

**New York State Bar Association  
Environmental Law Section  
Executive Committee Meeting  
January 30, 2015  
New York Hilton-Midtown  
Regent Sutton South, 2<sup>nd</sup> Floor, 2:15 p.m.**

**Agenda**

1. Welcome to the meeting and Chair's report—Terresa Bakner
2. Presentation by The New York York Bar Foundation
3. Approval of the Minutes of the Executive Committee Meeting on September 2014—Larry Schnapf
4. Membership Committee's Report: Rob Stout (attachment)
5. Diversity Committee Report-John Greenthal/Joan Matthews
6. Brownfields Task Force Report—the goal for the next Legislative Session: David Freeman (attachment)
7. House of Delegates Report: Howard Tollin and Linda Shaw
8. Financial Report- Michael Lesser/Laurie Silberfeld
9. Environmental Justice and Internship Program Report: Peter Casper and Yelann Momot
10. Oil Spill Symposium, Tuesday, April 14, 2015: Gary Bowitch, co-chair
11. CLE and other Programs Proposed for 2014-2015: Jim Rigano, Genevieve Trigg, Randy Young and Maureen Leary
12. Planning for 2015 Legislative Program: John Parker and Jillian Kasow
13. Planning for Fall Meeting 2015: Michael Lesser
14. Social Media Initiatives (electronic copies)-Larry Schnapf
15. Other Committee Reports
16. Adjourn

## **2014 Fall meeting draft minutes**

Terresa acknowledged and thanked the folks involved with the program (Janice Dean, David Freeman, Michael Lesser, Douglas Zamelis)

Motion to approve the minutes from the May meeting approved.

President Elect of the State Bar, David Miranda, spoke to the group. He said he wanted to listen and find out how the Bar can help the Section. President Elect also noted that he was at the dinner last night and really appreciated what the Section has done to involve law students.

Terresa thanked him for attending. She spoke of the need for a subsidization program to allow for the government attorneys to partake in the program that the Section offers and to allow for the Section to gain the benefit of the government attorneys' perspective.

David Freeman asked for time to report on suggestions made following yesterday's brownfields program. Could there be a taskforce formed that would push the Governor and Legislature to move forward with new brownfields legislation. John Greenthal thinks it is a good idea- that weighing in on policy is what we do best and have the reputation of having providing thoughtful input in other areas.

Joel Sachs questioned whether this would constitute "lobbying" and whether we can go outside the State Bar process for how that is done. David Freeman acknowledged that there is a question of lobbying. We have traditionally commented on pending legislation as opposed to advocating new legislation. President Elect Miranda does not see it as problem, the approach is broad with a variety of positions considered and the approach is thoughtful, which in the past has been well received. He suggested that we might want to consider reaching out to other Sections- real property, business, and municipalities for example, and provide any submissions as a group with the different issues raised by each to the legislature.

Discussion ensued regarding the process and timing of pursuing this effort, including whether the Section's role should be as a facilitator to convene a group of stakeholders from other organizations (enviros, business groups and the like).

Question of timing as the State Bar requires reports 75 days in advance of the annual mtg (November). January meeting might be too ambitious and the President Elect noted that there are other quarterly meetings where the issue can be brought forward.

Terresa noted that we already have the brownfields comments of the Section which could be used as a building block.

Howard noted that our position is not that far apart from others so finding a consensus may not be that hard.

Concern about whether any legislation would be as part of the budget which means an early bill before March, and we cannot count on the legislature waiting to take the issue up later in the legislative session next year.

Straw poll voted taken and everyone was in favor of pursuing this effort. Terresa noted that she didn't think a formal resolution was needed to move forward.

Terresa invited David Freeman to follow up and then circle back in a couple of weeks. David Freeman invited others to join either to participate or just offer ideas.

Next item- revitalizing the Committees- The cabinet has gone through the committee listing with an eye toward honing down the number of committees, encouraging activity by the committees and providing opportunities for more diversity in committee leadership and more involvement by newer members. Terresa led a lengthy discussion regarding each committee; which to eliminate or combine, which to keep, and which needed new leadership. A listing of the retained committees and the co-chairs of each is annexed hereto. A vote taken on the proposed committee reorganization following the discussion and all voted in favor.

Next item- Mike Lesser spoke to the new online electronic communities (demise of the list serve) and the enviroblog- a rough equivalent of a linked-in type. Lisa Bataille pointed out that the current list serve technology is from the 1980s and is going away. The new community will do all that the list serve does but much more and will be much more flexible with search and one-click capability. A much better explanation is on the NYSBA through a link on the upper right hand corner of the homepage. Steve Russo spoke about linking with the LinkedIn enviro law forum that he maintains. Attendees agreed that we should drop the list serve and migrate over to the new platform. Lisa will send out an email to all in the section advising of same.

#### Committee Reports-

Membership Committee- Rob Stout reported on recent efforts. His law firm (Whiteman) hosted an info gathering to introduce the law school students to the work of the section. Ginny Robbins offered BSK Syracuse office to do a program with Syracuse and John Greenthal offered to have Nixon's LI office and Rochester offices to do the same with their local law schools (Rochester to cover Buffalo). Terresa described the program. A couple of pizzas and soda funded by the Section is basically the setup. Steve Russo will do same for the City schools.

Rob also reported that they are actively recruiting environmental law professors to help promote the programs.

Diversity Committee- John Greenthal reported that he and Joan continue to hold monthly conference calls with the membership committee because of the overlap.

Howard Tollin reported on House of Delegates. He suggested there we undertake additional outreach to non-residence attorneys as overall the percentage of members at the State Bar level for non-res attys is up to 30%. Howard suggested that we consider being a sponsor of the non-residence attorney

breakfast at the annual meeting. Terresa suggested that maybe next year but lets stick with the initiatives that are not \$\$ involved this year and consider it for next year. Terresa acknowledged Linda Shaw as the new alternate delegate and thanked her for her agreement to participate.

#### Treasurer's Report (Laurie Silberfeld)-

Laurie noted that the Section finances are better this year in large measure thanks to Terresa and Mike's close scrutiny of spending over the last couple of years. She noted that current net income this year is \$33,146 thus far as compared to last year where there was only \$1,532 remaining on hand or prior years where at this point in 2011 and 2012 the Section was operating in the red. A number of actions contribute to these savings--

- The Super Bowl certainly helped as we only spent 20k this year on the annual meeting as compared with approximately 40k in prior years. However, some of the savings we realized this year we will look to carry forward next year -- though we will do a better job of getting the word out that breakfast is on your own before the program. Come with Coffee! No more \$100 bagels
- We also revamped our sponsorship program and, thanks to Phil Dixon and others, have doubled our sponsorship income over the past two years as compared with 2012 and earlier. As you can see, to date, we have brought in 147% of the budgeted number. Mike has some additional ideas about how to further grow our sponsorship income.
- Mike's close scrutiny of expenses included the small recurring expenses that add up over time- like postage, audio/visual, conference calls and the like.

Going forward, we are going to continue to scrutinize all expenses big and small to control expenses and hopefully stay within budget.

But controlling expenses alone isn't going to solve the budget situation. We have to get our membership numbers up. The good news is that we seem to have hit the bottom on our membership attrition and are not losing members to the same extent that we were back in 2011 where the loss was double digits. The work of our membership committee as well as our efforts to revitalize our different committees appears to be helping to stem the tide and reverse the flow. Our goal is to grow our ranks by 100.

Walter made a pitch to continue to contribute to NYCII. Mike confirmed that it is already in the budget for 2015.

Terresa asked whether we can get Alice Baker to get involved as a member of our membership committee. Walter will follow up.

