

FLORIDA BEACON

From the President's Desk
Kristin Bennett

**Florida Association of
Environmental Professionals**

Winter 2012



FAEP 2011-2012

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FAEP members,

I am honored to provide my first “From the President’s Desk” contribution to The Beacon. The FAEP held its annual elections last fall and I assumed the President’s position at the January FAEP Board meeting. I am pleased to be working on the Board with a great group of dedicated people: John Lesman, Kathy Hale, Mary Gutierrez, Erik Neugaard, Bruce Hasbrouck, Amy Guilfoyle, Ed Currie, Jeff Marcus, Elva Peppers, Paul Bowers, Arnaud Roux, Erin Kane, Alexis Preisser, Melissa O’Connor and Teri Hasbrouck, FAEP administrator.

Elections were held at the end of 2011 to fill an open At-Large Board Member position. Melissa O’Connor of Kelly Kronberg, P.A. was nominated by the South Florida chapter and was subsequently elected to the FAEP board for a three year term. John Lesman of Biotech Consulting and Mary Gutierrez of Earth Ethics, Inc. were nominated by the Board of Directors to fill two At Large positions created by resignations of two long term board members, Victoria Colangelo and Joel Thomson. I thank both Victoria and Joel for their service.

In addition to my election, the New Year brought in a new executive committee for the FAEP: John Lesman was elected Vice President, Kathy Hale of EMD Treasurer, Mary Gutierrez Secretary, and Bruce Hasbrouck of Faller, Davis & Associates was nominated NAEP Chapter representative.

I want to extend a great big “Thank You” to the Board members and officers for 2011. Erik Neugaard of RS&H finished his second term as President of FAEP and will continue to serve on the Board as the immediate Past President. As a result of his “Ex-officio” position, Erik will remain a voting member of the Board. Victoria Colangelo finished her second term as FAEP Treasurer. The FAEP balance sheet for Fiscal Year 2010/2011 ended with a surplus – good job Victoria! Joel Thomson of Thomson Environmental Consulting and Alexis Preisser of Bowyer Singleton & Associates, Inc. shared Secretary duties during the year. Alex will continue her term as an At-Large Board member.

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WWW.FAEP-FL.ORG

Upcoming Conferences and Workshops

Event	Date	Place
American Water Resources	Mar. 9, 2012	Jupiter
10th Annual Environmental Industry Summit	Mar. 14-16, 2012	San Diego
2012 FGWA Convention and Trade Show	May 4-6, 2012	Orlando
Pittcon Conference Expo	Mar. 11-15, 2012	Orlando
National Association of Environmental Professionals	May 21-24, 2012	Portland, Oregon
FAWQC Annual Conference	Jun. 12, 2012	Naples
Environmental Permitting Summer School	July 18-20, 2012	Marco Island
Air & Waste Management Conference	June 19-2, 2012	San Antonio
Florida Remediation Conference	Oct. 11-12, 2012	Orlando
Florida Local Environmental Resource Agencies	Oct. 24-26, 2012	Orlando

President's message continued....

Finally, Paul Looney of Volkert served as NAEP representative for the past two years. Paul was elected to the NAEP Board of Directors last year and is currently the President of NAEP .

Stand with me to recognize and thank all of these hard working people for their service to the FAEP. The NAEP also held elections recently and the FAEP had two successful candidates elected to the NAEP Board: Courtney Arena, Stanley Consultants, and David Dickson, Cardno Entrix, will be formally inducted at the NAEP National Meeting scheduled for May 21-25 in Portland, Oregon. As a result of the recent NAEP election, FAEP is now represented by five members: Courtney Arena, David Dickson, Paul Looney, Bruce Hasbrouck, and Kristin Bennett. You can get information about the NAEP National meeting on the NAEP website – www.NAEP.org.

FAEP saw great gains during 2011: a membership increase of almost 15% (740 to 845 members); an increase in monthly meetings including training opportunities and networking events; two student chapters have been formed, one at the University of North Florida and one at Hillsborough Community College in Tampa; Elva Peppers and Sheri Lewin did a fantastic job of reactivating the Tallahassee chapter; the Treasure Coast Chapter hosted another successful Annual FAEP meeting; and there has been an increase in communications with our members and with NAEP.

