



21st Fall Conference

**Water, Wind, Waste, and More:
Navigating New Tides in Environment,
Energy, and Resource Regulation**

2013

October 9–12, 2013

Hilton Baltimore • Baltimore, MD



21st Fall

Are you wondering how the 2012 election is going to impact your environmental, energy and resource practice over the next four years? Then you need to join us at the American Bar Association Section of Environment, Energy, and Resources (SEER) Fall Conference at the Hilton in Baltimore on October 9–12, 2013.

Our plenary sessions will focus on the administration's expected priorities over the coming months and recent changes in leadership in the agencies and on the Hill. Given our location in Baltimore, we will have a breakout session examining EPA's recent efforts to regulate nutrients and stormwater going into the Chesapeake Bay and whether those efforts are likely to provide a model for other parts of the country. Other breakout sessions will bring you up-to-date on recent developments under the primary environmental statutes, including Clean Air, Clean Water, CERCLA, and RCRA, as well as on renewable energy and fracking issues. We will have additional breakout sessions focused on legal issues associated with superstorms and natural disasters, as well as panels on enforcement and compliance, environmental litigation, and environmental markets.

Our conference will begin on Wednesday morning with a community service project and continue in the afternoon with an interactive program in which a panel of in-house counsel will discuss what they are looking for when selecting outside counsel. Come hear about the types of mistakes that firms frequently make when they get "chopped." Then join us for a special keynote address by Kenneth R. Feinberg, Feinberg Rozen, LLP, Washington, DC, about using the law to respond to unique catastrophes prior to the welcome reception on Wednesday evening.

On Thursday night we will have our Section dinner at the American Visionary Art Museum with lots of opportunities for fun and informal networking. We hope that you will also plan to join your colleagues at "interest area" dinners at local restaurants on Friday night.

The Fall Conference is the premier forum for learning about recent developments in the environmental, energy, and resource fields, networking with your colleagues, and meeting prominent government, industry, and private practice leaders. You won't want to miss out on the Berger cookies and crabcakes!

We look forward to seeing you in Baltimore in October.

Conference Mobile App

Download the conference mobile app for the most up-to-date information on schedule, speakers, sponsors, and more! Look for "ABA Fall Conference" in your Apple or Android's Google Play store or visit <https://crowd.cc/seer-fall-2013>. You can also scan this QR code:

Blackberry users must use the above link to view.



Conference

Section Chair:

William L. Penny

Stites & Harbison PLLC
Nashville, TN

Program Chair:

Amy L. Edwards

Holland & Knight LLP
Washington, DC

Planning Committee:

Steven A. Burns

Balch & Bingham LLP
Birmingham, AL

Gabriel Calvo

Northrop Grumman Corp.
Falls Church, VA

John C. Dernbach

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Nathan Gardner-Andrews

National Association of
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Washington, DC

Marian Hwang

Miles & Stockbridge PC
Baltimore, MD

John R. Jacus

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Denver, CO

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Axlor Consulting LLC
Cambridge, MA

Randall M. Lutz

Saul Ewing LLP
Baltimore, MD

Karen Mignone

Verrill Dana LLP
Boston, MA

Gayatri Patel

University of Maryland
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Wednesday, October 9, 2013

9:00 a.m. –12:00 p.m.

Public Service Project: Lawyers for One Million Trees



Join us for a morning of action to improve the environment and give back to Baltimore. As a part of the Section's One Million Trees project, we will partner with the Alliance for Community Trees (ACT) and a local nonprofit, the Parks & People Foundation, for our conference tree planting! The large city trees we plant will improve air quality, mitigate water pollution, reduce urban temperatures, and beautify the city for its residents and tourists. Whether you're new to urban forests or a seasoned tree planter, please join us and pick up a shovel! **To volunteer for this public service project, please contact Julie Connell at Julie.Connell@americanbar.org.**

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3:00 p.m. – 5:00 p.m.

How to Get Hired by In-House Counsel

An important aspect of the practice of law for lawyers in private practice is how to be engaged by potential clients. The selection process will be illustrated by having two outside counsel teams (as representatives of a hypothetical boutique firm versus a hypothetical big firm) making competing pitches to represent a hypothetical corporation, represented by a panel of in-house lawyers, using a program format inspired by the Food Network show “Chopped.” While the competing teams are preparing their pitches, the in-house counsel will share what they are looking for and how they select outside counsel. The panel then will hear and evaluate the two competing pitches. The audience will gain insights into what in-house counsel consider best practices and frequent mistakes that outside counsel employ when seeking to represent a company by observing how teams of outside counsel perform.

SPEAKERS:

Pamela E. Barker, *Appleton Papers Inc., Appleton, WI*

Gabriel Calvo, *Northrop Grumman Corp., Falls Church, VA*

Gary P. Gengel, *Latham & Watkins LLP, New York, NY*

Daniella Landers, *Sutherland, Houston, TX*

Bradley M. Marten, *Marten Law PLLC, Seattle, WA*

Carita Shanklin Walker, *Shell Legal Services US, Houston, TX*

Benjamin F. Wilson, *Beveridge & Diamond, P.C., Washington, DC*

5:15 p.m. – 5:45 p.m.

Keynote Address: Unconventional Responses to Unique Catastrophes: Tailoring the Law to Meet the Challenges

Kenneth R. Feinberg, *Feinberg Rozen, LLP, Washington, DC*

6:00 p.m. – 6:30 p.m.

