

ENVIRONMENTAL LAW SECTION
EXECUTIVE COMMITTEE AGENDA
May 3, 2017

- Welcome
- Approval of Minutes from January Executive Committee Meeting (attached)
- Budget Report (M. Wieder) (Attached)
- Membership (L. Schnapf)
- House of Delegates Report (L. Shaw)
- Regulatory Comments
 - Title 12
 - SEQRA
- Spring Programs
 - Trump Effect Webinar
 - RCRA Update
- Upcoming 2017 Programs
 - Part 375 Regs (May 12)
 - Oil Spill Symposium (June 7)
 - Fall Meeting
 - Winter Meeting
- Task Forces
 - Task Force on the Article XIV report
 - Task Force of Future Federal Environmental Policy
- Newsletter/Social Media
 - Community Home Page
 - Social Media Committee
 - Newsletter Opt-out Initiative
- Committee Reports
 - Climate Change Reports (April 1st)
 - Diversity Committee Recommendations
- New Business
- Motion to Adjourn

New York State Bar Association
Environmental Law Section
SUMMARY of January 26, 2017 Business Meeting
and January 27, 2017 EXECUTIVE COMMITTEE MEETING



By: Howard Tollin, Secretary – 2/3/17

A. Recap of Business Meeting on 1/26/17:

- Howard thanked the Nominating Committee, comprised of himself, Gail S. Port, Phil Dixon, Barry Kogut and Janice Dean; and by unanimous consensus, the following were approved to start term as of June 1, 2017: Kevin Bernstein shall become Chair of the Environmental Law Section, Nicholas Ward-Willis is elected to the office of Secretary, and Marla E. Wieder and Howard Tollin succeed to the office of Vice-Chair and Treasurer, respectively. The following individuals were approved as Members-at-Large for a one (1) year term: Gail Suchman, Andrew J. Gershon, Katherine “Kit” Kennedy, Eileen D. Millett, and Lemuel Morris Srolovic; and the following were approved Members-at-large for a three (3) year term: Elizabeth Bennett, Susan E. Amron, Hayley Carlock, Daniel M. Richmond, and Seth Friedland.
- Lou Alexander, who chaired the Awards Committee, presented Awards: Dr. Ross Whaley received the Environmental Law Section Award to honor distinguished service in the protection of the environment; and Section Council Certificates were given to the three section members: Jerry Cavaluzzi for two decades of sponsoring the Environmental Insurance program and Co-Chairing the Committee; John Parker for sponsoring the Legislative Forum and, as Legislation Committee Co-Chair, providing updates on governmental policy developments; and Jillian Kasow for also Co-Chairing the Legislation Committee and sponsoring legislative-oriented programs including the Legislative Forum.
- Larry thanked our sponsors, announced new Committee Co-Chairs and announced the 10 Commandments of Environmental Law (posted in the Environmental Communities Discussion).

- B. 1/27/17 EC Meeting Attendees: Marla Wieder, Larry Schnapf, Lisa Bataille, Kevin Bernstein, Barry Kogut, Dan Ruzow, Nicholas Robinson, Linda Shaw, Katrina Kuh, Mackenzie Schoonmaker, Ruth Moore, Jon Brooks, Michael Zarin, Telisport Putsavage, Joan Leary Matthews, Walter Mugdan, Miriam Villani, Gail Port, Jan Kublick, Steven Russo, Andrew Gershon, Carl Howard, Frank Piccininni, Ragna Henrichs, Amy Kendall, Alan Knauf, Meaghan Colligan, Robert Kafin, Kevin Healy, Reed Super, Daniel Richmond, Adam Stolorow, Mary Lyndon, Eileen Millett, Scott Wyner, George Rodenhausen, David Freeman, Nick Ward-Willis, Michael Lesser, Sandra Rivera Howard Tollin, Ed McTiernan, Dan Krainin (Phone), Cheryl Vollweiler (Phone)

1. October 2016 Fall Executive Committee Minutes
 - a. Minutes from Fall Meeting unanimously approved
2. Budget Report
 - a. Total income in 2016 was \$74,552 against a \$79,500 budget, but only \$65,633 was incurred in expenses, which added to the Section Surplus.
3. By-Laws Amendments
 - a. Add Treasurer to Nominating Committee: The consensus was that this change be withdrawn as an unnecessary amendment. The rationale for the change is that continuity from prior year's discussions and historic knowledge on individuals under consideration is important, but does not need to come from the Treasurer.
 - b. Four Year Committee Term: Motion passed (4 opposed, 1 abstention) to set an initial term of four (4) years for each Committee Co-Chair, with the ability for the Section Chair to reappoint Co-Chairs for additional 4 year terms or a shorter term depending on circumstances. There are no term limits. This change will allow an evaluation of the effectiveness of Co-Chairs as well as affirmatively confirm the interest of the Co-Chair to continue in the role. 4 Year terms to officially begin on June 1, 2017.
 - c. Required Attendance for Committee Co-Chairs: Amendment (to attend at least 2 EC meetings a year) withdrawn as there is already a required attendance provision prohibiting non-participating in three consecutive EC meetings. However, more attention to enforcement of this rule was suggested rather than a By-Laws amendment.
 - d. Add "Energy" to Section Title: Motion passed (26-14) to revise Section By-Laws adding "Energy" to the Section name and rebrand section as "Environmental and Energy Law Section." The By-laws change will be submitted to the Executive Committee of NYSBA for its review and comment. Those opposed did not believe there were enough qualified energy lawyers in the section, that energy law involves rate making issues, and concerned about the need to have increased programming focus on energy law topics. The majority believed that this was an opportunity to affirmatively expand the Section's focus on an emerging field of law while marketing and attracting both younger and seasoned lawyers who either practice or want to learn about energy issues. The majority believes that energy issues in fact dovetail nicely with environmental issues such as alternative energy developments in solar and wind and their impact on global climate change.
 - e. Include "Young" Lawyers on Executive Committee: Meaghan Colligan conveyed that other sections have changed their By-Laws to allow some number of "Young" lawyers (practicing less than 10 years) and Law Students (with no voting rights) to affirmatively be part of a Section's Executive Committee, which makes a statement about being more welcoming to less experienced lawyers. After various tweaks and motions, a close to unanimous vote passed to add one (1) "Young" lawyer in practice less than 10 years, and one (1) Law Student (with no voting rights) to be part of the Executive Committee.
 - f. Other By-Laws Changes: Minor grammatical changes and broadening the scope of activities to be contemplated by the Committees (such as webinars) will be added to the By-Laws.
4. House of Delegates Update:
 - a. New proposed CLE requirement that one of the existing 24 credits be dedicated to satisfying a "diversity" credit requirement. Seven (7) sections put out a letter appearing to favor the proposal with various caveats, and one section (Commercial and Federal Litigation) opposed this new requirement. The Section Delegates Caucus voted to generally support the concept without a written document. Our Section did not take any position.

5. Article XIV Report:
 - a. The Section had previously unanimously approved the creation of a Task Force to study and report on the environmental issues of constitutional law appropriate for inclusion in any revision to the New York State Constitution. A motion was unanimously approved for having the following Task Force members draft and provide a written report for the Section EC to review by **9/1/17** and discontinue the Task Force after that time: Prof Katrina Kuh (Chair), Claudia Braymer, Meaghan Colligan, Timothy Cox, Michael Gerrard, Robert Glennon, Carl Howard, Alan Knauf, Jan Kublick, Mary Lyndon, Peter Lehner, Joan Leary Matthews, Peter Paine Jr., Nick Robinson, Daniel Ruzow, Thomas Ulasewicz, Thomas Warth, Philip Weinberg, and Neil Woodworth. In addition, several invited expert advisors will assist and be part of the Task Force. Lisa will confirm that the Task Force are paid members of the Section.
6. Diversity Committee/Minority Fellowship
 - a. Kevin Bernstein is evaluating options for continuing the Minority Fellowship Program which include The Bar Foundation, the Pathways Law School Program and outreach to minority bar associations. These activities are also being addressed by Joan Leary Matthews and John Greenthal as part of their Diversity goals for 2017.
 - b. The Diversity Committee intends to organize a couple of programs over the next two years which focuses on diversity in the practice of environmental law, environmental justice and the role of the minority legal community.
 - c. The Diversity Committee is also updating the Section's Diversity Plan and Guidelines for Selecting Speakers, which was last updated in 2011.
 - d. If the CLE one credit requirement passes (See HOD above), The Diversity Committee will assist with a program that meets the requirement.
 - e. We identified two potential new Co-Chairs for the EJ Committee, which will be discussed by the Cabinet members at the next meeting. If approved by the Cabinet, all Committees will have Co-Chairs except for Indoor Air being discontinued. EJ Chairs would work closely with Diversity Chairs.
7. Fee Waiver policy
 - a. By a unanimous vote, the Section's dues waiver policy has been changed. Any section member who makes \$75,000 or less per year can apply for a 50% waiver off registration fees for the January Annual Meeting and Fall Section Program. The waiver will be on a first-come, first-served basis up to the allocated amount in the Section Budget set for dues waivers.
8. 2017 Upcoming Programs
 - a. Impact of Trump Administration on NY Environmental Law (set for March 22 at 3pm)
 - b. RCRA Program (set for April 13)
 - c. Legislative Forum (targeting May dates)
 - d. Oil Symposium (targeting June)
 - e. Fall Meeting (Saratoga Springs Oct. 20-22)
 - f. Update on Hazardous Waste and Site Remediation (November)
 - g. Program for 30th EIA Anniversary Conference (2018)
9. Newsletter
 - a. Current NY Environmental Lawyer publication should be in February, and articles are being accepted for next issue in May.
 - b. A phone app is coming out where we can access Journal without going into NYSBA website