Annual meeting- January 30<sup>th</sup> - Terresa reported that we are going to do a Toxic Tort panel and a new case update (Larry). The other panel topic that folks have suggested is casinos. Terresa asked whether anyone is uncomfortable with the topic. What would be the enviro connection? Ginny Robbins spoke to SEQRA , recent court decision upstate on neg dec. Terresa- Competition for scarce resources- taking

up a lot of money and power capacity, impacts on the Palisades Steve Russo worried that it is a narrow topic and some of these projects will have had the decisions rendered.

Other topics- Carl suggested as part of a broader focus on “big development” topic with casinos as just one type, lessons learned.

President Elect Miranda wondered whether we might want to do a program co-sponsored with the municipal law section.

Steve Russo suggested medical marijuana.

Terresa suggested that there be a follow-up conversation.

Journal report- Terresa acknowledged Miriam’s hard work. Miriam noted that in order to get another issue out for the annual meeting, she needs any articles and updates in the next several weeks. Miriam also raised the question of how to encourage members to switch to e-versions of the Journal. Discussion ensued about having notices at the sign in table at the annual meeting encouraging members to sign-up for opting out of print copies.

CLE programs- State Bar changed its policy so that there can be more benefit to the section for CLE programs. Maureen and Jim were going to do a fall program but staff resources limits dictated pushing it to the spring. Lisa reported that the State Bar is working towards facilitating more webinar programs and moving staff resources around to accommodate that. Will know more by the end of the year.

Planning for 2015 legislative forum. Jillian is working with Lisa on dates.

Fall meeting 2015- October 2-4 at the Gideon Putnam- Mike Lesser reported that they also looked at Albany (which might be doable in the future but not now). Hoping that the proximity of the Gideon to Albany and availability of transitional credits will boost attendance of gov’t attorneys and younger attorneys.

Mike reached out to the municipal law section to co-host the program but they haven’t decided as yet (their fall meeting is next week) but he doubted whether they would be interested as they are meeting at the Gideon this year. Terresa suggested Real Property. Lisa noted that they do a summer not fall meeting though cannot hurt to ask. As for topics, Mike suggested, since it is in the capital district, possibly focusing on regulatory oversight and environmental enforcement. Obviously, need further detail and subject to change. Walter suggested the haz waste transport by rail issues. Mike noted that we had a very well attended on that topic in the spring. He also that it has an environmental justice component and that that combined with upcoming changes in the chemical bulk storage regulations might be a good foundation for a program.

Mike gave a plug for the blog. Sam Capasso and he have put together a number of postings on environmental postings on focused on environ enforcement. They also published an email book on the

topic. Lastly, they have now (after a huge effort) created a link between the blog and the website. Mike also reported that we are co-sponsors of tomorrow's program with NYC Bar and Columbia on Climate Change.

Hearing nothing more, Terresa asked for a motion to adjourn which was unanimously passed.

**New York State Bar Association**

**Committee: *Environmental Law Section Executive  
Committee*  
*Environmental Law Section*  
*Executive Committee***

as of ~~January 13th, 2015~~

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David Miranda



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as of ~~January 13th, 2015~~

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as of ~~January 13th~~ 2015

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**New York State Bar Association**

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**Environmental Law Section**  
**Executive Committee**

as of ~~January 13th, 2015~~

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***New York State Bar Association***

Committee: ***Environmental Law Section Executive  
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Executive Committee***

as of ~~January 15th~~ 2015

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Committee Code: ENVI1000  
Committee Count: 101

Total Records: 101

+Segment1 = [624]

New York State Bar Association  
Environmental Law Section  
For the Twelve Months Ending Thursday, December 31, 2015

<u>Account</u>		<u>BUDGET</u>
<u>No</u>		<u>2015</u>
	<b>Revenue:</b>	
4010	Dues	\$32,000.00
4020	Meetings	34,000.00
4025	Sponsorship	9,000.00
4030	Newsletters	1,000.00
4090	Prior Years Surplus Used	4,900.00
	<b>Total Revenue</b>	<u>80,900.00</u>
	<b>Expenses:</b>	
5100	Postage & Shipping	1,750.00
5160	Awards & Grants	5,000.00
5455	Gratuities	300.00
5371	Diversity	6,000.00
5410	Catering & Banquets	45,000.00
5415	Beverage Service & Receptions	7,500.00
5420	Speaker & Guest Expense	1,000.00
5425	Audio/Visual Expense	2,500.00
5430	Promotional Costs	500.00
5445	Activities & Entertainment	1,000.00
5465	Section Executive Committee Meetings	350.00
5475	Officers Expense	1,500.00
5480	Misc Meeting & Program Costs	1,000.00
5485	Section Subcommittee Meetings	500.00
5540	Newsletter	5,000.00
5700	Graphic Department Allocations	1,500.00
	<b>Total Expenses</b>	<u>80,400.00</u>
	<b>Net</b>	<u>500.00</u>

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New York State Bar Association  
Environmental Law Section  
For the Twelve Months Ending Wednesday, December 31, 2014

	2014 Budget	December	2014 Year To Date	Percent	2013 Budget	2013 Year To Date	Percent	2012 Year To Date	2011 Year To Date
<b>Income</b>									
Dues	\$35,405.00		\$32,353.75	91.38%	\$38,500.00	\$33,781.67	87.21%	\$33,805.42	\$36,122.08
Meetings	39,770.00	1,200.00	30,001.00	75.44%	41,000.00	32,222.78	78.59%	39,421.00	36,282.50
Sponsorship	3,880.00	1,200.00	9,400.00	242.27%	4,000.00	10,400.00	260.00%	4,800.00	3,250.00
Newsletters	485.00	330.00	1,050.00	216.49%	500.00	885.00	177.00%	515.00	1,505.00
Publications			30.00	0.00%			0.00%	100.00	25.00
Prior Years Surplus Used	10,165.00			0.00%	10,500.00		0.00%		
<b>Total Income</b>	<b>89,725.00</b>	<b>2,730.00</b>	<b>72,834.75</b>	<b>81.18%</b>	<b>92,500.00</b>	<b>77,289.45</b>	<b>83.56%</b>	<b>78,441.42</b>	<b>77,184.58</b>
<b>Expenses</b>									
Postage & Shipping	2,810.00	50.00	1,318.18	45.30%	3,000.00	1,938.68	64.62%	2,111.16	3,282.34
Awards & Grants	4,850.00	21.05	8,375.95	183.32%	5,000.00	6,564.25	131.29%	7,832.20	10,100.78
Diversity	5,820.00			0.00%	6,000.00	3,000.00	50.00%		
Meeting Rooms				0.00%		158.82	0.00%		
Catering & Banquets	40,740.00		16,342.32	40.11%	42,000.00	46,407.93	110.50%	49,318.88	32,384.60
Beverage Services & Receptions	10,670.00		9,162.57	85.87%	11,000.00	7,376.21	67.05%	9,885.16	10,874.61
Speaker & Guest Expense	1,840.00		1,515.15	78.10%	2,000.00	538.83	26.94%	782.86	
Audiotape Expense	4,850.00		4,384.52	90.61%	5,000.00	2,076.95	41.54%	3,737.24	3,485.30
Promotional Costs	870.00			0.00%	1,000.00		0.00%		241.79
Activities & Entertainment	870.00			0.00%	1,000.00		0.00%		
Gratuities	281.00		160.00	54.88%	300.00		0.00%	225.00	280.00
Section Executive Committee Meetings	485.00		501.33	103.37%	500.00	306.47	61.29%	302.94	28.32
Officers Expense	1,164.00	0.77	119.52	10.27%	1,200.00	1,784.59	149.55%	786.84	1,062.66
Miscellaneous Meeting and Program Costs	2,425.00		1,100.00	45.36%	2,500.00	1,388.53	55.94%	3,405.62	1,089.75
Section Subcommittee Meetings	7,760.00	681.62	1,110.52	14.44%	8,000.00	108.52	1.36%	3,727.47	1,341.75
Newsletters	2,425.00	4.85	5,105.01	210.51%	2,500.00	3,293.58	131.74%	7,773.58	12,389.11
Graphic Department Allocations			954.18	38.16%		1,330.40	53.22%	2,387.59	2,560.07
<b>Total Expenses</b>	<b>89,725.00</b>	<b>789.28</b>	<b>51,189.55</b>	<b>57.03%</b>	<b>92,500.00</b>	<b>76,293.36</b>	<b>82.48%</b>	<b>92,407.72</b>	<b>79,222.07</b>
<b>Net Income over Expense</b>		<b>1,961.71</b>	<b>21,665.20</b>	<b>0.00%</b>		<b>896.09</b>	<b>0.00%</b>	<b>(13,966.30)</b>	<b>(2,037.49)</b>
<b>Accumulated Surplus (Deficit)</b>			<b>21,632</b>						

