Linking the World’s Environmental Law Programs: The IUCN Academy of Environmental Law

Nicholas Robinson Leads Formation of the Academy

The International Union for the Conservation of Nature and Natural Resources (IUCN) launched a new Academy of Environmental Law at the academy’s first annual Colloquium in Shanghai, China. The academy will operate under the auspices of IUCN’s Commission on Environmental Law. As chair of the commission, Pace Law School Professor Nicholas Robinson led the effort to create the academy. The IUCN is based in Gland, Switzerland, with an environmental law center in Bonn, Germany. Its membership is composed of more than 75 countries, including the United States, 120 ministries and agencies such as the U.S. National Park Service and Forest Service, and 480 nongovernmental organizations. It is the world’s oldest intergovernmental and international organization specialized in the environmental field. The academy’s governance and financing will be autonomous from IUCN but its work coordinated with IUCN’s Environmental Law Programme.

The academy’s program consists of (1) an annual colloquium to critically review an area of environmental law and reflect on new concepts to improve the law in the area; (2) publishing the colloquium proceedings each year to ensure wide distribution of the results of the colloquia; (3) conducting research to advance the development of environmental law; (4) developing training materials that will assist practitioners who put the ideas developed through the academy into practice; and (5) building the capacity of universities to teach environmental law particularly in developing countries and countries with economies in transition.

The academy is rooted in the Earth Summit’s call for universities to advance legal education for integrating environment and development. In 1998, IUCN members requested the organization’s Commission on Environmental Law (CEL) to develop a network of university law faculties to strengthen environmental legal education worldwide. IUCN formally authorized the concept of an Academy of Environmental Law at the Second World Conservation Congress in 2000 and gave its final approval for the academy in December 2002. CEL Chair Robinson convened a preparatory meeting for the academy in April 2003 in New York at the Rockefeller Brothers Family Fund Pocantico Hills Conference Center that attracted law professors from 21 countries with the formal announcement of the academy occurring at the United Nations headquarters in Manhattan.

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Comparing and Contrasting Ontario and U.S. Safe Drinking Water Acts
How Ontario Should Regulate for Public Confidence
By Tania L.M. Monteiro

In Walkerton, a small town of 4,800 people in southern Ontario, seven people died and more than 2,300 became seriously ill from drinking tap water contaminated with Escherichia coli 0157:H7 (E. coli) in May 2000. The loss of life and the staggering degree of illness devastated the community. Even today many Walkerton residents continue to suffer adverse health effects while feelings of frustration and insecurity persist. The Walkerton tragedy ultimately unfolded a national debate in Canada on drinking water safety and triggered the Ontario provincial government to establish a public inquiry to investigate the issues.

Appointed as commissioner to the inquiry, Justice Dennis R. O’Connor of the Ontario Court of Appeals was charged with the twin mandates of investigating the causes that led up to the tragic events in Walkerton and of making recommendations to ensure the future safety of drinking water in Ontario. Part one of the inquiry was held in Walkerton to make findings of fact about the specific physical and systemic causes of the tragedy. Over a nine-month period, the commission heard evidence from many witnesses including residents of Walkerton, various special interest groups that were given standing for ongoing participation, and, quite dramatically, from the Premier of Ontario. Justice O’Connor’s findings of fact and his 28 recommendations were released on January 18, 2002, in Part One Report of the Walkerton Inquiry, The Events of May 2000 and Related Issues.1

Sadly, provincial government budget reductions and discontinuation of laboratory testing services were held largely to blame for the severity of the Walkerton tragedy.

Part two of the inquiry involved a broader examination of the legal and policy questions surrounding drinking water delivery systems and drinking water safety in Ontario. On May 23, 2002, Justice O’Connor released Part Two Report of the Walkerton Inquiry, A Strategy for Safe Drinking Water2 in which he made 93 recommendations for legislative and policy reform,3 including recommendations that Ontario develop a comprehensive, “source-to-tap” government-wide drinking water policy and enact a “safe drinking water act.”4

Making specific recommendations about the fundamental contents of a “safe drinking water act,” Justice O’Connor called for:

- Recognition that the public is entitled to expect that the drinking water coming out of their tap is safe;
- Establishment of a licensing regime for owners of drinking water systems;
- Creation a statutory standard of care for persons who exercise municipal oversight functions;
- Requiring certificates of approval for drinking water systems;
- Requiring time use of accredited operating agencies;
- Requiring the training and certification of operators of municipal drinking water systems;
- Establishment of regulatory standards for drinking water quality;
- Creation of an advisory committee on drinking water standards;
- Establishment of regulatory standards for treatment, distribution, and monitoring;
- Obligation of government oversight of water testing laboratories; and
- Enhancement of provincial powers for inspections, abatement action, investigation, and enforcement.5

On the basis of Justice O’Connor’s recommendations, the Ontario government swiftly enacted the Safe Drinking Water Act [(ON)SDWA]6 in 2002. The new (ON)SDWA represents a major legislative and regulatory overhaul in Ontario, consolidating various scattered legislative bits of drinking water protection into a single Act and mandating new (and hopefully improved) standards, more rigorous permitting regimes, and increased public and government scrutiny over drinking water delivery. Still in its early stages, the ultimate efficacy of the Act is yet to be realized.

