

# ENVIRONMENTAL LAW AT MARYLAND

*University of Maryland  
Francis King Carey School of Law  
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## ENVIRONMENTAL LAW STUDENTS PRESENT PAPERS AT INTERNATIONAL COLLOQUIUM IN NEW ZEALAND

In June 2013, five students in Professor Percival's Global Environmental Law seminar (Christopher Chaulk, Hilary Jacobs, Katherine O'Konski, Allison Santacreu, and Napolina Chhetri) presented papers at the 11th annual IUCN Academy of Environmental Law Colloquium hosted by Waikato University in Hamilton, New Zealand.

More than 200 environmental law professors and students from 35 nations participated in the Colloquium, which has become an important forum for environmental law scholars from around the world to share their research and experiences. The University of Maryland's Environmental Law Program was one of the founding members of the IUCN Academy of Environmental Law and Prof. Percival regularly contributes to the annual Colloquia. After the success of last year's Colloquium at Maryland which included presentations by alumni David Beugelmans '12 and Stephen Stec '86, the Environmental Law Program has expanded its involvement in this premier global environmental law event.

Colloquium attendees were greeted with a Powhiri, a formal welcome of the indigenous Maori people, to open the Colloquium at the Waikato Museum. On the first day of the Colloquium, Prof. Percival began the UM Carey Law delegation presentations with an in-depth look at the burgeoning environmental movement in China drawn from his decades of experience working with Chinese authorities, scholars, NGOs, and students on environmental issues. Managing Director William Piermattei then gave a presentation on the potential use of qui tam actions, where citizens stand in the shoes of the government, to enforce environmental laws in return for a share of the fines and penalties collected.

On the second day, Napolina Chhetri addressed governmental inconsistencies in the evaluation of scientific data using trichloroethylene as a case study. Christopher

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*UM Carey Law delegation at the 11th Colloquium of the IUCN Academy of Environmental Law at Waikato University in New Zealand. (from l to r:) Gabby Queenan, Napolina Chhetri, Hilary Jacobs, Kat O'Konski, Chris Chaulk, Allie Santacreu, Bill Piermattei and Bob Percival.*

### *Also in this Issue . . .*

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University Environmental Summit

## New Zealand

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Chaulk then gave a provocative presentation on the liability of multinational corporations for transnational harm and recent developments in the United States concerning the Alien Torts Claims Act. Katherine O'Konski rounded out the day's UM Carey Law day two presentations by comparing approaches to phasing out fossil fuel subsidies.

On the last day of the Colloquium, Hilary Jacobs analyzed the International Covenant on Civil and Political Rights as a mechanism of redress for island nations adversely affected by climate change. Allison Santacreu then gave a presentation on changing land use practices to address rising sea levels caused by climate change.

In addition to the Colloquium, there was some time to explore New Zealand's north island, attend a professional rugby match, and tour the New Zealand cities of Hamilton and Auckland. Most importantly, the Colloquium provided the opportunity for our students not only to attend

numerous presentations on a wide variety of environmental topics from scholars all over the world, but also to have discussions with those scholars and to learn from their insights.

The students' travel was funded by a Maryland Public Interest Law Project (MPILP) grant and through the generosity of alum Joel Fedder '58, who, along with his wife Ellen, created Fedder Scholars, a program (see p. 4) that provides funds for students to present their research at IUCN Colloquia. The Environmental Law Program is enormously grateful to Joel and Ellen Fedder, as well as to the many alumni and friends whose donations support the Program. A video of the Maryland presentations at the Colloquium, made by Global Environmental Justice Fellow Gabby Queenan, is online at: [www.law.umaryland.edu/programs/environment](http://www.law.umaryland.edu/programs/environment).

## COURT DENIES DEFENDANTS' MOTIONS FOR ATTORNEY'S FEES IN WATERKEEPER SUIT

Years of litigation over pollution of the Chesapeake Bay ended August 27, 2013 when the U.S. District Court for the District of Maryland denied attorney fees motions from Perdue Farms Inc. and Alan Hudson, one of its contractors. In his ruling, the Honorable William M. Nickerson found that "while alarmingly high levels of fecal coliform, E. coli, nitrogen, and phosphorous had been discharged from Hudson's farm and that at least some of those contaminants would reach the Pocomoke River, Plaintiff had not met its burden of establishing that the poultry operation contributed to these discharges."

Judge Nickerson found that the "alarmingly high levels"

of pollution discharged from Hudson Farms came from cow manure rather than the poultry operation. However, he found the Plaintiff's claim that the poultry operation contributed to these pollutants was not "frivolous, unreasonable, or without foundation," the legal standard for awarding attorney's fees to a prevailing defendant in a Clean Water Act citizen's suit. Therefore, the Court held that the defendants were not entitled to attorney fees.

The Environmental Law Clinic at UM Carey Law represented the plaintiff Waterkeeper Alliance, a national environmental group with more than 3,000 members in Maryland.



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# CLINIC STRENGTHENS CONSENT DECREE, PROTECTIONS FROM COAL ASH POLLUTION

*By Colin Hood '13 and Alana Wase 3L*

As John Wilkes Booth limped his way through the Zekiah Swamp in April of 1865 he was probably only concerned with his freedom. Guided by freed black farmer Oswell Swann, Booth spent six hours marching through what would later become a national heritage site and the largest hardwood forest on Maryland's western shore. Booth probably didn't notice the diamond back terrapins or the oyster beds that would later make the area famous.

While the swamp has been free of presidential assassins for over one hundred years, it has become threatened by a different foe: fly ash. A by-product of coal fired power plants, fly ash contains heavy metals and other pollutants that can easily mix with rain water and leach into the ground. Many of these pollutants such as selenium, copper, cadmium, and mercury have leached out of improperly constructed holding pits at a facility in Faulkner, Maryland, staining nearby streams orange and disrupting the ecosystem's Ph levels. Over the last five years the Environmental Law Clinic, partnered with the Environmental Integrity Project (EIP,) represented clients Defenders of Wildlife, the Chesapeake Climate Action Network (CCAN), the Patuxent Riverkeeper, Potomac Riverkeeper (represented solely by the Clinic), and Sierra Club, to ensure that coal ash leachate no longer seeps into Maryland's surface and groundwater and that past discharges are fully remediated.

NRG Energy (formerly known as both "Mirant" or "GenOn") owns and operates three coal ash landfills in Maryland (the Faulkner Landfill in Charles County, the Brandywine Landfill in Prince George's County, and the Westland Landfill in Montgomery County). These landfills have a history of illegal discharges of pollution in violation of Clean Water Act (CWA). For example, NRG's Faulkner facility, built in the early 1970s, had a history of effluent discharge violations, and had even been the subject of a failed court-ordered remediation project. The Clinic, with EIP, filed a notice of intent to sue NRG for violations of the CWA in Maryland state court in 2008. This filing then prompted the Maryland Department of the Environment (MDE) to bring their own suit against NRG for some of the same violations. The clients attempted to intervene in MDE's suit in state court, but were denied.

After delay in state court, MDE transferred the litigation to federal court, where the clinic successfully intervened for its clients regarding alleged CWA violations at Brandywine. Intervention in the federal court proceeding allowed our clients to participate in the settlement negotiations, in which we fought for important safeguards against future leaks and increased public participation in future permitting



*(from l to r:) Jane F. Barrett, Jennifer Duggan (Environmental Integrity Project), Robin Broder (Potomac Riverkeeper), Andrew Keir, Colin Hood, and Alana Wase*

decisions at the sites.

In December of 2012 GenOn and MDE filed a motion for entry of the draft Consent Decree. The clinic's work (along with extraordinary help from Jennifer Duggan of EIP) in the 2012-2013 academic year focused on reviewing the Consent Decree and advocating for improvements sought by our clients. The Clinic identified several weaknesses in the Consent Decree. First, the provisions protecting drinking water wells were vague and ambiguous, so the Clinic pushed for stricter notice provisions for impacted well owners and clearer obligations for NRG to provide owners with bottled water. Second, schedules meant to keep Faulkner facility remediation on track were vague. Third, the Consent Decree did not prohibit NRG from expanding its Faulkner facility in the future, despite NRG's assertions in the media and in state court that the facility would be closed. Finally, the draft Consent Decree did not require NRG to comply with Maryland's recently enacted fly ash disposal regulations.

At the hearing on the entry of the consent decree, clinic student Colin Hood and EIP attorney Jennifer Duggan successfully argued for improvements to the Consent Decree. The parties agreed to improve the protections for impacted well owners and to reduce ambiguity regarding the schedule for remediation at Faulkner. Additionally, MDE stated on the record that any future expansions at the Faulkner facility would be subjected to Maryland's

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# A CONVERSATION WITH JOEL D. FEDDER '58 ON THE FEDDER FUND AND FEDDER SCHOLARS PROGRAM

*To all my Maryland Law alumni, I encourage you to join me and create a program at the school that embodies your passions and ideas. Engaged alumni are vital to the continued success of our law school and I am sure if you do, your experience will be every bit as gratifying as mine.*

*Please read about our experience. Joel D. Fedder.*

Joel and Ellen Fedder created the Fedder Environmental Law Fund to support initiatives of the Environmental Law Program. Through working with the Program, the Fedders have supported a lecture series, the IUCN Colloquium the school hosted in 2012, the Stetson International Moot Court competition, and many other program activities. When the IUCN accepted several Maryland law students' presentation proposals for this year's Colloquium at the University of Waikato in New Zealand, the Fedders were thrilled to start Fedder Scholars, a program to support students travelling to the Colloquium to give presentations. The success of the Fedder Scholars at this year's Colloquium has spurred a future joint commitment of the Fedders and the Environmental Law Program to support student presentations at the IUCN Colloquium as a yearly, programmatic event. Joel described what inspired their generosity in the interview below.