Law Student Scholars Meeting

Law Student Scholars and SEER Guides will meet for an informal gathering ahead of the Welcome Reception.

6:30 p.m. – 8:00 p.m.

Welcome Reception (cash bar)

Everyone is encouraged to attend to catch up with old friends, become acquainted with new ones, and meet the Section leadership. Meeting registration will be open.

Thursday, October 10, 2013

7:30 a.m. – 8:30 a.m.

Continental Breakfast

8:20 a.m. – 8:30 a.m.

Welcome and Opening Remarks

William L. Penny, *Section Chair, Stites & Harbison PLLC, Nashville, TN*

Amy L. Edwards, *Program Chair, Holland & Knight LLP, Washington, DC*

8:30 a.m. – 10:00 a.m.

News from the Capitol: Administration and Congressional Priorities for Energy and Environmental Law and Policy

In the face of challenging economic times and fiscal pressures and with apparent legislative gridlock on Capitol Hill, there should be great interest in understanding what representatives from Congress and the Obama administration see as upcoming priorities for environmental and energy issues. Hear an insider perspective on which environmental, energy, and natural resource policy issues are most likely to move in the Senate, House, and Obama administration over the coming year. Senior legislative and agency leaders will share their thoughts regarding Democratic and Republican priorities (and third rails) in the environmental, energy, and natural resources



arenas. There will be a question-and-answer period during which attendees can query panelists on specific areas of interest.

MODERATOR:

Elizabeth Shogren, *Environmental Reporter, National Public Radio, Washington, DC*

SPEAKERS:

Maryam Brown, *Assistant to Speaker Boehner for Policy, U.S. House of Representatives, Washington, DC* (invited)

Heather Zichal, *Deputy Assistant to the President for Energy and Climate Change, The White House, Washington, DC* (invited)

Representative from House Energy and Commerce Committee (to be announced)

10:00 a.m. – 10:30 a.m.

Networking Break

10:30 a.m. – 12:00 p.m.

Concurrent CLE Sessions

• The Corporate Supply Chain Goes Global: What You Need to Know to Counsel Your Multinational Client

Many domestic and multinational companies are “greening” their supply chains by looking closely at the environmental aspects of the core business practices of their suppliers and vendors. By reducing supply-chain risk, a company can reduce the regulation of its products and the waste associated with its products and processes; it may even gain competitive advantages, such as reductions in greenhouse gas emissions, through product and supply-chain differentiation. The greening of the supply chain is driven by the global spread of regulations such as the EU’s REACH law and social responsibility pressures. Major manufacturing countries in Asia and the Middle East have adopted their own versions of laws such as REACH, requiring companies to pay closer attention to the global landscape for environmental regulation. In addition, some companies have been stung by high-profile scandals associated with the environmental practices of their suppliers and have responded by committing to strengthen their environmental oversight of suppliers. This panel will explore this complicated topic and focus on what U.S. attorneys need to know in advising

companies about complying with regulations; identifying and reducing risks in their supply chains, including transboundary shipments of hazardous substances and end-of-life disposal; and creating new business opportunities.

MODERATOR:

Kenneth F. Gray, *Pierce Atwood, Portland, ME*

SPEAKERS:

Matthew Bogoshian, *Senior Policy Counsel, Office of Chemical Safety and Pollution Prevention, U.S. Environmental Protection Agency, Washington, DC*

Lydia Belknap Duff, *Assistant General Counsel–EHS, W.R. Grace & Co., Columbia, MD*

Ross Fairley, *Burges Salmon, Bristol, England*

• Reacting to Coastal Disasters: Response and Future Preparedness

Superstorm Sandy has focused public attention on the significant impacts and costs that can result when a significant storm hits a major metropolitan area. As coastal population density continues to increase and storms become more frequent and intense, coastal communities and lawyers who practice in them will be increasingly challenged to respond to and prepare for natural disasters. This panel will examine a number of different perspectives on disaster response and preparedness and the legal challenges arising therefrom. In particular, this panel will discuss the federal role in disaster response, the role of states and the ability of states to exercise their enforcement authority under coastal land use laws to reduce hazard exposure in the wake of a disaster, and the role of the insurance industry in disaster preparedness and response.

MODERATOR:

Sean T. Dixon, *Clean Ocean Action, Jersey City, NJ*

SPEAKERS:

Lindene E. Patton, *Chief Climate Product Officer, Zurich Insurance Group Ltd., New York City, NY*

Bernice “Bicky” Corman, *Office of General Counsel, U.S. Environmental Protection Agency, Washington, DC*

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• Less is More?

The Expanding Universe of Low-Level Toxic Tort Claims

Toxic tort cases in which plaintiffs seek large damages awards for detections and potential exposure to contamination at relatively low concentrations—often below regulatory action levels—are becoming increasingly common. Often, claims at various sites are amalgamated into a single, larger action on a product liability or other common law theory. The plaintiffs in these cases include groups of individuals or property owners; individual water authorities; or, in some cases, state sovereigns (typically acting in a *parens patriae* or natural resource trustee capacity) seeking to address a given contaminant at dozens, hundreds, or even thousands of sites. The substances at issue in these cases include lead, MTBE, perchlorate, perchloroethylene, asbestos, pesticides, and greenhouse gases. The environmental media involved include groundwater, air, and soil, and the alleged impacts include air quality, health (sometimes via vapor intrusion) and climate-related property claims. This panel will explore these emerging trends and offer insights on tort claims involving the detection of chemicals in ever-smaller concentrations at ever-larger numbers of sites.

