

New York State Bar Association
Environmental & Energy Law Section
Executive Committee Meeting Agenda – June 13, 2019



1. Approval of Minutes from January Executive Committee Meeting
2. Budget Report (Handout) (Linda)
3. Mohonk Meeting Program, Registration and Sponsors (Handouts) (Lisa B, Nick W. and Howard)
4. Law Firm and Corporate Sponsors Initiative (Handout) (Nick)
5. Membership Committee Initiative (Rob. S and Howard) ***
6. Law School Enrollment Initiative (Nick)
7. NYSBA Leadership Forum (Rob S.)
8. Use of Technology at Programs (Twitter Handout) (Social Media Chairs)
9. Other Programs
 - a. May 8: Oil Symposium
 - b. Dec 12: Brownfields Superfund Update
 - c. Jan 31: Annual Meeting
10. House of Delegates (Amy K)
11. Green Amendment Legislation (Handout) (Katy K. and Nick)
12. Green Guidelines (Marla W.)
13. SEQRA Statute of Limitations (Handout) (Dan R)
14. Federal Environmental Policy Task Force
15. Minority Fellowship (Ginny)
16. Essay Contest (Miriam) (2020 – need contacts with law schools during year)
17. Committee Reports and open Co-Chairs (Liaison Chart Handout)
18. Finalizing Speaker Fee Reimbursement Policy (Marla and Teresa)
19. Prevailing Wage Legislation – Brownfields (Larry S. and Nick)

*** Please consider volunteering to be part of a membership committee with its goals to locate more in-house corporate environmental lawyers, energy lawyers, eager law students, mentoring of younger lawyers, and assistance with contacting our dropped non-renewed members.

New York State Bar Association
Environmental and Energy Law Section
For the Three Months Ending Sunday, March 31, 2019

	2019		2018		2017		2016		2015	
	Budget	March	Year To Date	Percent	Budget	Year To Date	Percent	Year To Date	Year To Date	Year To Date
Income										
Dues	\$28,200.00	\$1,237.50	\$26,905.00	95.41%	\$29,450.00	\$27,317.84	92.76%	\$27,247.50	\$28,028.75	\$28,919.17
Meetings	42,000.00	3,250.00	10,640.00	25.33%	35,000.00	6,976.00	19.93%	13,815.00	14,315.00	15,790.00
Sponsorship	27,500.00	1,500.00	5,500.00	20.00%	20,000.00	20,000.00	100.00%	17,250.00	2,700.00	4,800.00
Newsletters	500.00			0.00%	350.00	495.00	141.43%	370.00	165.00	370.00
Publications				0.00%			0.00%			25.00
Total Income	98,200.00	5,987.50	43,045.00	43.83%	84,800.00	54,788.84	64.61%	58,682.50	45,208.75	49,904.17
Expenses										
Postage & Shipping	1,500.00	3.56	835.51	55.70%	1,500.00	555.99	37.07%	654.20	654.25	633.71
Awards & Grants	2,400.00	250.00	1,141.04	47.54%	3,500.00	1,500.00	42.86%	663.10	22.69	60.53
Diversity	500.00			0.00%	3,500.00		0.00%			
Membership Initiative	500.00			0.00%	1,500.00		0.00%			
Meeting Rooms	1,800.00			0.00%		1,626.50	0.00%			
Catering & Banquets	37,500.00	9,319.55	21,902.07	58.41%	35,000.00	27,469.71	78.48%	28,278.06		
Beverage Service & Receptions	10,500.00	15,482.32	15,482.32	147.45%	12,000.00	4,297.50	35.81%	5,785.76		
Speaker & Guest Expense	1,500.00			0.00%	1,500.00	500.00	33.33%			
Audio/Visual Expense	6,000.00	5,151.61	5,151.61	85.86%	7,500.00	3,380.26	45.07%	3,506.76		
Activities & Entertainment				0.00%	1,000.00		0.00%			
Gratuities	50.00			0.00%	300.00		0.00%			
Section Executive Committee Meetings	8,500.00	6,907.84	6,907.84	81.27%	2,500.00	6,575.13	263.01%	1,428.49	58.59	
Officers Expense	750.00		1.90	0.25%	1,000.00	1.18	0.12%	72.07		
Miscellaneous Meeting and Program Costs	8,000.00	2,028.02	2,028.02	25.35%	7,000.00	778.04	11.11%	3,949.21	300.00	532.49
Section Subcommittee Meetings	300.00			0.00%	500.00	80.76	16.15%	92.67	40.69	
Newsletters	7,200.00		3,696.42	51.34%	5,000.00	589.49	0.00%	3,099.32	2,958.02	750.00
Graphic Department Allocations	1,500.00		771.90	51.46%	1,500.00		0.00%	314.80	353.32	197.92
Total Expenses	88,500.00	39,142.90	57,918.63	65.44%	84,800.00	47,354.56	55.84%	47,844.44	4,387.56	2,174.65
Net Income over Expense	9,700.00	(33,155.40)	(14,873.63)	-153.34%		7,434.28	0.00%	10,838.06	40,821.19	47,729.52

