

# Widener University Delaware Law School

---

From the Selected Works of David R. Hodas

---

Spring 2001

## Vantage Point & Issue Editor, Climate Change Issue

David R. Hodas



Available at: [https://works.bepress.com/david\\_hodas/39/](https://works.bepress.com/david_hodas/39/)

# *Vantage Point*

According to the old saw, "everyone complains about the weather, but nobody does anything about it." Perhaps this should be changed to "nobody should complain about the weather because we all do something about it." The greenhouse effect makes our planet livable, but since the industrial revolution we have significantly increased atmospheric concentrations of greenhouse gases (GHGs); we are warming the planet, and changing its climates. Responding to this risk, in 1992 world leaders signed the Framework Convention on Climate Change (which entered into force as international law in 1994) "to stabilize greenhouse gas emissions in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."

The hard work of implementation remains. Developed countries worry that rapid reduction of GHG emissions (most of which come from burning fossil fuels such as oil, coal and natural gas) could hobble their economies. Developing countries worry that limiting growth of their meager per capita use of fossil fuels would deny them the opportunity to achieve the economic wealth that developed countries now enjoy. But we face a further dilemma: if the developing world adopts existing technology, its GHG emissions would dramatically increase and accelerate climate change. Accommodating these competing equity, economic and environmental concerns will require us to eliminate significant inefficiencies in our present energy use, and to employ renewable sources of energy to drive our economies. Jumping to this new level of technology requires government policies that harness the magic of market innovation. These concepts are the focal point of the ongoing negotiations over how emissions limitations should actually be achieved. Despite the immensity of the task, we are in the final stages of deciding what we should do about the weather.

As we move from the broad policy and scientific discussions of a decade ago to the particulars of program design and implementation, the role of lawyers grows rapidly. As you will see from this issue, lawyers are now actively practicing in this field, which will emerge, if the world agrees even modestly to limit GHG emissions, as the next great environmental law practice area. It will involve government policy, regulatory practice and, most importantly, extensive transactional work in support of an emerging multibillion dollar market in emissions reduction trading.

How can all this be? This issue will tell you. Starting with a general overview of the science and policy, from both American and European perspectives, the issue will explain how these markets might work, and even how to negotiate and draft documents to support emission trading transactions. Our cover tells the story of our issue: the most probable response to climate change will be the emergence of a lively global market in GHG emissions reductions trading.

*(Continued on page 146)*

**Executive Editor**

**Steven G. McKinney**  
Balch & Bingham  
Birmingham, Alabama  
E-mail: smckinne@balch.com

**Trends & Insights Editor**

**Patrick O. Cavanaugh**  
Dyer, Ellis & Joseph, P.C.  
Washington, DC  
E-mail: poc@dejlaw.com

**Nuggets, Literary Resources Editor**

**JoAnne L. Dunec**  
Ellman, Burke, Hoffman & Johnson  
San Francisco, California  
E-mail: jdunec@ellman-burke.com

**Interview Editor**

**Milo Mason**  
U.S. Department of the Interior  
Washington, DC  
E-mail: milomason@aol.com

**International Editor**

**J. Owen Saunders**  
Canadian Institute of Resources Law  
Calgary, Alberta  
E-mail: josaunde@acs.ucalgary.ca

**Articles Editors**

**Joshua Bar-Lev**  
Pacific Gas and Electric Company  
San Francisco, California  
E-mail: jxb7@pge.com

**David J. Barrett**  
Latham & Watkins  
New York, New York  
E-mail: david.judson.barrett@lw.com

**Margaret Claiborne Campbell**  
Troutman Sanders LLP  
Atlanta, Georgia  
E-mail: margaret.campbell@troutmansanders.com

