

ROBERT B. MCKINSTRY, JR.

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EXPERIENCE

ENVIRONMENTAL AND CLIMATE LAW & CONSULTING 2018-PRESENT
Kennett Square, PA

PARTNER AND SENIOR COUNSEL 1987-2018
Ballard Spahr, LLP Philadelphia, PA

Practice Leader of Climate and Sustainability Initiative, co-Founder and former Partner in Charge of Environmental Practice Group. I founded and built the firm's Environmental Practice Group. I focus my practice exclusively in environmental, energy, and natural resource law and litigation. This entails litigation, counseling, planning and transactional work in all areas of environmental law. Since completing my six-year term as the Goddard Professor, I have concentrated particularly on the emerging areas of climate change, sustainability and biodiversity. However, my work also continues to involve issues arising under CERCLA, RCRA and parallel state laws, municipal solid waste regulation and planning, brownfields, wetlands and environmentally sensitive areas, water, air and chemical regulation. My clients include utilities, municipalities, industrial companies, financial companies, developers, and non-profit organizations. Major cases in which I have been involved include *Michigan v. EPA*, 135 S. Ct. 2699 (2015); *EPA v. EME. Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014); *Massachusetts v. EPA*, 549 U.S. 497 (2007); and *Raytheon Constructors Inc. v. ASARCO Inc.*, 368 F.3d 1214 (10th Cir. 2003).

MAURICE K. GODDARD PROFESSOR OF FORESTRY AND ENVIRONMENTAL RESOURCES CONSERVATION 2001 - 2007
Pennsylvania State University, School of Forest Resources University Park, PA

Endowed professorship in which more than half of my time was devoted to public service in the fields of environmental and natural resource conservation, with the remaining time divided between teaching undergraduate and graduate courses writing and speaking.

PARTNER 1981 - 1987
Wolf Block Schorr & Solis-Cohen Philadelphia, PA

LAW CLERK 1979 - 1981
United States District Court for the District of Delaware Wilmington, DE

Law Clerk to the Honorable James L. Latchum, Chief Judge for the United States District Court for the District of Delaware.

SUMMER ASSOCIATE SUMMER, 1977
Environmental Defense Fund Washington, D.C.

EDUCATION

J.D. 1979
Yale Law School *New Haven, CT*

M.F.S. 1979
Yale School of Forestry and Environmental Studies *New Haven, CT*

My primary field of study was environmental studies. I was the first student at Yale to pursue a joint degree program in the Law School and the School of Forestry and Environmental Studies.

B.A. WITH HONORS 1975
Swarthmore College *Swarthmore, PA*

I graduated with Honors and was elected to Phi Beta Kappa. My major was history, and my minor was political science, and I took a broad range of science courses. I was a Division III All American swimmer and swim team captain in 1975 and participated in varsity swimming all four years. During 1973, I participated in summer study at the University of Leningrad, U.S.S.R.

SECONDARY SCHOOL 1971
Westtown School *Westtown, PA*

PROFESSIONAL ORGANIZATIONS AND ACTIVITIES

Frequent lecturer in continuing legal education courses and seminars, including those sponsored the Pennsylvania Bar Institute, the ABA SEER Section, PBA EMNRL Section, American Law Institute, Environmental Law Institute, Philadelphia Environmental Law Committee, Chester County Environmental Law Committee, Institute for Business Law, and the California Business Institute and many other organizations. I have prepared course materials and lectured on most areas of environmental law, including climate change, biodiversity, sustainability, green building, market based approaches to environmental law, municipal solid waste, citizen suits and private rights of action, wetlands law, laws regulating other environmentally sensitive areas, developments in constitutional law issues relevant to environmental law, CERCLA, environmental litigation, air pollution, development of energy projects, environmental due diligence and other topics.

Admitted to the bar of Supreme Court of Pennsylvania, Oct. 17, 1979 (Bar No. 30015). Admitted to practice before the United States Supreme Court (Sept. 10, 1993, Bar No. 203968), the United States Courts of Appeals for the District of Columbia (Sept. 15, 2011), the Third Circuit (January 7, 1983), and the Tenth Circuit (May 9, 2001), the United States District Courts for the Eastern District of Pennsylvania (Oct. 20, 1982), the Middle District of Pennsylvania (Nov. 13, 2009), the District of Columbia (Dec. 5, 2011, Bar No. PA0040), and the District of Colorado (August 2, 1999, administratively removed but in good standing and eligible for readmission).

