groups living near superfund sites created by weapons testing. These students have now filed suit against EPA on behalf of a national coalition to force the agency to define when munitions become hazardous wastes. Clinic students also are working to respond to Maryland's new law limiting liability for lead poisoning, the leading environmental hazard afflicting children, as described below. The newsletter also reports on the activities of the Maryland Environmental Law Society (MELS), which became the first student organization in the country to purchase an emissions allowance to reduce pollution under the emissions trading program created by the 1990 Clean Air Act Amendments. Students in Maryland's acclaimed Legal Theory & Practice program are focusing on environmental justice issues, as explained in the newsletter, by representing an African American community opposing a plan to construct a rubblefill directly adjacent to a historic church and cemetery.

The Environmental Law Program continues its tradition of hosting events that highlight issues on the cutting edge of environmental law. Maryland's annual Quinn, Ward & Kershaw Environmental Symposium featured a lively debate between government officials, securities lawyers, and representatives of corporations and public interest groups on how environmental concerns are changing corporate America. Speakers at the symposium explored many of the novel issues that are arising at the interface between environmental and business law, such as environmental disclosures required by the securities laws, regulation of "green marketing" claims, and joint ventures between environmental organizations and corporations. The 1995 environmental symposium will continue this tradition by bringing leading scholars and practitioners together to focus on environmental federalism issues.

Maryland's environmental faculty have been busy this year. Their research, teaching and service activities are discussed in other articles in the newsletter. These include a review of how the Supreme Court has handled environmental issues and impressions concerning the growth of environmental law around the world. Finally, of paramount importance to any academic program are its graduates. The newsletter reports on the remarkable things graduates of Maryland's Environmental Law Program are doing.

REPORT FROM THE ENVIRONMENTAL CLINIC: STUDENTS SEEK CLEANUP OF MILITARY TOXICS, SUE EPA TO FORCE MUNITIONS MANAGEMENT RULES

Under the direction of Professor Rena Steinzor, students in Maryland's Environmental Law Clinic have been gaining hands-on experience in environmental practice while providing vital public service to a variety of clients. Law students in the clinic have been working in partnership with scientists from the university's Toxicology Program to assist residents living near superfund sites at the U.S. Army's Aberdeen Proving Grounds. For 75 years the 72,000 acre Proving Grounds, located on an environmentally sensitive peninsula that juts into the upper Chesapeake Bay, has been a major weapons testing center and the home of the Army's chemical warfare program. As a result, this ecologically sensitive area is highly contaminated with an astonishing array of toxic chemicals that will take decades to track and remediate. Clinic students are representing the Aberdeen Proving Ground Superfund Citizens Coalition, a citizens group which has hired the university's Toxicology Program to serve as their technical experts under a grant from EPA.

Law students involved in the Aberdeen project discovered that EPA had failed to commence a crucial rulemaking proceeding to define when munitions become hazardous waste and to regulate the transportation and disposal of such waste. When Congress enacted the Federal Facility Compliance Act in 1990, it required EPA to propose such rules by April 6, 1993, and to adopt them in final form by April 6, 1995. These regulations are particularly critical for sites like the Aberdeen Proving Grounds where an estimated 16 million projectiles and four million unexploded shells are lodged in adjacent surface waters. Yet EPA has not issued any proposed rules and it will not meet the impending April deadline for finalizing them.

To force EPA to act, the Maryland Environmental Clinic filed suit against the agency in December. In the lawsuit the clinic represents not only the Aberdeen citizens but also the Military Toxics Project, a national coalition of citizens groups whose members live or work near U.S. military installations. The lawsuit asks for a court order requiring EPA to commence the rulemaking proceeding and to adopt final regulations governing management of hazardous spent or obsolete munitions.

Clinic students also are seeking to convince EPA to reject the military's position that spent munitions should not be regulated regardless of the hazards that they pose. On behalf of the Military Toxics Project, the students have prepared a lengthy legal analysis that rejects the military's argument that munitions remain a "product" and not a "waste" even after they have been spent.

Lead poisoning also has been a major focus of the Environmental Clinic. Responding to Maryland's controversial new law limiting landlord liability, the clinic has established a Lead Regulatory Intervention Project. This project is described in the article by student attorney Ann Lembo that begins on page 6 of this newsletter.

Recognizing the enormous demands that regulation can place on state and local government entities, the Environmental Clinic is eager to provide assistance. Students in the clinic are assisting officials from Howard County in drafting an ordinance to control stormwater pollution. Students also are assisting the professional staff of the Maryland General Assembly in drafting legislation to broaden environmental standing to bring the state into compliance with federal requirements for citizen participation in the regulatory process.

Maryland Environmental Law Society Buys and Retires Pollution!

By Jeanne M. Grasso, updated by Richard J. Facciolo

On March 29, 1994 the Chicago Board of Trade (CBOT) announced the results of its annual sealed-bid auction for pollution emission allowances under the federal Clean Air Act (CAA). The Maryland Environmental Law Society (MELS) bid for and was awarded an allowance worth one ton of sulphur dioxide emissions.

MELS is the first student group in the nation to buy and retire an air pollution allowance. MELS intends to hold the allowance until it expires, thereby preventing the release of one ton of sulfur dioxide that would otherwise be permitted if the allowance had remained on the market.

Beginning in 1995, companies that emit sulphur dioxide may do so only if they have obtained the requisite number of allowances. The more sulphur dioxide emitted, the more allowances required. This system offers companies a compelling incentive to reduce pollution, since by doing so, they avoid having to purchase additional allowances.

The first auction was held in March 1993 when air pollution "allowances" were auctioned by the CBOT on behalf of the Environmental Protection Agency (EPA). The auction, the centerpiece of EPA's acid rain program under the Clean Air Act Amendments of 1990, utilizes an innovative market-based trading system of sulphur dioxide "allowances" to reduce pollution (each allowance represents one ton of sulphur dioxide). The goal of the program is to cut the overall output of sulphur dioxide in half by the year 2000.

After the March 1993 auction, the CBOT announced that it would conduct private sealed-bid auctions to complement the annual auction; the first such sealed-bid auction was scheduled for June 1993. With that date in mind, MELS mounted a campaign in the spring of 1993 to raise enough money to purchase and retire at least one allowance, thus preventing a ton of sulphur dioxide from being emitted.



MELS members, Chris Dollase & Kenn O'Reilly present SO₂ plaque to Dean Don Gifford

Unfortunately, as a result of administrative delays which arose over EPA's "allowance tracking system," the June 1993 auction never took place.

