

# Second Generation Issues Committee Newsletter

Vol. 3, No. 1

October 2002

## MESSAGE FROM THE CHAIR

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It is hard to believe that only three years have passed since George Wyeth, our outgoing chair, and I sat in a restaurant outside EPA headquarters and talked about recent regulatory innovations, the legal issues arising from them, and the need for an ABA group focused on this area. As it turned out, the Section leadership was receptive to this idea. Little more than a year later, the Special Committee on Second Generation Issues was born. Today, our group can claim 120 members, a regularly published newsletter, a Web presence, a public service project and numerous events including one at the upcoming 10th Section Fall Meeting. Much of this success is attributable George's superlative leadership during this initial period. He has guided the Special Committee with intelligence and commitment and has set us on a sound and productive course.

As incoming chair, my first goal will be to continue along this path. This will involve focused activity on a number of fronts. The Special Committee will continue its outreach to Section members and other lawyers in an attempt to build the membership. It will begin the process of turning our Website into a resource for environmental practitioners interested in second generation law and policy. It will expand its innovative public service project, matching

volunteer lawyers with community groups participating in second generation initiatives. It will continue to sponsor major programs on second generation topics, as well as to put on smaller events that provide cutting-edge information specifically to members. I invite all of you to get involved in these activities. If you would like to do so, please contact me ([dhirsch@law.capital.edu](mailto:dhirsch@law.capital.edu)) and I will put you in touch with the relevant vice-chair.

The need for this work may be even greater today than it was three years ago. Environmental law and policy has always been contested ground. Of late, the field seems to have entered into one of its more polarized phases. This poses special challenges for second generation policies, many of which attempt to achieve environmental gains by crossing traditional battle lines and fostering cooperation among divergent groups. These circumstances create an increased need for clear and rigorous analysis of regulatory innovation and its place within the current legal framework. The Special Committee is uniquely positioned to provide this and, in so doing, can make a real contribution.

### Look inside for:

- *Oregon Green Permits*
- *A Manifesto for the Radical Middle*
- *EPA's Colleges and Universities Initiative*

**Second Generation Issues  
Committee Newsletter  
Vol. 3, No. 1, October 2002  
Joseph Dawley, editor**

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611.



**MESSAGE FROM THE EDITOR**

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This edition features thought-provoking articles. Two are on state and federal initiatives that highlight the various attributes of second generation programs. The third article implores those in the middle of the environmental ideological spectrum to take a more aggressive approach in defining environmental policy.

As the chair of the committee that drafted the rules to implement the Oregon Green Permit Program, Professor William Funk's article provides an excellent summary of the program and insightful analysis of the program's progress. Professor Ruhl's "Manifesto for the Radical Middle" is an inspiring thesis for the need for a proactive "middle ground" to fill the void left by the aggressive agendas of those at either end of the spectrum. Lastly, Fern Daves and Camille Corbin evaluate EPA's efforts to obtain voluntary environmental compliance from a traditionally under-regulated sector, colleges and universities.

I want to thank the authors for their contributions to make this edition a success and my predecessor, Marylou Barton, our first newsletter editor, who set the high standards for myself and future editors to follow.

If you have an article to contribute or would like to prepare one for our next newsletter, please feel free to contact me at 304/558-5929 or [jdawley@dep.state.wv.us](mailto:jdawley@dep.state.wv.us).

## **OREGON'S GREEN PERMITS**

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**William Funk**  
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Oregon was one of the early states to experiment with so-called green permits, alternative permits that provide permittees certain benefits in return for activities that go beyond what is legally required in normal circumstances. In 1997 the Oregon legislature, responding to requests from the Associated Oregon Industries (AOI) to allow special, more flexible permits, and to an initiative by the Oregon Department of Environmental Quality (DEQ) to encourage companies to adopt environmental management systems, adopted a Green Permit Program. ORS 468.501 *et seq.* The regulations implementing this program were not adopted until 1999 and included essentially two different subprograms, one involving Green Environmental Management System Permits (or GEMS Permits), and the other, Custom Waiver Permits.

