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## ENVIRONMENTAL CLINIC FILES ACTION TO HAVE PENNSYLVANIA REGULATE CLIMATE CHANGE GASES

On December 20, 2012, Widener's Environmental and Natural Resources Law Clinic, along with Widener Professor James May and Jay Duffy of the Clean Air Counsel, filed simultaneous appeals designed to determine whether the Commonwealth of Pennsylvania has a state constitutional duty to protect future generations from the effects of climate change. The Clinic's client, Ashley Funk, is an 18 year old citizen from Mount Pleasant, PA.

The appeals, filed as a Petition for Review in the Commonwealth Court of Pennsylvania and an appeal before the Pennsylvania Environmental Hearing Board, challenge a decision by the Pennsylvania Department of Environmental Protection (DEP) rejecting a Petition for Rulemaking designed to impose emission limits on greenhouse gases (GHG) and require GHG inventories in the Commonwealth. DEP's reasons for rejecting the Petition for Rulemaking implicate the provisions of Pennsylvania's constitution recognizing that the air and other natural resources of the Commonwealth are held in public trust for benefit of present and future generations.

The appeals are part of a larger national Atmospheric Trust Litigation effort. This action is the 14<sup>th</sup> action in the

dozens of administrative actions in other states in the country on behalf of youth pleading for their rights.

In October 2012, Ms. Funk filed a petition for rulemaking to the DEP in an attempt to get the state to issue rules on carbon emissions and reporting, as part of the TRUST Campaign, a national youth-led effort. But, after reading the rejection of her petition, Ashley decided to file a lawsuit, hoping that the Commonwealth Court would rule that Pennsylvania has to achieve its constitutional duty to protect the public's right to a healthy atmosphere and a stable climate. Pennsylvania is the fourth largest emitter of greenhouse gases in the nation, and Ms. Funk is determined to take action to reduce emissions in the Commonwealth.

In its determination not to proceed with Ashley's petition, DEP also relied on a provision in the Commonwealth's Air Pollution Control Act that provides that the Commonwealth may not issue rules stricter than U.S. EPA's rules on ambient air quality standards.

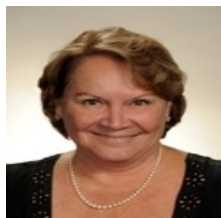
Whether that statutory provision is constitutional and whether DEP has properly interpreted it are questions now before the Commonwealth Court and EHB.

Led by Professor Kristl, the Widener Environmental and Natural Resources Law Clinic is serving as lead counsel in these concurrent actions. Professor May will assist. "Climate Change is the leading environmental and public health issue in the 21<sup>st</sup> century," said Kenneth T. Kristl, Associate Professor of Law and Director of Widener's Environmental and Natural Resources Law Clinic. "Both I and my colleagues in Widener's Environmental Law Center, including Professors Dernbach, Hodas and May have been leaders in the study of legal issues concerning climate change."

He continued: "I look forward to focusing the energy of our student clinic interns on making a case that the Commonwealth ultimately has a constitutional duty to help protect the planet by regulating greenhouse gas emissions."

## Environmental Law Center Series Welcomes 3 Distinguished Speakers

The Center is delighted to welcome three speakers during the Spring, 2013 semester as part of our ongoing series:



***Dinah L. Shelton***  
**Wed., Feb. 6 Noon-1:30**  
**Delaware Campus**

### **“Environmental Rights in the Jurisprudence of Human Rights Bodies”**

Dinah Shelton holds the Manatt/Ahn Professorship in International law at the George Washington University Law School, where she has taught since 2004. She is the author of *Protecting Human Rights in the Americas*, *Remedies in international Human Rights Law*, and the 3-volume *Encyclopedia of Genocide and Crimes against Humanity*. In 2006, Shelton was awarded the Elisabeth Haub Prize for Environmental Law. She is a member of the Inter-American Human Rights Commission, for which she has served as president since 2010.



***David Hunter***  
**Tues. Feb. 19 4:00—5:30**  
**Harrisburg Campus**

### **“The Future of the International Climate Change Regime: A Tale of Two Approaches”**

David Hunter is Professor of Law, Director of the International Legal Studies Program and Director of the Program on International and Comparative Environmental Law at American University’s Washington College of Law. He currently serves on the Boards of Directors of the Environmental Law Alliance Worldwide-US, EarthRights International, the Project on Government Oversight, and the Center for Progressive Reform.



***Donald A. Brown***  
**Thurs. April 18 4:00—5:30**  
**Harrisburg Campus**

### **“How U.S. Domestic Climate Law Needs to Respond to Emerging International Climate Law”**

Donald Brown is Scholar in Resident for Sustainability Ethics and Law, Widener School of Law. He has been an 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.