Accumulated Surplus (Deficit) **\$114,463**

NEW YORK STATE BAR ASSOCIATION

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Name of attorney who requested your sponsorship:

WHY SPONSOR?

- Gain recognition at the premier events of the year for the Environmental & Energy Law Section of the New York State Bar Association, held at NYSBA's high-profile Fall and Annual Meetings
- Position yourself and your company or firm as a supporter of the Environmental & Energy Law Section's legal community and network with hundreds of our members

WHAT YOU RECEIVE FOR YOUR SPONSORSHIP:

- Corporate recognition from podium and on all signage at business and individual meeting/networking receptions
- Acknowledgement on Environmental & Energy Law Section's website, visibility to the Section's active members (over 1,000) and NYSBA membership and listing in the program agenda

SPONSORSHIP OPPORTUNITIES

Please indicate which level of sponsorship you would like:

- Platinum: \$3,500 [includes **two** complimentary Fall & Annual Meeting networking receptions, programs & Annual luncheon at Mastro's Restaurant, 1285 Ave. of the Americas (one block from Hilton)]
- Gold: \$2,500 [includes **one** complimentary Fall & Annual Meeting networking receptions, programs & Annual luncheon at Mastro's Restaurant]
- Silver: \$1,500 [includes corporate recognition at Fall Meeting & **one** complimentary attendance at Thursday's Annual Meeting networking reception (6-7:30pm) & **one** complimentary attendance at Friday's luncheon located at Mastro's Restaurant. \$500 for each additional representatives to attend]
- Exhibitor: \$1,200 [Includes a draped table for Fall & Annual Meetings, two chairs and **two** complimentary registrations to the Annual luncheon]
- Sponsor Fee: \$500 [Includes your firm's logo on signage during the Fall and Annual Meeting, a listing in the program agenda and/or poster board, and recognition from section chair from the dais on the day of the event. Law firms are encouraged to support as a sponsor.]

Environmental & Energy Law Section

Fall Meeting

September 22 - 24, 2019

Mohonk Mountain House

New Paltz, NY

Annual Meeting

January 31 - February 1, 2020

New York Hilton Midtown

1335 Ave. of the Americas, NYC

Program Information:

Fall Meeting - Logo needed by June 1, 2019.

Annual Meeting - Logo needed by September 1, 2019.