DRAFT

# NYSBA Section Profile Report for Environmental Law Section

Total Number of (REG, NRES, STU) Members: 1,057

	Count	Percent	Valid Percent
<b>A) Gender</b>			
F	321	30.37%	30.90%
M	718	67.93%	69.10%
X (no data)	18	1.70%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>B) Practice Setting</b>			
Government	16	1.51%	1.88%
Government - Federal	16	1.51%	1.88%
Government - Local	18	1.70%	2.12%
Government - State	30	2.84%	3.53%
In-House Counsel	50	4.73%	5.88%
Judiciary	2	0.19%	0.24%
Law School - Faculty	12	1.14%	1.41%
Law School - Student	11	1.04%	1.29%
Legal Services	14	1.32%	1.65%
Non-Law Related	19	1.80%	2.23%
Non-Profit	26	2.46%	3.06%
Other	31	2.93%	3.64%
Part-Time Attorney	4	0.38%	0.47%
Private Practice	575	54.40%	67.57%
Public Interest	8	0.76%	0.94%
Retired	10	0.95%	1.18%
Trade/Professional Association	4	0.38%	0.47%
Unemployed	5	0.47%	0.59%
X (no data)	206	19.49%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>C) Office Size</b>			
Fifty to 99	87	8.23%	10.61%
One Hundred and greater	218	20.62%	26.59%
Six to Nine	58	5.49%	7.07%
Solo Practitioner	134	12.68%	16.34%
Ten to Nineteen	88	8.33%	10.73%
Twenty to 49	115	10.88%	14.02%
Two to Five	120	11.35%	14.63%
X (no data)	237	22.42%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>D) Position</b>			
Academic	15	1.42%	2.07%
Administrative Law Judge/Hearing Officer	4	0.38%	0.55%
Associate	115	10.88%	15.86%
Court Personnel	1	0.09%	0.14%
<b>E) Age</b>			
24 and Under	1	0.09%	0.10%
25 to 35	146	13.81%	14.40%
36 to 45	147	13.91%	14.50%
46 to 55	223	21.10%	21.99%
56 to 65	296	28.00%	29.19%
66 and Over	201	19.02%	19.82%
X (no data)	43	4.07%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>F) Race/Ethnic Group</b>			
Asian/Pacific Islander	10	0.95%	1.60%
Black/African American	9	0.85%	1.44%
Decline to Answer	35	3.31%	5.61%
Hispanic	12	1.14%	1.92%
Multiple Race/Ethnic Group	4	0.38%	0.64%
Native American	1	0.09%	0.16%
Other	6	0.57%	0.96%
White/Caucasian	547	51.75%	87.66%
X (no data)	433	40.96%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>G) Who Paid For Membership Dues</b>			
Collectively by Firm and Member	23	2.18%	3.57%
Fully by Firm, School or Organization	340	32.17%	52.71%
Member	267	25.26%	41.40%
No Dues Paid	15	1.42%	2.33%
X (no data)	412	38.98%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>
<b>H) Number of Years Admitted to Bar</b>			
0 (Less than 1)	0	0.00%	
1 to 3	106	10.03%	10.40%
4 to 5	47	4.45%	4.61%
			1/2015

	Count	Percent	Valid Percent		Count	Percent	Valid Percent
6 to 7	45	4.26%	4.42%	Franchise Law	3	0.28%	
8 to 14	123	11.64%	12.07%	General Practice	88	8.33%	
15 to 19	82	7.76%	8.05%	Government	126	11.92%	
20+	616	58.28%	60.45%	Health Law	19	1.80%	
X (no data)	38	3.60%		Immigration Law	13	1.23%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>	Insurance	82	7.76%	
<b>I) Disability</b>				Intellectual Property and Copyrights	38	3.60%	
Decline to Answer	111	10.50%	17.99%	International Law	31	2.93%	
No	500	47.30%	81.04%	Labor and Employment Law	58	5.49%	
X (no data)	440	41.63%		Law Office Economics and Management	11	1.04%	
Yes	6	0.57%	0.97%	Leases And Leasing	49	4.64%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>	Libel	4	0.38%	
<b>J) Sexual Orientation</b>				Litigation - General Civil	226	21.38%	
Decline to Answer	61	5.77%	14.42%	Medical Malpractice	15	1.42%	
Heterosexual	354	33.49%	83.69%	Municipal Law	246	23.27%	
Lesbian/Gay/Bisexual/Transgender	8	0.76%	1.89%	Personal or Property Injury	67	6.34%	
X (no data)	634	59.98%		Product Liability	72	6.81%	
	<b>1,057</b>	<b>100.00%</b>	<b>100.00%</b>	Professional Liability	12	1.14%	
<b>K) Areas of Concentration</b>				Public Contract	40	3.78%	
Administrative Law	237	22.42%		Public Utility	95	8.99%	
Agriculture	36	3.41%		Real Property Law	271	25.64%	
Antitrust and Trade	12	1.14%		Social Security Law	2	0.19%	
Appellate Law	93	8.80%		Tax - Corporate Business	17	1.61%	
Arbitration/Mediation	57	5.39%		Tax - Personal	7	0.66%	
Banking	25	2.37%		Transportation	26	2.46%	
Bankruptcy/Insolvency	21	1.99%		Trust and Estates Law	69	6.53%	
Business Law	103	9.74%		Workers Compensation	10	0.95%	
Civil Rights	43	4.07%		Zoning, Planning And Land Use	299	28.29%	
Commercial Litigation	131	12.39%			<b>3,935</b>	<b>372.28%</b>	<b>100.00%</b>
Communication	8	0.76%					
Computer Law	3	0.28%					
Construction	100	9.46%					
Contracts	72	6.81%					
Corporate Law	110	10.41%					
Creditors' Rights and Collections	4	0.38%					
Criminal Law	29	2.74%					
Derivatives and Structured Products	2	0.19%					
Elder Law	22	2.08%					
Employee Benefits	7	0.66%					
Entertainment, Arts and Sports	8	0.76%					
Environmental Law	750	70.96%					
Ethics	1	0.09%					
Family Law	23	2.18%					
Finance and Securities	23	2.18%					
Food, Drug & Cosmetics	19	1.80%					

