

The 40th Anniversary of the
Annual Conference on Environmental Law

40th Annual Conference on Environmental Law



AMERICAN BAR ASSOCIATION

Section of Environment,
Energy, and Resources

March 17–19, 2011

The Grand America
Salt Lake City, Utah



40th Annual Conference on Environmental Law

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The Grand America, Salt Lake City, Utah

About the Conference

This year we celebrate 40 years of the Annual Conference on Environmental Law! The conference continues to be one of the most important educational and professional opportunities available for environmental law practitioners including academics, nonprofit lawyers, in-house counsel, and government lawyers. The conference, formerly residing in Keystone, Colorado, has grown over the years into three days of cutting-edge plenary and breakout sessions, packed with keynote speakers, expert panels, and an abundance of networking opportunities. But don't worry—we are near the fabulous ski slopes around Salt Lake City, Utah!

This year's topics include challenges over implementing climate change regulation, fallout from the Gulf oil spill, special sessions on environmental enforcement, an update on federal/state tensions over Clean Air Act regulation, the resurgence of the public trust doctrine, and an examination of the challenges facing off-shore wind projects. Leading experts will explain new case law in the areas of judicial takings and bankruptcies involving contaminated properties. We will also have a panel of experts explaining environmental disclosure rules, a panel of in-house counsel sharing what outside lawyers need to know about environmental enterprise risk management, and an international panel of experts discussing ethics in a globalizing practice.

Along with these outstanding sessions, meeting highlights include networking opportunities, a public service activity, and a ruby red anniversary celebration of the 40th anniversary of the Annual Conference on Environmental Law.



2011 Annual Section Sponsor



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World class downhill and cross country skiing venues are as close as 20 minutes to Salt Lake City! You can even try bobsledding, snowmobiling, snow shoeing, or ice skating! For more information, please visit <http://www.abanet.org/environ/envlaw/>. And if you're not a skier, The Grand America is within walking distance to great shopping and restaurants.

Planning Chair:

Jonathan W. Kahn
Blake, Cassels & Graydon LLP
Toronto, ON, Canada

Committee Vice Chairs:

Sonya L. Baskerville
Bonneville Power Administration
Washington, DC

Alexia B. Borden
Balch & Bingham LLP
Birmingham, AL

Wendy Bowden Crowther
Planning Chair, 2013
Clyde Snow & Sessions, PC
Salt Lake City, UT

Brian W. Curtis, II
Chevron Corporation, Inc.
San Ramon, CA

Christopher P. Davis
Ceres, Inc.
Boston, MA

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Snell & Wilmer L.L.P.
Salt Lake City, UT

Francine Marie Ffolkes
Florida Department of
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Lindene E. Patton
Zurich Financial Services
New York, NY

Daniel J. Rohlf
Lewis and Clark Law School
Portland, OR

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Thursday, March 17, 2011

9:00 a.m. – 12:00 p.m. Public Service Project with TreeUtah

Join us for an environmental restoration service project in cooperation with TreeUtah. Participants will plant seedlings and small trees to add to existing riparian habitat along the Jordan River. Local avian ecologists have designated the Jordan River riparian ecosystem as critical habitat for ninety-eight species of song birds which require lower elevation riparian habitat. This riparian ecosystem is also a crucial stopover for hundreds of thousands migrating birds each season. Participants should dress for the planting and bring work gloves! To volunteer for this public service project, please indicate so on the registration form. This project is part of the Section's One Million Trees Project, which has the goal to plant one million trees by 2014. For more information, visit http://www.abanet.org/enviro/projects/million_trees/home.shtml. For questions, contact Julie Connell, Program Assistant, at ConnellJ@staff.abanet.org.

10:00 a.m. Registration Opens

2:00 p.m. – 2:15 p.m. Welcome and Opening Remarks

Jonathan W. Kahn, *Planning Chair, Blake, Cassels & Graydon LLP, Toronto, ON, Canada*

Steven G. McKinney, *Section Chair, Balch & Bingham LLP, Birmingham, AL*

2:15 p.m. – 3:00 p.m. Keynote Session: EPA—The Next 40 Years

The Conference on Environmental Law turns forty in 2011. The U.S. Environmental Protection Agency (EPA) will also be reaching this milestone. In recognition, current and former general counsels of EPA have been invited to reflect on the agency's past forty years as well as provide insights on the next forty.

Scott C. Fulton, *General Counsel, U.S. Environmental Protection Agency, Washington, DC*

3:00 p.m. – 3:15 p.m. Networking Break

3:15 p.m. – 4:45 p.m. Implementing Climate Change Regulation: Congress, EPA, or the Courts?

What might each branch of government—legislative, executive, judicial—do to tackle the multi-dimensional problem of greenhouse gas (GHG) emissions? A key member of Congress (or senior staffer) will examine current federal legislative efforts to limit GHG emissions, while a senior industry representative will review current executive branch efforts to regulate GHGs. The panelists will comment on efforts to utilize the judicial branch through nuisance and other tort suits to regulate utilities and others who emit GHGs, and on constitutional restraints such as separation of powers, political question, and prudential standing.