MELS did not give up. It resumed its fundraising effort in hopes of buying and retiring at least two emission allowances in the March 1994 auction. At the auction, MELS submitted bids of \$200 and \$150. The \$200 bid was successful, while the second bid fell a single dollar short of success. With the funds left over from the second bid, supplemented by new fundraising, MELS plans to bid on more allowances at the March 1995 auction.

Beyond the obvious benefits of forcing reductions in sulphur dioxide emissions, this campaign has generated positive, nationwide publicity for the law school and increased public awareness of and participation in clean air issues. Since the auctions are open to utilities, brokers, private citizens and environmental groups alike, they offer a clear opportunity for conservation-minded individuals to accelerate the reduction of sulphur dioxide emissions nationwide. Indeed, MELS has been contacted by students at several other law schools who are now planning similar projects.

Jeanne Grasso is a 1994 graduate and is now practicing maritime/environmental law at Dyer, Elis, Joseph & Mills.

Richard Facciolo, is a 2nd year law student and President of MELS.

ENVIRONMENTAL JUSTICE IN MARYLAND

By Sherrilyn Ifill

In 1989, a developer obtained permission from a local government to construct a rubble landfill in a small agricultural community in northern Maryland. The plan to construct this rubblefill directly adjacent to a 150 year old African American church and cemetery and in the middle of closely knit, African American community, was conceived by the developer and approved by the local government without the knowledge of the local residents. The fill, as contemplated, would fill existing gravel and sand pits in the area with debris from a number of sources in and out of Maryland.

The African American community members and their adjoining white neighbors, driven by their commitment to the preservation of their historic community, and by their belief in the power of the democratic process, utilized every avenue available to thwart the developer's plans and to challenge the process by which the local government approved the developer's plan without notification or input from the local community. They demanded that the local government hold public meetings, investigated and uncovered connections between the developer and elected members of the local government, and sought to participate in the state agency permitting process for the landfill.

Since that time the community, relying first on the pro bono services of an attorney who accepted the case because of its intense emotional appeal, intervened and sought hearing in the administrative permitting process conducted by the Maryland Department of the Environment. In the Fall of 1993, when the pro bono

attorney felt she could no longer donate her services to the fight, the community tapped into another resource -- students at the University of Maryland School of Law. Under the supervision of Professors Richard Boldt and Sherrilyn Ifill, students in the Fall semester of that year began to gather facts, interview community residents, research law and brainstorm about ways legal action could be taken on behalf of the community to preserve the integrity of their neighborhood and to challenge the exclusionary processes that led to the siting of the landfill in their community without the knowledge or participation of the local citizenry.

The community's concerns reflected the identical concerns raised by low-income and racial minority communities throughout the country: their communities bear a disproportionate burden of environmental hazards. This movement of communities to cure this inequity, called the environmental justice movement, has its roots in the mainstream civil rights movement and the heightened awareness of community residents about environmental hazards following the Love Canal incident in the late 1970s when residents learned that their community and school had been built on top of buried toxic chemicals.

This movement has been supported by evidence that demonstrates that:

-- 60% of African Americans live in communities with at least one abandoned toxic waste site

--of the five largest commercial hazardous waste landfills, three, which by themselves account for 40% of the nation's total esti-

mated landfill capacity, are located in predominately African American or Latino communities.

The evidence amassed through a 1983 General Accounting Office investigation and study, a 1987 landmark study by the United Church of Christ and a book by Robert Bullard, *Dumping in Dixie*, has led many to the unmistakable conclusion that the siting of environmental hazards is directly correlated with the racial characteristics of the community.

While many have contended that poverty is the predominant indicator which correlates with the siting of environmental hazards, studies show that race is a higher correlative factor than income in the siting of environmental hazards. However, both poor and minority communities tend to have one important feature in common: both communities often lack the resources -- financial, political and legal -- to mount an effective challenge to the siting of an environmentally hazardous facility in their communities. Residents in the northern Maryland community who are resisting the rubblefill often refer to the participation of the University of Maryland Law School students as "helping to even up the fight" between the unresourced community and the developer, who has estimated profits of 6 million per year if the rubblefill is constructed and operating.

In February 1994, President Clinton issued Executive Order No. 12898 which acknowledges the problem of environmental justice and requires that all federal agencies charged with environmental oversight duties consider the impact of agency decisions on minority

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populations and low-income populations.

Environmental justice cases typically raise a whole range of legal and policy issues. Often communities challenge the substantive inequity in a particular siting decision, for example, and also challenge the procedure for siting decisionmaking in the local government which effectively exclude minority communities from playing a meaningful role in decisionmaking that affects their communities. Students working in the Legal Theory & Practice Environmental Justice course have filed Freedom of Information Act requests seeking information from the federal and state agencies that issued permits to the developer, have obtained historic landmark status for the church cemetery which directly abuts the rubblefill site and which houses the remains of at least four African American Civil War soldiers, filed petitions to environmental administrative agencies seeking review of their actions, and have written an amicus brief on behalf of the community in support of the newly elected local government's efforts to provide greater safeguards to communities near rubblefill sites. The latter action is pending in the Maryland Court of Appeals and has pitted the landfill developer against the local government and the community in an interesting shift of alliances. Students have also identified several other legal actions which might be brought on behalf of the community.

Sherrilyn Ifill is an Assistant Professor at the University of Maryland Law School and teaches in the Legal Theory & Practice Program.

Maryland Environmental Law Society Plans Another Active Year

By Richard J. Facciolo

The University of Maryland School of Law boasts an active student environmental group, the Maryland Environmental Law Society (MELS). Approximately fifty students compose this year's membership list. Many of these members chose UM Law because of the quality environmental curriculum, faculty, and clinic offered here. Moreover, the school's proximity to Washington attracts those who wish to take advantage of the many valuable environmental externships available in public interest and government organizations. Members work together to sponsor various activities with input and guidance from the environmental law faculty.

This past fall MELS invited the Black Law Students Association (BLSA) to join it in cosponsoring a panel dinner on environmental justice. This well attended event had a two-fold purpose. First, to offer a forum where a hotly debated issue could be discussed, and secondly, to bring together two groups traditionally separated along racial lines. Working together, BLSA and MELS made the dinner an all around successful event.

MELS hosts brown-bag luncheons featuring speakers from government, public interest groups, and private practice to address students on various environmental issues. These speakers give students an opportunity to learn more about

what it's like to practice environmental law.

The school's student newspaper, *The Raven*, publishes environmental news and events twice a semester in a section compiled by MELS called *The Leaf*. Students and faculty write the articles submitted for publication. A recent edition of *The Leaf* included pieces on MELS most recent brown-bag speaker, the environmental hazards of lead poisoning, and environmental restoration in Haiti.

