

CLINIC NEWS

STUDENT ATTORNEY CO-FIRST CHAIRS EHB TRIAL

Student Attorney Jonathan McVey from the Clinic's Harrisburg office served as co-first chair in a January 2011 evidentiary hearing before the Pennsylvania Environmental Appeals Board on an appeal of a coal mining permit.

The case, *Robert Gadinski and Mr. and Mrs. Frank Burke v. Pennsylvania Department of Environmental Protection (DEP) and Gilberton Coal Company*, seeks to protect the drinking water of residents of Locust Summit in Butler Township. Robert Gadinski contacted the Clinic (one of the first Environmental Help Line contacts) after he filed an appeal challenging the issuance of an amended coal mining permit allowing Gilberton Coal Company to place contaminated coal ash (generated from coal-fired electric power plants) in a 6.2 acre mining pit uphill from his residential drinking water well. Mr. Gadinski, a professional geologist, was concerned that the fractured geology of the area would allow contaminants from the coal ash to get into his and his neighbor's drinking water supply, and that DEP and Gilberton had not adequately explored that issue or adequately proposed to monitor for such contamination. Evidence later showed that ash to be placed at the site contains chemicals and substances in forms from ten to 25 times the levels recognized as acceptable in drinking water by the United States Environmental Protection Agency.

In response to Mr. Gadinski's contact, former Student Attorney Steve Matzura ('10), with the assistance of Staff Attorney Darlene Heep, filed an appearance for the Clinic on behalf of Mr. Gadinski. Scheduling conferences were held with the Judge and defense counsel and Interrogatories and Requests for Production were prepared and served. After visiting the site and meeting with some of these neighbors and Mr. Gadinski, Matzura prepared, filed and was granted a Motion to Intervene on behalf of the Burkes.

Upon Matzura's graduation, the case was assigned to McVey in June 2010. Jon was working in the Clinic as a summer intern, and was scheduled to take the Clinic in the Fall 2010 semester. Thus, the

Gadinski matter was Jon's very first assignment in the Clinic, and would be his primary focus until his graduation in May 2011.

Jon quickly gained an understanding of the case and continued to complete discovery. He and fellow summer intern Adam Gibbons met with Mr. Gadinski, did site visits, and reviewed DEP's files. An early challenge was working with Staff Attorney Heep in the filing and arguing of a Motion to Compel following Gilberton's failure to provide discovery responses. That motion was granted.

Jon determined which depositions would be taken and prepared and issued appropriate Depositions Notices. He ultimately deposed the DEP employee who issued the permit and the Gilberton consulting engineer who prepared the permit application, and defended Mr. Gadinski and Mr. and Mrs. Burke during their depositions.

The Clinic's position was that contaminated run-off from the site would flow to the drinking water wells of the residents and the aquifer that is the source of this well water. Residents have no other drinking water source available should the water cease to be potable over years of contaminated water flow from the ash placement site because there is no public water system in the area. EPA statements and DEP guidance documents supported the position of the clinic and just prior to the trial, attorneys for DEP and Gilberton had filed a Motion in Limine to exclude them from the hearing. McVey and Heep briefed and argued in opposition to that motion. Ruling in favor of the clinic, the Judge denied the motion.

In preparation for trial, Jon had to draft the required Pre-Hearing Memorandum setting forth the positions, exhibits, and facts for trial. To maximize Jon's learning experience, Clinic Director Ken Kristl and Staff Attorney Heep decided that Jon should play a major role in the hearing itself. In addition to direct examination of the Burkes and Mr. Gadinski, Jon conducted cross-examination of two witnesses, objected to questions and testimony and presented exhibits. Other direct and cross-examination was

conducted by Clinic Staff Attorney Heep.

After the hearing, Jon had to tackle the task of distilling down the evidence into a persuasive argument in the Post-Hearing Opening Brief and assisting in the drafting of the Reply Brief. Post trial briefing is now complete and the decision is pending.

