

FOREWORD: ENVIRONMENTAL CHANGE YOU CAN BELIEVE IN

By Dennis McLerran*

It is my pleasure to welcome you to the Seattle Environmental Law Journal, published by the students of Seattle University School of Law. When I was a student at this fine law school many years ago, there was much excitement about the field of environmental law and what major federal statutes such as the Clean Air Act¹ and the Clean Water Act² might do to improve public health and the environment. If that sense of optimism diminished over time, I can certainly understand. It may be no surprise to us now, but fixing “the environment” turned out to be a much harder job than some people imagined, leaving many original goals unattained.³ At the same time, we have come to comprehend many new environmental challenges, including the ultimate challenge of addressing climate change caused by the emission of greenhouse gases.

But if the environmental movement has mighty reasons for feeling down, it now has great reasons for looking up with a restored sense of optimism. One tangible reason is this Seattle Environmental Law Journal, produced by a new generation of students from my *alma mater* who are committed to scholarship that may help achieve a deeper understanding of environmental problems and solutions. The establishment of this new journal at Seattle University reflects a growing interest in environmental law nationwide, providing comfort that the future of environmental study and practice will remain in good hands.

Another reason for environmental optimism is a new generation of leaders and priorities on all levels of government. The new Administrator of the United States Environmental Protection Agency (EPA), Lisa P. Jackson, grew up in New Orleans, spent sixteen years as an EPA employee, and in 2009 after ap-

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¹ Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (1970) (now codified as amended at 42 U.S.C. §§ 7401 *et. seq.*)

² Federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, 86 Stat. 816 (1972) (now codified as amended at 33 U.S.C. § 1251-1387).

³ Among other aspirations, the Clean Water Act set a “national goal that the discharge of pollutants into the navigable waters be eliminated by 1985,” and that water quality shall provide for the “protection and propagation of fish, shellfish, and wildlife and . . . for recreation in and on the water . . . by July 1, 1983.” 33 U.S.C. § 1251(a)(1)-(2).

pointments in state government became President Obama's pick as the first African-American to lead EPA.⁴

In February 2010, after a career in city and regional government, including years directing efforts to improve air quality of the Puget Sound area, I had the honor of being appointed by the president as Regional Administrator of EPA Region 10. As Regional Administrator, it is my job – working with a staff of 650 dedicated EPA employees – to oversee the implementation and enforcement of environmental laws and regulations in the enormous geography of Washington, Oregon, Idaho, and Alaska. This area includes the diverse concerns of 271 tribal governments, the front-line of global warming in the Arctic, the massive mining contamination in northern Idaho, the Hanford Nuclear Reservation, the Columbia River, the industrial waterways of Seattle and Portland, the agricultural economies of the inland Northwest, the international challenges raised by our shared border with Canada, and all the varied environmental issues one can find in any urban or rural setting.

To address these enormous and varied concerns, I am embracing the seven priorities for EPA recently adopted by Administrator Jackson.⁵ These priorities are:

1. **Taking Action on Climate Change.** While continuing to support comprehensive clean energy and climate change legislation, EPA is using the Clean Air Act to further a range of initiatives to reduce the emission of greenhouse gases.
2. **Improving Air Quality.** EPA will soon be proposing stronger ambient air quality standards for ozone and is working to develop strong but achievable reductions in sulfur dioxide, nitrous oxides, mercury, fine particulates including diesel exhaust, and other air toxics.
3. **Cleaning Up Our Communities.** EPA is accelerating the Superfund cleanup program, addressing major local challenges such as the asbestos contamination in Libby, Montana, and maximizing use of the Brownfields Program particularly to spur environmental cleanup and job creation in disadvantaged communities.

⁴ For more on Administrator Jackson, see Mark A. Latham, "Bush v. Obama: The Fight for the Soul of Science in Environmental Policymaking," SEATTLE J. ENVTL. L. (2010) at n.117 and accompanying text.

⁵ See Memorandum from Lisa P. Jackson, Administrator, to All EPA Employees (Jan. 12, 2010), available at <http://blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/> (press release)

4. **Assuring the Safety of Chemicals.** EPA is committed to making significant and long overdue progress toward assuring the safety of chemicals in our products, modernizing the Toxic Substances Control Act and providing for rigorous health assessments of arsenic, dioxins, formaldehyde, and other substances of concern.

5. **Protecting America's Waters.** Through strategic use of enforcement authorities, Recovery Act funding, and other measures, EPA will address complex challenges to water quality, from nutrient loadings and stormwater runoff to invasive species and drinking water contaminants.

6. **Expanding the Conversation on Environmentalism and Working for Environmental Justice.** Environmental justice principles must be included in all EPA decisions. It is time for bold and innovative thinking to ensure the protection of vulnerable subpopulations, especially children.