## Professor Dernbach Visits Cambridge to Study Climate Jurisprudence



*Distinguished Professor John C. Dernbach with Dr. Markus W. Gehring, deputy director of the Centre for European Legal Studies at the University of Cambridge.*

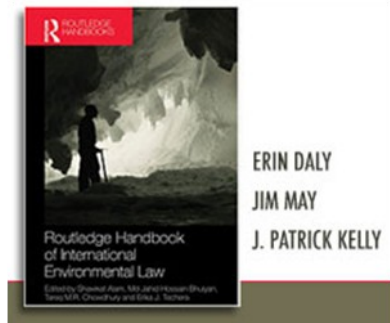
After leading three book projects in 10 years assessing sustainability efforts in the United States, Distinguished Professor John Dernbach decided it would be good to broaden his landscape. So when the offer to spend about two months of a sabbatical immersed in research and networking at one of the world’s oldest, most revered educational institutions presented itself, he jumped. Jumped across the pond, that is. Dernbach served as a visitor to the Faculty of Law at the University of Cambridge in England. “It seemed like an appropriate time to be somewhere else and see what they’re doing on the same environmental issues,” he said. “I’d been so focused on the U.S. that I hadn’t spent much time learning about what other countries are doing.”

Dernbach attended some classes to get a better feel for legal education in the United Kingdom, and he spent time doing research on England’s climate change and sustainability efforts. He spoke to faculty and served on a discussion panel at the university’s renowned Lauterpacht Centre For International Law. “The United Kingdom was a good place to do research, because the United States has the same language as well as similar laws and culture. In addition, the United Kingdom is part of the European Union and I wanted to see the impact of that on the United Kingdom’s climate policy,” Dernbach said.

Dernbach and environmental law Professor Andrea Ross of the University of Dundee Law School in Scotland are now collaborating on an article comparing and contrasting sustainability efforts in the United States and the United Kingdom. “I don’t know anyone else who’s written a book about sustainability in his or her particular country. We’re two of a very small number.”

The opportunity to be a part of life at Cambridge was remarkable, Dernbach said. “One of the first things I was told after arriving was ‘We’ve been teaching law on this site for more than 800 years,’” he said. The university faculty has included Sir Isaac Newton and Charles Darwin. James Watson and Francis Crick worked out the double helix theory in the nearby pub The Eagle, where Dernbach spent time. The university has produced 89 Nobel Prize winners.

## Three WELC Professors Publish Chapters in Leading International Environmental Law Treatise



Three members of the Widener Environmental Law Center enjoyed the distinct privilege of being invited to write chapters for the just-published *Routledge Handbook of International Environmental Law*, a leading treatise published by Oxford Press. This book examines what international environmental law is, and how it is or can be used to address the planet's wide array of complex and seemingly intractable challenges," write Professor James R. May and J. Patrick Kelly in the opening chapter.

Designed to provide an inclusive look at the growing field of international environmental law, the Routledge Handbook features chapters authored by leading experts in the field. The authors are drawn from both developed and developing countries in order to provide a complete picture of the challenges facing the planet given the increasing strain on resources caused by the expanding population.

Calling the book's contributors a "who's who of legal scholars at the international environmental level," May says, "It's an honor to be a part of that group."

May, co-director of Widener Law's Environmental Law Center, wrote "Environment and International Society: Issues, concepts and context," with Vice Dean Kelly. This chapter examines the legal architecture that affects the negotiation, ratification and implementation of international environmental law.

May also co-wrote another chapter, "Global Constitutional Rights," with Professor Erin Daly, the H. Albert Young Fellow in Constitutional Law. This chapter focuses on the extent to which constitutions around the globe enshrine environmental rights. Professors May and Daly are currently working together on a book on environmental constitutionalism.

Widener Law is the only school represented more than once in the book, and the only school with multiple authors. "We are increasing our global expertise and influence," May said.

## Professor May Discusses Future of Energy Policy at the Federalist Society's National Lawyers Convention



Energy policy is perhaps the nation's most important political issue. The Federalist Society invited Professor James R. May, the co-director of Widener's Environmental Law Center, to speak about energy policy at its annual National Lawyers Convention, which was held from November 15th through the 17th at the Mayflower Hotel in Washington, D.C.

May spoke as part of the panel "Federalism and the Energy Revolution: Can State and Federal Regulators Adapt to Innovations?" on Saturday November 17th from 10:45 a.m. to 12:15 p.m.

May is an engineer, a lawyer, and a professor of law and engineering. This presentation relied on each of these facets of his engineering and legal training. The panel considered the techniques of directional drilling and hydraulic fracturing that are used to extract oil or natural gas, the tension between state and federal regulation efforts and various constitutional questions. Panelists debated the merits of regulation by state governments and whether or not they are more nimble and able to adapt than the federal government, or whether the uniform regulatory provisions mandated by the federal government would be more protective of the environment and address a broader range of concerns.