# New York State Bar Association: Section Admission Year Comparison

1/1/2015

<u>Section</u>	<u>Admitted 10 years or more</u>		<u>Admitted less than 10 years</u>		<u>Students</u>	
	<u>Count</u>	<u>Percent</u>	<u>Count</u>	<u>Percent</u>	<u>Count</u>	<u>Percent</u>
Antitrust Law Section	350	66.67%	161	30.67%	14	2.67%
Business Law Section	2,918	68.79%	1,218	28.71%	106	2.50%
Corporate Counsel Section	1,094	67.28%	494	30.38%	38	2.34%
Criminal Justice Section	975	69.84%	365	26.15%	56	4.01%
Dispute Resolution Section	1,231	80.20%	184	11.99%	120	7.82%
Entertainment, Arts and Sports Law Section	769	49.36%	629	40.37%	160	10.27%
Elder Law Section	2,317	83.47%	416	14.99%	43	1.55%
Environmental Law Section	773	74.11%	236	22.63%	34	3.26%
Family Law Section	2,021	77.91%	535	20.62%	38	1.46%
Commercial & Federal Litigation Section	1,683	75.23%	521	23.29%	33	1.48%
Food, Drug & Cosmetic Law Section	181	69.35%	75	28.74%	5	1.92%
General Practice Section	1,350	66.83%	637	31.53%	33	1.63%
Health Law Section	983	74.19%	304	22.94%	38	2.87%
International Section	1,046	60.32%	601	34.66%	87	5.02%
Intellectual Property Law Section	1,114	59.38%	659	35.13%	103	5.49%
Judicial (Courts of Record) Section	363	98.64%	3	0.82%	2	0.54%
Labor and Employment Law Section	1,680	72.79%	569	24.65%	59	2.56%
Municipal Law Section	949	86.75%	136	12.43%	9	0.82%
Real Property Law Section	3,502	80.99%	778	17.99%	44	1.02%
Senior Lawyers Section	2,900	97.68%	69	2.32%	0	0.00%
Tax Section	1,772	72.09%	647	26.32%	39	1.59%
TICL Section	2,045	85.49%	327	13.67%	20	0.84%
Trial Lawyers Section	1,757	80.93%	347	15.98%	67	3.09%
Trusts and Estates Law Section	3,831	82.02%	756	16.18%	84	1.80%
Young Lawyers Section	84	2.65%	2,864	90.20%	227	7.15%
	<b>37,688</b>		<b>13,531</b>		<b>1,459</b>	



	ANTI	BUS	CORP	CRIM	DRS	EASL	ELD	ENVI	FAM	FED	FOOD	GEN	HLS	ILP	IPS	JUD	LABR	MUNI	REAL	SLS	TAX	TICL	TRIA	TRUS	YOUN	
ANTI	0	85	52	22	32	40	19	22	20	97	29	29	29	34	50	73	17	31	17	22	39	19	25	50	18	55
BUS	85	0	535	62	181	157	168	108	92	287	36	295	133	403	191	20	150	103	560	288	224	91	140	334	388	
CORP	52	535	0	33	57	104	50	45	35	101	56	91	108	157	146	19	144	36	159	109	65	75	43	66	163	
CRIM	22	62	33	0	43	42	67	30	203	98	20	121	42	48	33	63	56	47	81	98	34	101	184	78	165	
DRS	32	181	57	43	0	68	84	54	110	284	19	83	48	178	75	28	232	53	83	127	30	110	145	97	91	
EASL	40	157	104	42	68	0	41	30	43	80	27	75	25	80	401	17	70	29	70	66	50	42	54	77	227	
ELD	19	168	50	67	84	41	0	44	206	36	21	341	151	42	34	26	68	102	475	339	195	82	90	1,791	91	
ENVI	22	108	45	30	54	30	44	0	27	68	27	50	32	56	28	20	41	227	194	98	28	62	63	47	81	
FAM	20	92	35	203	110	43	206	27	0	59	19	261	45	44	29	62	58	58	194	186	47	78	141	256	184	
FED	97	287	101	98	264	80	36	68	59	0	38	109	68	137	138	43	178	60	127	162	35	162	320	79	249	
FOOD	29	36	56	20	19	27	21	27	19	36	0	27	63	33	59	15	24	18	24	31	19	33	33	27	35	
GEN	29	295	91	121	83	75	341	50	261	109	27	0	68	76	83	32	108	121	459	226	78	177	205	422	223	
HLS	34	133	108	42	48	25	151	32	45	68	63	68	0	39	46	20	88	36	76	100	42	111	88	99	96	
ILP	50	403	151	48	178	80	42	56	44	137	33	76	39	0	109	21	73	28	82	103	94	42	58	116	242	
IPS	73	191	146	33	75	401	34	28	29	138	59	83	46	109	0	18	69	21	61	82	38	38	66	58	205	
JUD	17	20	19	63	28	17	26	20	62	43	15	32	20	21	18	0	17	25	28	41	16	35	39	36	19	
LABR	31	150	144	56	232	70	68	41	58	178	24	108	88	73	69	17	0	148	80	151	62	107	152	76	183	
MUNI	17	103	36	47	53	29	102	227	58	60	18	121	36	28	21	25	148	0	258	104	36	88	88	123	55	
REAL	22	560	159	81	83	70	475	194	194	127	24	459	76	82	61	28	80	258	0	382	143	102	139	800	214	
SLS	39	298	109	98	127	66	339	98	186	162	31	226	100	103	82	41	151	104	382	0	150	238	222	415	14	
TAX	19	224	65	34	30	50	195	28	47	35	19	78	42	94	38	16	62	36	143	150	0	37	31	583	153	
TICL	25	91	75	101	110	42	82	62	78	162	33	177	111	42	38	35	107	88	102	238	37	0	805	104	155	
TRIA	50	140	43	184	145	54	90	63	141	320	33	205	88	58	66	39	152	88	139	222	31	805	0	124	177	
TRUS	18	334	66	78	97	77	1,791	47	256	79	27	422	99	116	58	36	76	123	800	415	583	104	124	0	181	
YOUN	55	388	163	165	91	227	91	81	184	249	35	223	96	242	205	19	183	55	214	14	153	155	177	181	0	

