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Emerging Statutory and Constitutional Tools for States to Resist Federal Environmental Regulation

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DIALOGUE

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by Michael B. Gerrard

This is a time of high tensions between the federal government and the states over environmental regulation.[1] The flashpoints include actions by the U.S. Environmental Protection Agency (EPA) against states that enact laws shielding environmental audit reports from discovery;[2] the withdrawal of several states from certain regulatory reform programs and delegated programs;[3] and EPA accusations that some states are ignoring many violations of the pollution control laws,[4] and loud denials by state representatives.[5]

The Supremacy Clause of the U.S. Constitution and the complex of federal environmental statutes enacted in the 1970s and 1980s still give Washington the upper hand in most of these battles. However, several new tools are now emerging that enable the states—and, in some instances, municipalities and the private sector—to resist federal environmental directives and actions.

Some of the new tools are provided by Congress, and some are provided by judges in their interpretations of the Constitution. This Dialogue is devoted to a discussion of these new tools.

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1. The history of such tensions is discussed in Robert V. Percival, *Environmental Federalism: Historical Roots and Contemporary Models*, 54 MD. L. REV. 1141 (1995).
2. *See, e.g., Environmental Audits: EPA Action on Michigan Air Program Adds to Tension Over State Audit Laws*, Daily Env't Rep. (BNA), Jan. 10, 1997, at AA-1 (EPA has refused to give Idaho, Michigan, and Texas full authority to implement Clean Air Act Title V permitting programs because of their environmental audit laws and is reviewing the audit laws of Colorado, Kansas, and Oregon); Timothy A. Wilkins & Cynthia A.M. Stroman, *Delegation Blackmail: EPA's Use of Program Delegation to Combat State Audit Privilege Statutes*, 34 CHEM. WASTE LITIG. REP. 893.
3. *Regulatory Reform: Michigan Withdraws From CSI Project, Citing Concerns With Negotiating Process*, Daily Env't Rep. (BNA), July 3, 1996, at AA-1.
4. John H. Cushman Jr., *States Neglecting Pollution Rules, White House Says*, N.Y. TIMES, Dec. 15, 1996, at A1.
5. *State Officials Rip Browner for Undermining 'Partnership,'* INSIDE EPA WKLY. REP., Jan. 3, 1997, at 1.

Unfunded Mandates

Perhaps the most important new tool is the Unfunded Mandates Reform Act of 1995 (UMRA).[6] It is one of the few elements of the House Republicans' "Contract With America" to be enacted into law. It concerns "federal intergovernmental mandates," defined as enforceable duties imposed on state, local, or tribal governments by a federal statute or regulation for which funds are not provided to carry out the duties, and "federal private sector mandates," which are enforceable duties imposed on nongovernmental persons and entities.[7]

At the regulatory level, UMRA does not bar unfunded mandates. However, it requires them to jump through additional procedural hoops before they can take effect. Federal agencies must publish analyses of the anticipated costs and benefits of proposed regulations that may cost the private sector or state, local, or tribal governments more than $100 million a year. Federal agencies must select "the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule," or explain in writing why they have not.[8] Failure to provide the necessary analysis can be challenged in court, though the contents of the analysis and the agencies' substantive decisions cannot.[9]

At the legislative level, UMRA is even more prescriptive. The Congressional Budget Office (CBO) is required to analyze legislative proposals and report to Congress whether they will impose total annual costs of $50 million on lower levels of government, or $100 million on the private sector. The House and the Senate then cannot consider those bills that, according to the CBO analysis, would impose federal intergovernmental mandates of at least $50 million per year, unless federal funding is provided to cover these costs.[10]

UMRA primarily applies to future regulatory and legislative enactments, but the statute also requires the Advisory Commission on Intergovernmental Relations (ACIR) to examine unfunded mandates in existing law.[11] In response, on

6. Pub. L. No. 104-4, 109 Stat. 48 (codified at 2 U.S.C. §§658, 658a-658g, 1501-71).
7. 2 U.S.C. §658.
8. *Id.* §1535.
9. *Id.* §1571.
10. *Id.* §658d.
11. *Id.* §§1551-1556.