**Jeanine Feriancek**  
Holland & Hart  
Denver, Colorado  
E-mail: jferiancek@hollandhart.com

**David A. Golden**  
Eastman Chemical Company  
Kingsport, Tennessee  
E-mail: dgolden@eastman.com

**David R. Hodas**  
Widener University School of Law  
Wilmington, Delaware  
E-mail: david.r.hodas@law.widener.edu

**Eleni Skoulidakis Koulmellis**  
Winston & Strawn  
Chicago, Illinois  
E-mail: ekouimel@winston.com

**Ross A. Macfarlane**  
Preston Gates & Ellis LLP  
Seattle, Washington  
E-mail: rossm@prestongates.com

**Marianne D. Mason**  
Maryland Attorney General's Office  
Annapolis, Maryland  
E-mail: mmason@dnr.state.md.us

**David S. May**  
Gilbreth & Associates  
Houston, Texas  
E-mail: dsmay@gilbreth.org

**Clifton J. McFarland**  
Gibson, Dunn & Crutcher LLP  
Los Angeles, California  
E-mail: cmcfarland@gdclaw.com

**Bruce D. Ray**  
Johns-Manville Corporation  
Denver, Colorado  
E-mail: rayb@jrn.com

**Teresa Salamone**  
Saskatoon, Saskatchewan  
E-mail: tsalamone@home.com

**Dean B. Suagee**  
Vermont Law School  
South Royalton, Vermont  
E-mail: dsuagee@vermontlaw.edu

**Sheldon A. Zabel**  
Schiff, Hardin & Waite  
Chicago, Illinois  
E-mail: szabel@schiffhardin.com

**Contributing Foreign Correspondents**

**Stephen R. Tromans**  
King's Bench Walk  
London, England  
E-mail: clerksroom@11kbw.com

**Andrew Waite**  
Berwin Leighton  
London, England  
E-mail: andrew.waite@berwinleighton.com

**American Bar Association**

ABA Publishing  
Managing Editor  
**Lori T. Kling**  
E-mail: loriking@staff.abanet.org

Art Director  
**Sonya Taylor**  
E-mail: taylors@staff.abanet.org

*Natural Resources & Environment* (ISSN: 0822-3812) is published quarterly as a service to its members by the Section of Environment, Energy, and Resources of the American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611. Periodicals postage paid at Chicago, Illinois, and additional mailing offices. Any member of the ABA may join the Section by paying its annual dues of \$50. Subscriptions are available to nonlawyers for \$60 a year (\$65 for foreign subscribers). Back issues published two years ago and earlier may be purchased from William S. Hein & Co., Inc., 1285 Main St., Buffalo, New York 14209. More current issues may be obtained for \$15 plus a \$3.95 handling charge from the ABA Service Center, American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611. Requests to reprint articles should be sent to Publication Policies and Contracting; all other correspondence and manuscripts should be sent to the *NRE* Managing Editor at the address above. The opinions in *Natural Resources & Environment* are those of the authors and shall not be construed to represent the policies of the American Bar Association; the Section of Environment, Energy, and Resources; or the employers of the authors. POSTMASTER: Send all changes of address to *Natural Resources & Environment*, 750 North Lake Shore Drive, Chicago, Illinois 60611. Copyright © 2001 American Bar Association.

(Continued from inside front cover)

We are privileged to begin this issue with an outstanding overview of the current state of climate change science by the director of the [Clinton] White House Office of Science and Technology, **Neal F. Lane**, and the office's associate director for environment, **Rosina Bierbaum**. We are also privileged to have **Frank E. Loy**, Under Secretary of State for Global Affairs, elaborate on the United States policy on climate change and the role of lawyers in fighting climate change. However, the United States is only one crucial actor in the climate change debate. We are fortunate to have **John Gummer**, a member of the British Parliament and previously the Secretary of State for the Environment under former Prime Minister John Major, challenge us with a perspective from his British outpost.

With this basic grounding in science and policy, **Richard B. Stewart**, **James L. Connaughton**, and **Lesley C. Foxhall** begin our exploration of the role of markets to meet our GHG emission limitations goals. Using lessons learned from the U.S. market experiences, such as the Clean Air Act's SO<sub>2</sub> trading program, they describe how to design an emissions trading system to facilitate investment in GHG emissions limitations. **Alan S. Miller** and **Eric Martinot** illustrate the wide variety of projects that are emerging, and tell us how to get financing and regulatory support in developing countries for these projects. **Kyle W. Danish** and **Jonathan C. Rotter** provide expert, practical advice to environmental and transactional lawyers negotiating and drafting contracts for these exciting projects.

**William L. Thomas**, **Daniel Basurto**, and **Gray Taylor** look at the developments in the United States, Mexico and Canada to promote emissions trading among the NAFTA trading partners. **James Cameron**, **David Robertson**, and **Paul Curnow** survey emerging legal strategies around the world for regulating GHGs. Their excellent, but necessarily concise, review covers the European Union, Denmark, France, Germany, The Netherlands, Norway, United Kingdom, and Australia. Due to space limitations, a survey of legal developments in the United States could not be included; moreover, we could not have duplicated the outstanding, comprehensive coverage by a vice-chair of the Section's Climate Change and Sustainable Development Committee, recently published elsewhere. See John Dernbach, *Moving the Climate Change Debate from Models to Proposed Legislation: Lessons from State Experience*, 30 Env'tl. L. Rep. (Env'tl. L. Inst.) 10,933 (Nov. 2000). **Sean S. Clark**, **Mark C. Trexler**, and **Laura H. Kosloff** conclude with an outstanding report on the just concluded Sixth Conference of the Parties in The Hague. They provide a scorecard of the players, issues, and an analysis of what lies ahead on the negotiations.

David R. Hodas  
Issue Editor