



ENVIRONMENTAL  
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# ELI Bulletin

Making law work for people, places, and the planet

ELI counts on the generosity of supporters like you to ensure that our work on “making the law work for people, places and the planet” has a far-reaching impact in the United States and throughout the world. All that ELI has accomplished would have been impossible without the support of people like you. **Please donate to ELI today!** Thanks to a generous donor, all donations up to \$1,000 will be matched!



In this past year, ELI provided over 100 educational programs for our members and the public; worked with governments, nonprofits, and the judiciary to advance environmental law around the world; and brought thought leadership to the intersection of technology, environment, and governance. ELI and our partners also enhanced environmental security and lasting peace during and after armed conflicts through the creation of a free massive online course that was attended by 10,000 people from 170 countries. We look forward to your continued support. **Please join or make a donation today!**

Thank you for supporting ELI. Here's a quick look at what we've been up to.

## Driving Policy Improvements

### Cooperative Federalism in the Modern Era

A recent ELI report, *The Macbeth Report: Cooperative Federalism in the Modern Era*, finds that while many environmental law and policy experts support giving states with demonstrated capabilities greater independence and flexibility in running delegated environmental protection programs, important concerns remain about what proposed reforms might portend. Even enthusiasts for greater state primacy in implementing environmental programs consistently agree that EPA must continue its leading role in developing national standards, conducting scientific research, and governing on issues involving national and interstate interests. This timely report stems from “The Macbeth Dialogues,” an initiative undertaken in honor and memory of the late Angus C. Macbeth, one of the great leaders and thinkers in environmental law, and former ELI board member.

### Digital Cards Against Calamity

What would you do if your job was to manage a small coastal community besieged by job loss, irate voters, hurricanes, oil spills, and hipsters? Here's a way to find out: boot up your laptop or tablet and check out *Digital Cards Against Calamity*. Last year, ELI and 1st Playable Productions launched *Cards Against Calamity*, designed to be not only entertaining, but also educational by raising awareness of the issues surrounding coastal resilience. In October, ELI and 1st Playable Productions have taken *Cards Against Calamity* online by converting the award-winning board game into a digital format. Play it today!



## Driving Public Health Improvements

The past two decades have witnessed considerable development in the body of state policy aimed at reducing exposure to pollutants indoors and promoting best practices in building management and construction. Nevertheless, nearly every state can benefit from stronger policies in this area. Toward this end, ELI's Indoor Environments and Green Buildings Program provides surveys of state law and frequently issues Research Reports and Policy Briefs highlighting state legislative and regulatory strategies that offer important opportunities for protecting health and the environment. The program's most recent report, *Addressing Environmental Site Hazards at Child Care Facilities: A Review of State Policy Strategies*, describes existing state laws, regulations, and voluntary initiatives for preventing and addressing children's exposure to environmental site hazards at licensed child care facilities.

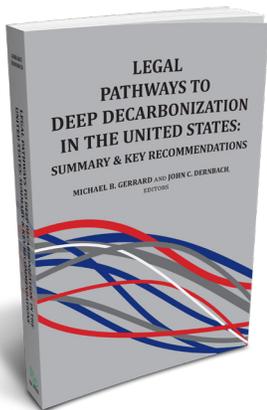
## Advancing Conservation in the Chesapeake Region

There are numerous applications for large linear energy projects—natural gas pipelines and electric transmission lines—that will affect the lands, waters, and resources of the Chesapeake region. At the same time, the states in this region are experiencing challenges in meeting their goals for conservation of lands, waters, and natural and historic resources. New and revised state-level practices can address the impacts of proposed projects and improve land conservation outcomes. In November, ELI released *Opportunities to Improve Landscape-Scale Mitigation for Energy Projects in the Chesapeake Region*, which identifies opportunities for the Chesapeake Conservation Partnership and its members to advance and improve landscape-scale mitigation expectations under existing laws; and to strengthen or create policies in Maryland, Pennsylvania, and Virginia to advance opportunities to apply consistent requirements for land conservation at scale with net benefits to the watershed. The report also examines similar issues that affect siting and mitigation of new commercial-scale solar and wind electric power generating facilities in the region.