Last spring MELS bought and retired the right to emit one ton of sulphur dioxide into the atmosphere. MELS collected the money to purchase the right by soliciting donations and sponsoring bake sales in the school. At this time, the group continues to raise money so that more rights can be bought this coming spring. Recently, MELS sent a letter to other environmental law groups encouraging them to start their own fund. The response to that letter was overwhelming with many schools intending to follow in MELS' footsteps.

MELS activities include sending a team to the Environmental Moot Court Competition at Pace University in Feb. 1995, assisting with preparations for the Quinn, Ward, and Kershaw Environmental Symposium in April 1995, sponsoring a team for the National Environmental Negotiation Competition at the T.C. Williams School of Law of the University of Richmond in March 1995, and attending the annual conference of the National Association of Law Societies conference in Boston in March 1995.

Richard Facciolo is a second year law student and President of the Maryland Environmental Law Society.

ENVIRONMENTAL LAW STUDENTS FOCUS ON LEAD: THE #1 ENVIRONMENTAL HAZARD TO CHILDREN

By Ann Lembo

The single greatest health threat to Maryland children under the age of six isn't violence, physical abuse, neglect or poverty: it's lead paint poisoning. Lead poisoning of children in their early years can result in lower intelligence, hyperactivity, reading disabilities and behavioral problems. In severe cases, poisoning caused by lead paint can lead to mental retardation and kidney failure.

Yet you cannot see, taste, or smell lead. Children can be poisoned from eating tiny paint chips, swallowing lead dust, or putting their hands in their mouths after touching lead paint. In addition, lead can also be passed to a baby during pregnancy. The only way to tell if a child has been poisoned is through a blood lead test.

Lead based paint was used almost exclusively before 1950, and was still used extensively in residential buildings until 1978, when it was finally banned. Because a significant portion of the housing stock in Maryland was built before 1950, the dangers from lead paint and lead dust are quite high, especially in the older cities and communities. In an effort to combat this threat to children, the Maryland legislature passed The Lead Paint Poisoning Prevention Act last year. This prevention program is intended to protect children from lead poisoning while providing property owners with incentives to maintain affordable, lead-safe housing. The law covers all residential rental property built before

1950; owners of residential rental property which was built after 1950 but before 1978 may opt in to the system created by the law.

The heart of this legislation is a simple quid pro quo: landlords will cleanup older rental properties according to specified standards, and their liability for damages resulting from lead poisoning will be limited. But this means that tenants will lose their tort rights to sue for their child's poisoning, and the damages that they can recover will be limited to \$7,500 for unreimbursed medical expenses and \$9,500 for relocation expenses. So, while this new law is supposed to encourage landlords to clean up older properties, it will also sharply limit the rights of parents and children to recover damages due to lead paint poisoning.

Students assigned to the Lead Regulatory Intervention Project in the Environmental Law Clinic are Matthew Bennett, Ann Lembo, David Lutz, Elizabeth Niland, Bryan Perry, Mark Petrauskas and Kevin Robertson. These students have been working to inform the community about the dangers of lead poisoning and about the new law. In September, the Law School, in conjunction with the Coalition for a Lead Safe Environment, held a press conference to educate the public about the new law. The Law School and the Coalition also co-hosted a Symposium and Roundtable to inform members of the affected community about the new law and to discuss their concerns with the implementa-

tion of the law. We are currently working with local community organizations to continue our mission

of educating people who may be affected by the new law. Additionally, we have prepared a brochure to explain to tenants what their rights are, and what their landlords' responsibilities are under the new law.

Because tenants will lose important legal rights, the Lead Team has also been tracking the development of the regulations which will implement the new law. We want to make sure that the cleanups, which are a form of lead abatement, done by the landlords will in fact be performed properly, and will protect the children who live in the housing. It is critical that the cleanup standards conform to the standards currently embodied in lead abatement regulations. The work done during a cleanup may actually release more lead dust into the air which may settle on walls, floors, furniture, and toys. Therefore, post cleanup dust testing by accredited inspectors is a critical component of any cleanup regulations.

But the cleanup standards are not the only problem with the regulations which we have identified. For instance, the regulations implementing what is called a "qualified offer" also leave much to be desired. When a child is identified as having been lead poisoned, the landlord must make a "qualified offer" to the tenant to pay unreimbursed medical expenses and certain relocation expenses so the family can move to lead-safe hous-

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ing (expenses to be paid by the landlord are capped at \$7,500 and \$9,500 respectively). The money is not paid to the tenant, but directly to the provider. Once the tenant accepts this "offer," any further tort rights arising from this incident are terminated.

Even if the tenant rejects the offer, if the landlord has complied with the law, the tenants' rights are terminated. Maryland Department of the Environment regulations set forth the form to be used for the qualified offer. However, the form does not make it clear that by signing the form, the tenant is in effect signing away their legal rights to a remedy. Additionally, although the form is supposed to be available in other languages, the form doesn't say so. There is also no guarantee that the money will be there when the tenant needs to have bills paid, such as an escrow requirement.

However, in September, the Maryland Department of the Environment (MDE) issued Emergency Regulations and Proposed Regulations which significantly undercut current requirements for lead abatements. Specifically, the regulations as issued, will exempt housing subject to the law (built pre-1950, and the worst housing) from current regulations which require a post cleanup dust testing inspection. Therefore, the students in the Clinic have undertaken an advocacy project to protest the adoption of these regulations on behalf of their clients.

Under the supervision of Rena Steinzor, Director of the Environmental Law Clinic, the students prepared and distributed a memo detailing the deficiencies in the regulations as issued by the Maryland Department of the Environment. This memo was distributed to the members of the Administrative, Executive, Legislative Review Committee (AELR Committee), which must approve emergency regulations before they can become effective. Two members of the Committee, Delores Kelley, Delegate from Baltimore City and Randallstown, and Michael Collins, Senator from Essex, requested a hearing on the regulations. The public hearing was held on November 30, 1994 in Annapolis, MD. The student attorneys, along with two of our clients, attended and testified at the hearing. At the conclusion of the hearing, the AELR Committee rejected the emergency regulations. Until the regulations are approved, the law is not in effect. It was particularly gratifying to us to hear the members of the committee raise the very issues we had raised in our previous memos to them.

The next step for us in this project is to participate in the public rulemaking that the Maryland Department of the Environment must now conduct before the permanent regulations can be approved. Students will be participating in this rulemaking on behalf of our clients. The students are also being advised by attorneys from the pro bono office of Hogan & Hartson, a Washington,

D. C. law firm. Because the new law asks lead poisoned children to sacrifice their tort rights in exchange for very limited damages, many have questioned whether it is constitutional, especially given the severe problems with the regulations which have been identified. Members of the Lead team, working with the Public Justice Center and attorneys from Hogan & Hartson, have also begun to research these important issues.

