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BELLWETHER STATES

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Features

Clean Energy Policy in Delaware: A Small Wonder

Collin O'Mara, Philip Cherry, and David Hodas

The United States' transition to a clean energy economy will require innovative approaches to reducing energy consumption, increasing renewable energy generation, and ensuring smarter transmission and distribution infrastructure nationwide. The authors of this article, Collin O'Mara (Secretary of the Delaware Department of Natural Resources and Environmental Control (DNREC)), Philip Cherry (DNREC Policy Director), and David Hodas (chair of the Delaware Governor's Energy Advisory Council), discuss how the state of Delaware is rapidly emerging as a leader among states as it puts into place the laws, regulations, programs, and projects necessary to make the idea of a clean energy economy a tangible reality.

Wind Energy Facility Siting in Massachusetts

Kenneth Kimmell, Anna Blumkin, and Rachel Graham Evans

Massachusetts has taken a leading role in advancing the development of renewable energy. The Massachusetts renewable portfolio standard, which requires electric suppliers to use increasing percentages of renewable energy as part of the supply mix, is one of the most established programs in the country. In recent years, Massachusetts has met virtually all of its annual renewables requirements with new renewable generation. Nonetheless, Massachusetts still has a long way to go to match its state goals with reality on the ground. Authors Kenneth Kimmell, Anna Blumkin, and Rachel Graham Evans explain how.

Product Stewardship, Stormwater, and Brownfields—Maine Innovates

William Taylor, Kenneth Gray, and Helen Edmonds

Authors William Taylor, Kenneth Gray, and Helen Edmonds show how Maine is a leader and a bellwether state for environmental protection and regulation by exploring Maine's progress in the areas of product stewardship, stormwater management, and cleanup of contaminated properties. The authors describe the Extended Producer Responsibility "framework" legislation adopted in 2010, which is intended to serve as a basis for establishing recycling programs for producers of any and all types of consumer products. They discuss the importance of Maine's role in EPA's first-ever decision to designate existing stormwater discharges in an urban watershed as requiring a permit. Finally, the authors explain Maine's innovative Voluntary Response Action Plan Program, which provides meaningful state liability protections for contaminated properties.

Collaborative Problem Solving in Minnesota

LeRoy C. (Lee) Paddock

Author LeRoy C. (Lee) Paddock explores the lessons learned from two remarkable consensus-based initiatives in Minnesota. The first, the Clean Water Legacy Act, which established the first and perhaps the only statewide

framework for Total Maximum Daily Loading designation and resolution under the Clean Water Act, resulted from more than two years of dialogue among a very broad range of interest groups. The second, Clean Air Minnesota (CAM), arose from a joint effort of the Minnesota Chamber of Commerce and the Minnesota Center for Environmental Advocacy to take steps that would prevent the Twin Cities from reaching non-attainment for ozone and particulates. CAM is on target to retrofit almost all diesel school bus engines to reduce exposure to hazardous emissions. These landmark problem-solving efforts provide important lessons about how to design collaborations that work for all sides.

Carbon Storage: Texas Stakes Its Claim

Lydia González Gromatzky and Peter T. Gregg

Texas has undertaken initiatives to promote carbon dioxide (CO₂) storage in the state as part of the climate-change mitigation strategy carbon capture and storage (CCS), designed to prevent the release of CO₂ into the atmosphere by capturing it at its source and storing it long-term in geologic formations. Storage of CO₂ is an integral part of the CCS strategy, and Texas recognizes the potential benefits of CO₂ storage. Authors Lydia González Gromatzky and Peter T. Gregg discuss those initiatives, as well as the research and pilot efforts private parties and academic institutions have undertaken within the state.

Reducing Nutrient Pollution in the Everglades Agricultural Area through Best Management Practices

Alfred R. Light

Some Florida farmers recently have been reducing the level of nutrient pollution discharged from their fields and entering sensitive Florida ecosystems from the level found in the irrigation water they use. They are doing this while continuing to operate their productive farms. Setting a water-quality standard seems to have driven actual "real world" improvements in water quality in Florida, including development of the data and research needed to support those improvements. Mandatory Best Management Practices (BMPs) seem to have worked in reducing phosphorus concentrations in water leaving the Everglades Agricultural Area (EAA). In fact, phosphorus concentrations in water leaving the EAA are about half of the concentrations in irrigation water entering the region. Other regions of the country with significant nutrient pollution, thus, may look to Florida to find out how farmers can be part of the solution rather than part of the problem.