## Providing the Legal Tools to Combat Climate Change

In early 2019, ELI Press will release *Legal Pathways to Deep Decarbonization in the United States*, edited by Michael B. Gerrard and John C. Dernbach. This “playbook” identifies well over 1,000 recommendations that form legal pathways for reducing U.S. greenhouse gas emissions by at least 80% from 1990 levels by 2050. Out of the desire to get the main messages of that book delivered to the broadest possible audience as quickly as possible, ELI Press has released ***Legal Pathways to Deep Decarbonization in the United States: Summary and Key Recommendations***, available in print and e-book formats. The *Summary and Key Recommendations* volume provides thumbnail summaries and the most critical recommendations from each of the 35 chapters of the

larger volume. It also includes an index that organizes the key recommendations by actor (e.g., local governments), allowing readers to see in one place all of the key recommendations for any particular actor, regardless of the chapter in which they originated. The legal options identified in both books involve federal, state, and local law, as well as private governance. Chapter authors were asked to include all options, even if they do not now seem politically realistic or likely, giving the book not just immediate value, but also value over time. While both the scale and complexity of deep decarbonization are enormous, both books have the same simple message: deep decarbonization is achievable in the United States using laws that exist or could be enacted.



# Informing Practitioners on Current Issues

## Exploring New Paradigms for Environmental Governance

We're living in a fascinating moment in time when divergent forces—private environmental governance, law, technologies, and communities—are coming together, allowing us to harness their combined power in a new environmental paradigm. These topics were discussed during two public forums held on October 23 in conjunction with the annual award dinner. At this year's Annual ELI-Miriam Hamilton Keare Policy Forum, ELI and expert panelists explored the intersection of private environmental governance, law, technologies, and communities, using a recent ELR publication, *A New Environmentalism: The Need for a Total Strategy for Environmental Protection*, as their stalking horse. Meanwhile, corporate environmental, social, and governance initiatives are facing increasing challenges and demands. The 2018 Corporate Forum looked at emerging risks and liabilities, lessons learned from recent experiences, and best practices to mitigate risks going forward, providing insight from investors, NGOs, regulators, and prosecutors. This forum was followed by a more in depth review of these topics in a gathering exclusively for corporate in-house Counsel and EHS officers on October 24.

## Focus on SCOTUS

ELI's annual U.S. Supreme Court Review of October Term 2017 and Preview of October Term 2018 again featured some of the nation's leading experts on environmental law in the Supreme Court. The event took place four days before the "First Monday of October" when the Supreme Court formally closed October Term 2017 and began October Term 2018. Expertly moderated by ELI Vice President of Programs and Publications John Pendergrass, leading environmental law professors Sharon Jacobs and Robert Percival reviewed key rulings from the Court's last term before turning to the cases that have been granted review or are likely to be considered by the Justices for the upcoming term. In addition, the speakers continued the conversation first held at an ELI Breaking News webinar on Justice Kennedy's legacy and implications caused by his recent departure from the Supreme Court.



## Blockchain Technology

Blockchain applications for the energy and environmental sectors are rapidly appearing, from tracking the movement of objects in industrial, food, or natural resource supply chains, to underpinning emission trading schemes, to verifying the ownership of land or genetic resources. However, blockchain's use by regulatory bodies is still an open question. Equally concerning is how to

deal with issues around blockchain performance, including speed and energy use, scalability, and interoperability, all of which could slow its adoption. Given this background, there is a clear and urgent need to bring together environmental professionals with those developing blockchain platforms and applications. On September 17, ELI held a Member Seminar in San Francisco, where panelists looked at this emerging technology and discussed its promises and perils for the environment.

## China Matters

On October 24, ELI had a second installment of its dialogue series between multinational companies and Chinese regulators, The China International Business Dialogue on Environmental Governance (CIBDEG). Deputy Director Li Liping of the Chinese Environment Ministry's Policy Research Center on Environment and Economy presented in Washington, D.C., recent regulatory developments in China to a host of companies with key operations and supply chains in China. CIBDEG provides a pathway for dialogue between companies and Chinese regulators about regulatory challenges, best regulatory practices, and best environmental control technologies, with ELI serving as the bridge for the dialogue.