Working on this project is an outstanding experience because it rounds out our legal education by applying the legal skills we have learned, and in the process, learning more skills. For instance, we have done statutory analysis on this law and the regulations, as well as theorizing about legal challenges to the law. We are learning about the complexity of the legislative process at the state level, and how regulations are drafted and implemented. It has also taught us that the way regulations are written to implement legislation can be critically important. As has been shown in this case, the fragile protection in the law for children is in serious danger of being completely overridden by the regulations. Finally, our experience with clients and community organizing has been invaluable.

Ann Lembo is a third year law student and is the lead student attorney for the Lead Regulatory Intervention Project.

"CORPORATE ENVIRONMENTALISM" FEATURED AT '94 SYMPOSIUM

Environmental concerns are spurring major changes in corporate behavior, as highlighted by speakers at Maryland's annual Quinn, Ward & Kershaw Environmental Symposium held last April. Focusing on the theme of "corporate environmentalism," the symposium featured presentations by corporate and government officials, securities lawyers, and representatives of public interest groups.

Environmental law has become an important concern for business lawyers who must ensure that environmental liabilities are properly accounted for and disclosed to shareholders as required by securities law. SEC Commissioner **Richard Roberts** warned symposium participants that the SEC is becoming more aggressive at requiring companies to disclose environmental liabilities, including the potentially large expenses of remediation at superfund sites. **Alan J. Berkeley** of Kirkpatrick & Lockhart and Maryland Professor **Mark Sargent** explained some of the difficulties involved in disclosing environmental liabilities and how practitioners should respond to the SEC's actions in this area. Commissioner Robert's paper was published in the November, 1994 issue of *The Business Lawyer*.

In response to environmental concerns, many companies have adopted policies that actively promote environmental protection. Even companies who once vigorously opposed environmental measures now court consumers with claims that their products are environmentally friendly. How to police "green advertising" claims was the focus on another panel at the symposium. **Mary Koelbel Engle** from the Federal Trade Commission discussed the FTC guidelines for green marketing claims and the rationale for enforcement actions the Commission has taken against advertisers in this area. **Elizabeth Skinner** from the Rainforest Alliance discussed how environmental groups are trying to harness consumer market power to promote more ecologically sensitive banana production through a product certification and labeling program.

Corporations and environmental groups are now working together on joint ventures that until recently would have been unthinkable. **Robert Langert** of the McDonalds Corporation and **Richard Denison** from the Environmental Defense Fund outlined the history of an unusual joint project between McDonalds and EDF to promote waste reduction and recycling. Based on a detailed review of McDonalds' operations by the corporation and the environmental group, the company has made dramatic changes to reduce the amount of waste it generates while at the same time saving substantial amounts of money. **Curtis Moore**, former counsel to the Senate Environment and Public Works Committee, discussed some of the dangers of environmental groups becoming too closely involved in corporate activities.

"ENVIRONMENTAL FEDERALISM" THEME FOR '95 SYMPOSIUM

The growing debate over the proper allocation of environmental responsibilities between federal, state and local governments will be highlighted at the 1995 Quinn, Ward & Kershaw Environmental Symposium, which will be held at the law school on April 7. Concerned by the growing cost of complying with federal mandates, representatives of state and local governments have proposed measures that would dramatically decentralize environmental regulation. An impressive array of legal scholars and environmental practitioners will gather at the symposium to discuss the issues raised by the environmental federalism debate.

Jim Krier of the University of Michigan Law School will explore the rationale for national uniformity in environmental regulation and the justification for minimum federal standards. An unusual dual perspective on the environmental federalism debate will be provided by another symposium participant, **James J. Florio**. Now a member of the firm of Mudge, Rose, Guthrie, Alexander & Ferdon, Florio played a key role in the enactment of many federal environmental laws while a member of Congress and then became responsible for implementing the laws as the governor of New Jersey. An international perspective on environmental federalism will be provided by **Cliona Kimber** of the University of Aberdeen in Scotland, who will compare the problems the European Union has faced in seeking to implement common environmental standards.

Oliver Houck of Tulane Law School will discuss federalism issues raised by state delegation of wetlands protection programs under the federal Clean Water Act. **Erik Olson** of the Natural Resources Defense Council will discuss the controversy over implementation of the Safe Drinking Water Act. **Dan Tarlock** of Chicago-Kent will explore federalism issues raised by the Endangered Species Act and Clean Water Act. **Adam Babich** of the Environmental Law Institute will discuss the roles of state and federal governments in regulating hazardous waste disposal and remediation.

Federalism issues related to environmental enforcement will be explored by two panelists. **Melinda Kassen**, former counsel to the House Armed Services Committee, will evaluate the effectiveness of the Federal Facility Compliance Act. **David Hodas** of Widener will examine the tripartite system of federal, state and citizen enforcement of the Clean Water Act. **Peter Mennell** of Boalt is preparing an article questioning the desirability of uniform national standards for environmental marketing claims. **Diane Shea** of the National Association of Counties will discuss the impact on state and local authorities of Supreme Court decisions invalidating state and local waste laws on constitutional grounds. **Jerome Organ** of Missouri-Columbia will discuss state laws that prohibit state agencies from establishing environmental standards higher than the federal minimum. Papers prepared for the symposium will be published in a special issue of the *Maryland Law Review*.

ENVIRONMENTAL LAW IN THE SUPREME COURT

By Robert V. Percival

While the Supreme Court has become increasingly selective in choosing cases to review, several of its decisions have had a profound effect on the shape of federal environmental law. These decisions can be grouped into three broad areas: constitutional law, statutory interpretation, and administrative law.

In its 1993-94 Term, the Court decided six environmental cases. Three cases involved constitutional issues. In two of these cases, *Oregon Waste Systems and Carbone*, the Court invalidated state and local restrictions on the interstate movement of solid and hazardous waste as a violation of the dormant commerce clause. In *Dolan v. City of Tigard* the Court continued to breathe new life into the takings clause of the Fifth Amendment by striking down as an unconstitutional exaction a city's efforts to condition a building permit on a set aside of open space.