MODERATOR:

Debbie A. Carlos, *Assistant General Counsel-Litigation, Sunoco, Inc., Philadelphia, PA*

SPEAKERS:

Jean M. Eggen, *Distinguished Professor of Law, Widener University School of Law, Wilmington, DE*

John S. Guttman, *Beveridge & Diamond, P.C., Washington, DC*

Scott Summy, *Baron and Budd., P.C., Dallas, TX*

12:00 p.m. – 1:30 p.m.

Interest Area Luncheon

Everyone is welcome to attend. Choose one of over thirty-five tables based on your practice area or interest. Meet other practitioners with similar interests and plan on a lively discussion of hot topics in your area of focus.

1:30 p.m. – 3:00 p.m.

Concurrent CLE Sessions

• Clean Air Developments Every Lawyer Should Know

The Clean Air Act and EPA's implementing programs continue to have significant and far-reaching impacts on the American economy. Every environmental lawyer should know about certain elements of these changes. This session will provide an overview of the air toxics provisions (section 112) of the Clean Air Act and illustrate those provisions using the new Boiler MACT (maximum achievable control technology); Mercury and Air Toxics Standards (MATS) for power plants; emission standards for oil and gas sources; and changes in regulation of emissions during periods of startup, shutdown, and malfunction for various sources. This session will also explain the basic requirements of these new air toxics rules and discuss the controversies and litigation surrounding each of these rules. Finally, this session will explore the challenges these regulations present to regulated industry and states and explore how implementation of these rules and policies will interact with regulatory efforts and other programs to reduce criteria pollutants and greenhouse gases.

MODERATOR:

Gale Lea Rubrecht, *Jackson Kelly PLLC, Charleston, WV*

SPEAKERS:

Wendy Blake, *Assistant General Counsel, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, Washington, DC*

F. William Brownell, *Hunton & Williams LLP, Washington, DC*

Julie R. Domike, *Kilpatrick Townsend & Stockton LLP, Washington, DC*

• Going Back to the Well: The Next Generation of Fracking Challenges

Hydraulic fracturing has opened huge opportunities—and poses significant new challenges—to the exploration and production of oil and gas in the Marcellus, Bakken, Eagle Ford, Utica, and many other shale and tight sand plays across the country. While many of the “fracking” issues faced in recent years mirror those long present



in the oil patch, the nature and sheer scale of fracking and horizontal drilling activities also create unique risks and challenges. This discussion will take a fresh look at the next generation of environmental and energy regulatory, transactional, and litigation risks facing the industry and some of the potential remedies being forged by involved parties. Different and evolving approaches to the allocation of environmental risks and the protection of investment and property interests in negotiated leases, royalty agreements, service agreements, and operating agreements in unconventional development operations will also be addressed. The natural resources allegedly being contaminated by hydraulic fracturing operations, particularly groundwater, are considered by many to be vital and irreplaceable, and yet federal, state, and tribal trustees have yet to step into the fray in a meaningful way. The litigation risks and recent outcomes associated with claims of personal injury, contaminated surface estates, groundwater, surface waters, and other natural resources resulting from unconventional oil and gas development will also be reviewed.

MODERATOR:

Susan F. Tierney, Ph.D., *Managing Principal, Analysis Group, Boston, MA*

SPEAKERS:

Nicolle R. Snyder Bagnell, *Partner, Reed Smith, Pittsburgh, PA*

William J. Jackson, *Jackson Gilmour & Dobbs, PC, Houston, TX*

David P. Poole, Sr. V.P., *General Counsel, and Corporate Secretary, Range Resources, Ft. Worth, TX*

• Clash of the Titans: Live Litigation

Great legal sparring will occur as a former federal judge listens to oral arguments and presentations from well-known trial attorneys. A set of facts will be provided offering discussion points, including missteps to avoid and proactive practices. The trial attorneys will also provide practical tips and tricks as they step into and out of their advocacy roles to discuss expert presentations, *Daubert* hearings, evidentiary issues, evidentiary techniques, and trial tactics.

FACILITATOR:

Scott J. Sachs, *Atkinson, Andelson, Loya, Ruud & Romo, Cerritos, CA*

MODERATOR:

Ronald J. Hedges, *Ronald J. Hedges LLC, Hackensack, NJ*

SPEAKERS:

James A. Bruen, *Farella, Braun + Martel, LLP, San Francisco, CA*

John C. Cruden, *President, Environmental Law Institute, Washington, DC*

Peter Hsiao, *Morrison & Forester, LLP, Los Angeles, CA*

3:00 p.m. – 3:30 p.m.

Networking Break

3:30 p.m. – 5:00 p.m.

