

Michigan Journal of Environmental & Administrative Law

Volume 6 | Issue 1

2016

Front Matter

Michigan Journal of Environmental & Administrative Law

Follow this and additional works at: <https://repository.law.umich.edu/mjeal>



Part of the [Administrative Law Commons](#), and the [Environmental Law Commons](#)

Recommended Citation

Michigan Journal of Environmental & Administrative Law, *Front Matter*, 6 MICH. J. ENVTL. & ADMIN. L. (2016).

Available at: <https://repository.law.umich.edu/mjeal/vol6/iss1/9>

This Front Matter is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of Environmental & Administrative Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

*Michigan Journal of
Environmental & Administrative Law*

Volume 6, No. 1

Fall 2016

*University of Michigan Law School
Ann Arbor, Michigan*

Cite as: 6 MICH. J. ENVTL. & ADMIN. L. ____ (2016)

Except where otherwise expressly provided, the author of each piece of scholarship in this issue has granted permission for copies of that scholarship to be made in whole or in part by nonprofit institutions for educational use, including distribution to students, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the *Journal*, the volume, the number of the first page, and the year of publication; (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.

The *Michigan Journal of Environmental & Administrative Law* is published biannually by students of the University of Michigan Law School. Printed by Joe Christensen, Inc., Lincoln, Nebraska 68521.

Michigan Journal of Environmental & Administrative Law
University of Michigan Law Library
801 Monroe Street
Ann Arbor, MI 48109-1210
MJEAL.Business@umich.edu
<http://www.mjeal-online.org>

Publication Policy

The *Michigan Journal of Environmental & Administrative Law* will publish articles and student notes on all aspects of environmental law and policy, as well as administrative law topics that may apply to environmental law. The *Journal* will generally focus on the American legal system. However, it welcomes interdisciplinary and international scholarship that advances understanding of environmental and administrative law and policy. The *Journal* may publish any article that its editors believe will be consistent with these aims.

Subscriptions

The current subscription rate is \$35.00 domestic and \$45.00 foreign. All subscription inquiries should be made to mjeal.business@umich.edu. Subscribers should report the non-receipt of copies within six months of the mailing date. For more information, please see the Subscriptions page at the end of the *Journal*.

ISSN 2375-6276 (Print)
ISSN 2375-6284 (Online)

Michigan Journal of Environmental & Administrative Law

Volume 6

2016–2017

Editor in Chief

ANDREW A. EBERLE

Managing Editor

RICHARD M. STEPANOVIC

Managing Articles Editor

CHRISTOPHER K. VANDEUSEN

Managing Notes Editor

DAVID GOLDENBERG

Managing Executive Editor

SARAH LADIN

Articles Editors

BRIANA GREEN
KYLE OLSEN
TRISHA PARIKH
MATTHEW STILES

Notes Editors

INSUNG HWANG
REBECCA WILLIAMS

Executive Editors

CHRISTOPHER BRUNO
ANDREW C. DANE
BRIAN DRESSSEL
STEVE VNUK

Junior Editor Coordinators

SEAN HIGGINS
VICTORIA LEUNG
KATE PETERSON

Contributing Editors

JOHN FITZHENRY
LAUREN FITZSIMONS
MARIKA ROTHFELD
SETH TANGMAN

Production Editor

KEITH THOMAS

Associate Editors

ANDREW J. ALLEN
JEREMY BURSTEIN
JOHN CONLIN
KATHLEEN CRADDOCK
CAITLIN DEAN
ALICIA FERRARA
AIMEE FORD
BRETT J. FRAZER
ELIZABETH GREENWOOD
MITCHELL HOKE

ADAM KENNEDY
MONIKA KHALTSEV
ANASTASSIA KOLOSOVA
JOSEPH MOELLER
MYLES OSBORNE
ADAM OSIELSKI
AUSTIN PERRY
CHRISTIAN ROBERTSON II
MAYTE SALAZAR ORDONEZ

JASON SEARLE
LAUREN STOTTS
IRA STUP
PHILLIP K. TURNER
MICHAEL WATTS
CAMERON WILSON
ANDREA XU
NEIL YOUNGDAHL
JOSHUA ZIMBERG
NICH ZLEVOR

Junior Editors

VICTORIA ALLEN
ERIC ASHBY II
ALLY BEASLEY
JOAN CAMPAU
IRMA CRUZ
TROY EPSTEIN
CHRIS ERICKSON
TIMOTHY FEATHERSTON
MITCHELL GILBURNE
NASH HALL
DAVID JOHN IMHOFF