In contrast to the relative youth of the (ON)SDWA, the U.S. Congress enacted its Safe Drinking Water Act [(US)SDWA]7 in 1974. This 30-year vintage allows the (US)SDWA to be used as a template against which to measure the potential strengths of the (ON)SDWA and by which to identify its gaps, omissions, and deficiencies. Intertwoven throughout this analysis is a look at the success of the (ON)SDWA as an implementation of the O’Connor recommendations in light of the Walkerton tragedy. For the most part, this comparative examination will focus on the more pressing practical issues, highlighting the areas of greatest weakness in the (ON)SDWA: water quality standards; community right-to-know; and enforcement.8

An Overview of the (ON)SDWA and the (US)SDWA Water Quality Standards: Setting Procedures and Substantive Contents

The (US)SDWA affords a great deal more opportunity for public input into the determination of contaminant levels than does the Canadian standard-setting process or than the provincial Ministry of Environment (MOE) has thus far permitted in the ongoing regulatory implementation of the (ON)SDWA. On the other hand, the (US)SDWA has built its standard-setting process on a hotly contested cost-benefit analysis, a framework that has not found uptake in the (ON)SDWA. While many of Canada’s and Ontario’s drinking water standards levels remain less
strict than EPA’s, there also remains the possibility that a new framework, built on Justice O’Connor’s recommendation that standard setting be premised on the precautionary principle, will move toward increased stringency in standards.

Community Right-to-Know: The Sin of Omission

Justice O’Connor concluded that necessary elements of any safe drinking water regulation are transparency and public accountability, and he structured his recommendations with the intention that these public rights be built into the legislative reformation:

“My recommendations are intended to improve both transparency and accountability in the water supply system. Public confidence will be fostered by ensuring that members of the public have access to current information about the different components of the system, about the quality of the water, and about decisions that affect water safety. By ensuring that those who make decisions about drinking water safety are accountable for the consequences of those decisions public confidence will also be enhanced.”

Unfortunately, the (ON)SDWA did not live up to this recommendation. While there are several provisions scattered throughout the (ON)SDWA aimed at providing public access to drinking water documents and related matters, the concept of community right-to-know is not as firmly entrenched as it is in the (US)SDWA.

Compliance and Enforcement: A Citizen’s Right

For the most part both statutes provide for administrative compliance orders, administrative penalties, special emergency powers, and injunctive relief. Where the statutes differ most markedly is in the absence of a citizen suit provision in the Canadian statute and there is no likelihood whatsoever that Ontario will amend the (ON)SDWA to create a substantive right for citizen enforcement. Nevertheless, a brief review of the value of this right in the United States sheds some light on the importance of amending the existing regulatory framework so as to subject the (ON)SDWA to the other statutory avenues for citizen environmental enforcement in Ontario.

Compliance and enforcement take place primarily through administrative avenues under the (ON)SDWA, as is the case under most other environmental statutes in Ontario. A provincial officer who reasonably believes that a person is contravening or has contravened any provision in the Act, any regulation, or any condition or term of a permit may issue a compliance order. The administrative order to remedy noncompliance may prohibit continuing noncompliance, require repairs to the system, mandate treatment, testing, sampling, reporting, direct that an alternative supply of water be provided, require the provider to prepare plans, and/or mandate that the order be posted. The director may also issue administrative penalties for violations of the Act, its regulations, or any term or condition of a permit that are not to exceed $10,000 per day. However, only the MOE is entitled to pursue injunctive relief for violations of the Act, the regulations, or the terms of a permit.

Conclusion

It remains to be seen whether Minister Stockwell’s introductory remarks at First and Second Readings—that Ontario will be a “world leader” in drinking water safety and that the (ON)SDWA will be the “toughest legislation in the world”—in fact plays out as true. Unfortunately for Ontario, the Act and its regulations’ noted omissions likely will cause it to fall far short of the Minister’s claim. On the other hand, most all the gaps discussed in this article can be quickly and easily corrected by the MOE through regulatory revision and without the need for statutory amendments. In particular, Regulation 169/03, Water Quality Standards, which appears likely to roll over the old water quality standards from Regulation 459/00 into the (ON)SDWA without regulatory or public review, should be made available for reconsideration, and the MOE should immediately instruct the statutorily mandated advisory council to review those standards on the basis of the precautionary principle. The MOE should also amend Regulation 170/03’s annual reports provisions to require the reports to be more specific in form and content and more informative and understandable for the general population, and to mandate that the reports be mailed directly to water users’ doors. Lastly, the government regulation that subjects a list of statutes to citizen civil enforcement should be amended to include the (ON)SDWA.

All of these regulatory revisions would enhance government accountability, transparency, compliance, and public participation in drinking water regulation and would thus give concrete meaning to Justice O’Connor’s most fundamental recommendation: that a “safe drinking water act” should foster public confidence in the drinking water system and that the tragedy of Walkerton should never recur.

This article is an abridged version of a longer article that appears at 33 Envtl. L. Rep. 10865, Environmental Law Reporter, Volume Year XXXIII, News & Analysis Article, November 2003. Reprinted with permission.

Tania Monteiro obtained her LLB from Queen’s Law School in Kingston, Ontario, and was called to the Ontario Bar in 2002. She completed her articles at Gowling, Lafleur Henderson in Toronto where the focus of the practice was corporate and commercial litigation. Following this year of work, Monteiro attended Pace University School of Law where she completed an LLM with a specialization in environmental law, graduating cum laude. Monteiro also has worked for several other Toronto law firms in the areas of union-side labor and human rights law. She has done volunteer work for various social justice groups in and around Toronto including the Sierra Legal Defense Fund.