Concurrent CLE Sessions

• Road Warriors—A Hands-On Practical Demonstration of Technology and Ethical Perils

As technology has made us more connected, clients and opposing counsel expect responses 24/7, 365 days a year. Adding to the difficulty of responding is the amount of time today's lawyers are spending on the road. Fortunately, road warriors have access to sophisticated technology in the form of hardware and software that can enhance their ability to practice law, improve productivity, and remain connected to their clients. While providing outstanding benefits, these tools also raise new legal ethical issues for lawyers. This session will provide a hands-on demonstration of some of the most productive hardware and software available. It also will provide a practical discussion of the legal ethical issues faced by lawyers using advanced technology, with an emphasis on the ABA Commission on Ethics 20/20 changes to Model Rules 1.0, 1.1, 1.4, 1.6, and 4.4, as well as recent ethics opinions.

MODERATOR:

Terry Tao, *Atkinson, Andelson, Loya, Ruud & Romo, Cerritos, CA*

SPEAKERS:

John M. Barkett, *Shook, Hardy & Bacon L.L.P., Miami, FL*

Ashley Hallene, *Attorney at Law, Katy, TX*

Claudia Rast, *Butzel Long, Ann Arbor, MI*

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• State Authority on Climate Change: Where are the Commerce Clause Boundaries?

Recent challenges to state environmental initiatives raise the distinct possibility that the dormant Commerce Clause of the United States Constitution could limit state action associated with efforts to reduce carbon intensity. The scope of state authority under the commerce clause was recently argued before the Ninth Circuit in *Rocky Mountain Farmers Union v. Goldstene*, which involved an appeal of a U.S. district court determination that California's Low Carbon Fuel Standard discriminated against out-of-state ethanol producers. Commerce clause cases like this one and others over the next few years likely will shape the boundaries of state opportunities to regulate in the alternative fuels, renewable energy facilities, and climate management arenas. Challenges to California's prohibition of long-term contracts for electricity generated by facilities that are more greenhouse gas intensive than an efficient natural gas facility may also follow, with potential national implications. Speakers on this panel will explore both the opportunities for states to regulate within the bounds of the commerce clause as well as what may become "no-fly zones" for states under the Commerce Clause.

MODERATOR:

LeRoy C. Paddock, Associate Dean for Environmental Law Studies, The George Washington University Law School, Washington, DC

SPEAKERS:

Shannon S. Broome, *Katten Muchin Rosenman LLP, Washington, DC*

Robert Percival, *Professor, University of Maryland School of Law, Baltimore, MD*

Margaret Elaine Meckenstock, *Deputy Attorney General, California Department of Justice, Office of the Attorney General, San Francisco, CA* (invited)

• Environmental Markets 2.0: The Evolving Use of Market-Based Mechanisms

Several market-based environmental commodity trading programs, both mandatory and voluntary, currently

operate or are under development in the United States. Such programs seek to achieve efficient and economical mitigation of environmental concerns (e.g., air, ecosystem services, energy, water, wastewater, and land use). These markets operate in overlapping jurisdictions but, in most cases, with different certification protocols, standards, and commodity/attribute definitions and treatment. In an age of austerity the growth of environmental markets is also converging with an increased focus on new environmental financing models that attempt to streamline and accelerate the deployment of energy, efficiency, and environmental projects at the state and local levels. This panel will seek to highlight the marked innovation in environmental market design and performance in recent years and the nexus with energy regulation, environmental finance, water infrastructure, and commercial transactions. The specific focus will be on the connection between finance and evolving carbon, renewable energy, ecosystem services, energy efficiency, water quality, stormwater retention, and other emissions markets.

MODERATOR:

Christopher B. Berendt, *Drinker Biddle, Washington, DC*

SPEAKERS:

D. Cameron Prell, *McGuireWoods LLP, Washington, DC*

Tauna M. Szymanski, *Hunton & Williams, LLP, Washington, DC*

5:15 p.m. – 6:30 p.m.

Speed Networking Event

You've probably heard of "Speed Dating," but what about "Speed Networking"? Young lawyer and law student attendees will meet one-on-one with several seasoned environmental, energy, and resources law practitioners over the course of an hour. This is the place to network and seek general advice from your colleagues and to discuss Section activities and initiatives that may be of interest. Everyone is welcome. If you have any questions, please contact **Omar Ortiz** at **Omar.Ortiz@americanbar.org**.



6:30 p.m. – 10:30 p.m.

Section Dinner Event at the American Visionary Art Museum (cash bar)

Nestled at the base of historic Federal Hill in the south side of Baltimore's beautiful Inner Harbor, dinner at the American Visionary Art Museum will be a unique and exciting event! Not only is the museum the national repository for the artworks created by self-taught artists, the building's architecture is an artistic creation unto itself—winning many international and national awards for its design and beauty. Join your fellow attendees for a night of fun! A ticket to this event is included in your registration and transportation will be provided.

Friday, October 11, 2013

7:30 a.m. – 8:30 a.m.

Continental Breakfast

8:00 a.m. – 8:20 a.m.

Presentation of the 2013 ABA Award for Excellence in Environmental, Energy, and Resources Stewardship

8:20 a.m. – 8:30 a.m.

Welcome and Opening Remarks

John R. Jacus, *2014 Fall Conference
Program Chair, Davis Graham
& Stubbs LLP, Denver, CO*

8:30 a.m. – 10:00 a.m.

From the Top: Second Term Priorities and Perspectives from Senior EPA Officials

Senior officials from the U.S. Environmental Protection Agency will share with us their priorities and perspectives regarding what to expect during the Obama administration's second term. Will there be administrative action on climate change? Power plant

emissions? Sewer overflows? Post-construction stormwater controls? Coal ash? Complex Superfund sites? These are just a few of the upcoming air, water, and waste issues that could affect the way we build, the way we travel, the way we obtain power, and how we plan for the future. This is a not to be missed session if you want to be informed about what to expect from the Obama administration over the next three years.

