



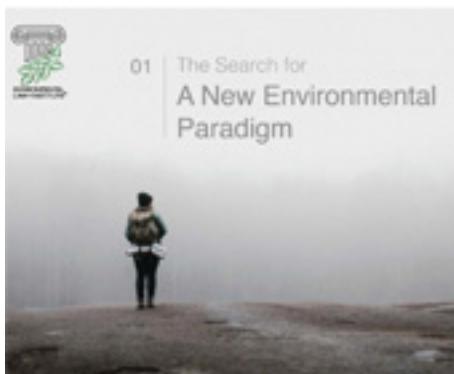
ELI Bulletin

Making law work for people, places, and the planet

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

Driving Policy Improvements

Proposing a New Environmental Paradigm



Environmental quality over the past 50 years has no doubt improved, but the pace of change is leaving in the dust the linear environmental strategies of the past. But how should the environmental protection enterprise be organized in the future, and who will shape this new paradigm? How do we make more use of citizen-generated data? How can the voluntary commitments by companies be further internalized into algorithms that drive energy and environmental decisions in facilities and supply chains? And how do we embed environmental norms into software design going forward? In *A New Environmentalism: The Need for a Total Strategy for Environmental Protection*, ELI offers a new way to

think about the environmental strategies of tomorrow, and we welcome your input. Please send your ideas to newparadigm@eli.org. The paper will be published in the September issue of *ELR's News & Analysis* and featured at the 2018 ELI-Miriam Hamilton Keare Policy Forum.

Protecting Our Oceans

At the 2017 Our Ocean Conference, Niue's Minister for Natural Resources, Dalton Tagelagi, announced that the small South Pacific island nation would create a large marine protected area (MPA) to better conserve the unique marine biodiversity in Niuean waters. The new MPA will cover 40% of Niue's Exclusive Economic Zone, including waters around the remote Beveridge Reef, a place of unique richness in marine biodiversity. ELI is working with the government of Niue to help identify and conduct legal reforms necessary for the creation of the MPA and to implement a coastal and marine spatial planning approach to ocean resources management in Niue. Xiao Recio-Blanco, Director of ELI's Oceans Program, traveled to Niue this past May to begin research on this project. Read about his visit at www.eli.org/vibrant-environment-blog/eli-collaborates-niue-help-create-one-worlds-largest-mpas.



Reducing Deforestation in Indonesia



ELI, in partnership with the Indonesian Center for Environmental Law (ICEL), has begun a judicial training project in Indonesia supported by the Swedish Postcode Foundation to help judges become a strong player in the fight against deforestation and the path toward sustainable development. ELI and the project team recently travelled to Pekanbaru, Indonesia, to convene a five-day workshop on economic valuation, restoration, and compensation of environmental damages, with 38 judges from different regions in the country as well as three Supreme Court Justices. The participants also attended a

field trip to a peat ecosystem affected by fires, providing the judges a unique opportunity to observe the complex dynamics of ecosystem and ecosystem services damage and degradation and to conduct experiments illustrating the challenge in collecting scientific evidence in these cases, thereby setting the basis for future discussions on the enforcement of the precautionary principle and other key environmental law principles and rules.

Reducing Waste

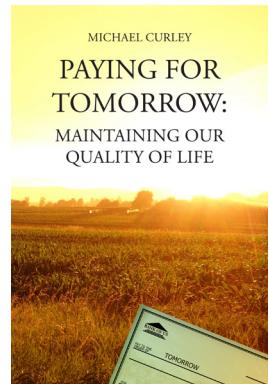
Simply by virtue of the gas inside them, discarded aerosol cans are treated as hazardous waste under the Resource Conservation and Recovery Act. But these same cans, when disposed of by consumers, are treated as household solid waste, meaning they can be managed or recycled differently, including ways that involve substantial steel and aluminum recovery from municipal waste management. A new report from ELI examines materials recovery and recycling in the retail sector, using consumer aerosol cans as an example. The full report, *RCRA and Retail: Considering the Fate of Consumer Aerosol Cans*, can be downloaded for free at www.eli.org/research-report/rcra-and-retail-considering-fate-consumer-aerosol-cans.

Identifying New Environmental Threats

In today's era, institutions and individuals must be vigilant of "novel entities"—broadly defined as "things created and introduced into the environment by human beings that could have disruptive effects on the earth system." In *Novel Entities and the GEF*, a new report commissioned by the Scientific and Technical Advisory Panel of the Global Environment Facility, ELI presents an in-depth analysis of some of the products, processes, and technologies that are likely to have significant impacts—positive or negative—on global communities and their environments over the next 15 years. The report is available at www.eli.org/sites/default/files/eli-pubs/stap-gef-novel-entities-report-2018.pdf.