Fellow, American College of Environmental Lawyers

Fellow, American Bar Foundation

Master and former President, Delaware Valley Environmental Inn of Court for Southeastern Pennsylvania, Philadelphia, PA/ President 2022-2023

Vice Chair and former Co-Chair, Climate Change, Sustainable Development and Ecosystems Committee of the ABA Section of Environmental, Energy and Resource Law,

Member, Environmental Law Institute, Member PBA Environmental and Energy Law Section; Philadelphia Bar Ass'n Environmental Law Committee, and Chester County Bar Ass'n Environmental Law Committee.

PROFESSIONAL AWARDS AND RECOGNITION

American College of Environmental Lawyers Elected as a Fellow 2018

Pennsylvania Bar Association Environmental and Energy Law Section. 2010 recipient of the Lifetime Achievement Award for my “extensive academic and professional work and scholarship in the field of environmental law, climate change, and sustainable development.

Fellow, American Bar Foundation

Law 360, MVP in environmental law, 2014

Chambers USA: America's Leading Lawyers for Business, environmental law, 2008-2016; national ranking, climate change law, 2009-2017

The Best Lawyers in America, environmental law, environmental litigation, 2009-2024

Who's Who Legal: Environment, 2014-2016

Pennsylvania Super Lawyers, 2011-2024

NON-PROFIT BOARDS AND CIVIC ORGANIZATIONS

SUPERVISOR, EAST MARLBOROUGH TOWNSHIP CHAIR.	2018-2023 2020-2023
Elected Township Supervisor, Vice-Chair (2019), Chair (2020-present)	
PENNSYLVANIA ENVIRONMENTAL COUNCIL	2001 TO PRESENT
Member of the Board of Directors of this statewide environmental organization involving government, industry, environmental activists and the academic community.	
LAWYERS FOR CLIMATE ACTION: A CALL TO THE BAR	2016 TO 2021
Vice President and Member of the Board	
DRVPC REGIONAL ENERGY USE & GHG ADVISORY GROUP	2014
MONTGOMERY COUNTY, PA GREENHOUSE GAS TASK FORCE	2006-2011
Co-chair.	
CHESTER COUNTY, PA GREENHOUSE GAS TASK FORCE	2007-2011

Member of Steering Committee and Co-Chair of Energy Committee.

PENNSYLVANIA RESOURCES COUNCIL 1984-2011

Board Member, President 1989-1991, Vice President and Treasurer of oldest statewide environmental education and advocacy organization in Pennsylvania.

WESTTOWN SCHOOL 1997-2009

Member of the General Committee (Board of Trustees) and Clerk (Chair) of the Facilities Committee.

THE NATURE CONSERVANCY, PENNSYLVANIA CHAPTER 2001-2007

Member of the Board of Directors, which is an advisory board, rather than a governing board.

PENNSYLVANIA INSTITUTE FOR CONSERVATION EDUCATION 2002-2006

NATIONAL BROWNFIELDS ASSOCIATION, PENNSYLVANIA CHAPTER 2005-2007

PENNSYLVANIA DCNR BIODIVERSITY ADVISORY COMMITTEE 2002-2007

PENNSYLVANIA DCNR ECOSYSTEM MANAGEMENT ADVISORY COMMITTEE 2001-2007

Member and Chair of Energy Policy Subcommittee.

EAST BRADFORD TOWNSHIP ENVIRONMENTAL COMMITTEE 1989-2001

Past Chairman and Member.

CHILDREN'S COUNTRY WEEK ASSOCIATION 1994-2001

Past Board Member and Secretary and Vice President.

CLEARWATER CONSERVANCY 2002-2005

Member of the Board of Directors and Treasurer of local watershed.

PERSONAL

I have three children, Andrew, Spencer and Erin, and four grandchildren. I enjoy swimming, gardening, tennis, skiing, backpacking and hiking.

PUBLICATIONS

JOHN C. DERNBACH & ROBERT B. MCKINSTRY, JR. *Agency Statutory Authority and Duties and the Pennsylvania Environmental Right Amendment* (submitted for publication) (2024)

ROBERT B. MCKINSTRY, JR., *We Have the Right Tools. Let's Use Them*, Jan./Feb. 2024 ENV'T'L LAW FORUM 45 (ELI 2024)

ROBERT B. MCKINSTRY, JR., *Much Ado About Not Much: West Virginia v. EPA* (American College of Environmental Lawyers blog, July 6, 2022), <https://www.jdsupra.com/legalnews/much-ado-about-not-much-west-virginia-v-5240429/>

ROBERT B. MCKINSTRY, JR., *Viewing the Environmental Justice Critiques of Greenhouse Gas Auction-Cap-Trade-and-Invest Programs Through an Ethical Lens*, American Bar Association, Section of Environment, Energy, and Resources, Climate Change Sustainable Development and Ecosystems Committee (, 2021), available at

C. BAIRD BROWN & ROBERT B. MCKINSTRY, JR., *From RPS to Carbon: An Evolutionary Proposal*, 50 E.L.R.10755 (SEPT. 2020).

ROBERT B. MCKINSTRY, JR. & JOHN C. DERNBACH, *Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption*, 9 MICH. J. ENV'T'L & ADMIN. L 50 (2018).

