



In This Issue:

- **ELC Coastal Zone Colloquium**
- **Law Professors Contribute to New Documentary Film**
- **Clinic student develops legal skills while confront Marcellus Shale drilling issues**
- **Environmental law professor contributes to national report on sustainability to EPA**
- **Environmental Law Clinic files Amicus Brief with Delaware Supreme Court**

Widener Law marks 40th anniversary of Delaware's Coastal Zone Act

Law is Delaware's most celebrated, controversial

Widener Law will mark the 40th anniversary of one of Delaware's most controversial – and some would say important – environmental laws with a daylong event that is open to the public. The Delaware Coastal Zone Act represented the first comprehensive coastal land-use law in the world aimed at curbing industrial development within a coastal area. The law forbids new heavy industry and bulk transfer facilities along the state's fragile coastline.

"The program will provide a neutral forum for conversations about this historic law, as well as the opportunities it provides and challenges it faces over the next 40 years," said Professor Jim May, the Center's Co-Director and Colloquium Chair.

The Widener Law Environmental Law Center will present the colloquium, "Delaware Coastal Zone Act, Past, Present and Future," on Friday, Sept. 30, from 9 a.m. to 5 p.m. in the Ruby R. Vale Moot Courtroom. The event is co-sponsored by the Delaware Humanities Forum, the Delaware State Bar Association Section on Environmental Law, and the student-run Widener Environmental Law Society.

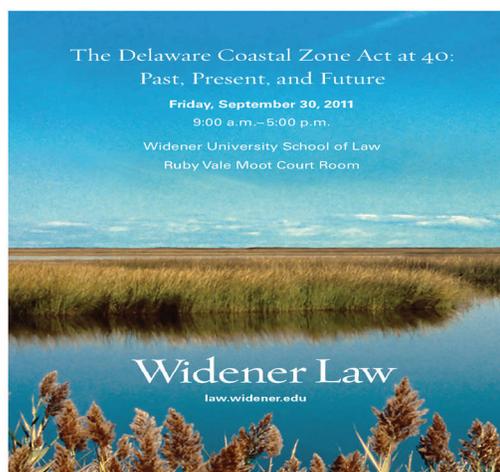
The CZA was a controversial law. It was heavily opposed by the industrial development community in general and Shell Oil and the Nixon Administration in particular. With the endorse-

ment of then Governor Russell Peterson, it passed in the Delaware Legislature by narrow margins.

Forty years on, the CZA continues to be what might be the state's most celebrated and controversial law. Proponents of its success point to a coastline that looks much as it did 40 years ago, boasting a 100-mile stretch that lacks industrial development from Delaware City to the southern tip of the State. The coast's quality contributes to tourism, property values and quality of life. Industrial development interests, however, contend that the CZA is unnecessarily rigid and starves the state of business and employment opportunities and tax revenues. Either way, the CZA has served as a model to be examined across the country and the world.

Former U.S. Rep. Mike Castle is the keynote speaker. The morning will include presentations about the law's history, how it works, and emerging challenges. The afternoon will feature breakout sessions and a screening of the documentary film, "An Evolving Legacy: Delaware's Coastal Zone Act," facilitated by the film's writer and director, Michael Oates of 302 Stories Inc. The day will include a "town hall meeting" moderated by retired Delaware Superior Court Judge Susan Del Pesco, an alumna of the law school.

This program aims to examine the CZA's past, present and future.



Clinic student develops legal skills while confronting Marcellus Shale drilling issues for client



The [Environmental and Natural Resources Law Clinic](#) had barely opened on the Harrisburg campus when the second phone call to its Environmental Help Line influenced the course of student Jon Johnson's future.

Johnson, who was one of a handful of students who helped expand the Clinic to the Harrisburg campus, knew nothing about hydraulic fracturing, or "fracking" – the process used to unearth natural gas from shales deep beneath the earth's surface. But the call from a resident of Damascus, Pa. near the Pennsylvania-New York border in Wayne County, changed everything.

Weeks later, Johnson, fellow clinic intern Claire Gargiulo and Associate Professor and Clinic Director [Kenneth T. Kristl](#) were sitting in a Wayne County, Pa. living room surrounded by about a dozen concerned citizens who were behind that phone call. The citizens had been approached by gas companies who wanted to drill on their properties, or lived near people who were selling drilling rights. As he gazed out at the Delaware River from a picture window in that living room, Johnson began to learn about the risks and damage that can accompany drilling.

"I spent many hours after that throughout the summer, trying to find any way I could to help them," Johnson said, estimating he has since logged about 150 volunteer hours in service of that one Clinic client. "I do research everyday on gas drilling and hydro fracking."

Fracking involves injecting a complex mix of chemicals deep into the earth to free the natural gas, which is trapped 500 to 8,000 feet below in the geologic formation known as Marcellus Shale. The shale underlies much of Pennsylvania. Nationally, fracking and related gas-drilling activities have led to contami-

nated water supplies and been linked to public health problems. The Oscar-nominated "Gasland" documentary chronicled the tribulations of people who live near natural gas wells.