MODERATOR:

Brenda Mallory, *Acting General Counsel,
U.S. Environmental Protection Agency,
Washington, DC*

SPEAKERS:

Janet McCabe, *Deputy Assistant
Administrator, Office of Air and Radiation,
U.S. Environmental Protection Agency,
Washington, DC*

Mathy Stanislaus, *Assistant Administrator,
Office of Solid Waste and Emergency
Response, U.S. Environmental Protection
Agency, Washington, DC*

Nancy Stoner, *Acting Assistant
Administrator, Office of Water, U.S.
Environmental Protection Agency,
Washington, DC*

10:00 a.m. – 10:30 a.m.

Networking Break

10:30 a.m. – 12:00 p.m.

Concurrent CLE Sessions

- **Renewable Energy Development:
Challenges, Opportunities,
and Pay-Offs**

Developing renewable energy projects requires navigating a mix of technology-specific government incentives as well as traditional energy and environmental regulations. That reality raises both policy issues and more practical considerations. So far, renewable energy projects on both public and private lands largely have survived court challenges. Is there a reason renewable energy production challenges are less successful than challenges to traditional energy production? What can we learn from traditional energy as we move into the new frontier of emphasizing renewable energy? Each type of energy production, conventional

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or renewable, comes with challenges. This panel explores the challenges unique to developing geothermal, solar, wind, and wave energy production. Panelists will explore the unique characteristics and regulatory siting and permitting challenges for each type of energy production and then offer some thoughts on what the future holds for the various types of renewable energy.

MODERATOR:

Franco E. Del Fosse, *Snell & Wilmer, Phoenix, AZ*

SPEAKERS:

Ted Boling, *Deputy Solicitor for Land Resources, U.S. Department of Interior, Washington, DC*

Nada Culver, *Senior Counsel, The Wilderness Society, Denver, CO*

Rebecca Watson, *Welborn Sullivan Meck & Tooley, P.C., Denver, CO*

• **TMDL Regulation: How EPA's Chesapeake Bay Initiative May Spread to Your Watershed**

EPA's new Chesapeake Bay Initiative is the latest attempt over four decades to restore the Chesapeake Bay, the largest estuary in North America. This is the first time TMDLs and state enforcement tools are being used to regulate nonpoint sources, the greatest contributor of pollutants to the Bay. This attempt is being challenged in federal court by farmers and others on several grounds, which could stop the Initiative. If upheld, TMDL regulation will have far-reaching effects on land use, water use, waste disposal, air emissions, and transportation almost everywhere. Some restrictions already being proposed will change the way new communities will be built, how they relate to surface water and released rain water. The session will explore through a panel of experts and lawyers the reasons for the TMDL enforcement in the Bay and the federal/state regulatory process put in place to reach the goals, the underlying legal basis for the TMDL regulation, and the challenges to the regulation in the federal courts. The session will also project what TMDL regulation could mean to industry, communities, agriculture, land use, and our daily lives in the near and distant future.

MODERATOR:

Randall M. Lutz, *Saul Ewing LLP, Baltimore, MD*

SPEAKERS:

Dr. Donald Boesch, *President, University of Maryland Center for Environmental Science, Cambridge, MD*

Christopher D. Pomeroy, *AquaLaw PLC, Richmond, VA*

Danielle Quist, *Senior Counsel for Public Policy, American Farm Bureau Federation, Washington, DC*

• **CERCLA Case Studies and Lessons Learned—Novel Approaches and Noteworthy Outcomes**

From small mining sites to sediment “mega sites,” CERCLA case studies provide important and interesting lessons about the practical implications of the statute for practitioners, government, and the regulated community. This panel will provide an in-depth look at sites where unique and instructive approaches were taken to selecting and implementing the remedial action, managing government oversight, coordinating between responsible parties and government agencies, resolving liabilities, negotiating the consent decree, and dealing with evolving standards and cleanup requirements. Panel speakers will provide an insider's perspective on several significant CERCLA sites where these approaches and their consequences are playing out. Participants will take away a new appreciation of CERCLA's complexities and a better understanding of real-world practices that are being used to address them.

MODERATOR:

Megan McCulloch, *Honigman Miller Schwartz and Cohn LLP, Detroit, MI*

SPEAKERS:

Brian E. Carr, *Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 2, New York City, NY*

Adam S. Cohen, *Davis Graham & Stubbs LLP, Denver, CO*

Nancy K. Peterson, *Quarles & Brady LLP, Milwaukee, WI*

12:00 p.m. – 12:30 p.m.

Lunch

12:30 p.m. – 1:30 p.m.

Technical Roundtables

These fast-paced presentations over lunch offer the opportunity to learn something new from some of the nation's top environmental consultants and service providers. You will be able to attend two roundtable presentations of your choice.

