Newton, MA--The winter edition of the *Boston College Environmental Affairs Law Review* (volume 39:1) has been released.

Abstracts (to view the full issue, please visit [Environmental Affairs](#) (PDF Format))

**Bradford C. Mank, Informational Standing After Summers**

In *Wilderness Society v. Rey*, the Ninth Circuit addressed a circuit split among the D.C. Circuit and Sixth Circuit over the proper application of the Supreme Court’s decision in *Summers v. Earth Island Institute*. The Ninth Circuit determined that Summers, which explicitly limited procedural rights standing, implicitly narrowed standing rights in general. The court applied this principle to informational standing, finding that statutes that do not establish an explicit right to information, but rather may be regarded as providing general notice and appeal provisions for public participation, are insufficient to establish standing. Prof. Mank argues that while the Ninth Circuit’s decision may be a proper application of Summers, the basis of its decision was inadequate given its neglect of Justice Kennedy’s approach to informational standing in *Summers* and *Lujan v. Defenders of Wildlife*. Because Justice Kennedy was the key swing vote in these cases, understanding his approach is essential to determining Congress’s authority to establish informational standing and standing rights in general.

**Patricia E. Salkin, Honey, It’s All the Buzz: Regulating Neighborhood Beehives**

Urban beekeeping, along with other types of sustainable development and green building, has generated quite a “buzz” in recent years. Perhaps most prominently, the White House has maintained a hive of 70,000 bees in First Lady Michelle Obama’s kitchen garden. Prof. Salkin highlights the recent popularity of urban beekeeping, as well as many of its benefits. The fact that beekeeping operations are “not always welcomed by the neighbors” leads to discussion of many of the challenges urban beekeepers face. Prof. Salkin then addresses the federal and state regulatory frameworks for beekeeping and honey, and analyzes a variety of state and local laws that are geared toward promoting beekeeping while limiting its potential for harm as a way to help regulators promote more efficient regulations.

**Sarah L. Stafford, Private Policing of Environmental Performance: Does It Further Public Goals?**

The role of private parties in the policing of environmental regulation has grown dramatically in the last two decades. As political pressure for greater privatization continues to grow, Prof. Stafford argues that it is first necessary to determine whether private participation in the enforcement of EPA’s regulatory policies is an efficient and effective way to promote EPA’s environmental goals. Before making this determination, she argues, it is necessary to ensure that the negative consequences of private enforcement of public initiatives do not outweigh its potential benefits. Prof. Stafford highlights several economic and policy studies in three relevant areas: 1) public activities that have been formally outsourced to private entities, 2) private activities that are actively facilitated by EPA, and 3) private initiatives that are
independent of the EPA. The article concludes that there is insufficient evidence to support the proposition that increased privatization is socially beneficial.

**Nicholas Clark Buttino, Note, An Empirical Analysis of Agricultural Preservation Statutes in New York, Nebraska, and Minnesota**

States use right-to-farm statutes to protect medium-sized farms for their cultural, economic, and environmental benefits. However, few states evaluate the effectiveness of their right-to-farm statutes. Right-to-farm statutes protect farmers from nuisance suits and burdensome zoning restrictions. In his note, An Empirical Analysis of Agricultural Preservation Statutes in New York, Nebraska, and Minnesota, Nicholas Buttino maps the structure of right-to-farm statutes in three states onto the U.S. Department of Agriculture’s census data for the last twenty-five years. Despite different approaches to protecting farms, all three states experienced similar demographic shifts: the number of small and large farms increased while the number of medium-sized farms plummeted. Buttino suggests states should reevaluate the purpose of the right-to-farm laws and empower agricultural councils to provide additional protections to medium-sized farms.