FOOTNOTES:
3. For a summary of the recommendations, see id. at 18-32. The recommenda- tions were subdivided into topic areas, including, inter alia: source protection; standards; treatment; monitoring; labo- ratory, and the role of the provincial and municipalities governments, First Nations, and so on.
4. Id. at 405.
5. Id. at 405-10.
8. Left out are other issues that merit no material analysis for the pur- poses of this article, for which the two Acts are sufficiently similar to disregard, or for which the technical questions extend beyond the scope of this Article. For example: the constitutional structural issues of provincial versus federal regulation; judicial review and appeal procedures, licensing regulations and standards for individ- ual operators; and laboratory licensing procedures.
10. The legal tradition in Canada has, by and large, established far more administrative avenues of redress and thus put less reliance in the civil courts for all sorts of regulatory enforcement. See also Canadian Environmental Law Acts, in the Wake of the Walkerton Tragedy: The Top 10 Questions 26 (2003).
11. (ON)SDWA, supra note 6, §105(1).
12. See id. §107(2)(a). The recipient of an order can seek a review of the order to the Director (a civil servant appointed by the MOE under the Act to administer any aspect of the Act, who may confirm, amend, or revoke the order and whose decision is reviewable by the Environmental Review Tribunal. See id. §107.
13. The Director will be any civil servant appointed by the MOE to ad- minister any portion of the Act. See id. §2(3).
14. See id. §121(1).
15. See id. §121(3).
16. See id. §120.
A Tough but Wonderful Decision

By Rose Cerbino

After more than ten years of practicing law as a public attorney at the Attorney General’s Office (AGO) for the City of Rio de Janeiro, in Brazil, I was looking for a new perspective to help me face the problems I had to deal with daily. At the AGO, we lawyers face all aspects of legal practice, from writing final legal opinions on issues affecting the city administration to litigation, since the AGO represents the city in the courts. In the last two and a half years before coming to Pace, I worked as an assistant to the AGO, primarily in the consulting area issuing final legal opinions where the environmental issues really got my attention.

In Brazil, as well as in other developing countries, environmental issues occur quite often including non-compliance with land use regulations, the cutting of protected trees without a permit, and hazardous material leakage into the Rio de Janeiro’s Guanabara Bay. Dealing with those issues made me wonder how other countries were addressing and resolving their environmental problems.

The opportunity to come to Pace Law School and take the LLM in Environmental Law was a perfect match for me, since Pace has a strong environmental law program and since Pace is now in the second year of an agreement with my office. The truth is that the decision to come to Pace was not an easy one. Leaving Brazil, my family, and friends for about a year didn’t sound very appealing to me back in 2003. Starting again in a different country, in a different language would be a real challenge and that’s what ultimately pushed me into the decision to come.

The comfortable atmosphere at Pace is great for a foreign student. The emphasis on the student’s own characteristics and needs, and not being just one among many others, is the real deal of Pace Law School. In the beginning I was not very sure about the correctness of coming here, but my time at Pace Law School has been an amazing experience. It has been a joy to be back at law school and to study with such a great group of professors and fellow students.

Learning about the U.S. model for environmental practice, the different approaches to dealing with environmental problems, and how the statutes are designed made me realize the importance of citizen’s process in the process. In class the professors show the importance of the energy to fight for and seek better environmental conditions. The knowledge that we can use the same model in Brazil is the most important lesson I’m taking from this year at Pace Law School. It’s hard work, but it is wonderful work.

2004 National Environmental Law Moot Court Competition

Lewis & Clark Law School emerged from a field of 72 law schools to win the 2004 National Environmental Law Moot Court Competition (NELMCC) at Pace Law School February 19–21. The event, hosted by the NELMCC Student Board of Pace Law School, is the premier environmental law moot court competition in the country and one of the largest competitions of its kind. The Lewis & Clark Law School team included Dave M. Jones-Landry, Isa Anne Lester, and Kristin Ruether.

The competition, now in its sixteenth year, simulates the process for preparing a legal case and presenting that case to a United States Court of Appeals. Students are given a complex environmental issue and must prepare legal briefs supporting the position of one of the parties to the case. They then travel to Pace Law School to argue the case before attorneys who serve as judges in the preliminary, quarterfinal and semifinal rounds. Judge Dolores K. Sloviter, U.S. Third Circuit Court of Appeals, presided at the final round of the competition together with Judge Richard D. Cudahy, U.S. Seventh Circuit Court of Appeals and Judge Kathie A. Stein, U.S. Environmental Protection Agency Appeals Board. One of the Court of Appeals judges said it was the most challenging moot she’d ever participated in and also one of the best organized.

Boalt Hall School of Law–University of California, Berkeley and Louisiana State University Paul M. Herbert Law Center were the other finalists. Temple University James E. Beasley School of Law took home the award for Best Brief. Robert Taylor of Willamette University College of Law received the award for the Best Oralist.

Teams reaching the semifinal round, other than the three finalists, included Penn State, The Dickinson School of Law, The University of Alabama School of Law, The University of Memphis Cecil C. Humphreys School of Law, Southwestern University School of Law, Washington University in St. Louis School of Law, and Western University School of Law.

The student board members included Chair Nicole Simmons, as well as Vice Chairs Rekha Rao, Michael Murphy, Stephanie Haggerty, Christopher Long, Kara Murphy, June Psaltis, and Michael Stalzer. Kelly Bray, Carrie Hilpert, Megan Kelly, Abigail Lewis, Sarah Samp, Erin Flanagan, and James Kelly also were members of the board this year.
A New Perspective on Brazilian Environmental Law

By Ruy Borborema

Under a grant from the U.S. and Brazilian Departments of Education, Pace Law School offers a study abroad program with my University, the Universidade Federal do Pará (UFPa), which is located near the mouth of the Amazon River on Brazil’s north coast. My school emphasizes courses and research related to the Amazon region. It offers access to the Brazilian Amazon and service-oriented interdisciplinary environmental projects on mining, water and forest issues. The city has a population of one million, and the state of Pará, today the richest mining state in Brazil, covers 1,246,833 sq. km. I came to Pace as a 22-year-old senior law student from UFPa, with five other Brazilian exchange students. Currently, Pace is continuing to host new students and intends to have six enrolled in the fall 2004 semester as well.