Logos need to be a high resolution tif file for inclusion in the signage. Send to lbataille@nysba.org

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lbataille@nysba.org

Ph: 518-487-5680/Fax: 518-463-5993

Schedule of Events

Sunday, September 22

- 9:00 – 2:00 pm **Guided Activities for Early Arrivals**
Mohonk offers a wide range of activities to do on your own, but why not get a head start on making connections? Here are a few sponsored activities:
Mountain Bike Ride
Hiking
Tomahawk Throwing and Archery
Rock Climbing
Garden and Greenhouse Tour
- 2:30 – 4:00 p.m. **Executive Committee Meeting** – Cliff View Room
- 4:00 – 4:30 p.m. **Hotel Check-in** - Guest Services Desk
Meeting Registration – Lake Lounge
- 4:00 – 4:30 p.m. **Coffee Break** – Cliff View Alcove
- 4:30 – 5:45 p.m. **“I Fought the Law and the Law Won” - Regulatory Initiatives & Enforcement** – Pavilion Terrace
1.5 MCLE Credits | Areas of Professional Practice
Federal, State and NYC regulatory officials review environmental laws with enforcement claims examples which resulted in legal liability, damages, remediation obligations, civil and criminal fines and natural resource damages, and civil and criminal fines, penalties and jail time.
- Panel Chair: **Susan E. Amron, Esq.**, New York City Department of City Planning, New York, NY
- Panelists: **Thomas S. Berkman, Esq.**, General Council, NYSDEC., Albany, NY
NYSDEC Initiative Update
- Lemuel M. Srolovic, Esq.**, Chief Environmental Protection Bureau, NYSAG, New York, NY
Attorney General Enforcement Update
- Walter Mugdan** – Deputy Regional Administrator, USEPA Region 2
USEPA Update
- 6:00 – 7:00 p.m. **Cocktail Reception** – Sunset Lounge
- 7:00 – 8:00 p.m. **Dinner** - Dining Room

Monday, September 23

7:30 - 8:30 a.m. **Breakfast – Dining Room**

8:45 - 9:35 a.m. **“She Blinded Me with Science” – New Technology as a Tool in Environmental Cases – Parlor**

1.0 MCLE Credit | Areas of Professional Practice

The proliferation of low-cost tools for environmental monitoring and encouragement of citizen science by government agencies has accelerated the use of environmental monitoring data collected by volunteers. This panel will survey recent advances in citizen science tools, discuss the ways in which policy makers use data from citizen science to form the basis for policy and enforcement decisions, and address the challenges associated with using data collected by citizen scientists.

Panel Chair: **Adam M. Stolorow, Esq.**, Sive, Paget & Riesel PC, New York, NY

Panelist: **Liz Barry**, Co-Founder and Director of Community Development, Public Laboratory for Open Technology and Science
Citizen Science Tools for Environmental Monitoring

Jacqueline Lendrum, Director, Bureau of Water Assessment and Management, NYSDEC
Citizen Science Perspectives

Michael Beckerich, President, York Analytical Laboratories
New Testing Methodologies for Emerging Contaminants

9:35 – 9:50 a.m. **Coffee Break - West Alcove**

9:50 – 11:05 a.m. **Earth, Wind & Fire, “Got to Get You into My Life” – Cleaner and Cost-Effective Energy – Parlor**

1.5 MCLE Credits | Areas of Professional Practice

Partly in response to climate change, New York and other states are experiencing a boom in solar, on- and off-shore wind, and energy storage projects. Because renewable-energy generation technologies provide variable output, New York and other states are creating incentives to integrate energy storage solutions into new and existing renewable-energy ventures. This panel will discuss how these different technologies work separately and together, as well as the current state of play and possible future developments in the siting, permitting and financing of solar, wind and energy storage projects.

Panel Chair: **Gregory M. Brown, Esq.**, Brown Duke & Fogel, P.C

Panelists: **Julie Petit**, Senior Counsel EDF Renewables
Large Scale Solar and on-shore Wind

Megan Higgins, Director of Offshore Energy, West Tetra Tech Sciences
Off-Shore Wind

Marshall Haimson, President, E Capital Development
Storage, Transmission and Financing Energy Projects

11:05 – 11:20 a.m.

Coffee Break – West Alcove

11:20 – 12:10 p.m.