**Hannah Coman, Note, Balancing the Need for Energy and Clean Water: The Case for Applying Strict Liability in Hydraulic Fracturing Suits**

In her Note, Balancing the Need for Energy and Clean Water: The Case for Applying Strict Liability in Hydraulic Fracturing Suits, Hannah Coman applies a conventional strict liability analysis to the relatively new process of hydraulic fracturing. Hydraulic fracturing is a process used to extract natural gas from shale formations. Recently the use of hydraulic fracturing has drastically increased throughout the United States, and especially in Pennsylvania. Despite its successful use in extracting natural gas, the process of hydraulic fracturing is controversial due to allegations that it contaminates underground water sources. Coman focuses her Note on two lawsuits pending before the U.S. District Court for the Middle District of Pennsylvania, Berish v. Southwestern Energy Production Co. and Fiorentino v. Cabot & Gas. Both of these pending lawsuits allege well water contamination caused by hydraulic fracturing and seek recovery under a strict liability cause of action. Coman concludes that although it is unlikely that the court will adopt a strict liability framework in deciding these cases, such a framework is both legally appropriate and beneficial to helping balance our energy needs and the importance of clean water.

**Jesse Garfinkle, Note, Scope of Reviewable Evidence in NEPA Predetermination Cases: Why Going Off the Record Puts Courts on Target**

When an agency has determined the outcome of its environmental impact statement under NEPA prior to the completion of its analysis, significant environmental harm can result. Plaintiffs challenging an agency’s environmental impact statement on grounds of such predetermination have met with differing evidentiary standards. In his Note, Scope of Reviewable Evidence in NEPA Predetermination Cases: Why Going Off the Record Puts Courts on Target, Jesse Garfinkle explores the effects of the Fourth and Tenth Circuit’s willingness to consider evidence outside of the administrative record in predetermination cases. Under the Fourth Circuit’s approach as applied in National Audubon v. Society v. Department of the Navy, the court restricts the scope of reviewable evidence to the administrative record. Under the Tenth Circuit’s approach elucidated in Forest Guardians v. U.S. Fish and Wildlife Service, extra-record evidence may also be considered in determining claims of predetermination. Garfinkle advocates for the universal adoption of the expansive Tenth Circuit approach because of the importance of extra-record evidence in predetermination cases and its minimal risk to agency independence.

**Susan Harris, Note, Protecting the Los Angeles River by Declaring Navigability**

The Los Angeles River, which once stood in for jungle habitat in the movie Tarzan, is today a fifty-mile long concrete storm drain used by Hollywood for filming car chase scenes. Nonetheless, the Environmental Protection Agency (EPA) declared in 2010 that the river was “navigable” for purposes of enforcing Clean Water Act (CWA) protections. This decision was criticized by some, who compared the EPA’s declaration to declaring that pigs will fly. In her note, “Pigs Will Fly”: Protecting the Los Angeles River by Declaring Navigability, Susan Harris
discusses the history and transformation of the Los Angeles River and then provides a background of CWA jurisprudence interpreting navigability as well as a discussion of political efforts to strike navigability from the CWA entirely. Harris argues that the EPA’s case by case approach to declaring navigability is an effective way to uphold the goals of the CWA while expanding protection for the Los Angeles River and other rivers that may not appear navigable under a traditional understanding of the word.

Nathan D. Riccardi, Note, The Legal Viability of EPA’s Regulation of Stationary Source Greenhouse Gas Emissions under the Clean Air Act

The Supreme Court in Massachusetts v. EPA ruled that greenhouse gases (GHGs) are an “air pollutant” under the terms of the Clean Air Act. This ruling transformed the legal definition of air pollution and set the stage for EPA regulation. At the time, however, the Court did not anticipate the regulatory chain reaction its decision would generate. It soon became apparent that millions of small businesses such as hotels and restaurants that emit more than 250 tons per year of GHGs would become subject to a costly permitting process under the terms of the Act. Facing this possibility, which would “paralyze” permitting authorities and place a great burden on small business, the EPA decided to circumvent the clear words of the Clean Air Act and “tailor” the permitting threshold from sources that emit 250 tons per year to those that emit 100,000 tons per year. Opponents argued that the EPA overstepped its legal authority in doing so. In his Note, Necessarily Hypocritical: The Legal Viability of EPA’s Regulation of Stationary Source Greenhouse Gas Emissions Under the Clean Air Act, Nathan D. Riccardi defends the EPA’s decision to regulate, arguing not only that the EPA was legally justified in “tailoring” the permitting threshold, but that it had no other choice.

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