Clinic Report: Try Not to Breathe – or Swim, Fish, or Drink
By Rena Steinzor

At the rate the Maryland Department of the Environment is going, it will not complete crucial water quality standards that were due in 1979 until 2056. Meanwhile, the Baltimore/Washington metropolitan area will not achieve attainment with national Clean Air Act standards for ozone by 2005, and will fall even further behind when new, more stringent requirements go into effect. Studies show that the country’s most common herbicide, atrazine, causes endocrine disruption in reptiles and amphibians at relatively low doses, potentially affecting several endangered species in the Chesapeake Bay. Statewide advisories for methyl mercury, pesticides, and PCBs warn people to limit or avoid consumption of such popular fish as large and small mouth bass, striped bass, blue gill, blue crabs, yellow perch, and catfish. And the sad thing is that, as states go, Maryland is widely perceived as progressive on environmental issues.

As several generations of Environmental Clinic students have learned, the gap between need and response regarding all these pressing problems is large, and growing rapidly, to the point that Maryland is failing to make progress and even backsliding in preserving the Bay and improving air quality. One major source of the performance gap is a severely debilitated state agency. Since 2000, the Department’s budget has been cut by approximately 30%, and former secretaries from both parties acknowledge that it started out with severe funding challenges even before the state began running record deficits. These scarce resources mean inadequate inspections, weak enforcement, and virtually non-existent public education on better environmental practices.

Decisions at the national level have only compounded the state’s struggle to move forward with drastically reduced resources. Congress has defeated efforts to require auto manufacturers to improve the fuel efficiency of cars and sport utility vehicles. The Environmental Protection Agency let grandfathered power plants in the mid-west off the hook when they modify their outmoded plants, allowing these “old dirties” to operate indefinitely without additional pollution controls. EPA also ducked its responsibility to regulate facilities using mercury cells to manufacture chlorine. One such plant, in New Martinsville, West Virginia, loses tons of mercury annually, depositing these “fugitive emissions” throughout the Potomac watershed. And EPA recently gave atrazine another interim registration without considering its potential effects at low doses on wildlife; the Agency has also pared down the process for consulting with the Fish and Wildlife Service experts before such decisions are made.

On behalf of its clients, this year’s Environmental Clinic is trying to do something about not one, nor even two, of these problems, but all of them, placing us at the forefront of Maryland most intractable debates over who – the public or the manufacturer – should bear the burden of protecting the environment. On behalf of Senator Brian Frosh, a team of second and third-year students will prepare a report analyzing why Maryland has fallen short of meeting its ozone attainment deadline, and what the state must do to get back on track. Modeled on the Clinic’s highly successful 2002 report entitled Keeping Pace: Maryland’s Worst Environmental Problems and What We Can Do to Solve Them, the report will analyze publicly available data, interview key stakeholders, and explore national proposals to improve the performance of the contributors to ozone, from power plants to SUVs.

The Clinic is also co-counsel with Aaron Colangelo, senior attorney at the Natural Resources Defense Council, in a lawsuit challenging EPA’s decisions regarding atrazine and
endangered species not just in the Bay region, but throughout the Midwest and the South. We represent Ed Merrifield, the Potomac Riverkeeper, in an ongoing effort to quicken the pace and effectiveness of the Maryland program to develop Total Maximum Daily Loads. In the face of EPA’s failure to regulate the chlor-akali plant in West Virginia effectively, we will assist the Riverkeeper in doing a public education campaign designed to pressure the manufacturer to reduce its emissions voluntarily.

Down to a lean and, to outsiders, mean contingent of ten student attorneys, demand for the Clinic’s assistance has never been higher nor its work more important. Hopefully, by virtue of hard and creative work and sheer commitment to these representations, we can help improve environmental conditions that are becoming more and more disturbing.