

Volume 25, Issue 3  
Summer 1995

---

ARTICLE

**Toxic Apportionment: A Causation and Risk Contribution Model**

*Gerald W. Boston*

Professor Boston urges application of principles of apportionment to those toxic tort cases involving multiple sources of toxic-related risks and suggests that a risk contribution model that compares the toxic-related risks each entity created and contributed to the resultant harm can function as a means for apportioning that harm. In advocating this model, Professor Boston relies on case examples from asbestos, multiple-defendant real property, and hazardous waste cleanup contexts as well as principles contained in the *Restatement (Second) of Torts*.

---

ESSAY

**Running on Empty: The Case for a Sustainable National Transportation System**

*F. Kaid Benfield*

Mr. Benfield, senior attorney and Director of the Transportation Project at the Natural Resources Defense Council in Washington, D.C., explores the federal Department of Transportation's upcoming creation of a national transportation system, which will address environmental concerns and restructure the federal administration of transportation. He concludes by suggesting a number of policy directions to make the new system sustainable.

---

SYMPOSIUM: PRESIDENT CLINTON'S NEW LAND  
POLICIES

On January 5, 1995, the Natural Resources Law Section of the Association of American Law Schools convened a panel of experts to review the first two years on the Clinton Administration's natural resources policy. Participants in the conference included several law professors, the executive director of a major policy analysis institute, and the Solicitor of the United States Department of Interior. These Articles are adaptations of remarks delivered at the Symposium.

**Introductory Remarks**

*Dean James L. Huffman*

**Natural Resources Policy in the Clinton Administration: A Mid-Course Evaluation from Inside**

*John D. Leshy*

Mr. Leshy is the Solicitor of the United States Department of Interior. His essay traces several basic themes in DOI natural resources policy under the Clinton Administration, including more respect for science, federalism, and tribal interest and more willingness to "re-invent" government.

**Reflection on the Endangered Species Act**

*Oliver A. Houck*

Professor Houck reflects on the purposes and effects of the Endangered Species Act by focusing on what he believes to be the premise of the Act--habitat

protection. He then searches for answers to why the Act and its approach to habitat protection has become one of the most controversial provisions in environmental law.

**'Til the Cows Come Home: The Fatal Flaw in the Clinton Administration's Public Lands Grazing Policy**

*Joseph M. Feller*

Professor Feller evaluates the Clinton Administration's efforts to reform environmentally destructive livestock grazing on public lands in the western United States. He concludes that although the Administration has issued a number of regulatory proposals exhibiting varying degrees of commitment to genuine change, the proposals still perpetuate fundamental flaws in the grazing system causing environmental destruction.

**Energy Policy from Nixon to Clinton: From Grand Provider to Market Facilitator**

*Alan S. Miller*

Professor Miller, the Executive Director of the Center for Global Change, provides a history of U.S. energy policy, documents present developments in energy consumption and technology, and suggests that the U.S. might do well to adopt the more aggressive national energy policies of other industrialized nations.

**Fulfilling the Executive's Trust Responsibility Toward the Native Nations on Environmental Issues: A Partial Critique of the Clinton Administration's Promises and Performance**

*Mary Christina Wood*

Professor Wood analyzes the Clinton Administration's emerging policies to accommodate native interests when implementing environmental and natural resources statutes. She focuses in particular on the trust responsibility in implementing the Endangered Species Act, drawing upon recent regulatory actions affecting treaty fishing in the Columbia River basin to demonstrate the need for prioritizing tribal interests when regulatory action affects treaty rights.

---

## COMMENT

**Mootness and Citizen Suit Civil Penalty Claims Under the Clean Water Act: A Post-*Lujan* Reassessment**

*Matthew M. Werner*

Mr. Werner surveys the cases that have followed the Supreme Court's decision in *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.* regarding their relationship between mootness doctrine and citizen suits under the Clean Water Act. He concludes that the holding of the majority of these cases--that injunctive claims can become moot while civil penalty claims cannot--is no longer valid in light of the Supreme Court's decision in *Lujan v. Defenders of Wildlife*.

---

## 1994 NINTH CIRCUIT ENVIRONMENTAL REVIEW

**The Legal Status of Land and Resource Management Plans of the National Forests: Paying the Price for Statutory Ambiguity**

*John P. Hogan*

Mr. Hogan contemplates the differing court interpretations of the role that Land and Resource Management Plans play in national forest planning and contends that these plans should be viewed as meaningful and concrete decisions that

predetermine future agency actions and, as such, should be subject to judicial review.

***Alaska Sport Fishing Association v. Exxon Corporation* Highlights the Need to Take a Hard Look at the Doctrine of *Parens Patriae* When Applied in Natural Resource Damage Litigation**

*Scott Kerin*

Mr. Kerin investigates the broad interpretations of the doctrine of *parens patriae* that courts are applying in the context of natural resource damage litigation.

Observing that such expansive readings pose significant risks to individual litigants, he concludes that the doctrine must be re-examined.

**Transportation Planning and the Clean Air Act**

*Alan L. Mitchell*

Mr. Mitchell examines the Clean Air Act's requirement that states submit implementation plans for reducing air pollution, reviews the Ninth Circuit's holding in *Trustees for Alaska v. Fink* which suggests lack of funding may excuse enforcement of a state's plan, and argues against such an excuse.