July 6, 1995, the ACIR listed 36 environmental programs that it found to be "of significant concern" due to unfunded mandates. Among them were Clean Air Act (CAA) requirements that states revise their permit programs, the state inventory of underground storage tanks, local government water system standards under the Safe Drinking Water Act (SDWA), and expanded state and local emergency response planning under the Emergency Planning and Community Right-To-Know Act. [12]

On January 24, 1996, the ACIR went further and recommended amendments to several federal statutes. These included Federal Water Pollution Control Act (FWPCA) provisions concerning state development of control methods and timetables for implementing federal clean water standards, testing standards and other requirements under the SDWA, the CAA's state implementation plan process, and the listing of species under the Endangered Species Act (ESA). [13]

UMRA is too new to have led to many reported judicial decisions in the environmental arena. [14] However, it has been injected into several ongoing policy debates. For example, in December 1996, two groups representing state pesticide regulators filed comments asserting that aspects of a proposed EPA rule concerning state management plans for groundwater-threatening pesticides violated UMRA.

Small Business Act

Another new statute is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). [15] Its many provisions enhance the ability of small businesses to participate in the rulemaking process. Most of them are specifically aimed at small businesses, but it is not difficult to imagine allegiances of such businesses with state and local governments. Two items deserve particular mention here.

First, the SBREFA amended the Equal Access to Justice Act by allowing attorneys fees and costs to be awarded to small businesses that were the subject of a civil action or administrative adjudication brought by a federal agency if "the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment . . . unless the party has committed a willful violation of law or otherwise acted in bad faith." [16] This provision is not limited to small businesses. For example, it may discourage EPA from demanding extremely high penalties from municipalities that have violated their FWPCA permits, which renders them theoretically liable for fines of $25,000 per day of violation, though the fines ultimately imposed (or settled on) tend to be far lower.

Second, the SBREFA adds teeth to the Regulatory Flexibility Act. New federal regulations must now be accompanied by an analysis of "the projected reporting, recordkeeping and other compliance requirements" from the new rule, "a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes," and an explanation of why other alternatives were rejected. [17] Small businesses are also given a right to challenge agencies' compliance with these requirements in federal court. [18] Although this requirement is primarily procedural rather than substantive, it is not difficult to envision it leading to extensive litigation against new regulations, similar to the voluminous litigation opposing proposed projects that resulted from the National Environmental Policy Act.

Litigation has already been filed in the U.S. Court of Appeals for the D.C. Circuit challenging a new EPA land disposal rule under the Resource Conservation and Recovery Act (RCRA) on the grounds, among others, that EPA violated the SBREFA. [19] Several lawsuits have been filed charging that EPA violated the SBREFA by failing to convene small business review panels (another mechanism established by the new statute) before proposing revisions to the national ambient air quality standards for ozone and particulate matter. [20] And one court has found that the SBREFA provides a basis for federal court jurisdiction over Regulatory Flexibility Act challenges to regulations adopted before the SBREFA's enactment, [21] but another court ruled to the contrary. [22] The difference between these two courts largely relates to differing interpretations of the legislative history of the SBREFA. With respect to post-SBREFA rules, one decision arising under the CAA found that the SBREFA does not provide for judicial review of agency compliance with certain rulemaking requirements. [23]

Federal Facilities Compliance Act

A third statute increasing the states' power against the federal government is the Federal Facilities Compliance Act (FFCA). [24] This law allows states that have been delegated by EPA the authority to implement RCRA (as most have) to institute enforcement actions against federal agencies and to obtain civil penalties. The FFCA was enacted in the wake of a U.S. Supreme Court decision that found that the U.S. government had not waived its sovereign immunity for such suits; [25] the FFCA amounts to such a waiver.

12. *Criteria on Identifying Unfunded Mandates Set by Advisory Commission to Guide Review*, [26 Current Developments] Env't Rep. (BNA) 530 (July 7, 1995).

13. *Report on Federal Mandates Recommends Changes in Laws on Water, Air, Species*, [26 Current Developments] Env't Rep. (BNA) 1869 (Feb. 2, 1996).

14. *But see* Nevada v. Department of Energy, No. 96-70774 (9th Cir. Jan. 13, 1998) (rejecting Nevada's claim that the U.S. Department of Energy violated UMRA by not giving it funds to review site studies at a proposed radioactive waste disposal facility in Yucca Mountain; the court found that Nevada had no federal obligation to review these studies, and that Nevada nonetheless had received federal funds for this purpose); Dunn-Edwards Corp. v. EPA, No. 97-55561 (9th Cir. Aug. 27, 1997) (plaintiffs challenged EPA's proposed architectural coatings rule under the CAA on the grounds that UMRA's rulemaking requirements were not followed; the complaint was dismissed, because under the CAA's judicial review provisions, which govern, only final agency action may be reviewed).