For more information about past and future seminars, visit [www.eli.org/events-calendar](http://www.eli.org/events-calendar)

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## Recognizing Excellence

### A Shining Star

The Environmental Law Institute's 2018 Award Dinner on October 23 was a star-studded event. Nearly 750 environmental leaders from across multiple sectors—one of the highest attendances in ELI Dinner history—arrived at the Omni Shoreham Hotel in Washington, D.C., to hear remarks from this year's distinguished honoree, **Lisa P. Jackson, Vice President of Apple's Environment, Policy, and Social Initiatives** and former U.S. EPA Administrator, as well as from former Attorney General, Eric Holder, who introduced Lisa. Lisa's extraordinary work in greening Apple's supply chain and in reducing the company's carbon and natural resource footprint stands as a powerful example of business leadership in creating the future that ELI promotes. Her belief in environmental justice is one that aligns with the Institute's commitment to reflecting the voice of all communities—especially the most vulnerable—in the world's environmental laws and policies. Ms. Jackson remains optimistic about this challenge. "At the end of the day," Ms. Jackson explained, "it is about being able to look at clients . . . and say whether your actions are net-positive for communities and health. You can make money with your clients and [also] have communities be better off for it."



### Thanking Our Past Board Members and Launching ELI's 50th Anniversary Year

Throughout ELI's nearly 50-year history, ELI has been privileged to have had serving on its board many of the most illustrious and influential leaders in the environmental arena from law firms, nonprofit organizations, government, and companies. These individuals have helped shape ELI and its legacy of environmental law. To kick off ELI's 50th Anniversary year, which begins in 2019, there was a dinner on October 22, 2018, at the Omni Shoreham in Washington, D.C., attended by more than 30 former board members, including several founders as well as current and former presidents, generously hosted by Stan Legro, present and past ELI board member. These former Directors shared stories about ELI's past and offered input as we move into our 50th year, and will look forward to gathering again on October 21, 2019. Look for 50th Anniversary special events, programs, blogs, and videos on our webpage starting January 2019.

## Recently Featured in *The Environmental Forum*



The hype around blockchains—the programming protocol originally created for the Bitcoin—is bidirectional, ranging from apocalyptic predictions of bitcoin energy use that will “destroy our clean energy future” to rosy scenarios that “blockchain technology can usher in a halcyon age of prosperity for all.” The question for policymakers, therefore, is how to ensure that the environment profits in the end. In ***Blockchain Salvation***, David Rejeski and Lovinia Reynolds look at the challenges and opportunities presented by blockchain technologies and urge environmental professionals to take part in an ongoing conversation with software developers and other stakeholders that will shape the social contract affecting the blockchain’s environmental costs and benefits—plus shape emerging policy and governance responses. Interested in learning more? Register for our September 17 webinar on how the environmental and energy sectors can benefit from this new technology.

## Recently Featured in ELR’s *News & Analysis*



Each month, the *Environmental Law Reporter’s News & Analysis* offers insightful features relevant to both legal practice and policy on today’s most pressing environmental topics. Recent articles include:

- ***An American (State) in Paris: The Constitutionality of U.S. States’ Commitments to the Paris Agreement***
- ***The Impact of Justice Kennedy and the Effect of His Retirement***
- ***A New Environmentalism: The Need for a Total Strategy for Environmental Protection***

And be sure you’re getting all that ELR has to offer, including *Daily Update* and *Weekly Update*. To learn more, visit [www.elr.info](http://www.elr.info).

## Recently Featured in *Vibrant Environment*

Check out ELI’s blog series, *Vibrant Environment*. Recent entries include:



- ***Finding Legal Avenues for Bottom-Up Management of Small-Scale Fisheries in the Mesoamerican Reef***
- ***The Fate of the Dusky Gopher Frog: ELI’s Discussion on Implications for Habitat Conservation***
- ***The Rise of Climate Change Adaptation Law***

To read more of our blogs, visit [www.eli.org/vibrant-environment-blog](http://www.eli.org/vibrant-environment-blog). And if you are interested in writing a blog for ELI, please contact Rachel Jean-Baptiste at [jean-baptiste@eli.org](mailto:jean-baptiste@eli.org).