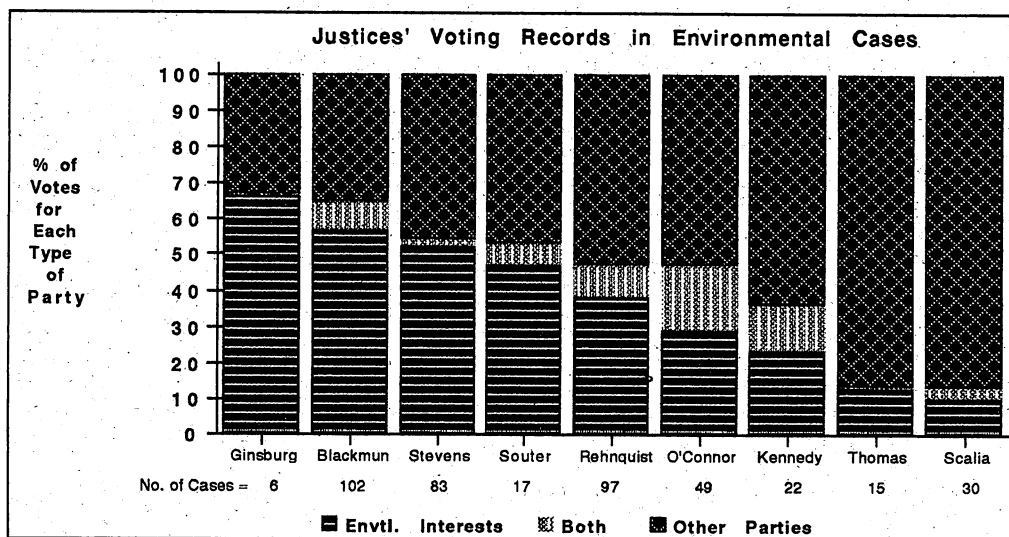
The Court has been a reluctant arbiter of disputes involving interpretation of environmental statutes, usually becoming involved only when the lower federal courts have reached conflicting decisions. Last Term the Court decided three such cases. In *City of Chicago v. EDF*, the Court held that ask generated by municipal incinerators was not exempt from federal hazardous waste regulation. In *PUD No. 1 of Jefferson County*, the Court held that states could impose minimum waster flow requirements on federally-licensed dams under the Clean Water Act. And in *Keytronic* the Court decided that attorneys fees were not recoverable as response costs under the federal superfund statute.

Last January, I led a group of Maryland environmental law students on a field trip to the Supreme Court to hear the oral argument in the *City of Chicago* case. This provided the students with an unusual opportunity to learn about the strategy that oral advocates employ in arguing before the Supreme Court. Following the argument, I had arranged for the students to gather in the Solicitor General's office at the

Court to hear each of the three lawyers who argued the case deliver a post-mortem on their arguments. The students were particularly intrigued to hear how the advocates had modified their strategy in response to feedback from the Justices during the course of the argument.

As the Supreme Court takes fewer and fewer cases, the chances of getting them to review any particular case continue to decline. During the period from 1992-1994, the Court granted review in only nine percent of environmental cases in which review was sought. However, because the Court granted review in only four percent of cases overall, the chances of an environmental case being heard were somewhat better than for other cases. Even the federal government is having a hard time getting the Court to review decisions it seeks to challenge. During the 1993-94 Term, the Court denied review in three major environmental cases in which the government sought review. During its current term, the Court has agreed to review only one environmental case, *Sweet Home Chapter of Communities for a Great Oregon*, a lower court decision that potentially could create a broad loophole undermining efforts to protect endangered species.

The chart below provides data on the voting records of Supreme Court justices in environmental cases. While it is not always easy to determine what constitutes the "environmental interest" in a particular case, the data reveal some interesting patterns. Justices Scalia and Thomas rarely vote in favor of environmental interests, while Justices Ginsburg, Stevens and Souter are far more likely to do so. In between is a block of conservative justices -- Rehnquist, O'Connor and Kennedy -- who vote for environmental interests when they coincide with other principles they value, such as respect for federalism. Become Justice Blackmun voted so frequently for environmental interests, his retirement actually may result in a Court somewhat less sympathetic to such concerns.



IT'S MURDER SHE WROTE - TALES FROM AN ENVIRONMENTAL EXTERNSHIP

By Ann DeBlasi

Eleven shots rang out in the crisp morning air as agents began to encircle the field of men still found holding smoking shotguns. As agents shout out their identity, a lone shooter panics, runs from the pack, and is pursued through field, woods and water, until he is arrested. The crime -- wilful, deliberate, premeditated murder -- only the victim is migratory game birds. The response -- lightning reactions from the environmental crimes unit of the U.S. Attorney's Office, producing an abrupt change in a Maryland law student's work day.

An Environmental Externship at the USAO

Generally, one can use words like "hectic but fun" and "invaluable" to describe an environmental externship at the U.S. Attorney's Office. Work days fly by. While prosecution of Migratory Game Bird Treaty Act violations, like the one described above, is an important part of the environmental crime unit's responsibilities, it is only one small component of this office's fascinating work. Student assignments typically are multi-faceted and involve the student in the full range of the office's work. These include trial preparation, investigative work, plea bargaining negotiations, and just plain old legal research.

Student externs are active participants in following all the usual pre-trial and trial protocols. Affidavits need to be drafted, interviews conducted, and evidence developed. Informations and Complaints need to be filed, initial appearances and arraignments must be scheduled and handled, and plea negotiations with defense attorneys are held. Student externs assist in these tasks and even get to take the lead on misdemeanor dockets, making the student a key player in every aspect of the process.

In addition to time in court, students participate in meetings to help coordinate prosecution of environmental crimes. These include meetings of the

recently formed County Task Forces on Environmental Crimes, which are chaired by the U.S. Attorney's Office. Students also participate in training sessions under the supervision of attorneys in the USAO.

Of course there's research, but it is generally interesting. Because it combines both environmental law and criminal procedure, the research gives motivated student externs plenty of twists and turns to follow.

Interviewing witnesses and enforcement agents is an important part of a student extern's workload. Although students do not always get to handle matters from start to finish -- as many prosecutions take years to complete -- the externs learn that each aspect of a case is important to its overall resolution. For example, an extern may spend days combing through old documents and hours on the phone or in meetings with agency staff to produce what ultimately becomes simply a memorandum for a file. But such memoranda may later become important for the resolution of a case.

Maryland student externs at the U.S. Attorney's Office are gaining experience in environmental law that will be of tremendous value in launching their future careers.

Other Environmental Externships

In addition to the externship with the U.S. Attorney's Office, Maryland law students participate in full-time, semester-long externship programs with EPA's Office of Enforcement, the National Wildlife Federation, the Natural Resource Defense Council, the Chesapeake Bay Foundation, the National Oceanic & Atmospheric Administration, EPA's Office of Administrative Law Judges, the Maryland Department of Natural Resources, and the National Association of Counties.

ENVIRONMENTAL LAW AROUND THE WORLD: REFLECTIONS FROM RUSSIA, SLOVAKIA, SCOTLAND & MONGOLIA

By Robert Percival

It is hard to find an area of the world where the public is not becoming increasingly concerned about the environment, as I have discovered while lecturing around the world. In recent years I have lectured on environmental law in Russia, Slovakia, and Scotland, and will soon be lecturing in Ulan Bator, Mongolia.

