

# CLINIC NEWS

## HARRISBURG OFFICE OPENS AND GETS TO WORK

January 11, 2010 marked the opening of the Clinic's office on Widener's Harrisburg Campus and the expansion of Clinic service in Pennsylvania. Its operation has been an unqualified success.

The January 2010 opening was the culmination of more than 6 months of work by Widener faculty, staff and students. It began with efforts by Harrisburg professors John Dernbach and Palmer Lockhart as well as Clinic Director Ken Kristl to secure a generous grant from the PA chapter of the Sierra Club that will fund the first two years of Harrisburg office operations, with an option for a third year of funding. The funding helps pay for a part time staff attorney to assist the Clinic Director in handling the Harrisburg case load. The Clinic hired Darlene Heep as its staff attorney in January 2010.

The Sierra Club wanted the Harrisburg office to operate a "hot line" and web resources for Pennsylvania citizens with environmental problems. The net result was the creation of the Widener Environmental Help Line (888-953-6853) and a Request Form on the Clinic's website.

With funding secured, Professors Dernbach, Lockhart and Kristl worked to establish the office and encourage student interest. A dedicated team of 4 students – Jennifer Berosh, Claire Gargiulo, Jon Jonnson, and Steve Matzura – held regular planning meetings with Professor Kristl throughout the fall semester to structure how the Clinic would handle Help Line requests and function as a group. As a result, the students played a primary role in developing the protocols the Clinic uses when responding to and working with Help Line requests and the new client representations that arise out of such requests. In addition, students and Professor Kristl developed a new model for operating the Clinic office. The primary feature of this new model was that the entire office would meet each week as a "law firm" to discuss new requests from the Help Line, make decisions as a team about whether or not to take on new representations, determine as a team how work would be assigned and performed, and to share strategies for resolving issues that arose in particular representations. This "law firm" model proved to be highly successful, allowing students to learn from each other as well as from the work on

behalf of Clinic clients. Indeed, Professor Kristl was so pleased with the results that he is importing the "law firm" decision-making model to the Delaware Clinic office in the Fall 2010 semester.

Essential to the protocols of the office is direct student involvement in all phases of the case. Students call Help Line users directly, conduct interviews to obtain the necessary information for making representational decisions, communicate that information internally within the office, directly participate in the decision of whether or not to take on a particular representation, and then are the front line communicators with clients as work is performed on their behalf. This active involvement model gives students the opportunity to engage and learn the



From left: Prof. Kristl, Steve Matzura, Jon Johnson, Claire Gargiulo, Jennifer Berosh, and Staff Attorney Darlene Heep.

very skills they will need when out in practice. In addition, this provides students with the opportunity for learning how to deal with the clients and their unique needs and circumstances.

As detailed elsewhere, the Help Line has resulted in a significant amount of work for the Harrisburg student attorneys. The opportunities have included direct participation in a permit appeal to the Environmental Hearing Board, interaction with and development of strategies related to legal issues arising out of the drilling for natural gas at the Marcellus Shale formation, advice to clients on issues

ranging from potential zoning changes to possible coal mining operations. In the first semester alone, more than 560 hours of student work on behalf of potential clients has helped to provide needed representation to those who might otherwise not be represented when confronting serious environmental problems. As the Clinic and Help Line grows, more such opportunities are likely to occur.

### **STUDENT ATTORNEYS HELP TO BATTLE LNG TERMINAL IN D.C. CIRCUIT COURT**

Student Attorneys Corey Bolander, Laura Kaplan and Richard Scott spent much of the Spring 2010 semester analyzing and briefing the issues related to a challenge to a certificate granted by the Federal Energy Regulatory Commission (FERC) to AES Sparrows Point, LLC for the construction of a liquefied natural gas (LNG) terminal in the Baltimore Harbor. The project is designed to unload super-tankers filled with liquefied natural gas (LNG) that would be gasified and pumped into a new pipeline that would extend 80 miles to a main natural gas pipeline near Doylestown, Pennsylvania. The Clinic represents the LNG Opposition Team, a coalition of numerous community organizations near the proposed terminal site, and the Bradford Glen Homeowners Association, which represents property owners in the pathway of the proposed pipeline. The appeal is pending in the U.S. Court of Appeals for the D.C. Circuit.