“This is the pinnacle of what a student’s experience can be in the Environmental Clinic,” Director Kristl said. “The ability to develop a case in discovery, develop the case strategy, present the evidence and arguments both in writing and orally before the Judge—that is what we hope students get to participate in when they take the Clinic. While not all Clinic Student Attorneys get to do everything that Jon did, we try to make sure that each student gets a chance to participate in at least some part of the many Clinic representations. It is the best way to practice the critical skills of lawyering while helping clients deal with real environmental concerns.”

WORKING TO PROTECT THREATENED SPECIES FROM MINING OPERATION

Student attorney Claire Gargiulo spent both the Fall and Spring semesters working on an appeal of a small non-coal surface mining permit allowing preparatory mining work for a limestone mine in Blair County, Pa.

In Summer 2010 the Clinic was contacted by the Juniata Audubon Society Chapter, the Center for Biological Diversity, and private citizen Laura Jackson to assist them in their 3 separate appeals of the small non-coal mining permit issued to Catharine Properties, Inc. The Clinic appeared on behalf of all 3 appellants and moved to consolidate their appeals into a single action before the Environmental Hearing Board in Pennsylvania. The basic thrust of the appeals, was that the Department of Environmental Protection had failed to protect the Eastern small-footed bat and the Allegheny wood rat – 2 species considered threatened under Pennsylvania law – as well as a unique invertebrate discovered in pools found in caves on the Catharine Properties site which are the only known instance of the species in the world. In effect, the appeal argues that DEP failed to discharge its statutory obligation to insure that the mining and forest clearing activities allowed under the small non-coal mining permit would not adversely impact those species.

Claire was actively involved in the representation of these clients. In addition to phone and in-person meetings, Claire conducted file reviews, and drafted both document requests and interrogatories that were sent to both DEP and Catharine Properties as well as the responses to document requests served

by DEP and Catharine Properties to each of the 3 appellants. This required Claire to do a massive amount of work and factual exploration in order to make sure that the responses were accurate and complete.

In addition to this written discovery, Claire also participated in deposition discovery, taking a deposition of a biologist from the Pennsylvania Game Commission that had conducted a survey for bats on the site in February 2010. Claire was disappointed that, because of graduation, she may not be able to see the case all the way through to its hearing, which is likely to take place in late 2011 or early 2012. Nevertheless, Claire found that her work on the case was a great learning experience and allowed her to pursue her personal interest in protecting animals and species that need protection.

STUDENT ATTORNEYS COMMENCE CLEAN WATER ACT ENFORCEMENT CASE

Student attorneys Andrew Lo and Jasmine Hardesty assisted in initiating Clean Water Act enforcement against Ox Paperboard in West Virginia.

Clinic clients, Potomac Riverkeeper and Shenandoah Riverkeeper, were concerned by discharges from Ox Paperboard’s Halltown, West Virginia facility. The alleged violations included exceedances of the pollutants biological oxygen demand, total suspended solids, and ammonia nitrogen that were being discharged into flowing Spring Run and the Shenandoah River. Thus, Andrew worked on preparing the 60-day notice of intent to sue letter under the CWA which was sent to Ox Paperboard in November 2010. Jasmine then utilized the information in the 60-day notice letter to prepare a complaint under the CWA that was filed in federal district court in West Virginia by co-counsel Christopher Stroech of Shepherdstown, West Virginia.

For Andrew and Jasmine, the Ox Paperboard matter provided an opportunity to sharpen their litigation drafting skills by drafting these important documents. The matter is now in discovery and the West Virginia Department of Environmental Protection has sought to intervene in the matter.

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WOW! HAVE WE BEEN BUSY!

To give *Clinic News* readers a sense of all the different things the Clinic did during the July 1, 2010 – June 30, 2011 academic year (and help explain why there was no Spring 2011 issue), we have compiled this chronological list of Clinic public activities. In summary, it shows that, just during this past year: (A) in 12 different litigation matters, the Clinic participated in 3 full evidentiary hearings, filed 14 briefs or Hearing Memoranda, submitted and/or filed 31 notices, complaints, motions or other pleadings, and participated in 16 arguments, conferences, depositions, or other activities; (B) submitted 4 sets of public comments in 4 different matters; and (C) prepared or updated 3 different Citizen Guides!

July 28, 2010 – *A Citizen's Guide to the Pennsylvania Sunshine Act* posted on Widener Environmental Law Center website.