“We Built This City on Rock and Roll” (with a little help from our friends) – Risk Management & Project Financing R.E. Transaction – Parlor

1.0 MCLE Credit | Areas of Professional Practice

This panel will explore a hypothetical real estate transaction and address specific issues that arise in the context of New York State’s Brownfield Cleanup Program (BCP), including: implications of BCP tax credits on deal structure and financing, real estate financing hurdles, balancing remediation goals with project finance, risk mitigation and role of insurance products, and related matters. The goals of the program are for attendees to (A) get a “behind the scenes” look at how legal experts in the areas of the BCP and environmental insurance grapple with and resolve day-to-day issues in transactions and (B) acquire practical pointers and advice. Attendees will be invited to ask questions during the program in order to facilitate conversations with the panelists.

Panel Chair:

Jose A, Almanzar, Esq., Periconi, LLC, New York, NY

Panelists:

Frank Piccininni, Esq., Sterling Environmental Services, Woodbury, NY
Risks & Transfer Strategies

Philip S. Bousquet, Esq., Bousquet Holstein PLLC, Syracuse, NY
Tax Incentives

12:30 – 1:30 p.m.

Lunch – Dining Room

1:30 – 6:30 p.m.

Guided Group Activities

Mohonk Mountain House offers a wide range of activities to do on your own, but we encourage you to take advantage of one of these sponsored activities:

Mountain Bike Ride

Hiking

Tomahawk Throwing and Archery

Rock Climbing

Garden and Greenhouse Tour

5:00 – 5:50 p.m.

“I Walk the Line” – Ethics & Environmental Law – Parlor

1.0 MCLE Credit | Ethics and Professionalism

While all attorneys must maintain technological competence, for environmental attorneys this goes beyond computer programs and the cloud. Recent rapid changes scientific understanding and environmental regulation make providing competent representation a challenge. This presentation will examine what competence means for an environmental attorney in 2019, and how to render candid advice to clients in the face of scientific and regulatory uncertainty.

Speaker: **Amy K. Kendall, Esq.**, Knauf Shaw, LLP, Rochester, NY

6:30 – 7:30 p.m. **Cocktails** – Pavilion

7:30 – 9:30 p.m. **Dinner** - Pavilion

Dinner Keynote: **Peter Lehner**, Managing Attorney, Sustainable Food and Farming, Earthjustice

Moderator: **Michael S. Bogin, Esq.**, Sive, Paget & Riesel PC, New York, NY

Tuesday, September 24

7:30 – 8:30 a.m. **Breakfast**

8:45 – 9:35 a.m. **Mindfulness Program: “Mohonk State of Mind” (with thanks to Billy Joel)** -
Parlor and Outdoors

1.0 MCLE Credit | Law Practice Management

Mohonk experts will teach attorneys how mindfulness practices and various techniques can enhance their focus and productivity. In addition, these learning techniques will include lessons onsite with viewing types of trees and geology formations while alleviating stress and enhancing wellness.

Panel Chair: **Dr. Lynn J. Bogin, JD, PHD**

Speaker: TBD

9:50 – 10:40 a.m. **“Take me to the River” – How to identify a WOTUS** - Parlor

1.0 MCLE Credit | Areas of Professional Practice

Defining a WOTUS – How the definition of federal and state wetlands has changed and will be changing. How the changes in definitions affect the identification, regulation and protection of the resources in New York State.