MODERATOR:

Kirsten H. Engel, *Professor, James E. Rogers College of Law, University of Arizona, Tucson, AZ*

SPEAKERS:

Lorie Schmidt, *Senior Counsel, Environment and Energy, Democratic Staff, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC*

Bill Tyndall, *Senior Vice President, Federal Government and Regulatory Affairs, Duke Energy, Charlotte, NC*

4:45 p.m.–5:00 p.m. **Break**

5:00 p.m.–6:30 p.m. **Technical Roundtable Presentations**

The technical roundtables offer the opportunity to interact with some of the nation's top environmental consultants and service providers. The roundtable format will include time for discussion during three roundtable presentations of your choice.

- **To Be Announced**—BNA
- **Environmental Site Assessments for Corporate Mergers and Acquisitions**—ARCADIS
- **To Be Announced**—Conastoga-Rovers & Associates
- **NEBA³: Net Environmental Benefit Analysis: A Framework for Social, Environmental, and Economic Valuation**—ENVIRON
- **The Toxic Chemicals Kitchen—What's Cooking on the Scientific and Regulatory Hot Stoves?**—Exponent
- **Proven Environmental Forensic Methods for Determining Divisibility and Allocating Liability under CERCLA**—Gradient
- **Digging Deeper: Uncovering the Hidden Potential of Historical State and Local Records**—History Associates Incorporated
- **Hot Topics**—Weston Solutions, Inc.

6:30 p.m.–7:30 p.m. **Welcome Reception (cash bar)**

Friday, March 18, 2011

7:00 a.m.–8:00 a.m. **Breakfast**

Sponsored by Black Diamond Sponsors

8:00 a.m.–8:30 a.m. **Keynote Address**

Kenneth Salazar (*invited*), Secretary, U.S. Department of the Interior, Washington, DC

8:30 a.m.–10:00 a.m. **Gulf Oil Spill: One Year Later**

The Deepwater Horizon incident was the largest oil spill in U.S. history. Nearly one year later, the federal government and state and local leaders are working to identify the long-term environmental, social, and economic impacts to the Gulf Coast region. What significant lessons regarding major oil spill response have been learned? What is the status of natural and cultural resource assessment and other activities being conducted by BP as well as federal and state trustees? Panelists will discuss the status of recovery, restoration, and natural resource damage assessment; unique considerations for impacted tribes and other indigenous peoples; environmental justice; litigation; and enforcement efforts.

MODERATOR:

George A. Rusk, Vice President, Ecology and Environment, Inc., Lancaster, NY

SPEAKERS:

Dr. Felicia C. Coleman, Director, Florida State University, Coastal and Marine Laboratory, Scholar Scientist, Department of Biological Science, The Florida State University Coastal and Marine Laboratory, St. Teresa, FL

Patty Ferguson-Bohnee, Director, Indian Legal Clinic, Associate Clinical Professor, Arizona State University, Sandra Day O'Connor College of Law, Tempe, AZ

David Hayes, Deputy Secretary, U.S. Department of the Interior, Washington, DC

10:00 a.m.–10:30 a.m. **Networking Break**

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10:30 a.m. – 12:00 p.m. **Concurrent Breakout Sessions**

10:30 a.m. – 12:00 p.m. **There Will Be Blood, or Not? Environmental Enforcement in the Gulf Oil Spill Context**

Outer boundaries and possible statutory and Constitutional limitations of environmental enforcement will be explored in the context of the Gulf oil spill. Panelists will examine what degree of culpability is suited to impose criminal liability upon corporations and their individual managers, whether civil damages are limited by statutory provisions in the Outer Continental Shelf Lands Act, whether civil damages including potential punitive damages are limited by Constitutional due process considerations, and whether the Eighth Amendment limitations on excessive penalties might impose some additional limits on damages that might otherwise be sought.

MODERATOR:

Elizabeth B. Wydra, *Constitutional Accountability Center, Washington, DC*

SPEAKERS:

Robin Greenwald, *Weitz & Luxenberg P.C., New York, NY*

Jeffrey S. Moller, *Blank Rome LLP, Philadelphia, PA*

10:30 a.m. – 12:00 p.m. **Implementing the Clean Air Act Agenda in an Era—How States Are (and Aren't) Working with EPA to Realize the New Regulatory Regime**

In the first two years of the Obama administration, the U.S. Environmental Protection Agency (EPA) has rolled out one of the most thorough and ambitious regulatory agendas in Clean Air Act history relating to National Ambient Air Quality Standards (NAAQS) ozone, SO₂, NO₂, and PM^{2.5}, Boiler and Cement MACTs, CISWI, the Transport Rule (formerly Clean Air Interstate Rule), and mercury, as well as a suite of comprehensive greenhouse gas regulations. Ultimately, the success of these regulations will depend on state implementation which have, in some instances, clashed with this new regulatory regime. This panel discussion will focus on the challenges states are confronting in implementing the most ambitious Clean Air Act agenda in an era, the steps states are taking to work closely with EPA, efforts by EPA to close "SIP gaps" in several key states such as Texas, and the impacts on the regulated community of areas of uncertainty of state implementation.