### **The Program**

Most of the focus of the program has been on the GEMS Permits. There are three levels of GEMS Permits available, ranging from Participant to Achiever to Leader. Each requires a showing that the applicant has at least adopted and implemented an Environmental Management System (EMS). For the Participant level GEMS Permit, only a "basic" EMS is required, but for the Achiever and Leader levels an ISO 14001 certified environmental management system or its equivalent is required.

In addition to an EMS, an applicant must also establish targets and goals for exceeding regulatory compliance and reducing environmental impacts. At the Participant level, these targets and goals need only involve

regulated pollutants, but at the Achiever and Leader levels the targets and goals must include both regulated and nonregulated pollutants, and at the Leader level the targets and goals must also involve a sustainable development, life cycle approach to the use of resources. In addition, at the Achiever and Leader levels, there must be an actual demonstration of having met goals and targets that exceed regulatory compliance and reduce environmental impacts.

Applicants must also provide for stakeholder involvement. At the Participant level, only a plan for involvement is required, but at the Achiever and Leader Levels the applicant must have implemented a stakeholder involvement plan that involves two-way communication between stakeholders and the applicant with respect to environmental performance. While there are certain other requirements, such as the need to show substantial compliance with state and federal environmental laws in the past three years, the EMS, targets and goals and demonstrated performance, and stakeholder involvement are the key issues.

The program, like several of Oregon's environmental initiatives, is funded through cost recovery mechanisms, rather than general state revenues. Thus, an applicant submits a \$5,000 deposit with its application. During the permit application process, the agency estimates a budget and may require additional cost recovery funds to cover agency expenses in reviewing, developing, administering and monitoring the Green Permit. DEQ has estimated that it may cost approximately \$4,000-5,000 (80-85 staff hours) to issue a Green Permit, but in light of the lack of much experience at this point that estimate may be somewhat of a guess. Moreover, the actual amount will likely depend on the nature of the facility, the level of permit sought, and the regulatory flexibility requested.

More details on the requirements for obtaining GEMS Permits can be found at: <http://www.deq.state.or.us/programs/greenpermits/index.htm>.

The benefits to permittees depend upon the level of the GEMS Permit. All three levels receive

technical assistance from DEQ in meeting their environmental and permit requirements. Additionally, all three levels receive a single point of contact within the agency. While the Green Permit is generally an additional permit – although one that can modify other existing permits rather than a substitute for existing permits, one of its advantages is the assignment of one person to be that permittee’s agency contact with regard to all elements of the permittee’s environmental requirements. All three levels of GEMS Permit holders also receive what is known as enforcement discretion. That is, there is an official recognition that when compliance issues arise, the emphasis will be on correcting the error to assure compliance in the future rather than punishment for failure in the past. This discretion is premised on the understanding that GEMS Permit holders are entities that *do* want to do the right thing, so that penalties are unnecessary for deterrence purposes. Finally, all three levels of GEMS Permit holders receive official public recognition of their environmental leadership.

At the Achiever level, a GEMS Permit holder may qualify for special services related to regulatory requirements, such as consolidated reporting to ease reporting requirements under various programs, use of GEMS stakeholder involvement to satisfy public involvement requirements in other permits, and use of GEMS documentation to satisfy planning requirements under other programs.

Perhaps most importantly, the GEMS Achiever qualifies for “regulatory flexibility.” This may include expedited review of other environmental permit applications and pre-approval construction authorization. It can also include extended permit intervals and modified monitoring requirements, as well as comprehensive operating permits for a facility to replace multiple existing permits. In short, “regulatory flexibility” can mean any waiver of existing requirements that will not result in adverse impacts on the environment. The precise “regulatory flexibility” provided by a GEMS Achiever Permit is essentially a matter negotiated between the applicant and DEQ at

the time of the permit application. If a waiver would implicate a federal requirement (or a state requirement mandated by federal law or the terms of federally approved authorization of state implementation of a federal program), the program calls for DEQ to seek a waiver or rule change from USEPA.