## **Describe your experience participating in the 2012 IUCN Colloquium hosted at the law school.**

JDF: My opportunity to interface with our students on a peer level at the IUCN Colloquium was wonderful. The opportunity to be a Panel Moderator on subjects that I lecture on was a special treat and gave me a world perspective and bolstered my resolve to do as much as possible to inform people of the problems facing our world due to climate change. To be involved in an exchange of ideas on a truly global level was thought-provoking and inspiring.

It was an honor to give a presentation at the Opening Plenary, entitled "Beyond Your Desk," that enabled me to reach out to environmental law professors from 100 universities and 30 countries. My goal was to encourage them to reach beyond their students and advocate in their countries for the creation of meaningful programs to implement climate mitigation and adaptation.

It was just a wonderful experience to work with the Dean, faculty and staff at the law school on such a meaningful gathering of environmental law scholars.

## **Did your experience with the 2012 IUCN Colloquium at Maryland influence you in setting up Fedder Scholars?**

JDF: Developing proficiency in life and in the law is not achieved just by reading books, attending classes



*Joel and Ellen Fedder with Professor Wang Canfa (center) during the Environmental Law Program's 2010 trip to China*

and taking exams. Observing many students from universities present thoughtful and important papers on the environmental issues their countries face led me to conclude that we at Maryland Carey Law should enable our students to do the same. I recognized that my wife Ellen and I had the opportunity to enable our students to present and, through their work, have an impact on an international level. This kind of experience is essential not only for our students' development as attorneys, but also to be more competitive in an ever-changing legal and business environment. We felt a duty to help them do just that. Such experiences broaden one's perspective on life. To visit other countries and meet other people with different backgrounds and points of view gives our students an important global perspective.

## **How do you see Fedder Scholars benefiting students?**

JDF: A broad learning experience for students is the goal. Working hard and earning the right to participate in the Fedder Scholar program and present that hard work and thoughtful analysis at international conferences certainly fits that goal. Our role in furthering these goals is that of a facilitator. It is then the students' job to grasp the opportunity offered and learn from it. The enthusiastic response and great result from the Fedder Scholars participation in the New Zealand IUCN Colloquium is proof that our goal was accomplished and we hope future students will grasp this opportunity.

## **Why is Fedder Scholars important to you?**

JDF: Nothing gives me more pleasure than to watch the

next generation of environmental lawyers grow into strong advocates for the preservation of GAIA, aka Planet Earth. We established The Fedder Lecture Series and Fedder Scholars to help train and inspire future environmental lawyers to craft policies and enforce laws to protect humanity's only home. As time marches on and civilization moves further into the Anthropocene Epoch with attendant Climate Change, our need for environmental advocates will be ever more important.

Ellen and I are deeply concerned about future catastrophic changes caused by Climate Change. I carry with me at all times a comment made by John Sawhill, former President of the Nature Conservancy who said,

*"In the end, our society will be defined not by what we*

*create, but by what we refuse to destroy."*

We consider it our duty as citizens of the world to do as much as possible to aid society in recognizing the wisdom of that admonition. Our programs at The University of Maryland Francis King Carey School of Law are our contribution to both train future environmental lawyers and fulfill our civic duty. For if we do not, future generations, our children and grandchildren, simply put, will not inherit a habitable and hospitable planet. Ellen and I view our work with the Environmental Law Program as one of stewardship – today's society does not own the planet, we are just borrowing it from future generations.

## THE IUCN ACADEMY OF ENVIRONMENTAL LAW COLLOQUIUM EXPERIENCE: THE STUDENTS' VIEWS

### **Hilary Jacobs, 2L**

Travelling to the University of Waikato in New Zealand for the annual Colloquium of the International Union of the Conservation of Nature's (IUCN) Academy of Environmental Law was one of my best educational experiences. While at the Colloquium, I presented a paper on a particular international law mechanism that could address the plight of island nations facing the effects of climate change. Instead of merely submitting a paper for a grade, I took my ideas and research a step further and tested them before a group of environmental law scholars from around the world, many with expertise on my presentation topic.

Presenting at the Colloquium gave me the opportunity to reach an audience of experts, some of whom are working on the very same issues I had researched. To engage this group of experts, receive new ideas from them and, hopefully, inspire the audience with a fresh look at an important topic was an eye-opening experience. To me, after just completing my first year of law school, this was awesome, humbling and simultaneously inspiring. Even more, I was able to meet several scholars whose work I cited in my paper – a truly unique experience which left me admittedly a little bit star-struck. Listening to their presentations and getting their feedback on my ideas made the experience all the more meaningful.

Seeing the country was an added bonus. New Zealand itself is beautiful and varied, highlighting the importance of environmental conservation. Its landscape changes dramatically in as little as twenty minutes. Within one day, we saw lush agricultural pastures (think: lots of sheep!), brightly colored scalding geothermal pools, and a redwood forest.

I feel so fortunate to have had this tremendous opportunity at such an early stage in my career as an environmental lawyer. I would like to thank Bill Piermattei, Professor Percival, and especially Joel and Ellen Fedder. It is an honor to have been selected as one of the first Fedder Scholars which, through their financial support, allowed me to pursue this opportunity.

### **Allie Santacreu, 2L**

Presenting at the IUCN Academy of Environmental Law Colloquium hosted by the University of Waikato was an incredible and unexpected opportunity. During the first year of law school the curriculum is set and our main responsibility as students is to figure out how to be law students. Many of the issues we are interested in have to take a temporary back seat while we begin to understand what it means to be a lawyer. Professor Percival's Global Environmental Law Seminar was the first opportunity for me to focus on my interest in the environment in a class setting. I did not anticipate that my interest and involvement in class would lead me to present my own research at an international conference.

My research and presentation focused on reforming land development patterns to accommodate rising sea levels and climate change. I was able to voice my own opinions on an issue I care about to scholars in the field. During the conference, we spoke with environmental law students, scholars, and professionals from all over the world. From these conversations, it became apparent that the attendees of the conference were helping to shape environmental law in ways large and small. Having the opportunity to present my ideas to such a distinguished audience was invaluable.

While I will never know what impact my opinions had on the attendees of the conference, it is incredible to think that I may have helped foster the development of law on important environmental issues.

Since returning to school, I appreciate even more the opportunity I had this summer. It is easy to get preoccupied with our responsibilities as students; however, my experience at the IUCN conference reminded me of the importance of staying connected to the larger global community. There are people all around the world who are working toward the same goals that many of my classmates and I are working toward. This opportunity reminded me of why I came to law school and reinforced my interest in making an impact on the global community. I am deeply grateful to the law school and the Fedder Scholars program for providing me this unique opportunity.

### **Christopher Chaulk, 2L**

I traveled to New Zealand this summer to present legal research at the 11th IUCN Academy of Environmental Law Colloquium. While I am grateful for a unique opportunity that improved my professional and legal skills, I am just as appreciative of the tremendous support from the Maryland Carey Law community that made the experience possible.

I improved several vital skills in presenting legal research on corporations accused of environmental harm in developing countries. Prior to my presentation, I did not realize that this presentation would provoke very strong responses from the audience. Several audience members openly rejected some of my findings. I responded by drawing upon the experiences during my first year of law school when a professor or judge challenged me in class or in my appellate argument. A lawyer, especially a litigator, works in an adversarial setting and must prepare to engage as such. I also developed my organizational and communication skills while building my presentation. Lawyers must reduce and simplify their arguments both to save time and to persuade others to recognize if not agree



*Maryland student delegation at Waiotapu (“sacred waters”) geothermal area in the Taupo Volcanic Zone on New Zealand’s North Island*

with their position.

Another important skill I honed while at the Colloquium was building genuine professional relationships and maintaining cordial interactions with others. I interacted and connected with environmental legal scholars from Canada, the Netherlands, and Australia. During the coffee and lunch breaks over the three-day Colloquium I learned about their research and career paths. From these conversations, I acquired career advice instrumental in setting loftier goals and more pragmatic, effective approaches to achieve them. I found the camaraderie and the IUCN Academy of Environmental Law’s acceptance of student ideas very helpful in my growth as an attorney. I was treated as a colleague, not a student. This acceptance helped develop my ideas, analysis and professional growth and raised my personal expectations. Put simply, when treated as a colleague, you grow as a professional.

Finally, I could never have presented at this Colloquium without tremendous support from the Maryland Carey Law community. Einstein was quite right when he noted that he does not teach his students, but only provides them with the environment in which they can learn. Professor Robert Percival revealed this opportunity at the start of the spring 2013 semester in my elective, Global Environmental Law, and encouraged us to apply. When the Colloquium organizers accepted my abstract later in the spring, my travel was financed through MPILP. Professor Percival worked with and challenged me to improve my research and writing so that I could produce my best work. I acknowledge that I have to seize opportunities to learn and grow, but I can really only seize opportunities when others help show me where they lie.



