

ENVIRONMENTAL LAW

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ESSAY

- Tragically Difficult: The Obstacles to Governing the Commons..... 241
Barton H. Thompson, Jr.

Professor Thompson discusses the tragedy of the commons in the context of the depletion of world fisheries, groundwater overdrafting, and global climate change. He examines why it has proven difficult for governments, communities, and other institutions to adopt and implement solutions, and why resource users themselves are often the biggest opponents to solutions. Professor Thompson concludes that effective solutions will require convincing resource users that there is a problem, eliciting an agreement among the users regarding the structure of the solution, and finally, getting resource users to agree on how to allocate the burden of the solution.

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ARTICLE

- Protecting Habitat for Off-Reservation Tribal Hunting and Fishing
Rights: Tribal Comanagement as a Reserved Right..... 279
Ed Goodman

Courts have recognized tribal treaty rights to hunting, fishing, trapping, and gathering and underlying rights to the maintenance and well being of those resources. What they have not determined is the role that tribes should play in maintaining those resources. Mr. Goodman argues that, based upon the understanding of inherent tribal sovereignty, tribes should be comanagers with power-sharing capacity rather than mere participants or commentators.

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COMMENTS

- Equivalence: Not Quite Close Enough for the International
Harmonization of Environmental Standards..... 363

Alexander M. Donahue

At the contentious intersection of environmental protection and international trade is the process of harmonization of standards. Mr. Donahue discusses the theory and dynamics of harmonization and explores recent harmonization efforts by the United States and Europe. He argues that full and upward harmonization--not equivalence--should be used in harmonizing environmental, health, and safety standards.

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Dueling Risk Assessments: Why the WTO and Codex Threaten U.S. Food Standards 387

John Ewers

In 1998 the WTO Appellate Body decided the Bovine Growth Hormone case. This decision could have a tremendous impact on the food safety laws and regulations in the United States. This comment examines the potential conflicts between the Appellate Body's decision and the basis on which the United States sets its food safety standards.

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Shifting the Experiment to the Lab: Does EPA Have a Mandatory Duty to Require Chemical Testing for Endocrine Disruption Effects Under the Toxic Substances Control Act? 413

Holly E. Pettit

The recent discovery of endocrine disruption highlights the dangers associated with our general ignorance about the effects of common chemicals. Ms. Pettit argues that section 4 of the Toxic Substances Control Act may, in fact, require the Environmental Protection Agency (EPA) to promulgate a rule mandating testing of high production volume chemicals for endocrine disruption effects. While nonrule methods or gathering the necessary data may be preferred for policy reasons, EPA should seek congressional approval of these voluntary alternatives to the statutorily prescribed scheme.

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EPA's Approach to Endangered Species Protection in State Clean Water Act Programs 447

Elizabeth Rosan

Ms. Rosan discusses EPA's Memoranda of Agreements with NMFS and FWS to integrate endangered species needs into state Clean Water Act programs. EPA's approach attempts to provide stronger protection for listed species and create greater regulatory predictability for states, tribes, and the public. Most notably, this effort relies on water quality standards as the primary vehicle to protect endangered and threatened species. The author concludes

that while EPA's efforts to take affirmative steps to integrate the complementary goals of the CWA and ESA are commendable and potentially signal important change, the true measure of success will turn on the actual protection water quality standards guarantee endangered and threatened species.

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