One of my goals as President of FAEP is to provide better communication between our members, the chapters, and the NAEP. This will include increased activity at the National level to gain a better understanding of the member benefits that are a result of our Affiliation Agreement with NAEP. This includes webinar offerings, the NAEP National Desk, and the NAEP newsletter. These items are being offered to the FAEP membership at no additional cost to our members.

The FAEP leadership, at the local level and the state level, want to ensure the members are getting value out of participation in the FAEP. Each local chapter offers a variety of training, technical presentations, and networking opportunities. You receive a monthly calendar of events offered by each chapter. I encourage you to participate. If you have suggestions on how we can continue to bring value to your membership, please contact any of the FAEP board members or your local board representatives.

Kristin Bennett
Tetra Tech, Inc.

Florida Beacon

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9th Annual Air Potato Rodeo

Not what you typically think of when you hear the word rodeo, but the annual air potato rodeo at Ravine Gardens State Park in Palatka is an event well worth the attention of any calf roping, bull riding or barrel racing competition. The [9th Annual Air Potato Rodeo](#), held Saturday, Feb. 11, brought together Floridians of all ages for a worthy cause that in the end benefits all of us. Each year participants show up at 9 a.m. ready to volunteer their time for the next four hours to help control the spread of the invasive air potato plant.

Participants received the necessary gloves, trash bags and tools. Following the event, guests were invited to enjoy a free lunch of hot dogs, chips and drinks while prizes are awarded for the largest, smallest, heaviest, the most collected and the most unusual shaped air potato.

Scientifically referred to as *Dioscorea bulbifera*, the air potato is one of many invasive plants introduced into Florida's ecosystem that has become harmful to the environment. The heart-shaped leaves, although very attractive, grow on vines that can reach up to 70 feet in length. The plant spreads rapidly, choking out native plants by dropping potato-like tubers known as bulbils. The bulbils range from marble size to as large as a softball and quickly begin a new growth cycle both above and under the ground, especially during the colder months. They can quickly engulf mature tree canopies and are also transported by being swept along in flowing waters.

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NAEP Webinar Schedule

Date	Speaker	Topic
Mar. 21, 2012	TBD	APU Training
Apr. 18, 2012	TBD	Gulf of Mexico BP Cleanup Report
Jun. 20, 2012	Lucy Swartz, Ron Bass	NEPA Cases



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2012 Annual Conference - Portland, Oregon May 21-25, 2012

Don't miss the NAEP conference in Portland! It's packed with symposiums, keynote speakers, hot topic lunches, and discussions covering the latest environmental information. Register online or download the form at www.naep.org/2012-conference and mail it in. The conference hotel (Portland Hilton & Executive Towers) is filling up fast, so book your hotel room now. Use the link on the conference website as it will give you the negotiated group rate. Check out the latest details about the conference at the [NAEP conference website](http://www.naep.org/2012-conference).

Symposiums (Monday May 21):

- NEPA and Decision Making
- Advance Topics in Visual Resource Impact Assessment

Keynote Speakers: (Tuesday and Wednesday, May 22 and 23)

- John Kroger, Attorney General of Oregon: *Protecting Oregon's Environment*
- John Morgan, Chinook Institute: *Planners as Leaders: Leading in the Chaos*
- Michael Houck, Urban Greenspace Institute: *Exploring The Intertwine, Integrating the Built and Natural Landscapes in the Portland-Vancouver Metropolitan Region*

Hot Topic Lunches (Thursday May 25th):

- **NAEP Pilot Project:** The Council on Environmental Quality (CEQ) selected the NAEP Pilot Project Best Practice Principals for EAs on October 19, 2011.
- **Visual Resource Assessment and the Historic Context:** Dr Beckham will be speaking on various impacts of Euro-American activity over the past 200 years
- **The Top 10 Reasons Citizens and Scientists Should Care About What Is and Is Not Happening in the Gulf of Mexico Following the BP Oil Spill of April 2010:** Mike Rosen, organizer of the PDX 2 Gulf Coast Project, will explore the short- and long-term impacts of the spill that have been documented to date, why we should stay engaged and how we can.
- **Certified Environmental Professionals In Action:** Certified Environmental Professionals are working! At a time when job openings continue to be scarce and competition is fierce. Staying in your current position, or finding a job if you don't have one, is a daunting and nerve-racking task. Yet, there is something you can do to increase your value to your current employer or to a prospective one: become a Certified Environmental Professional.