Proposing a Financial Blueprint for a Greener Future

Society has been relatively successful at tackling many of the environmental problems of the past. But we now face a new set of environmental challenges, and we have neither the financial nor the operational structures to deal with them. In *Paying for Tomorrow: Maintaining Our Quality of Life*, ELI Visiting Scholar Michael Curley explores and explains the various financial strategies that could be used to preserve the quality of our lives. The book is written for a general audience. For more, visit www.eli.org/eli-press-books/paying-tomorrow-maintaining-our-quality-life.



Informing Practitioners on Current Issues

Keeping Members Abreast of Breaking News

On July 11, over 350 people tuned in to ELI's "Breaking News" webinar, ***The Impact of Justice Kennedy on Constitutional Environmental Law and the Effect of His Impending Retirement***, where expert panelists discussed the influence Justice Kennedy has had on environmental law, opined on what his departure could mean for the future of environmental policy and law, and gave thoughts on SCOTUS nominee D.C. Circuit Judge Brett Kavanaugh. And on July 31, ELI offered ***Proposed USFWS Endangered Species Act Regulations***, where panelists examined recently proposed regulatory changes to how the Endangered Species Act is implemented. Be on the lookout for more Breaking News webinars in the coming months.



Untangling the Administrative Law of Deregulation

The Trump Administration has promised to roll back a wide array of regulations, but this requires more than a mere stroke of the pen. On May 18, ELI convened a panel of experts at a seminar, ***The Burden of Unburdening: Administrative Law of Deregulation***, to discuss obstacles to deregulation, including when, and how, an agency must consider costs and benefits of staying, repealing, and rewriting rules. Speakers discussed the types of rules and guidelines to which these requirements do and do not apply; commented on current challenges to the Trump Administration's deregulation agenda; and offered insights on the ways that administrative law is developing through interpretation of the APA and other relevant statutes. A transcript of the seminar will be featured in the September issue of *ELR's News & Analysis*.

Examining Changes in Ocean Management Policy



A number of ocean management decisions released under the Trump Administration mark a significant shift in ocean policy. Among them, the 2019-2024 Outer Continental Shelf Oil and Gas Leasing Program would open new marine spaces under U.S. jurisdiction to oil and gas exploitation. In addition, Executive Order No. 13840, Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States, sets the Trump Administration's ocean management priorities. It effectively revokes President Obama's Executive Order No. 13547, which had initiated

the development of a Coastal and Marine Spatial Planning process in the United States. On July 23, a panel of experts convened at an ELI Oceans Program webinar, ***The Impact of Recent Ocean Management Decisions of the Trump Administration***, where they offered their insights as to these changes from a variety of legal and governance perspectives.

For more information about past and future seminars, visit www.elio.org/events-calendar.

Recognizing Excellence

Announcing This Year's Environmental Achievement Award Recipient



ELI is pleased to announce that it will present its 2018 Environmental Achievement Award to **Lisa Jackson**, Vice President of Apple's Environment, Policy, and Social Initiatives, in recognition of her visionary leadership and outstanding environmental stewardship over a most distinguished career. "Lisa has exemplified leadership, innovation, and commitment to sound science and rule of law at each step of her remarkable career," said ELI President Scott Fulton. "She has been a tireless champion for both sustainability and environmental justice, and has left an enduring mark on both the private sector and the public sector. Her work in greening Apple's supply chain and in reducing

the company's carbon and natural resource footprint has been exceptional, reflecting the power and reach of business leadership in advancing environmental performance and stewardship." **Eric Holder**, who served as Attorney General from February 2009 to April 2015, will make introductory remarks. The dinner will be held on October 23 at the Omni Shoreham Hotel in Washington, DC. For more information and/or to purchase tickets, visit www.eli.org/award-dinner.

Encouraging Future Thought Leaders

Kristin McCarthy, a second-year student at William & Mary Law School, was named the winner of ELI's 2017-2018 Henry L. Diamond Constitutional Environmental Law Writing Competition. Ms. McCarthy's winning entry, *An American [State] in Paris: The Constitutionality of States' Commitments to the Paris Agreement*, will be featured in a future issue of ELR's News & Analysis. In it, she argues that the numerous state and local pledges to adhere to Paris climate goals do not run afoul of federal constitutional limits. Receiving honorable mention was Rebecca Susko, a recent graduate of Fordham University School of Law, for her entry, *The First Amendment Implications of a Mandatory Environmental, Social, and Governance (ESG) Disclosure Regime*, which will be a topic of discussion at this year's Corporate Forum. The competition was organized by ELI's Program on the Constitution, Courts, and Legislation and made possible through the generous support of Beveridge & Diamond, P.C.

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:

- **Zeroing Out Climate Change: A “Hard Look” at Trump’s Social Cost of Carbon**
- **A Pendulum Seldom Stops in the Middle: Shifting Views on “Take” of Raptors and Other Migratory Birds**
- **Lessons From Ten Years of Household Recycling in the United States**

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.

Recently Featured in *Vibrant Environment*



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

- **An Endangering Act? Proposed Regulatory Changes to the Endangered Species Act**
- **Talking Trash About Plastics**
- **Making the Most of the Watershed Approach**

To read more of our blogs, visit 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.