Joel A. Mintz of Nova Southeastern University is CLEAR’s next Scholar of the Month. Professor Mintz teaches Environmental Law, Torts, and Environmental Enforcement at the Nova Southeastern University Shepard Broad Law Center. He has also taught courses and seminars in Land Use Planning, State and Local Government Law, and Comparative Environmental Law.

Professor Mintz earned his B.A. from Columbia University, his J.D. from New York University Law School, and his LL.M. and J.S.D. from Columbia University Law School. He has co-authored two casebooks, written many well-received law review articles, and authored several other works like op-eds, book reviews, a “law-in-a-nutshell” book, and a treatise.

Professor Mintz has worked as an attorney and chief attorney with the Environmental Protection Agency in Chicago and Washington, D.C. He is a member scholar of the Center for Progressive Reform, a Fellow of the American Bar, on the Board of Directors of the Everglades Law Center, and an elected member of the American Law Institute. Additionally, he is an elected member of the Commission on Environmental Law of the International Union for the Conservation of Nature and the International Council of Environmental Law. He is the newsletter editor of the Section on State and Local Government Law for the Association of American Law Schools. He has been teaching at the Nova Southeastern University Shepard Broad Law Center since 1982.

* * *

In Some Thoughts on the Merits of Pragmatism as a Guide to Environmental Protection, 31 B.C. ENVTL. AFF. L. REV. 1 (2004), Professor Mintz discusses the emergence of environmental pragmatism. Pragmatism is a philosophy that focuses on action and experimentation. He describes three categories of pragmatism: philosophical pragmatism, environmental pragmatism, and legal pragmatism. Philosophical pragmatism emphasizes facts and consequences instead of theories. It focuses on experimentation, the limitations of human understanding, and developing notions of ethics. Environmental pragmatism is a comparatively new concept. It rejects the idea that environmental ethics should accept non-anthropocentrism and holism. It seeks a framework wherein divergent environmental ideas can be compatible. Legal pragmatism opposes legal formalism. It applies pragmatic thought to legal principles.

The article next discusses two scholarly works on the subject of environmental pragmatism: Daniel A. Farber’s book, ECO-PRAGMATISM (1999), and Keith Hirokawa’s law review article, Some Pragmatic Observations About Radical Critique in Environmental Law, 21 STAN. ENVTL. L.J. 225 (2002). Farber’s book uses pragmatism to connect environmental protection with some of society’s other needs. Hirokawa’s article sees environmental pragmatism as a way to challenge radical critiques of environmental law. Professor Mintz believes that both authors provide a useful contribution to environmental law. Farber’s book in particular, he says, is important in searching for a permanent groundwork for environmental preservation. He observes that Hirokawa, however, undermines his own arguments in his article by sharply dismissing arguments with which he disagrees.

Professor Mintz believes that environmental pragmatism, with its focus on facts and skepticism for grand theories, could benefit environmental decision making. He adds that environmental pragmatism is not without limitations, however. It is not emotionally stirring and may not capture public interest. Also, it does not find the “right answers” to many questions. Nevertheless, despite its shortcomings, environmental pragmatism has the potential to provide useful tools for analyzing environmental concerns.
In *Taking Congress’s Words Seriously: Towards a Sound Construction of NEPA’s Long Overlooked Interpretation Mandate*, 38 EnvTL L. 1031 (2008), Professor Mintz discusses the interpretation mandate—provision 102(1)—of the National Environmental Policy Act of 1969 (NEPA). At the time the article was written, that provision had only been applied six times in judicial opinions.

Subsection 102(1) says that “[t]he Congress authorizes and directs that, to the fullest extent possible[,] the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter.” 42 U.S.C. § 4332(1) (2000). Professor Mintz makes several observations about this provision. First, he says it is clearly mandatory. Second, “the policies, regulations, and public laws of the United States” are to be administered. Third, the interpretation and administration must be “to the fullest extent possible.” The article asserts that it is evident that Congress required a vigorous application of NEPA’s policies. However, there are a few unclear points of the provision. First, it is not certain which policies provide a basis for administering the policies, regulations, and public laws. Second, there is no indication as to whom the provision applies. Third, the provision does not squarely define “to the fullest extent possible.”