*Students Allie Santacreu, Napolina Chhetri, and Hilary Jacobs with University of Waikato Law Dean Brad Morse*

## **Katherine O’Konski, 2L**

My trip to New Zealand was an incredible opportunity to view environmental law scholarship from a new and international perspective. After a flight around the world, coming into Auckland airport and looking at the city sprinkled with volcanoes resembling isolated, grassy hills, made New Zealand feel incredibly far away from Washington, D.C. I felt as if I was at the end of the earth. New Zealand is both familiar and exotic; English pervaded the streets of Auckland, a charming but typical western city. Rather, it was the underlying natural backdrop that made New Zealand feel special; from the rolling hills of its pastoral sheep farms, to the electric blue creek flowing through Whakarewarewa Forest (a forest of planted California redwoods permeated by New Zealand’s more tropical looking vegetation), to the volcanic sites surrounding Rotorua. It was difficult not to be cognizant of the importance of sustainability and environmental protection given our lovely surroundings.

Although most of the participants at the 2013 ICUN Academy Environmental Law Colloquium spoke about issues that were familiar – climate change, chemical regulation, energy, environmental justice – they addressed issues from perspectives that were very unfamiliar. For example, my panel included a law professor from the U.S. now working for the Department of the Interior, who spoke on the familiar challenges with fracking regulation in the United States, while two law professors explored environmental governance challenges of expanding coal operations from their native South Africa. To me, both presentations, addressing such different circumstances yet fundamentally similar goals, reflected a sense of unified purpose throughout the room and the Colloquium itself. And just as presenters described a diverse set of environmental challenges and offered their thoughts on solutions that law and policy could provide, conference goers were happy to provide helpful insight from their own challenges and experiences.

My presentation, which focused on actions the U.S. should take to lead the world in removing fossil fuel subsidies, was largely focused on methods to push such measures through Congress. As I spoke to the room on my thoughts on the character of environmentalism in the



*Opening of the 11th Annual Colloquium of the ICUN Academy Environmental Law*

U.S., and where I thought it should go in the future, I felt extremely lucky to see experts from across the globe considering, and offering their thoughts on my opinions. To be sure, getting a sense of attitudes toward environmental protection from outside the U.S. was instructive; I could almost feel the agreement in the room as I stated in my conclusion that the U.S. should lead by example in its fuel subsidy policies.

Speaking one-on-one with the other Colloquium attendees was also a great opportunity to learn about different parts of the world, the environmental problems they face, and what had brought them to the Colloquium. From the problem of sea level rise for island nations to the challenges associated with the “Anthropocene,” it was easy to tell how each participant was devoted to the mission of environmental sustainability. On those common grounds, set against the pristine background of New Zealand, I felt when I left the conference that some real progress had been made toward future environmental sustainability, even if it was just a stepping stone that would be built upon and continue to be shaped by next year’s Colloquium.

I would like to thank the law school and the generosity of Joel and Ellen Fedder for helping fund my presentation through Fedder Scholars.

*The 12th Colloquium of the IUCN Academy of Environmental Law will be hosted by Rovira I Virgili University in Tarragona, Spain from June 30 to July 5, 2014*

# EXPERIENTIAL LEARNING

## WHERE NATURE KNOWS NO BORDERS: A TRIP TO THE ARAVA INSTITUTE FOR ENVIRONMENTAL STUDIES IN KIBBUTZ KETURA, ISRAEL

*By Napolina Chhetri, 2L*

On March 8, during the 2013 spring break, five students along with Professor Robert Percival and Julie Weisman, an attorney working for the Water Resources Action Group, travelled to Israel on an environmental field trip. The purpose of the trip was to get an introduction to a regional problem: the growing demand for water, a scarce resource in the region. We had fascinating dialogues with the experts about the scope of the problem and potential solutions. At Bar Ilan University, we spent the day with their environmental clinic and compared citizen suit provisions between the two countries. In the Old City of Jerusalem, we learned about waste water management and the political difficulties of coordinating efforts with differing Muslim, Christian, Arminian and Jewish communities. Finally, at the Kibbutz Ketura, we met with Dr. Clive Lipchin who gave an insightful lecture about the current Israel drinking water system, its effects on industries and land around the Dead Sea, and the political impact on Jordan and Palestine. At the Kibbutz, we also interacted with the students of the Arava Institute for Environmental Studies, whose vision statement declares:

*The Arava Institute for Environmental Studies will provide the Middle East a new generation of sophisticated professionals that will meet the region's environmental challenges with richer and more innovative, peace-building solutions.*

The missions of the Arava Institute and Kibbutz Ketura are to address difficult environmental issues and to use the collective teamwork developed in finding solutions to common environmental problems to encourage tolerance, unity, and peace in a region with intractable religious conflict.

Kibbutzim are communities based on covenants, similar to planned communities in the U.S. such as gated communities or condominiums. Traditionally Kibbutzim were primarily agricultural communes, but today they consist of varied groups of people who share a common social, political, religious, or spiritual vision. Kibbutz Ketura is one such community in the middle of the Negev desert in southern Israel. Located between the Dead Sea and the Red Sea regions, it houses the facilities and students of the Arava Institute. This community is



*Julie Wiesman, attorney for the Water Resources Action Group and Bob Percival with Carey Law students at the Ruth statue outside a solar panel array at the Arava Institute for Environmental Studies*

extraordinary because they live according to conservation precepts. On our first evening at the Arava Institute, Dr. Elli Groner, an ecologist, gave us an opening presentation entitled “Where nature knows no borders.”

Kibbutz Ketura has transcended its original agrarian, socialist and often time, Jewish strictures to become a world-class center for environmental study, entrepreneurship, and leadership of peaceful coexistence between the Arab, Jewish, and Christian societies through the Arava Institute. Israel’s first commercial solar energy farm, the Ketura Sun, is on the Kibbutz. Algatech, another such enterprise uses a filtration system to extract natural astaxanthin from haematococcus algae that is currently sold for \$6,000 a kilogram due to its potent antioxidant activity, which is thought to be beneficial in cardiovascular, immune, inflammatory and neurodegenerative disorders. Also, Ketura is the home of the famous Judean date palm ‘Methuselah’ germinated from seeds found during a Masada excavations in an ancient jar dating 155 BC to AD 64.

I was highly impressed with Kibbutz Ketura’s commitment to green technology. The Arava Institute generates an impressive amount of research and



development. Some scientists and students studied options to produce biogas from the compost generated from their dairy farm. Four different types of solar energy systems were being tested to manipulate maximum sunlight intensity while minimizing heat loss. The guest houses and dormitories were built with separate black water and grey water piping systems for future water recycling projects. Several patches of land were being tested with different types of crops, including a large section of heirloom dates. The Institute's study of crop varieties focuses on characteristics such as environmental tolerance, disease resistance and medicinal properties. When Dr. Sarah Sallon, head of the 'Methuselah' date palm project, chose Ketura to grow this famous ancient tree, she implicitly endorsed the Kibbutz's scientific commitment and research capability.

Students maintain a rigorous course-load in environmental studies including environmental ethics, policy and economics, ecology, and sustainability. They have an excellent research focus integrated with the green developmental activities in the Kibbutz. What was extraordinary for me was the conscious decision that the Institute made to integrate students in weekly peace-building and leadership seminar where they engage in dialogue with one another focusing on issues of coexistence, tolerance, and communication. The student body of the Institute is deliberately comprised of equal numbers of Palestinians, Jordanians, Israelis and international students.

Regional conflict as a whole has a new meaning for me since I visited the Institute. I heard different and multidimensional narratives about Middle Eastern history and conflict. I heard from a Palestinian student whose parents were living in a refugee camp at the West Bank. His

parents would be appalled and angry if they knew their son attended a school in Israel. He talked about why his people wanted to return to their home in Israel. On our last day, in a class on water resource management, a Jordanian student disagreed with the idea that Israel "gifted" a tiny fraction of potable water back to Jordan. A discussion then started between the Jordanian students whether it was 'legal' in some areas of Jordan to store more than two cubic meters of water on the one day of the week where city water was available in the taps. Later in the evening, some Arabic students invited us to learn basic Arabic where we had good fun attempting to complete simple sentences. We were then cajoled to join the students for a salsa dancing class taught by a Jordanian student. Finally, we ended the night with the entire student body celebrating a surprise birthday party for one of the students who was dragged down from her dorm room in her pajamas.

What is remarkable about the Institute and the Kibbutz is what these young individuals will take back home. Instead of living and knowing only segregated communities of Arabs, Jews or Christians, students are taught that they can have a new identity as world citizens. These students will hopefully go back home and teach others about tolerance and respect of all religions despite historical and cultural differences. By teaching that nature knows no boundaries, the Arava Institute at Kibbutz Ketura is also teaching a future generation of Palestinians, Israelis, Jordanians, and the lucky few international students, the art of peace in one of the world's most war-torn and religiously conflicted regions. I look forward to seeing the difference that these individuals will make.

## ADVENTURES WITH THE DEPARTMENT OF THE INTERIOR IN THE PACIFIC NORTHWEST

*By Megan Ulrich, 4E*

This past summer I had the opportunity to intern for the United States Department of the Interior, Office of the Solicitor, Pacific Northwest Regional Office. The Regional Office is located in Portland, Oregon. My internship focused on issues related to management of land and natural resources. Fortunately, I was able to visit some of the areas that the Department is working to protect.