10. Committees

- a. Unanimous consensus to disband Air Quality Committee
- b. Every Committee has at least two confirmed Co-Chairs (except Environmental Justice, which is still under discussion).
- c. Val Washington, current President and Executive Director of New Partners for Community Revitalization (NPCR), has offered to oversee the EJ Committee. NPCR is going to dissolve and continuing some of the NPCR initiatives would dovetail with the EJ Committee. If approved, NPCR would also provide its members and prior sponsor lists. Val initially proposed a new committee called Urban issues, but that concept was rejected for a variety of reasons.
- d. Officer Liaisons have been working with Co-Chairs on Planning Agendas for Committees

11. Future of Federal Environmental Policy (FFEP)

- a. David Freeman, Gail Port and Kevin Healy proposed a new task force to study and report on changes during the new administration. Those three will serve as Co-Chairs of the Task Force and we have 27 section member volunteers who responded to Larry's Communities post

**ENVIRONMENTAL LAW SECTION
SUMMARY FOR THE YEAR
2016**

624

As of 12/31/16

	<u>Annual</u>	<u>Oil Spill Symposium</u>	<u>Building Green</u>	<u>Fall</u>	<u>Special Event Nov.</u>	<u>Subsidization</u>	<u>Other</u>	<u>Total</u>
Revenue								
<i>Dues</i>							29,725.00	29,725.00
Meetings	11,115.00	2,810.00	2,225.00	15,420.00	4,150.00		1,785.00	37,505.00
Sponsorship	3,900.00	2,700.00		500.00				7,100.00
<i>Newsletters</i>							660.00	660.00
<i>Other</i>							0.00	0.00
<i>Publications</i>							0.00	0.00
Total Revenue	15,015.00	5,510.00	2,225.00	15,920.00	4,150.00	0.00	32,170.00	74,990.00
Expense								
<i>Postage</i>							1,633.88	1,633.88
<i>Awards & Grants</i>							4,175.53	4,175.53
Advertising & Marketing								0.00
Outside Printing								0.00
<i>Diversity</i>							0.00	0.00
Campaigns & Surveys								0.00
Internet								
Gratuities				1,449.46				1,449.46
Meeting Room								0.00
Catering	15,871.15	1,297.96			782.34		3,045.56	20,997.01
Beverage	2,637.20			3,326.75				5,963.95
Speaker / Guest				1,679.73			840.99	2,520.72
Audio/Visual	2,720.52	1,512.00		2,632.60				6,865.12
Promotional								0.00
Ground Transportation								0.00
Activities & Entertainment				500.00				500.00
Non Employee Personnel								
<i>Executive Committee Meetings</i>							1,238.34	1,238.34
Committee Meetings								
<i>Officers Expense</i>							971.03	971.03
Misc. Meeting & Program Costs	550.00		99.80	625.00	2,560.65		2,350.33	6,185.78
<i>Section Subcommittee Meetings</i>							74.18	74.18
<i>Newsletters</i>							11,688.31	11,688.31
<i>Graphics</i>							1,671.45	1,671.45
Total Expense	21,778.87	2,809.96	99.80	10,213.54	3,342.99	0.00	27,689.60	65,934.76
Net Revenue	(6,763.87)	2,700.04	2,125.20	5,706.46	807.01	0.00	4,480.40	9,055.24

Bold, Italics = 2016 Reported as " Other "

NYSBA Section Profile Report for Environmental Law Section

Total Members: 898

	Count	Percent	Valid Percent
A) Gender			
F	258	28.73%	30.42%
M	590	65.70%	69.58%
X (no data)	50	5.57%	
	898	100.00%	100.00%
B) Practice Setting			
Government	8	0.89%	1.13%
Government - Federal	14	1.56%	1.97%
Government - Local	18	2.00%	2.54%
Government - State	31	3.45%	4.37%
In-House Counsel	48	5.35%	6.77%
Judiciary	3	0.33%	0.42%
Law School - Faculty	10	1.11%	1.41%
Law School - Student	2	0.22%	0.28%
Legal Aid	2	0.22%	0.28%
Non-Law Related	12	1.34%	1.69%
Non-Profit	18	2.00%	2.54%
Other	16	1.78%	2.26%
Part-Time Attorney	5	0.56%	0.71%
Private Practice	493	54.90%	69.53%
Public Interest	3	0.33%	0.42%
Retired	12	1.34%	1.69%
Trade/Professional Association	7	0.78%	0.99%
Unemployed	7	0.78%	0.99%
X (no data)	189	21.05%	
	898	100.00%	100.00%
C) Office Size			
Fifty to 99	80	8.91%	11.70%
One Hundred and greater	182	20.27%	26.61%
Six to Nine	50	5.57%	7.31%
Solo Practitioner	104	11.58%	15.20%
Ten to Nineteen	71	7.91%	10.38%
Twenty to 49	96	10.69%	14.04%
Two to Five	101	11.25%	14.77%
X (no data)	214	23.83%	
	898	100.00%	100.00%
D) Position			
Academic	13	1.45%	2.05%
Administrative Law Judge/Hearing Officer	3	0.33%	0.47%
Associate	90	10.02%	14.22%
Court Personnel	2	0.22%	0.32%

	Count	Percent	Valid Percent
Judge	4	0.45%	0.63%
Managing Partner	44	4.90%	6.95%
Of Counsel	38	4.23%	6.00%
Other	96	10.69%	15.17%
Partner	253	28.17%	39.97%
Senior Associate	17	1.89%	2.69%
Solo Practitioner	32	3.56%	5.06%
Staff Attorney	41	4.57%	6.48%
X (no data)	265	29.51%	
	898	100.00%	100.00%
E) Age			
24 and Under	14	1.56%	1.65%
25 to 35	123	13.70%	14.47%
36 to 45	114	12.69%	13.41%
46 to 55	162	18.04%	19.06%
56 to 65	250	27.84%	29.41%
66 and Over	187	20.82%	22.00%
X (no data)	48	5.35%	
	898	100.00%	100.00%
F) Race/Ethnic Group			
Asian/Pacific Islander	8	0.89%	1.43%
Black/African American	8	0.89%	1.43%
Decline to Answer	39	4.34%	6.99%
Hispanic	11	1.22%	1.97%
Multiple Race/Ethnic Group	1	0.11%	0.18%
Other	1	0.11%	0.18%
White/Caucasian	490	54.57%	87.81%
X (no data)	340	37.86%	
	898	100.00%	100.00%
G) Who Paid For Membership Dues			
Collectively by Firm and Member	23	2.56%	4.14%
Fully by Firm or School or Organization Member	299	33.30%	53.87%
No Dues Paid	228	25.39%	41.08%
X (no data)	5	0.56%	0.90%
	343	38.20%	
	898	100.00%	100.00%
H) Number of Years Admitted to Bar			
0 (Less than 1)	2	0.22%	0.22%
1 to 3	75	8.35%	8.35%
4 to 5	34	3.79%	3.79%
6 to 7	33	3.67%	3.67%

5/2/2017

	Count	Percent	Valid Percent
8 to 14	95	10.58%	10.58%
15 to 19	67	7.46%	7.46%
20+	535	59.58%	59.58%
No Admit Date	57	6.35%	6.35%
X (no data)	57	6.35%	6.35%
	955	106.35%	100.00%

	Count	Percent	Valid Percent
04	34	3.79%	3.79%
05	54	6.01%	6.01%
06	20	2.23%	2.23%
07	45	5.01%	5.01%
08	52	5.79%	5.79%
09	124	13.81%	13.81%
10	82	9.13%	9.13%
11	13	1.45%	1.45%
12	4	0.45%	0.45%
13	3	0.33%	0.33%
99	138	15.37%	15.37%
Unknown	1	0.11%	0.11%
	898	100.00%	100.00%

	Count	Percent	Valid Percent
84	84	9.35%	15.25%
458	458	51.00%	83.12%
347	347	38.64%	62.83%
9	9	1.00%	1.63%
	898	100.00%	100.00%

	Count	Percent	Valid Percent
56	56	6.24%	13.90%
339	339	37.75%	84.12%
8	8	0.89%	1.99%
495	495	55.12%	100.00%
	898	100.00%	100.00%