Greening the Grid in California

Timothy P. Duane

California has been a bellwether state in greening the grid since the 1970s. Climate change has made these efforts more urgent with the passage of AB 32 (the California Global Warming Solutions Act of 2006), which requires statewide GHG emissions to be reduced to the equivalent of 1990 levels by the year 2020. Author Timothy P. Duane describes California's approach to GHG emissions in the electricity sector as a three-legged stool: (1) improving energy efficiency through both state regulatory standards and demand-side management programs funded through utility ratepayer charges; (2) implementing renewable portfolio or energy standards and requiring utilities to purchase or generate a specified amount of their total electricity needs through qualifying renewable generation sources; and (3) strategic investments in transmission to move renewable power from high-resource-value generation sites to demand centers with minimal social and environmental impacts. This article summarizes the authority of key state agencies implementing these policies, the key lessons from California's experience to date, and the key strategies these agencies are now pursuing in greening the grid to meet AB 32's ambitious GHG emission reduction goals.

California's New Water Legislation: A Bucket of Reform or But a Drop?

Christian L. Marsh and Peter S. Prows

California has for years struggled to find ways to meet the demands of a growing population while simultaneously preserving its natural environment, both of which depend on the state's scarce water resources. Despite laudable past efforts by federal and state agencies, species have continued to decline, water rights are no more certain, and the courts are again poised to take over management of the dams, dikes, levees, and diversions that are the heart of the state's water system in the Sacramento-San Joaquin river delta. In the Fall of 2009, the California legislature passed a package of reform measures with the goals of ensuring reliable water supplies and restoring the delta environment. Authors Christian L. Marsh and Peter S. Prows chronicle the history of conflicts over California's water and analyzes whether and how this legislation might help resolve them.

Environmental Justice in the Laboratories of Democracy

Steven Bonorris and Nicholas Targ

The states have been early and consistent innovators in the area of environmental justice (EJ) policy. Authors Steven Bonorris and Nicholas Targ examine the efforts of the Atlantic States, where much of the recent EJ innovation has occurred. They show that these states demonstrate the vitality of EJ and sketch out the surprisingly distinct strains of EJ policy within the halls of government, even as advocates outside of government continue to pursue community mobilization and novel litigation strategies in parallel to advance EJ.

Departments

Vantage Point

Insights:

Accelerating NRD Actions: Good or Bad?

Christopher A. Rycewicz and Brian T. Sniffen

Natural Resource Damage (NRD) actions and activities historically followed the selection of a remedial action. After the *Confederated Tribes and Bands of the Yakama Nation v. United States* case, however, NRD trustees have been able to accelerate NRD activities so that they run parallel to remedial investigations and cleanup. According to authors Christopher A. Rycewicz and Brian T. Sniffen, it remains to be seen whether such accelerated/parallel NRD activities are a good thing.

Reverse Bifurcation: Litigating Damages Before Liability?

Douglas A. Henderson

In asbestos litigation, courts frequently use “reverse bifurcation” as a case management technique, holding a trial on damages before a trial on liability. But outside of asbestos litigation, the use of reverse litigation is not well known. Recent empirical research suggests this technique may be more effective than standard bifurcation—or even unitary trials—in resolving certain difficult disputes efficiently. In this article, author Douglas A. Henderson considers reverse bifurcation in the context of environmental cases, identifying when it might work and when it may fail.

Factoring Climate Change into TMDLs: Pollution Budgets for a Warming World

James Murphy

Climate change will make it more challenging to safeguard water quality and clean up currently polluted waters. To protect our waters in a warming world, it is imperative that climate change science inform Clean Water Act implementation, says author James Murphy. This is particularly true in the formulation of Total Maximum Daily Loads—or pollution budgets—for impaired waters. Currently, EPA is formulating a TMDL for the Chesapeake Bay and reconsidering a failed 2002 TMDL for Lake Champlain. To successfully clean up these waters, Murphy explains how EPA must ensure climate change science informs the TMDLs for these two great waters. As importantly, EPA should use these TMDLs to demonstrate how the CWA can be an effective tool to protect our waters in the face of climate change.

Deepwater Drilling and Least-Cost Energy Decision Making

David R. Hodas

Author David R. Hodas contests that the environmental and economic costs of the Gulf of Mexico *Deepwater Horizon* oil spill are very large, but that the oil potential in deepwater drilling is small in comparison to total U.S. consumption. Motor-vehicle efficiency standards can save far more oil than can be obtained from deepwater drilling. Federal law is project based and does not consider real least-cost policy alternatives, such as demand reduction, for meeting our energy needs.

Local Governments Key to Cancun Climate Talks

Hannah Bentley and Steve Zikman

Subnational governments, including state and local governments, are sharing their regulatory experience on greenhouse gas (GHG) mitigation and adaptation with state and local governments in developing countries. According to authors Hannah Bentley and Steve Zikman, these subnationals are looking to influence international

talks for achieving a new climate agreement and to have their role recognized in the texts of any such agreement. The participation and recognition of subnationals is critical to an international response to climate change.

Literary Resources

The Back Page