

**American Bar Association
Standing Committee on Environmental Law**

33rd NATIONAL SPRING CONFERENCE ON THE ENVIRONMENT

**Financial Institutions, Corporate Stewardship,
and Sustainable Development: Drivers for the
Evolution of U.S. Environmental Laws and Practice**

**June 10, 2005
Baltimore, Maryland**



Sponsored by

ABA Standing Committee on Environmental Law

In Association with

ABA Section of Administrative Law & Regulatory Practice

ABA Section of Business Law


ABA Section of Environment, Energy, and Resources

ABA Section of International Law

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Environmental Law Institute

CERES (Coalition for Environmentally Responsible Economies)

 SAM Indexes GmbH, the operating company

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United States Business Council for Sustainable Development

University of Maryland School of Law, *Conference Host*



Is the U.S. statutory and regulatory framework outmoded?

The objective of the 2005 Spring Conference is to stimulate thoughtful and broad-based discussion about the evolution of the U.S. environmental statutory and regulatory framework and practice by engaging the broad range of stakeholders affected by the current environmental regulatory framework, and raising important questions about the viability of that framework to achieve urgent economic development, environmental protection, and social objectives in a context of market-based change.

This conference will focus on “drivers for change,” including those that fall outside the traditional environmental regulatory compliance arena.

- What are the implications of changing security expectations, new toxicity information, product de-selection, toxic tort liability issues on a global scale, and corporate efforts to lessen their liability footprint when viewed in terms of how our current environmental laws and regulations mesh with these changing aspects faced by the business sector?
- As financial institutions, customers, and shareholder groups increase their expectations for bottom-line profitability through superior corporate social responsibility, and their corresponding requirements for enhanced environmental and social performance and reporting, how must U.S. statutes and regulations evolve to support these changes?
- As community-based organizations, environmental groups, and other NGOs expand efforts to engage corporate and governmental attention to the development of sustainable solutions to community environmental, economic, and quality of life challenges, and to participate in corporate and governmental problem-solving with respect particularly to projects that impact infrastructure and the environment, has the current legal and regulatory system adequately encouraged early engagement of a sufficiently broad range of stakeholders to achieve, replicate, and continue over time to improve capacity for time-and-cost-effective development of sustainable solutions?
- As companies work to gain market share through more robust corporate stewardship programs, how might U.S. environmental laws adapt to more effectively support and provide the flexibility needed to implement programs designed to achieve competitive bottom-line results through superior environmental performance?
- Is the U.S. statutory and regulatory framework outmoded? As the principles of sustainable development, including the concept of partnering across sectors to achieve sustainable development objectives, become accepted by an increasing number of governmental, business, and civil society organizations, governmental and business organizations and their stakeholders are finding that development of innovative solutions is hindered by applicable laws or regulations.

Through a keynote presentation and two panels, the on-site morning session will identify and examine drivers for change – focusing primarily on new and emerging global and domestic financial and competitive market pressures that will advance without regard to U.S. legislative initiatives, but also addressing the more widely understood management, structure and flexibility complaints that have long been leveled at the federal environmental regime. This session will examine the requirement by an increasing number of international financial institutions that projects must minimize their environmental footprint in exchange for funding; it will analyze the more aggressive investment stances being taken by the large pension-

investment groups that will invest in those companies that pass through an environmental screening process; and it will look at how environmental actions taken by the European Union and the United Nations will affect American business regardless of political decisions made in Washington, DC.

Through a keynote presentation and case studies, the afternoon session will take these drivers and look at how our environmental legal system must evolve to keep pace with the legal and practical challenges that these drivers present. How are the demands being made by these sectors faring as companies try to respond favorably while complying with required permitting and reporting obligations under Federal environmental laws? Through specific case studies, this session will examine possible problems presented by our environmental laws and will begin an examination of how regulated entities could respond to these drivers if some of the restrictions currently imposed by laws were altered or removed.

A final analysis session will discuss the interactions among the issues raised in earlier sessions. It will seek to identify where the evolution of our environmental legal system has occurred and begin to examine what future level of change may be required by those drivers for change to better accommodate market influences. This session also will begin to outline a process that can be followed by the ABA/Standing Committee that can lead to further informed discussions of the topic and the development of a strategy that recognizes the changed and evolving atmosphere in which businesses are now operating. It is not expected that answers to this complex set of issues will result from the conference, but rather, that informed and ongoing discussion by stakeholders will begin and that a framework for taking substantive action can be developed.