There are no significant additional incentives at the Leader level, although in light of the Leader level’s focus on sustainable development, thereby implicating not just the permitted facility but also upstream suppliers and downstream customers, the regulatory flexibility may be extended beyond the particular permitted facility to provide custom permit packages for multiple facilities.

Finally, the 2001 Oregon legislature amended the Oregon Pollution Control Facilities Tax Credit Program to include a tax incentive for facilities that have a Green Permit, have an EMS that is certified as meeting the ISO 14001 standard, or have an equivalent EMS.

Separate from the GEMS Permit Program, the Custom Waiver Program is more responsive to the original conception of the AOI. It does not involve environmental management systems but instead provides for a special permit waiving certain requirements when an applicant can demonstrate that existing regulatory requirements in fact preclude the applicant from achieving improved environmental performance. The purpose of the Custom Waiver is to waive any such restrictions conditioned upon the permittee actually achieving the improved environmental performance. This waiver provision was responsive to industries’ claims that existing, detailed command-and-control regulations resulted in limitations frustrating their ability to achieve improved environmental performance for the same or less costs. Since the adoption of the Custom Waiver Program, however, no person has applied for such a waiver. Whether this is the result of a lack of knowledge of the program, in light of the greater DEQ emphasis placed on the GEMS Permit Program, or of a lack of substance to the original industry claims is difficult to determine.

## The Program's Success?

When the GEMS Permit Program's regulations came out in 1999, there were already three pilot programs involving environmental management systems, each of which was expected to apply for and receive a GEMS Permit in short order. Two of these were indeed issued on the same day, but not until December 2000. One was an Achiever GEMS Permit to the Louisiana Pacific Engineered Wood Products plant in Hines, Oregon. Another Achiever GEMS Permit was issued to the LSI Logic, Inc., semiconductor manufacturing plant in Gresham, Oregon. The third pilot project, however, never finalized its application. Nevertheless, a third facility, the Epson Portland, Inc., manufacturing facility, was also awarded an Achiever GEMS Permit not long after the first two. At the present, these are the only facilities that have gone fully through the GEMS Permit process, although there are two more applicants that seem intent on obtaining a GEMS Permit in the near future. This meager return might seem to suggest that the Program has not been a success, but it may simply be too early to tell. The startup time for any firm that does not already have an EMS is likely to be a significant period, and the few firms that already have EMSs may be waiting to see if the effort involved in obtaining a GEMS Permit is worth it. In a period of corporate retrenchments generally, experiments in environmental management are probably not high on most facilities' list of priorities.

Recently, the DEQ contracted for a consultant to assess perceptions of the success of the program by those involved or interested in it, and DEQ also revived the advisory committee that had drafted the program regulations in order to have it assess the success of the program. Under existing law, the agency's authority to issue new Green Permits will expire on Dec. 31, 2003. This assessment process was intended to provide a basis for a decision whether to extend the program. The assessment has not yet been completed, but on the basis of the interim report of the consultant and a meeting of the advisory committee, the advisory committee concluded that the program definitely should be

extended, and it is likely that the AOI, which supported the initial legislation (and its first extension in 1999), will also support the continuation of the program. The advisory committee believes that, especially given the low cost of the program to the agency and the satisfaction of the companies that have received GEMS Permits, its extension is justified.

Assuming the program is extended, the advisory committee has also considered some aspects that might be improved. One major issue involves whether the first level of GEMS Permit should require a facility to already have a functioning EMS. When DEQ developed the regulations, it considered allowing persons to qualify for Participant level solely on the basis of a commitment to adopt an EMS, rather than on having them already implemented. Lowering the initial entry barrier might entice a greater number of firms to apply to the program. Once accepted at the first level GEMS Permit, such firms might then be motivated to proceed to the next step, especially if the entry level Permit was limited in duration, as sort of a probationary period with removal from the program being the alternative to proceeding to the next step. Rather than "bait-and-switch," the idea would be to "bait-and-hook." This approach was not taken in the original regulations in light of concerns that, if public recognition attendant to awarding a Green Permit were given merely on the basis of promises, the recognition given to those applicants with developed EMSs might be diluted because of an inability of the public to discern the significant difference between the various levels. Public recognition for having a Green Permit was a primary motivation for the facilities that have received GEMS Permits and is likely to continue to play a major motivating role. Nevertheless, the advisory committee indicated that reconsideration of that decision might be appropriate if the program is extended in order to broaden its appeal.