FEDERICO CHEEVER WITH ROBERT B. MCKINSTRY, JR. & ROBERT L. FISCHMAN, *Forestry*, Chapter 31, in Michael B. Gerrard & John C. Dernbach, eds., LEGAL PATHWAYS TO DEEP DECARBONIZATION IN THE UNITED STATES: SUMMARY & KEY RECOMMENDATIONS (Environmental Law Institute 2018).

ROBERT B. MCKINSTRY, JR., THOMAS D. PETERSON & STEVEN CHESTER, *Unlocking Willpower and Ambition to Meet the Goals of the Paris Climate Change Agreement (Part Two): The Potential for Legal Reform and Revision*, 47 E.L.R. 10135 (FEB. 2017).

THOMAS D. PETERSON STEVEN CHESTER & ROBERT B. MCKINSTRY, JR., *Unlocking Willpower and Ambition to Meet the Goals of the Paris Climate Change Agreement (Part One): Shifting Needs of Law, Policy, and Economics*, 46 E.L.R. 11024 (DEC. 2016).

ROBERT B. MCKINSTRY, JR. & RONALD M. VARNUM, *State Implementation of the Clean Power Plan: Why It Matters to Industries Outside the Power Sector*, 45 E.L.R. 11008 (Nov. 2015).

ROBERT B. MCKINSTRY, JR., *Potential Implications for the United States of the Urgenda Foundation v. Netherlands Decision Holding that the UNFCCC and International Decisions Required Developed Nations to Reduce Emissions by 25% From 1990 Levels by 2020* (ABA SEER 2016).

ROBERT B. MCKINSTRY, JR., et al. *Pennsylvania Common Pleas Court Turns Back Robinson Township Challenge to Waste-to-Energy Facility*, Catalyst Magazine, Winter 2014/2015

ROBERT B. MCKINSTRY, JR., JENNIFER E. DRUST, & LEA A. PHILLIPS, *Regulation of Non-Hazardous Waste Under RCRA*, Chapter 15, THE RCRA PRACTICE MANUAL, THIRD EDITION, ABA Section of N. R. & Energy & Env't'l Law, Theodore L. Garrett, ed., American Bar Association. Chicago, IL (2014).

ROBERT B. MCKINSTRY, JR., *Obama's EPA Memorandum Follows the Law, Does Not Make It*, 30. NATURAL GAS ELECTRICITY, NO. 3 (WILEY OCT. 2013)

ROBERT B. MCKINSTRY, JR. H. DAVID PRIOR, JENNIFER E. DRUST, ANA C. MONTALBAN, & KIMBERLY D. MAGRINI, *Unpave a Parking Lot and Put Up a Paradise: Using Green Infrastructure and Ecosystem Services to Achieve Cost-Effective Compliance*, 42 E.L.R. NEWS & ANALYSIS 10824 (2012)

ROBERT B. MCKINSTRY, JR., *Abundant Win-Wins for Law Offices*, ENVIRONMENTAL LAW FORUM 39 (May/June 2012).

ROBERT B. MCKINSTRY, JR., *The Clean Air Act: A Suitable Tool for Addressing the Challenges of Climate Change*, 41 E.L.R. NEWS & ANALYSIS 10301 (2011).

ROBERT B. MCKINSTRY, JR. & DARIN LOWDER, *Energy Efficiency and Conservation: New Legal Tools and Opportunities*, NATURAL RESOURCES & ENVIRONMENT, VOL. 25, NO. 4, SPRING 2011).

ROBERT B. MCKINSTRY, JR., BRENDAN K. COLLINS, & JENNIFER E. DRUST, *Race to Regulation of Greenhouse Gases Accelerates Without Clear Destination*, 133 BNA WORLD CLIMATE CHANGE REPORT (July 12, 2010)

JOHN C. DERNBACH, ROBERT B. MCKINSTRY, JR. & THOMAS D. PETERSON, *Making the States Full Partners in a National Climate Change Effort: A Necessary Element for Sustainable Economic Development*, 40 E.L.R. NEWS & ANALYSIS 10597 (2010)

ROBERT B. MCKINSTRY, JR., THOMAS D. PETERSON, ADAM ROSE & DAN WEI, *The New Climate World: Achieving Economic Efficiency in a Federal System for Greenhouse Gas Control Through State Planning Combined with Federal Programs*, 34 N.C. J. INTL L & COMMERCIAL REG. 102 (2009).