This was the most important academic and personal experience of my life, and it surpassed my expectations. Being able to experience and compare legal systems from different traditions, and learning how they deal with environmental problems was of immeasurable value. The knowledge of American Environmental Law in its various aspects, theory and practice, has certainly provided me with the competences and skills I need to deal with environmental legal problems. The comparative perspective adopted by some of the courses allowed me to use the American referential to Brazil, specifically to the Amazon.

This experience had a special meaning for me, since I intend to follow an academic career, studying, researching and teaching the law. The importance of Environmental Law in Brazil and in the Amazon made all this even more rewarding.

Brazil has a well-developed framework law on the environment, perhaps one of the best in the world. The Constitution recognizes the right to a healthy environment and gives specific powers to the Union, States and Municipalities on environmental matters. Together with other key statutes, such as the National Environmental Policy, this creates an adequate legislative framework for governmental actions towards the protection of the environment.

The role of public prosecutors differ from the role of public officials in the United States in that they have a preeminent role in protection of the environment. They have the institutional duty to defend the environment; therefore they oversee the governmental actions that have environmental consequences and may sue, including the government, on behalf of the people to protect the environment. Standing to sue for environmental harms is also another positive aspect of the Brazilian Law. Practically anyone can sue, because the environment is understood as a diffuse right, owned by all of society. Liability is established objectively, once the nexus between the environmental harm and action that caused it is shown.

However, Brazil lives a paradox because, although it has a well thought-out environmental legal system, it has an insufficient enforcement structure, due mainly to geographical, technological and economical problems. There is also little public participation on environmental matters. Although, the culture of public participation is generally weak, it is getting stronger. Since the re-democratization in 1988, the law has provided more opportunities for participation by organizations and individuals in the formation of environmental policies.

The understanding I have today of Brazilian Environmental Law is different from some of the Brazilian scholars, thanks to my studies at Pace. Brazil, for example, does not have a well-developed concept of enforcement or an administrative structure devoted to the protection of the environment like the United States; the regulatory programs in Brazil are only in the formation stage. The United States also has a more developed environmental impact study program (NEPA). Being able to analyze the United States experience, with its wrongs and rights, enables me to better understand the directions environmental law in Brazil must take in order to effectively protect the environment.

Pace offered a propitious environment for my work, with an excellent library, dedicated professors, and kind staff. This helped me to overcome the difficulties with the language and the concepts of the common law, which were foreign to me. During the last semester, my colleagues and I were often cheerfully referred to as “the Brazilian Delegation” in a climate of informality that made us feel closer to home.

Back in Brazil, as a better qualified professional, I want to share this experience and the knowledge I acquired with my colleagues and professors, to keep researching the development and improvement of Environmental Law in Brazil. I hope to develop future opportunities for collaboration between Brazil and the United States in the environmental field.
Regional Environmental Law Societies Meeting Held at Pace

On March 13, 2004, Pace University School of Law hosted the first regional meeting of Environmental Law Societies (ELS), comparing the best environmental litigation clinics in the country. Students from Quinnipiac, Connecticut, Cardozo, Fordham, and Pace were present. The National Association of ELS has promoted the idea of regional ELS meetings as a way of strengthening, encouraging better coordination, and introducing new ideas among school-based ELSs.

This year, three of the most prominent environmental litigation clinics in the country participated in the regional meeting. Karl Coplan of the Pace Environmental Litigation Clinic, Adam Babich of the Tulane Environmental Litigation Clinic, and Robin Greenwald of the Rutgers School of Law Environmental Clinic discussed the history and structure of their clinics, critical issues faced in operating the clinics, student involvement in the clinics, future directions for the clinics, and how students at schools without clinics can play a role in environmental litigation.

Dan Worth of the National Association of Environmental Law Societies (NAELS) discussed opportunities to gain clinical experience through NAELS in conjunction with Public Interest Research Groups (PIRGs). Lee Paddock, Director of Environmental Law Programs at Pace, led a roundtable discussion among the participants about externships, internships, and other experiential learning opportunities.

For further information on the Pace Environmental Law Society, please visit www.law.pace.edu/els.

Riverkeeper, represented by the Environmental Litigation Clinic, and the Village of Hastings-on-Hudson, recently reached a settlement with the Atlantic Richfield Company (ARCO) in the case of Riverkeeper v. Atlantic Richfield Co., filed in the U.S. District Court for the Southern District of New York. Hazardous wastes including PCBs, leaked from two abandoned industrial sites, currently owned by ARCO, into the Hudson River near Hastings. Riverkeeper also alleged that a developer, Harbor at Hastings, was liable for a tenant who operated an illegal open dump by depositing more than 90,000 cubic yards of construction debris in a building at the site. The complaint alleged violations of the Resource Conservation Recovery Act, and the Clean Water Act. ARCO settled and pursuant to the agreement, most of the 90,000 yards of construction debris has been removed from the site. Riverkeeper has remained active by participating in New York Department of Environmental Conservation administrative proceedings to require full clean up of historical contamination. The settlement requires ARCO to meet a minimum standard of environmental remediation, estimated to cost $50 million, with the possibility that the DEC may impose a higher standard in the future. As part of the cleanup, ARCO must excavate the contaminated soils from 9 to 15 feet deep. However, the contamination goes 40 feet deep, necessitating the installation of a steel bulkhead and a contact barrier/soil cover system composed of asphalt, clean fill, and topsoil designed to prevent soil erosion and storm water runoff. ARCO is also required to take other necessary shoreline-protection measures. In addition, the parties created an Environmental Trust Fund with an initial payment by ARCO; the fund will be used for projects that improve the ecology and public’s enjoyment of the Hudson River.