ALEXANDER KRAIK
MANAS KUMAR
THOMAS LA VOY
HALLIE LIPSEY
M MOORE
ALEXANDRA NOLL
JAMILA ODEH
OLIVIA CARES
JOHN MINODE'E PETOSKEY
ANNA RASMUSSEN

JOEL RICHERT
ANDRÉ ROUILLARD
ANDREA SINELE
JONATHAN SLACK
KYLE SMITH
MICHAEL SMITH
GRANT SNYDER
MEGAN STAMM
CASSANDRA J. THOMSON
HINH D. TRAN
JASON HUI ZHU

UNIVERSITY OF MICHIGAN LAW SCHOOL

Administrative Officers

MARK SCHLISSEL, B.A., M.D., PH.D., *President of the University*
PAUL E. COURANT, B.A., M.A., PH.D., *Interim Provost and Executive Vice President for Academic Affairs*
MARK D. WEST, B.A., J.D., *Nippon Life Professor of Law, Dean*
ALICIA DAVIS, B.S., M.B.A., J.D., *Professor of Law, Associate Dean for Strategic Initiatives*
DANIEL HALBERSTAM, B.A., J.D., *Eric Stein Collegiate Professor of Law, Associate Dean for Faculty and Research*
DAVID SANTACROCE, B.A., J.D., LL.M., *Clinical Professor of Law, Associate Dean for Experiential Education*
GIL SEINFELD, A.B., J.D., *Professor of Law, Associate Dean for Academic Programming*
DAVID H. BAUM, B.A., J.D., *Assistant Dean for Student Life and Special Counsel to the Dean*
MICHAEL DUBIN, B.S., M.A., *Assistant Dean for Development and Alumni Relations*
THERESA KAISER-JARVIS, B.A., B.S.J., ED. M, J.D., *Assistant Dean for International Affairs*
RAMJI KAUL, B.A., J.D., *Assistant Dean for Career Planning*
LINDSEY STETSON, B.A., J.D., *Assistant Dean for Financial Aid*
SARAH C. ZEARFOSS, A.B., J.D., *Senior Assistant Dean for Admissions, Financial Aid, and Career Planning*

Professors Emeriti of Law

LAYMAN E. ALLEN, A.B., M.P.A., LL.B.
DAVID L. CHAMBERS, A.B., LL.B.,
Wade H. McCree, Jr. Collegiate Professor of Law
WHITMORE GRAY, A.B., J.D., LL.D.
THOMAS A. GREEN, B.A., PH.D., J.D.,
John Philip Dawson Collegiate Professor of Law
JEROLD H. ISRAEL, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
CHARLES W. JOINER, A.B., J.D.
YALE KAMISAR, A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law
THOMAS E. KAUPER, A.B., J.D.,
Henry M. Butzel Professor of Law
RICHARD O. LEMPERT, A.B., J.D., PH.D.,
Eric Stein Distinguished University Professor of Law and Sociology
SALLYANNE PAYTON, B.A., LL.B.,
William W. Cook Professor of Law

MARGARET JANE RADIN, A.B., M.F.A., J.D., LL.D.,
Henry King Ransom Professor of Law
JOHN W. REED, A.B., LL.B., LL.M., JUR.SC.D., LL.D.,
Thomas M. Cooley Professor of Law
TERRANCE SANDALOW, A.B., J.D.,
Edson R. Sunderland Professor of Law
E. PHILIP SOPER, B.A., M.A., J.D., PH.D.,
James V. Campbell Professor of Law
THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
JOSEPH VINING, B.A., M.A., J.D.,
Harry Burns Hutchins Collegiate Professor of Law
LAWRENCE W. WAGGONER, B.B.A., J.D., D.PHIL.,
Lewis M. Simes Professor of Law
PETER K. WESTEN, B.A., J.D.,
Frank G. Millard Professor of Law
JAMES BOYD WHITE, A.B., A.M., LL.B.,
L. Hart Wright Collegiate Professor of Law
JAMES J. WHITE, B.A., J.D.,
Robert A. Sullivan Professor of Law