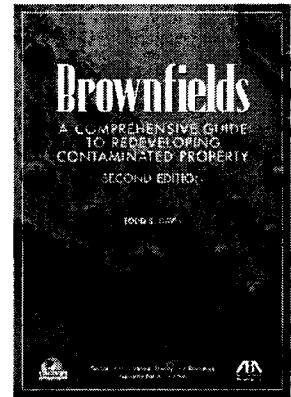
In addition to the initial level, reconsideration might also be given to the third level. The

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**TWO NEW BOOKS FROM ABA PUBLISHING AND THE  
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES**

***\*New 2nd Edition\****  
***Brownfields: A Comprehensive  
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***Todd S. Davis***



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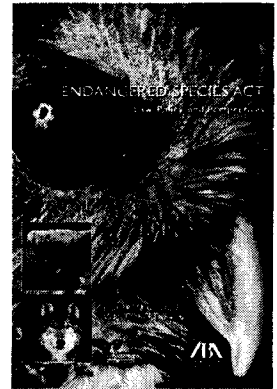
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# ***Endangered Species Act: Law, Policy, and Perspectives***

***Donald C. Baur and Wm. Robert Irvin***



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advisory committee noted that all the permits granted and applied for have been the mid-level, Achiever GEMS Permit, with little indication that Achievers will move onto the Leader level. The guidance as to what the requirements are for showing how a facility has adopted a “sustainable development,” life cycle approach, combined with the lack of any real additional benefits, do not make the Leader Level particularly inviting under the current regulations.

Besides public recognition, the promise of regulatory flexibility has held the greatest allure to potential applicants. At the same time, its realization has not come without some difficulties. The greatest difficulty has been overcoming EPA’s reluctance. EPA requires that every Green Permit application be sent to it for review and a determination whether the regulatory flexibility requested is within the state’s authority. The justification for this intensive review in EPA’s view is that any waiver of a state law or regulation might implicate the basis for EPA’s approval of the state’s authorization under the Clean Air Act, Clean Water Act or RCRA. While, with one exception, EPA has in fact signed off on all the requested regulatory flexibility provisions in the permit applications, the time and resources demanded by the EPA review impedes the program. Moreover, in the one case in which the requested regulatory flexibility was found to require a waiver of an EPA regulation (or a rule change), despite the apparent lack of any substantive EPA objection to the change, the process has dragged on for over a year.

One of the primary safeguards from an environmental perspective in the regulations is the provision for meaningful stakeholder participation in the grant and implementation of a GEMS Permit. Not surprisingly, however, there has been little environmental stakeholder involvement in the three permits issued despite efforts by the applicants to drum up interest. It is often difficult to find knowledgeable environmental stakeholders interested in details of a particular facility’s performance, and this

difficulty is compounded when the state agency seems to be directly involved and the facility in question is apparently a star performer rather than a bad actor. Nevertheless, this lack of actual participation was not seen by the advisory committee to be a major problem.

Finally, while the program’s cost to DEQ is relatively small, it is not entirely free. That is, while the application fee covers the direct costs of handling the application and its administration, there are a number of overhead costs that are not covered by the fee. Moreover, if the program is to be extended, it would be beneficial to more broadly advertise the program, both to encourage new applicants and to make public recognition of GEMS Permit holders more meaningful. However, as is true in most states, this is not the most fortuitous time to be seeking increased state funding. The advisory committee briefly considered possible other sources of funding, but the idea of raising the permit fee did not seem attractive because it would also tend to discourage new applications.

All in all, it must be said that the jury is still out on the success of Oregon’s Green Permit Program. What it has accomplished has been all positive – neither environmentalists nor industry perceive the program as having caused any problems. And all are agreed that facilitating industry’s use of EMSs is a good thing. Whether the Green Permit Program is the best way to broaden the use of EMSs is another question.