Pace To Host 2005 NAELS Conference

Pace Law School submitted a successful bid to host the 2005 meeting of the National Association of Environmental Law Societies (NAELS) at the 2004 NAELS meeting held in Portland, Oregon, March 25–28. The 2005 NAELS meeting, scheduled for March 17–20, will focus on the future of environmental law clinics, sustainable energy, local environmental law, and the growth in international environmental law. Michael Murphy, Christopher Long, Peter Putignano, Erick Ihlenburg, and Elana Roffman participated, along with Environmental Law Programs Director Lee Paddock.

Roffman was elected as cochair of the NAELS organization and Putignano was elected as the Region 2 director. For more information on NAELS, please visit www.naels.org.

Environment Litigation Clinic

Clinic Instrumental in $50 Million Cleanup Agreement

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ABA Launches New Committee on Renewable Energy Resources

The American Bar Association is pleased to announce the formation of its new Committee on Renewable Energy Resources. The committee brings together the country’s leading practitioners and renewable energy professionals to exchange information and ideas on the legal and practical implementation issues central to accelerating the commercial development of renewable energy resources.

The formation of the Committee on Renewable Energy Resources coincides with a growing interest in renewable energy in meeting the nation’s energy and environmental challenges. The committee serves as an important new and multidisciplinary forum to address the regulatory and market hurdles unique to renewable and distributed energy technologies and to advance the legal, policy, and financial innovations necessary to overcome them.

Committee members are encouraged to play an active role in organizing and participating in a number of initiatives, including:

• National teleconferences/brownbag lunches focusing on the central legal and policy questions under active consideration at the state and federal levels.

• Publications. Members of the committee will have an opportunity to make substantive contributions highlighting developments in renewable energy law and policy in publications such as the Natural Resources and Environment, Trends and a new Consolidated Energy Committee.

• Renewable Energy Web site. The committee’s dedicated Web site will serve as the central repository for timely and relevant news, information, analysis and other content on issues germane to renewable energy and distributed generation technologies.

If you are interested in joining the growing network of lawyers, businessmen, developers, government officials, academics, and others who share a mutual interest in understanding the law affecting renewable energy, please contact:

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Energy Project

Energy Project Focuses on Greenhouse Gases; Renewable Portfolio

Regional Greenhouse Gas Initiative
The Energy Project has been invited to participate as a member of the Regional Greenhouse Gas Initiative (RGGI) Stakeholder Group. The role of this group is to provide substantive feedback to state agencies devising a framework for a northeast regional cap and trade program for power plant emissions of greenhouse gases. The RGGI process is the culmination of an effort initiated by Governor George Pataki in April of 2003 to devise a regional approach to climate change. Pataki reached out to 12 governors as well as select stakeholder groups to be involved in the initiative to minimize greenhouse gas. The states and provinces participating in RGGI are committed to developing a regional greenhouse gas cap-and-trade program through a process that integrates public participation and stakeholder input. The Energy Project is on the founding board and the initial meeting about the one-year process will take place in April.

Renewable Energy Portfolio
In January 2003, Governor Pataki announced in his State of the State address a new initiative to increase New York’s use of renewable energy to 25 percent by 2013. In the spring of 2003, the New York Public Service Commission opened a proceeding to design a Renewable Portfolio Standard (RPS). The Energy Project has been actively involved in this process as a member of the Renewable Energy Technology and Environment Coalition (RETec), an ad hoc coalition of renewable energy trade associations and project developers, environmentalists, consumer groups, and public health advocacy groups. The RPS raises a number of practical design issues (e.g., what will be defined as renewable energy) and legal questions associated with cross-border trading of renewable energy. The Administrative Law Judge’s recommended decision is expected this spring.

Research Projects
The Energy Project has been working on several research projects including:
• A recently completed permitting handbook for developers and users about permitting and code requirements for distributed generation technologies. These cover small-scale generation plants located at or near the point of consumption. There is an HTML tool on the Web site to find applicable regulations.
• Securing emissions reduction credits and allowances for small combined heat and power (CHP) facilities. Because the cost associated with securing ERC’s is high relative to the total cost of CHP facilities, the project is looking at ways to streamline the process for small facilities.
• The problems associated with power quality and reliability are important issues, especially after the major blackout that occurred in many States last August. Under investigation is whether CHP can be a cost-effective solution to certain power quality and electric service reliability deficiencies.
• The creation of a guide for landowners who are approached by wind developers looking to create legal arrangements, such as wind energy easements, over their land. The guide will be used to assist landowners in understanding the complex legal issues involved, and how landowners may protect their legal interests.

Profiles
Pace SJD Graduate Named Dean of Law School in Brazil

Marco Olsen holds a BA of Law from the University of Brasilia, Brazil, an LLM from American University Washington College of Law, and an SJD from Pace Law School. He has worked as a legal advisor at the State Environmental Department in Tocantins, Brazil where he was responsible for environmental permit issues and drafting environmental legislation for the state. He was recently appointed dean of the Federal University of Espirito Santo, School of Law where he also teaches Brazilian and International Environmental Law, International Public Law, and Constitutional Environmental Law. He truly enjoys his work and finds it quite rewarding in many ways, especially in environmental law.