15. Pub. L. No. 104-121, §§201-253, 110 Stat. 857.

16. 28 U.S.C. §2412(d)(1)(D), *available in* ELR STAT. ADMIN. PROC.

17. 5 U.S.C. §604.

18. *Id.* §611.

19. FMC Corp. v. EPA, No. 96-1149 (D.C. Cir. filed May 8, 1996).

20. *Suits Proliferate Over Small Business, Scientific Issues in New Rules*, 28 Env't Rep. (BNA) 1010 (Sept. 26, 1997).

21. Southwestern Pa. Growth Alliance v. Browner, No. 96-3364, 1997 U.S. App. LEXIS 19243 (3d Cir. July 28, 1997).

22. Associated Fisheries of Me., Inc. v. Daley, 954 F. Supp. 383, 27 ELR 21023 (D. Me. 1997).

23. Dunn-Edwards Corp. v. EPA, No. 97-55561 (9th Cir. Aug. 27, 1997).

24. Pub. L. No. 102-386, 106 Stat. 1505 (1992).

25. Department of Energy v. Ohio, 503 U.S. 607, 22 ELR 20804 (1992).

The FFCA only applies to RCRA violations and not to other environmental statutes. And judicial decisions have affirmed the states' ability to enforce RCRA and its state counterparts against federal facilities. [26]

Though the FFCA explicitly increases the power of the states, it was recently invoked successfully by a private company that owned property in Rhode Island. Before the company purchased the property, the U.S. Air Force used the site for petroleum storage and distribution. The court found that the FFCA clearly provided that the company could sue the United States for the cost of cleaning up the contamination allegedly left behind by the Air Force. [27]

Commerce Clause

As described above, Congress has strengthened the states' hand in dealing with federal agencies on environmental matters. So has the Supreme Court.

The scope of federal power under the U.S. Commerce Clause is one such battleground. In 1995, to the surprise of most constitutional scholars, the Supreme Court in *United States v. Lopez* [28] invalidated portions of the Gun-Free School Zones Act of 1990 on the grounds that the activities regulated by the Act (possessing handguns near schools) did not substantially affect interstate commerce. And in 1996, a U.S. district court shockingly found that, under *Lopez*, applying the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to the cleanup of groundwater contamination that does not travel across state lines violates the Commerce Clause. This decision, *United States v. Olin Corp.*, [29] was reversed by the U.S. Court of Appeals for the Eleventh Circuit. [30]

Relying on *Lopez*, the Fourth Circuit handed a Christmas present on December 23, 1997, to James J. Wilson, a land developer who had been convicted of a felony violation under the FWPCA and sentenced to 21 months' imprisonment for knowingly discharging fill material and excavated dirt into wetlands without a permit. The trial court had instructed the jury that the wetlands fell within federal jurisdiction based on a U.S. Army Corps of Engineers' regulation that defined "waters of the United States" to include intrastate wetlands, "the use, degradation or destruction of which *could affect* interstate or foreign commerce." [31] The Fourth Circuit found that this regulation exceeded Congress' commerce power, as interpreted in *Lopez*, and, therefore, was invalid. As a result, Mr. Wilson was awarded a new trial. [32]

Lopez may have effects on other environmental rules. One that is the subject of particular attention in light of *Lopez* is the Migratory Bird Rule. This rule sets out the Corps' position that federal jurisdiction over wetlands extends to those "[that] are or would be used as habitat by birds protected by Migratory Bird Treaties or waters [that] are or would be used as habitat by other migratory birds [that] cross state lines." [33] Before *Lopez*, some doubted the viability of this rule due to concerns over the manner in which it was promulgated. [34] But today, some commentators suggest that *Lopez* compels the invalidation of the Migratory Bird Rule, [35] and the *Wilson* decision strengthens this view.