	Count	Percent	Valid Percent
24	24	2.67%	1.01%
80	80	8.91%	3.36%
58	58	6.46%	2.43%
45	45	5.01%	1.89%
34	34	3.79%	1.43%
54	54	6.01%	2.27%
44	44	4.90%	1.85%
33	33	3.67%	1.38%
898	898	100.00%	37.67%
32	32	3.56%	1.34%
33	33	3.67%	1.38%
47	47	5.23%	1.97%
35	35	3.90%	1.47%
37	37	4.12%	1.55%
56	56	6.24%	2.35%
28	28	3.12%	1.17%
47	47	5.23%	1.97%
216	216	24.05%	9.06%
181	181	20.16%	7.59%
84	84	9.35%	3.52%
32	32	3.56%	1.34%
62	62	6.90%	2.60%
51	51	5.68%	2.14%
49	49	5.46%	2.06%
124	124	13.81%	5.20%
	2,384	265.48%	100.00%

	Count	Percent	Valid Percent
165	165	18.37%	18.37%
18	18	2.00%	2.00%
145	145	16.15%	16.15%
	328	36.52%	36.52%

	Count	Percent	Valid Percent
1	1	0.11%	100.00%
1	1	0.11%	100.00%

	Count	Percent	Valid Percent
898	898	100.00%	100.00%
1	1	0.11%	100.00%
1	1	0.11%	100.00%

N) Sections
 Antitrust Law Section
 Business Law Section
 Commercial & Federal Litigation Section
 Corporate Counsel Section
 Criminal Justice Section
 Dispute Resolution Section
 Elder Law and Special Needs Section
 Entertainment, Arts and Sports Law Section
 Environmental Law Section
 Family Law Section
 Food, Drug & Cosmetic Law Section
 General Practice Section
 Health Law Section
 Intellectual Property Law Section
 International Section
 Judicial (Courts of Record) Section
 Labor and Employment Law Section
 Local and State Government Law Section
 Real Property Law Section
 Senior Lawyers Section
 Tax Section
 Torts, Insurance & Compensation Law Section
 Trial Lawyers Section
 Trusts and Estates Law Section
 Young Lawyers Section

O) Member/Non-Member
 Member

P) State, City (Top 25)
 *Non-US

L) New Section Members (This Month)
 k) OOS Newly Admitted

M) Judicial District
 01
 02
 03

New Members of the Environmental Law Section for April 2017

<u>Name</u>	<u>Phone</u>	<u>Admit Date</u>	<u>Email</u>
<u>Judicial District: 01</u>			
Benjamin Julian Cole, Esq. New York State Office of the Attorney General 120 Broadway 26th Floor New York, NY 10271-0002 <i>Dues Billing Category: NY Admitted 2-3 Years</i>	(800) 771-7755	01/01/2015	
Vijaya Rangan Palaniswamy, Esq. Linklaters LLP 1345 Avenue Of The Americas New York, NY 10105 <i>Dues Billing Category: Undetermined</i>	(212) 903-9005	08/25/2004	vijaya.palaniswamy@linklaters.com
<u>Judicial District: 02</u>			
Daron Ravenborg 670 Halsey Street Apt. 2F Brooklyn, NY 11233 <i>Dues Billing Category: Law Student</i>			dravenborg@law.fordham.edu
<u>Judicial District: 03</u>			
Edward Hyde Clarke, Esq. 39 Van Buren St Albany, NY 12206-1222 <i>Dues Billing Category: NY Admitted 2-3 Years</i>	(518) 438-9907	01/22/2015	hclarke@youngsommer.com
Suzanne Foote 908 3rd Avenue Apt. 1 Troy, NY 12182 <i>Dues Billing Category: Law Student</i>	(518) 791-8843		sfoote@albanylaw.edu
<u>Judicial District: 08</u>			
Julia H. Purdy 2718 Vollentine Rd Randolph, NY 14772 <i>Dues Billing Category: NY Newly Admitted</i>	(716) 359-6366	01/11/2017	julia.helen.purdy@gmail.com
<u>Judicial District: 09</u>			
Mary E. Desmond, Esq. N.w. Bernstein & Associates LLC 800 Westchester Avenue Suite N319 Rye Brook, NY 10573-1364 <i>Dues Billing Category: NY Admitted 8 Plus Years</i>	(914) 358-3500	10/30/2000	mdesmond@nwblc.com
Todd D. Ommen 72 Ogden Pl Dobbs Ferry, NY 10522 <i>Dues Billing Category: Undetermined</i>	(914) 422-4343	01/01/2000	todd.ommen@oag.state.ny.us

New Members of the Environmental Law Section for April 2017

<u>Name</u>	<u>Phone</u>	<u>Admit Date</u>	<u>Email</u>
<u>Judicial District: 10</u>			
Brian Raymond Duggan, Esq. 14 Cottage Court Huntington Station, NY 11746 <i>Dues Billing Category: NY Admitted 8 Plus Years</i>	(631) 737-9170	04/01/2006	bduggan@csflc.com
Jenna Lyn Fierstein, Esq. 16 Montrose Dr. Commack, NY 11725 <i>Dues Billing Category: NY Newly Admitted</i>		04/27/2016	fierstein.j@law.wlu.edu
<u>Judicial District: 99</u>			
Jeffrey B. Durocher, Esq. 2748 Ne Weidler Street Portland, OR 97232 <i>Dues Billing Category: Undetermined</i>	(503) 796-7781	01/01/2000	jeffrey.durocher@iberdrolaren.com
Matthew K. Edling, Esq. Sher Edling Llp 425 California St Ste 810 San Francisco, CA 94104-2110 <i>Dues Billing Category: OOS Admitted 2-3 Years</i>	(628) 231-2500	01/01/2016	
Kathleen Mary Kline, Esq. Greenberg Traurig, Llp 2700 Two Commerce Sq. 2001 Market St. Philadelphia, PA 19103 <i>Dues Billing Category: OOS Admitted 2-3 Years</i>	(215) 988-7841	10/01/2015	klineka@gtlaw.com

Total New Members: 13

FULL_NAME	COMPANY	CITY	STATE	ZIP	COUNTR	JD	WORK_PHONE	EMAIL	NYSBA_STATUS
Vincent Altieri, Esq.	Rockland County Drainage Agency	New City	NY	10956		09		altieriv@co.rockland.ny.us	SN
Lawrence J. Andolina, Esq.		Rochester	NY	14618		07			SN
Alfred M. Anthony, Esq.	Wilentz Goldman & Spitzer PA	Woodbridge	NJ	07095		99	(732) 855-6097	Aanthony@wilentz.com	SN
Joshua Asherian		Woodbury	NY	11797		10		joshuaasherian@gmail.com	SN
Robert S. Attardo, Esq.		Fairport	NY	14450		07	(585) 770-2555	rattardo@labellapc.com	SN
Seong Ryeol Bae Esq.	Chung Jin Law Group	Seoul, 03151			KOREA	99	+82-2-735-5374	seong@lawcj.net	SN
John S. Barnett, Esq.	Connell Foley LLP	Roseland	NJ	07068-3736		99		sbarnett@connellfoley.com	SN
Robert A. Benrubi, Esq.		Northport	NY	11768		10	(516) 672-3179	rbenrubi@ajscap.com	SN
Paola Bettelli, Esq.		Ridgefield Park	NJ	07660		99		pbettelli@gmail.com	SN
Andrew W. Bilinski, Esq.		White Plains	NY	10606-3609		09	(914) 684-0333	awbilinski@verizon.net	SN
Justin Birzon, Esq.		Albany	NY	12208-1012		03		justinbirzon@gmail.com	SN
Mark William Blanchard, Esq.	Branchard & Wilson LLP	White Plains	NY	10601		09	(914) 654-2125	mblanchard@blanchardwilson.com	SN
Rachel Bleshman, Esq.		Lincoln	DE	19960		99	(302) 674-8500 x316	rbleshman@declasi.org	A
Donna Boland, Esq.		Roswell	GA	30075-4774		99	(201) 573-6893	donnaboland@aol.com	SN
Claire E. Boland-Arellano, Esq.		Garden City	NY	11530		10	(516) 724-0583	claire.arellano@chsli.org	SN
Caryn Irene Bower, Esq.		Albany	NY	12210		03	(518) 402-9186	caryn.bower@gmail.com	SN
George F. Bradlau, Esq.	George F. Bradlau PLLC	White Plains	NY	10601		09		gbradlau@gfbalaw.com	SN
Jillian Bray		Fair Lawn	NJ	07410		99	(201) 281-1129	jillian.bray@law.cardozo.yu.edu	A
David J. Brooman, Esq.	High Swartz LLP	Norristown	PA	19404		99	(610) 275-0700	dbrooman@highswartz.com	SN
Paul John Brown, III	Emmet Marvin & Martin	New York	NY	10271		01		pbrown@emmetmarvin.com	SN
Matthew Buttram		Brooklyn	NY	11238		02		matthew.buttram@law.nyls.edu	A
Prof. William Wade Buzbee	Georgetown Law	Washington	DC	20001		99	(202) 661-6536	wwb11@law.georgetown.edu	SN
Jaclyn Calcagno, Esq.		New York	NY	10065		01		jaclyncalcagno@gmail.com	SN
Inga Carolyn Caldwell, Esq.		White Plains	NY	10603-3734		09		inga.caldwell@gmail.com	SN
Samuel Joseph Capasso, III, Esq.		Astoria	NY	11105-3607		11		samcapasso@gmail.com	SN
Kathleen Coggins		Holbrook	NY	11741		10		kathleen-coggins@tourlaw.edu	A
Renata El Hadi Conte		New York	NY	10128		01		rconte5@fordham.edu	A
John D'Agostino, Esq.	D'Agostino Levine Landesman & Ledermann, LLP	New York	NY	10001		01	(212) 564-9800	jdagostino@dagll.com	SN
Steven M. Dalton, Esq.	Giordano Halleran & Ciesla PC	Red Bank	NJ	07701		99	(732) 741-3900	sdalton@ghclaw.com	SN
Nicholas J. Damadeo, Esq.	Nicholas J. Damadeo, PC	Huntington	NY	11743		10	(631) 271-7400	nick@damadeolaw.com	SN
Clifford Lee Davis, Esq.	Clifford L. Davis	White Plains	NY	10601-5312		09	(914) 761-1003	cdavis@clifforddavis.com	SN
Robert S. Davis, Esq.		Croton On Hudson	NY	10520		09			SN
Christina D'cruz		Brooklyn	NY	11215		02		christina.dacruz@brooklaw.edu	A
Aldo De Cresci, III	Gasparini, De Cresci Nogueira De Lima Advogados	Sao Paulo	SP	01310-923	BRAZIL	99	+55 11 2171-1303	acn@gcnlaw.com.br	SN
Daniel Kleinsmith Delbridge, Esq.		New Philadelphia	OH	44663		99		daniel.delbridge.esq@gmail.com	SN
David Devaprasad, Esq.	Devaprasad PLLC	Albany	NY	12210		03	(518) 496-9238	sdd@devalaw.com	SN
Karen L. Doyle		Cold Spring	NY	10516		09	(845) 565-1100	karendoylelaw@gmail.com	SN
Irina Dularidze, Esq.		Forest Hills	NY	11375		11		irinaqc@gmail.com	SN
Wesley Dyer		West Harrison	NY	10604		09		ddyer@law.pace.edu	A