The appeal itself challenges FERC's initial granting of approval for AES to build a terminal and pipeline as well as the denial of a petition for rehearing. The appeal challenges FERC's decision on numerous grounds, including the failure to comply with the federal Clean Water Act (because of the failure to obtain water quality certification from the state of Maryland prior to issuance of the decision) the Coastal Zone Management Act, and the Administrative Procedures Act, for FERC's failure to consider relevant evidence and for the issuance of a permit with 169 conditions in it. The appeal also challenges FERC's decision under the National Environmental Policy Act (NEPA) for the failure to conduct adequate environmental assessments prior to the decision, instead leaving those analyses as post-decision conditions that must be satisfied.

Corey, Laura and Richard spent the semester digesting the significant amount of record information available and analyzing the law in order to support the claims raised on the appeal. They played an integral role in drafting initial pleadings for the D.C. Circuit required by court rules. In addition, they prepared a first draft of the Brief on Appeal that will ultimately become the basis for portions of the final joint brief that will be filed with the Court.

### **STUDENT ATTORNEYS LEAD APPEAL OF PERMIT FOR COAL COMBUSTION WASTE**

Harrisburg Student Attorneys Jennifer Berosch and Steve Matzura played leading roles in one of the Harrisburg office's first representations. In this matter, the Clinic represents Robert Gadinski, who has appealed a permit amendment that would allow the Gilberton Coal Company to dispose of Coal Combustion Waste (CCW) on a site in Mt. Carmel, Conyngham, and Butler Township in Northumberland, Columbia, and Schuylkill Counties, Pennsylvania.

The appeal is based primarily upon the Pennsylvania Department of Environmental Protection's failure to characterize the disposal site and to consider the adverse impacts on drinking water supplies for residents living near the disposal site. CCW – which is primarily the ash left over after coal is burned to generate electricity – often contains toxic contaminants such as cadmium, mercury and other heavy metals. The concern driving the appeal is the potential for toxic contaminants in the CCW disposed of at the Gilberton site to leach into groundwater and end up in the drinking water supply of nearby residents, including Mr. Gadinski.

Jennifer and Steve dug right into the complex technical and legal issues arising out of Mr. Gadinski's appeal. They were the primary drafters of discovery that was served on DEP and Gilberton as well as responses to discovery served on Mr. Gadinski by DEP and Gilberton. In addition, they had to research the relevant regulatory and case law in order to develop the legal strategy for the appeal. They interacted directly with the client and coordinated their work with the Clinic Director and staff attorney Darlene Heap. They also drafted motions and legal memos in connection with completing all needed discovery by a July 6 discovery cutoff. Their work has been handed off successfully to summer interns Jon McVey, Adam Gibbons, and Ann LePore who continued to prepare the matter for hearing in the Fall.

### **STUDENT ATTORNEYS TACKLE MARCELLUS SHALE GAS DRILLING ISSUES**

Harrisburg Student Attorneys Claire Gargiulo and Jon Johnson spearheaded a multi-prong effort to deal with requests for help concerning issues about drilling for natural gas in the Marcellus Shale formation in Pennsylvania.

The Marcellus Shale formation is a geologic structure stretching from New York through Pennsylvania and into Ohio and West Virginia. Because it is believed to hold massive quantities of natural gas, there has been enormous pressure to develop this resource and drill to extract the natural gas. Claire and Jon first tackled legal issues arising out of the efforts to tap Marcellus Shale gas through a re-

sponse to numerous Helpline requests from citizens in Damascus Township, located in northeast Pennsylvania along the Delaware River. Claire and Jon have engaged in numerous activities on behalf of the Damascus clients, including researching issues related to Pennsylvania and federal regulations, zoning issues, and issues pending before the Delaware River Basin Commission which regulates the withdrawal of water from the DE River watershed to be used in the hydraulic fracturing processes of natural gas exploration.

