

**LOOKING BACK TO  
MOVE FORWARD:  
RESOLVING HEALTH &  
ENVIRONMENTAL CRISES**

STATE ENERGY & ENVIRONMENTAL IMPACT CENTER  
NEW YORK UNIVERSITY SCHOOL OF LAW

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1730 M Street NW, Washington, DC 20036

Published October 2020.

Cover design by Stephen Read and Evan Odoms.

Printed in the United States of America  
ISBN 978-1-58576-227-9

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A Project of the State Energy & Environmental Impact Center  
Published by the Environmental Law Institute

Edited by Hampden T. Macbeth

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# Acknowledgments

When we first developed the idea for this project at the New York University (NYU) School of Law's State Energy & Environmental Impact Center (State Impact Center), we had conversations with state attorneys general offices, judges, legal practitioners, and other policymakers who have been involved in the crises covered in these pages. We wanted to determine whether there would be value in a historical review that documents how major health and environmental harms, responsible for widespread individual and societal damage, had been addressed and resolved in the past. We suspected that such an analysis could provide a helpful compendium of the techniques used, and lessons learned, for lawyers, judges, regulators, and legislators who are confronting new health and environmental crises.

Many lawyers and policymakers who had been involved in prior matters told us how useful this type of historical resource would have been to them. They encouraged us to take this on. We took the bait.

We anticipated that our report could be pulled together in approximately a year. We were naive; this was a larger undertaking than we had expected. The final product is a book, not a report. Consequently, we have many people to thank for helping this project reach the finish line.

We start with our outstanding editor and authors, who exhibited great patience and flexibility in producing this important resource. Hampden T. Macbeth at the State Impact Center took on the role as the editor of the project. Hampden spent countless hours developing templates for the chapters, working through multiple drafts with the authors, and then shepherding the chapters through the footnoting, proofing, and publishing process. This book would not have happened without Hampden's exemplary commitment and extraordinary competence as an editor. Well done!

Kudos to all of our authors who produced compelling reviews of how high-profile health and environmental crises have been addressed and resolved in the past, keeping an eye on lessons learned and other takeaways that can help inform future undertakings. Thank you to Sandra Nichols Thiam, Carol Adaire Jones, Cynthia R. Harris, and Samuel F. Koenig (writing about asbestos litigation); Joelle M. Lester and Kerry Cork (writing about the Tobacco Master Settlement Agreement); Logan L. Page (writing about Diethylstilbestrol (DES) Daughters); Katherine N. Probst (writing about the

Superfund legislation); John C. Cruden and Joshua H. Van Eaton (writing about the Volkswagen diesel emissions settlement); Hampden T. Macbeth, (writing about the National Childhood Vaccine Injury Act); and Elizabeth Klein (writing about the *Deepwater Horizon* disaster).

We also want to acknowledge our partnership with the Environmental Law Institute (ELI) for publishing the book under ELI's brand and working with its partners and the State Impact Center to distribute it to a diverse range of stakeholders. The partnership will help spread the stories of seven significant public health and environmental challenges and how the legal system (courts, regulators, and legislatures) responded to the challenges. Parties and stakeholders to future public health and environmental mass torts will benefit from each chapter's authoritative discussion of what elements in each resolution or settlement worked and which elements did not work and how fair and enduring resolutions, if at all, were secured in the face of daunting financial, economic, and legal obstacles.

The State Impact Center also extends a thank you to the external reviewers, who provided invaluable advice about how to structure individual chapters and identified critical issues and observations that merited additional attention in each chapter. Thank you Lisa Burianek, Nora Freeman Engstrom, David Farer, Mark Greenwold, and Deborah Hensler.

We also thank the panelists and attendees who participated in the first phase of this project—a workshop on four major public health and environmental resolutions within the last 50 years—at the NYU School of Law in March 2019. The workshop included a welcome from Richard Revesz (Lawrence King Professor of Law, Dean Emeritus, and Director of the Institute for Policy Integrity at the NYU School of Law); a keynote speech from Kenneth Feinberg, who discussed his experience operating the September 11th Victim Compensation Fund and other settlement funds; and luncheon remarks by Dr. Cheryl Heaton (Dean and Director of the NYU School of Global Public Health), who discussed the applicability of the Tobacco Master Settlement Agreement to current and future public health challenges.

The rest of the day featured four panels on major health and environmental settlements. The first panel was the Tobacco Master Settlement Agreement with Michael Hering of the National Association of Attorneys General; Joelle M. Lester of the Mitchell Hamline School of Law Public Health Law Center, and Mark Greenwold of the Campaign for Tobacco-Free Kids. The *Deepwater Horizon* disaster was the topic of the second panel, with Brian Israel of Arnold & Porter Kaye Scholer LLP, John C. Cruden of Beveridge & Diamond PC, and Billy Plauché of Plauché & Carr LLP. Third up was

the panel on the Superfund legislation, which included remarks from Barry Breen as Acting Assistant Administrator of the Environmental Protection Agency, Judge Nancy Firestone of the U.S. Court of Federal Claims, and David Farer of Greenbaum, Rowe, Smith & Davis LLP. The final panel focused on the Volkswagen emissions settlement with Seema Kakade at the University of Maryland Francis King Carey School of Law, John C. Cruden at Beveridge & Diamond PC, and David Nachman of the New York Office of the Attorney General.

The lively and informed discussion of these panels confirmed that this book should include chapters on the Tobacco Master Settlement Agreement, *Deepwater Horizon*, Superfund legislation, and the Volkswagen emissions scandal. The Superfund panel indicated that we should also include a chapter on the National Childhood Vaccine Injury Act as it employed an unusual alternative resolution process with a no-fault compensation system for providing relief to harmed parties.

Last, but not least, the State Impact Center recognizes and thanks the work of current and former Center staff for their outstanding contributions to the book. Research and Communications Specialist Stephen Read did a fantastic job in developing the book cover and in working with both internal and external chapter authors to develop graphics that help tell the story of a particular settlement or resolution in a chapter. Program Assistant Sydney Colopy also provided invaluable assistance and support to the editors in helping bring this book to fruition. Thanks are also due to Chase Whiting, who assisted with researching, editing, and writing various parts of this book, and our research assistants, Raven Hayes and Tyra Carroll, who helped with footnoting and fact checking. Former Program Manager Brittany Whited was instrumental in organizing the successful March 2019 workshop. She also helped convince the editors of this book that the story of the failure to provide a comprehensive level of compensation to asbestos' victims and that the innovation of the market-share liability theory for the DES Daughters should be included in the book.

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October 2020





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