

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

The 33rd National Spring Conference on the Environment, held in Baltimore, Maryland on June 10, 2005, examined some of the more noteworthy trends affecting environmental law and policy today. While many of these trends find their origins in arenas that are not the traditional partners of environmental issues, they possess the potential to affect the direction of environmental policy and practice in a significant manner. *Financial Institutions, Corporate Stewardship and Sustainable Development: Drivers for the Evolution of U.S. Environmental Laws and Practice* was a first step in the examination of these developments and of the entities that are generating them.

Unlike many conferences, this one was developed with the aim of initiating a discussion of some of the critical changes occurring in the world of environmental law and policy. We did not intend to resolve the issues. In fact, we saw much of the discussion focus on developing and refining an understanding of what the issues actually are. But inherent in the program was a recognition among the participants that business as usual could not be the course for the future, and recognizing that, asking whether the U.S. system of environmental law and policy can “achieve urgent economic development, environmental protection, and social objectives in a context of market-based change.”

The conference addressed many of what we called “drivers for change,” that being activities, policies and developments which directly or indirectly are causing the world to alter how it addresses environmental issues. The backdrop of the conference was whether our system of laws and regulations, born out of the need to “command and control” actions, is flexible enough to allow the drivers for change to influence actions to the greatest extent possible – and if so – should it?

Conference speakers addressed a range of issues generated from a diverse number of organizations, including various types of financial institutions, insurance companies, non-governmental entities, corporations, government agencies, law schools, and law firms. Banks and the Equator Principles, pressures brought by Wall Street and other markets, corporate programs, shareholder initiatives, and international initiatives – all are affecting how environmental issues are framed, addressed and resolved. Many of the common-sense solutions that these initiatives call for appear to be difficult to implement in the face of existing environmental laws and regulations. There is a need to ask where the problems lie: in the laws or regulations or in the regulator’s interpretation of them? What needs to be done to understand the trends and take positive steps forward, that is, to act on the new understandings in a way that advances environmental management and protection?

At the end of the Conference, three talented presenters provided their individual views of the conference presentations and suggested next steps. We have asked them to provide synopses of those presentations, and they are reproduced here. Our presenters were *John Dernbach*, Professor of Law at the Harrisburg, Pennsylvania campus of Widener

University School of Law, who at the time of the Conference was serving as Director of the Office of Policy at the Pennsylvania Department of Environmental Protection; *Dennis Hirsch*, Professor of Law and Associate Dean of Faculty and Student Development at Capital University Law School in Columbus, Ohio; and *Michael Gerrard*, Partner and Head of the Environmental Practice at Arnold & Porter LLP in New York City. The insights provided by these three experts were thought-provoking and should, we hope, lead to further exchanges of ideas on the issues raised. We invite you to review their presentations and provide your own comments, reactions, and ideas for next steps by writing to scel@abanet.org. The ABA Standing Committee on Environmental Law is committed to continuing the discussion of these issues in the coming months and years.

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