

Sustainable Development, Ecosystems and Climate Change Committee Newsletter

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MESSAGE FROM THE CHAIR

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This issue of the Sustainable Development, Ecosystems, and Climate Change Committee Newsletter focuses on sustainable development. After producing two issues on climate change, I am happy to come back to address another of our three interrelated key topics. This is also the first issue for our enthusiastic new Newsletter editor, Seema Kakade, and we welcome her to the committee.

This issue of the newsletter addresses a wide range of issues related to sustainable development. First, Bill Blackburn and Ira Feldman, both active members of the committee, update readers on sustainability-related international standards and guidelines, including initiatives under the International Organization for Standardization (ISO) and the Global Reporting Initiative (GRI). Second, Jeff Rudd discusses the relationship between political accountability and sustainability development, including the roles of all there branches of government in sustainable development policy. Sanford Gaines next discusses the link between sustainable development and national security, particularly focusing on climate change as an example. Finally, this newsletter includes an overview of Bill Blackburn's new book, "The Sustainability Handbook—The Complete Management Guide to Achieving Social, Economic, and Environmental Responsibility."

The next two newsletters will address climate change and ecosystems, respectively. Our editor is already hard at work on the climate change newsletter. Please do not hesitate to contact Seema or me if you have an idea for an article.

The Second Annual Conference on the Legal Dimensions of Climate Change, which was held at American University Law School on Nov. 8, was very successful. More than 150 people attended, and the speakers were excellent. The conference is a signature event for this committee, and many thanks to Kyle Danish for his work in organizing it. Kyle, by the way, has agreed to organize the Third Annual Conference. Material from the conference is available at www.wcl.american.edu/secl/video.cfm.

***ABA Section of Environment, Energy,
and Resources***

**36th Annual Conference on
Environmental Law
March 8-11, 2007
Keystone, Colorado**

**15th Section Fall Meeting
Sept. 26-30, 2007
Pittsburgh, Pennsylvania**

SAVE THE DATES!

**Sustainable Development,
Ecosystems and Climate Change
Committee Newsletter
Vol. 10, No. 1, December 2006
Seema Kakade, Editor**

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 321 N. Clark St., Chicago, IL 60610.



**UPDATE ON SUSTAINABILITY-RELATED
INTERNATIONAL STANDARDS
AND GUIDELINES**

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As the concept of sustainability—the economic, social and environmental responsibility of organizations—has become more popular and visible among business and other sectors of society, more attempts are being made to integrate it into business tools and requirements. This article discusses a few initiatives of this type, in particular, those being undertaken by the International Organization for Standardization (ISO) and a few in the area of public reporting, including the Global Reporting Initiative (GRI).

**ISO Standards on Sustainability/Social
Responsibility**

**ISO 26000 Social Responsibility Guideline
Standard (Draft)**

Corporate social responsibility (CSR) has become a fairly well-established concept, with a vast if inconsistent literature developing over the last 15 years. As applied to corporate entities, CSR suggests that organizations can be doing well by doing good, but there is no single commonly accepted definition. Most would agree that CSR implies something more than corporate philanthropy, and usually refers to a bundling of substantive efforts in the areas of the environment, human rights and labor. For many, the scope of CSR is co-extensive and interchangeable with the “people, planet, profits” mantra of sustainable business practices; others would argue that CSR is closely related to sustainability, but steers clear of the financial viability of the organization that is accepted in “triple bottom line” sustainability thinking.

There are numerous voluntary codes and standards already available dealing with various slices of the CSR pie. Among these are the principles set forth by the

UN Global Compact and in the Organisation for Economic Co-operation and Development (OECD) guidelines, the social audit guidelines found in the SA 8000 and AA 1000 standards, and the reporting protocol developed by the GRI.

ISO stepped into the CSR arena in 2002 by forming a strategic advisory group to consider whether ISO should develop a standard for CSR. Instead of harmonizing the definitional morass, ISO has further clouded the picture by declaring that its initiative will focus on “social responsibility”—CSR without the “C”—as a signal that the ISO 26000 guidance will address the social responsibility of all organizations, not just business corporations. ISO’s stated objective for its new guidance standard is to provide practical guidance related to operationalizing social responsibility, identifying and engaging with stakeholders, and enhancing the credibility of reports and claims made about social responsibility.

Nearly 400 experts from over 60 countries and liaison groups have been involved in the ISO/SR process, which is unique in the history of ISO activities in that six stakeholder categories (industry, government, NGO, consumer, labor and others) were designated to encourage a multi-stakeholder process. ISO has convened 3 international meetings (Bahia, Bangkok and Lisbon) in the process to date, with a fourth round set for Sydney in late January 2007. It was only recently however, in October 2006, that a working draft (Working Draft 2) emerged from the various drafting groups with sufficient content to discern the likely component pieces of the final product.

In the current draft of ISO 26000, roughly the first third of the document attempts to place the social responsibility concept for organizations in broader context; for a document created by committee the current working draft does a surprisingly good job of laying out the background and a range of considerations in a manner that is accessible to a newcomer to the field. The second third of the document identifies key SR principles and then outlines the seven “core” topic areas, which have, for now, been selected for inclusion in the guidance by consensus. These topics, still subject to change, are:

organizational governance; environment; human rights; labor practices; fair operating practices; consumer issues; and community involvement/society development. This middle section reads more like a succession of lists rather than an integrated text, and this is understandable for an early draft. The framework adopted in this section shows promise for introducing the user to the key substantive areas by explaining the relevance of each topic to SR rather than attempting an encyclopedic approach. The final third of the draft document is devoted to operationalizing an SR program. This section is viewed by many as the weakest of the current draft, as debates over the use of illustrative examples and reference to management systems approaches remain unresolved. The language in this section relating to communicating with stakeholders, while coherent, will likely be scaled back to better fit the full text.

There is a long way to go before ISO 26000 is released as an international standard in late 2008 or early 2009. Almost two years into the process there are some fundamental issues still on the table, including whether to embrace sustainability terminology per se in this SR document; how to acknowledge the various existing standards and protocols (such as the Global Compact, AA1000, SA 8000 and GRI) that fall within the scope of ISO 26000; and, whether to utilize illustrative examples or refer to “best practices.” What is clear at this stage is what ISO 26000 is not intended to be. It is not to be a “management systems standard” (MSS) in the “Plan, Do, Check, Act” Deming model. Rather, organizations are expected to use existing management systems (ISO 9001, 14001, etc.) to implement their SR programs. It is not to be a certification standard like ISO 14001, *i.e.*, there will be no third party registration—it is a guidance standard only. Finally, the drafters are not to create a set of social obligations or expectations of the type properly defined by governments. But major, as yet unresolved questions remain as to whether the implementation section of the draft too closely resembles a management system, and whether the substantive principles outlined in the text (*e.g.*, “Organizations should not employ children nor practice any form of forced labor”) cross the boundary drawn on obligations.

ISO 9004 Sustainability Management System Guideline (Draft)

Under the leadership of the British Standards Institution as secretariat, ISO is in the preparatory stages of developing an updated version of its ISO 9004: 2000 standard, the ISO 9001-related document entitled “Quality Management Systems—Guidelines for Performance Improvement.” But unlike the popular 9001 quality management system standard, the 9004 draft indicates it is not intended for certification or regulatory or contractual use, nor as a guide to the implementation of 9001 itself. Rather, the new 9004 proposal, labeled “Managing for Sustainability—A Quality Management System Approach,” provides guidance to organizations on how to achieve “sustainability,” (although that term has yet to be defined in the document). Still, the draft 9004 is based on the same methodology and principles that underlie the 9001 standard. More specifically, the new 9004 would present an approach defined by the following elements: (1) management responsibility, (2) organizational identity, (3) organizational environment, (4) strategic planning (including risk identification and management), (5) structure and communication, (6) business planning, (7) resource management (including the effective use of natural resources), (8) people in the organization, (9) processes, (10) measurement and analysis and (11) continual improvement (including a focus on learning and innovation). Sustainability aspects are incorporated in a number of provisions. For example, the proposal indicates that to be sustainable, an organization needs to meet a diverse range of stakeholder needs and expectations. It then suggests 30 sustainability indicators that can be used to measure the satisfaction of various stakeholder groups. The draft asks that the organization communicate with internal and external stakeholders to keep them informed and solicit their feedback. It also urges that a “life cycle management” approach be used in planning to identify and minimize environmental burdens across the full life cycle of products and services.

