



Happy Earth Day and Have a Good Summer

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Professor May Receives Alumni Achievement Award from Pace Law



Pace University School of Law has awarded Professor of Law **James R. May** the Nicholas A. Robinson Alumni Achievement Award for his contributions to the field of environmental law.

May earned his LL.M from Pace in 1991, where he was the Feldshuh Environmental Fellow and graduated first in his class. The ceremony

took place in White Plains, New York on March 12, 2013. May remarked, "I am humbled and honored by this award, named after a hero of mine."

Also co-director of Widener's Environmental Law Center and an adjunct Professor of Graduate Engineering at Widener's Chester campus, May has litigated more than 200 public interest environmental claims and has written extensively in the areas of environmental and constitutional law. He is a Fellow of the American College of Environmental Lawyers, a Faculty member to the National Judicial College, and has served as a Council Member to the governing board of the ABA Section on Environment, Energy and Resources. May has received several other awards during his career, including from the Sierra Club and the American Canoe Association.

State Awards Grant to Clinic to Study Adaptation to Sea Level Rise

The Widener Environmental and Natural Resources Law Clinic has been awarded a Coastal Management Assistance Grant from the Delaware Coastal Programs of the Delaware Department of Natural Resources and Environmental Control to study the emerging issue of sea level rise in Delaware. The grant proposal, titled "Assessing the Legal Toolbox for Sea Level Rise Adaptation in Delaware: Options and Challenges for Regulators, Policymakers, and the Public," will provide both an analysis of the current Delaware legal tools available for implementing adaptation strategies and guidance on how to remove barriers to implementing recognized adaptation strategies.

"We are very excited that the Delaware Coastal Programs has chosen the Clinic to provide this comprehensive legal analysis. Consistent with the core mission of Widener's Environmental Law Center, the proposal is designed to gather information so that regulators, policymakers, and the public can understand the different strategies for adaptation and be better informed about making the policy choices that will need to be made in the coming years," said **Clinic Director Kenneth Kristl**. "Our goal is to be descriptive and to provide options so that decisionmaking in Delaware is informed and thoughtful. At the same time, Clinic students and staff will have the opportunity to engage in policy analysis on one of the most important issue of the 21st century."

To meet its grant obligations, the Clinic will perform work to generate a final report that provides analysis in 3 phases. In phase one, the Clinic will analyze different recognized adaptation strategies and the legal issues that those strategies may create. In the second phase, the Clinic will look at existing Delaware law at the state and local levels to determine which of the recognized adaptation strategies can be implemented and which strategies are currently subject to legal barriers – either laws preventing the strategy or simply the lack of laws under which a strategy can be implemented – so that the current legal toolbox is described and analyzed. In the third phase, the Clinic will focus on what would need to be done to overcome the identified barriers to implementation of the identified adaptation strategies. The final report due March 1,

Agenda 21: A Guide for the Perplexed

By Prof. John Dernbach

What is Agenda 21 and why does it matter?

Agenda 21 is a comprehensive public strategy for achieving sustainable development. It was endorsed by the U.S. (under the presidency of George H.W. Bush) and other countries at the U.N. Conference on Environment and Development in 1992. Agenda 21 stands for two broad propositions: 1) environmental goals and considerations need to be integrated into all development decisions, and 2) governments and their many stakeholders should work out the best way to integrate environment and development decisions in an open and democratic way.

Agenda 21 contains an almost encyclopedic description of the best ideas for achieving sustainable development that existed in 1992. On land use, it specifically counsels respect for private property. It contains a detailed description of the role that many nongovernmental entities, including business and industry, farmers, unions, and others, should play in achieving sustainability.

Ironically, Agenda 21 was never taken seriously as such in the United States; there has never been much enthusiasm here for following international agreements. It is not a legally binding treaty; it contains no provisions for ratification, for example. Agenda 21 also says nothing about new ideas like green building, smart growth, and smart meters. But sustainable development as an idea—achieving economic development, job creation, human wellbeing, and environmental protection and restoration at the same time—is gaining traction.

In response, a well organized campaign against Agenda 21, spread by the Tea Party, Glenn Beck, and the John Birch Society, is attacking sustainability by making false statements about Agenda 21. They say that Agenda 21 is opposed to democracy, freedom, private property, and development, and would foster environmental extremism. Far-fetched, you say? Well, consider this: in 2012, Alabama adopted legislation that prohibits the state or political subdivisions from adopting or implementing policies “that infringe or restrict private property rights without due process, as may be required by policy recommendations originating in, or traceable to ‘Agenda 21’” (Ala. Code § 35-1-6). Similar bills have been introduced elsewhere, and should be opposed.