***LIKE TO WRITE?***

The Special Committee on Second Generation Issues welcomes the participation of members who are interested in contributing to this newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues, please contact the newsletter editor, Joseph Dawley at 304/558-5929 or [jdawley@dep.state.wv.us](mailto:jdawley@dep.state.wv.us).



## A MANIFESTO FOR THE RADICAL MIDDLE

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Since its beginnings in the 1970s, the development of modern environmental law and policy has been dominated by an intense feud between resourcists, who believe economic efficiency should control resource use decisions, and preservationists, who counter that conventional economic theory ignores intrinsic environmental values. Within the context of this binary debate, no coherent philosophy of the middle has emerged in the sense of affirmatively offering an alternative set of policies and decision making methods.

The middle in environmental law and policy, in other words, has for the most part been passive, in that it has been defined simply by whatever resting point the law and policy of the day finds after the two extremes have finished their battle. At most, this passive middle finds itself timidly advocating compromise between the positions taken by the two extremes, and as a result also finds itself useless to either extreme and thus derided by both. This approach, if it can be called that, describes the centrist position taken throughout much of the past three decades of environmental law and policy, epitomized in the unfolding of Endangered Species Act (ESA) law and policy from enactment of the statute in 1973 through the 1980s. ESA policy gradually became dominated by a pitched battle between staunch property rights advocates and hardcore preservationists, with neither extreme showing much tolerance for the middle ground. These extremist camps instantly branded centrist positions as sellouts. After suffering years of such bullying, the middle became sheepishly apologetic for even suggesting that a middle position might exist.

In a more aggressive form, a resistive middle has emerged in some settings to take the initiative by defining and coherently articulating

compromise positions sooner in the policy-making debate and then vigorously defending them. The emergence of sustainable development policy in the early 1990s illustrates how this approach may prove more effective to centrist interests. Sustainable development rhetoric cherry picked desirable qualities of economic, environmental, and social equity policies and fused them into a holistic compromise policy approach. Sustainable development advocates have steadfastly defended their multi-faceted policy vision, deflecting efforts by the mono-policy extremes to pull sustainable development rhetoric toward their respective camps while shedding the policies of their opponents. Today, sustainable development advocates have managed to focus national and international dialogue on achieving more sustainable development policies. In the end, however, the resistive middle is a reflection, distorted as it may be, of the extremes from which it melds compromise. It lacks its own philosophy.

By contrast, a radical middle is one based on its own method of policy analysis and formulation its own philosophy. It is a third way which, while often presenting a position between the two extremes, does not depend on the two extremes to define its contours. Beginning in the mid-1990s, this form of the middle emerged in environmental law and policy most aggressively through the development of ecosystem management policy, championed so effectively by Bruce Babbitt in his tenure as secretary of the Interior. Although ecosystem management policy has often arrived at positions resembling compromise between resourcism and preservationism, it is not about compromise. Ecosystem management policy thirstily embarked on broad-based research to arm itself with superior information, developed its own scientific models to support its policy theses, and proposed new methods of adaptively managing environmental and land use issues on large landscape scales. It affirmatively charted policy directions and challenged, even attacked, naysayers from the extremes. Armed with ecosystem-based science, vigorous political will, and new policy

instruments such as the habitat conservation plan, Babbitt's Fish and Wildlife Service completely reshaped the ESA playing field, forcing both the property rights advocates and the preservationists to scrap their playbooks and play by the new set of rules. Babbitt showed that the middle can define itself, set the agenda, and carry the day.

The radical middle will define itself, will articulate its philosophy, through three tools of the trade – superior information, robust models, and adaptive management methods – and will use them to act affirmatively rather than reactively. The radical middle cannot stop there, however, as the long battle between resourcists and preservationists has hardened a system of legislative stalemate and administrative obfuscation that is designed for World War I style trench warfare, in which the rule of law is used to gain and hold policy ground inch-by-inch. The radical middle, with its continuum-based adaptive management approach to decision making, will shake settled precepts of public participation, agency discretion and judicial review. Indeed, this is where the real battle ahead will lie not between what were once two, but are now three policy perspectives, but over how to choose the winner.