It will be interesting to see how the new draft of 9004 fares during the ISO review process. For one thing, there is considerable duplication between the 9004

proposal and the text on implementation of social responsibility found in the draft on 26000. For another, the ISO delegates for 26000 already voiced strong opposition to the development of a social responsibility management system standard, and the new 9004 seems to be just that.

Public Reporting on Sustainability Performance

Global Reporting Initiative’s New Sustainability Reporting Guidelines

The GRI’s Sustainability Reporting Guidelines and related Framework are developed through an extensive global multi-stakeholder process. The GRI Guidelines, the most popular of its type, provide guidance to organizations of all kinds and sizes on the public reporting of their sustainability performance.

In early October 2006, at a major international conference in Amsterdam, GRI launched “G3”—the third version of its Guidelines. The event, which drew over 1000 attendees, provided a comprehensive view of the state of play in sustainability reporting through plenary sessions and separate parallel tracks on topics including public policy and capital markets. The event not only introduced the new G3, but also served as the vehicle for announcing a new relationship between GRI and the Global Compact (see below); the release of a number of significant new reports and studies; and the introduction of a new generation of information technology tools designed to support sustainability reporting.

A stellar collection of keynote speakers—including former U.S. vice president Al Gore, the EU’s Margot Wallstrom, and United Nations Environment Programme’s Achim Steiner—affirmed that sustainability reporting is here to stay and that the GRI, in Steiner’s words, had become a unique instrument, “facilitating the interface between markets, government and NGO’s.” *See Informal Report of the GRI Global Conference, Reporting: A Measure of Sustainability*, Oct. 4-6, 2006, at p.5, available at www.globalreporting.org. The panels underscored the value of sustainability reporting as a communication

and management tool. The move to “materiality-based reporting”—the core of the new G3—is seen by many as the key challenge going forward. “Focusing on the material sustainability issues that matter to the business and demonstrating better linkages between an organization’s business and sustainability strategy would go a long way in getting the mainstream investment community interested in sustainability.” And hopefully materiality-based reporting will lead to more focused reports rather than the long, exhaustive ones that have come from the “carpet bombing” of issues by some writers. Further information on most of the plenary and break-out sessions can be found at www.globalreporting.org.

The Guidelines call on organizations to include five major components in their reports: a strategy and analysis section, an organizational profile, a section on governance and commitments, a discussion of management approach and performance indicators.

Model indicators are provided under economic, environmental and social categories—the latter comprising four categories covering labor practices, human rights, society and product responsibility. Reporters are urged to provide contextual management information, termed “Disclosure on Management Approach” for each of the six categories. The indicators likely to be of interest and material to most reporting organizations are classified as “core indicators”; “additional indicators” represent emerging practice or address topics likely to be material to some but not a majority of organizations. Each indicator is supported with an explanatory indicator protocol. To complement the general guidelines, the GRI Reporting Framework also includes an evolving set of sector supplements providing additional indicators and more focused guidance for particular industries and other groups.

In addition, the GRI Guidelines provide general guidance on building the reporting process and communicating about it. Reporting principles are offered for helping reporters decide what to report (materiality, stakeholder inclusiveness, sustainability context, completeness) and how to achieve a good quality report (balance, comparability, accuracy,

timeliness, reliability and clarity). These principles can assist organizations in selecting from among the indicators offered by GRI as well as aid them in developing others appropriate to their operations, products and services.

In addition, guidance is provided on the role of stakeholder dialogue in the reporting process, on external assurance and on setting report boundaries (determining, for example, what organizations within the supply chain should be covered). Different levels of application of the guidelines are defined to help new reporters get started and, over time, progress to more sophisticated stages of reporting. These levels are also used to classify reports that are registered on the GRI Web site.

Whether or not an organization prepares a social responsibility or sustainability report for the public, it may find the GRI Reporting Framework to be a useful tool for driving performance through internal reporting.

In an effort to improve the compatibility between the GRI sustainability reporting guidelines and the UN’s Global Compact, the most popular code of organizational sustainability behavior, the two groups have formed a recently announced alliance. Organizations endorsing the Global Compact are expected to report their progress toward fulfilling their Compact obligations, and the UN is encouraging the use of GRI-based reports for that purpose. Further collaboration between the Global Compact and GRI is planned to make their two frameworks even more complementary in the future.

U.K. Business Review

A 2005 U.K. law, adopted pursuant to the 2003 European Union Accounts Modernization Directive, requires the largest publicly traded companies in the country to include within their annual financial reports a Business Review, providing a comprehensive analysis of the development and performance of the company and its position at year-end. Prior to 2006, the law stipulated that an analysis related to environmental and employee matters be inserted where needed to help understand the review information. *See* EU Council

and Parliament Directive 2003/51/EC, July 17, 2003; The Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations 2005, UK Statutory Instrument S.I. 2005/No.1011, Mar. 21, 2005, as amended by UK Statutory Instrument S.I. 2005/No.3442, Dec. 14, 2005, at www.opsi.gov.uk/stat.htm. In November 2006, the U.K. legislature approved amendments, which call for companies to report on supply chain, social and community issues, too, and to include information about the effectiveness of the organization's policies on the covered sustainability topics. Companies must also provide, where appropriate, an analysis of key performance indicators related to their employee, supplier, and environmental matters and social and community issues. See The Companies Act 2006, Nov. 8, 2006, clause 423 (UK), available at www.opsi.gov.uk/index.htm. The country's Accounting Standards Board issued guidance in 2006 on how to prepare text in financial reports on such non-financial topics. The U.K. Department of Environment, Food, and Rural Affairs, for its part, published reporting guidelines on environmental key performance indicators that could be considered in preparing a Business Review. See *Environmental Key Performance Indicators: Reporting Guidelines for UK Business* (2006), UK Department for Environment, Food and Rural Affairs, available at www.defra.gov.uk/environment/business/envrp/envkpi-guidelines.pdf.

The new Business Review requirements follow in the wake of rules adopted over the last few years in France and South Africa, which also mandate the inclusion of environmental and social information in financial reports. As a growing number of investors demand such information, both for ethical reasons as well as to better assess long-term financial risk, other countries are expected to adopt similar requirements.

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**AMERICAN BAR ASSOCIATION
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Calendar of Section Events

**Environmental Science
Teleconference Series:
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Jan. 11, 2007

**Litigation Teleconference Series:
A Practitioner's Guide to Citizen Suit
Litigation**
Jan. 16, 2007

**Nanotechnology Teleconference
Series: The Clean Air Act and
Nanotechnology**
Jan. 16, 2007

25th Annual Water Law Conference
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**36th Annual Conference on
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MERGING SUSTAINABLE DEVELOPMENT POLICY AND DELIBERATIVE DEMOCRACY TO ENHANCE POLITICAL ACCOUNTABILITY

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University of Wisconsin-Madison

Introduction

Sustainable development contrasts sharply with traditional forms of economic development by elevating democratic ideals of human freedom, equality of opportunity and an improved quality of life into its theories and policies. The specific contexts for the application of sustainable development principles vary from the revolutionary, atom-by-atom manufacture of nanomaterials to more tangible environmental issues, such as forest management on public and private lands. Sustainable development's substantive proposals are bound together, however, by the interwoven political goals of liberty, equality and a civil society distinguished by a long-term socio-ecological consciousness. The achievement of these admirable goals requires the cultivation of political accountability as an essential part of sustainable development's philosophy. Environmental regulatory agencies' extensive legislative power conflicts with sustainable development's democratic goals by undermining accountability in the rulemaking process.