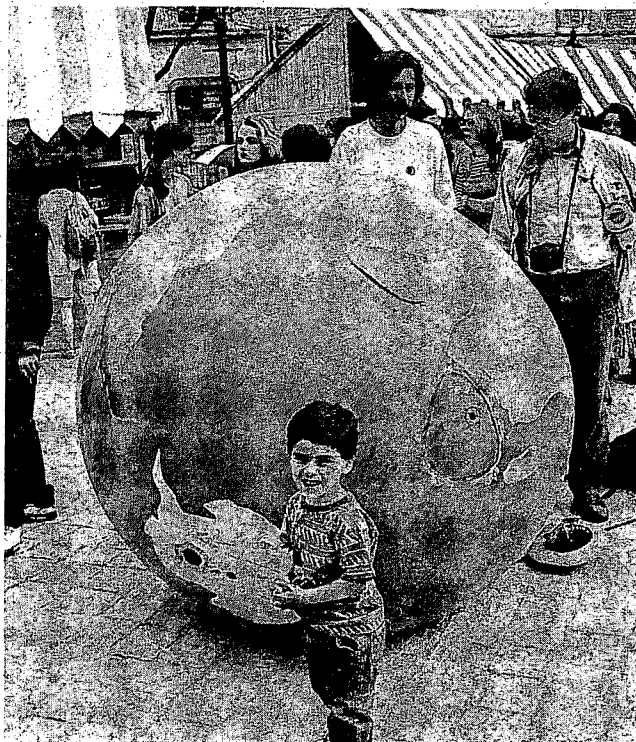
Environmental problems are among the largest challenged facing central and eastern Europe in the wake of communism's demise. Shortly before the collapse of the Soviet Union, I visited what was then Leningrad (now St. Petersburg) to deliver a series of lectures on environmental law. While there, I discovered that public concern over severe environmental degradation was a significant factor in the incipient movement for democracy. Now that communism has collapsed, the newly democratic regimes in central and eastern Europe must deal with the consequences of decades of environmental neglect.

During spring 1994, I taught as a J. William Fulbright scholar at Comenius University Law School in Bratislava, the capital of Slovakia. Slovakia is the eastern half of what was Czechoslovakia until the Czech and Slovak Republics agreed to separate at the end of 1993. At Comenius, I taught seminars on environmental and administrative law. Rather than emphasizing the intricacies of American law, I sought to distill general lessons from the U.S. experience that would be particularly useful in a country like Slovakia. Because environmental and administrative law have played an important role in establishing the rights of citizens to influence government decisionmaking in the U.S., they can provide rich lessons for countries now making the transition to democracy.

While political turmoil has placed major obstacles in the path of law reform in Slovakia, several citizen environmental groups are now active in the country. They have a growing following, particularly among young people, as illustrated

by the environmental festival held in downtown Bratislava, which is pictured below. As in other former Soviet bloc countries, state ownership of polluting enterprises poses major obstacles to environmental reform in Slovakia. While the new Slovak government has cut back on the privatization of state enterprises, the Czech Republic is seizing the opportunity to require newly privatized companies to clean up environmental contamination they caused in the past.

During summer 1994, I taught comparative environmental law at the University of Aberdeen in Scotland, where an entirely different set of issues topped the environmental agenda. Membership in the European Union has helped prod Britain to upgrade its environmental laws, which have permitted regulatory decisions to be made in a far more decentralized fashion than in the U.S. Citizen suits had citizen access to government information are far more limited in Britain than in the U.S., but the former has far more highly developed land use controls.



Percival's son, Richard, at Bratislava Environmental Festival

One should not assume that environmental law can be easily transplanted from one country to another. While the U.S. experience can provide some rich lessons to other countries, it is important to bear in mind that each country has distinct problems and that law in each country is a product of a unique social culture. Thus, while environmental concerns are becoming increasingly global in scope, the concerns and priorities of individuals may vary dramatically from country to country. In Mongolia, for example, the country's nomadic tradition makes public land a constitutional necessity with private ownership of pastoral land prohibited by the country's constitution. Not surprisingly, severe overgrazing is one of the country's most serious environmental problems.

MARYLAND ENVIRONMENTAL LAW CURRICULUM FOR 1994-95

Maryland's environmental curriculum continues to be one of the most extensive in the country. In addition to the introductory environmental law courses, the Environmental Law Program continues to offer several special seminars as well as an environmental clinic and externship program.

During the spring 1995 semester, Professor Percival is teaching the basic Environmental law survey course, using his best-selling textbook, *Environmental Regulation: Law, Science & Policy*. Professor Percival also is teaching a special topics course on Environmental and Toxic Torts. EPA attorney Scott Garrison, who is an expert on enforcement of toxic chemical regulations, is teaching a course on Risk Management and Chemical Use Regulation. Justice Department attorney Annie Petsonk, who will soon become a senior attorney for the Environmental Defense Fund's International Program, also is teaching a seminar on International Trade and the Environment during the spring semester.

During the fall semester 1994, Jane Barrett, the U.S. Attorney who obtained the first criminal convictions of federal contractors for environmental crimes, continued to offer her highly popular seminar on Criminal Enforcement of Environmental Law. For the sixth consecutive year, Professor

Alan S. Miller, director of the University of Maryland's Center for Global Change, taught his seminar on International Environmental Law.

In addition to these courses and seminars, a dozen students have been enrolled in Maryland's Environmental Law Clinic, which is offered during both semesters under the direction of Professor Rena Steinzor. Students also have been enrolled in Maryland's extensive externship program, which allows them to receive up to thirteen credits for full-time work with environmental agencies and organizations.

Maryland law students also have been taking advantage of some of the rich opportunities for taking courses in environmental policy and science offered outside the law school by the University of Maryland system. Approximately 80 graduate-level courses on environmental topics are offered each semester by 28 departments within the university. One program that is popular with law students is the university's masters degree program in Marine, Estuarine and Environmental Science (MEES).

Environmental Program Receives Major Grant from EPA Science for Lawyers Development Targeted

By Dr. Linda Greer

Effective protection of human health and the environment requires a sophisticated integration of law and science that is often lacking in policymaking and the regulatory implementation process. Environmental statutes and regulations continue to multiply in both breadth and nature, while the science and technology underlying such rules become increasingly complex. At the same time, the influence of environmental issues is extending into new legal arenas such as urban redevelopment, bankruptcy, real estate, insurance, and even international trade.

