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SYMPOSIUM

THE CLEAN AIR ACT AT A CROSSROADS: TURNING 40, CONFRONTING CLIMATE CHANGE

Introduction.....	1123
<i>Robert L. Gillette II</i>	

SYMPOSIUM ARTICLES

Staving Off the Climate Crisis: The Sectoral Approach Under the Clean Air Act	1125
<i>Teresa B. Clemmer</i>	

Global climate change demands a transformation of our entire economy and energy system within just a few short years. Although our legislative process in the United States is paralyzed, the Clean Air Act authorizes the United States Environmental Protection Agency (EPA) to adopt fair, effective, and flexible regulatory mechanisms to address climate change on a sector-by-sector basis. This article surveys the emission reduction strategies available in key industries and mobile source categories, and it concludes that EPA can reduce emissions by about 24% within a short period of time using the sectoral approach. Accordingly, this article urges EPA to focus its attention on regulating greenhouse gas emissions on a sector-by-sector basis under the Clean Air Act, and it urges Congress Congress to reject any legislative proposal that would strip EPA of these effective regulatory tools.

Climate Change Adaptation: A Collective Action Perspective on Federalism Perspectives	1159
<i>Robert L. Glicksman</i>	

Regardless of the fate of efforts to mitigate global climate change through cuts in greenhouse gas emissions, policymakers will have to confront the need to prepare for the inevitable consequences of past greenhouse gas emissions. One important question is how to allocate the authority to adopt and implement climate change adaptation

measures among federal, state, and local governments. This article recommends the application of collective action principles to assist in determining the appropriate level of government for various adaptation policies.

The Enforcement Challenge of Cap and Trade Regulation	1195
<i>Lesley K. McAllister</i>	

The enforcement of a cap-and-trade program requires that the government know the mass emissions of all capped facilities—the whole quantity of their emissions over a given compliance period. An economy-wide cap-and-trade program addressing greenhouse gas emissions in the United States would bring with it formidable monitoring and enforcement challenges. This paper explains why accurate emissions data is so important to the success of a cap-and-trade program; discusses the methods available to obtain accurate emissions under a self-monitoring and reporting framework; and recommends a cooperative federalism model of enforcement in which significant roles are played by the federal government, state government, citizen groups, and potentially third-party verification entities.

Is the Clean Air Act at a Crossroads?	1231
<i>Craig N. Oren</i>	

This Article comments on important recent issues concerning the Clean Air Act. The author, after summarizing the Clean Air Act briefly, assesses the Act's accomplishments and finds that the Act has worked well in many respects. The author also comments on the U.S. Environmental Protection Agency's recent proposal to tighten the air quality standard for ozone, and points out that the key decisions to be made concern values and policy rather than merely scientific data. The Article then turns to proposals to regulate greenhouse gases through the Clean Air Act. It suggests that the Act's mechanisms are poor ways to address global warming in an environmentally sound and economically efficient way. The Article also critically assesses a recent argument that the EPA is obligated to set air quality standards for greenhouse gases.

Federal Control of Greenhouse Gas Emissions	1261
<i>Arnold W. Reitze, Jr.</i>	

This article discusses the efforts of the United States to control greenhouse gas emissions, primarily carbon dioxide, through international negotiations, new domestic legislation and by using the Clean Air Act. The focus is on developments in 2009 and 2010. At the international level the article advocates limiting negotiation to the twenty nations responsible for eighty percent of the world's GHG emissions. The article evaluates the major bills introduced in Congress dealing with climate change and concludes they are costly, complex, and intrusive income redistribution measures. The article then discusses the use of existing laws in an extensive regulatory and litigation-driven effort to reduce CO2 emissions.

ARTICLES

Relational Integrity Regulation: Nudging Consumers Towards
Products Bearing Valid Environmental Marketing Claims 1327
Jeffrey J. Minneti

This Article focuses on the regulation of environmental marketing claims—those claims that sellers make about their products’ environmental attributes. In a search for the optimal form of regulation of such claims, the Article first harmonizes recent environmental regulation scholarship, resulting in the creation of a new form of regulation that it terms “Relational Integrity” regulation. Second, the Article applies the Relational Integrity approach to public and private environmental claim regulatory schemes and suggests how those schemes could be more effective.

Ecosystem Services and the Clean Water Act: Strategies for Fitting
New Science into Old Law 1381
J.B. Ruhl

This Article explores the administrative reform potential that exists for integrating new knowledge about ecosystem services into Clean Water Act (CWA) regulatory programs as an example for all environmental laws. Using the dredge and fill permit and water quality standards programs of the statute as its case studies, the author explores the strategies agencies can use to integrate the concept of ecosystem services into regulatory programs by searching for statutory provisions to support “direct protection” authority and “performance metric” authority. The Article closes with some thoughts on a more overarching agenda for working ecosystem services into existing federal environmental protection programs.

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VOLUME 40 INDEX 1403