In addition, Jon collaborated with Delaware Student Attorney Jonathan Spadea in beginning the preparation of a Citizens Guide on Marcellus Shale legal issues that is intended to become a resource for Pennsylvania citizens seeking to understand the legal implications of various aspects of the gas development process. The Citizens Guide will debut on the Clinic's page of the Environmental Law Center's website in late August.

### **STUDENT ATTORNEY HELPS DEFEND DELAWARE COASTAL ZONE**

Student Attorney Christianna Kersey drafted public comments that helped keep an oil recycling facility out of Delaware's coastal zone.

The proposed facilities operator, FCC Environmental, sought to move a currently existing oil recycling facility from within the City of Wilmington onto an abandoned site located in Delaware's coastal zone. Pursuant to the Delaware Coastal Zone Act, FCC Environmental had applied for a status decision, which allows for the Secretary of DNREC to provide an opinion about whether the proposed project would violate the Coastal Zone Act before the project is commenced.

Christianna's comments focused on the application of the Coastal Zone Act prohibition against "heavy industry." With the help of Clinic Director Ken Kristl, Christianna found a ruling from the 1970s in which a Texaco oil recycling facility was barred on the basis of being heavy industry under the statute. Christianna's comments argued for the consistent application of this precedent.

The Secretary of DNREC ultimately ruled that the facility would be barred under the Coastal Zone Act as heavy industry. Christianna was "excited" by the decision and the chance to have a real impact on a matter of public importance.

### **STUDENT ATTORNEY HELPS COMMENT ON WEST VIRGINIA PERMITS**

Student Attorney Keith Salador assisted the

Potomac Riverkeeper in preparing comments on stormwater and quarry mining permits for a shale mining operation proposed for the North Mountain in West Virginia. North Mountain Shale, LLC seeks the permits in connection with its plan to mine shale for the manufacture of bricks. The Potomac Riverkeeper is concerned about impacts from stormwater and mining operation runoff that could impact drinking water supplies and a trout stream in the Potomac River Watershed.

Keith had to dig into West Virginia regulations and case law to identify potential issues with the draft quarry and stormwater permits issued by West Virginia Department of Environmental Protection. He prepared legal memoranda and reviewed various documents related to comments submitted by the Potomac Riverkeeper during the public comment process.

### **STUDENT ATTORNEYS DRAFT CITIZEN GUIDES**

Student Attorneys and summer interns helped to draft Citizen Guides that are available to all Pennsylvania citizens on the Clinic's website. During the Spring semester, the following guides were developed:

Student attorney Christianna Kersey prepared the Citizen Guide to Project 70, which describes the legal options available to citizens for land that was purchased with Project 70 funds in Pennsylvania. Project 70 was an effort by Pennsylvania to purchase land for use by municipalities as parks. Project 70 imposes restrictions on how such land can be disposed of by the municipality, and the citizen guide helps to explain what those options are.

Summer intern Frank Coralluzzo helped to prepare the Citizen Guide on Article 1, § 27 of the Pennsylvania Constitution. Section 27 sets forth a right to clean air and clean water in Pennsylvania. This Citizen Guide analyzes the case law interpreting § 27 to give Pennsylvania citizens a better sense of how viable a claim under § 27 can be.

Summer intern and Fall 2010 Student Attorney Daniel DiMaria drafted a Citizen Guide on Pennsylvania's Sunshine Act, which mandates when meetings of public officials must be open to the public.

"Citizen Guides are part of the mission that Sierra Club asked us to carry out with the start of the Harrisburg office," Clinic Director Ken Kristl said. "They provide preliminary answers to questions that citizens may have, and therefore serve to educate while we can represent other citizens. At the same time, students learn about new areas of law. It's a real win-win situation for us and interested citizens."

## SUMMER INTERNS HELP KEEP CLINIC RUNNING WHILE GAINING VALUABLE EXPERIENCE

A record number of 24 summer interns – 13 in Delaware and 11 in Harrisburg – helped keep the Clinic running during Summer 2010. In addition, summer interns had the opportunity to gain valuable experience working on real matters for real clients, while performing pro bono work that will meet the requirements for Pro Bono Distinction at graduation.