NYSBA Section Members in other Sections

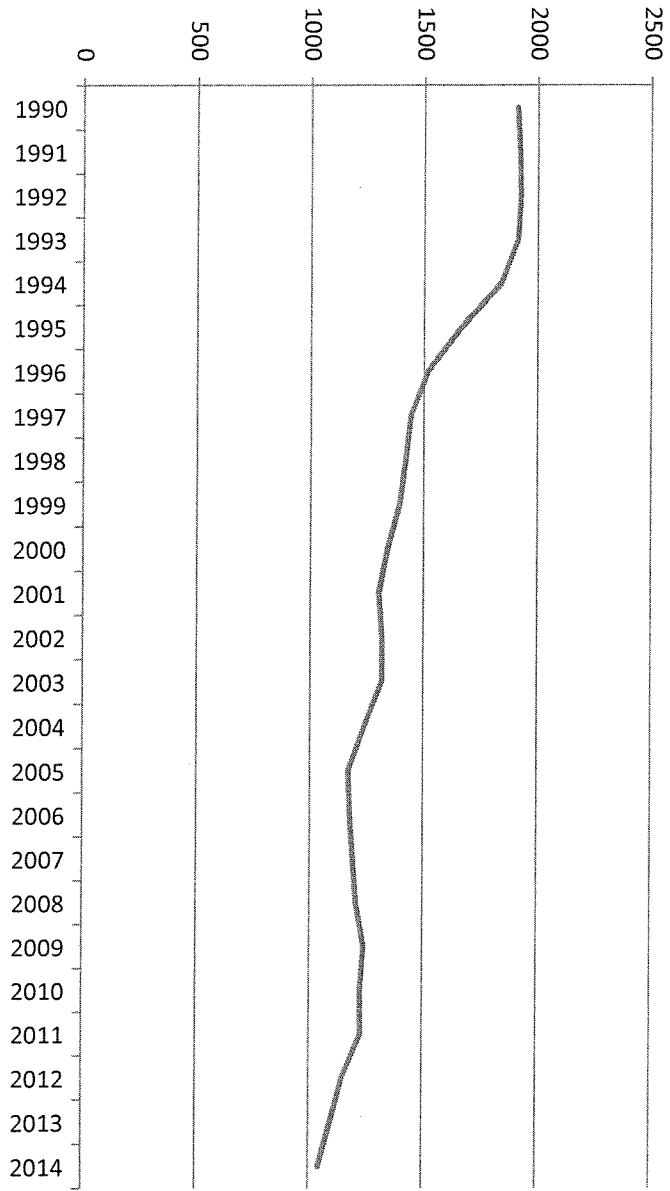
1/1/2015

# NYSBA Section Membership by JD

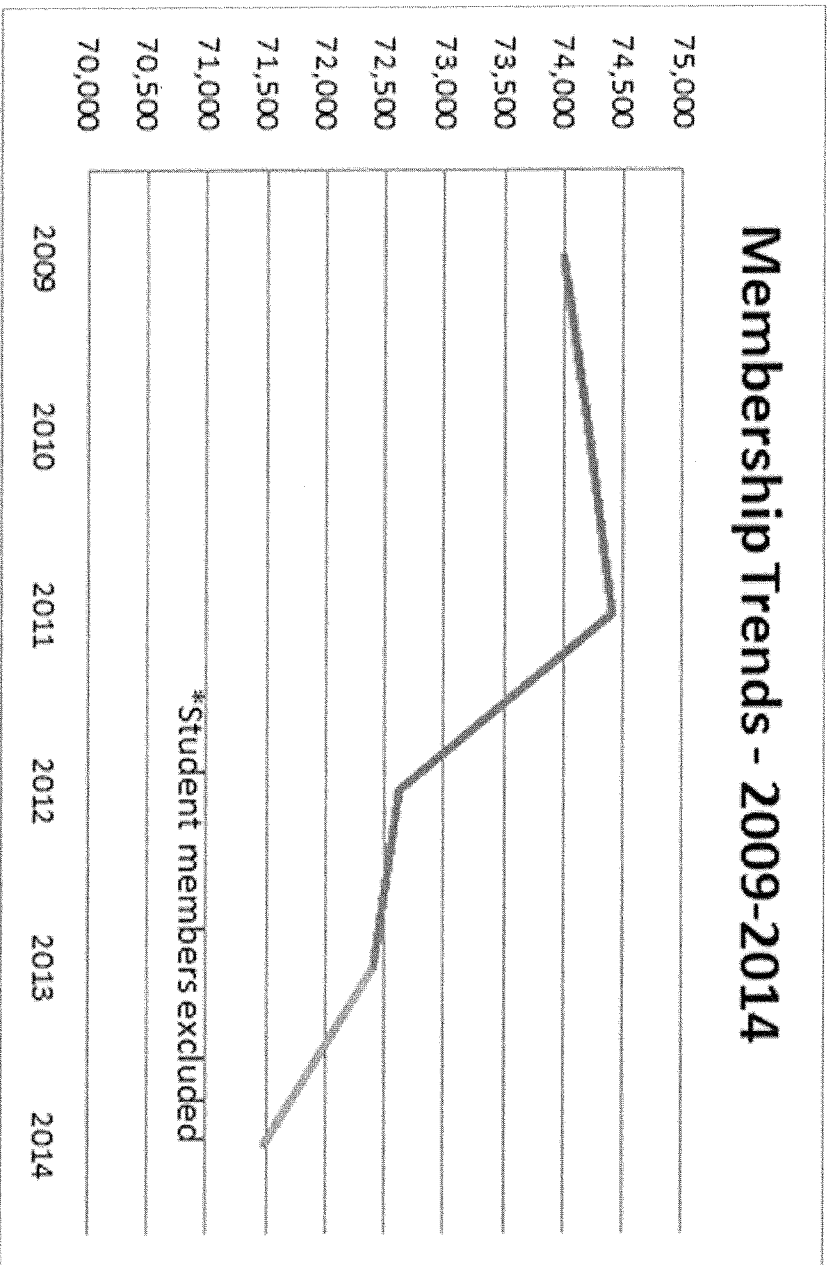
1/1/2015

	<u>JD1</u>	<u>JD2</u>	<u>JD3</u>	<u>JD4</u>	<u>JD5</u>	<u>JD6</u>	<u>JD7</u>	<u>JD8</u>	<u>JD9</u>	<u>JD10</u>	<u>JD11</u>	<u>JD12</u>	<u>JD13</u>	<u>OOS</u>	<u>No.JD</u>	<u>Total</u>
ANTI	265	19	19	5	5	0	5	6	16	13	6	2	2	162	0	525
BUS	1,489	95	196	66	93	44	129	176	286	343	91	19	22	1,193	0	4,242
CORP	455	39	73	26	33	13	35	43	130	127	41	9	8	593	1	1,626
CRIM	292	92	122	60	44	45	59	92	189	143	64	32	18	144	0	1,396
DRS	508	57	99	19	36	19	36	61	152	150	54	16	11	315	2	1,535
EASL	681	108	33	4	9	3	9	15	103	103	54	9	7	420	0	1,558
ELD	361	118	194	120	154	95	153	164	404	620	140	37	56	159	0	2,775
ENVI	208	20	150	36	59	16	39	51	151	99	13	4	2	195	0	1,043
FAM	519	108	180	116	117	86	139	162	413	434	94	36	37	152	1	2,594
FED	1,073	55	100	10	56	10	65	94	143	213	39	13	5	360	1	2,237
FOOD	78	6	11	4	2	1	3	13	22	21	3	1	3	93	0	261
GEN	306	96	137	98	99	54	96	133	265	297	112	32	23	271	1	2,020
HLS	244	46	176	46	56	29	40	81	125	224	20	13	9	216	0	1,325
ILP	586	42	30	14	8	7	13	35	68	49	35	9	3	833	2	1,734
IPS	710	86	54	20	31	13	36	38	109	120	43	10	9	595	1	1,875
JUD	70	29	51	22	24	12	13	29	42	41	7	16	9	3	0	368
LABR	662	88	213	59	107	35	87	111	203	304	56	17	5	361	0	2,308
MUNI	111	11	151	69	82	66	81	86	218	164	4	3	2	46	0	1,094
REAL	1,143	170	225	150	142	91	214	178	602	718	188	29	64	410	0	4,324
SLS	800	79	184	74	128	60	108	154	357	437	86	24	37	441	0	2,969
TAX	1,054	58	62	18	34	12	41	63	167	195	42	4	13	695	0	2,458
TICL	457	79	187	67	117	60	86	244	295	415	77	34	26	246	0	2,390
TRIA	466	60	187	64	129	64	89	192	235	324	63	29	10	258	1	2,171
TRUS	1,150	156	218	144	172	119	210	210	561	832	179	36	64	620	0	4,671
YOUN	863	202	173	49	59	34	73	142	160	275	162	39	26	917	1	3,175