August 10, 2010 – *Sierra Club, Citizens Coalition, Inc., Citizens Action Foundations, Inc., and Southern New Castle County Alliance, Inc. v. Delaware Dept of Natural Resources and Environmental Control and Tidewater Environmental Services, Inc.*, No. 2010-01, 2010-02, 2010-03 (DE Coastal Zone Industrial Control Board): **Notice of Appeal** challenging issuance of a Coastal Zone Act Permit for the Wandendale Wastewater Treatment Facility in Sussex County, DE (the “Wandendale Matter”). *See story in this Issue.*

August 17, 2010 – *A Citizen's Guide to Legal Issues of Marcellus Shale Gas Drilling* posted on Widener Environmental Law Center website.

August 16, 2010 – *Robert Gadinski v. Commonwealth of Pennsylvania Dept of Environmental Protection and Gilberton Coal Co.*, Docket No. 2009-174-M (PA Environmental Hearing Board): **Deposition taken** of DEP permit writer in challenge to coal-mining permit amendment allowing beneficial use of coal ash in a mine pit (the “Gadinski Matter”) (by Student Attorney Jon McVey). *See story in this Issue.*

August 20 2010 - Gadinski Matter: **3 Depositions of clients defended** (by Student Attorney Jon McVey).

August 23, 2010 – *Center for Biological Diversity, Juniata Audubon, and Laura Jackson v. Commonwealth of Pennsylvania Dept of Environmental Protection and Catherine Properties, Inc.*, Docket No. 2010-123-C (PA Environmental Hearing Board): **Notice of Appearance** filed to represent Center for Biological Diversity, Juniata Audubon, and Laura Jackson in their 3 separate appeals of a small non-coal mining permit issued to Catherine Properties, Inc. near the Heller Caves bat hibernacula in Blair County, PA (the “Heller Caves Matter”). *See story in this Issue.*

August 24, 2010 - *Blue Mountain Preservation Association, Inc. v. Commonwealth of Pennsylvania Dept of Environmental Protection and Alpine Rose Resorts, Inc.*, Docket No. 2009-080-L (PA Environmental Hearing Board): **Pre-Hearing Memorandum** filed (the “BMPA Matter”).

August 25, 2010 – Heller Caves Matter: **Amended Notice of Appeal** filed on behalf of Center for Biological Diversity.

September 1, 2010 – Wandendale Matter: **Statement of Issues on Appeal** filed.

September 9, 2010 – Wandendale Matter: **Pre-Hearing Memorandum** filed.

September 16, 2010 – Wandendale Matter: **Evidentiary Hearing** before the DE Coastal Zone Industrial Control Board (“CZICB”).

September 27, 2010 – BMPA Matter: **Settlement Conference.**

October 29, 2010 – Wandendale Matter: **Notice of Appeal** of CZICB Decision to the Superior Court filed.

November 8, 2010 – Heller Caves Matter: **Document Requests and Interrogatories** sent to DEP.

November 11, 2010 – Shenandoah Riverkeeper and Potomac Riverkeeper v. Ox Paperboard: **60-day Notice of Intent to Sue Letter** sent for violations of Clean Water Act.

November 16, 2010 – *Choptank Riverkeeper and Eastern Bay Conservancy and Drew Kostlow v. DE Dept of Natural Resources and Environmental Control*, EAB 2010-10: **Notice of Appeal** filed to challenge issuance of Delaware’s final regulations on Concentrated Animal Feeding Operations (CAFO) (“the DE CAFO Matter”).

November 17, 2010 – *Delaware Audubon Society and Public Employees for Environmental Responsibility v. Ken Salazar, Sec’y, U.S. Dept. of Interior, Acting Director of U.S. Fish and Wildlife Service, and U.S. Fish and Wildlife Service*, No. 1:10-civ-00985 (U.S. Dist. Ct. for Dist of DE): **Complaint** filed challenging dune repair project (the “Prime Hook Matter”). *See story in this Issue.*

November 22, 2010 – Heller Caves Matter: **Document Requests and Interrogatories** sent to Catherine Properties.

November 29, 2010 – Prime Hook Matter: **Request for Public Hearing** on permit under DE Wetlands Act for dune repair project.