Olsen became interested in environmental law after observing tremendous environmental degradation in his country and the lack of concrete measures to prevent it. When he decided to pursue his environmental law studies, not many lawyers were interested in the issue and he saw a great opportunity to make a difference. He decided to come to Pace because he wanted to complete a doctoral degree at a top environmental law school that was close to a Brazilian Embassy or Consulate. His wife is in the diplomatic service and he needed a place where she could be posted while he studied. Olsen admits Pace Law School was perfectly suited for his needs and credits the degree he was awarded at Pace with giving him the opportunity to become a tenured professor and dean of his law school. It also allowed him to become a research leader in his school. He found many benefits to studying in New York, some of them being the experience of a vibrant academic community, the proximity to the United Nations headquarters where he paid several visits to learn and interview people, and the availability of information and material related to environmental law.

While studying at Pace, Olsen focused his research on the Stockholm Convention on Persistent Organic Pollutants (POPs). He was aware of the immense problem in Brazil, where there are large stockpiles of these pollutants, leading to soil and water contamination in some cases. Because POPs contamination is a huge international problem as well, Olsen decided to write a book that would be useful at both the international and national level. His SJD thesis, recently published by Oceana Publications, is the first legal material written on the subject.

Continued on page 10
profiles

Pioneers in Environmental Law: Dean Emeritus and Former Congressman Ottinger

Dean Richard Ottinger says he has been interested in environmental issues since he became an Eagle Scout as a boy. After many years of enjoying nature, he attended Cornell University and received a BA in government. He received his LLB from Harvard, where he was impressed with the faculty, research, and analytical thinking.

At this juncture, chance started to shape his career. He had gone through ROTC at Cornell and was called to duty after his Harvard Law graduation as a procurement officer in the Air Force at the end of the Korean War. While there, he rewrote the procurement regulations, boiling them down from a four-foot high stack of volumes to one book of just four inches. He ended as a captain working as assistant to the general in charge of Air Force procurement.

Beginning a Public Interest Career

Not long after his discharge from the Air Force, after several years of law practice, he decided to use his law degree exclusively for public interest work. He was asked to run for supervisor in the town of Mt. Pleasant, starting an experience in politics that eventually qualified him to run for U.S. Congress.

His Air Force work in procurement qualified him to work for the U.S. foreign aid agency, then called the International Cooperation Administration (ICA). The ICA General Counsel’s office told him they could not hire him for political reasons, but placed him to do a study of the defects in the procurement division. His work there led to a written report that inspired the ICA General Counsel to recommend him to run the procurement office for the newly formed U.S. Peace Corps. He assisted in building the Peace Corps from scratch and, after having taught himself Spanish, was made the director of Programs for the West Coast of South America and then for all of Latin America. Ottinger believes that being able to make a difference in so many communities was the most stimulating, exciting, and rewarding work a person can do and that being a founding member of the Peace Corps is one of his proudest accomplishments.

On to Congress

Ottinger’s Peace Corps efforts led the Westchester County Democratic Chairman to ask him to run for Congress. Ottinger saw it as a fun challenge, as no Democrat had ever won in Westchester County before, let along one with an environmental platform. He enjoyed campaigning and liked finding ways to appeal to people from all different stands in life. Even his youngest son, Larry, participated in the campaign at the young age of seven when a newspaper reporter asked him, “Do you even know what a congressman does?” He responded, “Sure. A congressman is a guy who stands outside of shopping centers and hands out pictures of himself.”

The honesty of the Ottinger campaign helped him to beat the odds by genuinely appealing for the greater good of the people of the Hudson Valley. He was elected in 1964 as not only the first Democrat to win in Westchester County, but the first to prevail on environmental issues. His campaign to clean up the Hudson River consistently offended Governor Rockefeller. Ottinger’s observation that Rockefeller had allowed the Hudson to become “an open sewer” so infuriated him that he publicly attacked Ottinger. Ironically, the Rockefeller attacks contributed to Ottinger’s election, landing him on the front page of the metropolitan section of the New York Times on several occasions.

In his 16 years as a member of the United States House of Representatives, he authored a substantial body of energy and environmental laws. As chair of the House Energy Conservation and Power Subcommittee, Energy and Commerce Committee, he was instrumental in adopting key energy and environmental legislation.

On to Pace Law School

After 16 years of very long days and little time with his family, Ottinger wanted to switch gears. He wanted to teach government, but found that he would need a PhD to be part of a University faculty. Then, out of the blue, Pace Chancellor Edward Mortolla invited Ottinger to become a law professor. Although he had no previous training as a professor, he was made a member of the faculty and taught legislative process to the whole first year class. Ottinger admits the students were quite unhappy with his extremely lengthy assignments for a 1-credit class, yet there is no doubt he taught them very valuable skills. He also taught the Environmental Survey course to second-year students. He then founded the Energy Project at Pace, which currently raises $900,000 per year, advocating utility investment in conservation and renewable energy resources in several states.

As his work at Pace progressed, chance intervened again when Alexander Forger, a prominent New York lawyer who had been selected as Dean, received and accepted an appointment to become the head of the U.S. Legal Services Corporation just two weeks before classes were to begin. The faculty asked Ottinger if he would serve as Acting Dean. He said he would accept the position but that he would not serve as a mere place marker—he wanted to make a difference at Pace, just as he had in his other endeavors. He became full dean and was a catalyst in making the environmental program at Pace what it is today.

After five years as dean, where he was instrumental in building our new classroom building and establishing the Judicial Institute at Pace, he retired and was appointed by Dean Cohen and the faculty as Dean Emeritus. He remains very active with the Energy Project, currently doing very significant energy work internationally through the IUCN with several agencies of the United Nations. He recently coedited and coauthored the groundbreaking IUCN publication, “Energy Law and Sustainable Development” and is busy writing the UNEP Handbook for Legal Draftsman on Environmentally Sound Management of Energy Resources as well as assisting the United Nations Department of Economic and Social Affairs in organizing a forum for African parliamentarians.