THOMAS D. PETERSON, ROBERT B. MCKINSTRY, JR. & JOHN C. DERNBACH, *Developing a Comprehensive Approach to Climate Change Policy in the United States That Fully Integrates Levels of Government and Economic Sectors*, 26 VA ENVTL L.R. 219 (2008); *to be republished in ENVT'L L. & POLICY REV.* (2009).

ROBERT B. MCKINSTRY, JR., JOHN C. DERNBACH, & THOMAS D. PETERSON, *Federal Climate Change Legislation As If the States Matter*, NAT'L RES. & ENV. 3 (Winter 2008)

MICHAEL STOSSER, KERRY DUKES, ROGER FELDMAN, ROBERT B. MCKINSTRY, JR., & MERRILL KRAMER, *EBA Climate Change Primer: Financing A Renewable Energy Project*, 29 ENERGY L. J. 195 (2008).

ROBERT B. MCKINSTRY, JR. & THOMAS D. PETERSON, *The Implications of the New "Old" Federalism in Climate Change Legislation: How to Function in a Global Marketplace When States Take the Lead*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. J. 61 (2007).

ROBERT B. MCKINSTRY, JR., JAMES MCELFISH, & MICHAEL JACOBSON, *Coordination and Planning Tools that Can Be Applied to Biodiversity Conservation*, 16 WIDENER L. J. 879 (2007).

ROBERT B. MCKINSTRY, JR., JAMES MCELFISH, MICHAEL JACOBSON & DERALD HAY, *Legal Tools That Provide Direct Protection for Elements of Biodiversity*, 16 WIDENER L. J. 879 (2007).

ROBERT B. MCKINSTRY, JR., JAMES MCELFISH, & MICHAEL JACOBSON, *Coordination and Planning Tools that Can Be Applied to Biodiversity Conservation*, 37 E.L.R. NEWS & ANALYSIS 10070 (2007).

ROBERT B. MCKINSTRY, JR., JAMES MCELFISH, MICHAEL JACOBSON & DERALD HAY, *Legal Tools That Provide Direct Protection for Elements of Biodiversity*, 37 E.L.R. NEWS & ANALYSIS 10152 (2007).

ROBERT B. MCKINSTRY, JR., JAMES MCELFIGH, MICHAEL JACOBSON & COREEN RIPP, *Opportunities for Regulation of Land Use and Development As a Legal Tool To Protect Biodiversity*, 37 E.L.R. NEWS & ANALYSIS 10653 (2007).

ROBERT B. MCKINSTRY, JR. *Putting the Market to Work for Conservation: The Evolving Use of Market-Based Mechanisms to Achieve Environmental Improvement in and Across Multiple Media*, 14 PENN STATE ENVTL L.R. 151 (2006).

ROBERT B. MCKINSTRY, JR., *Ecosystem Restoration and Federal Land Policy: Reexamination in Light of The American Chestnut Restoration Effort, Restoration of American Chestnut To Forest Lands* - PROCEEDINGS OF A CONFERENCE AND WORKSHOP, eds. John Carlson & Kim Steiner (The North Carolina Arboretum, Natural Resources Report NPS/NCR/CUE/NRR - 2006/001, National Park Service, Washington, DC 2006).

ROBERT B. MCKINSTRY, JR., COREEN RIPP, & EMILY LISY, eds., BIODIVERSITY CONSERVATION HANDBOOK: STATE, LOCAL, AND PRIVATE PROTECTION OF BIOLOGICAL DIVERSITY (Environmental Law Institute 2006) including the following chapters:

Robert B. McKinstry, Jr. & Coreen Ripp, Introduction: The New Old Federalism and State Leadership in Addressing the International Issue of Biodiversity Conservation, Chapter 1 (17 pp).

Robert B. McKinstry, Jr., James McElfish, & Michael Jacobson, Coordination and Planning Tools that Can Be Applied to Biodiversity Conservation, Chapter 17 (39 pp).

Robert B. McKinstry, Jr., James McElfish, Michael Jacobson & Derald Hay, Legal Tools That Provide Direct Protection for Elements of Biodiversity, Chapter 18 (29 pp.).

Robert B. McKinstry, Jr., James McElfish, Michael Jacobson & Coreen Ripp, Opportunities For Regulation of Land Use and Development As a Legal Tool To Protect Biodiversity, Chapter 19 (36 pp).