- **Bloomberg BNA**—*Up to Our Necks in Stormwater: Where Do the Regulators Go After Virginia DOT v. EPA?*
EPA's effort to regulate stormwater using flow as a surrogate for sediment was rejected by a federal court in Virginia in January, but it focused attention on stormwater as a growing source of water pollution and the difficulties in regulating it. This session will explore the issues surrounding stormwater management and offer suggestions for better approaches for addressing stormwater.
- **Cardno ENTRIX**—*Adding Value: Helping Clients Manage the Transition to Sustainable Chemical Products*
Global chemical management systems are transforming the commercial supply chain. Chemical producers, importers, and product manufacturers—from cosmetics and apparel to electronics—must be prepared to manage the implications of the transition to “green” chemistry and products. Their lawyers must understand the legal, practical, and commercial implications of critically important concepts including “chemicals of concern,” “priority products,” “substances of very high concern,” and “alternative assessments,” and provide value to their clients in helping them manage the seismic changes underway in the marketplace brought about by these developments. This roundtable will focus on providing the context connecting the key elements of this new commercial reality, and equip attendees with what they need to manage the transition to more sustainable chemical products.
- **Geosyntec Consultants, Inc.**—*California Adopts Landmark Low-Threat Petroleum Case Closure Policy*
On May 1, 2012, the California State Water Resources Control Board (SWRCB) adopted

the Low-Threat Underground Storage Tank Case Closure Policy setting the stage for other states across the country to follow suit. The Low-Threat Policy, which became effective on August 17, 2012, acknowledges that most petroleum release cases pose a low threat to human health and the environment. These “low-threat” cases are sites where a leak occurred from an underground storage tank (UST), characterization and cleanup have been completed, and monitoring has indicated that residual contamination is stable and will not migrate into domestic or municipal water supply wells, or surface water bodies. To qualify for closure, the site must satisfy eight general criteria, as well as media and pathway specific criteria for groundwater, vapor intrusion, and soil. These standardized procedures to evaluate unauthorized petroleum release sites across California should reduce costs and simplify the process for case closure allowing available funds and resources to be directed to higher threat sites.

- **History Associates Incorporated**—*A Historical Survey of the Use and Regulation of Trichloroethylene (TCE)*
This roundtable will provide insights into the historical uses of trichloroethylene and its regulation by the federal government and other regulatory agencies. It will also discuss some of the historical records that can be useful in TCE-related legal matters, including in cost allocation negotiations for past site contamination. Particular emphasis in the roundtable will be given to the federal government's historical specifications concerning TCE, especially in industrial vapor degreasing and metal cleaning operations.

1:30 p.m. – 3:00 p.m.

Concurrent CLE Sessions

• Cooperative Federalism: Under Assault or In Balance?

There is a diversity of opinion on whether EPA in recent years has been conducting itself in accord with the principles of cooperative federalism found in many federal environmental statutes. This debate

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cuts across multiple media and regulated industries and implicates many of the energy sector's regulatory programs, including air (e.g., Cross-State Air Pollution Rule, dual permitting in Texas, and SIP call litigation); water (e.g., EPA's various attempts to regulate coal mining through guidance and a post-permit 404(c) veto, potential preemptive 404(c) veto of an Alaska mining project on state lands, regulation of nutrient water quality in Florida and the Mississippi River Basin, along with the pending challenges to aspects of the Chesapeake Bay TMDL); waste (the pending proposed rule to regulate coal ash); EPA efforts to regulate hydraulic fracturing; and continued and upcoming regulation of greenhouse gas emissions from the energy sectors. Finding and striking the appropriate federal-state balance is critical to all stakeholders in the implementation and enforcement of federal environmental laws. The panel will focus on the reasons for any real or perceived breakdown in cooperation and what, if anything, needs to be done in response.

MODERATOR:

Kirsten L. Nathanson, *Crowell & Moring LLP, Washington, DC*

SPEAKERS:

Jon Mueller, *Vice President for Litigation, Chesapeake Bay Foundation, Annapolis, MD*

David Paylor, *Virginia Department of Environmental Quality, Richmond, VA*

Katie Sweeney, *General Counsel, National Mining Association, Washington, DC*

• Hot Topics in Environmental Enforcement and Compliance

Environmental enforcement and compliance present ever-changing challenges as new regulations and issues emerge. This session assembles a distinguished group of panelists to provide insights on where enforcement and compliance may be headed. EPA's current enforcement priorities continue to focus on New Source Review issues and flaring under the Clean Air Act and on sewage overflows and concentrated animal feeding operations under the Clean Water Act. Mineral and mining operations are being addressed under several regulatory authorities, and the agency continues to look at energy extraction, particularly hydraulic fracturing. In addition, important issues

such as the general duty clause under the Clean Air Act, the Supreme Court's *Sackett* decision on administration enforcement, and the evolution and implementation of EPA's Audit Policy point to the breadth and depth of enforcement and compliance issues that confront environmental practitioners. This panel will explore these emerging issues to better equip counsel engaged in compliance and enforcement representation.

MODERATOR:

Adam M. Kushner, *Hogan Lovells US LLP, Washington, DC*

SPEAKERS:

Julie Kaplan, *Senior Counsel for Litigation, Environmental Integrity Project, Washington, DC*

Stewart Leeth, *Assistant Vice President, Environmental and Corporate Affairs and Senior Counsel, Smithfield Foods, Smithfield, VA*

Larry Starfield, *Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Washington, DC*

• Transaction Jeopardy! Getting the Deal Done

Helping clients avoid and minimize environmental risks in commercial and real estate transactions can be a significant challenge. There are numerous pitfalls and "gotchas" to avoid and negotiating strategies to employ. Presented in an exciting game-show format, this panel will provide practical advice from a seller's and a buyer's perspective on how to get the deal done. Categories include "Phase I TrainRECs," "Mistakes in Drafting Reps and Warranties," "Ambiguous Words and Phrases," "Negotiating Contractual Indemnities," "The Wonderful World of Environmental Insurance," and "Where's My BFPP Defense?" We've already got the questions; come hear the answers!