December 9, 2010 – Gadinski Matter: **Pre-Hearing Memorandum** filed.

December 9, 2010 – BMPA Matter: **Settlement Conference.**

December 13, 2010 – *Uhl v. Board of Commissioners of Salisbury Twp.*, Civ. No. 2010-C-4281 (Lehigh County Ct. Common Pleas): **Motion to Intervene** filed on behalf of Kevin McNally to support denial of subdivision approval by Salisbury Township (“the McNally Matter”).

December 17, 2010 – DE CAFO Matter: **Settlement Conference.**

December 21, 2010 – *Delaware Audubon Society, Center for Food Safety, and Public Employees for Environmental Responsibility v. U.S. Dept. of Interior, Acting Director of U.S. Fish and Wildlife Service, and U.S. Fish and Wildlife Service*, Civ. No. 10-162 (GMS) (U.S. Dist. Ct. for Dist of DE): **Settlement Agreement** signed resolving suit over farming with genetically modified crops at the Bombay Hook Wildlife Refuge in Sussex County, DE.

January 6, 2011 – McNally Matter: **Amended Petition to Intervene** filed.

January 13, 2011 – DE CAFO Matter: **Settlement Conference.**

January 25 – 27, 2011 – Gadinski Matter: **Evidentiary Hearing** before the EHB.

January 31 – February 1, 2011 – BMPA Matter: **Evidentiary Hearing** before the EHB.

February 3, 2011 – Heller Caves Matter: **Responses to Document Requests and Interrogatories** on behalf of Juniata Audubon and Laura Jackson.

February 9, 2011 – DE CAFO Matter: **Settlement Conference.**

February 10, 2011 – Heller Caves Matter: **Responses to Document Requests and Interrogatories** on behalf of Center for Biological Diversity.

February 11, 2011 – McNally Matter: **Response to Opposition to Intervention** filed.

February 15, 2011 – Wandendale Matter: **Opening Brief** filed in Superior Court appeal.

February 21, 2011 – *In re Delmarva IRP*, 2010-02 (DE Public Service Commission): **Petition to Intervene** filed on behalf of Sierra Club in order to participate in consideration of Delmarva Power 7 Light’s 2010 Integrated Resource Plan (the “Delmarva IRP Matter”). *See story in this Issue.*

March 3, 2011 – *Shenandoah Riverkeeper and Potomac Riverkeeper v. Ox Paperboard*, No. 3:11-cv-17 (US Dist. Ct. for Dist. of W.Va.): **Complaint** filed in Clean Water Act enforcement case for discharges from paper mill. *See story in this Issue.*

March 9, 2011 – Prime Hook Matter: **Public Comments** on Wetlands Permit submitted; **Public Hearing** on Wetlands permit.

March 17, 2011 – Wandendale Matter: **Response Brief to Cross-Appeal** filed.

March 24, 2011 – BMPA Matter: **Post-Hearing Brief** filed.

March 25, 2011 – Gadinski Matter: **Post-Hearing Brief** filed.

March 31, 2011 – McNally Matter: **Intervenor’s Brief on Merits** filed.

April 6, 2011 – Wandendale Matter: **Reply Brief** filed.

April 11, 2011— Delmarva IRP Matter: Attend **Public Workshop** on IRP.

April 13, 2011 – *In re Proposed Regulations of the Delaware River Basin Commission* (Delaware River Basin Commission): **Public Comments** on proposed regulations for Marcellus Shale gas drilling in the Delaware River Basin filed on behalf of Damascus Watch.

April 25, 2011 – Prime Hook Matter: **Rule 16 Conference** with the Court to schedule cross-motions for summary judgment.

April 26, 2011 – Update to *Citizens Guide to Strategic Lawsuits against Public Participation (SLAPP) in Pennsylvania* posted on Widener Environmental Law Center website.

May 11, 2011 – McNally Matter: **Oral Argument on Appeal**.

May 17, 2011 – *Delaware Dept. of Natural Resources and Environmental Control v. Sussex County*, No. 145, 2011 (Delaware Supreme Court): **Motion for Leave to File As An Amicus Curiae** in Support of Appellant’s Position filed on behalf of the Sierra Club in appeal of Superior court decision striking down buffer provisions of state regulations for protection of Delaware’s Inland Bays (“Inland Bays Matter”). *See story in this Issue*.