The office handles legal issues that arise in Idaho, Montana, Oregon, and Washington. Attorneys in the office advise the Fish and Wildlife Service, the Bureau of Land Management, the National Park Service, the Bureau of Indian Affairs, and the Bureau of Reclamation. The

attorneys work on a broad range of legal issues related to: quantifying tribal reservation water rights, protecting endangered species, managing the national parks, holding timber sales, interpreting treaties and contracts, and undertaking natural resource damage assessments.

I was fortunate to be one of two legal interns selected to work in the Pacific Northwest Regional Office. The office put a lot of thought and time into the legal internship program and made my fellow law clerk and I feel very welcome. My supervisor gave me many substantive projects throughout the summer. I worked on two projects related to natural resource damage assessments. I also

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## Adventures

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wrote memoranda related to CERCLA statute of limitation issues, quantifying agricultural water rights on tribal reservations, and the “protect and enhance” provision of the Wild and Scenic Rivers Act. Additionally, I drafted a litigation report and answer for a Federal Tort Claims Act case. The projects were engaging and helped me understand the variety of legal issues that are handled by the Office of the Solicitor.

My internship experience was also enhanced by many field trips and site visits. On one of the trips I went to Coeur D’Alene, Idaho where I attended a natural resources restoration plan meeting. In addition to the meeting, I was able to visit the site of the proposed restoration for an area damaged by years of mining waste. Three other field trips that the office organized were a site visit to ninety-acres of land that the Bureau of Land Management is planning to sell in a timber sale; a tour of Fort Vancouver, the site of a Hudson Bay Company outpost; and a hike in the Mt. Hood National Forest. These site visits helped me gain some perspective on the implementation of environmental laws and the importance of the government’s thoughtful management of the vast resources it holds in trust for the people.

I am very grateful that I was able to intern at the Pacific Northwest Regional Office with such an intelligent and



*Megan Ulrich at Crater Lake National Park in Oregon*

generous group of people. The work was very rewarding and I had a wonderful time exploring the Pacific Northwest. I would highly recommend a legal internship at the Department of the Interior to any student who is interested in land management, water rights, natural resources law, Indian law or endangered species issues. I would like to thank the Maryland Environmental Law Society and BARBRI for their generous support of my summer work through the MELS BARBRI Summer Grant program. The grant helped defray the cost of my travel and living expenses and enabled me to both explore and help protect the natural resources of the Pacific Northwest.

## THE POWER OF VOICE: THE NEW DIRECTIONS CONFERENCE

*By Christopher Chaulk, 2L*

What is the point of going to a conference? Sometimes it’s difficult to ascertain precisely what you learned. There’s no exam, no set of handouts or conference papers to take home. But you definitely gain something. It’s energy.

To attend a one-day conference on “New Directions in Environmental Law” at Yale Law School, I hopped on a train from Baltimore to New Haven after Friday classes, plowed through sessions all day Saturday, slept on an air mattress for my two nights at the house of a conference planner, then caught a train home early Sunday morning. Even after all that travel, I still carried back a tremendous burst of energy.

In the field of environmental law, it’s quite possible to feel after a time, as one speaker humorously remarked, as though we have drunk “from the chalice of pessimism” until it’s dry. The number of environmental problems continues to mount. The morning workshop concerned the International Court of Justice, where the island nation of Palau had sought an advisory opinion regarding the responsibility of countries not to harm others with their

greenhouse gas emissions; in the case of Palau, rising sea levels threaten the future of this small island. None of the speakers sugarcoated the realities of deadlock, the dangerous stakes and the often tenuous political will surrounding environmental initiatives.

Yet I drew energy and inspiration from the new contacts formed during and after the conference, the discussions between the speakers and attendees as well as the sharp reflections and expertise shared by a variety of professionals. Between sessions, I learned from a recent law school graduate about her fellowship at the National Oceanic and Atmospheric Administration, from an environmental studies professor about preparing students for careers in the environmental field, and from another lawyer about her policy work on sustainable international investment in developing countries. These conversations comprised just a few of the moments in which I learned, not easy solutions to environmental problems, but the value of participating in a wider legal community by exchanging ideas on environmental issues.

The conference planners – all students – deserve much credit for inviting an array of professors to discuss the most pressing environmental issues, like climate change, as well as unusual voices, like the key note speaker, Jeff Goodell. A writer for Rolling Stone, he has also written books about the coal mining industry and geoengineering. But what merits the most praise are the dialogues that arose when the speakers opened the floor to engage the audience. One audience member questioned the key note speaker on how to have real conversations about complex issues when media often reduce layered problems to snappy headlines. Another audience member tried to point out that the paucity of legal claims in defense of Palau at the International Court of Justice does not remove the extent to which this island’s fate remains a moral question that, as the panel had earlier pointed out, affects all of us. Each session ended with thoughtful questions and an engaged audience willing to stay and talk more.

I found the conference a rich survey of concepts, case studies and presentations. The opening speaker, a local alderman, reflected on successful and failed environmental legislation in New Haven, from a bottled water ban to a streetcar for the city. He imparted the following: even with sound policy and hard work, we will hardly implement our good ideas without the support of others who recognize that an injustice or crisis must be resolved. A former senior official with the United Nations also struck a chord with his emphasis on the importance of creating political pressure to increase negotiating power. I walked away from both



*Keynote speaker Jeff Goodell at the 2013 Yale New Directions in Environmental Law Conference*

conversations with a sobering but inspiring realization that my desire to effect positive environmental change, whether with an NGO or inside a corporation’s board room, will depend upon my ability to convince others of the importance of the environmental challenges we face. Very few accomplish anything substantial alone; much like the engaged, diverse community I discovered in New Haven, we need to recognize and embrace the community of mankind, our shared resources and our potential to do both harm and good.

## STUDENT AND ALUMNI PUBLICATIONS

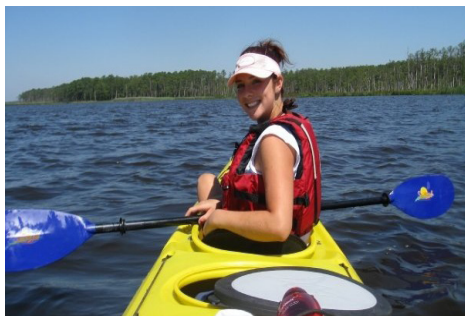
*Congratulations to Paul Wierenga '13 who recently published “Effective Clean Air Act Enforcement in the Face of Statute-of-Limitations and Successor Liability Barriers” in the July 2013 Environmental Law Reporter (43 ELR 10607). Paul’s article addresses the problems of enforcing Clean Air Act air quality standards emitted by unregulated, grandfathered (really old) power plants that fail to comply with requirements to update pollution controls after making major modifications. A second problem addressed is successor liability - when an old power plant fails to comply, several owners have sought to shield themselves from liability through transferring ownership of the noncompliant facility to another corporate entity.*

*Congratulations to Major Jeremy Schultes '08 for two recent publications. Earlier this year, Jeremy published “On Point for the Nation: Army and Renewable Energy” in the Energy Law Journal (34 Energy L.J. 55). Jeremy’s article traces the development of the Army’s renewable energy initiatives both home and abroad, their strategic importance, and analyzes existing projects, challenges that remain to implement the Army’s strategic goals, and recommendations to further enhance the Army’s renewable energy efforts. This fall, Jeremy’s article “From Trash to Treasure: Converting America’s Contaminated Land into Renewable Energy Havens” will be published in the Suffolk University Law Review. Major Scholtes has been in the Army JAG Corp since his graduation in 2008, first as a Prosecutor on Joint Base Lewis-McChord in Washington, then as Chief Regulatory Compliance Counsel at Camp Red Cloud in Korea and has recently returned back to Maryland as a Labor and Employment Attorney at Fort Meade. Jeremy looks forward to a transition into private practice.*

## ELAINE LUTZ '09 GOES TO WORK TO SAVE THE BAY

Since October 2012 Elaine Lutz '09 has been working as an attorney with the Chesapeake Bay Foundation's public policy group. Elaine primarily works with the Maryland legislature, lobbying for legislative initiatives to protect the Chesapeake Bay. Elaine summarized the guiding principle of her work succinctly through a single question: "How does a particular legislative initiative help improve and protect Chesapeake Bay water quality?" While Elaine enjoys this goal-oriented work, getting to this point in her career and lobbying for more effective laws to protect water quality are far more complicated than this seemingly simple question.

Elaine graduated in May 2009 during the worst of the Great Recession. Though the job market was bad (an understatement), Elaine positioned herself well during law school and was ready when the job market improved. She began by joining the Maryland Environmental Law Society (MELS) which helped her integrate into the environmental law community and become attuned to state and local environmental issues and politics – a "grass-roots" education. While in law school, she demonstrated her interest in the Chesapeake Bay through internships at the Maryland Department of Natural Resources in their Fisheries Division and the Chesapeake Bay Foundation. The Drug Policy Clinic was also very helpful, teaching Elaine through experience how to disarm political opposition, overcome prejudices, conduct educational campaigns and navigate the local and state political landscape. Doing moot court and negotiations through the



*Elaine Lutz '09*

Environmental Advocacy course gave Elaine the opportunity to hone her advocacy skills.