MODERATOR:

N. Jonathan Peress, *Director, Clean Energy & Climate Change Program, Conservation Law Foundation, Concord, NH*

SPEAKERS:

Dr. Al Amendariz, *Regional Administrator, U.S. Environmental Protection Agency, Region 6, Dallas, TX*

Bill Becker (*invited*), *Executive Director, National Association of Clean Air Agencies, Washington, DC*

Gregory M. Scott, *Executive Vice President and General Counsel, National Petrochemical and Refiners Association, Washington, DC*

10:30 a.m. – 12:00 p.m. **The Public Trust Doctrine—Reviving, Thriving, or Maxed Out as a Water Resources Management Tool?**

Forty years ago, Professor Joseph Sax revived the public trust doctrine with a seminal article in the *Michigan Law Review* (68 MICH. L. REV. 471 (1970)) that urged use of the doctrine as a tool for judicial review of government decisions to alienate natural resources. In recent

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years, the doctrine has expanded in a number of states into areas of sustainability, water quality, and the protection of habitat for fish and wildlife. Some have argued that water law, and in particular the public trust doctrine, is “a likely legal mechanism for climate change adaptation,” as human behavior, values, and management regimes shift in response to a changing environment. In states where public policies historically have favored private rights, however, the doctrine continues to be confined to its traditional limits, whether by courts or by the legislature. The panel will explore the shifting boundaries of the public trust doctrine in both litigation and legislation, examining not only where and how the doctrine is evolving, but also how it may be used in the future and whether it has natural limitations.

MODERATOR:

Robin Kundis Craig, Associate Dean for Environmental Programs Attorneys’ Title Professor, Florida State University, College of Law, Tallahassee, FL

SPEAKERS:

Reed D. Benson, Professor, University of New Mexico, School of Law, Albuquerque, NM

Cynthia Koehler, California Water Legislative Director, Environmental Defense Fund, San Francisco, CA

Ryan M. Seidemann, Assistant Attorney General, Section Chief, Lands & Natural Resources, Civil Division, Louisiana Department of Justice, Baton Rouge, LA

10:30 a.m. – 12:00 p.m. **Permitting and New Initiatives: Creating Offshore Wind’s New Frontier through Novel Policies, Regulations, and Legislative Developments**

To secure the U.S. position as a global leader in the wind energy space, the federal government has embraced with zeal its commitment to develop and oversee the U.S. offshore wind industry. Federal involvement in the industry’s development has spurred innovative legislation, policies, and other measures that have been adopted—or are being considered for adoption—that will assist in launching the industry. These steps will play a crucial role in (i) identifying high priority areas for potential offshore wind project development in the Great Lakes and in waters off the Atlantic coast and Texas, (ii) paving the way for supply chain development and increased investor confidence in U.S. offshore wind projects, (iii) shortening the permitting process by having the federal government work closely with states, and (iv) exploring the development of a transmission backbone in the Atlantic Ocean. This panel will discuss the new legislative, regulatory, and policy developments that will play a key role in shaping the future of the U.S. offshore wind industry.

MODERATOR:

Kimberly E. Diamond, Lowenstein Sandler, New York, NY

SPEAKERS:

Ellen J. Crivella, Project Manager, Environmental and Permitting Services, GL Garrad Hassan, Portland, OR

Jim Lanard, President, Offshore Wind Development Coalition, Washington, DC

Laura Morton, Senior Advisor, Renewable Energy, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC

12:00 p.m. – 12:30 p.m. **Luncheon**

12:30 p.m. – 1:30 p.m. **Keynote Address**

Gary S. Guzy, Deputy Director, Office of Environmental Quality, Council on Environmental Quality, Washington, DC

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1:30 p.m.–3:00 p.m.

The Future of Coal

Coal accounts for over half of our nation's energy. Recently, however, major policy shifts at the U.S. Environmental Protection Agency (EPA), involving the Army Corps of Engineers and the Office of Surface Mining, put a moratorium on new water quality permits for coal mines in Appalachia. This could jeopardize the ability of coal companies to sustain their current levels of production in the near future. The last year has seen increased EPA regulation and environmental permitting requirements for coal-fired power plant emissions and surface coal mining operations. In August 2010, an interagency task force convened by President Obama delivered a series of recommendations to the president for overcoming barriers to widespread, cost-effective use of carbon capture and sequestration technologies and other clean coal technologies. As the tension between the demand for a domestic source of reliable energy and increased environmental regulation plays out, the long-term future of coal use in the United States hangs in the balance. A panel of practitioners and industry representatives will explore current and future regulatory challenges and policy considerations concerning the coal and utility industries.