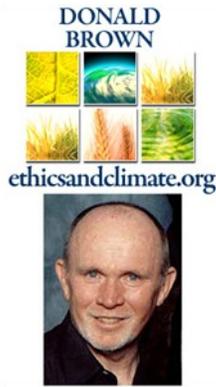
Professor Speaks at Symposium Marking 40th Anniversary of Clean Water Act

On February 25, **Prof. May** delivered *Clean Water Connections: Implementing the Clean Water Act in the Chesapeake and Mid-Atlantic Region* at the Maryland Water 2012-13 Symposium at the University of Maryland, College Park. This interdisciplinary conference marked the 40th anniversary of the Federal Water Pollution Control Act Amendments of 1972 -- better known as the Clean Water Act (CWA). The symposium aimed to provide an overview of the CWA's enactment, implementation, and status, and included speakers with expertise in sociology, anthropology, and economics contributing their perspectives on how communities are affected by, and respond to, environmental challenges and proposed or prescribed solutions.

May talked about the history behind and enactment and implementation of the CWA in the Chesapeake Bay and beyond. He said: “The Clean Water Act is really two stories. The first involves a breathtaking combination of engineering grit, bipartisan action, and political will. The second involves the gap that still remains between water that is too polluted and the potential for sustainable action for future generations.”

This symposium drew an audience of environmentally-minded students in all fields of study, scientists and engineers interested in learning about the societal context of their work, and water resources researchers, policymakers and practitioners interested in understanding and building connections among all the sciences.





Distinguished ELC Speaker Series features Scholar in Residence Donald Brown.

Donald Brown, Scholar in Residence for Sustainability Ethics and Law, spoke to faculty on the Harrisburg Campus, and Delaware Campus via teleconferencing, on April 18. His topic was “How U.S. Domestic Climate Law Needs to Respond to Emerging International Climate Law.” Mr. Brown was Associate Professor of Environmental Ethics, Science, and Law at Penn State, an environmental lawyer for the states of Pennsylvania and New Jersey, and Program Manager for UN Organizations at the U.S. EPA.

Environmental Clinic Award Recipients

Three Widener Law students have earned awards. First, 3L Clinic Student Attorney **Julie Nugent** has been awarded the Jerry Shields Environmental Award for 2013. This award, sponsored by the Greenwatch Institute, is given annually to a Clinic student who exhibits exemplary work and service in the Clinic. The Award honors the memory of Jerry Shields, an environmental activist in Delaware, and includes both the recognition and a stipend.

Second, 2L **Justin Turner** has been awarded the Charles Zency Environmental award, another award sponsored by Delaware Greenwatch. It is awarded to a second year student who for achievement with the Environmental Clinic. Justin is a 2012 summer volunteer intern in the Environmental Law Clinic, a Fall 2013 Clinic intern, and the incoming 2013-14 President of the Environmental Law Society student organization.

Third, 3L Clinic Student Attorney **William Kassab** has been awarded the Charles Zency Memorial Award. This award is sponsored by the children Chuck Zency to honor a third year law student who worked in the Clinic. Congratulations!

Professor Publishes Book, “Acting As If Tomorrow Matters: Accelerating Progress Toward Sustainability”



It is increasingly clear that the modest progress achieved by the United States since the Earth Summit is not caused by the absence of specific and feasible policy recommendations. “We already know more or less what we need to do; but we are much less clear about how to get it done,” says **John Dernbach, Distinguished Professor and Center Co-Director**.

In *Acting as If Tomorrow Matters*, the third in a trilogy of books on U.S. sustainability by Dernbach, more than four dozen experts in a variety of fields provide a how-to-guide for making the U.S. more environmentally sustainable. They survey what has happened in the United States, describe the main types of obstacles that have impeded sustainability in the U.S. and provide a detailed explanation of how to accelerate progress and overcome those obstacles.

In his exclusive series for CSRwire, Dernbach summarizes the key findings of the book and offers a crash course in how to make a greater variety of sustainable decisions more attractive, how law can provide a better enabling environment for sustainability, and how public opinion and leadership can be more effectively engaged to support sustainability.