Noreen M. Lavan, Esq.	Huntington	NY	11743	10	(212) 455-3506	nlavan@stblaw.com	SN
Katherine Rachel Leisch	New York	NY	10019-3134	01		kleisch@law.pace.edu	SN
Jordan Anthony Lesser, Esq.	Albany	NY	12248-0001	03	(518) 455-5444	lesserj@assembly.state.ny.us	SN
Benjamin S. Lowenthal, Esq.	New York	NY	10022	01	(646) 663-1860	lowenthalben@gmail.com	SN
Linda Mack, Esq.	Lawrence Township	NJ	08648-2311	99	(609) 896-3600	lmack@foxrothschild.com	SN
Gatha Lafaye Manns, Esq.	Washington	DC	20008	99	(202) 567-8120	glimanns@law.gwu.edu	SN
Marco Marzocchi, Esq.	Syracuse	NY	13214	05	(315) 445-2424	mmarzocchi@widewaters.com	SN
Molly A. Masterton Rothschild	New York	NY	10065	01	(212) 727-4451	mollymasterton@gmail.com	SN
Mark Matteini	Garden City	NY	11530	10		mgm2103@gmail.com	A
Kieran McCarthy	Hampton Bays	NY	11946	10		kmccar16@gmail.com	SN
Devin McDougall	New York	NY	10022	01	(212) 421-2150	dmcDougall@sprlaw.com	SN
Paul McKinney	Farmingdale	NY	11735	10		pmckinney2@gmail.com	A
Robert S. McLaughlin, Esq.	Syracuse	NY	13202	05	(315) 218-8179	rmclaughlin@bsk.com	SN
Robert Miles	Merrick	NY	11566	10		rmiles2@pride.hofstra.edu	A
Steven R. Miller, Esq.	Arlington	VA	22202-3249	99	(703) 415-0684	smiller173@aol.com	SN
Stephen Minardi	Albany	NY	12208	03		sminardi23@gmail.com	A
Lora Minicucci, Esq.	Brooklyn	NY	11229-3161	02		lm11j@my.fsu.edu	SN
Thomas D. Myers, Esq.	West Yarmouth	MA	02673	99	(203) 863-8208	kellyndubuka@outlook.com	SN
Dr. Kelly K. Ndubuka, Ph.D.	Brooklyn	NY	11225	02	(646) 744-6295	jamie.newell@bt.com	SN
Jamie Paul Newell, Esq.	Dallas	TX	75231	99	(703) 626-6555	jnolon2@law.pace.edu	SN
Jennie C. Nolon, Esq.	White Plains	NY	10603-3710	09	(914) 422-4353		SN
Alexandra Kate O'donohue, Esq.	New York	NY	10036-8705	01	(212) 696-0100		SN
Rosemary Spring Ortiona, Esq.	Mineola	NY	11501	10		RSOrtiona@gmail.com	SN
Dannielle Cole O'Toole, Esq.	Poughkeepsie	NY	12603	09	(845) 901-9131	dcootoole@buffalo.edu	SN
Josiah D. Pinto	Syracuse	NY	13224	05		jd Pinto@syr.edu	A
William F. Plunkett, Jr., Esq.	New York	NY	10020-1089	01	(212) 922-1800	william.plunkett@dentons.com	SN
Sameer Ponskhe, Esq.	White Plains	NY	10601	09		ponkshe.sameer@gmail.com	SN
Erica Levine Powers, Esq.	Albany	NY	12203	03	(845) 926-2459	epowers@albany.edu	SN
Sara Frances Puppato, Esq.	Rochester	NY	14604	07	(585) 231-1393	spuppato@hseilaw.com	SN
Richard Stephen Ranieri, Esq.	Warren	NJ	07059-2739	99	(917) 368-8102	rranieri@wglaw.com	SN
Andrew Redd	Brooklyn	NY	11206	02		andrewmichaelredd@gmail.com	A
Maria Sylvia De Toledo Ridolfo, Esq.	Sao Paulo				BRAZIL	mst@mnadv.com.br	SN
Irina Rodina	New Haven	CT	06511	99		iorodina1@cougars.ccis.edu	SN
Nancy Rogowski	Pine Island	NY	10969	09		nancy_rogowski@hotmail.com	A
Gerard Romski, Esq.	Mount Kisco	NY	10549	09	(212) 684-0300	gerry@riklawfirm.com	SN
Lizzie Rubenstein	Presto	PA	15142-1533	99		lrubenstein2@law.pace.edu	A
George A. Rusk, Esq.	Lancaster	NY	14086-1316	08	(716) 684-8060	grusk@ene.com	SN
Raven Rutledge	ventura	CA	93004	99		ravenjanell70@gmail.com	A
Kevin G. Ryan, Esq.	New Rochelle	NY	10804-3415	09	(914) 833-8378	kgr@ryanlawgroupplc.com	SN
Timothy M. Sardone	Fairport	NY	14450	07		tmsardon@buffalo.edu	A



Knauf Shaw L
L
P

ATTORNEYS AT LAW

TO: Environmental Committee

FROM: Linda Shaw, NYSBA Delegate

DATE: March 31, 2017

RE: House of Delegates Caucus Meeting

MEMORANDUM

3-3:30 - The meeting commenced with a discussion asking if any of the Committees are planning to present letters to the President about the new budget. I spoke up and said that the Environmental Committee is in the process of preparing a letter and sending it. An offer was made to help us get approval of the letter through quickly. The Chair then went through a discussion about how we should all use the Caucus for any help to get things approved by the “Big Bar”.

3:40-4:15 – RE Section put together a brochure about what they do to get new members. It will be discussed at tomorrow’s delegates meeting. The Chair explained that the intent is not to be in competition with each other, but we should share our successful ideas. We need to “talk up”, especially for small firm, the Bar’s access to cheaper insurance for example. Another idea is to call new members by splitting up the numbers. The idea of provided some one year free membership cold also be offered by Committee using its own budget but then the Committee needs to commit to following up with those member before the end of the year to officially join. One section did a survey to ask why they left the Bar. Problem raised – The Committees do not know if a person has dropped the Big Bar.

4:15- – Committee Reports INAUDIBLE PERSON

4:30 - Law Hub is a resource that is not being utilized as much as possible. However, we can ask for a person to come to a Committee meeting to explain this resource.

4:35 – Staff Update – New staff is still not all hired. Lawyer referral lists are being developed but staff shortages are having an impact.

4:40 – Finance Committee - Section Surpluses – We need to think about any surplus. One free CLE for members is a good way to keep members or offer to ones who have left. The Finance Committee has helped “keep track” of this issue and is going to be bothering the Committees that have surpluses.