These trends have resulted in a growing realization that the training of attorneys who will deal with environmental protection issues must be expanded to improve their capacity to recognize and assess priority threats to human health and the environment. However, as Professor Robert Percival reported in his survey of the state of legal education for environmental lawyers (*Environment*, 1993), most environmental law professors agree that significantly more effort needs to be directed to curricular development of interdisciplinary studies.

To address the gap between the increasing importance of science to environmental law and the legal profession's capacity to understand and use science, in cooperation with Vermont Law School, Professor Rena Steinzor has received a large grant from the Environmental Protection Agency to develop a national environmental science curriculum for lawyers. The curriculum will emphasize technical issues of broad relevance across environmental statutes, highlighting especially issues relevant to environmental justice. As an environmental toxicologist with considerable experience in environmental policymaking and law, I will work jointly with Professor Steinzor on this project. This two-year project will shape a new field of practical and applied science for environmental decisionmaking that law schools can use as they strive

to increase the technical background they provide their students.

The curriculum will teach science from an informed legal context. It will include: required readings for both teachers and students, suggested lecture notes for instructors teaching the course, draft interactive exercises for use during the course, case studies that illustrate real world science and policy problems, and a "teachers manual" which will provide commentary on both the theoretical and empirical goals of each course component, and practical teaching tips on how to best communicate the information. The courses will be designed to be taught by an interdisciplinary team of law school faculty and scientists experienced in working with the law.

In the last phases of the project, the University of Maryland Law School will collaborate with Vermont Law School to host a faculty development workshop to train law and science professors in the use of the curriculum. Through this training, we hope that faculty across the country learn how to use our work.

Please contact Laura Mrozek at (410) 706-8157 if you are interested in speaking to the project managers or would like to be included in future faculty development workshops. We would like to hear about your interest in this project and get your thoughts about priority information needs for the curriculum in these early stages of our work.

Dr. Linda Greer is an environmental toxicologist with the Natural Resource Defense Council in Washington, DC.

WHERE OUR GRADUATES ARE

While UM's Environmental Law Program is only in its eighth year, its graduates already are doing an astonishing variety of work in the environmental field. Many former UM environmental law students are employed by federal or state environmental agencies, environmental law firms, consulting firms, public interest groups, trade associations, think tanks and private companies. A sampling of what some of our graduates are doing is listed below.

Government Agencies

Several graduates of the Environmental Law Program are working for federal agencies. *Scott Garrison ('89)* is senior legal counsel with the Toxics and Pesticides Enforcement Division of EPA headquarters. *Steve Rollin ('90)* has been active in the superfund reauthorization process as an attorney/advisor with EPA's Office of Enforcement and Compliance Assurance. *Ann Hobbs ('91)* is a patent attorney with the National Institutes of Health. *Marisa Caputo ('93)* is a special assistant to the Director of the Office of Human Radiation Experiments at the U.S. Department of Energy. Among her most interesting projects is conducting an oral history of scientists involved in human radiation experiments between 1944 and 1974. *She'k Jain ('93)* is an attorney/advisor and special assistant to the director of EPA's Acid Rain Control Program in Washington. *Jennifer Miller Masuret ('94)* is working on environmental issues and legislation for U.S. Senator John F. Kerry (D-Massachusetts). *Mary Raivel ('93)* is an environmental, legislative and policy analyst at the Argonne National Laboratory in Washington. *Lori Bruun ('94)* is a legalization appeals officer for the U.S. Immigration and Naturalization Service.

Other UM grads are working for state government. *Bruce Johnson, Jr. ('92)* is an assistant state's attorney in Bowie, Maryland. *Lorraine Ebert ('93)* is working as a law clerk for the Maryland Office of Administrative Hearings where she handles cases involving the Maryland Department of the Environment and the Maryland Department of Natural Resources. *Steve Groseclose ('94)* is serving as a law clerk with the Texas Natural Resource Conservation Commission in Austin, Texas. *Joe LaMore ('94)* is serving as a law clerk for the Hon. Martin A. Wolff on the Circuit Court for Anne Arundel County. *K.C. Murphy ('94)* is serving as a law clerk for Judge John Prevas.

Consulting Firms & Non-Profit Organizations

Students with technical expertise have been warmly welcomed by consulting firms and environmental remediation companies. *Elizabeth Donley ('90)* is Deputy Director of the Research and Analysis Division of Techlaw, Inc. where she works on cost allocation, PRP identification and liability analyses for former military sites. *Thomas J. Lavelle ('91)* is an environmental regulatory analyst for Science Applications International Corp. in North Carolina. Tom is involved in a variety of projects including environmental assessments of Army installations and teaching hazardous material and waste management to Army personnel in Germany and England. His article "Federal Facilities in the Realm of Pollution Prevention and Community Right-to-Know" will be published in the winter edition of the Federal Facilities Environmental Journal. *John Hopkins ('91)* serves as counsel for Clean Harbors, Inc. in Boston. *Ali Alavi ('93)* is a senior environmental analyst and assistant general counsel at Clean Sites, Inc. in Alexandria, Virginia. Among the projects he is involved in are an EPA pilot study to accelerate the remedial design process at Superfund sites, innovative technology demonstrations under public-private partnerships, and conducting independent expert review of Air Force cleanup projects. *Carrie Capuco ('94)* is a policy analyst with PRC in Virginia.

Other students have landed positions with public interest groups, think tanks or trade associations. *Pamela Wexler ('91)* is an analyst for the Center for Global Change in College Park, Maryland. *Linda Bailey ('91)* is executive director of the Institute for Injury Reduction in Crofton, Maryland. *David Fischer ('91)* is counsel for the Chlorine Chemistry Council of the Chemical Manufacturers Association where he has been working on the dioxin reassessment, regulation of disinfection byproducts, and endocrine issues involving chlorine-containing compounds. *Wib Chesser ('93)* is environmental counsel for the National Association of Attorneys General in Washington. *Jacqueline McNamara ('93)* works at the Environmental Law Institute in Washington where she is an editor of the Environmental Law Reporter. *Karin Krchnak ('93)* has returned from a year in Slovakia and continues to work on Eastern European environmental issues as a consultant to the Environmental Law Institute in Washington.