The article next attempts to explain the unclear parts of the provision. It says that all of the considerations in the subsections are “policies of this chapter” that should provide a basis for administering policies, regulations, and public laws. It also reasons that, while some might argue that the language of the provision indicates that it should apply only to federal agencies, such an argument would be strained. Professor Mintz believes the provision applies to the federal judiciary and federal agencies and departments. Lastly, federal courts have addressed the meaning of “to the fullest extent possible” related to NEPA’s environmental impact statement (EIS) requirement. Professor Mintz says that the use of that phrase with EISs gives guidance to its use in the interpretation mandate. The phrase indicates that, when a conflicting statutory duty makes it impossible to implement NEPA, the other statute takes precedence.

Professor Mintz calls the interpretation mandate the “forgotten man” of NEPA. He states that that provision has been largely ignored in times where it could—and possibly should—have been used. However, he contends that the provision, which has the potential to be one of the most influential parts of United States environmental law, may not be ignored forever.

*EPA Enforcement of CERCLA: Historical Overview and Recent Trends*, 41 Sw. L. Rev. 645 (2012), gives a brief account of the enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against potentially responsible parties (PRPs) by the Environmental Protection Agency (EPA).

The article begins its brief history during the last two years of the Carter administration, when EPA created a Hazardous Waste Enforcement Task Force in order to prevent inadequate disposal of hazardous wastes. Superfund, which provides a procedure for cleaning hazardous waste sites, was passed in December of 1980 shortly before Ronald Reagan was inaugurated. Ronald Reason’s administration, however, was hostile toward EPA enforcement. EPA enforcement took on a “non-confrontational” approach and gave PRPs the option of voluntarily cleaning waste sites.

A change in EPA administration during Reagan’s presidency motivated more enforcement actions. The EPA leadership began to approach CERCLA with the idea that enforcement was important for Superfund. The Superfund Amendment and Reauthorization Act (SARA) created a more consistent approach to enforcing CERCLA. However, many critics were still suspicious of Superfund enforcement.

The leaders of EPA under George H.W. Bush’s administration stated commitments to strong enforcement and saw criticism as a chance to reorganize Superfund. EPA leaders called for “the Ninety Day Study,” which required a review of Superfund with the intent to improve it. According to the article, the Ninety Day Study improved public perception of Superfund enforcement.

During Bill Clinton’s administration, Congress was not enthusiastic about regulations. EPA focused on compliance assistance and collaboration. Proposals to strengthen Superfund were defeated and in 1995, Congress did not renew Superfund’s taxing authority.

During George W. Bush’s presidency, the EPA was involved in significant political turmoil. Resources for enforcement of CERCLA diminished and the Superfund was underfunded. EPA was hesitant to list new waste sites on the National Priorities List. EPA emphasized short-term removal at sites. During long-term actions, the Agency increasingly emphasized reusing sites.

Professor Mintz observes that, after three years of President Barack Obama’s presidency, EPA enforcement has been in some ways both similar and different to enforcement during George W. Bush’s administration. There is a notable lack of political controversy and EPA leaders recognize the importance of enforcement. New trends in enforcement under President Obama include: an improvement in the timing of cost-recovery billing practices, a greater emphasis on environmental justice, and increased concern for lowering carbon footprints at Superfund sites. EPA enforcement still faces a resource shortage, however. Also, CERCLA enforcement now receives much less attention than it did when it was first implemented. The article concludes that CERCLA’s future is uncertain.

Professor Mintz’s scholarly work contributes to the field of environmental law by introducing and outlining interesting topics in innovative ways. His exploration of environmental pragmatism, discussion of the NEPA interpretation mandate, and his concise history of and predictions for CERCLA enforcement provide environmental scholars and legislators with inventive suggestions for framing and solving environmental issues.

*By Melissa Mitchell, UNC School of Law, Class of 2015*