Professors of Law

REUVEN S. AVI-YONAH, B.A., A.M., PH.D., J.D.,
Irwin I. Cohn Professor of Law
SAMUEL BAGENSTOS, B.A., J.D.
Frank G. Millard Professor of Law
NICHOLAS BAGLEY, B.A., J.D.
MICHAEL S. BARR, B.A., M. PHIL., J.D.
Roy F. and Jean Humphrey Proffitt Professor of Law
LAURA N. BENY, B.A., M.A., J.D., PH.D.
EVAN H. CAMINKER, B.A., J.D.
Branch Rickey Collegiate Professor of Law
SHERMAN J. CLARK, B.S., J.D.
Kirkland and Ellis Professor of Law
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
DANIEL CRANE, B.A., J.D.
Frederick Paul Furth, Sr. Professor of Law
STEVEN P. CROLEY, A.B., J.D., M.A., PH.D.
Harry Burns Hutchins Collegiate Professor of Law
KRISTINA DAUGIRDAS, A.B., J.D.
ALICIA DAVIS, B.S., J.D., M.B.A.
REBECCA S. EISENBERG, B.A., J.D.,
Robert and Barbara Luciano Professor of Law
PHOEBE C. ELLSWORTH, A.B., PH.D.,
Frank Murphy Distinguished Professor of Law and Psychology
RICHARD D. FRIEDMAN, B.A., J.D., D.PHIL.,
Alene and Allan F. Smith Professor of Law
BRUCE W. FRIER, B.A., PH.D.,
John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law

SAMUEL R. GROSS, A.B., J.D.,
Thomas G. and Mabel Long Professor of Law
MONICA R. HAKIMI, B.A., J.D.
DANIEL HALBERSTAM, B.A., J.D.
Eric Stein Collegiate Professor of Law
JAMES C. HATHAWAY, LL.B., LL.M., J.S.D.,
James E. and Sarah A. Degan Professor of Law
SCOTT HERSHOVITZ, A.B., M.A., D.PHIL., J.D.
DONALD J. HERZOG, A.B., A.M., PH.D.,
Edson R. Sunderland Professor of Law
JAMES HINES JR., B.A., M.A., PH.D.,
L. Hart Wright Collegiate Professor of Law
NICHOLAS C. HOWSON, B.A., J.D.
ELLEN D. KATZ, B.A., J.D.
Ralph W. Aigler Professor of Law
VIKRAMADITYA S. KHANNA, B.C.A., LL.B., S.J.D.
William W. Cook Professor of Law
JAMES E. KRIER, B.S., J.D.,
Earl Warren DeLano Professor of Law
JESSICA D. LITMAN, B.A., M.F.A., J.D.,
John F. Nickoll Professor of Law
KYLE D. LOGUE, B.A., J.D.,
Wade H. and Dores M. McCree Collegiate Professor of Law
CATHARINE A. MACKINNON, B.A., J.D., PH.D.,
Elizabeth A. Long Professor of Law
NINA A. MENDELSON, A.B., J.D.
Joseph L. Sax Collegiate Professor of Law
WILLIAM I. MILLER, B.A., PH.D., J.D.,
Thomas G. Long Professor of Law

JULIAN DAVIS MORTENSON, A.B., J.D.
WILLIAM NOVAK, B.A., M.A., PH.D.
Charles F. and Edith J. Clyne Professor of Law
JOHN A.E. POTTOW, A.B., J.D.
John Philip Dawson Collegiate Professor of Law
JAMES J. PRESCOTT, B.A., J.D., PH.D.
EVE BRENSIKE PRIMUS, B.A., J.D.
RICHARD A. PRIMUS, A.B., D.PHIL., J.D.
Theodore J. St. Antoine Collegiate Professor of Law
ADAM C. PRITCHARD, B.A., M.P.P., J.D.
Frances and George Skestos Professor of Law
STEVEN R. RATNER, A.B., M.A., J.D.,
Bruno Simma Collegiate Professor of Law
DONALD H. REGAN, A.B., LL.B., B.PHIL.,
PH.D.,
William W. Bishop, Jr. Collegiate Professor of Law

KATE ANDRIAS, B.A., J.D.
MAUREEN CARROLL, B.S., J.D.
GABRIEL MENDLOW, A.B., PH.D., J.D.

ALICIA ALVAREZ, B.A., J.D.
EDWARD R. BECKER, B.A., J.D.
HOWARD BROMBERG, B.A., J.D., J.S.M.
BRIDGETTE CARR, B.A., J.D.
DAVID A. MORAN, B.S., B.A., M.A., M.S., J.D.
MARK K. OSBECK, A.B., M.A., J.D.
PAUL D. REINGOLD, B.A., J.D.

NICOLE APPLEBERRY, A.B., J.D., LL.M.
PATRICK BARRY, B.A., J.D., PH.D.
MICHAEL BLOOM, B.A., J.D.
ELIZABETH CAMPBELL, B.A., J.D.
DEBRA CHOPP, B.A., J.D.
PAUL H. FALON, B.A., M.A., J.D.
STEVE GRAY, B.A., J.D.
DAVID GUENTHER, B.A., M.A., J.D.
MARGARET HANNON, B.A., J.D.