Robert B. McKinstry, Jr., James McElfish, & Michael Jacobson, Biodiversity Protection Through Acquisition of Land or Development Rights and Management to Conserve Biodiversity, Chapter 20(53 pp.).

Robert B. McKinstry, Jr., James McElfish, & Michael Jacobson, Designing Transactions to Conserve Biodiversity and Lands Important to Biodiversity: Funding Mechanisms, Chapter 21(20 pp.).

Robert B. McKinstry, Jr. Effective Strategy for Addressing Global Biodiversity Issues Locally: A Synthesis, Chapter 37(17 pp.).

DONALD BROWN, NANCY TUANA, MARILYN AVERILL, PAUL BAER, RUBENS BORN, CARLOS EDUARDO LESSA BRANDÃO, ROBERT FRODEMAN, CHRISTIAAN HOGENHUIS, THOMAS HEYD, JOHN LEMONS, ROBERT MCKINSTRY, MARK LUTES, BENITO MÜLLER • JOSÉ DOMINGOS GONZALEZ MIGUEZ, MOHAN MUNASINGHE, MARIA SILVIA MUYLAERT DE ARAUJO, CARLOS NOBRE, KONRAD OTT, JOUNI PAAVOLA, CHRISTIANO PIRES DE CAMPOS. LUIZ PINUELLI ROSA, JON ROSALES, ADAM ROSE, EDWARD WELLS, & LAURA WESTRA, *White Paper on the Ethical*

Dimensions of Climate Change, THE PENNSYLVANIA STATE UNIVERSITY ROCK ETHICS INSTITUTE (2006).

ROBERT B. MCKINSTRY, JR., ADAM ROSE, & COREEN RIPP, *Incentive-Based Approaches to Greenhouse Gas Mitigation in Pennsylvania: Protection of the Environment and Promoting Fiscal Reform*, 14 WIDENER L. J. 205 (2004).

ROBERT B. MCKINSTRY, JR., *Local Solutions for Global Problems: The Debate over Causes and Effects of Climate Change and Emerging Mitigation Strategies for States, Localities and Private Parties*, 12 PENN ST. ENVTL. L. REV. 1 (2004).

ROBERT B. MCKINSTRY, JR., *Laboratories for Local Solutions for Global Problems: State, Local and Private Leadership in Developing Strategies to Mitigate the Causes and Effects of Climate Change*, 12 PENN ST. ENVTL. L. REV. 15 (2004).

ROBERT B. MCKINSTRY, JR., *Regulation of Non-Hazardous Waste Under RCRA*, Chapter 15, THE RCRA PRACTICE MANUAL, SECOND EDITION, ABA Section of N. R. & Energy & Env'tl Law, Theodore L. Garrett, ed., American Bar Association. Chicago, IL (2004).

ROBERT B. MCKINSTRY, JR., *Rights to Obtain Damages Under Pennsylvania Environmental Citizen Suit Provisions After Centolanza and Redland Soccer Club*, 28 E.L.R. NEWS & ANALYSIS 10653 (1998).

ROBERT B. MCKINSTRY, JR. & RICHARD POOLER, *Buying and Selling: Site Assessments, Acquisition and Divestiture Concerns*, PRINCIPLES OF ENVIRONMENTAL HEALTH AND SAFETY MANAGEMENT, eds. Gordon West, Ronald W. Michaud (1995).

ROBERT B. MCKINSTRY, JR., *The Role of State "Little Superfunds" in Allocation and Indemnity Actions Under the Comprehensive Environmental Response, Compensation and Liability Act*, 5 VILL. ENVT'L L.J. 83 (1994).

ROBERT B. MCKINSTRY, JR. & MARK STEVENS, *Regulation of Nonhazardous Waste Under RCRA*, RCRA PRACTICE MANUAL, ABA Section of N. R. & Energy & Env'tl Law, Theodore L. Garrett, ed. (1994).

ROBERT B. MCKINSTRY, JR., *Constraints Upon Development in Environmentally Sensitive Areas: Regulation of Wetlands, Streams, and Floodplains in Pennsylvania*, 2 VILL. ENVT'L L.J. 333 (1991).

ROBERT B. MCKINSTRY, JR. & WINIFRED PRENDERGAST, *Drafting a Mandatory Recycling Ordinance*, 30 BIOCYLE No. 6 at 78 (1989).

DAVID G. MANDELBAUM & ROBERT B. MCKINSTRY, JR., *Implications of Solid Waste Management Regulation for Coastal Resources*, PROC. AM. WATER RESOURCES ASS'N SYMP. ON COASTAL WATER RESOURCES 835 (1988).