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EDITOR'S PERSPECTIVE

We are proud to begin the inaugural edition of the Journal of Environmental & Sustainability Law with three articles written by well-established figures in the field of sustainability law. These articles come from three of the five presenters of the Journal's inaugural symposium, *Environmental Justice Issues in Sustainable Development*.

First, we have an article written by Professor John Dernbach entitled *Sustainability As a Means of Environmental Justice*. In his article, Dernbach explains why environmental justice supplies much of the groundwork for sustainable development, and shows how sustainability can enhance our ability to achieve environmental justice.

The article begins with a simple but oft unrecognized truth of environmental policy: pollution eventually harms humans. However, this harm to humans is not evenly spread, as poverty and environmental derogation reinforce each other, creating a devastating cycle for the poor. Further, the wealthiest countries are the main source of greenhouse gases; yet, because they lack the financial resources to combat climate change effects, the poor experience the impacts much more gravely.

Dernbach goes on to explain that both environmental justice and sustainable development respond to this issue, but in uniquely varying ways. According to Dernbach, sustainable development provides a broader set of tools to address this problem than are often employed for environmental justice.

After determining that sustainable development provides a better framework for dealing with disparate impacts of pollution, Dernbach illustrates four broad approaches by which sustainability can improve environmental justice: more and better sustainability choices, law for sustainability, visionary and pragmatic governance, and a national sustainability movement. By invoking these four approaches simultaneously, Dernbach postulates that we "can help to realize environmental justice goals more effectively and completely."

Professor Eileen Gauna authors our second lead article, *Environmental Law, Civil Rights and Sustainability: Three Frameworks for Environmental Justice*. In her article, Gauna argues that we must deal with the issues raised by environmental justice before we can ever hope of reaching a sustainable level of development. Gauna begins her article with an examination of the three frameworks for environmental justice and their limitations. The article then looks at the disconnect between the environmental law and civil rights frameworks. Next, Gauna explores how sustainability fits into the picture. According to Gauna, sustainability is a double-edged sword that could be used to either maintain the status quo of inequality or, “if coupled with sensitivity towards environmental justice concerns, might help bridge the chasm in the current discourse about environmental justice, and provide the space, in a manner of speaking, where more common ground can be meaningfully explored.”

Professor Uma Outka authors our third lead article, *Environmental Justice Issues in Sustainable Development: Environmental Justice in the Renewable Energy Transition*. In her piece, Outka considers environmental justice in the milieu of renewable energy objectives. First, Outka examines the role of renewable energy in sustainable development. According to Outka, renewable energy is key to sustainability because it can facilitate to the goals of environmental law.

Outka subsequently examines the following environmental justice issues implicated by renewable energy: “(1) locating renewable energy projects; (2) defining “renewable energy” in law; and (3) access and inclusion in green economy benefits.” Despite these difficult issues, Outka argues environmental justice can be promoted through renewable energy. Outka expressively states, “renewable energy can be a vehicle to affirmatively advance environmental justice through access and inclusion in green economic development.”

Turning to our student notes, James Boresi authors our first note, *A Case for Cooperation between the Environmental Protection Agency and the United States Department of Agriculture in Order to Achieve Federal Environmental Quality Goals*. In his note, Mr. Boresi assesses concentrated animal feeding operations (“CAFOs”), the risks such operations pose to the goals of the Clean Water Act and how the EPA can work with the USDA to mitigate these risks.

In his comment, Boresi argues that the EPA's attempt to regulate CAFOs that only have a potential to discharge is ill founded. Instead, Boresi insightfully argues that the EPA should cooperate with the USDA in order to increase the regulation of non-discharging CAFOs. Boresi posits that if the EPA can successfully persuade the USDA to amend its rules and require CAFOs applying for EQIP payments to also obtain NPDES permits through the EPA, the EPA's scope of enforcement will increase.

Our second student note, *The Continuing Burden of Short-sighted Nuclear Waste Policy*, examines the inefficiencies and ineptitude of U.S. nuclear waste storage policy. Author Mark Godfrey explains that American policy regarding what to do with spent nuclear fuel has been highly "reactive." Godfrey argues American politicians have allowed public reaction to nuclear crises like Three Mile Island and Chernobyl dictate American nuclear policy. Godfrey examines this problem through the context of *Dominion Res., Inc. v. United States*. He explains that this case moved the United States closer to a solution regarding where to store spent nuclear fuel by not allowing the government to circumvent the plain language of both the Nuclear Waste Policy Act and standard contracts the government entered into with utilities. However, there is still no long-term plan for the storage of spent nuclear fuel and, as Mr. Godfrey argues, the instant case does nothing to persuade the government to fulfill its obligations to build a repository for nuclear waste storage.

The third student note is authored by Marriam Lin and is entitled, *Defogging the Future: The Effect of American Electric Power on Future Lawsuits*. In her note, Ms. Lin examines the Supreme Court case of *American Electric Power Co. Inc., v. Connecticut*, a case involving a suit in which states suit injunctive relief against polluters. Lin examines several insufficiencies in the decision of this case, explaining that the Supreme Court failed elaborate as to why the plaintiffs had Article III standing, and why the political question doctrine failed to prevent the case from proceeding. Despite this shortfall in the Supreme Court's decision, Linn provides useful insight regarding how future litigants can predict the threshold needed for Article III standing, the effect of political question doctrine, and whether state common law and state statutory law will be preempted by the Clean Air Act. She argues that by looking at the

American Electric decision itself, its history and Supreme Court precedent, future litigants can more safely navigate the murky waters of climate change litigation.

The last of the student notes is a piece written by Christopher Strobel titled, *Paper or Plastic? The Importance of Effective Environmental Review of Ordinances Regulating the Use of High Consumption Consumer Products*. In his piece, Mr. Strobel tackles the issue of the environmental impact of plastic bag bans in light of the recent case, *Save the Plastic Bag Coalition v. City of Manhattan Beach*. The plastic bag ban in this case was initiated under the California Environmental Quality Act (“CEQA”), which was enacted to “protect and maintain a quality environment for the people of California, both now and into the future.” However, as Strobel argues, the ban may not have met this goal. Strobel contends the ban may have an overall negative effect on the environment and that the court affirmed the ban based on incomplete information. To prevent this situation from reoccurring, Strobel states the court must require a more complete analysis of the environmental effects of a similar ban and must assess the cumulative impact of such a ban.

As always, this volume ends with updates discussing recent court holdings throughout the country that impact environmental law.

We offer a special thanks and recognition to the 2011-2012 Editorial Board for its hard work on our inaugural issue. Each edition requires diligence, dedication and passion to be successful, and have had an abundance of these attributes throughout the year.

Finally, a huge amount of gratitude goes to our advisor, Professor Troy Rule, for his incalculable assistance and limitless encouragement for the journal and our new direction.

KATHERINE E. VOGT

EDITOR –IN-CHIEF, 2011-2012

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EDITOR-IN-CHIEF, 2012-2013