May 19, 2011 – Gadinski Matter: **Reply Brief** filed.

May 27, 2011 - Inland Bays Matter: **Reply Brief** in Support of Motion for Leave to File as Amicus Curie filed.

May 31, 2011 – Delmarva IRP Matter: **Public Comments** filed with PSC.

May 31, 2011 – **Request for Public Hearing** filed on behalf of Roy Whitaker with DNREC over Application to Revise State Wetlands Map concerning proposed development on the Nanicoke River in Sussex County, DE.

June 1, 2011 – BMPA Matter: **Reply Brief** filed.

June 1, 2011 – Prime Hook Matter: **Motion for Summary Judgment and Brief in Support** filed.

June 2, 2011 – **Public Comments on Request for Status Decision under Delaware Coastal Zone Act** filed with DNREC on behalf of Delaware Nature Society concerning oil recycling proposal of MWL Products, Inc. *See story in this Issue*.

June 6, 2011 – Heller Caves Matter: **2 Depositions** taken of PA Game Commission biologist and DEP permit writer (1 by Student Attorney Claire Gargiulo).

June 13, 2011—Inland Bays Matter: **Amicus Brief** filed after Motion for Leave to File granted.

June 15, 2011 – BMPA Matter: **Site Visit** by Judge.

And this is only the work that has been publicly filed—there was significant additional work done on behalf of Clinic clients that cannot be listed for client confidentiality reasons. Overall, the Clinic’s combined DE and Harrisburg work over the 2010—2011 academic year breaks down this way:

Fall 2010 Semester (July 1, 2010—December 31, 2010):

	Hours
Summer Interns	1298
Student Attorneys	1400
Clinic Director	326
Total	3024

Spring 2011 Semester (January 1, 2011—June 30, 2011):

	Hours
Summer Interns	171
Student Attorneys	1308
Clinic Director	503
Total	1964

2010– 2011 Academic Year Totals

	Hours
Summer Interns	1469
Student Attorneys	2708
Clinic Director	829
Total	4006

NATIONAL WILDLIFE REFUGE AGAIN THE FOCUS OF STUDENT ATTORNEY WORK

Student attorney Elizabeth Elidrissi played a central role in helping to represent Clinic clients on litigation over issues arising out of management efforts at the Prime Hook National Wildlife Refuge in Sussex County, DE.

In November 2009 a nor'easter breached the protective dunes at Prime Hook, allowing salt water from the Delaware Bay to enter into certain fresh-water impoundments at the Refuge. As a result, the Refuge decided to seek to plug the dune breach by scraping sand off the Refuge beaches and using it to rebuild the dune, not only on Refuge property but also on over 200 feet of private property. Clients, the Delaware Audubon Society and (PEER) objected to the proposed dune repair project primarily because the environmental impacts of scraping the sand off the beach – including the impacts on threatened or endangered species that nest on the areas to be scraped – had not been adequately analyzed prior to the decision to go

forward with the project. Thus, in November, 2010, the Delaware Audubon and PEER sued the Secretary of the Department of Interior and the Fish & Wildlife Service (who manage the Prime Hook Refuge) for failure to comply with the requirements of the National Environmental Policy Act (NEPA) by failing to do an Environmental Impact Statement and violations of the National Wildlife Refuge Systems Administration Act for the failure to make a determination that a dune repair project was compatible with the Refuge's purposes.

In order for the project to go forward, it needed a State permit under the Delaware Wetlands Act to remove the sand from wetland areas. Thus, the Clinic filed a request for a public hearing on the wetlands permit and submitted public comments on the permit at a public hearing in March, 2011. After the State wetlands permit was issued, the Clinic worked with Department of Justice attorneys in order to create an expedited schedule for cross motions for summary judgment to be filed and briefed during Summer 2011 in an attempt to have the issue ready for a judicial decision before a potential August 2011 start of the project at the Refuge.