Environmental Law Certificate Recipients

Seven graduating students have earned a Certificate in Environmental Law. This program requires achievement in coursework, intern or externships, and a scholarly research paper. 2013 certificate recipients are: **Danielle DiPillo, Christopher Hine, Jose Jovin, William Kassab, Rachel Kemmey, Julie Nugent, and Joseph Valenza**. Congratulations!

Environmental Law Society Activities

The Environmental Law Society at Widener Law continues to exemplify the school’s commitment to volunteer service through engaging in several successful community service events. The Society partnered with the Alternative Dispute Resolution Society to collect winter clothing for those in need in the Philadelphia area. In April, the Society’s members coordinated a cleanup in Battery Park, Newcastle, where numerous bags of trash and recycling were removed from nearly a mile of waterfront. Under incoming President **Justin Turner**, the Society is planning a series of talks increasing awareness of topics affecting the state of environmental law, such as climate change and rising tides.

Faculty Updates



In March 2013, **Prof. David R. Hodas** delivered a talk, *The Rule of Law, the Rules of Law, the Law of Rules*, at the University of Southern California Information Systems Institute. In May, Prof.

Hodas will present *Climate Change Law and Scientific Denialism* at Williams College. In June, he will present a plenary session paper on sustainable energy law and climate change at the 2013 IUCN Academy of Environmental Law Colloquium at the University of Waikato, Hamilton, New Zealand.

Prof. Hodas' most recent law article is *Law's Blind Spot: Ecosystem Energy Services*, 16 POTCHEFSTROOM ELECTRONIC LAW JOURNAL (Spring 2013). Prof. Hodas has also revised and updated his chapter, *State Initiatives* to be published in the forthcoming 2nd edition of GLOBAL CLIMATE CHANGE AND U.S. LAW (M. Gerrard and J. Freeman, eds).

Dean of Faculty and Prof.

Andrew Strauss has produced a Cambridge University Press book (coedited with Wil Burns), *Climate Geoengineering: Philosophical Perspectives, Legal Issues, and Governance Frameworks*, to be published June 2013.



Distinguished Prof. Jean M. Eggen has two forthcoming articles, which will be published this spring. The first is *Medical Malpractice Screening Panels: An Update and Assessment*, which will be published by the

American Health Lawyers Association (AHLA) in their scholarly journal, the *Journal of Health & Life Sciences Law* (forthcoming June 2013). The second article is *Navigating Between Scylla and Charybdis: Preemption of Medical Device*



"Parallel Claims," which is forthcoming in the Spring 2013 issue of the *Journal of Health and Biomedical Law*.

Center Co-Director Prof. Jim May's recent publications include *Civil Litigation as a Tool for Regulating Climate Change*, 46 Val. U. L. Rev. 356 (2012), and *American Electric Power v. State of Connecticut, Brief of Law Professors as Amici Curiae in Support of Respondents*, 46 Val. U. L. Rev. 401 (2012). May's forthcoming articles include *What Does the HealthCare Ruling Mean for Environmental Law?: Commerce, Necessary and Proper, and Tax and Spending Clauses*, 43 Env'tl. L. ____ (2013); *The Origins of Constitutionally Protected Procedural Rights*, 41 Ore. L. Rev. ____ (2013).

May's presentations include *Developments Before the U.S. Supreme Court in Environmental Cases*, for the Pennsylvania Bar Institute's 2013 *Environmental Law Forum* in Harrisburg, PA (April 2013); *Procedural Environmental Rights Worldwide* at the Annual Public Interest Law Conference, University of Oregon (March 2013); and *Implementing the Clean Water Act in the Chesapeake and Mid-Atlantic Region: Litigation in the 1990's and 2000's*, at the University of Maryland (February 2013).

Prof. Erin Daly, H. Albert Young Fellow in Constitutional Law, recently published *Constitutional Environmental Rights and Liabilities*, 3 Eur. J. Env. Lia. 75 (2012) (with **Jim May**). Forthcoming works include *Procedural and Human Rights in Constitutional Context*, IUCN Academy (2014) (with **Jim May**).

Vice Dean and Professor of Law Patrick Kelly's article, "Trade, Globalization and Economic Policy," will be published as the first chapter in, *International Trade Law and the WTO* (eds. Carr, Alam and Jahid Bhuiyan) on April 26, 2013. Duke Law School has invited Prof. Kelly to speak at their international conference on international legal theory to be held at the University of Geneva on July 12-13. He will speak on the first Panel: Historical Origins of the *Opinio Juris* Requirement.

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