An effort to strike certain restrictions under the ESA on *Lopez* grounds was rejected by a divided D.C. Circuit in late 1997. The issue was whether the U.S. Fish and Wildlife Service could restrict certain building projects to protect the endangered Delhi Sands Flower-Loving Fly, where the projects and the fly's habitat are exclusively located within the state of California. Judge Patricia M. Wald found that the ESA restriction "prevents the destruction of biodiversity and thereby protects the current and future interstate commerce that relies on it." Judge Karen LeCraft Henderson, concurring, disagreed with the biodiversity argument but found that the ESA should be upheld as applied in this case, because the "protection of the flies regulates and substantially affects commercial development activity which is plainly interstate." Judge David B. Sentelle, dissenting, argued that Congress cannot, under the Commerce Clause, "regulate the killing of flies, which is not commerce, in southern California, which is not interstate." [36] This sharply divided outcome, when combined with the *Wilson* decision, may encourage further attempts to strike down certain government actions under *Lopez*.

As part of the cascade of important decisions issued in June 1997, the Supreme Court announced another limitation on the federal government's power over the states. *City of Bourne v. Flores* [37] involved a lawsuit by the Catholic Archbishop of San Antonio against a Texas city that denied a building permit for the expansion of a historic church. The Archbishop claimed that the permit's denial violated the Religious Freedom Restoration Act of 1993 (RFRA), a federal statute that prohibits all governmental actors (including states) from imposing certain burdens on the free exercise of religion. The Supreme Court found that Congress exceeded its power under the Fourteenth Amendment in enacting RFRA. The statute was a considerable congressional intrusion into the states' traditional prerogatives, and it was enacted in the absence of a record providing instances of generally applicable laws that were passed because of religious bigotry in the previous 40 years. Local laws—like the city of Bourne's building code—were created under the general authority to regulate for the health and welfare of the people and imposed merely incidental burdens on religion. Thus, RFRA lacked the necessary congruence and proportionality

26. United States v. Colorado, 990 F.2d 1565, 23 ELR 20800 (10th Cir. 1993), *cert. denied*, 510 U.S. 1692 (1994).

27. Charter Int'l Oil Co. v. United States, 925 F. Supp. 104 (D.R.I. 1996).

28. 514 U.S. 549 (1995).

29. 927 F. Supp. 1502, 26 ELR 21303 (S.D. Ala. 1996).

30. 107 F.3d 1506, 27 ELR 20778 (11th Cir. 1997).

31. 33 C.F.R. §328.3(a)(3) (1993) (emphasis added).

32. United States v. Wilson, No. 96-4498 (4th Cir. Dec. 23, 1997). The same court had earlier rejected an argument that *Lopez* eliminates FWPCA jurisdiction over discharges into sewers that feed wastewater treatment plants that empty into rivers flowing into the ocean. United States v. Hartsell, 127 F.3d 343 [28 ELR 20153] (4th Cir. 1997).

33. 51 Fed. Reg. 41206, 41217 (Nov. 13, 1986).

34. Tabb Lakes Ltd. v. United States, 885 F.2d 866, 20 ELR 20008 (4th Cir. 1989), *aff'g* 715 F. Supp. 726, 19 ELR 20672 (E.D. Va. 1988). *But see* Leslie Salt Co. v. United States, 55 F.3d 1388, 25 ELR 21046 (9th Cir. 1995), *cert. denied sub nom.*, Cargill, Inc. v. United States, 116 S. Ct. 407, 26 ELR 20001 (1995).

35. Michael Bablo, Leslie Salt Co. v. United States*: Does the Recent Supreme Court Decision in United States v. Lopez Dictate the Abrogation of the 'Migratory Bird Rule'?* 14 TEMP. ENVTL. L. & TECH. J. 277 (1995).

36. National Ass'n of Home Builders v. Babbitt, No. 96-5354 (D.C. Cir. Dec. 5, 1997).

37. 117 S. Ct. 2157 (1997).

between the injury to be prevented or remedied and the means adopted. The decision construed Congress' lawmaking power under the Fourteenth Amendment rather than under the Commerce Clause (the constitutional basis for most environmental statutes), but it (like the other cases discussed below) demonstrates the Court's hostility toward unnecessary intrusions into state power.

Tenth Amendment

The Tenth Amendment is a limitation on congressional power that had long been mostly dormant. However, in 1992, the Supreme Court decided *New York v. United States*,[38] a challenge to the Low-Level Radioactive Waste Amendments Act (LLRWAA) by New York State and two of its counties. The Court struck down a portion of the LLRWAA that required states to take title to radioactive waste generated within their borders if they failed to make adequate disposal arrangements. The Court held that Congress violated the Tenth Amendment by directly compelling the state to enact laws in order to enforce a federal regulatory program.