Elizabeth was involved in drafting the initial complaint, drafting the request for a public hearing on the State wetlands permit, as well as the public comments submitted on that permit, participated in the Rule16 conference setting the briefing schedule for the cross motions for summary judgment, and engaged in important legal research on issues related to the summary judgment motions before she graduated in May.

This litigation is the third lawsuit related to activities at national wildlife refuges in the State of Delaware. The first was the precedent-setting challenge to farming at the Prime Hook Refuge. The second was a challenge to similar farming at Bombay Hook National Wildlife Refuge which resulted in a settlement. In both cases, the Clinic obtained relief that prevented any further farming until there was compliance with NEPA and the National Wildlife System Administration Act provisions.

DON'T FORGET TO CHECK OUT THE CLINIC'S PAGES ON THE ENVIRONMENTAL LAW CENTER'S WEBSITE, www.widenerELC.org. You can find the Clinic's Document Archive, Current Public Docket listing all pending public matters (updated monthly), Past issues of the *Clinic News*, and Information for students and prospective clients.

Of special interest is the feature on Harrisburg Student Attorney Jon Johnson and his work on Marcellus Shale issues posted in June 2011. See "Confronting Marcellus Shale Drilling Issues For Client Helps Clinic Student Develop Legal Skills" under the Recent Posts section at www.widenerELC.org.

TACKLING ENERGY ISSUES

Student attorneys William “Dan” Feehan and Jasmine Hardesty assisted client Sierra Club in commenting on the proposed Integrated Resource Plan of Delmarva Power & Light.

Pursuant to Delaware law and regulations, Delmarva is required ever 2 years to submitted an Integrated Resource Plan explaining how it intends to provide power to Delaware customers over the next 10 years. As part of this IRP process, Delmarva is required to look not only at the cost from an economic standpoint but also at the environmental impacts and externalities (that is, costs incurred or saved) by particular mixes of types of power utilized by Delmarva. The resulting IRP submitted by Delmarva in December 2010 is an extensive document with 10 appendices covering various aspects of this complicated analysis.

In early 2011, the Sierra Club approached the Clinic to represent it before the Delaware Public Service Commission on issues related to Delmarva’s IRP. Thus, Dan and Jasmine had to draft the petition to intervene in the IRP proceeding and, once intervention was granted, to draft the Comments of the Sierra Club on the IRP. As a result, Dan and Jasmine dug into the data, consulted with the client, and pulled together comments for submission. Ultimately, the Comments of the Sierra Club were submitted to the PSC by the Clinic on May 31, 2011.

The Comments focused primarily on the recognition by Delmarva that shifting from coal-based electricity would result in significant savings in terms of lives and health that Delmarva estimated to be from \$1.8 to 4.3 billion in value. The Comments noted that substantial economic effect of shifting from coal-based power noted that the calculation did not include certain pollutants (like mercury) that would likely make the number be even higher, and urged the PSC to utilize the externality analysis as a factor driving future Delmarva decisions about fuel use and mixes.

Both Dan and Jasmine found that the effort to understand the issues and advocate for the client were valuable lessons from their Clinic experience.

SUMMER INTERN HELPS DEFEND DELAWARE COASTAL ZONE

Summer Intern Martin Reap drafted public comments on a Request for Status Decision for an oil recycling facility in Delaware’s coastal zone.

The proposed facilities operator, MWL Products, Inc., wanted to build a proposed facility at the DuPont Chambers Work site in New Jersey that would convert “centerfuge oil” to boiler fuel. 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, MWL 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.

(Although located in New Jersey, the facility was subject to the Coastal zone Act because of a pier that would extend into the Delaware River—which is subject to regulation because that portion of the River is in Delaware. This regulatory authority was confirmed by the US Supreme Court in its 2008 ruling in *New Jersey v. Delaware*.)

Martin’s comments focused on the application of the Coastal Zone Act prohibition against “heavy industry.” With the help of Clinic Director Ken Kristl, Martin focused on statutory language and a ruling from the 1970s in which a Texaco oil recycling facility was barred on the basis of being heavy industry under the statute. Martin’s comments argued for the consistent application of this precedent.

“This case is a great example of how a summer intern can get right into the thick of Clinic work,” Director Ken Kristl said. “Martin jumped right in and created the comment document we sent to DNREC.”