Panel Chair: **Terresa Bakner, Esq.**, Whiteman Osterman & Hanna LLP, Albany, NY

Panelists: **Barbara Beall**, The Chazen Companies, Troy, NY

Daniel M. Richmond, Esq., Zarin Steinmetz, White Plains, NY

10:40 – 11:00 a.m. **Coffee Break** - Parlor

11:00 – 11:50 a.m. **“The Big Bright Green Pleasure Machine” a.k.a. Complying with Environmental Law, Testing and Equipment** - Sports Field

1.0 MCLE Credit | Areas of Professional Practice

Environmental Attorneys have to review data on a daily basis, but few of us have observed how consultants physically obtain samples in the field, and maintain quality assurance protocols, for the data we review every day. During

this outdoor interactive session, three consultants will show us the equipment they use to take soil, soil vapor and groundwater samples, and discuss the problems they typically encounter, and how they resolve those issues. In addition, the consultants covering the soil and groundwater environmental media will show us the different techniques they use for emerging contaminant sampling. A summary of the applicable sampling regulations and guidance documents will also be provided.

Panel Chair: **Linda R. Shaw, Esq.**, Knauf Shaw LLP, Rochester, NY

Panelists **Seth Kellogg**, Geosyntec Consultants, Inc., Ewing, NJ

Gary Rozmus, GEI Consultants, Inc., P.C., Huntington Station, NY

Scott Yanuck, Laurel Environmental, Huntington Station, NY

12:00 – 1:00 p.m. **Lunch**

1:00 p.m. **Check Out**

1:00 p.m. **Hydrology Tour at the OSI Trail in New Paltz**
Meet at the Trail

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One Elk Street, Albany, NY 12207

lbataille@nysba.org

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Law School Name	Law Students October 2018	Law Students January 2019	Section Liaison	Environmental Law Society	Environmental Law Review	EELS Minority Fellowship Summer 2019 notice recipients - 11/19/2018
Albany Law School	9			http://www.albanylaw.edu/students/organizations https://www.brooklaw.edu/student-life/campus-life/studentorganizations/ewvaw12	None	careers@albanylaw.edu career@brooklaw.edu, apalasa@brooklaw.edu
Brooklyn Law School	2				None	jmeny@law.columbia.edu (Journal of Env Law); maria.ricardo@law.columbia.edu (Dean Maria Ricardo); els@law.columbia.edu (Env Law Society) fac16@cornell.edu (Carberry, _____); careerplanningoffice@law.cuny.edu; greencoalition@mail.law.cuny.edu;
Columbia University School of Law	0			https://orgs.law.columbia.edu/els/ https://www.lawschool.cornell.edu/research/ELS/	http://www.columbiaenvironmentallaw.org/	None
Cornell Law School	7			http://www.law.cuny.edu/students/orgs/green-coalition.html	None	None
CUNY	5				None	elr@law.fordham.edu (Environmental Law Review); ELA@law.fordham.edu (Environmental Law Advocates)
Fordham University	3			https://sites.google.com/site/environmentallawadvocates/home https://law.hofstra.edu/currentstudents/studentactivities/studentorganizations/els/index.html	https://news.law.fordham.edu/air/ https://scholarlycommons.law.hofstra.edu/air/	ELA@law.fordham.edu (Environmental Law Advocates)
Hofstra University	8			https://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/clinical_conservation_law_and_policy/	None	career@nyls.edu; gkorngold@nyls.edu (Prof. Korngold)
New York Law School	1				None	asr546@nyu.edu (Alexandra St. Roman, Editor-in-Chief, Environmental Law Journal at NYU Law 2018/2019); law.careers@nyu.edu; mcb684@nyu.edu (Mae _____ Co-chair of the Board of the Environmental Law Society at NYU Law 2018/2019); jbg445@nyu.edu (Jackie _____ Co-chair of the Board of the Environmental Law Society at NYU Law 2018/2019);
New York University	1			http://www.law.nyu.edu/studentorganizations/els	https://www.nyuell.org/	careers@law.pace.edu; kkuh@law.pace.edu (Professor Katrina F. Kuhn, alrauser@law.pace.edu (Allison Fausner, 2018/2019 ELS President)
Pace University	31			https://law.pace.edu/pace-environmental-law-society-els	https://digitalecommons.pace.edu/peir/	careerdevelopment@stjohns.edu; kelly.bronne@gmail.com; lryndon@stjohns.edu (Prof. Lyndon)
St. Johns University	5			https://www.stjohns.edu/law/academic-programs/student-journals/student-bar-association/environmental-law-society	None	law-careers@buffalo.edu; belj1993@gmail.com (Kristen Spuleck, Editor-in-Chief, Buffalo Environmental Law Journal, 2018/2019); buffalo.environmental.law.society@gmail.com
Suny at Buffalo	18			http://www.law.buffalo.edu/current/studentOrgs.htm#elss	http://www.law.buffalo.edu/beyond/journals/bell.html http://lawreview.syr.edu/categories/environmental-law/	LawReview@law.syr.edu; sawlier@law.syr.edu;
Syracuse University	3			http://law.syr.edu/student-affairs/student-organizations/ https://www.tourolaw.edu/studentresources/student-organizations	None	ndassani@tourolaw.edu; cardozoenviromentalaw.society@gmail.com; srsntrdt@yu.edu (Sherry Ann Smith-gomez in the Office of Career Services)
Touro College	2				None	
Yeshiva University - Benjamin N. Cardozo School of Law	5			https://cardozo.yu.edu/student-life/student-organizations	https://cardozo.yu.edu/events/environmental-law-review-session	