After graduation, Elaine cast her net wide (while bartending) and landed a job with a small Ohio law firm after passing the Maryland bar. She quickly took the Ohio bar and then spent nearly three years honing her advocacy skills. Along the way Elaine stayed in touch with the Chesapeake Bay Foundation (CBF). When a litigation

position opened, CBF contacted Elaine. She did not get the job, but Elaine continued to stay in contact. Six months later a public policy/lobbying position opened in the CBF Maryland office and CBF reached out to Elaine again. This time she landed the job.

Since her hire, Elaine has focused much of her attention on working with the Maryland legislature. Much of Elaine's work involves building coalitions to support legislative initiatives that will protect Bay water quality. In the fast-paced, ever-changing legislative sessions, Elaine has found collaboration with and outreach to other environmental groups, county governments and agriculture interests to be a critical component in getting initiatives passed in the legislature. "Working with other groups and interests that support and oppose environmental initiatives provides a better understanding of problems with proposed legislation and how to address those problems to protect water quality. My law school experience developing advocacy skills and doing public policy work with the clinic and through my internships have been invaluable to my work with the Chesapeake Bay Foundation."

## ERICA ZILIOLI '06 NOW A TRIAL ATTORNEY FOR DOJ ENVIRONMENT AND NATURAL RESOURCES DIVISION

After a nearly year-long process from resume submission to hire, Erica Zilioli joined the Department of Justice Environment & Natural Resources Division in January 2013. Erica is a trial attorney in their Environmental Defense Section, defending the United States in litigation arising under federal environmental statutes. Generally, the work in the Environmental Defense Section falls into three categories: (1) defending agency actions in petitions for review (2) prosecuting suits under §404 of the Clean

Water Act and (3) defending environmental suits where the government is a defendant. Erica's work to date has focused on this latter category, working on CERCLA cases involving federal lands and mining, government contractor pollution cases, and "World War II" cases where the government was alleged to be involved in the production of war products.

Prior to joining the Department of Justice, Erica clerked for the Honorable Richard D. Bennett of the U.S. District

Court for the District of Maryland and credits the clerkship experience with solidifying her interest in litigation. She then went on to work for Beveridge & Diamond, P.C. in Washington, D.C. Erica represented clients in litigation and arbitrations arising under a variety of environmental laws, including CERCLA and FIFRA, as well as in toxic tort cases. She also counseled clients on a variety of issues relating to product regulation, such as compliance with the Consumer Product Safety Improvement Act of 2008 and similar laws worldwide, as well as regulatory developments in the expanding area of product safety. Erica noted that “Beveridge & Diamond provided a fantastic opportunity to develop as an environmental lawyer, but I could not pass up the chance to focus my career on environmental



*Erica Zilioli '06*

litigation at the Department of Justice.”

Erica believes that Maryland’s Environmental Law Program’s curriculum, proximity to Washington D.C. (“the environmental law center of the country”), and commitment “to helping students find internships and jobs both during and after law school” provide students a wealth of opportunity that will prepare them for any kind of career in environmental law.

Erica advises students “to get involved in as many projects and activities outside the classroom as possible.” She notes that “grades are very important, but so are experiences intern, representing clients through clinic, getting hands-on training through moot court and trial team, and getting involved in the legal community.”

## **Coal Ash**

*cont'd from p. 3*

regulations for new coal ash disposal landfills. In addition, Judge Messitte requested changes to the Consent Decree to ensure public participation. Specifically, MDE must notify the Clinic’s clients if NRG proposes to modify the consent decree or if NRG applies to expand its landfills. Furthermore, MDE must provide the clinic’s clients with copies of important Consent Decree implementation plans and determinations.

The Court entered the final version Consent Decree (which included Judge Messitte’s requested revisions) on May 1, 2013. The Consent Decree requires NRG to: pay a \$1.9 million civil penalty to MDE, install liners in all leachate control ponds and cap all closed disposal cells at its landfills, study the nature and extent of the coal ash pollution and implement corrective measures to remediate the problem, and test local residents’ drinking water wells for coal ash contamination.

While the Court’s entry of the Consent Decree does not mark the end of the Clinic’s involvement in this case (implementation is ongoing), it offers a moment to reflect not only on the significance of the settlement, but also on the hands-on educational experiences that this case provided. By representing their clients in this case from

its inception through settlement, student-attorneys have experienced many different aspects of environmental citizen suits. Along the way, clinic students filed motions to intervene in state court and federal court, drafted appellate briefs and argued before the Maryland Court of Special Appeals, drafted and filed a notice of intent to sue and a federal complaint, organized and reviewed voluminous public document files, argued for stricter settlement provisions in federal court, researched countless issues relating to environmental regulation and civil procedure, and pored over drafts of the consent decree to weed out errors and ambiguity.

The benefits of the work completed by the Clinic, EIP, and its clients will be long felt in protecting not only the integrity of the natural environment, but also Maryland’s quirky rich history. So if any future fugitive has to escape into the night amongst the owls and terrapins, at least he won’t have to worry about stepping into water polluted with fly ash.

# PROGRAM NEWS

## 2013 GOLDEN TREE AWARDS FOR ENVIRONMENTAL FILMS

Since 2002, students in Professor Percival's Environmental Law class have enjoyed an unusual assignment: to split up into small groups and make a short film about an environmental issue that concerns them. The purpose of the ungraded assignment is to make students think about how to communicate complicated regulatory policy issues to the public. With the rise of YouTube and other new media outlets, digital video-making has become a valuable tool for influencing public opinion.

A total of 22 students in the fall 2012 Environmental Law class made nine environmental law films. As in past years the films demonstrated their enormous creativity. The films addressed a wide variety of topics including the environmental effects of methamphetamine labs, the environmental justice implications of pollution in Baltimore Harbor, offshore wind energy, natural gas exports, invasive species, and the effects of climate change on the wine industry. On March 27, 2013, the coveted "Golden Tree" awards were presented to the best films in ten categories as voted by an independent panel of judges (Prof. Taunya Banks, John Brosnan, Dominic Dachille, Sonja Gloeckle from the Voice of America, Prof. Kathleen Hoke, former Program Coordinator Laura Mrozek, Mark Nevitt, and Jill Smith).

The 2013 Golden Tree Awards:

- Best Picture: "Here Comes the Oyster" by Cassandra Miranda Villardes

- Best Acting: "Beware the Beasts of the Ballast" by Matthew Jacobs, Phillip Chalker, Christopher Collins and Lisa Piccinini.
- Best Animation/Special Effects: "Beware the Beasts of the Ballast" by Matthew Jacobs, Phillip Chalker, Christopher Collins and Lisa Piccinini
- Best Use of Humor: "Beware the Beasts of the Ballast" by Matthew Jacobs, Phillip Chalker, Christopher Collins and Lisa Piccinini
- Best Narration: "Maryland's Offshore Wind Debate" by Tom Blonkowski, Alana Wase, and James Miller
- Most Educational film: "The Environmental Effects of Methamphetamine Labs" by Gina Fioravanti and Chelsea Treadwell
- Best Interviews: "The Environmental Effects of Methamphetamine Labs" by Gina Fioravanti and Chelsea Treadwell
- Best Cinematography: "Controversy at Calvert Cliffs: The Implications of Natural Gas Exports" by Dawn Leung and Mona Zhe
- Best Sound: "Business for a Better Baltimore" by Mollie Rosenweig & Fernando Guerra
- Best Screenplay: "Here Comes the Oyster" by Cassandra Miranda Villardes

## PROGRAM TEAMS WITH ENVIRONMENTAL LAW INSTITUTE TO PROVIDE VISITING STUDENT EXTERNSHIP PROGRAM

The UM Carey Law Environmental Law Program and the Environmental Law Institute (ELI) have created the Maryland/ELI Environmental Experience in Washington, D.C. ("ME3 in DC") which brings together a unique combination of expertise and resources to provide students from across the country with an exceptional experiential study experience.

The Environmental Law Program has long operated one of the most extensive environmental externship programs in the country, placing students with more than 40 different agencies, non-profit organizations, and trade associations. At its offices in the heart of downtown Washington, D.C., ELI is one of the leading environmental law research organizations and regularly hosts educational programs featuring top environmental officials and practitioners.

The ME3 in DC program permits students from any law school to work with the Environmental Law Program and ELI to develop externship opportunities, register for a two credit practicum taught at ELI's headquarters, or become a visiting student at UM Carey Law and take a blend of courses, externship, and the practicum. Students will gain valuable work experience in the center of environmental policy-making while participating in an environmental practicum at ELI's offices. Students will be able to experience how environmental and energy laws operate in practice while learning from key practitioners who help draft, apply, and enforce these laws.