MODERATOR:

Channing J. Martin, *Williams Mullen, Richmond, VA*

SPEAKERS:

Annemargaret Connolly, *Weil, Gotshal & Manges LLP, Washington, DC*

Todd S. Davis, *CEO, Hemisphere Development, Bedford, OH*

Walter Lohmann, *Kirkland & Ellis LLP, Washington, DC*



3:00 p.m. – 3:30 p.m.

Networking Break

3:30 p.m. – 5:00 p.m.

Today's Ethics: More Complicated Than You Thought? Managing Conflicts and Virtual Reality in Today's Environmental, Energy, and Natural Resources Law Practices

Modern environmental and energy law practice involves new realities, including: virtual law practice, multijurisdictional concerns, complex conflicts of interest, creative ethical walls, and greater mobility of lawyers, to name a few ... All of this makes determining who is the "client," whether or not there is a conflict of interest and what jurisdiction you are in a challenge to establish. Possibilities of disqualification, forced withdrawal, disgorgement of fees, sanctions and malpractice claims may be the result. This session will explore such issues and will include ABA's Ethics 20/20 Commission, amended versions of Model Rule 1.6 (Confidentiality), Model Rule 1.7 (Conflict of Interest), Model Rule 5.4 (Professional Independence), and Model Rule 5.5 (Unauthorized Practice of Law: Multijurisdictional Practice).

MODERATOR:

Vicki J. Wright, *Krieg DeVault LLP,
Indianapolis, IN*

SPEAKERS:

Jane F. Barrett, *Law School Professor
and Director, Environmental Law Clinic,
University of Maryland School of Law,
Baltimore, MD*

Jon Schuler Brooks, *Phillips Nizer LLP,
New York, NY*

George W. Jones, Jr., *Sidley Austin LLP,
Washington, DC*

5:30 p.m. – 7:00 p.m.

Local Flair Reception

Join fellow meeting attendees, representatives from local law firms, and guests before heading out to dinner.

7:30 p.m.

Dining Together

After the reception, Fall Conference attendees and their guests have the opportunity to sample Baltimore's dining venues together. Please check the message board in the registration area for group sign-up sheets. This is an excellent way to meet people.

Saturday, October 12, 2013

8:00 a.m. – 9:00 a.m.

Continental Breakfast

9:00 a.m. – 10:30 a.m.

Committee Chairs Meeting

Committee chairs will join Council liaisons to discuss strategies for the year. This is an excellent opportunity to meet chairs of other Section committees and plan cooperative initiatives.

10:30 a.m. – 11:30 a.m.

Vice Chair Working Groups

Committee vice chairs will meet with their peers in the same committee leadership role: committee newsletters, membership, programs, social media, electronic communications, and *The Year in Review*. Leadership responsibilities will be outlined, and there will be time for questions and group discussion.

11:45 a.m. – 5:15 p.m.

Council Meeting

Everyone is welcome to attend.

5:30 p.m. – 6:30 p.m.

Section Chair's Farewell Reception

Don't miss this opportunity to gather with your friends and colleagues at the closing event of the 21st Fall Conference.

Conclusion of Conference

Registration Information



Stay Connected with the Section



Join the Section in discussions, news, and events on environment, energy,



and natural resources law on Twitter, LinkedIn, and Facebook! Follow our

Twitter account at: @ABAEnvLaw, join our LinkedIn group at: <http://linkd.in/K6OquT>, and like us on Facebook at

<https://www.facebook.com/ABAEnvLaw>

Conference Mobile App



Remember to download our conference app to have easy access to the conference schedule, maps, attendees, and more! Just search for “ABA Fall Conference” in

Apple’s App Store, Android’s Google Play, or scan the QR code above. You can also visit <https://crowd.cc/seer-fall-2013>. You can also scan this QR code above.

*Blackberry users must use the above link to view.

Course Materials

Course materials and related background information will be provided online prior to the conference to attendees. You may wish to bring a laptop, netbook, or tablet to view the materials onsite as complimentary Wi-Fi access will be available.

Location and Lodging

The 21st Fall Conference will be held at the Hilton Baltimore, 401 W. Pratt St., Baltimore, MD 21201. A block of rooms has been reserved at the discounted rate of **\$219/night plus tax** for single/double rooms. A limited number of government rooms are available at \$145/night plus tax (or the prevailing government rate); identification is required at the time of check-in. The deadline for room reservations at the discounted rates is **Tuesday, September 17, 2013**. For reservations, call the Hilton Baltimore directly at (443) 573-8700 or toll free at (800) 445-8667 or visit our conference page, www.ambar.org/EnvironFM for a direct link to reservations.