The Advance Program is available to review or download at www.naep.org/2012-conference. Registration is also available online. Contact Donna Carter at naepfl@verizon.net or 863-949-0262 for more information or if you have any questions.



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U.S. Supreme Court Heard Oral Argument in the Closely Watched *Sackett v. EPA*¹ Case

The Sacketts own an undeveloped parcel in Idaho slightly over a ½ acre in size, upon which they had set out to build a home. In 2007, they filled a portion of their property without a Clean Water Act (CWA) permit to prepare the property to build. The EPA determined that the fill violated the CWA because the parcel contained a “jurisdictional wetland.” It issued an administrative compliance order requiring the Sackett’s to remove the fill and restore the parcel to its original condition or face fines of up to \$37,500.00 per day for every day the fill remains in the wetland.

The U.S. Supreme Court heard oral argument in their case on January 9, 2012 in *Sackett v. EPA* because the Sacketts petitioned the EPA for a hearing to challenge the EPA’s wetland determination and the EPA refused, so the Sacketts filed suit. Previously, the district court dismissed the Sackett’s case for lack of jurisdiction stating that a review of an agency order was barred unless the Agency sued first, which the EPA had not done. The 9th Circuit affirmed the District Court concluding that the CWA impliedly barred pre-enforcement review under the Administrative Procedure Act and this bar did not violate due process.

While initially the tenure of the oral argument appeared to be less of a David v. Goliath and more of a boring droll of administrative law and whether the Sacketts exercised all their options to avoid EPA intervention, this came to an end when counsel for the EPA began to unfold his argument. The focus of the Justices began to center on the issue of double penalty, as the EPA conceded the possibility of double penalties in the EPA’s brief “as an exercise of our duty of candor to the Court” although the EPA had not mentioned the possibility of double penalties to the Sacketts in their compliance order. In so doing, the EPA conceded that the maximum penalties faced by the Sacketts totaled \$75,000.00 per day, rather than \$37,500.00 and that the CWA provides separate penalties for violating the statute and violating the compliance order. Counsel for the EPA explained that double penalties were a legal possibility, but he did not know of a case in which double penalties had been assessed. This led to the sarcastic remark by Justice Scalia of, “I’m not going to bet my house on that.”

Argument came to a climax when the heat was placed on counsel for the EPA with a question Justice Alito queried, “What would you do, . . ., if you received this compliance order? You don’t think your property has wetlands on it and you get this compliance order from the EPA.” His response prompted a strong retort from Justice Alito:

. . . don’t you think most ordinary homeowners would say this kind of thing can’t happen in the United States? You don’t - you buy property to build a house. You think maybe there is a little drainage problem in part of your lot, so you start to build the house and then you get an order from the EPA which says: You have filled in wetlands, so you can’t build your house; remove the fill, put in all kinds of plants; and now you have to let us on your premises whenever we want to. You have to turn over to us all sorts of documents, and for every day that you don’t do all this you are accumulating a potential fine of \$75,000.00. And by the way, there is no way you can go to court to challenge our determination that this is a wetland until such time we choose to sue you.

The Sackett’s attorney offered to rest without rebuttal and by the end of oral argument eight Justices, which included Roberts, Alito, Breyer, Ginsberg, Kagan, Kennedy, Scalia, and Sotomayor had expressed their strong concerns with the EPA’s case. Although the decision is pending, if oral argument is any indication, the Supreme Court may be on its way to putting some restraints of the EPA’s enforcement powers under the CWA and possibility many other federal environmental laws.

By: Melissa O’Connor, Esq.
Kelley Kronenberg

Supreme Court Docket No. 10-1062.

Transcript of the oral argument can be found at http://www.supremecourt.gov/oral_arguments/argument_transcripts/10-1062.pdf.

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