The deterioration of political accountability in environmental law and policy has produced a loosely-organized, insulated rulemaking process that hinders public debate about policy agendas and regulatory decisions. Deliberative democratic debate in the rulemaking process presupposes an institutional structure requiring the ongoing exchange of information between the agency and the public's representatives. The "public" is generally represented in this process by members of non-governmental organizations and local associations, university professors and government officials; highly-qualified experts in the natural and social sciences often support the public's interest in agency decisions. Congressional oversight is largely absent from the rulemaking process and national elections provide an insufficient means to ensure

agency accountability in the environmental regulatory system. Sustainable development's potential to supplant narrow public policies prioritizing economic growth over social and ecological values depends on fortifying accountability in the environmental regulatory system.

Political accountability is the foundation of deliberative democracy's merger with sustainable development. Institutions designed to augment accountability check the exercise of political power and provide the impetus for government officials to comply with the letter and spirit of laws promoting reciprocity and publicity. In a deliberative democracy, government officials participate publicly in decision-making processes designed to produce the best policy through the free, reciprocal exchange of ideas; officials should design, modify and justify their policies through such public debates. Policymaking processes contingent upon legitimate institutions of accountability lower the bar for public access, encourage the exchange of information and ideas between government and stakeholders, and help citizens locate and challenge excess government power over policy innovation and implementation. Sustainable development proposals grounded in legitimate institutions of accountability elevate the public visibility of agencies' technical experts and force to the surface the discussion of trade-offs among short- and long-term economic, ecological and social values.

Sustainable development policies renew government's emphasis on environmental values and expand the reach of traditional environmentalism to encompass broader policy debates about human freedom and equality of opportunity. America's political journeys through the New Deal and the Environmental Era shared sustainable development's quest for a form of economic growth infused with democratic principles of equality, liberty and lasting social justice. In the next section, I argue that the evolution of the New Deal's dependence on politically independent agency experts may cause the downfall of sustainable development policy. In the aftermath of the Environmental Era, Supreme Court decisions reduced administrators' political accountability by inflating agency expertise and independence. Two recent rulemaking experiences, the Environmental Protection Agency's (EPA) 2005

Clean Air Mercury Rule, 70 Fed. Reg. 28,606 (May 18, 2005), and the first Canada Lynx endangered species case, *Defenders of Wildlife v. Babbitt*, 958 F. Supp. 670 (D.D.C. 1997) (*Lynx I*), illustrate the lack of accountability left in the wake of the Supreme Court's expansion of agencies' legislative power. I conclude with suggestions intended to strengthen political accountability in the rulemaking process and avoid sustainable development's transformation into political cover for exploitative forms of economic development.

The Roots of Corruption in Environmental Law: Agency Expertise and Independence

The Great Depression represented a breakdown in the capability of government institutions to identify and manage changing social conditions. Franklin Delano Roosevelt instituted social justice initiatives designed to remove socio-economic barriers that suppressed economic security and national unity. The New Deal's institutional costs were borne by Americans through the transfer of autonomy to an administrative, centralized authority. Administrative agencies were designed with the power to identify, analyze and solve social problems that impeded cultural evolution and economic stability; agencies' expertise promised a new efficiency in government benefiting all sectors of society.

Americans placed their trust in the creation of an Administrative State that significantly diminished the constitutional responsibilities of Congress and the courts.

In *The Administrative Process* (1938), James Landis, a former dean of the Harvard Law School, championed the central structural and substantive features of the New Deal's administrative agencies—political independence, technical expertise and a quest for efficiency in government. He sketched a stratified social world susceptible to careful intervention by apolitical experts who had the rare ability to perceive the proper relationship between general laws and their just execution. He argued that administrative experts possessed the aptitude and tools necessary to control social phenomena and promote efficiency and stability in society. The new army of experts would identify relevant phenomena, study their impact on society, and

craft regulatory plans to maintain stability and improve efficiency. The new administrative order reduced public participation by narrowing the field of qualified opinions to those held by experts; the administrative expert's black-box would solve social problems.

As social conditions improved during the late 1950s, Americans became increasingly concerned about the quality of life generated by an economically efficient society. The Environmental Era's birth in the early 1960s showed solid indications of making progress against industrial power through the implementation of environmental legislation. Congress renegotiated the New Deal's emphasis on agencies' political independence and expertise to produce institutional shifts in authority designed to protect biodiversity, curtail pollution and provide democratic conditions for environmental law's implementation. Congress and the public accepted economic sacrifice to advance social and ecological values across generations, but in time environmental legislation also created conditions for technological innovation and economic growth. The institutions designed to promote liberty, equality and an improved quality of life through the implementation of environmental legislation were not sufficient, however, to ensure lasting cultural change in administrative government.

Congressional and judicial restraint of environmental regulatory agencies' authority faded during the late-1970s and early 1980s as agencies acquired more power to make value-based decisions in environmental law. The Supreme Court's decisions in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), *Vermont Yankee Nuclear Power v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) and *Baltimore Gas & Elec. v. NRDC*, 462 U.S. 87 (1983) insulated agencies' legislative interpretation from challenge and produced a form of procedural positivism in environmental law that conflicted with democratic debate in the rulemaking process. The *Vermont Yankee* Court chastised the D.C. Circuit Court of Appeals for ruling that the Nuclear Regulatory Commission should have allowed discovery and cross-examination to improve the regulatory proceeding's legitimacy. The Supreme Court narrowed the democratic force of the National

Environmental Policy Act of 1969 by reinforcing agency discretion over procedural and methodological issues of statutory implementation, and enlarging the sphere of agency competence to determine the terms and opportunities for public debate about regulatory decisions. The Court's reification of institutional expertise in *Baltimore Gas* combined with its narrowing of environmental law to shift political authority over environmental decisions from the public to administrative experts. The current structure provides agencies with a virtual monopoly over the power to construct the normative and technical categories that determine the *kind* of information that should count as knowledge.

Reagan Era Supreme Court decisions in *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983) and *Chevron U.S.A., Inc., v. National Res. Def. Council, Inc.*, 467 U.S. 837 (1984) also enhanced agencies' institutional independence, complementing the Court's normative and epistemic expansion of agency expertise. The *Chevron* Court broadened agency authority to interpret congressional legislation, narrowing further judicial review of agency decisions. In *Chadha*, the Court delivered an institutional shock to Congress by declaring congressional vetoes unconstitutional, severing a congressional mechanism for restraining agency's legislative power. The *Chadha* and *Chevron* decisions redistributed constitutional government's legislative powers while turning a blind eye to the Court's expansion of agency independence and its concurrent reduction in accountability. Simply put, the Court's broad interpretation of agencies' legislative authority undermines the judiciary's capacity to check agency decision-making, denies affected persons access to the policy process and stifles significant democratic debate about agencies' lawmaking decisions.

In contrast to the Supreme Court decisions expanding agency autonomy, appellate courts initially reinforced the doctrine that judicial review should check administrators' tendency to favor private interests in public policy decisions. During the late 1970s and early 1980s, the judiciary developed the "hard look" doctrine to ensure agencies did not exceed the bounds

of their political authority. In *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), the Supreme Court endorsed the doctrine and rejected government arguments grounded in broad interpretations of agency discretion and expertise. The Court's opinion illustrates its willingness to defend legislation advancing collective social values against powerful business factions attempting to control agency decisions. Since the early 1980s, however, the judiciary has virtually abandoned the hard look doctrine.