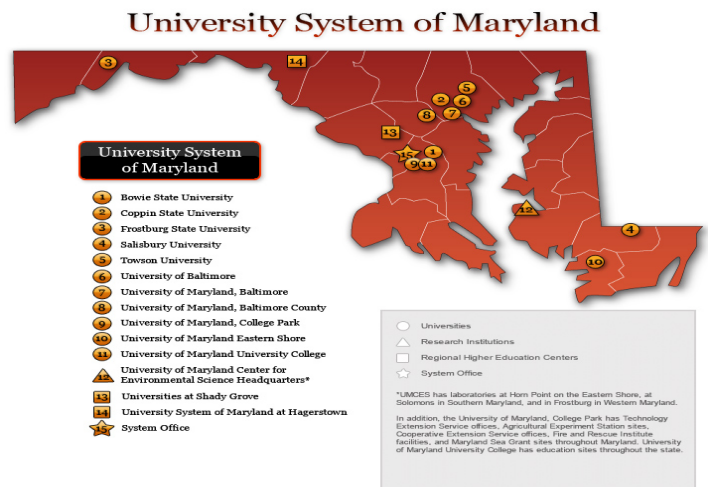


# ENVIRONMENTAL LAW PROGRAM TO HOST UNIVERSITY ENVIRONMENTAL SUMMIT

In February 2014, the Environmental Law Program will host a gathering of environmental scholars throughout the University System of Maryland (USM), including scholars from all disciplines who study environmental issues. The purpose of the summit is to bring together environmental scholars from across the entire USM system to increase interdisciplinary opportunities and inform scholars and prospective students of the research, programs, and courses that are available.

Prof. Rena Steinzor and Prof. Mike Pappas have spearheaded this initiative that is designed to pursue common goals of teaching students to work across disciplines and in teams, bringing multiple perspectives to the classroom, preparing students for practical problem-solving situations, and improving scholarship through building research and teaching relationships.

Ultimately, we see this first Summit as a starting point to build a durable, sustained interdisciplinary network across the university system. We also hope that this network enhances recruitment of student interested in pursuing the environmental offerings that the University system provides, improves research collaboration, and fosters a growing community of environmental scholars.



## GLOBAL ENVIRONMENTAL LAW: NOTES FROM THE FIELD

*By Robert Percival*

While the U.S. Congress remains gridlocked on environmental issues (and nearly everything else), many features of U.S. environmental law remain the envy of the developing world. Strong federal laws enforceable by an independent judiciary and vigilant citizens's groups are crucial elements of the U.S. legal system that are admired around the globe. As many countries strengthen their environmental laws, some features of U.S. law are being emulated while new approaches for protecting the environment also are being crafted.

China and India have adopted extensive bodies of environmental law, but these laws often are poorly enforced. Thus, much of the effort to improve environmental policy in these countries focuses on enforcement issues. Unlike the U.S. both countries have created specialized environmental courts, but these have not had much impact yet. In India severe air and water pollution jeopardize the country's economic development. In China air pollution reached such horrendous levels last January that air travel in Beijing had to be halted for several days. The World Health Organization now estimates that air pollution causes 1.2 million premature deaths annually in China.



*Offices of Greenpeace East Asia in Beijing*

In March 2013 Indian environmental officials invited me to be the opening keynote speaker at a conference in Kolkata, India on "Environmental Compliance and Enforcement -- the Emerging Global Trend." Co-sponsored by the West Bengal Pollution Control Board and the Environmental Compliance & Assistance Centre of West Bengal with

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## Notes from the Field

*cont'd from p. 15*

funding from the World Bank, the conference was attended by nearly 400 people, including enforcement officials from India's state pollution control boards, industry executives, and representatives of Indian NGOs. In my presentation I reviewed how NGOs and enforcement officials throughout the world are increasingly coordinating their actions to improve enforcement. Enforcement officials from the U.S., India, Sweden, Norway, Australia, and Kenya also made presentations. Apple Chapman (Maryland Law '99), the associate director of air enforcement at the U.S. Environmental Protection Agency's Office of Civil Enforcement, gave a terrific talk reviewing best practices for enforcement and displaying technology EPA uses to monitor air emissions. At the conference it was particularly gratifying to hear executives from major Indian industries argue for stronger enforcement to level the playing field between companies who respect the law and those who do not.

China's new leadership and the public reaction to horrendous air pollution have generated winds of change in Chinese environmental policy. The Chinese government is revising its basic environmental law to permit NGOs to bring public interest litigation, though it remains unclear precisely who will be allowed to sue. In May 2013 I participated in a conference on "The Performance of Environmental Governance Systems: Comparing America and China" at the University of Nanjing. The conference was co-sponsored by the School of the Environment at Nanjing University and the Bren School of Environmental Science and Management at the University of California Santa Barbara. Professor Zhao Huiyu of Shanghai Jiaotong University Law School and I jointly presented a paper on "The Role of Civil Society in Environmental Governance." The paper compares how civil society influences the adoption, implementation and enforcement of environmental standards in China and the United States. We argue that while one party rule makes it easier to enact environmental legislation in China, Chinese laws may be harder to enforce because they are not the product of hard-fought legislative compromises with the regulated community. NGOs in China play an increasingly active role in Chinese environmental policy, though their greatest successes appear to be through transparency initiatives (such as supply chain audits) rather than litigation.

Another obstacle to enforcement in China is the small penalties imposed for environmental violations. Unlike the U.S. EPA, Chinese authorities do not require that penalties at least recoup the economic benefit of violations. This often makes it more economical for polluters deliberately to flout the law rather than to incur the costs of pollution controls. Criminal enforcement of the environmental laws has been rare in China, but it is now starting to become



*Apple Chapman '99, EPA Associate Director of Air Enforcement, gives presentation in Kolkata, India on best air enforcement practices.*

more common.

While more Chinese are studying environmental law today, there is not yet a well developed, practicing environmental bar. When I returned to China in August on a field trip with students from the Comparative U.S./China Environmental Law course I teach during the summer at Vermont Law School, I met with several environmental NGOs, academics, and practicing lawyers. Accompanying me on the trip was Jim Bruen, co-chair of the pro bono committee of the American College of Environmental Lawyers (ACOEL). Our mission was to scout out potential opportunities for U.S. environmental lawyers to provide pro bono help in China. As a result of our trip, ACOEL has agreed to serve as a pro bono clearinghouse for U.S. lawyers seeking to assist the Beijing office of the Natural Resources Defense Council (NRDC), the All China Environment Federation, and lawyers working with Shanghai Jiaotong University Law School.

The All China Environment Federation (ACEF) is a government-organized non-governmental organization (often referred to as a GONGO). On the day we met with them in August the group had just filed an important lawsuit against China's National Ocean Administration charging that the agency had illegally allowed oil drilling to resume after an oil spill in Bohai Bay. ACEF previously had brought a lawsuit on behalf of fishermen harmed by the spill, but the Chinese courts refused to hear the case. The latest draft amendments to China's basic Environmental Law would make ACEF the only organization that could bring public interest environmental lawsuits. Other Chinese environmental groups argue that it is unfair only to allow the one state-sponsored environmental group to bring such lawsuits. It is widely anticipated that this will be modified before final amendments to the law are adopted.

Another important Chinese environmental group we



met with was the Center for Legal Assistance to Pollution Victims (CLAPV), founded in 1999 by Professor Wang Canfa. CLAPV operates an environmental “hotline” that has received 13,000 calls complaining about environmental problems. These have resulted in more than 300 cases being brought. CLAPV also has trained more than 1,000 judges and lawyers in environmental law. Professor Wang recently opened a law firm, the Beijing Environmental Aid Law Firm, to bring public interest environmental cases. Professor Wang, who teaches environmental law at the China University of Political Science & Law, is helping to draft climate change legislation at the request of the National People’s Congress.

In Beijing we also met with officials from Greenpeace East Asia, which was founded in Hong Kong in 1997 and which opened up a Beijing office in 2002. Greenpeace employs 17 full-time staff in Beijing, but because the organization cannot raise funds on the Chinese mainland, it is supported largely through donations to the group’s Hong Kong office. Greenpeace’s Beijing office focuses on climate and energy, forests, toxics, oceans, food and agriculture. Its staff emphasize the use of social media, including Sina Weibo (a popular microblogging site), to mobilize consumers to pressure companies to abandon environmentally damaging practices.

China has a growing civil society operating in the shadow of uncertainty over the roles the government will allow NGOs to play in shaping public policy. Despite signs of increased openness from the new government, last May it issued an ominous directive to universities listing “seven forbiddens” - topics not to be discussed in classrooms, including civil society, constitutionalism, freedom of press, human rights, universal values, mistakes of the Communist Party, and administration of justice. While discussion of Tibet often has been considered off-limits in China, in August I participated in an extraordinary conference in Shanghai on efforts to protect the Tibetan environment. The conference on “Conservation, Resource Management and Local Governance in Tibet: Challenges and Prospects in Policy Perspective” was sponsored by the Tibet Governance and Practice (TGAP) program and held at the Harvard Center Shanghai. I chaired a panel on “Environmental Problems of the Tibetan Plateau,” which included presentations from Tibetan environmentalists and government officials.

One of the most rewarding experiences for me during the past year was to introduce students to the growing global network of professors and students interested in environmental law. Last June five Maryland students and I presented papers at the annual Colloquium of the IUCN Academy of Environmental Law in New Zealand (see cover story). The Academy now includes 168 institutional



*Prof. Percival delivering keynote address at Environmental Compliance and Enforcement – Emerging Global Trend conference in Kolkata, India*

members from 53 countries. More than 200 professors and students from 35 countries attended the Colloquium. In March 2013 five Maryland students joined me on an environmental field trip to Israel. We visited the Arava Institute in the Negev desert where students from around the world are studying water resources problems that plague the Middle East (see article on p. 8). A visit to the rapidly shrinking Dead Sea made us acutely aware of how depletion of water resources has caused dangerous subsidence of surrounding land. In Jerusalem we met Israeli and Palestinian environmentalists who are struggling to overcome political obstacles to cooperation on environmental infrastructure investments. In Tel Aviv we visited the Bar Ilan University’s Environmental Law Clinic, which is working to combat noise pollution and to remediate leaks from underground storage tanks.