The Clinic took on the residents as clients. Johnson began writing letters to the township, arguing they were letting gas companies drill in violation of township zoning. The Clinic threatened to sue.

Through his research, Johnson learned the clients lived in the Delaware River Basin, an area of more than 13,000 square miles that includes the longest un-dammed river east of the Mississippi and 216 tributaries. It provides water for drinking, agricultural and industrial use to more than 15 million people. The Delaware River Basin Commission is the regional body that regulates the river system.

Johnson learned the commission, made up of the governors of the four basin states – Delaware, New Jersey, Pennsylvania and New York – and the commander of the U.S. Army Corps of Engineers North Atlantic Division, already had two pending applications for natural gas drilling.

As the Clinic's clients formed into a group known as Damascus Watch, the commission moved to put all drilling applications on hold while it developed regulations that would govern the practice. And, it invited public comments.

The result was a nine-page public-comment document completed two months later that made two major arguments. First, it maintained the proposed regulations would violate the commission's compact – designed to create a uniform set of rules throughout the Delaware River Basin – by giving regulatory control to the individual compact states. Second, it argued the commission cannot enact regulations because it has failed to complete an assessment of what drilling would do to the environment, as required by federal law. Subsequent to the filing of the Clinic's comments, the State of New York sued the DRBC in New York federal court on the basis of the same failure to perform an environmental assessment

Johnson said the experience taught him to write concisely, avoid legalese and stick to the main issues that have the best chance of winning.

"More than 90 percent of the final document was written by John," Kristl said. "He kept generating drafts and we would talk about his points and help him focus the argument and make it stronger. As the document evolved, I could see Jon's skill and confidence grow. This became a real capstone experience in Jon's legal education."

"Cases like this demonstrate how Clinics play such a key role in our service-learning approach," Kristl said. "Jon represented real people, he honed his research and legal writing skills and he worked to make a difference in the community. Jon grew as a lawyer and is better equipped for the legal career that awaits him. That's rewarding for him and fulfilling for me as the professor who guided him."

Reach the Environmental and Natural Resources Law Clinic Environmental Help Line at 888.953.6853.

Environmental Law Clinic Files Amicus Brief with Delaware Supreme Court

The Delaware Supreme Court recently granted the Delaware chapter of the Sierra Club the right to file an amicus curiae brief in support of an appeal by the Delaware Department of Natural Resources and Environmental Control (DNREC) in the case of *Sussex County v. the State of Delaware*, DNREC.

The Delaware Superior Court found in favor of Sussex County and several private landowners in March, ruling that DNREC's regulations instituting land buffers and zoning restrictions in the Inland Bays watershed constituted zoning. DNREC appealed the Superior Court's ruling to the Delaware Supreme Court, and on May 17th, Associate Professor [Ken Kristl](#), the Director of Widener Law's [Environmental and Natural Resources Law Clinic](#), filed a motion on behalf of the Sierra Club for leave to file as an amicus curiae in support of DNREC's position.

"The clinic is actively involved in trying to ensure that the environmental laws are able to provide the most protection that they can," said Professor Kristl.

The motion to file cited the Sierra Club's longstanding commitment to the protection of Delaware's natural environment and its knowledge of the regulatory process that led to the issuance of the PCS regulations. On June 13th, the Delaware Supreme Court granted the motion to allow the brief.

"We believe that the Superior Court made a mistake," Kristl said. "The implications of the decision could undermine other environmental regulations. We wanted to make sure that the Supreme Court considers that when they decide whether or not to overturn the decision."

Law professors contribute to new documentary film on Coastal Zone Act

Two Widener Law professors will be featured in a new documentary film premiering Friday that marks the 40th anniversary of Delaware's Coastal Zone Act.

Professor [James R. May](#), Co-Director of the Widener Environmental Law Center, and Associate Professor [Kenneth T. Kristl](#), who directs the school's [Environmental and Natural Resources Law Clinic](#), were both interviewed for the film, "Delaware's Coastal Zone Act: An Evolving Legacy."

"They provided historical narrative," filmmaker Michael Oates said. "They know the history and could comment objectively."

The film recounts the dramatic struggle of the late Gov. Russell W. Peterson to craft visionary environmental legislation to preserve Delaware's shoreline, its 40-year history and the ongoing challenges Delawareans face in the struggle to balance the desire for industrial development with a love for unspoiled natural habitats. Oates produced the documentary with support

from Berkana Center for Media and Education, the Delaware Humanities Forum and E. I. du Pont de Nemours & Company.

"The Coastal Zone Act was and is unique - no other coastal state had the wisdom or foresight to protect its coastal areas like Delaware did back in 1971," Professor Kristl said.

Oates made the film through his company 302 Stories, which documents the stories of the people and places of Delaware.

May added: "This was a great opportunity to help tell the story behind one of the nation's most important state environmental protection and land use laws."