The Delaware contingent included J.D. students Kelly Allegretti, Nicole Amorosi, Sara Balestra, Desire Chavez, Dan Conway, Frank Coralluzzo, Marisa DeFeo, Marc Eisenstein, Christine Harris, Edward Hughes, Shloka Joshi, and James Lewis, as well as MJ student Jenny Li. The Delaware interns worked on research projects, wrote memos and drafted pleadings, and had the opportunity to attend client meetings.

In Harrisburg, J.D. students Dan DiMaria, Claire Gargiulo, Adam Gibbons, Brianne Henninger, Jonathan Johnson, Abbey Lewis, Jonathan McVey, Stacy Miller, Kari Panza and Sarah Stoner served as summer interns. These Harrisburg interns responded to Help Line requests, did legal research and drafting, conducted discovery, and interacted with clients on various matters.

“Summer internships allow Widener students the opportunity to help solve real problems for clients and to learn from each other,” Clinic Director Ken Kristl said. “The ability to sharpen writing, research, and communication skills can help students better prepare for the world of practice. Our clients really appreciate the hard work of our summer interns.”

## STUDENT ATTORNEYS RECEIVE AWARDS

Numerous Student Attorneys received awards during the Spring 2010 semester. Corey Bolander received the Chuck Zencey Memorial Award, given to a second year student interested in the Clinic and Environmental Law. Nicholas Jajko received the Greenwatch Institute Charles J. Zencey Memorial Award, awarded on the basis of work in the Environmental Law Clinic, volunteer activities, or work experience, demonstrating a commitment to protecting the environment in the spirit of Charles Zencey, and who is likely to pursue a career that furthers environmental protection. Richard Scott received the Greenwatch Institute Jerry Shields Memorial Award for performance in the Environmental Law Clinic and demonstration of a commitment to public interest advocacy.

In addition, numerous student attorneys received the first ever Environmental Law Certificates awarded on the Delaware campus at graduation.

These certificate recipients included: Rita Assetto, Dawn Kurtz Crompton, Catherine Emmett, Marie Hobson, Nicholas Jajko, Laura Kaplan, Keith Salador, Richard Scott and Jonathan Spadea.

## CLINIC WORK PROVIDES SIGNIFICANT PRO BONO CONTRIBUTION

During the Spring 2010 semester, the Clinic provided significant pro bono representation. This work, on behalf of 44 clients over 48 different matters, amounted to the following (through the summer):

Clinic Director	325
Student Attorneys	2,005
Summer Interns	1,113
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Total Hours	3,443

For the full academic year, the numbers were:

Clinic Director	548
Student Attorneys	3,154
Summer Interns	1,113
	<hr/>
Total Hours	4,815

## LINES ARE OPEN! THE WIDENER ENVIRONMENTAL HELP LINE KICKS OFF (1-888-953-6853)

As explained elsewhere in this Issue, a generous grant from the Pennsylvania chapter of the Sierra Club means Widener students in Harrisburg will help empower Pennsylvania citizens by providing legal knowledge and guidance so that citizens (or groups of citizens) can advocate for themselves or directly representing citizens to obtain appropriate legal recourse. Pennsylvania citizens can reach the Help Line in one of two ways: A Toll Free telephone line (1-888-953-6853) OR an internet-based Request for Help Form available at [www.widenerELC.org](http://www.widenerELC.org) (and clicking on the Request for Help Form link on the right hand side of the home page).

*For more information on the Environmental and Natural Resources Law Clinic, check out the Clinic pages on the Environmental Law Center's website, [www.widenerELC.org](http://www.widenerELC.org) or contact Professor Kristl (477-2053 or at [ktkristl@widener.edu](mailto:ktkristl@widener.edu)). The Clinic is open to second semester 2RDs, as well as 3RDs and 4EDs on both the Wilmington and Harrisburg campuses.*

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