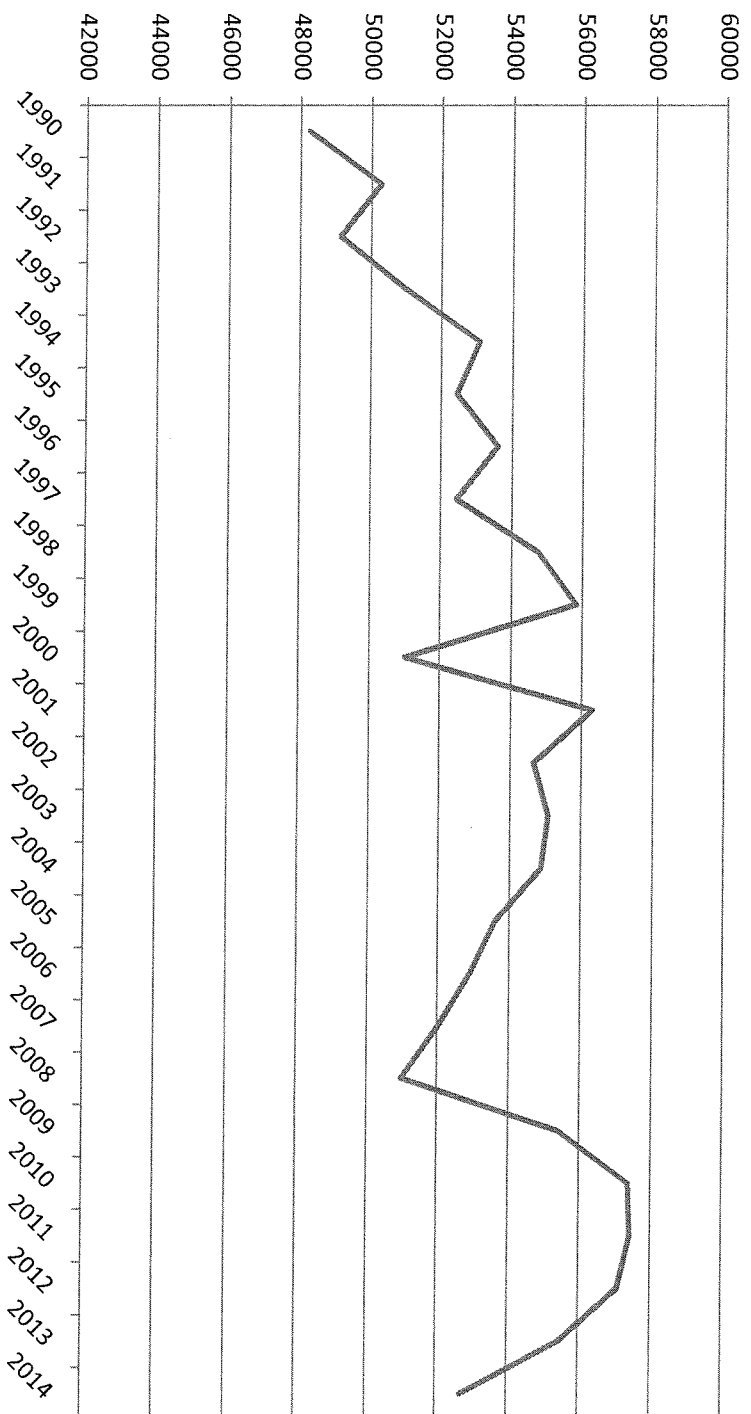
# Environmental Law Section



## Membership Trends - 2009-2014



## Total Section Memberships



\*includes members with multiple section memberships

## MEMORANDUM AND RECOMMENDATIONS REGARDING PROPOSED EXTENSION AND REFORM OF THE BROWNFIELD CLEANUP PROGRAM

### ENVIRONMENTAL LAW SECTION

Environmental #2-A

January 8, 2015

Following a panel discussion at the Fall Meeting of the Environmental Law Section of the New York State Bar Association (NYSBA), the Section's Brownfield Task Force invited key stakeholders<sup>1</sup> to continue a dialogue in hopes that a consensus could emerge on the key issues to be addressed in any extension of the New York State Brownfield Cleanup Program (BCP).

The Section is pleased to report that, after several months of conference calls and meetings, the Brownfield Task Force has been able to develop, with the input of these stakeholders, a series of new recommendations that we believe inform the debate<sup>2</sup>.

This memorandum, which has been approved by the Environmental Law Section's Executive Committee in accordance with the Section's Advocacy Policy, summarizes the recommendations of the Section's Brownfield Task Force based on input from these stakeholder meetings and conference calls.<sup>3</sup>

#### **1. Amending ECL § 27-1405(2)(b)'s Definition of Brownfield Site**

The current definition, based on federal law, is a site which "may be complicated by the presence or potential presence" of a contaminant. The Governor's proposal in last session's budget bill was to amend the definition of "brownfield site" to "any real property where a contaminant is present at levels exceeding the soil cleanup objectives or *other health-based or environmental standards* promulgated by the department that are applicable based on the reasonably anticipated use of the property, *as determined by the department.*" (Emphasis added)." The Assembly's bill was essentially the same but omitted the provision that the site's "reasonably anticipated use" be determined the Department of Environmental Conservation (DEC). The Senate's proposal also required

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<sup>1</sup> The participants in this process included representatives of the New York State Bar Association Environmental Law Section ("Section"), the New York League of Conservation Voters, the Environmental Defense Fund, The Business Council of New York State, Inc., New Partners for Community Revitalization, the New York City Office of Environmental Remediation, the Real Estate Board of New York and the New York City Brownfield Partnership.

<sup>2</sup> The views expressed in this memorandum are those of the Section. No inference is intended, and none should be inferred, that each organization has endorsed the specifics of each of the recommendations herein.

<sup>3</sup> No state employees have participated in the development of this memorandum.

contaminants to be present at levels exceeding soil cleanup standards but allowed the applicant to choose the appropriate standard based on use. The Senate's definition added a list of criteria that would need to be met to qualify for entry into the BCP and for tax credits.

In addition, the Governor's and Senate's bills added the phrase "or other health-based or environmental standards". This phrase did not clarify as to whether DEC could create additional standards for admission into the BCP, by guidance documents or otherwise, than are provided in 6 NYCRR Part 375-6 and the DEC groundwater criteria.

**Recommendation:** We recommend the definition proposed by the Governor and the Assembly, except that the cleanup standard to be applied should be based on the proposed end use as reasonably determined by the applicant. We believe that the applicable threshold of contamination should be the standards and criteria set by statute or regulation.

## **2. Amending Tax Law § 21(a)(3-a)(A) To Reduce Tangible Property Tax Credit Component**

Currently, the tangible property tax credit component available for a qualified, non-industrial site "shall not exceed thirty-five million dollars or three times the costs included in the calculation of the site preparation credit component."

The Governor's proposal would have created an additional "gate" for accessing tangible property tax credits: sites would have to (i) have been vacant for 15 or more years, (ii) include a building or buildings that have been vacant or tax delinquent for 10 or more years, (iii) be "upside down", or (iv) meet certain future use requirements related to economic development. The Assembly proposal would also have established a second gate, but would have modified the criteria to require sites to (i) have been vacant for four years, or with buildings vacant for two years (ii) be underutilized, (iii) have functionally obsolescent buildings, or (iv) be "upside down" (using a different definition than in the Governor's proposal). As noted above, the Senate proposal would have added criteria to qualify as a "brownfield" but, once a site was in the BCP, there would have been no additional restriction on the availability of tangible property tax credits.

**Recommendation:** The two-gate approach to qualify for this credit will likely result in (a) complication, delay and uncertainty in site acceptance, (b) increased program complexity and transaction costs for both DEC and the regulated community, and (c) litigation based upon the subjectivity of the proposed criteria (e.g., what qualifies as "underutilized" or "functionally obsolescent"?). The goals that the two-gate approach seeks can be achieved by retaining as-of-right eligibility for the tax credits while prioritizing the tangible credit based on the benefits such projects provide to the State and to the community in which the site is located.