Widener Green Team Continues Work to Help Make Widener Law More Efficient and Economical

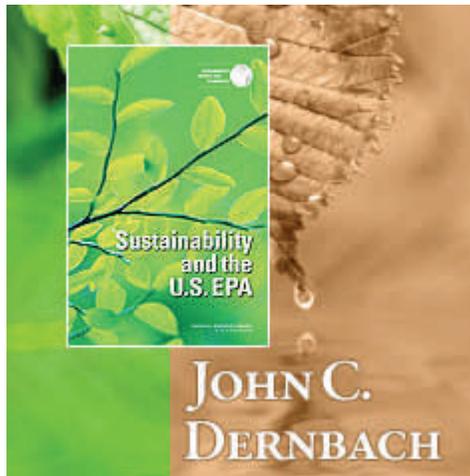
The Green Team is a multidisciplinary committee of administrators, engineers, professors and staff who work together to identify environmentally friendly improvements at the law school facility.

The Green Committee plans to request approval of a "green" capital project for Summer 2012. Currently, the Committee is evaluating three suggestions. The first project involves installation of a electric meter on each campus building in order to track the use of electricity by building (a capacity currently lacking). Another suggestion is to start deploying variable frequency drives on HVAC equipment to monitor and modulate electrical consumption depending on temperature and demand. A third proposal concerns an efficiency audit of the campus internal and external lighting systems and the development of a plan for upgrades as needed with a view to enhancing energy conservation.

Other ongoing Committee initiatives include the deployment of motion sensors in offices and common areas that turn off overhead lighting when the space is unoccupied.

Finally, the Committee is evaluating environmentally-friendly commencement apparel to provide for students at graduation. Two types of gowns are under evaluation. The first is made of wood fibers and is compostable, so that when the gown is disposed of properly in a landfill, it will decompose with very little residue. The second type of gown is made almost entirely of recycled plastic bottles. The cost is believed to be competitive with the current gowns which are used by the school.

Environmental law professor contributes to national report on sustainability for EPA



Widener Law Distinguished Professor [John C. Dernbach](#) has contributed to a new report from the National Research Council that presents a framework for incorporating sustainability into the U.S. Environmental Protection Agency's principles and decision-making. It was requested by the EPA and is intended to help the agency better assess the social, environmental, and economic impacts of various options as it goes forward.

The report, "Sustainability and the U.S. EPA," was released Tuesday, Aug. 2. It is the work of the Committee on Incorporating Sustainability in the U.S. Environmental Protection Agency, a 12-member group that includes Dernbach. He teaches on Widener's Harrisburg, Pa. campus and began his work with the committee in December.

The report's recommended sustainability approach both incorporates and goes beyond an approach based on assessing and managing the risks posed by pollutants that has largely shaped environmental policy since the 1980s. Although risk-based methods have led to many successes and remain important tools, the committee said, they are not adequate to address many of the complex problems that put current and future generations at risk, such as depletion of natural resources, climate change, and loss of biodiversity. Moreover, sophisticated tools are increasingly available to address cross-cutting, complex, and challenging issues that go beyond risk management.

The report recommends that EPA formally adopt as its sustainability paradigm the widely used "three pillars" approach, which means considering the environmental, social, and economic impacts of an action or decision. Health should be expressly included in the "social" pillar, the committee recommended. The report also maintains that the EPA should articulate its vision for sustainability and develop a set of sustainability principles that would underlie all agency policies and programs.

Dernbach's 2009 book "Agenda for a Sustainable America" is a comprehensive assessment of recent American sustain-

ability efforts based on contributions from academic and other experts from around the country. It also contains recommendations for the next five to 10 years. Dernbach approached the project with the intention of providing a broad framework for moving the United States toward sustainability.

Dernbach teaches and writes in the areas of environmental law, property, international environmental law, climate change, and sustainability and the law. He was quoted prominently in Thomas L. Friedman's latest book "Hot, Flat, and Crowded: Why We Need a Green Revolution – and How it Can Renew America." He joined the Widener Law faculty in 1993. Dernbach co-directs the Widener Environmental Law Center with Professor Jim May.

Clinic Corner

The Clinic website now offers the Clinic's public docket list of all matters in which the Clinic has appeared at <http://blogs.law.widener.edu/envirolawcenter/environmental-law-clinic/clinic-current-public-docket/>. The list is updated monthly. Check out the Clinic's pages on the ELC website (www.widenerELC.org) to find our Citizen Guides, copies of documents filed by the Clinic, and other useful information. Our Fall 2011 Newsletter lists Clinic action during the 2010-11 year — including a list of 57 different activities like hearings, briefs, filings, arguments and public comments. The Environmental Help Line (1-888-953-6853) continues to assist PA citizens and organizations address environmental problems.

The Widener University Environmental Law Center harnesses the expertise of the seven environmental law faculty Widener has on two campuses to benefit both its students and the public. The Center launched in October 2009 under the motto "Law for Sustainability." The center creates learning and service opportunities for students and helps public and private decision makers solve legal problems relating to environment, energy and climate change.

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