The Supreme Court's expansion of regulatory agency independence and expertise has evolved to overshadow and marginalize the hard look doctrine. Environmental regulatory agencies exercise broad discretion in the absence of meaningful accountability to create law bound only by vague statutory principles and an equally ambiguous overall statutory scheme. Agencies' rulemaking decisions are subject to notice and comment requirements, but these procedural devices function as poor substitutes for deliberative democratic mechanisms ensuring agency accountability. Agencies' extensive authority over rulemaking denies affected persons access to the policymaking process and insulates administrators from responsibility for their regulatory decisions. The current institutional structure inhibits Congress from easily identifying, tracking and correcting environmental agencies' rulemaking strategies that deviate from statutory purposes and distort consensus scientific views.

Contemporary Corruption in Environmental Law

Environmental regulatory agencies have considerable power to construct the scientific theories and claims necessary to implement environmental legislation. The rulemaking processes that produced the 2005 Clean Air Mercury Rule (CAMR), 70 Fed. Reg. 28,606 (May 18, 2005), and led to the *Lynx I* case, 958 F. Supp. 670 (D.D.C. 1997), exemplify the institutional gaps that promote agency power and undercut accountability. In 2004, Congress instructed the Office of the Inspector General (OIG) for EPA and the General Accounting Office (GAO) to conduct an investigation of the EPA's promulgation of the CAMR.

See *United States EPA, Office of the Inspector General, Rep. No. 2005-P-00003, Additional Analyses of Mercury Emissions Needed Before EPA Finalizes Rules for Coal-Fired Electric Utilities* (2005), www.epa.gov/oig/eroom.htm#05; U.S. General Accounting Office, Rep. No. 05-252, *Observations on EPA's Cost-Benefit Analysis of Its Mercury Control Options* (2005), available at www.gao.gov/cgi-bin/getrpt?GAO-05-25). The investigation provided a rare look inside the EPA's rulemaking process, highlighting the institutions susceptible to political manipulation. The Canada Lynx saga began in the mid-1990s and lasted almost a decade before senior officials with the U. S. Fish and Wildlife Service (FWS) were ordered by a U.S. District Court to follow FWS scientists' recommendation to list the lynx as threatened or endangered under the Endangered Species Act (ESA) of 1973.

The OIG and GAO reports show that EPA's "scientific" analysis, information suppression and institutional modifications were part of a broader regulatory strategy to control deliberation and minimize dissent affecting CAMR promulgation under the Clean Air Act (CAA). The CAMR investigation reveals that the Executive overran Congress to grant the status of law to a policy agenda appeasing private industry. The OIG's report illuminates an agency's capacity to exercise its political authority and reduce accountability by reshaping institutions governing the implementation of legislation. EPA senior staff rigidly controlled the analysis necessary to promulgate the CAMR, inhibiting intra-agency and public objection in order to attain its desired goal—back door enactment of the Clear Skies legislation that had failed to pass congressional inspection and analysis. EPA's leadership actively skirted the institutional framework designed to hold the agency accountable for decisions implementing the CAA.

EPA developed its scientific methodology within a contrived institutional framework that limited potential challenges to the Executive's legislative objectives. The investigations revealed that EPA's upper level management dictated significant deviation from past rule development practices, precluding reasonable

intra-agency and public participation in the rulemaking process. The process circumvented normal intra-agency review, reducing the risk that internal agency objections might derail political appointees' preferred result. Established internal rulemaking practices were abandoned, constraining the intra-agency working group's ability to participate in the technical and scientific aspects of the rulemaking process. The intra-agency review process was less collaborative, substantive and inclusive than in the past, thus protecting the administration's preference from challenge. The OIG and GAO reports highlight EPA's ability to withhold information, control analysis and curtail opposition through an institutional structure that reduced agency accountability to agency employees and other stakeholders.

The Canada Lynx saga lasted over 10 years and implicates top officials at FWS as participants in the steady erosion of environmental legislation's socio-ecological values. In the mid-1990s, the *Lynx I* conflict developed between FWS and numerous environmental organizations over listing the lynx as endangered or threatened under the ESA. FWS administrators created the illusion of scientific uncertainty by revising the informal rules governing the agency's interpretation of the ESA's "best available science" standard to require "conclusive evidence" before listing a species as threatened or endangered. 958 F. Supp. at 679. The *Lynx I* court chastised upper-level officials for constructing an insurmountable burden of scientific proof to limit the legal force of agency scientists' credible work. The administrators also withheld FWS scientists' research and conclusions from the public domain and deceptively applied a non-agency scientist's report out-of-context in an attempt to prevent listing the lynx.

The CAMR and *Lynx I* case studies highlight the need for sustainable development advocates to counter agencies' legislative power with accountability reform. The absence of legitimate agency accountability allows the Executive to pursue back door legislation with insignificant potential consequences for agency employees or political appointees who deviate from their statutory responsibilities or accepted agency practices. Administrators may optimize their

lawmaking authority by framing the justification for final rule decisions in terms of their discretionary exercise of expertise. Administrators also tend to exploit scientific uncertainty to suit their political agendas, rather than resolve issues of uncertainty by engaging the broader scientific community in a sound deliberative process. Finally, administrators control the information and the knowledge bearing upon reasonable intra-agency and public review of rulemaking proposals.

Conclusion: Enhancing Accountability to Strengthen Sustainable Development

Environmental agencies' broad legislative power subverts the democratic principle of accountability necessary to implement sustainable development policies. Supreme Court decisions grounded in theories of agency independence and expertise broadened agencies' legislative power relative to the courts and Congress and expanded Executive authority over lawmaking. Agencies' political independence produces rulemaking agendas in non-public settings relatively insulated from stakeholder dissent. Agencies' legislative authority encourages institutional decisions characterized by secrecy, disregard for future generations' interests and the exploitation of scientific uncertainty to achieve political goals. The absence of an institutional structure mandating agency accountability causes agencies' minimal attention to democratic deliberation and undermines sustainable development's political goals of human freedom, equality and improved quality of life.

The practical realization of sustainable development's political goals demands the enhanced accountability of agencies' political appointees and civil servants. In contrast to the top-down, authoritative approach institutionalized in the current environmental regulatory structure, sustainable development policy reflects deliberative democracy's aim to publicly separate self-interested and altruistic claims for discussion and analysis. Presidential appointees overseeing environmental regulatory agencies should foster an atmosphere encouraging the reciprocal exchange and revision of views among administrators, agency employees and citizens about the merits of policies affecting the environment. Political appointees' power

over policy should not sacrifice the diligence and integrity of agency employees who respect and strive to implement the principles supporting environmental law. Congress should invigorate the current environmental regulatory structure to supplement the very limited accountability produced by the electoral process.

The future success of sustainable development hinges on whether Congress and the judiciary restructure the institutional framework allocating power among the various branches of government. Congress should expand the EPA investigation into other administrative realms, including the federal land management agencies' rulemaking process. Investigations into the rulemaking process within the U.S. Bureau of Land Management and the U.S. Forest Service will reveal an absence of political accountability that creates opportunities for corruption. The investigations should also yield insights about the role of *ex parte* contacts in the rulemaking process. Regulatory agencies' *ex parte* communications with parties interested in the rulemaking agenda undermines the democratic legitimacy of the rulemaking process and produces an unequal distribution of information relevant to policy selection.

Congress should reverse the Supreme Court's expansion of agency authority by passing legislation that constrains agency autonomy. Congress may restrict agencies' power on a statute-by-statute basis or with legislation that broadly targets agencies' rulemaking authority. In addition to explicit reductions in agencies' lawmaking capacity, Congress should investigate the Executive's environmental policy agenda by questioning agency assumptions about the need for new rules and investigating agency plans to engage scientific experts during the rulemaking process. Enhanced congressional oversight will create an important constitutional check on the Executive's capacity to legislate through the back door and curry favor to special interests in only nominally public forums. Democratic reforms should improve Congress' access to information about environmental regulation and raise public awareness of agency functions and decisions.