Accordingly, we recommend that all sites in the BCP remain eligible for the tangible property tax credit component, but that the \$35 million cap on such credits be reduced for non-targeted sites and projects, and that targeted sites and projects receive increased

percentages and limitations. See Attachment A for a spreadsheet illustrating how such an approach might work.

**3. Amending Tax Law § 21(b)(2) Regarding Site Preparation Costs Eligible for Tax Credits**

Under existing law, recoverable site preparation costs are broadly defined. They include the costs paid or incurred in connection with the site's qualification for a certificate of completion (COC) and other costs to prepare a site for building construction. They specifically include costs of excavation, temporary electric wiring, scaffolding, demolition, fencing and site security.

The Governor's proposal would have restricted eligible site preparation costs to those specified in a DEC decision document and directly related to remediation-related construction. The Assembly and Senate proposals would have left existing law on this issue unchanged

**Recommendation:** We propose (in Attachment B) a definition of "remediation costs" that ties the credit to costs that are more closely associated with remediation activities. The proposed definition would clarify that certain costs associated with constructing the foundation of a building—e.g., those in excess of the cost of an engineering cap required by an approved remedy—would not be eligible for the remediation credit component.

**4. Adding new ECL § 27-1437 to create a streamlined, non-tax credit voluntary cleanup program:**

The Governor's, Assembly's and Senate's proposals all included the addition of a liability-release-only cleanup program that would allow parties to waive tax credits in exchange for a more expedited cleanup process. The Assembly's bill allowed both volunteers and participants to waive tax credits but still required compliance with the full panoply of the BCP requirements. The Governor's "BCP-EZ" provision provided that a volunteer would be relieved of any or all procedural requirements, including public participation and community acceptance of a proposed plan. The Senate "NY-RAPID" program limited eligibility to volunteers for sites that are either "minimally contaminated" or "where contamination is overwhelmingly the result of the use or placement of historic fill" and also provided for an exemption from procedural requirements.

**Recommendation:** We agree that there is value to creating a new, streamlined program. However, there should be more clarity than was provided in any of the existing proposals as to which procedural requirements would be waived in any such program. Cleanup and review timeframes should be reduced, greater reliance placed on simplified templates and presumptive remedies, and the alternative analyses, ASP data and EQUIIS database requirements should be deleted. Although participation in a streamlined program should generally be at the election of the applicant, certain types of sites—e.g., significant threat sites—should not be eligible.



**5. Amending ECL 27-1407 (1-a) Brownfield Site Eligibility for Off-Site Contamination**

The Governor's and Assembly's proposals contained a provision that sites where contamination is solely from offsite sources are not eligible for tangible property tax credits. Such sites would remain eligible to enter the BCP and obtain site preparation tax credits.

**Recommendation:** If a site is contaminated, it needs to be cleaned up irrespective of the source of that contamination. Therefore, sites that meet the definition of "brownfield" should be eligible to enroll in the BCP and obtain applicable site preparation and tangible property credits, even if some or all of the contamination originates offsite.

**6. Amending the Brownfield Definition To Allow Class 2 Site Eligibility-**

The Governor's proposal would have allowed Class 2 sites to be eligible for the BCP if the sites were "under contract to be transferred to a *volunteer and the department has not identified any responsible parties for that property having the ability to pay for the investigation or cleanup of the property.*" (emphasis added).

**Recommendation:** We agree that Class 2 sites should be eligible for the BCP where a volunteer owns or is under contract to purchase the site, but we recommend that the italicized language be deleted. Instead, we recommend including language, similar to that in the Senate bill, that site cleanup does not extinguish the right of the volunteer or the State to pursue responsible parties for cleanup costs, or for cleanup if the site is not remediated appropriately.

**7. Amend Tax Law § 21(a)(3), (b)(2) and (b)(4) Regarding the "Related Party" Issue.**

Currently, the brownfield redevelopment tax credit (Section 21 of the Tax Law) does not distinguish creditable expenditures based on whether they are paid to related parties. Rather, qualified expenditures that are properly chargeable to capital under federal tax law are creditable unless specifically excluded (such as pre-Brownfield Cleanup Agreement costs). The Governor's proposal would have added language to specify that the calculation of each of the tangible property, site preparation and on-site groundwater remediation credit components would not include costs paid to a "related party or parties", as that term is defined under the Internal Revenue Code. The Senate and Assembly bills contained no changes to existing law. If enacted, the Governor's proposal would have swept too broadly, eliminating from credit eligibility a panoply of typical and necessary project costs paid to related parties which would then have to be paid instead to third parties, possibly at greater cost to both the project and the State (in tax credits).

**Recommendation:** We suggest an approach that is directly targeted to related party expenditures which we understand to have created concerns at the NYS Department of Taxation and Finance: accrued but deferred amounts owed to "related parties" for services (typically development fees calculated as a percentage of project costs). These amounts may be properly capitalized under federal tax law but may be deferred after

project completion, often because lenders and investors demand priority over such payments. Rather than eliminating all related party payments, and to preserve the well-understood usage of federal income tax basis in the credit calculations, we suggest instead that the tangible property credit component with respect to such deferred service obligations to related parties be allowed only if and when such payments are actually made. Suggested language incorporating this approach can be found in Attachment C.

#### **8. Grandfathering of Existing Sites**

Under current law, the BCP continues indefinitely, but eligibility for tax credits expires for all sites which have not received their COCs by December 31, 2015.

The Governor's proposal would have retained that deadline for sites that entered the program prior to June 23, 2008. Sites entering between June 23, 2008 and June 30, 2014 would have had until December 31, 2017 to obtain their COCs. Sites entering between July 1, 2014 and December 31, 2014 would have had until December 31, 2025 to obtain COCs. However, a site not meeting its applicable deadline would not only have been ineligible for tax credits but would be terminated from the BCP and thus not receive the liability protection that accompanies the COC.

Both the Senate and Assembly proposals would have extended eligibility for tax credits to all sites obtaining COCs by December 31, 2025 (although the Assembly proposed a December 31, 2022 cutoff date for site entry).

**Recommendation:** We recommend that all sites accepted into the BCP as of the date of any amendment to the BCP be grandfathered with respect to eligibility for currently available tax credits, and that the deadline for obtaining their COCs be the earlier of ten years after admission to the BCP (as long as that date is no earlier than December 31, 2015) or December 31, 2025. In order to address this issue on a going-forward basis, we recommend that newly-admitted sites qualify for tax credits based on their date of admission to the Program, not based on the issuance of a COC. In no event should sites in the program automatically lose their eligibility for COCs for failing to meet a cutoff date. The issue of sites remaining in the program indefinitely can be addressed using existing DEC authority to terminate sites that are not making reasonable progress in implementing a remedial program.

#### **9. Amending ECL § 27-1409(2) re Payment of DEC and DOH Oversight Costs**

State oversight costs sometimes represent a significant proportion of brownfield cleanup project expenses. For smaller projects, these costs can exceed the tax credit benefits. Whereas other project costs are usually somewhat predictable, State oversight costs are often difficult to predict, especially when DOH costs are added to DEC costs.

The Governor's proposal would have eliminated to oversight fees for volunteers for costs incurred after the effective date of the legislation. It also provided authority to DEC to negotiate "a reasonable flat-fee" for oversight costs for participants. The Senate proposal would have also eliminated State oversight fees; the Assembly proposal did not address this issue.

**Recommendation:** We agree that the State should not charge oversight fees for volunteers, and that DEC be authorized to negotiate reasonable flat fees with participants.