MODERATOR:

Karen Bennett, *Vice President for Environmental Affairs, National Mining Association, Washington, DC*

SPEAKERS:

Dan Bakal, *Director of Electric Power Program, Ceres, Inc., Boston, MA*

Brian Frazer, *U.S. Environmental Protection Agency, Washington, DC*

A. Richard Walje, *President, Rocky Mountain Power, Salt Lake City, UT*

3:00 p.m.–3:30 p.m.

Networking Break

3:30 p.m.–5:00 p.m.

Concurrent Breakout Sessions

3:30 p.m.–5:00 p.m.

Environmental Bankruptcy Settlements Revisited— A Year of Consensus and Progress

The economic recession of the last several years spurred many large companies into bankruptcy, which in turn carried hundreds of environmentally contaminated properties, and related liabilities. As these companies emerged from bankruptcy, they entered into heavily negotiated settlement agreements with the government. The settlements included the participation of various claimants and involved numerous parties (governmental agencies, third party claimants, financiers, creditors, etc.). Efforts were made to quantify the scope of the environmental liabilities and in some instances, formal estimation proceedings were involved. The settlement agreements became a roadmap for how environmental liabilities were to be settled and included features such as the creation of custodial trusts to hold the environmentally contaminated properties and to oversee their cleanup, liquidating trusts, and other post-confirmation vehicles. This session will provide a detailed look at several of the key recent bankruptcy settlements: Asarco, Lyondell, Tronox, and GM.

MODERATOR:

Matthew A. Paque, *Tronox LLC, Oklahoma City, OK*

SPEAKERS:

Jeanne T. Cohn-Connor, *Kirkland & Ellis LLP, Washington, DC*

Aileen M. Hooks, *Baker Botts L.L.P., Austin, TX*

Alan S. Tenenbaum, *National Bankruptcy Coordinator, U.S. Department of Justice, Washington, DC*

3:30 p.m.–5:00 p.m.

Greenhouse Gas Permitting under the Clean Air Act: Program Implementation and Emissions Quantification

In May 2010 U.S. Environmental Protection Agency finalized its Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule establishing applicability thresholds and a timeframe for phasing in permitting for stationary sources of greenhouse gas (GHG) emissions under the Clean Air Act. On November 10, 2010, EPA issued its “PSD and Title V Permitting Guidance for Greenhouse Gases” and made available technical information and other resources to assist permitting authorities and sources as they implement the Clean Air Act’s permitting programs for GHGs. Among the key program elements being addressed are refined methods for measuring and quantifying GHG emissions, including a range of methods, approaches, and assumptions in use for different industries and inventory regimes. The phasing of the Tailoring Rule also requires EPA to propose additional details in 2011 addressing general permits, presumptive Best Available Control Technology (BACT), permit by rule, and electronic permitting for additional sources. Many of these sub-issues are topics of active ongoing development by EPA, and the Clean Air Act Advisory Committee. This panel will address the implementation details and status of EPA’s GHG permitting programs including the tools for determining applicability, quantifying GHG emissions, calculating potential to emit, BACT, and future streamlining efforts.

MODERATOR:

Jared Snyder, Assistant Commissioner Air Resources, Climate Change and Energy, New York State Department of Environmental Conservation, Albany, NY

SPEAKERS:

Robyn Camp, Executive Vice President, The Climate Registry, Los Angeles, CA

Anna Marie Wood, Senior Policy Analyst, Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency, Washington, DC

Robert A. Wyman, Jr., Latham & Watkins LLP, Los Angeles, CA

3:30 p.m.–5:00 p.m.

Earth, Wind, and Fire: The Future of Renewable Energy

In the absence of climate legislation, law and policy makers will need to fill the void by the implementing laws and regulations promoting renewable energy. This panel will discuss the future for renewable energy sources like, biomass, wind power, solar, and other renewable energy sources in our energy mix in the absence of bipartisan consensus on climate change legislation and regulation. The panel will discuss the key legal and policy issues presented by the changing energy portfolio, including the ability of the executive branch to implement renewable energy policies in the absence of new legislation. Are these energy sources viable, cost effective, and reliable? What is the role of lawyers in these emerging energy practice areas?

MODERATOR:

Sheila Slocum Hollis, Duane Morris LLP, Washington, DC

SPEAKERS:

Caroline Choi, Executive Director—Environmental Services & Strategy, Progress Energy, Raleigh, NC

Kit Kennedy, Counsel to the Air and Energy Program, Natural Resources Defense Council, Washington, DC

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3:30 p.m.–5:00 p.m.

Judicial Takings: Fact or Fiction?