4:50 – CLE Committee – The Committee recommends recording CLEs because the Bar is finding that many members like to see a CLE on their own time at night in their PJs. Also Lisa B. said that webinars are doing very well. 1200 members have participated to date.

ADJOURNMENT AT 5

NYSBA HOD (HOUSE OF DELEGATES) - 9:30AM, 4/1/17

2. **Minutes** - approved by consent

3. **Treasurer's report** (Scott Karson)- The audit committee will meet later in April, so the final 2016 report on 2016 will be provided this summer in Cooperstown. Compared to 2016, revenue is down c. \$126K and expenses up c. \$732K, for a net deficit YTD of c. \$859K. While those differences are significant, note that CLE revenue (2d largest source) is the same as last year. Increased competition for CLE has contributed to keeping that revenue flat. Membership, the largest source of revenue, is also flat from last year, which is of concern. However, dues revenue fluctuates throughout the year. Nonetheless, the goal is to get it on an upward trend, and Membership is working on it.

Expenses - mitigating factors YTD- current period YTD includes an extra payroll compared to the same period YTD last year, and those expenses should even out moving forward. Also, different timing for payment to committees, as their hotel bills were paid sooner this year.

Committees - expense reporting tries to allocate expenses for staff associated with those committees/committee groupings - some committees raise revenue, but many don't.

In response to question, Mr. Karson conceded that the current condition is unsustainable. We need to look at long-term responses and increased attention to expenses, and opportunities to look for increased revenue through membership, CLE, and non-dues revenue.

4. **Election of nominating committee and state bar delegates to ABA** - approved

5. **Membership challenge report** - presented by Michelle Wildegrube (Tom Maroney not here due to car accident on Wednesday) - as of Wednesday, the leading 4 committees are corporate counsel, labor/employment, criminal justice, and antitrust. As young lawyers are auto-enrolled, they're not included in the list. As each committee is posting their best practices, we were encouraged to check their pages for ideas, and to **bring in everyone you meet in the course of practice, and welcome them in!**

Sample efforts:

- having a booklet describing the section, how to get involved, etc.
- young lawyer/law student outreach: Coffee talk, trial academy by litigation, career introduction/networking, and engage students in annual meeting.
- section outreach and follow-up at CLE events.
- destination meetings - give local attorneys a discount/no-cost day passes to see what's going on.
- encourage sustaining members
- NYSBA road show - going to every county, working with county bar associations.

At the NYSBA lever, staff is paying attention to the membership cycle by mail and email follow-up for non-renewal. Staff provides for a grace period, but dues must be paid by April in order not to be dropped. At that point, staff re-contact former members to encourage them to sign up again.

In response to question, noted that they're looking into auto-renewal (currently do it for those on quarterly plan, but not yet for annual billings).

6. **President's report** (Ms. Gutekunst)- two months are left in her term. Her primary foci have been, and continue to be, on membership, diversity, legislative priorities, and domestic violence. However, more recent issues have arisen as additional priorities -

- **State legislative issues** - proposed increased license fee (lobbied against, rallied membership, and coordinated with other bar associations in the state). If that issue not decided weekend of HOD meeting, NYSBA will continue to fight. Their primary objection is to taxing lawyers to fund what is really a state constitutional obligation to provide for indigent defense. Additional legislative priorities are on raise the age and funding for judiciary.

- **Presidential immigration order** - NYSBA objected to the President's statements undermining the independence of the judiciary, and commended lawyers for stepping up to defend those affected by order. NYSBA is committed to ensure the protection of legal rights of immigrants, and has developed a pro bono immigration project to supplement the resources of other organizations, and to increase capacity through lawyer training to increase knowledge of immigration law. Mechanisms for accomplishing the former include the creation of an online portal to connect pro bono volunteers, providers, etc. (building off of legal.io.), and for accomplishing the latter include the establishment of a one-year pro bono immigration fellowship to provide one FTE to support the Associations work on immigrant issues. Everyone is encouraged to get involved - it's not all immigration hearings. A session is scheduled for April 12 session at the Law Center. NYSBA also passed a resolution to ensure refugees are appropriately assessed, without regard to national origin/religion.

- **Federal legislative issues** - in addition to standard business

- a recent budget proposal which de-funded the Legal Services Corporation
- a renewed call to adequately fund and reverse cuts (NY gets a lot of that money)
- statements rejecting the Lawsuit Abuse Reduction Act (LARA), on the grounds that tort issues are state prerogatives.

Ms. Gutekunst emphasized our responsibility to be guardians for the rule of law, noting that requires vigilance and the ability to respond quickly, especially given the current environment. Speaking out is crucial. In looking back over the course of events, she gave kudos to staff, and to the state's local and specialty bars.

As to other ongoing issues (additional information is available in the written president's report):

- **access to justice** - free legal answers is working well, but they need more volunteers.
- **referral and information service (Legal.io)** - encouraged more attorneys to participate
- **FreeLegalAnswers.org** - a site which allows the public to pose questions to volunteer attorneys. Training and promotion will occur throughout 2017. Encouraging participation in this service, as well.
- **domestic violence initiative** - working on a joint initiative with the Women's Bar Association - will be doing trainings, developing pro bono programs, and reviewing/recommending positions on legislation.
- **membership** is CRUCIAL - in order to ensure continued vibrancy of NYSBA, must remain focused on membership. NYSBA will continue to explore additional non-dues revenue and technology-based efforts to provide additional value to members, and work to engage law students so they will continue as paying members.
- **diversity/inclusion** - HOD resolution on diversity and inclusion; will be doing info sessions/meetings; adding diversity coordinator for the NYSBA. Will be adding portrait of Judge Kaye to the Bar Center building.
- **Constitutional convention study group** - thanked Hank Greenberg for his efforts
- **Environmental section** - noted updated climate change report from the Environmental Section, citing it as an example of the value of committees in providing information to the NSYBA
- the **Task Force on Family Courts** is now the Committee on Families and the Law
- announced the prior approval of the creation of the Committee on Technology in the Legal Profession (to address issues such as artificial intelligence and its impact on the profession, the rise of online legal "self-help" services and their implications, the responsible use of technology to "close the gap" in the provision of legal services, etc.). Advisory committees are being formed. Those with any interest in participating should contact the NYSBA.

As Ms. Gutekunst contemplates the end of her term, she thanked incoming president Sharon Gerstman, the executive committee, HOD, NYSBA staff, and numerous others for their dedication and assistance, without whom the NYSBA could not function and prosper.

Responding to a query noting that not all those who would be interested in providing pro bono have malpractice insurance, Ms. Gutekunst stated that the NYSBA would look into that issue.

7. **Special prosecutors/executive** - There was a short presentation addressing authority and practice regarding federal special prosecutors, and recent issues surrounding state oversight of local prosecutors.

With regard to legal authority for, and practices related to the appointment and use of federal special prosecutors, it was noted that there has been no federal statute for it since 1999. The idea dates back to Watergate, when the Democratic Senate negotiated a charter for a special prosecutor, and provided

for the appointment of Archibald Cox as part of the deal to confirm Elliot Richardson as Attorney General. Given expired statute, it's now up to AG as to whether special prosecutor would be appointed. (check YouTube for video of Archibald Cox's press conference in response to Nixon's imposed "compromise" to provide transcripts rather than tapes). Often, the debate is less over qualifications and integrity of the individual proposed, and more over whether the overall circumstances would lend to public acceptance of the final result.

State DA oversight - a representative of the NYOAG stated that case law indicates that the Governor has the authority to appoint special prosecutor in a particular case. The basis for providing for a class of cases is the precedent of the Knapp Commission under Rockefeller. The current debate involves assertion of the authority for AG review of local DA actions regarding certain incidents regarding local police. That issue is raised by current litigation involving the AG and the Rensselaer County DA, which was proceeded by that DA's very public objection to the Governor's order when it was promulgated. Relations with other local DAs have generally been collegial in dealing with cases under the order.

8. Report on Domestic Violence Initiative

- goals - to advocate for meaningful legislation, improve practice with training and education, and fill gaps through pro bono

- legislation - A5921 (and two others - slides went by too quickly)

- training

 - outreach to NYSBA sections and Committees

 - live programs

 - core DV trainings recorded and available online

 - free access to CLE programs

 - in process - speaker's bureau and additional live trainings

- pro bono -

 - statewide survey to bars, legal services providers, domestic violence programs

 - examine existing civil legal and pro bono services

 - in process: - free CLE in exchange for volunteer service

 - creation and maintenance of pro bono volunteer list

 - multi-disciplinary "mentor panel

 - co-sponsoring PB legal clinic (model based on ADK Women's Bar Association project)

9. Environmental and Energy Law Section Climate Change Report - update - The report, updated at Ms. Gutkunst's request, was presented by Section Chair Larry Schnapf. As Section members are, or should be, familiar with the report, this summary will not describe Mr. Schnapf's remarks in detail. That said,

he noted that there are two reports: a longer version, and a shorter version focusing on what NYS can do moving forward. Those reports are available on the NYSBA reports page, through which comments on the report may be made. (personal note: I didn't have much luck easily finding it there. In any event, the report is also available more directly through the Section's webpage). Comments are encouraged, with the goal of enabling the NYSBA to adopt the report in June. It is only available for internal NYSBA consumption until that time.