In 1996, the Fifth Circuit relied on *New York* in striking down the Lead Contamination Control Act of 1988, which required states to establish remedial action programs for removing lead contaminants from school drinking water systems. The court found that the Tenth Amendment prohibited Congress from imposing mandates that require states to establish new programs or else face civil enforcement proceedings.[39]

In June 1997, the Supreme Court reaffirmed and extended *New York*. In *Printz v. United States*,[40] the Court struck down a provision of the Brady Handgun Violence Prevention Act that required local law enforcement officials to participate in the handgun purchaser screening process. The Court found that the mandate offended the Tenth Amendment. Unlike the "take title" provision of the LLRWAA, the Brady Act did not require states to adopt legislative programs, but only to carry out a federal program. And it imposed its mandate on individual state officials and not on the states themselves. In view of *Printz*'s 5-4 majority, however, these distinctions made no difference; Congress still trespassed on state authority in the Brady Act. It did not matter that the Act would only impose a relatively minor burden on local officials as part of a solution to a major national problem; in the view of the majority, which was led by Justice Scalia, the weighing of burdens and benefits is inappropriate when state sovereignty is at stake.

Citing *Printz* and *New York*, the Second Circuit remarked in dictum that the CERCLA provision that extends state statutes of limitations for toxic tort actions[41] "appears to purport to change state law, and is therefore of questionable constitutionality."[42] However, because the parties had not raised that issue, the court did not technically reach it.

38. 505 U.S. 144, 22 ELR 21082 (1992) (the author of this Dialogue represented one of the counties in this case).

39. ACORN v. Edwards, 81 F.3d 1387, 26 ELR 21257 (5th Cir. 1996), *cert. denied*, 117 S. Ct. 2532 (1997).

40. 117 S. Ct. 2365 (1997).

41. 42 U.S.C. §9658, ELR STAT. CERCLA §309.

42. ABB Indus. Sys., Inc. v. Prime Tech., Inc., 120 F.3d 351, 360, 27 ELR 21335, 21339-40 n.5 (2d Cir. 1997).

Eleventh Amendment

The Eleventh Amendment provides, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."[43] More than a century ago, the Supreme Court interpreted the Eleventh Amendment to extend to suits by all persons (except the federal government) against a state in federal court.[44] This protection does not apply if a state has waived its immunity.[45] In 1989, the Court held in *Pennsylvania v. Union Gas Co.*[46] that Congress may in some circumstances abrogate state sovereign immunity, and that it had done so in enacting CERCLA.

But in *Seminole Tribe of Florida v. Florida*,[47] the Court reversed its decision in *Union Gas* and held that Congress could not abrogate state sovereign immunity in statutes that are based on the Commerce Clause. This was primarily because the Commerce Clause was enacted before the Eleventh Amendment and, therefore, could not preempt the Eleventh Amendment and expand the federal court jurisdiction that the Eleventh Amendment was enacted to limit. *Seminole Tribe* was decided under the Indian Gaming Regulatory Act, but it led to a wave of motions by states seeking dismissal from ongoing federal environmental litigation. Most of these motions were denied, mainly because state officials were also named as defendants. Under *Ex Parte Young*,[48] the Eleventh Amendment does not bar suit seeking prospective relief against a state official acting in violation of federal law.[49]

In yet another June 1997 decision, the Supreme Court limited the *Ex Parte Young* doctrine. In *Idaho v. Coeur d'Alene Tribe of Idaho*,[50] it barred a tribe from suing in federal court to establish its title to the submerged lands and bed of Lake Coeur d'Alene and various tributaries lying within the tribe's reservation. The tribe argued that *Ex Parte Young* gave it the ability to circumvent the Eleventh Amendment and remain in federal court, especially because it alleged an ongoing violation of its property rights; the Court disagreed, in view of the substantial state interests involved. This may open the door to further erosion of *Ex Parte Young*'s reach, thereby strengthening the hand of states under the Eleventh Amendment.

Several states have successfully relied on *Seminole Tribe* in order to win dismissal of environmental claims charged against them. One of the first was New York. William Bubenicek, at that time a lieutenant with the Bureau of Envi-

43. U.S. CONST. amend. XI.

44. Hans v. Louisiana, 134 U.S. 1 (1890).

45. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984).

