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Table of Contents

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MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW

VOLUME 14 SUMMER 2007 NUMBER 3

A Not-So Equitable Allocation: The Need for an Environmental Cost Principle	<i>Cpt. Joshua H. Van Eaton</i>	441
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NOTES

Corporate Farming: How Interpretation of the Commerce Clause Is Making Restrictions More Difficult	<i>Brock H. Cooper</i>	475
Conservation Easements: Tax Shields with Philanthropic Means	<i>John H. A. Griesedieck</i>	501
Reimbursement for Voluntarily Cleaning Up Your Mess? The Seventh Circuit Says Yes Under CERCLA	<i>Nikki Mullins</i>	527
Words Speak Louder Than Actions: Ninth Circuit Narrows Exception to Plain Meaning of SIP's	<i>Ryan Westhoff</i>	551
Environmental Updates		575

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EDITOR'S PERSPECTIVE

Here is a final greeting from volume 14 of the Missouri Environmental Law & Policy Review at the University of Missouri School of Law.

Captain Joshua H. Van Eaton is a Judge Advocate in the United States' Army currently assigned as a litigation attorney for the Environmental Law Division of the United States Army Legal Services Agency. His article presents the problem associated with the Department of Defense's lack of coordination between procurement and environmental cleanup, which leads to inefficiency and the expenditure of additional taxpayer dollars. While DOD's procurement liabilities are voluntary, its environmental liabilities are involuntary, and are often times the result of third party contractors charging back environmental cleanup costs to the government. Captain Van Eaton's article outlines how the United States incurs environmental liabilities and discusses the guidelines for the allowability of environmental costs under the procurement contracting scheme. The article also examines DOD's past failures in sharing environmental cleanup costs and proposes an environmental cost principle to remedy the problems associated with the current cost scheme by creating a set of common guidelines.

The case notes in this issue address four United States Court of Appeals cases from the Sixth, Seventh, Eighth, and Ninth Circuits.

Brock Cooper's case note, from the Eighth Circuit addresses the issue of legislative restrictions on corporate ownership of family farms based on concerns over the status of independent family farms in Nebraska. The *Jones v. Gale* decision declared such restrictions unconstitutional under the Dormant Commerce Clause. The court found that the law discriminated against out of state land owners; however, Cooper argues that the court erred in the second part of the analysis by failing to discuss any of the factual findings presented by proponents of the legislation and suggests standards to be used when a law is challenged under the Dormant Commerce Clause.

John Griesedieck's case note focuses on a Sixth Circuit decision dealing with conservation easements. Such easements are a valuable method to preserve natural tracts of land while benefiting the landowner by claiming a tax deduction. However, the popular use of conservation easements has led to scrutiny by the Internal Revenue Service over concerns as to whether the easements are actually protecting significant natural habitat. Griesedieck argues that conservation easements benefit current landowners and their descendants through the benefit of reduced property value and thus less tax liability upon its sale. He also indicates that these easements slow the rate of development and encourage citizens to promote environmental preservation. By coupling environmental protection with tax incentives, conservation easements serve to protect species and their habitat while benefiting the owners of the land.

Nikki Mullins' case note about the Seventh Circuit's decision in *Metropolitan Water Reclamation District of Greater Chicago v. North American Galvanizing & Coatings, Inc.*, turns on the interpretation of the Supreme Court's holding in *Cooper Industries, Inc. v. Aviall Services, Inc.*, where an implied cause of action under section 107(a) was found. Mullins argues that while the Seventh Circuit came to the correct conclusion, the court's reasoning left open the possibility that a potentially responsible party that voluntarily performs a cleanup may still be unable to bring a cost recovery action under section 107(a).

Finally, Ryan Westhoff's case note focuses on a case out of the Ninth Circuit. His note discusses the interaction of state implementation programs and the Clean Air Act in relation to field burning in the northwestern United States. *Safe Air for Everyone v. EPA* held that under the Clean Air Act, when a SIP is amended and submitted for approval to the EPA, the agency must review and interpret the amendment based on its plain meaning in referring to the plain meaning of prior SIP's to ensure the CAA is not violated. Westhoff argues that the court focused on regulatory technicalities and in effect, permitted the words in Idaho's SIP to carry greater weight than the actions of Idaho's grass farmers and state legislature.

As always, law updates are provided for recent significant environmental law cases.

It has been my pleasure and honor to serve as the Editor-In-Chief for volume 14 of the Missouri Environmental Law & Policy Review. I have had the benefit of a talented and knowledgeable editorial board that produced a publication that we hope is valuable to practitioners in Missouri and elsewhere.

Very Best,

Travis A. Elliott
Editor-In-Chief