The Future

With a genuine warm smile, he states, “I love what I do.” His favorite quote is from Robert F. Kennedy’s speech to South African students: “Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation. Each time a man stands for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope. And crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.”

Ottinger’s advice to students is that chance plays a big role in life and that it is important to take advantage of the opportunities that come your way.
Olsen Named Dean in Brazil
Continued from page 8

The book analyzes the Stockholm Convention on POPs prepared under the auspices of the United Nations Environment Programme Chemical Division. The treaty was adopted at the Conference of Plenipotentiaries in Stockholm on May 24, 2001, and was open for signature at United Nations Headquarters in New York until May 22, 2002. It became legally binding on May 17, 2004. The 90-day countdown to the treaty’s entry into force was triggered on February 17, 2004 when France became the 50th state to ratify the agreement. This treaty is the first international legal instrument to focus attention on the dangers of persistent organic pollutants—chemicals, which are commonly used as pesticides in agriculture and to control insects that cause diseases like malaria. At the same time, these chemical substances are carcinogenic, mutagenic, and teratogenic, posing grave risks to human and animal health and the environment. The Stockholm Convention on Persistent Organic Pollutants is a comprehensive global attempt to reduce the risks to human health and the environment from the release of these persistent organic pollutants, currently known as “the dirty dozen.” The book chronicles the Stockholm Convention negotiations, discusses the Stockholm treaty’s intricacies, and analyzes its thirty articles. It explains the fundamentals of POPs, their chemical properties, toxicology, and common and/or historical uses. It discusses the history of POPs contamination, how the modern era of synthetic pesticide production began, and its effect on today’s world. The book concentrates on the science and chemistry of the twelve chemicals addressed in the Stockholm Convention and examines the politics evolving around them. It provides explicit examples of the harmful effects that these chemicals have on human and animal populations and the environment. It examines the role of non-governmental organizations (NGOs) in negotiating the treaty and includes a full text of the Stockholm Convention with annexes. To order the book or find more information, go to www.oceanlaw.com.

Olsen’s goals for the future include continuing to disseminate environmental awareness at the academic and community levels, assisting government officials to improve and develop environmental implementation in Brazil, and extending his research production. In his spare time, he enjoys trekking, traveling, cooking, and photography. His favorite quote is from Solomon: “I, wisdom, dwell with prudence, and find out knowledge and discretion.” It is clear that wisdom is Olsen’s guide in life.

The IUCN Academy of Environmental Law See main story on page 1.


The IUCN Academy of Environmental Law convened its first Colloquium at Shanghai Jiao Tong University in Shanghai, China, in November 2003 on the issue of “The Law of Energy for Sustainable Development.” More than 150 law professors from 90 universities representing every region of the world attended the event that featured a keynote address from Thomas Johansson, professor and Director of the International Institute for Industrial Environmental Economics at the University of Lund (Sweden) on “The Imperative of Energy for Sustainable Development.” Alexandre Kiss of the Robert Schuman University of Strasbourg, France, and Director of Research Emeritus of the Centre National de la Recherche Scientifique, presented the first in an annual series of Distinguished Scholar lectures at the colloquium.

Academy Signs Publishing Deal with Cambridge Press

The IUCN Academy of Environmental Law recently signed a publishing agreement with the Syndicate of the Press of the University of Cambridge, to publish the research works of the IUCN Academy of Environmental Law in March. Nicholas A. Robinson, chair of the IUCN Commission of Environmental Law, signed on behalf of the IUCN Academy of Environmental Law, with John Berger representing the Cambridge University Press, at the Pace University School of Law Center for Environmental Legal Studies. Robinson stated, “Cambridge University Press has an outstanding set of publications in the field of environmental law.” Cambridge University Press will publish the proceedings of the first Academy Colloquium addressing the issue of The Law of Energy for Sustainable Development in October 2004. Pace Law School Dean Emeritus Richard Ottinger will coedit the publication with Adrian Bradbrook of the University of Adelaide in Australia.

Professor Nolon to Chair Panel at Second Colloquium on Land Use and Management

The IUCN Academy of Environmental Law’s second Colloquium will be held in Nairobi, Kenya, from October 4 to 8, 2004. One area of focus will be the issue of land use and management and will be cochaired by John R. Nolon of the Pace Land Use Law Center. This panel will explore the various national regimes used to regulate land use, identify their similarities and differences, and allow reflection on the complex cultural, ideological, and historical factors that explain these similarities and differences. The panel will also provide an opportunity to explore national similarities and differences regarding the topic of development and settlement patterns and how they are shaped. Local strategies for protecting the national patrimony, mediation, consensus building, the democratic effect, property rights affect on land use, and recommendations for future research and action are among the additional topics to be discussed. Future academy colloquia are scheduled as follows: Sydney, Australia, and Auckland, New Zealand, in July 2005, on the law and sustainable development; New York City, hosted by Pace University School of Law, in October 2006, on enforcement and compliance; in Rio de Janeiro in June 2007, featuring a perspective on the Rio Earth Summit 15 years later; and in Europe in 2008.
Introduction

On November 8, 2003, students, attorneys, community members, and officials gathered at the New York Judicial Institute to hear keynote speaker Congresswoman Nita M. Lowey and a panel of judges, lawyers, mediators, and elected officials discuss the role of litigation and the role of collaboration in resolving land disputes. The conference was sponsored by the Land Use Law Center at Pace Law School with other cosponsors.