MARTHA S. JONES, B.A., J.D.

J. PHILLIP ADAMS, B.A., J.D., LL.M.
TIMOTHY L. DICKINSON, B.A., J.D., LL.M.
ROBERT HIRSHON, B.A., J.D.
Frank G. Millard Professor from Practice

PAUL BRAND, B.A., M.A., D.PHIL
CHRISTINE CHINKIN, LL.B., LL.M., PH.D.
JOHN G. H. HUDSON, M.A., D.PHIL

MATHIAS W. REIMANN, DR.IUR., LL.M.,
Hessel E. Yntema Professor of Law
MARGO SCHLANGER, B.A., J.D.
Henry M. Butzel Professor of Law
CARL E. SCHNEIDER, A.B., J.D.,
*Chauncey Stillman Professorship for Ethics,
Morality, and the Practice of Law*
REBECCA J. SCOTT, A.B., M.PHIL., PH.D.,
Charles Gibson Distinguished University Professor of History
GIL SEINFELD, A.B., J.D.
BRUNO SIMMA, DOCTORATE OF LAW
SONJA B. STARR, A.B., J.D.
MARK D. WEST, B.A., J.D.,
Nippon Life Professor of Law
CHRISTINA B. WHITMAN, A.B., M.A., J.D.,
Francis A. Allen Collegiate Professor of Law

Assistant Professors of Law

W. NICHOLSON PRICE, II, A.B., J.D., PH.D.
GABRIEL RAUTERGERG, B.S., J.D.
VERONICA SANTAROSA, LL.B., B.A., M.A., LL.M., PH.D.

Clinical Professors of Law

NICHOLAS J. RINE, B.A., J.D.
VIVEK SANKARAN, B.A., J.D.
DAVID A. SANTACROCE, B.A., J.D., LL.M.
SUELLYN SCARNECCHIA, B.A., J.D.
KIMBERLY A. THOMAS, B.S., J.D.
DANA THOMPSON, B.S., J.D.
FRANK E. VANDERVORT, B.A., J.D.

Clinical Assistant Professors of Law

JOSHUA KAY, B.A., M.A., PH.D., J.D.
SAMMY MANSOUR, B.A., J.D.
TIMOTHY PINTO, B.A., J.D.
AMY SANKARAN, B.A., J.D.
IMRAN SYED, A.B., J.D.
NANCY VETTORELLO, B.A., M.U.P., J.D.
NANCY WANG, B.S.E., J.D.
BETH H. WILENSKY, B.A., J.D.

Affiliated LSC&A Faculty

Professors from Practice

LEONARD NIEHOFF, A.B., J.D.
DAVID UHLMANN, B.A., J.D.,
Jeffrey F. Liss Faculty Development Professor from Practice

William W. Cook Global Law Professors

HAW-JIN KIM, B.S., DR. JUR., LL.M.
J. CHRISTOPHER MCCRUDDEN, LL.B., LL.M., D.PHIL

*Michigan Journal of
Environmental & Administrative Law*

Volume 6, No. 1

Fall 2016

TABLE OF CONTENTS

ARTICLES

Using Proactive Legal Strategies for Corporate Environmental
Sustainability 1
– *Gerlinde Berger-Walliser, Paul Shrivastava & Adam Sulkowski*

Comma but Differentiated Responsibilities: Punctuation and 30
Other Ways Negotiators Have Resolved Issues in the
International Climate Change Regime..... 37
– *Susan Biniarz*

The Deepwater Horizon Oil Spill Litigation: Proof of Concept for
the Manual for Complex Litigation and the 2015 Amendments to
the Federal Rules of Civil Procedure..... 65
– *John C. Cruden, Steve O'Rourke & Sarah D. Himmelhoch*

Superfund Chaos Theory: What Happens When the Lower Federal
Courts Don't Follow the Supreme Court 151
– *Steven Ferrey*

From Environmental Rights to Environmental Rule of Law: A
Proposal for Better Environmental Outcomes 203
– *Jessica Scott*

Bringing Pacific Bluefin Tuna Back from the Brink: Ensuring the
Submission of Operational Data to the Western and Central Pacific
Fisheries Commission 239
– *Chris Wold, Mitsuhiro Takahashi, Siwon Park, Viv Fernandes &
Sarah Butler*

NOTES

Change in Regulation is Necessary for Genetically Engineered
Mosquitoes 285
– *Insung Hwang*

Defining Ambiguity in Broken Statutory Frameworks and its
Limits on Agency Action 313
– *Amanda Urban*