Congress should also improve institutions supporting the participation of agency and non-agency experts in the rulemaking process; agencies' political and scientific discretion currently exceeds the grasp of a deliberative democratic process. Deliberative debate in complex societies necessarily entails a conditional commitment to rely upon experts for technical information. The successful implementation of sustainable development policies is contingent upon institutions facilitating the exchange of information and ideas among experts and non-experts, establishing experts' credibility and permitting debate to define what counts as knowledge. Agency administrators hoping to bolster their policy positions with claims of technical expertise preclude accountability by limiting the introduction of values and perspectives from outside the insulated political order. The restructuring process should promote the visible, public involvement of agency scientists in the rulemaking process and encourage collaboration with non-agency experts in the public and private sectors.

Courts should complement congressional actions by exercising their constitutional responsibilities to breathe new life into the dormant hard look doctrine. Courts should be especially wary of decisions by agency experts. Agencies exercise largely unchecked authority to choose among competing sets of values when implementing congressional statutes; value choices determine the assumptions bearing upon policy design. Administrators' choices among different spatial and temporal dimensions also determine the relevance of a proposed policy's scientific and social consequences. Judicial deference to agencies' scientific decisions too often ignores the nature of scientific analysis and the impact of values on the determination that a regulatory decision is based on the best available science or the maximum achievable technology.

Courts should also incorporate constitutional principles of equal protection and due process into the hard look doctrine to assess the legitimacy of rulemaking decisions. Sustainable development theory requires judicial satisfaction that all affected groups have been treated equally throughout the rulemaking process, but political ideals of liberty and equality of opportunity also require judges to consider the advantages that

regulated parties hold relative to third-party beneficiaries in scientific expertise, information acquisition capabilities and political access to policymakers. Courts promote administrators' accountability by granting liberal discovery and assessing whether administrators identified, analyzed, and publicly debated information affecting rulemaking decisions. Courts should also open the doors to the rulemaking process and hold agencies accountable for revealing the political agendas justifying a proposed rule. Political reasons do not necessarily constitute an illegitimate basis for a regulatory change, but public scrutiny of political influence in the rulemaking process enhances agency accountability and strengthens democratic government.

Finally, Congress should enact specific legislation describing civil and criminal penalties for agency employees who willfully violate laws governing information disclosure or scientific analysis procedures during the rulemaking process; the current institutional framework is virtually barren of enforcement characteristics. EPA's mercury emissions rule and the FWS decision not to list the lynx each turned on upper-level management's unilateral authority to withhold from the public scientific or technical information relevant to the reasonable review of the agency's rulemaking decision. Public officials should be reminded that deliberation over sensitive environmental rulemaking requires transparent and complete communication with the American people. The potential for political appointees or upper-level officials to appear in court and explain their decision would serve as a substantial deterrent to special interest influence on agency behavior. Faced with the possibility of appearing before a federal judge to explain a corrupt decision, agencies' senior management will become less likely to issue edicts from the backroom demanding particular results that contravene statutory provisions and constitutional values.

Sustainable development is much more than an attempt to integrate and apply knowledge from diverse disciplines to achieve democratic goals of intergenerational equity, freedom and equality, and an improved quality of life. It presupposes institutional

conditions of accountability necessary for democratic deliberation about policy agendas and proposals. The current environmental regulatory structure has evolved at cross-purposes with legitimate forms of political accountability, threatening the realization of sustainable development's goals. The democratic future of environmental law and policy turns on closing the institutional gaps that insulate the exercise of agencies' legislative power. The merger of sustainable development and deliberative democracy promises to raise the political status of social and ecological values in the rulemaking process.

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SUSTAINABLE DEVELOPMENT, CLIMATE CHANGE AND NATIONAL SECURITY

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Introduction

In the 1990s, "environmental security" analysis linked environmental degradation with national security. Scholars and popular writers in this field emphasized environmental scarcity—scarcity of renewable resources such as cropland, fresh water and forests to meet the needs of growing populations in developing countries—as a leading contributor to social disruption and thus to violent conflict. Civil and ethnic conflicts around the globe, in turn, presumably implicated the geo-political, indeed military, national security interests of developed countries. See Thomas F. Homer-Dixon, ENVIRONMENT, SCARCITY, AND VIOLENCE 13 (1999); Robert D. Kaplan, *The Coming Anarchy: How Scarcity, Crime, Overpopulation, Tribalism, and Disease are Rapidly Destroying the Social Fabric of Our Planet*, ATLANTIC MONTHLY, Vol. 273 No. 2, Feb. 1994, at 44.

In view of the active conflicts in the developing world in 2006, such as the Maoist insurgency in Nepal and the genocide of African tribes in Darfur and Chad, the analysis linking environmental scarcity and violence has continuing relevance. As a focus for national security consideration by the United States or other industrial powers, however, the environmental scarcity model seems deficient. Scarcity-driven violent conflict in developing countries does not directly threaten U.S. national security; indeed, developed countries exhibit a palpable reluctance to commit national security assets to their suppression or their resolution. The current national security threat of terrorism finds sustenance in religion, historical grievances, and a clash between traditional and modern conceptions of the world that have little to do with environmental degradation. Most importantly, the scarcity model of environmental security only weakly accounts for the social, political, economic and equitable contexts in which conflicts are engendered and play out. Even in the 1990s, "reformist" critics of environmental scarcity analysis



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argued persuasively that inequitable access to resources and political oppression are the main drivers of violent conflict, as illustrated by the frequency of civil or inter-ethnic violence amidst resource abundance, as in Iraq. Indra de Soysa, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity?*, in *GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS* 113 (Mats Berdal & David M. Malone, eds., 2000); Nancy Peluso and Michael Watts, *Violent Environments: Responses*, ECSP Report, No. 9 (2003), at 93, available at <http://wilsoncenter.org>.

But if we substitute the complex term “sustainable development” for the simpler term “environment” in the field of environmental security, we bring many social, economic and political factors shaping environmental conditions and environmental governance back into the environment–security analysis. The social and economic dimensions of sustainable development also invite a broader conception of “security.” Exploring security linkages in the sustainable development frame of reference thus opens our minds to broader, more complex, and ultimately more meaningful connections between security in our lives on the one hand and the patterns of economic activity and social organization affecting human use and abuse of the environment on the other. In particular, the sustainable development perspective brings into clearer view how unsustainable patterns of consumption in the United States are contributing to its own insecurity. Appreciation of such linkages leads to normative analysis of the need for radical reform of certain public policies of the United States in order to obtain the security benefits, for ourselves as well as for the rest of the world, of a full commitment to sustainable development.

The Contours of Sustainable Development and Its Link to Security

Sustainable development is a notoriously broad and ambiguous concept that integrates economic and social development issues with environmental conditions and environmental protection. The purpose here is not to engage in the discourse on precisely what the term means or should mean to policy makers, but to apply the main contours of the concept. The classic definition of sustainable development appears in the

World Commission on Environment and Development (WCED) final report, *Our Common Future*: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” *OUR COMMON FUTURE* 43 (1987). This definition reflects three key concepts, each of which has relevance to security.