*This article provides a brief abstract of a longer elaboration on the topic of the middle in environmental law and policy appearing in a symposium issue of the Idaho Law Review dealing with the law of biodiversity. See J. B. Ruhl, Manifesto for the Radical Middle, at 38 IDAHO L. REV. 385 (2002).*

#### COMMITTEE NEWSLETTER UPDATE

The distribution of paper copies of committee newsletters is being phased out. Newsletters published after Sept. 1, 2002 will be available in their entirety on the Section's Website in both .html format and a printable .pdf format. Committee members will receive notification of each new issue from their committee list serves. To be included on the list serves of the committees you belong to, the ABA needs to have your current email address on record. If the ABA does not have your current e-mail address, you can call the ABA Service Center at 800/285-2221.

## EPA'S COLLEGES AND UNIVERSITIES INITIATIVE

**Fern Fleischer Daves and Camille A. Corbin  
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Historically, EPA has not focused many of its resources on colleges and universities, despite the fact that most of them do not have sophisticated environmental compliance programs. Some regulators believe that there is a high rate of non-compliance at these facilities, and have been exploring ways to encourage academic institutions to address environmental issues.

While relatively few institutions of higher learning have ever been the subject of environmental enforcement actions, over the last three years, hundreds of campuses across the nation have been inspected by EPA. Some schools have been assessed substantial penalties. While the proposed penalties typically range from \$30,000 to \$300,000, recent settlements have been valued in excess of \$750,000. At least one settlement involved a cash penalty in excess of \$500,000 and Supplemental Environmental Projects valued at \$1.2 million. And a few campuses are involved in multi-million dollar cleanups of old landfills, leaking underground storage tanks, and asbestos abatement projects.

In 1999, EPA launched an incentive program to encourage colleges and universities to evaluate and improve their environmental compliance. The Colleges and Universities Initiative (Initiative) extends the time frame for reporting violations that are discovered in scheduled self-audits, and offers the opportunity for penalties to be reduced or waived. Regions 1, 2 and 3 have been quite active in this Initiative.

### EPA Region 1

In New England, EPA initially focused on basic regulatory compliance, sponsoring compliance

assistance workshops, and taking enforcement actions at a few campuses. EPA sent warning letters to the presidents of all 286 colleges and universities in New England. Over 200 campuses are conducting voluntary audits. Some of the schools that submitted self-disclosures received full waiver of the penalties. Some settlements have included Supplemental Environmental Projects (SEPs). To settle violations of RCRA, the Clean Water Act and the Clear Air Act, last year the Massachusetts Institute of Technology (MIT) agreed to pay a cash penalty of \$150,000 and spend more than \$400,000 on SEPs. One of the SEPs is creation of a computer-based "virtual campus" compliance assistance tool that will guide others in addressing environmental issues in typical academic facilities. This tool will be expected to be available online in 2004. Further details on the MIT settlement can be found at <http://www.epa.gov/region1/pr/2001/apr/010424.html>.

EPA Region 1 has also been helping colleges and universities develop Best Management Practices and tools for conducting audits and implementing environmental management systems. They are encouraging these institutions to go beyond compliance (*i.e.*, green procurement, energy efficiency, etc.) and to share their success stories and experiences with the academic professional community. More information about Region 1's program can be found at <http://www.epa.gov/region1/steward/univ/>.

## **EPA Region 2**

EPA Region 2 is taking a slightly different approach to getting academic institutions into compliance with environmental laws and regulations. First, all colleges and universities in the region were encouraged – in writing – to perform voluntary self-audits and to disclose any violations discovered in those audits to EPA in return for reduced penalties under certain conditions. Then Region 2 reached out to the academic community with workshops aimed at increasing awareness of environmental regulations, and encouraging the use of environmental management systems and

pollution prevention programs. More recently, Region 2 began inspecting those colleges and universities that have not accepted EPA's "invitation" to sign up for the audit program, and enforcement actions are proceeding. Many of the campuses targeted for multi-media inspections by Region 2 are either in urban areas, near sensitive ecosystems or have received EPA grants.