PROGRAM

- 8:00 a.m. **Registration and Coffee**
- 8:30 a.m. **Welcome and Introduction to Conference**
Goals/Announcements/Introduction of Keynote Speaker:
Elliott P. Laws, Counsel, Pillsbury Winthrop Shaw Pittman, LLP, Washington, DC and ***Professor Robert V. Percival***, Director, Environmental Law Program, University of Maryland School of Law, Baltimore, MD
- 8:45 - 9:30 a.m. **Opening Keynote Address: "Financial Markets and Sustainability: The Intersection of Law, Business & Investor Demand,"** ***Alexander Barkawi***, Managing Director, Dow Jones Sustainability Indexes, Zurich, Switzerland
- 9:30 - 11:00 a.m. **"Financial Sector Drivers for Change"** Financial institutions, customers, and shareholders in pursuit of profit are demanding greater transparency — including ecological and social impact reporting — for better analysis of corporate performance. This is driving global efforts for consensus-based change in reporting standards. Pension fund focus on an expanded range of fiduciary issues — in a context of detectable climate change, marine ecosystem decline, and increasing human life span — is beginning to impact investment strategies by some of the nation's largest funds. How must our environmental law framework adjust to support achievement of equally urgent environmental protection, economic development, and social objectives?
- Moderator: **Ann L. MacNaughton***, Financial Advisor, Merrill Lynch & Co., Inc., Houston, TX
- Speakers: **Kenneth P. Cohen***, Vice President Public Affairs, ExxonMobil, Irving, TX; ***Gary S. Guzy***, National Environmental Business Development Leader, Senior Vice President – Environmental Practice, Marsh USA Inc., Washington, DC; ***Mindy S. Lubber***, President, CERES, Inc., Boston, MA; ***Hewson Baltzell***, President, Innovest Strategic Value Advisors, New York, NY
- 11:00 - 11:15 a.m. **Break**
- 11:15 a.m. - 12:45 p.m. **"Corporate Stewardship: Bottom-Line Business Drivers for Change"**
As companies work to gain market share through more robust corporate stewardship programs, how might U.S. environmental

laws evolve to more effectively support and provide the flexibility needed to implement programs designed to achieve competitive bottom-line results through superior environmental performance? As law, business, and investor demand drive ongoing evolution of corporate management strategies, how must U.S. environmental protection statutes and regulations adjust? How are these and other market-based mechanisms fueling pressure for change?

*Moderator: **Andrew Mangan***, Executive Director, United States Business Council for Sustainable Development, Austin, TX

*Speakers: **Alan D. Hecht***, Ph.D., Director for Sustainable Development, Office of Research & Development, U.S. Environmental Protection Agency, Washington, DC;
Susan M. Ponce, Vice President and Chief Counsel, ESG International, Halliburton Law Department, Houston, TX;
Brad Raffle, Baker Botts LLP, Houston, TX

12:45 - 2:00 p.m. LUNCH AND LUNCHEON KEYNOTE ADDRESS:
"Forest and Climate Protection: New Pathways to Sustainability," ***Michael F. Northrop***, Program Officer
The Rockefeller Brothers Fund, New York, NY

2:00 - 3:30 p.m. **"Case Studies: Does Modernizing U.S. Environmental Law Require Fundamental Reform?"** An examination of two cases highlighting the legal and practical obstacles presented by our environmental legal system to market-driven projects or plans. In view of demands for early and effective engagement of a sufficiently broad range of stakeholders, transparent triple-bottom-line reporting, sustainable development, and changing global security requirements, what obstacles are presented by new toxicity information, product de-selection, and toxic tort liability issues as companies try to respond favorably while complying with required permitting and reporting obligations under federal environmental laws?

*Moderator: **Marianne Lamont Horinko***, Executive Director, Global Environment and Technology Foundation, Arlington, VA

*Speakers: **Matt Hale***, Director, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC; ***Amy Schaffer***, Federal Regulatory Affairs Manager, Weyerhaeuser Company, Washington, DC; ***Rena I. Steinzor***, Professor, University of Maryland School of Law, Baltimore, MD

3:30 - 3:45 p.m. **Break**

3:45 - 5:00 p.m. **“Final Analysis: Changing U.S. Statutes and Regulations to Achieve Stewardship and Sustainability”** An evaluation and synthesis of the issues raised in the earlier sessions. The panelists will assess how our environmental statutory and regulatory scheme advances or impedes the goals of sustainable development through such tools as corporate stewardship, financial statement and consumer disclosures, and market incentives. They will also make recommendations for legislative and agency actions to facilitate positive movement by the corporate and financial sectors.