First is human needs, in particular the basic needs of the world’s poorest people for adequate food, water and shelter. (Interestingly, the first iteration of the National Security Strategy of the United States by the current administration placed fresh emphasis on global poverty reduction as an element of security policy because of the link between poverty and state failure. The National Security Strategy of the United States (2002), at www.whitehouse.gov/nsc/nss.html. Second is intergenerational equity, our duty to future generations to leave them an environment with a sufficient variety and abundance of resources to meet their own needs. The third embedded concept, intragenerational equity, draws attention to issues of access to resources and other development opportunities within the present generation. The social and political dimensions of sustaining ecological systems have been elaborated recently in the work of the Millenium Ecosystem Assessment. *MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: A FRAMEWORK FOR ASSESSMENT* (2003) 96-104. Their analysis binds sustainable development and security tightly together. Quite simply, development is not sustainable if it does not rest on a stable social and political foundation.

Thinking about security in the sustainable development frame of reference also brings new meaning to the term “national security.” The integration of economies and even cultures that marks the world of the 21st century, not to mention the objective ecological integrity of the planet, makes obvious that any one nation’s “national security” is considerably bound up with the security of other nations. In 1995, an international Commission on Global Governance urged that thinking about global security “must be broadened from its traditional focus on the security of states to include the security of people and of the planet.” Eric K. Stern, *The Case*

for *Comprehensive Security*, *CONTESTED GROUNDS: SECURITY AND CONFLICT IN THE NEW ENVIRONMENTAL POLITICS* 127, 133 (Daniel H. Deudney & Richard A. Matthew, eds., 1999). Note that the commission also referred to the security of people. Lloyd Axworthy, Canada's foreign minister for much of the 1990s, was just one foreign policy leader who sounded a theme of "human security." As one analyst sums up the security challenge: "A threat to national security exists once an action or sequence of events threatens to degrade the quality of life for the inhabitants of a state or . . . threatens significantly to narrow the range of policy choices available to the government of a state or to private nongovernmental entities within the state." Michel Fr  d  rick, *A Realist's Conceptual Definition of Environmental Security*, at 91, quoting Richard Ullman, *CONTESTED GROUNDS: SECURITY AND CONFLICT IN THE NEW ENVIRONMENTAL POLITICS* 127, 133 (Daniel H. Deudney & Richard A. Matthew, eds., 1999). This last statement, focusing on the "range of policy choices" available to governments and private actors alike, pulls our thinking about environmental security back into the orbit of sustainable development, which is also concerned with maintaining choices for future generations. With an appropriately broad conception of security the link between sustainable development and security thus becomes inescapable.

The traditional environmental security literature identified a security threat coming from degraded environmental conditions and population growth in developing countries. There is, however, a more direct environmental security threat for developed societies that is becoming more evident each year: environmental change driven by climate change. That is, a real risk to the national security of the United States comes directly from changes in the natural environment itself, and we ourselves are the biggest contributors to those threatening changes. As Britain's foreign secretary recently said, "[Climate change] is not just an environmental problem. It is a defense problem." Thomas L. Friedman, *Allies Dressed in Green*, *N.Y. TIMES*, Oct. 27, 2006, p. 19.

To mitigate this self-inflicted security threat will require a hard look at our own lifestyles as a major contributor to national insecurity. The security solution can be

framed as the earnest pursuit of sustainable development in the United States. To give some normative direction to the discussion, this essay will apply three normative values to U.S. policy that connect closely with sustainable development—precaution, equity and responsibility.

Unsustainable Consumption and Ecosystem Changes in the United States

The United States consumes approximately 100 quadrillion British thermal units (quads) of energy each year, more than 23 percent of world energy use. U.S. Dep't of Energy, *Annual Energy Outlook 2006*, at www.doe.gov/. Fossil fuels, with carbon content that gives them global warming potential, account for 85 percent of this energy. Nearly half of U.S. fossil fuel energy consumed, or 40 percent of our total energy, comes from petroleum. The United States accounts for more than a quarter of the world's total petroleum consumption, approximately equal to the entire national energy consumption of China from all sources. On a per capita basis, Americans stand out as profligate energy consumers, surpassed only by the people of Kuwait and the United Arab Emirates.

One way to appreciate the environmental consequence of all this energy consumption is to measure our "energy footprint," the area of the world's surface required to provide the fuels we use and then to absorb the wastes from their use. The average energy footprint for each person in the United States is calculated to be six hectares (roughly 15 acres). World Wildlife Fund, *Living Planet Report 2004*, p. 14. This means that 300 million Americans require 1.8 billion hectares to support their energy habit, a national footprint close to twice the area of the 50 United States. In other words, our energy consumption alone not only fully uses up the ecosystem services of the United States itself but appropriates an equal amount of the world's ecosystem services from the peoples of other countries.

Global climate change is already causing physical destruction to important economic assets in the United States and other developed countries. Some of the effects are arguably trivial, such as shorter or more

variable ski seasons. Some are economically significant but probably manageable, such as declining summertime fresh water resources in the western states (which California has identified in its recent nuisance suit against automobile manufacturers) or shifting production of agricultural crops in the Midwest. Some consequences are tragic, such as loss of life and property due to intensifying tropical storms in the United States or unprecedented extremes of summer heat, winter storms, drought and flood as experienced in recent years in Western Europe. The resulting decline in security for many people is palpable and profound. Fishermen, lumbermen, farmers, resort operators, and others who make their livelihood from nature are either losing that livelihood or paying higher costs to maintain their productivity. As often happens, the people most directly affected are the most vulnerable and have the fewest options. In the United States and Canada, the most vulnerable to climate change include the Inuit and other tribal groups in the Arctic who are seeing their whole way of life disintegrate as the Arctic winter shortens, the sea-ice recedes far from shore in the summer, and the animal populations around which the livelihoods and cultures of those peoples are built decline or relocate in the face of the changing climate. Clifford Kraus, *Eskimos Fret as Climate Shifts and Wildlife Changes*, N.Y. TIMES, Sept. 6, 2004, at A4.

Hurricane Katrina in August, 2005 dramatizes the loss of security involved in America's continued pursuit of unsustainable patterns of production and consumption and its tardiness in reshaping its economy to meet the objectives of sustainable development. If any doubts were left after Katrina, Hurricane Rita in September should have erased them. Global warming is almost surely part of the story—Katrina and Rita were particularly intense hurricanes because of unusually warm waters in the southeastern Gulf of Mexico. P.J. Webster et al., *Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment*, 309 SCIENCE 1844, Sept. 16, 2005. But other patterns of unsustainable consumption and unsustainable development of the Gulf Coast region contributed to the tragic loss of life and enormous property damage and economic disruption caused by the hurricanes. Intensive commercial and residential

development of vulnerable barrier islands and beach areas put billions of dollars of property into areas prone to destruction by a hurricane. Evan Mills, *Insurance in a Climate of Change*, 309 SCIENCE 1040, Aug. 12, 2005. Ironically, that intensive development includes critical segments of the U.S. capacity for producing and importing oil and natural gas and the onshore facilities for processing, refining, and distribution of those fuels, revealing another security vulnerability. The protective wetlands to the south of New Orleans are smaller and less resilient after decades of artificial management of the Mississippi River, the construction of ill-advised shipping channels, and multiple incursions into the wetlands to provide access to oil and gas wells. Joel Bourne, *Louisiana's Vanishing Wetlands: Going, Going . . .*, 289 SCIENCE 1860, Sept. 15, 2000. The levee and flood wall system protecting the city of New Orleans, which was not designed to withstand a full-force hurricane, also suffered from critical design flaws including shipping canals that helped funnel the storm surge directly into the eastern end of the city. Christopher Drew and Andrew Revkin, *Storm and Crisis: The Defenses: Design Flaws Seen in New Orleans Flood Walls*, N.Y. TIMES, Sept. 21, 2005, Sec. A, p. 1. The potential for all of the devastating consequences of these faults had been identified years earlier, but government at all levels failed to commit the necessary funds or make the necessary decisions to prevent them or to correct them. Louis Uchitelle, *Disasters Waiting to Happen*, N.Y. TIMES, Sept. 11, 2005, Sec. 3, p. 1. In the case of Rita, vulnerable lower-income communities of southwest Louisiana were almost completely destroyed and have scarcely begun to rebuild more than a year later. Jennifer Steinhauer, *Smaller Towns Bore the Brunt of Rita's Force*, N.Y. TIMES, Oct. 1, 2005.