Advance Registration

We encourage you to take advantage of online registration. **Visit us online at www.ambar.org/EnvironFall**. You can also retrieve a printable registration form there. Please mail or fax the form with your check

(payable to the American Bar Association) or credit card information to: ABA Section of Environment, Energy, and Resources, Attn: Program Registrar, 321 N. Clark St., Chicago, IL 60654 or fax to (312) 988-5572 or e-mail to Julie.Connell@americanbar.org. All attendees must be registered for this conference to participate.

The deadline to receive the early-bird registration rate for the 21st Fall Conference is **Wednesday, August 28, 2013**. All registrations postmarked after Wednesday, August 28, 2013, must include an additional \$50 for processing. The final cutoff date for advance registrations is **Tuesday, September 24, 2013**. **After this date, registrations must include an additional \$25 for processing.**

Registration Fee

The registration fee for the 21st Fall Conference includes tuition and course materials (provided online) developed especially for this conference. In addition, your fee covers Wednesday’s public service project and Welcome Reception, Thursday’s Interest Area Luncheon and dinner event at the American Visionary Art Museum, Friday’s Technical Roundtable Luncheon and Local Fair Reception, and Saturday’s Section Chair’s Farewell Reception. Breakfast and networking breaks will be available on Thursday, Friday, and Saturday.

Cancellation Policy

Attendees registered for the 21st Fall Conference are eligible for a full refund of the registration fee less a \$50 administrative fee for all written requests received by **Tuesday, September 24, 2013**. No refunds will be granted after Tuesday, September 24, 2013—no exceptions will be made. Substitutions are acceptable. The Section does not provide credits to be used toward future programs. Cancellations may be sent via e-mail to Julie Connell at Julie.Connell@americanbar.org or by fax to (312) 988-5572. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

Tuition Assistance

A limited number of registration fee waivers are available for government employees, public interest lawyers employed with non-profit organizations, and academics. To apply, send a letter outlining why you are interested in participating in the conference and the basis for your request of a fee waiver by e-mail to Julie.Connell@americanbar.org. **Deadline: Friday, September 6, 2013.**

Achieving Carbon Neutrality

Calculated with great care, the Section estimates that the average attendee's participation will generate approximately one metric ton of carbon emissions.

A Fall Conference attendee can offset his or her carbon footprint by adding \$20 to the registration fee. This will cover the cost of a one-ton carbon credit and help pay for tree plantings and public service projects!

Law Student Scholarship Opportunity

A limited number of scholarships are available to law students interested in attending the entire conference and volunteering. Responsibilities will include assisting with CLE session logistics and participating in the public service project (if your schedule permits). Benefits will include a registration fee waiver, an assigned "Guide" from Section leadership for the conference, and networking opportunities. To be considered as a law student scholar you must be a member of the ABA Section of Environment, Energy, and Resources. **Deadline: Friday, August 30, 2013.** To apply, complete the application online at www.ambar.org/EnvironFall. Questions? Omar.Ortiz@americanbar.org.

Section Business Activities

Section leadership should plan to participate in activities throughout the conference for committee chairs, vice chairs, and Council members. Section members are welcome to attend these activities. If you want to get involved, this is a great way to learn more about the Section.

CLE Information

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, WI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for **16.0** CLE credit hours (including **1.5** ethics hours) in 60-minute states, and **19.2** credit hours (including **1.8** ethics hours) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit www.ambar.org/EnvironFall or contact Julie Connell at Julie.Connell@americanbar.org or (312) 988-5724.

Register Online!

Save time and trees by registering for this meeting online! Visit us online, www.ambar.org/EnvironFall.

Attention ABA Members!

If you are an ABA member but not a member of the Section of Environment, Energy, and Resources, please note that your conference registration fee (\$770 before or on August 28, 2013, or \$820 after August 28, 2013) will include 2013–2014 Section membership, which is a \$75 value.

** ABA membership is a prerequisite of Section membership. If you are not already an ABA member, please call (800) 285-2221. Please note: Free Section membership only applies to individuals who have not been a Section member in the past two years.*

Registration Rates

	Before 8/28/13	After 8/28/13
Section Member	\$695	\$745
Section Gov't, Public Interest, Academic	\$575	\$625
ABA Member	\$770	\$820
General Attendee	\$820	\$870
Gov't, Public Interest, Academic	\$625	\$675
Young Lawyer*	\$625	\$675
Speakers and Moderators	\$395	\$395
Carbon Offset/Trees	\$20	\$20

Please note: All registrations postmarked after Tuesday, September 24, 2013, must include an additional \$25 for processing.

** Qualifying Young Lawyers are those who have been admitted to practice in their first bar within the past five years or who are younger than 36 years old.*

Registration Rates for Law Students and Student Associates Only

Section Member	\$100
ABA Member*	\$125
General Attendee**	\$150

** As an ABA member, registration will include membership in the Section of Environment, Energy, and Resources for one year.*

*** As a general attendee, registration will include membership in the ABA and the Section of Environment, Energy, and Resources for one year.*

Day Rates

Day rates are available for \$350 each day. This rate does not include Thursday's dinner at the American Visionary Art Museum. Tickets are available for \$75 each.



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American Bar Association
Section of Environment, Energy, and Resources
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Chicago, IL 60654

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21st Fall Conference 2013

October 9–12, 2013
Hilton Baltimore • Baltimore, MD

Register Online!

www.ambar.org/EnvironFall

Early Bird Registration Deadline:

Wednesday, August 28, 2013

Housing Deadline:

Tuesday, September 17, 2013