Mr. Schnapf summarized the bullet points in the report, noting that, in short, the good news is that the states will be continuing to move forward through renewable energy portfolio's, etc. Other points noted relevant to the report:

- PSC recently required 50% of the state's energy supply to come from renewables by 2030; interim goal of 30%, now at 23%.
- There is a short term problem with lowering prices for carbon; the recommendation is to increase price to maintain incentive for reductions.
- Most greenhouse gases in NYS come from the built environment, rendering appliance efficiency important here. To the extent federal standards are rolled back, the recommendation is to have state step in and fill the new gap, including establishment of a state energy star program if federal program is eliminated.
- Resiliency standards exist statewide as a sort of reverse SEQRA analysis, requiring consideration of the climate impact on the project (v. the project's impact on the environment).
- Recommendation to incorporate energy efficiency in affordable housing projects
- Not all recommendations will require legislation

Mr. Schnapf also noted that existence of the Section's Task force on the future of environmental law. States can help blunt backward movement.

Following Mr. Schnapf's remarks, an audience member commented to emphasize the role of bar associations in educating the public and articulating positions to the legislature, as well as educating the public on the role of law, the need for regulation, and the need to acknowledge the importance of the regulators.

10. NY Bar Foundation - Mr. Gross acknowledged the receipt of a \$1 million gift to support up to 40 law students pursuing public service careers. A check was also presented to an organization working to provide public defense to veterans.

Mr. Gross noted the commencement of joint initiatives between the Foundation and NYSBA to provide pro bono assistance in immigration matters through the Pro Bono Access to Justice Fund. Donations to the fund, which can also be made through the Foundation website, are encouraged.

11. Report of Executive Director - Ms. Pamela M. McDevitt, the new NYSBA Executive Director was introduced. She came here from the ABA, and had previously worked at the NYSBA as its director of Law Practice Management. She emphasized a strong commitment to welcoming input, and is initially focusing on ways of providing member support for career lifespan issues and evaluating opportunities for additional non-dues revenue.

12. Administrative items -

- approval of local bar delegates - approved

- filed roster of House delegates - approved

- closed meeting of Committee on Leadership Development to follow HOD

- This was Sharon Stem Gerstman's last HOD as chair. She offered thanks to many, and recognized the retiring members of the executive committee and the HOD

- Michael Miller, who will succeed Ms. Gerstman as HOD chair, was welcomed to his new role with the passing of the gavel.

Adjourned 12:01pm

Respectfully submitted,

David W. Quist

Alternate Liaison

DRAFT

**Comments on the New York State Department of Environmental Conservation
Proposed Amendments to 6 NYCRR Part 617 SEQRA Implementing Regulations**

ENVIRONMENTAL & ENERGY LAW SECTION

The New York State Environmental Quality Review Act, New York Environmental Conservation Law Sections 8-0101 et seq. (“SEQRA”), mandates that all state and local agencies incorporate a review of the environmental impacts of their decisions to undertake, fund or approve their actions. ECL Section 8-0113 directed the Commissioner of the Department of Environmental Conservation (“DEC”) to establish, by regulation, procedures to guide state and local agencies in their implementation of SEQRA. DEC’s regulations, which are codified in Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”) were initially promulgated in 1976 and have been amended several times in the forty years since then, most notably in 1978, 1987 and 1995¹.

On January 20, 2017, after a lengthy internal review process and with input for a large variety of stakeholders, DEC proposed a new set of regulatory amendments, designed to streamline SEQRA review. The Environmental & Energy Law Section of the New York State Bar Association (the “Section”) is pleased to have the opportunity to comment on the proposed amendments to the SEQRA implementing regulations. The following comments were prepared by the Section’s Environmental Impact Assessment Committee and have been approved by the Section’s Executive Committee.

DEC is certainly to be commended for seeking to streamline the SEQRA process without overly narrowing the scope of environmental review where such review is necessary and desired. The process has become cumbersome, time consuming and expensive. Each SEQRA practitioner has his or her “horror story” of the Sisyphean task of completing the SEQRA aspects of obtaining approvals for project-sponsored actions. Expanding the Type II list, particularly for smaller projects, will go a long way in eliminating these delays. Adding certain sustainability and infill projects to the Type II list will likewise expedite their approval and implementation throughout the state.

Moreover, the regulations’ attempt to make scoping a more meaningful process and tying the final scope and the concept of what is complete and adequate for public review will hopefully encourage and allow for more targeted EISs, eliminating the need to waste time and resources providing analyses of issues that are not necessary to a fulsome environmental review of an action.

DEC should also be commended for the significant outreach to all SEQRA stakeholders – environmental groups, the development community and state and local agencies – that

¹ Draft Generic Environmental Impact Statement on the Proposed Amendments to the State Environmental Quality Review Act (SEQRA) Regulations, January 20, 2017 (“DGEIS”) at page i.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

DRAFT

went into the creation of these proposals. DEC must walk a fine line between streamlining the process (certainly a goal of the development community) while at the same time avoiding the dilution of SEQRA's mandate to incorporate environmental consideration into agencies' decision-making processes.

The comments below are arranged in sequential order by section of the proposed regulations, followed by proposals for further substantive amendments that were not covered by the proposed regulations. The proposals for further substantive amendments are followed by a minority opinion expressing the view that the proposed SEQRA regulations cannot promote sustainable development or renewable energy as a policy goal absent specific legislative authority, or without a showing that all proposed Type II actions have been categorically determined not to have a significant effect on the environment.

Definitions

§ 617.2(af)

The proposed definition of "previously disturbed" is too narrow and contains undefined terms. The proposed definition is currently worded as follows:

"Previously disturbed" means a parcel of land in a municipal center that was occupied by a principal building used for residential or commercial purposes where the building has been abandoned or demolished.

"Principal building" is an undefined term. It is unclear what this term means or what purpose it serves. We recommend eliminating the term. It is also unclear why it is important that the parcel of land have been used for "residential or commercial purposes" as opposed to industrial, governmental, or other purposes other than as parkland. Some examples of previously disturbed land that would be excluded from this definition include parking lots, churches, and manufacturing facilities, all of which are commonly found in municipal centers and may have been abandoned or demolished.

General Rules

§ 617.3(a)

Referenced section numbers in amended version are numbered incorrectly. Rather than § 617.5(c)(27), (30), and (37), the corresponding subsection numbers should be § 617.5(c)(29), (32), and (39).

Type I List

§ 617.4(b)(6)(iii)-(iv)

DRAFT

In the newly proposed subsections governing Type I thresholds for parking, there is an overlap in § 617.4(b)(6)(iii) and (iv) that needs to be corrected. § 617.4(b)(6)(iii) applies to municipalities with populations of 150,000 persons or less, and § 617.4(b)(6)(iv) applies to municipalities with populations of 150,000 persons or more. Municipalities with exactly 150,000 persons are covered by both (iii) and (iv).

§ 617.4(b)(9)

We support the proposal to raise the Type I threshold for Unlisted actions that occur in or contiguous to sites listed on the national or State Register of Historic Place to include only Unlisted actions that exceed 25 percent of other Type I thresholds, and support the proposal to include sites that have been determined to be eligible for listing in the State Register of Historic Places as part of this Type I threshold.

Type II List

§ 617.5(c)(15)-(16)

The addition of solar project siting, while conceptually a positive addition to the Type II list, should not include urban brownfield sites in the Brownfield Cleanup Program. Part of the goal of the BCP is to promote urban infill. Solar installations may not be appropriate in all areas, may be counter to urban redevelopment goals, and may have potential impacts on neighborhood character.

We also recommend placing a limit on the acreage of solar installations that can be exempted as Type II actions, rather than relying strictly on a five megawatt limit. Solar energy projects involving the physical alteration of 10 acres or more should not be exempted from review. The 10-acre threshold is consistent with the Type I threshold set forth at 6 NYCRR § 617.4(b)(6)(i).

§ 617.5(c)(19)-(22)

We support the adoption of Type II exemptions for infill development/sustainable development in cities, towns, and villages of various sizes at set forth in proposed 6 NYCRR §§ 617.5(c)(19)-(22). We would further recommend the revision of proposed § 617.5(c)(22) to cover cities, towns, and villages of 250,000 to 1,000,000 persons only, and would add a fifth exemption for municipalities of greater than 1,000,000 persons. For the largest category, which would cover New York City, DEC should increase the maximum size for infill developments to 60,000 square feet and clarify that a subway station is a "commuter rail station" for the purposes of qualifying for the exemption. As proposed, the provision would have virtually no impact in New York City, which is in as much need of infill rehabilitation as the rest of the state.