STUDENT ATTORNEYS HELP CHALLENGE WASTEWATER TREATMENT PLANT

Several student attorneys assisted in representing the Delaware Chapter of the Sierra Club in challenging a Coastal Zone Act permit issued for the building of the Wandendale Wastewater Treatment Plant in Sussex County, Delaware.

Under Delaware’s Coastal Zone Act, appeals of the issuance of a Coastal Zone Act permit are made to the Coastal Zone Industrial Control Board and operate on an extremely compressed, 60-day appeal-to-decision timetable. As a result, the initial appeal and evidentiary hearing was filed on August 10, 2010 and the evidentiary hearing before the Board was held September 16, 2010. Student attorneys Christine Harris, John Cecere, John Dillon and Corey Bolander all assisted Clinic Director Kenneth T. Kristl in preparing for the September 16 hearing. In addition, Clinic student attorneys Andrew Lo and Sunny Yang attended the hearing.

The issue before the Board in the permit appeal related to the status of the Wandendale facility under the Coastal Zone Act. During the hearing before the Board, the Clinic argued that the Wandendale facil-

ity satisfied the statutory definition of heavy industry (an prohibited under the Act), and that the permit issued did not satisfy statutory requirements if the Board instead found that the facility was a manufacturing use. On October 11, 2010, the Board issued its written memorandum decision upholding the permit. On behalf of the Sierra Club the Clinic therefore appealed the Board's decision to the Delaware Superior Court.

In the Superior Court, the Clinic raised not only its heavy industry and permit arguments, but also a unique procedural issue arising out of the fact that only 4 of the 9 members of the Board signed the written decision. student attorneys Christine Harris and John Cecere played important roles in generating drafts of the brief and formulating arguments ultimately made to the Court.

STUDENT ATTORNEYS PREPARE AMICUS BRIEF FOR DELAWARE SUPREME COURT

Student attorneys Christine Harris and Dan Coleman played a central role in the Clinic's drafting of an amicus brief for submission to the Delaware Supreme Court on an appeal of Delaware regulations.

The appeal arose out of Delaware's attempts to reduce nutrient pollution in the Inland Bays located in Sussex County, Delaware. DNREC had issued the regulations (called the Inland Bays Pollution Control Strategy), and included within the regulations a requirement that a buffer of 100 feet exist between the waterways and any development that might take place. The purpose of such a buffer is to filter and capture both nutrient and sediment pollutants before they enter the waterway. The regulations were challenged by Sussex County and by private developers on the grounds that the buffer requirements were an attempt by the State of Delaware to interfere with Sussex County zoning authority that had set a 50 foot buffer. The Superior Court of Delaware agreed with the County and developers and struck down the buffer requirements in the Inland Bays PCS. DNREC appealed that decision to the Supreme Court.

In an effort to support DNREC's regulations identify the broader policy impacts that the Superior Court's ruling may impose on environmental regulation in the state of Delaware, the Delaware Chapter of the Sierra Club asked the Clinic to submit an *amicus curiae* (friend of the Court) brief supporting the regulations. Christine and Dan set to work on developing both the necessary motion for leave to file an amicus curiae brief and the brief itself. They helped to develop arguments that show the logical extension of the Superior Court's reasoning would undermine State environmental regulation.

The motion for leave was filed on May 17 and was opposed by the private developers. The Supreme Court granted the motion and the *amicus* brief was filed with the Court on June 13.

SUMMER INTERNS HELP KEEP CLINIC RUNNING WHILE GAINING VALUABLE EXPERIENCE

13 summer interns – 8 in Delaware and 5 in Harrisburg – helped keep the Clinic running during Summer 2011. 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 Sean Devlin, Aqua Etuk, Emina Henne, Edward Henry, Edward Hughes, Martin Reap, Joseph Valenza, and Hans Wetzel. The Delaware interns worked on research projects, wrote memos, letters, public comments, and drafted pleadings, and had the opportunity to attend client meetings. In Harrisburg, J.D. students Brittany Berenato, Michael Kearney, Ryan Molitoris, Langdon Ramsburg, and Alex Rosenbaum 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.”

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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 or contact Professor Kristl (477-2053 or at 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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