During my trips to India, China, and Israel, I had the privilege of meeting law students and participating in some of their classes. These included lectures I gave to classes at the West Bengal National University of Juridical Science in Kolkata and the Shanghai Jiaotong University Law School in Shanghai. These students demonstrated that they are keenly aware of the legal and political challenges that confront efforts to protect the global environment and eager to tackle them. This leaves me more optimistic than ever about the future of global environmental law.

# NEW PROFESSORS AND COURSES FOR 2013-14

## Visiting Professor Victor Flatt

Victor Flatt is a Visiting Professor at the University of Maryland's Francis King Carey School of Law for the 2013-14 school year. Prof. Flatt is the Director of the Center for Law, Environment, Adaptation, and Resources (CLEAR) at the University of North Carolina Law School. Prof. Flatt is teaching an integrated course in Torts and legal writing in the fall, International Environmental Law in the spring and he also will be introducing an innovative seminar on Environmental Markets in the spring.

Prof. Flatt not only will expand the Environmental Law Program's course offerings, but he also may pave the way for future collaboration between the Environmental Law Program and CLEAR, particularly on issues concerning the clean-up of the Chesapeake Bay and water quality trading practices common to the Bay and to North Carolina waterways. Professor Flatt came to Maryland last fall as a panelist for the 2012 Ward Kershaw Symposium (Too Big to Jail) and gave a presentation on the disaggregation of U.S. society (the "us vs. them" ethos) since the 1970's and its effect on environmental law enforcement.

## New Energy Law Course

Over the past couple of years, many students have suggested adding an Energy Law class to the curriculum. The increased student interest combined with the growing importance of this field led to the development of a new Energy Law class offered for the first time in the Spring 2014. The course will be taught by two new adjunct professors: Daniel Hurson and Brent Bolea.

Dan Hurson is an Assistant General Counsel at Baltimore Gas and Electric Company (BGE). Prior to joining BGE, Dan served as an Assistant Attorney General at the Maryland Energy Administration and the

Maryland Department of Natural Resources. Brent Bolea is counsel to the Maryland Energy Administration.

The focus of the course will be the generation and distribution of electricity, including a look at the various sources of fuel (coal, natural gas, oil, hydro, nuclear, solar, wind) used for power generation and the regulatory systems in place to oversee the electric business. The course will also address transportation energy resources, energy efficiency, renewable energy mandates, energy markets, and international energy concerns.

## Food, Farming and Sustainability Seminar

Professor Mike Pappas has created a new seminar focused on agriculture policy, regulation and subsidies with a focus on how agriculture policy shapes food production and the environmental outcomes of food production. Increasingly, society assesses agricultural production not just by the efficiency of output (producing the most food at the lowest cost), but also by the environmental impact of current agriculture practices and policies as well as the quality of that output and the methods of production.

This course offers a crosscutting examination of the various legal regimes impacting our food and its production. The seminar will examine government policies, environmental impacts, food production, and its energy and water use. Additionally, the course will cover food safety regulation, organic and sustainable food production, land-use implications of food production, and the social impacts of food structures. Throughout the course, students will engage the central questions

of whether we actually have a cohesive food policy and what may be done to make sure that the legal treatment of food truly reflects our society's values.



*Professor Victor Flatt*



*Professor Mike Pappas*

# FACULTY ACTIVITIES

## ROBERT PERCIVAL

### PUBLICATIONS

*Environmental Regulation: Law, Science & Policy*  
(Aspen Law & Business 7th ed. 2013).

*Environmental Law – Statutory and Case Supplement  
2013-14* (Aspen Law & Business 2013).

“Looking Backward, Looking Forward: The Next 40  
Years of Environmental Law,” 43 ENV’T L. REP. 10492  
(2013).

“Environmental and Occupational Interventions for  
Primary Prevention of Cancer: A Cross-Sectorial  
Policy Framework,” 121 ENVIRONMENTAL HEALTH  
PERSPECTIVES, April 2013 (online at: <http://ehp.niehs.nih.gov/2013/02/1205897/>) (with Carolina Espina, Miquel  
Porta, Joachim Schüz, Ildelfonso Hernández Aguado,  
Carlos Dora, Terry Slevin, Julietta Rodriguez Guzman,  
Tim Meredith, Philip J. Landrigan & Maria Neira).

“Human Rights and the Evolution of Global  
Environmental Law,” in *Economic, Social & Cultural  
Rights*, Volume 2 at 1 (Subhram Rajkhowa & Stuti Deka,  
eds. 2013).

“International Responsibility and Liability for  
Environmental Harm,” in *Routledge Handbook of  
International Environmental Law* 681 (Shawkat Alam,  
Jahid Hossain Bhuiyan, Tareq M.R. Chowdhury & Erika  
J Techera, eds. 2012).

### PRESENTATIONS

“The Challenge of Environmental Enforcement,”  
Zhejiang University, Guanghua Law School, Hangzhou,  
China, August 12, 2013.

“Environmental Problems of the Tibetan Plateau:  
Questions on the Current Situation,” Conference  
on Conservation, Resource Management and Local  
Governance in Tibet: Challenges and Prospects in Policy  
Perspective, Tibet Governance and Practice, Harvard  
Center Shanghai, Shanghai, China, August 10, 2013.

“Reimagining the Role of Civil Society in Environmental  
Governance, 11th Colloquium of the IUCN Academy of  
Environmental law, University of Waikato, Hamilton,  
New Zealand, June 26, 2013.

“Massive Open Online Courses (MOOCs) and the Digital  
Classroom,” Teaching Workshop, 11th Colloquium of  
the IUCN Academy of Environmental Law, University of  
Waikato, Hamilton, New Zealand, June 24, 2013.

“Commotion in China: Emerging Legal Issues for an  
Emerging Superpower,” Law & Society Annual Meeting,  
Boston, Massachusetts, June 1, 2013.

“The Law and Politics of Environmental Protection,”  
Shanghai Jiaotong University School of Law, Shanghai,  
China, May 8, 2013.

“The Role of Civil Society in Environmental  
Governance: A Comparative Study of China and the  
United States,” Conference on The Performance of  
Environmental Governance Systems: Comparing  
America and China, School of the Environment, Nanjing  
University, Nanjing, China, May 6, 2013.

“Privacy, Intellectual Property and the New Transatlantic  
Trade and Investment Partnership,” Workshop on The  
New Transatlantic Trade and Investment Partnership:  
Aligning Investment, Patents and Privacy Protection,  
American Institute for Contemporary German Studies  
and the Ecologic Institute, Cosmos Club, Washington,  
D.C., April 23, 2013.

“The Evolving Role of Civil Society in Environmental  
Enforcement,” West Bengal National University of  
Juridical Sciences, Kolkata, India, March 20, 2013.

“Future Directions for Environmental Enforcement,”  
International Conference on Environmental Compliance  
and Enforcement, West Bengal Pollution Control Board  
and West Bengal Environmental Compliance Assistance  
Centre, Science City Auditorium, Kolkata, India, March  
20, 2013.

“Environmental Enforcement in an Era of Globalization,”  
Opening Keynote Address at the International Conference  
on Environmental Compliance and Enforcement, West  
Bengal Pollution Control Board and West Bengal  
Environmental Compliance Assistance Centre, Science  
City Auditorium, Kolkata, India, March 19, 2013.

“Responding to LUST (Leaking Underground Storage  
Tanks): The U.S. Experience,” Bar Ilan University, Tel  
Aviv, Israel, March 14, 2013.

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## Faculty Activities

*cont'd from p. 15*

“Environmental Law in China,” Comparison of Environmental Challenges and Governance in China and the United States, Johns Hopkins University/Nanjing University, Baltimore, Maryland, February 7, 2013.

“The Electronic Casebook and the Digital Classroom,” Suffolk University School of Law, Boston, Massachusetts, February 4, 2013.

“Clerking at the Supreme Court – Then and Now,” Distinguished Speaker Series, D.C. Court of Appeals, Washington, D.C., January 18, 2013.

“The Next 40 Years of Environmental and Natural Resources Law,” Joint Program of Natural Resources and Energy Law Section and Property Law Section on “40 Years of Environmental and Natural Resources Law – A Prospective Look,” 2013 Annual Meeting of the Association of American Law Schools, Hilton Riverside Hotel, New Orleans, Louisiana, January 7, 2013.

“In the People’s Interest: Openings for Pollution Public Interest Law Cases in China,” China Environment Forum, Woodrow Wilson International Center for Scholars, Washington, D.C., November 27, 2012.

“The Role of Environmental Litigation in Shaping Public Policy,” Seminar on Rights and Wrongs: Litigation and Public Policy, Macalester College, St. Paul, Minnesota, October 12, 2012.

“The Electronic Casebook and the Digital Classroom,” University of Houston School of Law, Houston, Texas, September 18, 2012.

“Of Coal, Climate and Carp: Reconsidering the Common Law of Interstate Nuisance,” Legal Theory Workshop, University of Maryland Francis King Carey School of Law, Baltimore, Maryland, September 6, 2012.