As if the threat to national security resulting from the changes we are causing to our own environment were not enough, America's insatiable energy appetite also jeopardizes the environment and the social stability of distant countries, aggravating security threats to the United States from foreign sources. Feeding our energy appetite appropriates important resources from developing countries for our consumptive use in a manner that is neither equitable nor observant of the

principle of precaution. Moreover, the business of acquiring the resources, with developed country governments often lending diplomatic or financial support to private companies, also foments the political power struggles for control over abundant resources in developing countries that exacerbate social tensions and give rise to civil or revolutionary conflict. A report for the World Bank cautions that the production of valuable mineral and energy resources in developing countries and their export to developed countries frequently leads to a decline in living standards rather than sustainable economic development, a perverse outcome known as the “resource curse.” Extractive Industries Review, *Striking a Better Balance: The World Bank Group and Extractive Industries 2-3* (2003), available at <http://web.worldbank.org>.

Climate change also has enormous implications for the security of people in the South. As a recent report on the environmental and social consequences of climate change finds that floods, storms, and droughts present the most widespread risk to human security, and documents the consequences of these hydro-meteorological changes on developing countries and communities in terms of the basic human needs identified in the WCED definition of sustainable development. It succinctly concludes, “[T]he impacts of climate change will disproportionately affect people living in poverty in developing countries.” Andrew Simms, John Magrath, & Hannah Reid, *Up in Smoke? Threats from, and Responses to, the Impact of Global Warming on Human Development* 5, 29 (2004).

Precaution, Equity and Responsibility

U.S. greenhouse gas emissions continue a steady increase nearly 15 years after the United States officially accepted the general commitment to reduce such emissions under the United Nations Framework Convention on Climate Change. Our behavior violates all three principles of sustainability and security enumerated above—precaution, equity and responsibility.

Current U.S. government policy clearly spurns any notion of precaution. Scientists repeatedly warn that

inexorable changes in the climate are already under way but could be mitigated with early action to reduce greenhouse gas emissions drastically. Michael D. Mastrandrea & Stephen H. Schneider, *Probabilistic Integrated Assessment of “Dangerous” Climate Change*, 304 *SCIENCE* 571, 574 (April 23, 2004) (“It is possible that some thresholds for dangerous anthropogenic interference with the climate system are already exceeded, and it is likely that more such thresholds are approaching. Despite great uncertainty in many aspects of integrated assessment, prudent actions can substantially reduce the likelihood and thus the risks of dangerous anthropogenic interference.”). Even some oil industry leaders predict ““disaster”” if governments do not take urgent action. Geoffrey Lean, *Apocalypse Now: How Mankind is Sleepwalking to the End of the Earth*, *THE INDEPENDENT*, Feb. 6, 2005 (quoting Lord Oxbrugh, the head of Shell in the United Kingdom). Most energy commentators agree that we need immediate investment in a range of short-term strategies, including energy efficiency improvements, carbon sequestration, and sharply increased use of renewable energy sources such as biofuels. Eileen Claussen, *An Effective Approach to Climate Change*, 306 *SCIENCE* 816 (Oct. 29, 2004). Others urge that such mitigation steps are a wise “insurance policy” against possible nonlinearities and surprises in the climate’s response to the increased forcing of rising atmospheric carbon dioxide, and that a mitigation strategy has a highly beneficial cost-benefit ratio. William R. Cline, *The Costs of Inaction with Respect to Climate Change*, Paper for EPOC High-Level Special Session on the Costs of Inaction, Organization for Economic Cooperation and Development, Apr. 14, 2005.

With five percent of world population responsible for emitting 25 percent of carbon dioxide, the environmental inequities of U.S. energy policy are equally obvious. Yet the U.S. government and the American public at large continue with business-as-usual, giving scant thought to equity, and failing as well to recognize the responsibility that we might owe to other nations and peoples, each of whom will feel environmental effect from our behavior. British Prime Minister Tony Blair has put the point clearly: “It is the poorest countries of the world that will suffer most . . .

yet it is they who have contributed least to the problem. . . . That is why the world's richest nations in the G8 have a responsibility to lead the way.” Tony Blair, quoted in *Blair Fears Climate Change Disaster, Challenges US*, Reuters dispatch, Sept. 14, 2004.

Conclusion

That brings us back to security, for if the United States does not act equitably and does not accept responsibility for its actions, others are prepared to act against such unfairness and unresponsiveness. Our patterns of unsustainable consumption help foster that particular form of insecurity called terrorism, which has some of its roots in inequities between the terrorists and their targets. Inequity here includes unequal distribution of wealth, but only to the extent that the wealth disparities are seen to be unfair. Disparities of power and hopelessness about legitimate means of redress or reform in face of power also play an important part. Writing of the divide in the world between rich and poor, Wolfgang Sachs and his colleagues contend that our “affluence is secure” only if the poor know nothing about it, accept their poverty as their fate, or have no chance to attain wealth. In a globalized world, they write, none of these conditions obtains. They quote a Bangladeshi delegate to a climate change conference in Berlin who warned his developed country colleagues, “If climate change makes our country uninhabitable, we will march with our wet feet into your living rooms.” Wolfgang Sachs et al., *GREENING THE NORTH: A POST-INDUSTRIAL BLUEPRINT FOR ECOLOGY AND EQUITY* 167 (1998.) Morally, our responsibility to avoid this security threat cannot be more eloquently stated than it was 25 years ago in a U.S. government report on climate change:

Whatever the consequences of the carbon dioxide experiment for humanity over the long term, our duty to exercise a conserving and protecting restraint extends as well to the community of life—animal and plant—that evolved here with us. There are limits beyond which we should not go in disrupting or changing this community of life, which, after all, we did not create. Although our dominion over the earth may be near absolute, our right to exercise it is not.

U.S. Council on Environmental Quality, *Global Energy Futures and the Carbon Dioxide Problem* viii (1981).

The only effective choice is to embrace the linkage between sustainable development and our own security, and to begin the serious work of restructuring our own society and economy, in cooperation with others around the world, on the basis of a shared commitment to the whole planet and to each other as neighbors. Wolfgang Sachs and his colleagues make a similar plea: All of this signifies that political and military security, greater equity of chances of survival, sustainable economic activity and protection of the natural foundations of life are interconnected worldwide. Anyone seeking sustainability . . . must include the fate of the entire world in their considerations and actions—out of a sense of responsibility and self-interest. *Id.* at 167-69.

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**BOOK OVERVIEW: WILLIAM
BLACKBURN'S "THE SUSTAINABILITY
HANDBOOK—THE COMPLETE
MANAGEMENT GUIDE TO ACHIEVING
SOCIAL, ECONOMIC, AND
ENVIRONMENTAL RESPONSIBILITY"**

Introduction

William Blackburn's new book "The Sustainability Handbook—The Complete Management Guide to Achieving Social, Economic, and Environmental Responsibility" (Environmental Law Institute: Dec. 2006) is an excellent resource for practitioners, providing practical tools and approaches for achieving sustainable development in both private and public sectors. The following is a reprint of the Introduction/ Executive Summary of the book and is being reprinted with permission. For more information, please see www.WBlackburnConsulting.com.