In the recent Supreme Court case of *Stop the Beach Renourishment, Inc. v. Florida Dept of Environmental Protection*, a plurality of the U.S. Supreme Court opined that Fifth Amendment “takings” are potentially cognizable where the decision of a court severely impacts the value of property. The other four participating justices had deep reservations on whether there could ever be a right to “just compensation” arising out of a judicial decision—noting that virtually any judicial determination in the civil context will have some impact upon the property interests of the litigants. There are perhaps no other areas of the law where the potential impact of judicial takings would be as acutely felt as in the areas of water quality and water supply litigation. Contests over water and the ecosystems that water sustains are often zero sum games, where every decision of a judge potentially has profound impacts on property values of one litigant in favor of another. Will unsuccessful contestants in water disputes now be afforded a second opportunity for redress by way of a claim for inverse condemnation in federal court against a judge that rendered a decision to their financial detriment? If so, who would pay the judgment in the event of a successful judicial takings claim? These questions and others will be addressed by our panelists, who will comprehensively review the *Stop the Beach Renourishment* case and its potentially far reaching implications.

MODERATOR:

Clark W. Sessions, *Clyde Snow & Sessions P.C., Salt Lake City, UT*

SPEAKERS:

Robert “Bo” Abrams, *Professor, Florida A&M University, College of Law, Orlando, FL*

Honorable Dee V. Benson, *U.S. District Court, District of Utah, Salt Lake City, UT*

Scott D. Makar, *Solicitor General, Office of the Attorney General, Tallahassee, FL*

5:00 p.m.–6:00 p.m.

Section Committee Chairs Meeting

6:00 p.m.–7:00 p.m.

Reception (cash bar)

7:00 p.m.–10:00 p.m.

40th Anniversary Celebration Dinner (ticketed, offsite)

Join us for a 40th anniversary celebration at Log Haven, known for its fine dining in an historic log mansion, located in a beautiful canyon setting in the Wasatch National Forest, just 20 minutes from downtown Salt Lake City! This is one event you do not want to miss!

Saturday, March 19, 2011

7:30 a.m.–8:30 a.m.

Breakfast

Sponsored by Black Diamond Sponsors

8:30 a.m.–10:00 a.m.

Environmental Enterprise Risk Management: In-House Counsel Tell You What Outside Counsel Need to Know

Certain environmental liabilities have the potential to result in significant negative impacts to a company’s reputation, stock price, manufacturing, sourcing and supply chain operations, and market position. These risks can be particularly acute for companies with

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a global reach and the added challenges of conducting international due diligence. Environmental enterprise risks can often trigger unwanted media exposure and government enforcement, with immediate repercussions to a company's capital and earnings. Aside from a company's traditional environmental, health, and safety programs and metrics, leading companies are using environmental enterprise risk management as a tool for planning, organizing, leading, and controlling the activities of the organization to better identify and minimize the effects of such risks to the organization. This interactive presentation will feature a panel of in-house counsel explaining best practices of such enterprise risk reviews, informing what questions should outside counsel ask, what process and procedures to consider, and why multi-area coordination is required to maximize the value of this process for your client.

MODERATOR:

Brent Fewell, *Vice President, Environmental Compliance, United Water, Harrington Park, NJ*

SPEAKERS:

Angela M. Grooms, *Director, Corporate EHS, Duke Energy Corp., Charlotte, NC*

Phyllis Harris, *Vice President Environmental, Health, and Safety Compliance, Wal-Mart Stores, Inc., Bentonville, AR*

Joe Suich, *Senior EHS Counsel, General Electric Company, Fairfield, CT*

10:00 a.m. – 10:30 a.m. Networking Break

10:30 a.m. – 12:00 p.m. Concurrent Breakout Sessions

**10:30 a.m. – 12:00 p.m. Climate Change Adaptation—
Implications for Law and Policy**

Until recently, the climate change dialogue in the United States has been largely focused on the mitigation of greenhouse gases. While critically important, mitigation is hardly the full picture—for policymakers, regulators, or practitioners—when considering the implications of climate change. It is likely that the climate adaptation agenda will dwarf the mitigation issues—it is largely dependent on how aggressively and successfully we pursue mitigation of greenhouse gas emissions—but, at present, adaptation best practices are still evolving. After defining some of the basics of adaptation, this panel will explore several of the key emerging topics that will affect corporate and governmental activities at each level of scale from the local to the global.

MODERATOR:

Ira Feldman, *greentrack strategies, Bethesda, MD*

SPEAKERS:

Josh Foster, *Program Manager, Northwest Climate Decision Support Consortium, Oregon State University, Corvallis, OR*

Zoe Johnson, *Program Manager, Climate Change Policy, Office for a Sustainable Future, Maryland Department of Natural Resources, Annapolis, MD*

Cathleen Kelly (*invited*), *Climate Adaptation Manager, White House Council on Environmental Quality, Washington, DC*

**10:30 a.m. – 12:00 p.m. Hollywood v. Reality:
What an Environmental Criminal
Investigator Really Does and What Legal
Tools Lawyers Can Use to Protect the Client**

Hollywood has portrayed the investigation of environmental crimes in a number of films over the years. So you are sitting at the movies and you see a federal environmental criminal

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investigator take some action and you think to yourself—can they and do they really do that? For the most part, Hollywood gets it completely wrong. Our panel will discuss the fact and fiction of how the U.S. Environmental Protection Agency’s criminal investigators are portrayed in the movies and provide effective legal tools and tactics to use if your client is involved in an investigation. The panel will also address how the investigator’s actions will be portrayed at trial, from a prosecutor’s perspective and from a defense perspective. Learn how you can attack and defend!