“Introduction to Environmental Law,” Nanjing Intermediate People’s Court Delegation, Maryland China Initiative, University of Maryland Francis King Carey School of Law, Baltimore, Maryland, September 4, 2012.

### SELECTED MEDIA APPEARANCES

Yemisi Akinbobola, “Slippery Justice for Victims of Oil Spills: Nigerian Villagers Lose Lawsuit Against an Oil Giant,” African Renewal (magazine of the Africa Section of the United Nations Department of Public Information),

August 2013, at 24 (online at: <http://www.un.org/africarenewal/magazine/august-2013/slippy-justice-victims-oil-spills>).

Steven Ambrus, “Landmark Pollution Suit Leaves Little Resolved,” EcoAméricas, July 2013, at 6 (online at: <http://ecoamericas.com/en/story.aspx?id=1416>).

Tracy Gnadinger, Alternative Transportation Reduces UMB’s Carbon Footprint, The Elm, July 11, 2013 (online at: <https://um.umaryland.edu/elm/alternative-transportation-reduces-universitys-carbon-footprint/>).

Jason Dearen, An Unassuming Warrior: Chinese Environmentalist Ma Jun, Smart Planet, Nov. 20, 2012 (online at: [http://www.smartplanet.com/blog/big-story/an-unassuming-warrior-chinese-environmentalist-ma-jun/122?tag=nl.e660&s\\_cid=e660](http://www.smartplanet.com/blog/big-story/an-unassuming-warrior-chinese-environmentalist-ma-jun/122?tag=nl.e660&s_cid=e660)).

Lv Xiaohong, 英国石油公司因溢油事故将向美支付巨额刑事赔偿金 (BP Will Pay Huge Criminal Fine to US for the Oil Spill Accident), China Radio International, Nov. 16, 2012 (online at: <http://gb.cri.cn/27824/2012/11/16/2625s3927789.htm>).

Lovejit Dhaliwal, BBC Radio (London), “BP Spill Trial Told It ‘Put Profits Over Safety’,” BBC News, February 25, 2013 (<http://www.bbc.co.uk/news/business-21548117>).

Radio interview about BP trial with Rhod Sharp (London) on BBC Radio 5 Live program “Up All Night,” February 26, 2013.

TV interview, “Transocean Oil Spill Settlement,” Marivel Taruc and Som Seif on “Lang & O’Leary Exchange” program, Canadian Broadcasting Corporation, Jan. 3, 2013 (<http://www.cbc.ca/player/News/TV+Shows/Lang+%26+O%27Leary+Exchange/ID/2322939115/?sort=MostRecent>).

TV interview, “TransOcean Settles Over Gulf Spill,” Andrew Bell on “Business Day PM” program, Canada Business News Network, Jan. 3, 2013 ( <http://watch.bnn.ca/business-day-pm/january-2013/business-day-pm-january-3-2013/#clip836751>).

### HONORS

Elected as a Fellow in the American College of Environmental Law (October 2012).

## RENA STEINZOR

### PUBLICATIONS

Collaborating to Nowhere: The Imperative of Government Accountability for Restoring the Chesapeake Bay, 4 *JOURNAL OF ENERGY & ENVIRONMENTAL LAW* 51 (2013) (with Shana Jones)

Introduction: Connecting the Dots Between Two Parallel Worlds, 72 *MARYLAND LAW REVIEW* 1145 (2013)

Evaluating Rules and How We Measure Their Effects, 29 *ENVIRONMENTAL FORUM* 36 (2012) (with Michael Patoka).

The Age of Greed and the Sabotage of Regulation, 47 *WAKE FOREST LAW REVIEW* 503 (2012).

The End Game of Deregulation: Myopic Risk Management and the Next Catastrophe, 23 *DUKE ENVIRONMENTAL LAW & POLICY FORUM* 93 (2012) (with Thomas O. McGarity).

### PRESENTATIONS

Regulating Hazardous Air Pollutant Emissions: The Utility MACT and Boiler MACT Rules” Environmental Regulation of Fossil-Fueled Power Plants Conference at the School of Law at the University of Texas at Austin. February 15, 2013

Commentator, Modern Slavery, HuffPost Live, January 30, 2013.

Commentator, Improving Regulator Interactions with Regulated Entities at the Next Generation Environmental Compliance: Improving Compliance with Regulations Through Regulation Structure and Advanced Technology, A Workshop for Researchers and Practitioners, Washington, DC, December 12, 2012.

Panelist, White House Review of Rulemaking: Strengthen, Mend, About Right or Abolish?, at the ABA Administrative Law Section Annual Conference, Washington, D.C., October 25, 2012

### QUOTED IN PRESS AND MEDIA

Baltimore Sun, “Obama should sidestep Congress.”

<http://www.baltimoresun.com/news/opinion/oped/bs-ed-obama-second-term-20121226,0,724407.story>. (January 3, 2013)

American Constitution Society, “Moving Forward on Public Health and Safety with Just the Stroke of the Pen.”

<http://www.acslaw.org/acsblog/moving-forward-on-public-health-and-safety-with-just-the-stroke-of-the-pen-yes-obama-can>. (December 10, 2012)

Center for Progressive Reform “The Nuclear Option: Debar BP, End \$2 Billion Fuel Sales Now.” <http://progressivereform.org/CPRBlog.cfm?idBlog=0619824F-07FA-9E6B-44CA4D5D66B6651C> (November 15, 2012)

Huffington Post, “Barack Obama’s Record On Addressing Climate Change In First Term Under Scrutiny By Activists.” [http://www.huffingtonpost.com/2012/10/11/barack-obama-climate-change\\_n\\_1951965.html](http://www.huffingtonpost.com/2012/10/11/barack-obama-climate-change_n_1951965.html) (October 11, 2012)

Greenwire, “SUPREME COURT: Justices won’t hear Alabama Superfund dispute.” [www.eenews.net/Greenwire/2012/10/09/archive/16?terms=steinzor](http://www.eenews.net/Greenwire/2012/10/09/archive/16?terms=steinzor) (October 9, 2012)

Chesapeake Bay Journal, Nutrient Trading has Potential to Harm Low-Income Areas (October 2012)

Baltimore Sun, “Free pass for Md. polluters?” (September 28, 2012)

Baltimore Sun, “Are Chesapeake Bay polluters getting off easy?”(September 21, 2012)

## JANE F. BARRETT

### PUBLICATIONS

Why Environmental Law Clinics?, 43 *ENVIRONMENTAL LAW REPORTER* 10039 (2013) (with Adam Babich).

### QUOTED IN PRESS AND MEDIA

January 22, 2013 mentioned in the Delaware November 19, 2012 quoted in the NPR Morning Edition story “BP Legal Troubles Persist Over Gulf Spill.”

<http://www.npr.org/2012/11/19/165454213/bp-legal-troubles-persist-over-gulf-spill>

November 15, 2012, quoted in The Washington Post story “BP settles criminal charges for \$4 billion in spill; supervisors indicted on manslaughter” and in The New York Times story “In BP Indictments, U.S. Shifts to Hold Individuals Accountable.”

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## Faculty Activities

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[http://www.washingtonpost.com/business/economy/bp-to-pay-billions-in-gulf-oil-spill-settlement/2012/11/15/ba0b783a-2f2e-11e2-9f50-0308e1e75445\\_story.html?hpid=z3](http://www.washingtonpost.com/business/economy/bp-to-pay-billions-in-gulf-oil-spill-settlement/2012/11/15/ba0b783a-2f2e-11e2-9f50-0308e1e75445_story.html?hpid=z3)

<http://www.nytimes.com/2012/11/16/business/energy-environment/in-bp-indictments-us-shifts-to-hold-individuals-accountable.html>

November 15, 2012 quoted in The New York Times story "In BP Indictments, U.S. Shifts to Hold Individuals Accountable"

**MIKE PAPPAS**

### PRESENTATIONS

Presented paper entitled Anti-Waste at the following three events:

Columbia Law School's Sabin Colloquium on Innovative Environmental Scholarship, May 2013

American University Washington College of Law's Junior Environmental Law Professor Work-in-Progress Gathering, June 2013

University of Washington Young Environmental Law Scholar Workshop, July 2013

### PUBLICATIONS

"Energy Versus Property" forthcoming in FLORIDA STATE UNIVERSITY LAW REVIEW

### CLASSES

Food, Farming, and Sustainability seminar to be offered in the Spring

## TWENTY-FIVE STUDENTS GRADUATE WITH CERTIFICATE OF CONCENTRATION IN ENVIRONMENTAL LAW

On May 17, 2013, 25 students graduated from the University of Maryland Francis King Carey School of Law with a certificate of concentration in environmental law. A total of 313 students have now graduated from Maryland with the environmental law certificate, which the school first offered in 1998.





**22<sup>ND</sup> ANNUAL ENVIRONMENTAL LAW  
WINE TASTING**  
*“WINE: NATURE’S THANKS  
FOR PRESERVING THE EARTH”*

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

**FRIDAY, NOVEMBER 22, 2013, 6:30 P.M.**

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

**R.S.V.P. to Katelyn Woods**  
410-706-4529 | [kwoods@law.umaryland.edu](mailto:kwoods@law.umaryland.edu)





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*Comments and letters should be  
forwarded to the above address.*