7. **Building Strong State and Tribal Partnerships.** Particularly in an era of declining tax revenues and growing fiscal challenges for state and tribes, EPA must do its part to support state and tribal capacity, ensuring that environmental programs are delivered consistently nationwide.⁶

These priorities reflect concerns that have been expressed for long periods of time from many corners of the country. To address these concerns, Administrator Jackson has emphasized that we will carry out these priorities and our overall mission by respecting our core values of science, transparency, and the rule of law.⁷

Beyond these priorities and initiatives on the federal level, there is much environmental progress to observe and celebrate at all levels of government. For example, during my tenure as Executive Director of the regional Puget Sound Clean Air Agency, that Agency, alongside EPA, and state and local partners, developed innovative strategies to help reduce diesel emissions. Each year, diesel emissions are the cause of thousands of premature deaths, hundreds of thousands of asthma attacks, millions of lost work days, and numerous other health consequences.⁸ Thus, reducing exposure to diesel exhaust is a high na-

⁶ *Id.*

⁷ *See id.*

⁸ *See* U.S. Env'tl. Prot. Agency, National Clean Diesel Campaign Fact Sheet, 1-2, *available at*: www.epa.gov/cleandiesel/ (last visited Apr. 10, 2010).

tional and local priority. Working with the Ports of Tacoma and Seattle, Washington, and Vancouver, B.C., the Clean Air Agency developed the Northwest Ports Clean Air Strategy.⁹ This collaborative program is focused on diesel-powered ships, locomotives, trucks, and cargo-handling equipment. With the help of EPA Diesel Emissions Reduction Act¹⁰ grants, great progress is being made to reduce diesel exposure to port workers and environmental justice communities in close proximity to ports. Similar initiatives exist in California at the Ports of Los Angeles and also Long Beach,¹¹ at the Ports of New York and New Jersey,¹² and are spreading to ports around North America.¹³

Another program worthy of note is the Washington State Clean School Bus Program, created by the state legislature in 2003.¹⁴ Funding of five million dollars per year for five years placed clean air retrofits on over 5,000 school buses and hundreds of transit and municipal fleet vehicles. These retrofits have greatly protected the health of nearly half a million children who ride school buses in Washington every school day.¹⁵ Many of the funded projects also reduce fuel use, along with the black carbon and carbon dioxide that accompanies fuel consumption, thereby reducing climate impacts. These are just a few examples of the creativity and energy evident in programs to improve the envi-

⁹ See Port of Tacoma, *Northwest Ports Clean Air Strategy*, 1 (Dec. 2007), available at <http://www.portoftacoma.com> (click on “Environment & Community” then “Air” then “Northwest Ports Clean Air Strategy”) (last visited Apr. 10, 2010).

¹⁰ Title VII(G) of the Energy Policy Act of 2005 (Diesel Emissions Reduction Act), establishes a voluntary national and state-level grant and loan program to reduce diesel emissions. The Act authorizes the expenditure of one billion dollars over five years, with EPA overseeing 70 percent of the expenditures. Funding through this program supports the retrofit of existing on-road mobile sources, which can immediately reduce emissions of particulate matter by 25-90 percent. See Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005); see also, Diesel Technology Forum, *The Diesel Emissions Reduction Act: A Smart, Clean Air Investment*, <http://www.dieselforum.org/news-center/pdfs/> (then click on “The Diesel Emissions Reduction Act - A Smart, Clean Air Investment”) (last visited April 13, 2010).

¹¹ See San Pedro Bay Ports, *Clean Air Action Plan*, <http://www.cleanairactionplan.org/about/default.asp> (last visited April 14, 2010) (citing to: South Coast Air Basin, et al, DRAFT 2010 UPDATE, SAN PEDRO BAY PORTS CLEAN AIR ACTION PLAN TECHNICAL REPORT, at ES-1 (April 2010), available at <http://www.cleanairactionplan.org/civica/filebank/blobload.asp?BlobID=2441>).

¹² See U.S. Env'tl. Prot. Agency, *City, State and Federal Government Take Action for Cleaner Port of New York and New Jersey; Truckers Gain Access to Millions of Dollars to Slash Air Pollution*, 1-2 (Mar. 10, 2010), available at <http://yosemite.epa.gov/opa/admpress.nsf/Press%20Releases%20By%20Date?OpenView>

¹³ For a wealth of information on efforts nationwide to improve air quality in port areas see U.S. Env'tl. Prot. Agency, *Clean Ports USA*, www.epa.gov/cleandiesel/ports (last visited Apr. 14, 2010).

¹⁴ See Mike Boyer & Kim Lyons, Wash. State Dept. of Ecology, WASHINGTON STATE CLEAN SCHOOL BUS PROGRAM: REPORT TO 2005 LEGISLATURE, Pub. No. 04-02-29, at i-ii (2005), available at <http://www.ecy.wa.gov/pubs/0402029.pdf>.

¹⁵ See *id.* at i.

ronment being pursued within the region. Examples of other inspiring initiatives may be found in the comments from King County Executive Dow Constantine, Seattle Mayor Mike McGinn, and other contributors to this volume.

Once again, it is my pleasure to welcome you to this volume of the Seattle Environmental Law Journal and I look forward to continued conversations on our collective efforts toward environmental progress in the Northwest and beyond.