The role of litigation

The Honorable Francis A. Nicolai, N.Y.S. Supreme Court Justice, Administrative Judge for the Ninth Judicial District, commenced the discussion on the role of litigation by noting that some cases, especially those with significant community interests and scrutiny, often cannot be resolved without litigation.

The Environmental Claims Part, a court established by Judge Nicolai, is dedicated to resolving such disputes and has been in operation for two years. It is the only one of its kind in New York and, in part, he commented, serves the need to obtain the annexation of the border of both towns and highlighted how litigation served the need to obtain the annexation for the case In the Matter of Long Island Pine Barrens Society et al. v. Planning Board of the Town of Brookhaven et al., 80 N.Y.2d 500 (1992). The Long Island Pine Barrens provide a recharge area for the aquifer, which is the only water source for Long Island. The issue in this case concerned the cumulative effect of 224 development projects and whether the projects required SEQRA review. Ultimately, the Court of Appeals dismissed the case but called on the legislature to act to prevent irreversible harm to the environment. The state legislature enacted a bill that established a transfer of development rights (TDR) system, allowing for the preservation of sites in exchange for authority to increase density in other areas, leading developers to agree to collaborate.

The role of collaboration

Robert Dennison III, P.E., director, Region 8, New York State Department of Transportation, described a collaborative effort between the DOT and the Natural Resources Defense Council (NRDC) to resolve issues surrounding the expansion of Route 120 and 122 off I-684 and the protection of the Kensico Basin drinking water supply. Eric Goldstein, Esq., senior attorney for NRDC, supplemented the discussion with the grassroots perspective of the process.

Goldstein pointed out that collaboration isn’t spontaneous and may not be conducive to environmental goals. He felt that NRDC had to build a grassroots coalition, media alliance, and political alliances, and present an alternative plan before they would be in a position to get “invited to the table.” Goldstein pointed out that even when well positioned for collaboration, you still need a partner who is willing to collaborate and NRDC found Dennison at DOT. Although NRDC also had a bottom line—no expansion adjacent to the reservoir—they agreed with DOT’s safety concerns, making a settlement agreement possible.

Finally, the Mayor of the Village of Sleepy Hollow, Philip Zegarelli, described his proactive approach in determining the outcome of the future of the derelict and contaminated General Motors site along the Hudson River in Sleepy Hollow. GM’s original plans for the abandoned site did not match the village’s needs, so the Village filed a lawsuit that was ultimately resolved through collaboration. The Village presented an alternative plan and worked with non-profits including Scenic Hudson, Historic Hudson, and Riverkeeper for ideas to foster a better solution. Eventually GM selected another developer who was amenable to the village’s vision of creating a waterfront development that would become an economic and environmental asset to the community.

Conclusion

The conference concluded with afternoon presentations of collaborative developments. William Balter of Wilder Balter Partners described a positive collaborative experience in the Town of Cortlandt that was the result of the establishment of a Concept Committee to allow for community input. Deborah Meyer DeWan and Margery Gruten of Scenic Hudson described their unique partnership with developer Ned Foss of CGI & Partners and the City of Beacon that enables 23 acres of a former industrial site to be developed into an ecologically sound yet economically feasible green hotel, marina, and waterfront park.

Paul Gallay, Esq., executive director of the Westchester Land Trust concluded that the future is not an unavoidable “log jam” and that groups on either side of the equation can succeed as evident from case studies. As a final thought, Gallay commented that when collaborating, “fortune favors the bold,” something both sides can use to their advantage.

Dean David Cohen, President David A. Caputo, Rep. Nita Lowey, and Professor John Nolon
Haub Prize for Environmental Diplomacy Goes to President of Kyrgyzstan

This year’s Elizabeth Haub Prize for Environmental Diplomacy was awarded to H.E. Askar Akaev, president of the Republic of Kyrgyzstan. Pace University School of Law cosponsors the award with the Elizabeth Haub Foundation for Environmental Law and Diplomacy. Lee Paddock, Director of Environmental Law Programs at Pace University School of Law, and Wolfgang Burhenne, executive governor of the ICEL and vice chair of the Haub Foundation, presented the award at Voksenhus, Oslo, Norway, on November 28, 2003. The Diplomacy Award was established in 1997 by Helga Haub to honor the legacy of her mother-in-law, Elizabeth Haub, a noted philanthropist and enthusiast for conservation. Elizabeth Haub was devoted to appreciating nature and to sound stewardship of natural resources. The Haub Diplomacy Award is one of the most prominent environmental awards in the world. Each year, a jury composed of members of the International Council of Environmental Law and Pace Law School reviews the most important diplomatic achievements in the field of environmental law and chooses the Haub awardee from among this field. This year, President Akaev was chosen for his significant contributions to environmental diplomacy and was recognized for his extraordinary accomplishments in initiating and assuring the success of the United Nation’s Year of the Mountains as well as contributing to the development of sustainable regimes for mountain regions.

Faculty Publications and Activities

Professor David Cassuto

Dean Emeritus Richard Ottinger
Energy Law and Sustainable Development, IUCN, 2003 (Adrian J. Bradbrook, University of Adelaide Law School, and Ottinger are editors and contributors)

Director of Environmental Law Programs Lee Paddock
“Clean Air and the Politics of Coal,” coauthored with John Dewitt, in Issues in Science and Technology (winter 2004)

Professor Nicholas Robinson

Adjunct Professor Joe Siegel
“Climate Change: Smoggy Policy on Clean Air” in National Law Journal (January 5, 2004); he was named acting chief of EPA Region 2’s Air Branch in the Office of Regional Counsel

Adjunct Professor Marla E. Wieder
Presented at the National Association of Remedial Project Managers (NARPM) Annual Conference in Miami, Florida, in May