Over the last 3 years, over 100 campuses in Region 2 have voluntarily disclosed violations to EPA under this program. Two large institutions have entered into comprehensive audit agreements with EPA: Rutgers – the State University of New Jersey (5 campuses and 11 other facilities) and The State University of New York (58 campuses). Copies of these agreements can be accessed on the Web at <http://www.epa.gov/region02/capp/cip/agreeex.htm#Rutgers>. Earlier this year, EPA filed administrative complaints against Manhattan College and Pratt Institute that allege violations of federal and New York hazardous waste laws. More enforcement actions are expected. And more institutions are seriously considering the value of self-audits and voluntary disclosures.

## **EPA Region 3**

In the Mid-Atlantic region, EPA has focused on compliance assistance for colleges and universities. In addition to hosting seminars, creating a Website, and working with various academic professional organizations, Region 3 developed questionnaires for college and university presidents and athletic directors to help them identify environmental issues on their campuses. In August 2000, Region 3 published the results of a survey of the effectiveness of EPA's outreach efforts to colleges and universities. One of the interesting findings of this survey was that

Many participants indicated that the fear factor, which may have been raised in workshops or from reading compliance materials, was a major force in raising awareness of the initiative and increasing the schools willingness to take the

necessary steps toward compliance. For example one participant stated 'After hearing the presentations, I used the horror stories to scare the university and to get things done.'

The full report of this survey is available on line at [http://www.epa.gov/reg3ecej/compliance\\_assist/ance/fullreport.pdf](http://www.epa.gov/reg3ecej/compliance_assist/ance/fullreport.pdf). EPA Region 3 received valuable feedback from academic institutions about what types of tools and other assistance would be most valuable to them in improving their environmental performance, and they are proceeding with various projects.

### Activities in Other EPA Regions

EPA Region 4 held a compliance assistance workshop for small colleges and universities in July 2002. Other EPA Regions have their own programs. A full list of contacts can be found at [http://www.nacubo.org/business\\_officer/2000/01/epa.html](http://www.nacubo.org/business_officer/2000/01/epa.html).

In EPA Region 9, The University of Arizona and Arizona State University self-disclosed their violations, and their penalties were waived. The University of California system submitted the results of RCRA and EPCRA audits and self-disclosed thousands of violations in March 2002.

### Risks and Rewards

Significant penalties can be assessed against colleges and universities for

- improperly using and storing chemicals in laboratories, maintenance and sports facilities
- mismanaging medical wastes and art supplies
- stockpiling old computers and used fluorescent light bulbs
- allowing gasoline and heating oil to leak from bulk storage tanks
- failing to address asbestos, PCBs and lead paint in campus buildings
- operating water treatment facilities, generators, boilers and incinerators in violation of permit requirements

- disposing wastes improperly, and violating reporting regulations under RCRA, the Clean Air Act, the Clean Water Act, TSCA, EPCRA, and other federal and state environmental laws and regulations.

Many academic institutions have not devoted substantial resources to environmental compliance in the past, and their current financial positions makes it difficult to commit to new programs. But there is good news.

- Colleges and universities can improve their environmental performance by utilizing tools and methods that are well-developed and approved by EPA (self-auditing, management systems, pollution prevention, etc.).
- Academic institutions may be able to reduce the risk of unannounced multi-media inspections and aggressive enforcement actions by negotiating a voluntary audit agreement with EPA.
- Gravity-based penalties may be waived under EPA's self-disclosure policy.
- Colleges and universities may be able to further reduce penalties by performing Supplemental Environmental Projects.

Colleges and universities that take action now to evaluate their compliance status are in the best position to take advantage of these opportunities.

#### ABA SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

##### *Calendar of Section Events*

##### **Clean Water Act: Law and Regulation**

October 23-25 2002  
Washington, DC  
Co-sponsored with ALI-ABA

##### **Environmental Sciences**

November 7-8, 2002  
Philadelphia, Pennsylvania

##### **32nd Annual Conference on Environmental Law**

March 13-16, 2003  
Keystone, Colorado