MODERATOR:

David B. Weinstein, *Greenberg Traurig, P.A., Tampa, FL*

SPEAKERS:

Fred L. Burnside, *Fred Burnside & Associates, Point of Rocks, MD*

Kris A. McLean, *Assistant U.S. Attorney, U.S. Attorney’s Office, Missoula, MT*

Ivan Vikin, *U.S. Environmental Protection Agency, Region 6, Dallas, TX*

10:30 a.m. – 12:00 p.m. **Clarity or Obfuscation: The Changing World of Environmental Disclosure**

The U.S. Securities and Exchange Commission recently issued guidance on corporate disclosures related to climate change impacts, and guidance related to mining company disclosure is expected in the near future. The Dodd-Frank financial reform legislation added new reporting requirements regarding disclosure of mine safety violations; payments to governments by oil, gas, and mining companies; and the origin of certain “conflict minerals” and related due diligence efforts. Additionally, ASTM International has published its best practice standard regarding climate disclosures, and FASB has proposed changes to standard practice. Benchmarking reports show a wide variety in environmental disclosures. Given the evolution of required disclosures and increasing scrutiny thereof by the SEC, investors and non-governmental organizations, and many companies and their counsel, are struggling with questions of whether, how, and what to disclose. A panel representing the various stakeholders will address these pressing issues and offer differing perspectives on the new guidance and the possibility of further rulemaking.

MODERATOR:

James F. Cress, *Holme Roberts & Owen LLP, Denver, CO*

SPEAKERS:

Adam Kanzer, *Managing Director & General Counsel, Domini Social Investments LLC, New York, NY*

Ben T. Keller, *Wyatt, Tarrant & Combs, LLP, Lexington, KY*

Gayle S. Koch, *The Brattle Group, Cambridge, MA*

10:30 a.m. – 12:00 p.m. **A New Brownfield Economy— Recognizing the Risks and the Market**

Foreclosure, stingy private and public investment, government incentives for renewable energy project siting on brownfields, greenfield competition, enhanced due diligence, and risk aversion, among other factors, all impact a new brownfields market. A moderated panel with legal, banking, land development, and consulting experience will analyze brownfield redevelopment emerging in a recovering economy. This panel presentation uses a brownfield case study involving the redevelopment of the site of the former Geneva Steel located near Salt Lake City, Utah works, including post-closure permit corrective action and redevelopment under the Resource Conservation and Recovery Act. Redevelopment of the site included use of multiple site management plans and

environmental covenants for impacted areas. As a result, significant portions of the 1,750 acres became available for mixed land use, including a FedEx distribution center and public acquisitions for the Vineyard Connector Highway, Geneva Road expansion, Front Runner commuter rail and Central Utah Project water wells, pipeline and storage facilities, and a potential university sports field complex.

MODERATOR:

Bradley R. Cahoon, *Snell & Wilmer L.L.P., Salt Lake City, UT*

SPEAKERS:

Julie Kilgore, *Environmental Consultant, Wasatch Environmental, Inc., Salt Lake City, UT*

Pete Pedersen, *Founder & Managing Principal, Renova Partners LLC, Wellesley, MA*

Cliff Yeckes, *Senior Vice President, Environmental Practice, Willis Group, Denver, CO*

12:00 p.m. – 1:30 p.m.

Committee Roundtable Luncheon

This luncheon will allow you to meet and network with attendees who share your practice interests. Everyone is invited to participate in this informal event.

1:30 p.m. – 3:30 p.m.

Ethics Session—The Brave New World of Ethics in a Globalizing Practice: How U.S. Lawyers Can Reconcile U.S. Ethics Responsibilities with Conflicting Multinational Rules

As American companies rapidly globalize and multinational companies expand to the United States, environmental lawyers in the United States increasingly are called upon to counsel on regulatory, transactional, and enforcement issues arising around the world. However, professional responsibility, ethics, and other rules vary widely among different nations, at times directly conflicting with responsibilities imposed upon U.S. lawyers. This panel will offer counsel on how to investigate international ethics obligations and reconcile with U.S. responsibilities when giving advice regarding international matters. The speakers will focus on ethical issues that commonly arise when counseling on international environmental legal questions, including attorney client privilege, confidentiality, responses to government and independent investigations, and national security ramifications. The panel will first provide a synopsis of recent developments regarding these issues in the United States, followed by an overview of varying international approaches, and a discussion of how to reconcile conflicting domestic and international approaches.

MODERATOR:

Carol A. Needham, *Professor, Saint Louis University School of Law, Saint Louis, MO*

SPEAKERS:

Antonella Capria, *Gianni, Origoni, Grippo & Partners, Milan, Italy*

Clara Maria Poffenberger, *Counsel, Environmental Law, Exxon Mobil Corporation, Fairfax, VA*

Tseming Yang, *Deputy General Counsel, U.S. Environmental Protection Agency, Washington, DC*

3:30 p.m.