**10. Amending ECL §72-0402(1)(d) Hazardous Waste Program Fee and ECL §27-0923(3)(c) Special Assessment on Hazardous Waste**

ECL §72-0402 imposes a program fee, and ECL §27-0923 imposes a special assessment, on generators of hazardous waste. Statutory exemptions are provided for hazardous wastes generated as part of remedial actions performed under an order or agreement with DEC pursuant to title 13 or title 14 of the ECL. However, these exemptions do not extend to cleanups performed under local or other regulatory authority.

The Governor's proposal would have extended the statutory exemptions to projects that remediate sites under local government programs that either have been delegated authority to implement their remedial program by DEC or that have entered into a MOA with DEC. Neither the Senate nor Assembly proposals addressed this issue.

**Recommendation:** We agree that the hazardous waste program fee and special assessment should be exempted for sites remediated under programs run by municipalities with delegated authority or that have a MOA with DEC.

**11. Provide Municipalities with Authority to Enter Sites in Tax Foreclosure to Perform Environmental Investigations:**

Existing law authorizes municipalities that foreclose on tax liens to enter foreclosed sites to perform environmental investigations. However, there is no such authority for municipalities that, rather than foreclosing directly, sell liens to third parties which then foreclose.

**Recommendation:** We recommend amending the ECL §56-0508(1) to allow municipalities to enter sites subject to foreclosure or tax lien sales, in order to perform environmental investigations on those sites. See suggested statutory language in Attachment D.

**12. Allowing Expenses Deducted Under Internal Revenue Code §198 To Be Considered in Calculation of Tangible Property Credits**

Current law does not allow remedial expenses deducted under now-expired IRC §198 towards the calculation of the tangible property credit component limitations established by the 2008 BCP Amendments. The result is that if an applicant deducted rather than capitalized all of its cleanup expenses, it would not qualify for any tangible property tax credits. This anomalous result was, apparently, not intended by the drafters of the 2008 Amendments.

Both the Governor's and the Senate's proposals included language which would have allowed all costs of remediating a site—regardless of whether they were capitalized or deducted—to be considered in calculating tangible property tax credits.

**Recommendation:** We support the approach taken in the Governor's and Senate's proposals.

### **13. BOA Reform:**

The BOA Program does not expire under existing law.

The Governor's proposal did not amend the BOA Program, and the budget did not fund it. The Senate proposal would have required the Department of State (DOS) to establish criteria for brownfield opportunity area conformance determinations for purposes of the BCP. The Assembly proposal would have required the DOS to develop criteria to determine if the proposed use and development of a site advances the goals and priorities established for that applicable BOA.

**Recommendation:** We recommend that the BCP program be amended so that a site in a designated BOA would be eligible for enhanced BCP tax credits. As far as the BOA program itself is concerned, designation should be far more transparent and simple than the current process. The information developed in relation to the existing BOAs should be publicly accessible, with the assistance of ESD, so that developers know the locations of BOAs and the pre-development amenities offered. Enough funding should be provided so that all of the existing BOAs can be designated as eligible for BCP tax credits and the opportunity remains for the creation of new BOAs. Moreover, the three-step process should be reduced to a single process, and DOS should be accountable for facilitating BOA designation within a defined time period. Upon designation there should be grant funding for implementation, specifically pre-development activities that will assist in the marketing and redevelopment of brownfield sites.

## **CONCLUSION**

The Brownfield Task Force is fully prepared to work with the Governor's office, the Assembly and the Senate on legislation that would resolve the issues highlighted in this Report and Recommendations. Since the tax credits are expiring on December 31, 2015, it is imperative the two branches of Government work together to revise and extend the BCP along the lines suggested herein, so that the Program can continue to assist in the environmental cleanup and economic revitalization of the many remaining brownfield sites in New York State.

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ATTACHMENT A

			<b>Tangible Property Credit Component Is Limited to the Lower of</b>	
Use	Type of Enhancement	Applicable %	Remediation Cost Multiplier	Sitewide Cap On Taxable Property Tax Credits
Non-Affordable Residential	None	10%	3.0	\$15,000,000
	LEED (Green Building) or TOD (Transit Oriented Development)	12%	3.0	\$20,000,000
	En-Zone/BOA*	14%	3.0	\$25,000,000
Affordable Residential	None	13%	4.0	\$25,000,000
	LEED or TOD	15%	4.0	\$30,000,000
	En-Zone/BOA	17%	4.0	\$35,000,000
Commercial	None	10%	4.0	\$35,000,000
	LEED or TOD	12%	4.0	\$40,000,000
	En-Zone/BOA	14%	4.0	\$45,000,000
Industrial	None	15%	8.0	\$50,000,000
	LEED or Near Rail/Roads/Barge	20%	8.0	\$55,000,000
	En-Zone/BOA	25%	8.0	\$60,000,000

**\* NOTE: The En-Zone definition in Tax Law 21(6) should be amended to reference the most recent census data and to eliminate the sunset of the county En-Zones.**

## ATTACHMENT B

Section 21(b)(2) of the Tax Law would be amended to read as follows:

*(2) Remediation costs. The term "remediation costs" shall mean all amounts properly chargeable to a capital account, which are paid or incurred in connection with a site's investigation, remediation, or qualification for a certificate of completion, and all costs paid or incurred within sixty months after the last day of the tax year in which the certificate of completion is issued for compliance with the certificate of completion or the remedial program defined in the certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site. Remediation costs shall include, but not be limited to, costs of excavation; demolition; lead paint removal; asbestos removal; environmental consulting; engineering; legal costs associated with participation in the brownfield cleanup program; transportation, disposal, treatment or containment of contaminated soil; remediation measures taken to address contaminated soil vapor; cover systems consistent with applicable regulations; physical support of excavation; dewatering and other work to facilitate or enable remediation activities; sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring, scaffolding, and security facilities. Remediation costs shall not include the costs of foundation systems that exceed the cover system requirements in the regulations applicable to the qualified site.*

## ATTACHMENT C

Section 21(a)(3) would be amended to add the following at the end thereof:

*Notwithstanding any other provision of law to the contrary, the portion, if any, of the tangible property credit component calculated pursuant to this section which is attributable to related party service fees includable in the cost or other basis of qualified tangible property shall be allowed as follows: (A) the tangible property credit component attributable to related party service fees actually paid by the taxpayer to the related party in the taxable year in which such property is placed in service shall be allowed for such taxable year; and (B) with respect to any other taxable year for which the tangible property credit component may be claimed under this section, the tangible property credit component attributable to related party service fees shall be allowed only with respect to payments actually made by the taxpayer to the related party in such taxable year.*

**A.** Section 21(b) would be amended by adding a new paragraph (3-A) as follows:

*(3-A) The term "related party service fee" shall mean any fee or other monetary compensation earned by a related party and calculated as a percentage of project and/or acquisition costs, in consideration of services rendered to or for the benefit of the taxpayer placing qualified tangible property in service in connection with the acquisition and development of such property. For purposes of the immediately preceding sentence, "related party" shall have the meaning ascribed to it under Sections 267(b) and 318 of the Internal Revenue Code.*

ATTACHMENT D

ECL § 56-0508 would be amended as follows:

Notwithstanding any general, special or local law or ordinance to the contrary:

*1. upon the commencement of a proceeding to foreclose a tax lien, the taxing district bringing the proceeding, **the taxing district that sold the tax lien** or any **other** taxing district other than the one foreclosing the tax lien, having any right, title, or interest in, or lien upon, any parcel described in the petition of foreclosure may upon twenty days notice to all parties having any right, title, or interest in, or lien upon such parcel, move, at a special term in the court in which the foreclosure proceeding was brought, for an order granting such taxing district the temporary incidents of ownership of such parcel for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel.*