46. 491 U.S. 1, 19 ELR 20974 (1989).

47. 116 S. Ct. 1114 (1996).

48. 209 U.S. 123 (1908).

49. *E.g.*, Natural Resources Defense Council v. California Dep't of Transp., 96 F.3d 420 (9th Cir. 1996); Strahan v. Coxe, 939 F. Supp. 963 [27 ELR 20254] (D. Mass. 1996); *see also* Mancuso v. New York State Thruway Auth., 86 F.3d 289 [26 ELR 21418] (2d Cir.), *cert. denied*, 117 S. Ct. 481 (1996) (defendant does not enjoy Eleventh Amendment immunity under the FWPCA because it is not fully a state agency).

50. 117 S. Ct. 2028, 27 ELR 21227 (1997).

ronmental Conservation Investigation Unit of the New York State Department of Environmental Conservation (DEC), had persuaded the Prisco family to allow their land in Patterson, New York, to be used for dumping certain waste, purportedly in connection with the DEC's law enforcement activities. Later, it was revealed that Bubenicek was acting beyond his authority, and he was fired. The Priscos, who were left with a contaminated site, sued the state, various state officials, and the entities that had dumped the waste on their land.

Judge Carter of the U.S. District Court for the Southern District of New York concluded that *Seminole Tribe* "overturned the basis on which private citizens had been permitted to sue states" under CERCLA, and that in the wake of *Seminole*, "state sovereign immunity cannot be abrogated absent Congressional legislation pursuant to the Fourteenth Amendment or a waiver by the state." Because neither of these was present here, he dismissed the suit against the state and its officials.[51] *Ex Parte Young* was not addressed in the decision.

Also relying on *Seminole Tribe*, the state of Indiana won dismissal from a CERCLA contribution action involving a landfill for which it was a potentially responsible party,[52] and the state of Michigan won dismissal from a RCRA citizens suit concerning a contaminated site that it owned.[53] The Eleventh Amendment has also been held to bar suits in federal court against state officials over highway projects[54] and stream erosion control projects.[55]

Conclusion

All these new statutory and constitutional tools are too young for their possibilities and limitations to be fully understood. However, counsel representing states—and, for some of the tools, municipalities and private parties—should keep them in mind when litigating environmental cases against the federal government.

None of the new tools has had a great impact on the behavior of either the federal government or the state governments in the environmental sphere. (An exception is the FFCA, which has overt operational consequences.) UMRA and the SBREFA were enacted in response to congressional concerns about overreaching by the federal bureaucracy (and, to a certain extent, by Congress itself), but aside from generating certain paperwork requirements, they do not seem to have changed the culture of any of the institutions involved.

The Commerce Clause, Tenth Amendment, and Eleventh Amendment decisions likewise have had little impact on administrative or legislative behavior. Their principal significance is that they provide important tools that litigants might be able to use when confronted with difficult situations. No attorney challenges the constitutionality of a statute or regulation with great confidence of victory, but there have been enough successes under these new doctrines to make the effort worthwhile where the situation is appropriate and the stakes are high enough

51. Prisco v. New York, No. 91 CIV 3990, 1996 U.S. Dist. LEXIS 14944, at *45 (S.D.N.Y. Oct. 8, 1996).

52. Ninth Ave. Remedial Group v. Allis-Chalmers Corp., 962 F. Supp. 131, 27 ELR 21307 (N.D. Ind. 1997); *see also* Thomas v. FAG Bearings Corp., 50 F.3d 502, 26 ELR 20207 (8th Cir. 1995) (involving the involuntary joinder of the Missouri Department of Natural Resources).

53. Rowlands v. Pointe Mouillee Shooting Club, 959 F. Supp. 422, 27 ELR 21167 (E.D. Mich. 1997).

54. Zarrilli v. Weld, 875 F. Supp. 68, 25 ELR 20945 (D. Mass. 1995).

55. Southfork of the Eel River Envtl. League v. Corps of Eng'rs, No. C-96-3983, 1997 U.S. Dist. LEXIS 9260 (N.D. Cal. June 17, 1997).

In Memoriam

ELR–The Environmental Law Reporter regrets to announce the passing of Bruce Latta. Subscribers will know Bruce from the energy and devotion he brought to his responsibilities in the ELR Customer Service Department. All those who knew Bruce will miss his warmth and generous spirit. To those who did not know him, we can only say that you missed knowing someone very special.