Closing Remarks

Robert J. Martineau, Jr., *Planning Chair 2012, Waller Landsen Dortch & Davis, LLP, Nashville, TN*

Registration Information

Location and Lodging

The 40th Annual Conference on Environmental Law will take place at **The Grand America**, 555 South Main Street, Salt Lake City, UT. To learn more about the property, visit <http://www.grandamerica.com>. A block of rooms has been reserved at the discounted rate of \$250 standard single/double occupancy. A limited number of rooms are available at **The Little America** (across the street) at the rate of \$169 standard single/double occupancy. To learn more about this property, visit <http://saltlake.littleamerica.com/>. A limited number of government rooms will be available at **The Little America** at the rate of \$94. Government identification is required for the reduced rate. The cut-off for room reservations at the discounted rates is **Tuesday, February 22, 2011**. After that date, rooms can be reserved on a space-available basis. To reserve a room, call directly at (801) 258-6000 or toll free at (800) 453-9450. **Be sure to mention the ABA Annual Conference on Environmental Law to receive the special rate.**

Early Registration

We request that all registrations be made in advance of the program. You may register online by visiting <http://www.abanet.org/environ/envlaw/> or by completing the attached form and mailing it with your payment to the ABA Section of Environment, Energy, and Resources, Attn.: Julie Connell, 40th Annual Conference on Environmental Law, 321 N. Clark Street, Chicago, IL 60654. The deadline for receipt of early bird registrations is **Thursday, February 17, 2011**. All registrations postmarked after February 17, 2011 must include an additional \$50 for processing. The final cut-off date for all pre-registrations (early bird and late) is **Tuesday, March 1, 2011**. In order to be listed in the registration roster distributed at the program, registration must be received by **Tuesday, March 1, 2011**. If you have not received a written confirmation by this date, please call (312) 988-5724 to verify that your registration form and payment were received. Please note that onsite registrations will have an additional administrative fee of \$25.

Fees

The registration fee covers conference materials on a USB drive, breakfasts and breaks on Friday and Saturday, and receptions on Thursday and Friday. Please indicate on the registration form if you plan on attending Friday's luncheon, Friday evening's anniversary dinner, or Saturday's luncheon. An additional fee is required for Friday night's anniversary dinner.

Group Discount

Law firms and other organizations registering multiple attendees (four or more) can be eligible for a group discount. All registrations must be received together and prior arrangements must be made with the Program Assistant, Julie Connell, by calling (312) 988-5724. Discounts will not be applied retroactively. *You will not be able to register group attendees using the online registration system but rather must complete and submit hard copies of the registration form in this brochure.* Discounted rates granted to speakers, planning committee members, sponsors, or tuition waiver candidates do not count towards group discount opportunities.

Tuition Assistance

A limited number of registration fee waivers are available for government employees, public interest lawyers employed with nonprofits, and academics. To apply, send a letter outlining the basis for your fee waiver request to Julie Connell, Program Assistant, by e-mail at ConnellJ@staff.abanet.org. All requests must be received by **Tuesday, February 8, 2011** to qualify.

Law Student Scholarship Opportunities

A limited number of scholarship opportunities are available to law students interested in attending the entire meeting. To be considered for this scholarship opportunity, you must be a member of the ABA Section of Environment, Energy, and Resources. You must also submit a 2-3 paragraph letter indicating your interest in environmental, energy, or resources law and why you wish to attend the meeting by **Tuesday, February 8, 2011**. The letters will be reviewed and scholars will be selected and notified no later than **Tuesday, February 15, 2011**. Send all letters to Yumeka Brown, Program and Membership Coordinator, via e-mail at BrownY@staff.abanet.org, or by fax to (312) 988-5572.

Cancellation Policy

A full refund of the registration fee less a \$50 administration fee will be granted for all written requests received by **Tuesday, March 1, 2011**. No refunds will be granted after March 1, 2011. Substitutions are acceptable. The Section does not provide credits to be used toward future programs. Cancellations must be submitted in writing and may be sent via fax to (312) 988-5572, Attn.: Program Assistant, Julie Connell. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

Program Materials

Conference proceedings and related background information will be provided to participants on a USB drive to reduce the environmental impact of the program. For those who would also like to reserve a hard copy of the program materials so that it is available onsite at the meeting, please pre-order on the registration form. Only pre-ordered copies will be available onsite.

CLE Credit

CLE accreditation has been requested for this program from every state with mandatory continuing education requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE." Check with your state agency for confirmation of this program's approval. **Please note: New York and Delaware licensed participants are required to sign-in and sign-out on a special attendance sheet at each session.** States with lawyer specialization programs have not been requested to certify this program. Uniform certificates of attendance will be available in the registration materials at the program. For more information on approved number of credit hours, please contact Yumeka Brown, Program and Membership Coordinator, at (312) 988-5577.