Moderator: Michael B. Gerrard, Partner, Arnold & Porter LLP, New York, NY

Speakers: *John C. Dernbach*, Director, Policy Office, Department of Environmental Protection, Harrisburg, PA; *Dennis D. Hirsch*, Professor, Capital University Law School, Columbus, OH

5:00 p.m. **Closing Remarks**

5:30 p.m. **CONFERENCE RECEPTION**

**FINANCIAL SUPPORT FOR THIS PROGRAM
HAS BEEN GENEROUSLY PROVIDED BY**

**Baker Botts LLP
Beveridge & Diamond, P.C.
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Marsh Environmental Practice
Stikeman Elliott LLP**

CONFERENCE HOST AND SITE

This conference is hosted by the
University of Maryland School of Law

and takes place in the
Ceremonial Moot Court Room, Nathan Patz Law Center
500 W. Baltimore Street, Baltimore, Maryland

Traveling to the Conference Site

> *By car:* From I-95 take route 395 ("Downtown Baltimore") and exit onto Martin Luther King, Jr. Blvd. Turn right at fourth traffic light onto Baltimore Street. Turn left at second traffic light onto Paca Street. Go ¼ block and turn right into the Baltimore Grand Garage. Lexington Market garages also are available on Paca Street. Parking fees must be paid by participants. The Law School is directly across the street from the Garage.

> *By plane:* Conference participants can use any of three regional airports. The closest and most convenient is Baltimore-Washington International (BWI). If you prefer to fly into the Washington, DC area, use Reagan National Airport or Washington Dulles International Airport. Shuttle and light rail are available when flying into BWI, and rental car transportation is available at all three airports.

> *By Train:* Baltimore's Penn Station is on main Amtrak routes and close to the School of Law. More information can be found at <http://www.amtrak.com/stations/bal.html>. Amtrak and MARC trains also run from Union Station in Washington, DC to Camden Yards and Penn Station in Baltimore (Note: MARC runs only Monday-Friday).

Accommodations

A block of sleeping rooms has been held at the Wyndham Baltimore, 101 West Fayette Street, Baltimore, MD 21201, just a few blocks from the Law School. To receive our special rate of \$159 (single or double) + tax, advise the hotel that you are with the "Standing Committee on Environmental Law Committee and Conference Group." Call 1-410/752-1100 to receive the ABA rate.

Special Needs

Any person with disabilities who would like to attend the program and who has special needs should contact Laura Mrozek at the Law School at least 72 hours in advance at 410-706-8157.

CONFERENCE REGISTRATION FORM

Register using this form or on our web site at <http://www.abanet.org/publicserv/environmental/>

___ YES, I will attend. Reserve a space for me at the fee circled below. I enclose a check or credit card authorization payable to American Bar Association (government employees may enclose an authorized purchase order). Student rate requires proof of full-time current student status.

CONFERENCE FEE * (circle one)

ABA Member \$150

General Attendance \$225

Academic/NGO/Gvt. \$75

FT Student \$35

GROUP FUNCTION ATTENDANCE

_____ I will attend Lunch _____ I will attend Reception

Please reserve space for (print or type):

Name _____

Title _____

Firm/Affiliation _____

Address _____

Telephone _____ Fax _____

E-mail: _____

If using a credit card, check one: ___ Visa ___ MasterCard

Card Number _____

Expiration Date _____

**Your conference fee covers admission to all sessions, course materials, breaks and functions.*

CLE: This program will be submitted for Continuing Legal Education (CLE) credits. Forms and course materials will be available on-site. Contact the ABA Service Center toll free at 1-800/285-2221 or program coordinator Hannah Yu at 202/662-1694 for confirmation of the number of CLE credit hours requested by the ABA or credit approved by any particular state.

CANCELLATION POLICY: Full refunds of registration fees, less a non-refundable administrative charge of \$50, will be given for cancellations received by June 1, 2005. Cancellations received after that date will not be refunded, but substitute registrants may be designated with advance notification to our office. We are not responsible for sleeping room, meal, or other charges or fees arising from cancellations or changes and will bill registrants for any costs we may incur in such instances.

> Questions? Contact us at <scel@staff.abanet.org> or 202/662-1694.

If mailing form, please return it along with check or money order made payable to "American Bar Association" to:

**Carrie C. Coleman, American Bar Association
740 15th Street, NW, Washington, DC 20005-1022.**