§ 617.5(c)(22)

The language of the proposed new Type II category speaks of sites “within one quarter mile of a commuter railroad station,” but the corresponding analysis in the DGEIS states that this category would be appropriate for sites “within one half mile of a passenger train station.”² The proposed language should be consistent as between the DGEIS and the proposed language of the regulation.

§ 617.5(c)(23)

We support the inclusion of a Type II category for the reuse of existing structures (where consistent with zoning), but note that the term “commercial” is not defined (unlike the term “residential” which is defined). This category could also be expanded to include the reuse of municipally-owned structures and community facilities as they are defined in local zoning. It is not clear whether “reuse” limits the structure to its existing size or would also allow expansion of the structure as long as the expansion was consistent with the current zoning.

§ 617.5(c)(45)

The proposed Type II exemption for the acquisition of parkland is overbroad and should be eliminated. The typical acquisition of parkland should be relatively simple from a SEQRA perspective, and would not typically have the potential for significant adverse environmental impacts. However, this proposed exemption would allow the acquisition of environmentally-contaminated parcels for use as parkland, without further review. The DGEIS notes that the proposed exemption “does not exempt from SEQR any accompanying management or development plans or construction projects intended for the parkland,”³ but it is not clear how this exemption would protect against the acquisition and use of contaminated parcels.

§ 617.5(c)(46)

The proposed exemption for transfers of land for affordable housing should be revised to eliminate the requirement that the land be transferred to a not-for-profit corporation. The status of a corporation as not-for-profit is irrelevant to the appropriate SEQRA analysis, which reviews potential environmental impacts. The DGEIS itself suggests that an alternative would be to eliminate the not-for-profit requirement “since, according to the Division of Housing and Community Renewal, for-profit actors are also involved in the development of affordable housing and the impact would not change based on the character of the transferee.”⁴ The DGEIS itself thus provides the justification for eliminating the not-for-profit requirement and provides no basis for the inclusion of such a requirement.

§ 617.5(c)(48)

² DGEIS at 28.

³ DGEIS at 31.

⁴ DGEIS at 33.

DRAFT

The proposed exemption of brownfield cleanup agreements (“BCA”) from SEQRA review is a common sense addition to the Type II list, but the proposed language should be modified. As proposed, the Type II exemption for BCAs is written:

(48) brownfield site clean-up agreements pursuant to Title 14 of Article 27 of the Environmental Conservation Law, provided that design and implementation of the remedy do not commit the Department or any other agency to specific future uses or actions or prevent an evaluation of a reasonable range of alternative future uses of or actions on the remedial site;

The exemption for BCAs should be rewritten, either to strike the references to the “design and implementation of the remedy” and all that follows (strike out all text after “Environmental Conservation Law”), or to clarify that separate actions are being exempted: 1) entry into BCAs; and 2) selection of the remedy and implementation of remedial actions under DEC-approved work plans pursuant to ECL Article 27, Title 14.

A BCA is entered into at the outset of a brownfield cleanup and by nature does not discuss the design and implementation of the remedy, and does not commit agencies to specific future uses or actions. As noted in the DGEIS, a SEQRA exemption for remedy selection and implementation of remedial actions is already exempted under 6 NYCRR Part 375-3.11(b).⁵ If DEC’s intent is to have the Type II exemptions mirror the existing SEQRA exemption of 6 NYCRR Part 375-3.11(b), then the existing language in that brownfield regulation should be copied and added to the Type II list, or incorporated specifically by reference.

Scoping

§ 617.8(a)

We support the proposed revision to make EIS scoping a mandatory requirement.

The text of the proposed regulation in section 617.8(a) should be changed to strike the comma after “potentially significant” in the penultimate sentence so that it is clear that what is being included in the scope of the EIS are “potentially significant adverse environmental impacts.” The sentence should be changed to read “Scoping should result in EISs that are focused on relevant, potentially significant adverse environmental impacts.”

Online Publication of EIS Documents

§ 617.12(c)(5)

We support the requirement that the lead agency publish its draft and final EIS scopes and draft and final EISs on a publicly-available website, but would clarify the phrase “to

⁵ DGEIS at 35.

the extent practicable.” In 2017, the cost and technological requirements of posting even large documents such as draft and final EISs, is “practicable” for all lead agencies. We recognize that the text of ECL § 8-0109(4) and (6) contains the phrase “unless impracticable,” but DEC should clarify its interpretation of that phrase in order to strictly limit the ability of lead agencies to claim that it is not practicable to publicly post EISs on the basis of cost or availability of website space.

The revisions to this section should also allow for a lead agency to discontinue the website posting of scopes and EISs upon the withdrawal of a proposed action in addition to the current trigger for discontinuance of website publication (“may be discontinued one year after all necessary permits have been issued by the federal, state and local governments”).

Further Proposed Amendments

Creation of a Dispute-Resolution Board

The proposed regulations still lack an efficient means of enforcing the time frames for the completion of the final scoping document, reviewing and commenting on a draft of a DEIS, or on the newly-strengthened requirement to tie the adequacy of the proposed DEIS to the final scoping document. While a private applicant has the theoretical ability to commence an Article 78 proceeding to compel a lead agency to follow the rules, that process can be even more time-consuming and expensive than responding to reiterative comments, and an applicant’s success in such a proceeding does not lead to an approval.⁶ DEC should consider the creation, either within DEC or elsewhere, of a body to make prompt administrative determinations as to whether the desired streamlining is happening in practice, not just in the NYCRR.

Elimination of Environmental Assessment for Projects in which Sponsor and Lead Agency Agree an EIS Will Be Required

With the addition of mandatory scoping, consideration should be given to eliminating the need for an Environmental Assessment Form (called an Environmental Assessment Statement in New York City) in situations where it is clear that an EIS will be required. In such cases, the applicant should be permitted to provide a draft scoping memorandum with its application for the underlying approval or funding, upon which a Positive Declaration can be properly based. This would eliminate an unnecessary interim step that does not add anything of substance to the analysis of the potential environmental impacts of a proposed action. Where it is obvious that an EIS will be required, there is no need to delay starting the process for the preparation, filing and administrative review of a form that is in almost all instances superseded by a published EIS scope and a DEIS.

⁶ See, e.g., *Matter of 383 Madison Associates v. New York City Planning Commission*, 144 A.D. 2d 1044, (1st Dep’t 1989), *lv. denied*, 13 N.Y.2d 709 (1989). Litigation over whether the lead agency had violated the time frames in the SEQRA regulations consumed almost two years and resulted only in a court-mandated certification of the DEIS as adequate and complete (not an approval of the underlying land use application).

Allow for Conditioned Negative Declarations for Type I Actions

DEC should propose allowing for Conditioned Negative Declarations in Type I Actions. A Conditioned Negative Declaration (CND) may currently be used for an Unlisted action that may have significant adverse environmental impacts, but the impact can be eliminated or adequately mitigated by conditions imposed by the lead agency. The existing regulations in 6 NYCRR § 617.2(h) limit the use of CNDs to Unlisted Actions; however, there is little reason to continue to exclude Type I actions, which are only *presumed* to have impact, from this more efficient, yet similarly protective procedure.

Minority view

A minority of commenters expressed the view that the proposed SEQRA regulations cannot promote sustainable development or renewable energy without a showing that all proposed Type II actions have been categorically determined not to have a significant effect on the environment:

No matter how well intentioned, DEC is overreaching and usurping the role of the legislature in seeking to establish a policy that so-called “sustainable” development is favored. Such a policy can only be established by the legislature.

The ECL explicitly directs DEC to draft regulations, including actions that DEC has labeled “Type II” actions, based on specific criteria. ECL 8-0113 provides that DEC **“shall include . . . [a]ctions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this article. In adopting the rules and regulations, the commissioner shall make a finding that each action or class of actions identified does not have a significant effect on the environment.”**⁷

DEC cannot make such a finding for many if not all of these “sustainable” favorites. 10 or 25 acres of disturbance for a solar field would have environmental impacts just as a 10 or 25-acre disturbance for billboards or windfarms or anything else. These items would also contradict the existing Type II regulation that says that an agency may adopt its own Type II list but that none of its Type II actions can be Type I actions under the list at 6 NYCRR § 617.4.⁸

There are other provisions that confirm that the intent of SEQRA is for agencies to look, uniformly, at the impact to the environment only. ECL § 8-0111(6) requires that a lead agency render a “determination of whether the action may have a significant effect on the environment.” This is the lead agency’s only charge in SEQRA, regardless of the other perceived benefits of the project its effects on the environment must be considered.

ECL § 8-0109 also requires that agencies “shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum

⁷ ECL § 8-0113(2)(c)(ii) (emphasis added).

⁸ See 6 NYCRR § 617.5(b)(2).

extent practicable, **minimize or avoid adverse environmental effects**, including effects revealed in the environmental impact statement process.”⁹ Their mandate is to minimize adverse environmental effects, through, if necessary, an EIS. Section 4 goes on to state “The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about **proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action.**”¹⁰ Further, when findings are issued they similarly have to find that “consistent with social, economic and other essential considerations, **to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.**”¹¹

In sum, the agency’s charge to is look at “adverse environmental effects” in determining how to proceed under SEQRA, not at whether the action is desirable or sustainable.

