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# MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW

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# MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW

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## EDITOR'S PERSPECTIVE

I would like to welcome the readers to another edition of the Missouri Environmental Law & Policy Review. Like our last edition, this issue is chock full of useful articles to practitioners and academics in Missouri and around the nation.

Our first article investigates the Concentrated Animal Feeding Operations and the environmental problems these CAFO's cause. Viewed through the lens of the meat-packing industry, attorney Paul Stokstad explores how the balance of power, between integrators and growers, and the extent of the violations impact the environmental violations.

The second article focuses on Easements and the ownership of land. Arguing that the decision of the Colorado Supreme Court in *Lobato v. Taylor* flies in the face of established precedent and centuries of real property law, Professor Todd Barnett analyzes how the use of legal fictions led to such an outcome.

In our third lead article, Alisa Tschorke examines the environmental challenges faced by the Great Lakes and explores the failure of the Great Lakes Water Quality Agreement to keep these freshwater bodies free of pollution.

As 2007 was a banner year for important environmental decisions to be handed down, the Missouri Environmental Law & Policy Review chose to recognize this increase by publishing more case notes than ever before. Never before has this journal had the opportunity to analyze the jurisprudence of the U.S. Supreme Court to such depths and we have done our utmost to take advantage of this opportunity.

The Supreme Court's 5-4 decision in *Massachusetts v. EPA* is the focus in our first note as Brett Maland explains the far-reaching consequences of this decision. Agreeing with the majority, Maland argues that, despite the economic consequences of this decision, the Court acted appropriately in forcing the executive branch to recognize the threat of climate change.

Hannah Tien writes the next case note on the Supreme Court's unanimous decision in *Environmental Defense v. Duke Energy Corporation*. As a victory for the EPA and other environmental defense groups, Tien explains how the Court's decision encourages the energy industry to move towards a cleaner future.

Another 5-4 decision by the Supreme Court is the focus of Joe Schlotzhauer's case note. However, in analyzing the Court's decision in *National Association of Homebuilders v. Defenders of Wildlife*, Schlotzhauer argues the majority got this decision wrong because they ignored Congressional intent in the Endangered Species Act.

Ryan Tichenor author's the fourth case note on the Supreme Court's decision in *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*. Finding that the Court has provided local governments with an end run around the dormant Commerce Clause, Tichenor worries that the exception will be so broad that it will not easily be closed.

Our final case note focuses on *U.S. v. Atl. Research Corp.* Remediating an ambiguity, Claire McClintic comments that this decision cleans up §§ 107(a) and 113(f)(1) of CERCLA. Pointing out that it is too soon to know for sure, McClintic still maintains that this decision will encourage voluntary clean-up while still holding polluters liable for their actions.

Rounding out this edition are the always-important Environmental Updates. Each one of them offers a brief synopsis of the most recent environmental decisions handed down by courts all around the nation. Several of these cases will be the focus of case notes and scholarly articles of next year.

I would like to take this opportunity to explain that this will be the last issue that my board and I are responsible for producing. Doing our best to maintain continuity, the Missouri Environmental Law & Policy Review is handing over the reins of its leadership to the new board for the

next edition. Editor-in-Chief Brett Maland and his board will do a wonderful job in the upcoming year and I wish them the best of luck.

No journal could possibly succeed without the hard work of many people and this year's editorial board has been nothing short of outstanding. Thanks go out to Lakshmi for the hundreds of pages of reading, Ryan for handling so many details, Amy for tireless devotion to footnotes, Brock and Robert for helping me with the Write-on Selection Process last summer, the NCE's (Darryl, John, and Jen) for their work editing the case notes, the Missouri Bar for publishing our issues, and Professor Lambert for his wonderful advice as our faculty advisor.

Elijah J. L. Haahr  
Editor-in-Chief