Law Firms

Many UM graduates are involved in environmental litigation or are practitioners at firms with environmental practices. **Joseph Espo ('90)** is an attorney with Brown, Goldstein & Levy in Baltimore, where he represents children suffering from lead poisoning in tort liability actions. **Catherine Faint ('93)** is working with attorney Kenneth Feinberg on implementing the settlement of the breast implant class action litigation. **John Firth ('93)** is working with Quinn, Ward & Kershaw in Baltimore on mining and groundwater pollution cases. **Shannon Miller ('94)** is an attorney with Law Office of Eilon Krugman-Kadi which handles personal injury, admiralty, aviation and an occasional lead poisoning case. **Stephanie P. Brown ('91)** is an environmental practitioner with Piper & Marbury in Baltimore. **Carol Iancu ('92)** practices environmental law as an associate with Crowell & Moring in Washington. **Gregory Reynolds ('92)** has an active environmental practice at Gordon, Feinblatt, Rothman, Hoffberger & Hollander in Baltimore. **Emily Vaias ('92)** is an associate with Linowes & Blocher in Silver Spring, Maryland. **Rita Edwards ('92)** is an associate with the Kilpatricks firm in Mt. Vernon, Oregon. She reports that "there is never a dull moment" there because people have "very strong feelings and positions on both sides of environmental issues." **Edith Webster ('93)** is an associate with Piper & Marbury in Baltimore where she works on solid waste and energy projects for the firm's Project Finance Group. **Pam Metz ('93)** is an associate with the law offices of William J. Pitcher which primarily represents clients before legislative and regulatory bodies. **Ruth Allison Waxter ('93)** is an associate with Jeffrey McEvoy, P.C. and **Scott Waxter ('93)** is an associate with Stephen Glesner, P.C. **Jeanne Grasso ('94)** practices maritime and environmental law for Dyer, Elis, Joseph & Mills in Washington. **Susan Ferguson ('94)** is an associate with a firm that practices corporate health care law. **Dave McRae ('94)** is an attorney with Harmon, Curran, Gallagher & Spielberg in Washington, D.C. working on environmental and public interest issues.

Corporations & Academia

Other graduates serve as in-house environmental counsel for corporations. **Kerry Williams ('90)** serves as in-house environmental counsel for Offshore Pipelines, Inc., in Houston, Texas. **Louis J. D'Angelo ('91)** is director of regulatory affairs for the Fisher Scientific Company in Pittsburgh. He currently is developing an environmental compliance program for the company's

chemical operations in the U.S. and Europe and assures us that chemical manufacturing "is adequately regulated." **Colleen Ottoson ('93)** is a staff attorney with U.S. Pharmacopeia where she monitor environmental health and safety compliance. **Erin Fitzsimmons ('91)** is an editor at BNA and works on the Toxics Law Reporter and the Environmental Due Diligence Guide. She is serving as a member of the Department of Natural Resources Forest Conservation Advisory Group and teaches environmental policy at Salisbury State University. **Juma Monono ('92)** is an assistant professor teaching environmental and property law at the University of LaVerne College of Law in LaVerne, California.

Solo Practitioners

Michael D. Fishman ('89) is an attorney and real estate consultant. **Cynthia Golomb ('89)** has a civil practice that includes family law and contracts and she represents clients as a lobbyist on matters before the Maryland General Assembly. **Maureen O'Doherty ('93)** has a law practice that focuses on solid waste and lead contamination issues. **Nancy Sell ('94)** has a practice that focuses on animal, environmental and disability cases. **Kathy Delahanty ('94)** is starting her own civil practice.

ENVIRONMENTAL WINETASTING SCHEDULED FOR MAY 2

The Environmental Program will host its third annual winetasting for environmental law students and alumni on Tuesday, May 2, 1995. "Wine -- nature's thanks for preserving the earth" is the theme of the event, which is held annually at the conclusion of Professor Percival's course in Environmental Law. The winetasting grew out of a school tradition dictating that Maryland professors should use any royalties they earn on books they assign their students to fund an end-of-semester party. Professor Percival's class uses his *Environmental Regulation* casebook, published by Little, Brown & Company, which has become the most widely adopted environmental law text in the nation. The winetasting will be held in the Brune Room of the law school at 7:30 p.m. Alumni planning to attend are requested to RSVP to Laura Mrozek at (410) 706-8157 by April 21.

FACULTY ACTIVITIES

Professor Robert Percival

Presentations:

"U.S. Environmental Law: A Historical Overview," U.S. Japan Conference on Lessons of U.S. and Japanese Environmental Policy for Industrialized and Developing Countries, Washington, D.C., December 1, 1994.

"The Supreme Court and the Environment," D.C. Bar, Washington, D.C., October 25, 1994.

"The Roles of Law and Science in Environmental Health Protection: A Comparative Perspective," Slovak Polytechnic Institute, Bratislava, Slovakia, May 19, 1994.

"Economics and the Environment," University of Economics, Bratislava, Slovakia, April 27, 1994.

"Market-Based Solutions to Environmental Problems: Economics, Equity and the Environment," Conference of the National Association of Environmental Law Societies, Loyola Law School, Los Angeles, January 28, 1994.

Testimony:

"Risk Assessment and the Mission of the Environmental Protection Agency," before the Joint Hearing of the Subcommittee on Environment, Energy and Natural Resources and the Subcommittee on Legislation and National Security of the Committee on Government Operations, U.S. House of Representatives, February 1, 1994.

Appointments:

Co-chairman of D.C. Bar Section on Environment, Energy and Natural Resources Law.

Member, Board of Directors, Environmental Law Institute.

Member, Advisory Board, National Healthy Air License Exchange (INHALE).

Professor Rena Steinzor

Publications

"The Reauthorization of Superfund: Can the Deal of the Century Be Saved?," 25 Environmental Law Reporter 1009 (1995).

Presentations

"Introduction: A Wide Variety of Opinions," Conference on Federal Environmental Mandates -- Government and Funding, Arlington, Virginia, December 13, 1994.

"Resolving Technical Disputes in a Legislative Context: The Reauthorization of Superfund," Conference on Which Scientists Do You Believe? Process Alternatives in Technological Controversies, Franklin Pierce Law Center, Concord, New Hamp-

BOOK BY ENVIRONMENTAL FACULTY MEMBER TOUTS ENVIRONMENTAL TECHNOLOGY AS "GREEN GOLD"

A new book coauthored by one of Maryland's faculty argues that environmental technology represents a major business opportunity for countries battling in the race for international competitiveness. "Green Gold: Japan, Germany, The United States and the Race for Environmental Technology" is coauthored by Alan S. Miller, director of UM's Center for Global Change and Curtis Moore, former counsel to the Senate Committee on Environment and Public Works. Professor Miller has been teaching in Maryland's Environmental Law Program for the past six years and is currently the program's Gordon, Feinblatt, Rothmann, Hoffberger & Hollander Environmental Scholar. In their new book, Miller and Moore argue that the U.S. squandered an early lead in the development of pollution control technologies that now represent a potential market of more than \$300 billion per year. The book, which is published by Beacon Press, was described by a Washington Post reviewer as "lucid and compelling" with valuable lessons for "lawmakers writing energy and environmental policy."