"It was a great opportunity to discuss emerging energy issues on the national stage," May said. Keynote speakers at the annual conference included Associate Justices of the United States Supreme Court Alito and Scalia.

May sat as a guest of the Society. "The discussions were rigorous. It is always fun to see the Justices up close and in person, and to hear points of view that may not be readily apparent from the text of judicial opinions," May said.

## Faculty Updates: Fall Semester, 2012

**David Hodas** was appointed to the International Advisory Panel of *Resource Management Theory & Practice* (an international peer reviewed journal). Hodas guest lectured on U.S. Climate Change Law at the University of Texas Law School. He presented a paper, *A Global Law of Sustainable Energy*, at the IUCN Academy of Environmental Law 2012 Annual Colloquium, hosted by the University of Maryland School of Law. He also moderated a panel session on Geoenvironmental Legal Issues at the Colloquium. Hodas presented his paper, *Law, Ecosystem Valuation and Risk Allocation*, at a research workshop sponsored by the IUCN Environmental Law Centre, IUCN Academy of Environmental Law Research Committee, and the IUCN Commission on Environmental Law at the University of Maryland School of Law. Hodas was busy as an editor of *Natural Resources and Environment* (an American Bar Association quarterly law journal) and as a member of the executive editorial board and book review editor of the *IUCN Academy of Environmental Law E-Journal*. Hodas continues to serve as the chair of the Delaware Governor's Energy Advisory Council.

**Jim May** published two book chapters. The first is "Environment and International Society: Issues, Concepts and Context," which he co-authored with Vice Dean Patrick Kelly. The second is "Global Constitutional Rights," with Professor Erin Daly. Both are included in the *Routledge Handbook of International Environmental Law* (see article on page 3). May also made various professional presentations, including "Hydraulic Fracturing, Law and Science," at the annual American Law Institute-American Bar Association Clean Water Law and Regulation Course of Study, in Washington, DC (September 20); "New Directions in Procedural Environmental Rights" at the University of Oregon (September 28); two lectures to more than 60 judges from Pennsylvania, New York, Ohio and West Virginia at the National Judicial College's "Fracking and Water: A Workshop for Judges" that was held in Pittsburgh, Pennsylvania (November 9); "The Promise and Practice of Equality under the U.S. Constitution," to the University of Delaware's Center for Lifelong Learning (November 13); and "The future of energy policy" at the Federalist Society's National Lawyers Convention (November 17).

On November 9, May was inducted as a Member of Faculty of the National Judicial College.

For more updates, including about other members of the Widener Environmental Law Center, please visit: <http://blogs.law.widener.edu/envirolawcenter/>



Clinic Director Ken Kristl

## Clinic Finishes 2012 On Strong Note

Fall 2012 semester saw the Clinic continue to provide significant *pro bono* representation in a wide variety of environmental matters. During the semester, the 13 interns in Delaware and Harrisburg and the Clinic Director and Staff Attorney provided more than 1000 hours *pro bono* on behalf of 20 different clients.

In addition to the significant climate change litigation initiated in December as discussed on the front page of this newsletter, the Clinic also achieved other significant results. It obtained an Order from the Pennsylvania Department of Environmental Protection requiring a local township to conduct the necessary planning and construction of public sewer service to an area in which the Clinic's client had a failing septic system and desperately needed the long-promised sewer service. The Clinic also prepared a Citizens Guide analyzing the provisions of the Pennsylvania Environmental Good Samaritan Act, which shields individuals from certain liability for projects undertaken to achieve beneficial environmental results. The Clean Water Act, Marcellus shale gas drilling, local zoning, and stormwater management issues were also some of the areas that Clinic interns worked to provide legal analysis and advice.

In looking forward to the Spring semester, the Clinic will continue its work on constitutional issues in the appeals discussed on the first page, as well as tackling such diverse areas as Emergency Planning and Community Right-to-know Act (EPCRA) compliance, local zoning issues, Clean Water Act issues, and a number of state environmental laws. In addition, Clinic interns will continue to hone their litigation, drafting, and strategy skills through their work on the Clinic case, with focus on deposition skills.



Have alumni/student/other news fit to print? Please contact:  
For Pennsylvania Campus: Professor John Dernbach,  
717.541.1933, [jcdernbach@widener.edu](mailto:jcdernbach@widener.edu)  
For Delaware Campus: Professor Jim May, 302.477.2060,  
[jrmay@widener.edu](mailto:jrmay@widener.edu)

### Credits:

**Editor: Jim May**

**Layout: Debbie Dantine**

**Content: Mary Allen, Nathan Garrison, Jim May,  
John Dernbach, Ken Kristl**