⁹ ECL § 8-0109(1) (emphasis added).

¹⁰ ECL § 8-0109(4) (emphasis added).

¹¹ ECL § 8-0109(8) (emphasis added).

Memorandum Regarding Proposed New Title 12 of Article 27 of the Environmental Conservation Law “Cleanup and Abatement of Certain Solid Waste Site and Drinking Water Contamination.”

ENVIRONMENTAL LAW SECTION

Environmental #1

March 27, 2017

S.2008-B; Part II
A.3008-B; Part II

By: BUDGET

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

On behalf of the Environmental Law Section of the New York State Bar Association, this is to provide comments to the proposed new Title 12 of Article 27 of the Environmental Conservation Law “Cleanup and Abatement of Certain Solid Waste Site and Drinking Water Contamination” contained in Article VII legislation of the proposed 2017-18 Executive Budget.

We understand that the legislation was proposed to provide the New York State Department of Environmental Conservation (“NYSDEC”) and Department of Health (“NYSDOH”) legal authority to respond to contamination of drinking water by substances that are not regulated as hazardous substances (“novel substances”) and have been disposed at sites such as municipal landfills or dumps that ceased operating before 1993 and may not have been closed in accordance with current standards. The bill would, inter alia, expressly provide NYSDEC with the authority to investigate old landfills and “novel substance” sites. It would also grant NYSDEC with the authority and funds to mitigate/abate exposure until NYSDEC/DOH have time to assess the novel substance, determine if the substance should be listed as a hazardous substance and then determine if the site should be listed on the Registry of Inactive Hazardous Waste Disposal Sites. We also understand that the NYSDEC believes it does not have authority to address pollutants and containments that are not hazardous wastes.

The Environmental Law Section (“Section”) strongly supports ensuring that the NYSDEC has the legal authority and financing to address threats to drinking water supplies. However, the Section believes that creating a “Superfund lite” program is not necessary and could have serious and unintended consequences in terms of adverse impacts to municipal operations and real estate transactions.

The proposed Title 12 contains broad language that could potentially create liability for any site with fill material that impacts groundwater without the safeguard of defenses for innocent parties that are available under Title 13. As all groundwater in the State of New York is considered potentially drinking water, the proposed Title 12 could stigmatize thousands of fill sites, including not only commercial but also residential properties, and make financing extremely difficult.

The Section believes the best way to ensure NYSDEC has the authority to spend funds to address threats to drinking water without placing a source of drinking water contamination on the Registry is to amend Title 13 so that NYSDEC has the same kind of authority that the federal Environmental Protection Agency (“EPA”) has under 42 U.S.C. 9604 to conduct short-term response actions. Under 42 U.S.C. 9604(a)(1)(B), EPA may respond to the release or substantial threat of release of “any pollutant or contaminant” that may present an “imminent and substantial danger to the public health or welfare.”

Another alternative could be to amend the Landfill Closure Funding of the Environmental Protection Fund. Environmental Conservation Law 56-0403 currently provides state assistance to eligible municipalities to help pay for municipal landfill closure projects undertaken after April 1, 1993. This could be amended to provide funding to eligible municipalities to help pay for investigations and remediation of pre-regulatory landfills.

Finally, rather than create an entire new program and risk its adverse unintended consequences, the NYSDEC could employ some of its existing authority to respond to threats to drinking water. There follows a list of Environmental Conservation Law (“ECL”) authorities that NYSDEC may use to address threats to drinking water:

- ECL § 03-0301(1)(i) - “Provide for prevention and abatement of all water, land and air pollution including, but not limited to, that related to hazardous substances, particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids;”
- ECL § 03-0301(1)(m) - “Prevent pollution through the regulation of the storage, handling and transport of solids, liquids and gases which may cause or contribute to pollution;”
- ECL § 03-0301(2)(g)- “Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with any law, rule or regulation which may be promulgated pursuant to this chapter;”
- ECL § 17-0101- “It is declared to be the public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof . . . and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.;
- ECL § 17-0303(2)- “The department shall have administrative jurisdiction to abate and prevent the pollution of waters of the state in the manner herein provided in accordance with the classification of waters adopted by the

- department pursuant to section 17-0301 and in accordance with standards, criteria, limitations, rules and regulations and permit conditions adopted, promulgated or applied by the department pursuant to title 8 hereof;”
- ECL § 17-0303(4)(g) – “Conduct such investigations as may be deemed advisable and necessary to carry out the intents and purposes of the provisions of this article listed in subdivision 1 of this section;”
 - ECL § 17-0303(4)(h) – “Settle or compromise, with the approval of the attorney general, any action or cause of action for the recovery of a penalty under the provisions of this article listed in subdivision 1 of this section as he may deem advantageous to the state;”
 - ECL § 17-0303(4) (i) – “Perform such other and further acts as may be necessary, proper or desirable, to carry out effectively the duties and responsibilities prescribed in the provisions of this article listed in subdivision 1 of this section;”
 - ECL § 17-0303(5)- It shall be the duty and responsibility of the department to:
 - ECL § 17-0303(5)(a) – “Encourage voluntary cooperation by all persons in preventing and abating pollution of the waters of the state;”
 - ECL § 17-0303(5)(b) – “Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, industries, and other users of the waters who, severally or jointly, are or may be the source of pollution in the same waters, for the prevention and abatement of pollution;”
 - ECL § 17-1101. Existing rights and remedies preserved. “It is the purpose of titles 1 to 11, inclusive, and title 19 of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any such provisions or any act done by virtue of such provisions, be construed as estopping the state, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing;”
 - ECL § 27-0916(1) – “The department shall have authority to clean up or return to its original state any area where hazardous wastes were disposed, possessed or dealt in unlawfully in violation of section 27-0914 of this article. For the purpose of this section "the original state of the area" shall mean the reasonably ascertainable condition of the property immediately prior to the unlawful act or if impracticable to determine such condition, the cleanup or restoration shall be done in a manner to restore the area to a reasonably sound environmental condition;”
 - ECL § 71-0301 - Summary abatement;
 - ECL § 71-0501- applies to original sections carried over from pre-1970 conservation law;
 - ECL § 71-0505 - Suits and prosecution (for ECL § 71-0501);
 - ECL § 71-0509 - Costs in actions by the people (for § 71-0501 and presumably title 13);
 - ECL § 71-0523 - Power of the department to settle or compromise an action (§ 71-0501);
 - ECL § 71-2307 - Abatement of pollution (wetlands);

- ECL § 71-1701 et seq. - ENFORCEMENT OF PROVISIONS DERIVED FROM PUBLIC HEALTH LAW;
- Section 71-1709 - NYSDEC has authority to issue subpoenas, serve the respondent with an order requiring certain action or the cessation of certain activities immediately or within a specified period of less than fifteen days whenever because of danger to the public health it appears prejudicial to the interests of the people of the state to delay action for fifteen days;
- ECL § 71-1927(1)- Enforcement of titles 1 through 11 inclusive and title 19 of article 17;
- ECL §71-1929 - Like the description which follows in the next bullet (regarding violations of solid waste management requirements), DEC may enjoin violations of water-related requirements pursuant to this provision;
- Section 71-2703(1)(b)(i) - In addition to its ability to assess penalties, suspend or revoke permits, etc., DEC has the power to enjoin the continuation of a violation of solid waste management requirements through the traditional administrative hearing process; and,
- ECL § 71-2727 - Enforcement of articles 27 and 71 of this chapter.

NYSBA Environmental Law Section
8th Annual Oil Spill Symposium
Wednesday, June 7, 2017, 9:30 AM – 1:10 PM
Great Hall, State Bar Center, Albany

Agenda

Registration and Continental Breakfast	9:00-9:30 AM
Welcome and Introduction Gary Bowitch, Esq., Bowitch & Coffey, LLP Co-Chair, Petroleum Spills Committee	9:30-9:35 AM
Oil Spill Act Case Law Update Alan J. Knauf, Esq., Knauf Shaw LLP	9:35-9:50 AM
Oil Spill Fund Update Patrick Holloway, Esq., Office of State Comptroller	9:50-10:05 AM
Financing Issues for Petroleum Spill Sites Seth Friedland, Esq., Friedland Law, LLC	10:05-10:50 AM
Break	10:50-11:00 AM
Use of Forensics in Petroleum Spill Cases Jim Occhialini, Alpha Analytical, Inc. and Scott Stout, Newfields Environmental Forensics	11:00-11:45 AM
Lunch (provided)	11:45 AM-12:15 PM
Brownfield Cleanup Program Legislation/Regulatory Update Linda R. Shaw, Esq. Knauf Shaw LLP	12:15-1:00 PM
Closing Remarks Doug Zamelis, Esq., Co-Chair, Petroleum Spills Committee	1:00-1:10 PM