Americans with Disabilities Act

If any special arrangements are required for a disabled individual to attend this program, please call the Program Assistant at (312) 988-5724 by **Friday, March 11, 2011**.

Registration Form

40th Annual Conference on Environmental Law • March 17–19, 2011

Register Online! Save time by registering for this meeting online.

Visit <http://www.abanet.org/environ/envlaw/>

- I will **not** be attending the conference but wish to order the course materials, which includes shipping and handling. \$45 USB Drive \$80 Hard Copy

Registrant Information

____/____/____/____/____/____/____/____
ABA MEMBERSHIP NUMBER

NAME (FIRST MIDDLE LAST) PREFERRED FIRST NAME FOR BADGE

ORGANIZATION

ADDRESS

CITY, STATE/PROVINCE, ZIP/MAIL CODE

COUNTRY

TELEPHONE NUMBER FAX

E-MAIL

Please note: Information provided on this registration form will be published in an attendee roster that will be disseminated to meeting attendees.

- Please do not list my e-mail address in the registration roster.
 Please do not list my name and contact information in the registration roster.

New York licensed participants are required to sign-in and sign-out on a special attendance sheet at each session.

- I am licensed in the state of New York.

Attention ABA Members!

If you are an ABA Member but not a member of the Section of Environment, Energy, and Resources please note that your conference registration fee (\$665 before 2/17/11 or \$715 after 2/17/11) now includes Section membership.

Yes! Enroll me in the Section of Environment, Energy, and Resources.

- Free with "ABA Member" registration fees for ABA members only* (a \$75 value)

*ABA membership is a prerequisite of Section membership. If you are not already an ABA member, please call (800) 285-2221. Please note: Free membership only applies to individuals who have not been a member of the Section in the past two years.

Fees and Payment Information

Program Registration Fees: (Payment and/or P.O. must accompany registration or registration form will not be accepted)

Online registration is available at <http://www.abanet.org/environ/envlaw/> through Tuesday, March 1, 2011.

Registration

	Before 2/17/11	After 2/17/11
<input type="checkbox"/> Section Member	\$590	\$640
<input type="checkbox"/> Section Member Government, Public Interest, Academic	\$460	\$510
<input type="checkbox"/> ABA Member	\$665	\$715
<input type="checkbox"/> General Attendee	\$675	\$725
<input type="checkbox"/> Government, Public Interest, Academic	\$510	\$560
<input type="checkbox"/> Young Lawyer*	\$510	\$560
<input type="checkbox"/> Hard Copy Course Materials	\$80	\$80

*Qualifying young lawyers are those who have been admitted to practice in their first bar within the past five years or who are less than 36 years old.

Registration—

Law Students and Student Associates

<input type="checkbox"/> Section Member	\$50
<input type="checkbox"/> ABA Member*	\$75
<input type="checkbox"/> General Attendee**	\$100

*As an ABA member, registration will include membership to the Section of Environment, Energy, and Resources for one year.

** As a general attendee, this registration will include membership to the ABA and the Section of Environment, Energy, and Resources for one year.

Public Service, Luncheons, and Dinner

Friday's Luncheon, Friday's Anniversary Dinner, and Saturday's Committee Roundtable Luncheon each require advance registration to participate. The luncheons are included in the program registration fee. **The anniversary dinner event requires a purchased ticket.** Please do not wait until you arrive at the conference to reserve tickets for these three events, as we cannot guarantee availability onsite.

Thursday, March 17, 2011, 9:00 a.m.

- \$0 Public Service Project

Friday, March 18, 2011, 12:00 p.m.

- \$0 Luncheon

Friday, March 18, 2011, 7:00 p.m.

- \$75 Anniversary Dinner
 \$50 Anniversary Dinner (Law Students and Student Associates only)

Saturday, March 19, 2011, 12:00 p.m.

- \$0 Committee Roundtable Luncheon

Payment: (check one; complete all information)

- Check enclosed, payable to the American Bar Association.
 Purchase Order No. _____
 Charge my credit card: Visa MasterCard AmEx

CARD NUMBER EXP. DATE

SIGNATURE

ABA FJE Contribution:

\$25 (suggested) \$ _____

Voluntary contribution to support Section of Environment, Energy, and Resources Project Support Fund. Contributions to the FJE are tax deductible to the full extent allowed by law.

Dietary restrictions? Please specify:

Total enclosed: \$ _____

Return this registration form (including check, credit card information, or purchase order) to:
American Bar Association
Section of Environment, Energy, and Resources

Attn: Julie Connell, Program Assistant
321 N. Clark Street, Chicago, IL 60654

Fax: (312)988-5572

Questions? Call (312)988-5724

/web



321 N. Clark Street, Chicago, IL 60654

Register early for the
**40th Annual
Conference on
Environmental Law
March 17-19, 2011**

Location:

The Grand America, Salt Lake City, UT

Early Registration Deadline:

Thursday, February 17, 2011

Housing Deadline:

Tuesday, February 22, 2011

Nonprofit Organization
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American Bar Association