Book Overview

This book could have been titled *How Organizations Can Use Sustainable Development to Their Advantage* or simply, *Sustainable Development for Dummies*. *Sustainable development*, or the shorthand *sustainability* used in this book, is a concept of growing popularity aimed at producing long-term global well being through the wise use and management of economic and natural resources, and through respect for people and other living things. At the outset, the book provides background information on the topic and its importance to business. It then proposes an approach for managing companies in an efficient, holistic way that takes into account important sustainability trends shaping our world of tomorrow. It is a handbook filled with explanations, practical strategies, checklists, forms, tips, and reference information. To a large extent, the text is as much about smart management techniques as it is about the topic of sustainability.

The book is written with large companies in mind, although Chapter 12 tells how the lessons can be applied to companies that are small or in financial difficulty. Chapters 13, 14, and 15 explain how

governmental and nongovernmental organizations (NGOs) and colleges and universities can approach sustainability too. These four chapters are filled with best-practice examples which should prove particularly useful to readers interested in those organizations. Other readers, including those from large corporations, may find the ideas and strategies presented there can stimulate new thinking for them as well.

The book is geared both for people who know nothing about sustainability as well as seasoned experts who are anxious to hone their approach to the concept. The former are advised to read Appendix 1 first. That part of the book provides an overview of three dozen major sustainability trends—things like globalization, the growth of NGOs, wealth distribution, population, resource depletion, pollution, corporate governance, green products and marketing, and socially responsible investing. Those who are knowledgeable about these trends may still find this to be a handy reference.

Chapter 1 talks about some common views on sustainability held by executives today. It candidly discusses the misconceptions that business leaders and others often have about the concept. Chapter 2 helps clear the air by providing an operational definition of sustainability, one that can be used as the basis for targeted action. The premise of the book is that companies can improve their chances of success—and survival—by integrating sustainability into their operations and decisionmaking in a consistent manner. The book offers the sustainability operating system (SOS), as one way this can be done.

"Oh, no! Not *another* management system standard!" I hear you say. "We've already had our fill of ISO, EMAS, OHSAS and a litany of other alphabet-soup processes!" Fortunately, the SOS offered here is not another add-on system. It's a general business system that can encompass all others into a common process that serves sustainability as well as the purposes of manufacturing, design, sales, finance, human resources, and any other function or business unit. It is a broad-based system, one that can increase uniformity, coordination, and efficiency rather than detract from it. It's an improved approach, too, aimed not just at continual improvement—going from, say, *really really*

bad to just *really bad*—but designed for achieving quantum leaps in performance to *good* or better. It incorporates the important tools of Talent Management and the Big Picture Review often overlooked in other systems standards. Even if not adopted wholesale, the SOS can be used to achieve the same ends by serving as a good checklist against which existing management systems can be judged and improved.

So what is an SOS? It's a process of proactive, holistic organizational management for purposes of achieving sustainability for both the organization and society. Chapters 4 and 5 explain the SOS in detail. Some of its critical elements can be captured under the following four categories, which are depicted in Figure 4.1.

1. The Drivers. These elements assure the organization's efforts toward sustainability are constantly propelled forward. They include the following:

- **A champion/leader.** A good champion/leader is critical to the success of a sustainability initiative within a company. But what does it take to be a successful champion/leader? Thoughts on this are offered in Chapter 4.
- **Approach for selling management on sustainability.** Chapter 4 also suggests sales arguments and strategies. It borrows points from Chapter 3 about the business value of an SOS.
- **Accountability mechanisms.** Fair, effective methods for holding management and other employees accountable for sustainability performance are essential to ongoing improvement. Chapter 9 reviews some of those methods.

2. The Efficient Enablers. These elements help ensure that people and groups within the organization are properly equipped to undertake coordinated action toward sustainability in an efficient and effective way. These elements include:

- **Organizational structure.** Chapter 4 explains the advantages of using a virtual sustainability

organization, rather than a formal structure. It suggests roles and responsibilities of various players and notes where teams may be helpful.

- **Deployment and integration.** Chapter 8 delves into what are often the most important and most overlooked ingredients for a successful sustainability initiative. How do you roll out an SOS to the field so it sticks? What do you do if someone slams the door in your face? The chapter answers those questions and discusses the needs and challenges for deployment and integration within individual corporate departments.

3. The Pathway. Pathway elements chart the course toward sustainability. They include the following:

- **Vision, values, and policy.** These elements are needed to clarify what the organization is trying to accomplish through its SOS process and related programs. It defines the desired end state. Chapter 4 offers a model sustainability vision and policy that can serve as a starting point for the development of an organization's own version. It also presents guidance on whether or not the organization should adopt the *Global Compact, Earth Charter*, or other external code. Summaries of many of the more popular sustainability-related codes are provided in Appendix 2.
- **Operating system standards.** Chapter 5 presents a set of unique SOS standards. These standards describe a holistic, organization-wide process for improvement that considers sustainability trends. The chapter examines why management standards often fail to drive performance and offers some solutions.
- **Strategic planning for aligned priorities.** Chapter 6 explains how planning can improve organizational efficiency and effectiveness. It suggests some companywide and department-level planning processes and presents tools that can be used for them.

4. The Evaluators. These elements help us periodically judge the sustainability performance of an

organization so it may adjust its efforts for optimal results. These elements include:

- **Indicators and goals.** Chapter 7 explains the various types of sustainability metrics and other indicators. It offers a process for selecting the indicators and goals most appropriate for the organization. The concept of the “collective directional goal” is introduced. Appendix 7 presents a broad collection of sustainability metrics commonly used by companies, local governments, and universities.
- **Measuring and reporting progress.** Measurement and reporting are essential elements of any process of continual improvement. Chapter 9 discusses how to monitor progress toward sustainability. Do you need an information technology system for this purpose? This chapter helps you determine if you do, and shows you how to select the one you need. Chapter 10 outlines challenges and approaches to sustainability reporting. The author draws on a dozen years of reporting experience to provide practical tips for communicating sustainability information. The chapter also reviews the legal implications of reporting.
- **Stakeholder engagement and feedback.** Without stakeholder engagement and feedback, management becomes myopic in its views and organizationally incestuous in its thinking. Over time, this can become a recipe for trouble. Chapter 11 presents guidelines for selecting and effectively engaging stakeholders under various circumstances.

The book lays out these elements roughly in the order they would be addressed by one who is introducing sustainability to an organization for the first time. It need not be read front to back, however. Those interested in a specific topic—say metrics, for example—can go directly to the chapter on the topic to learn more. To help crystallize the lessons for practical use, a follow-up checklist for action is provided at the end of each chapter. Chapter 16 closes with some tips on how to keep the initiative alive—how to assure the SOS itself remains sustainable. So why should an organization do all this?

What’s the value of an SOS? The answer is provided in Chapter 3 through two models that examine the role or purpose of business relative to its stakeholders. First is the “Show-Me-the-Money Model,” which presumes that the sole purpose of business is to make as much money as possible for as long as possible. The unique Baxter International Inc. environmental financial statement—a tool the author was instrumental in developing—is presented. It and a host of other real-life examples are used to bolster the claim that a march toward sustainability can contribute to bottom-line financial results. Next, the “Quid Pro Quo Model” is presented. This model says business must give something to its stakeholders in order to receive from them what it needs to be successful over the long term.

Throughout the book, the author shares insights gained over 25 years in the management of global environmental, health, and safety, and sustainability programs and in observing others do so. You will learn of the obstacles commonly faced in the march toward sustainability, and hear how leading organizations have responded to these challenges in building their own sustainability programs.

In short, the wealth of information provided by this book should enable you to thoroughly understand sustainability and use it where you work—use it to protect and grow assets, strengthen financial performance, and shape an organization to be admired by all.

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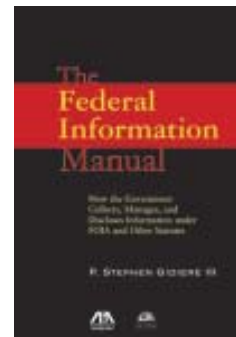
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