Columbia

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Canadian Club	canadianclub@law.columbia.edu
Columbia Law First Generation Professionals	fgp@law.columbia.edu
Columbia Law School Women's Association	clwa@law.columbia.edu
Columbia League of Nations	ad3373@columbia.edu
Empowering Women of Color	ewoc@columbia.edu
Environmental Law Society	els@law.columbia.edu
Latino/a Law Students Association	lalsa@law.columbia.edu
Middle Eastern Law Students Association	melsa@law.columbia.edu
Native American Law Students Association	nalsa@law.columbia.edu
Outlaws (Queer students)	outlaws@law.columbia.edu
Queer and Trans People of Color	qtpoc@law.columbia.edu
South Asian Law Students Association	salsa@law.columbia.edu

New Members of the Environmental Law Section for May 2019

<u>Name</u>	<u>Phone</u>	<u>Admit Date</u>	<u>Email</u>
<u>Judicial District: 03</u>			
Simone Smith New York State Bar Association One Elk St. Albany, NY 12207-1002 <i>Dues Billing Category: Undetermined</i>	(518) 487-5591		ssmith@nysba.org
<u>Judicial District: 07</u>			
Bruce Forbes Freeman, Esq. 126 Colonial Village Road Rochester, NY 14625 <i>Dues Billing Category: NY Admitted 8 Plus Years</i>		01/01/1984	freems@frontiernet.net
<u>Judicial District: 08</u>			
Lindsey E. Haubenreich, Esq. 149 Swan Street Unit 111 Buffalo, NY 14203 <i>Dues Billing Category: NY Admitted 6-7 Years</i>	(716) 504-5789	12/03/2013	lhaubenreich@phillipslytle.com
<u>Judicial District: 11</u>			
Van Thi Nguyen 54-41-65th Place Maspeth, NY 11378 <i>Dues Billing Category: Law Student</i>			vnguyen32@fordham.edu
<u>Judicial District: 99</u>			
Alexander Sam Kaplen, Esq. North American Electric Reliability Corp 1325 G Street NW Suite 600 Washington, DC 20005 <i>Dues Billing Category: OOS Admitted 2-3 Years</i>	(202) 400-3019	03/24/2017	alexander.kaplen@nerc.net

Total New Members: 5

New York State Bar Association
Energy and Environmental Law Section

Sign up for our
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The NYSBA EELS Twitter page is regularly updated to keep you informed of environmental news happening around the country. We also provide updates about our section, including events and CLE programs. We also love to give shout-outs to our members! Our twitter page is a great place to find and share interesting environmental and energy current events. By signing up today, you will be able to connect to fellow section members and view other posts that align with your interests. Get involved today and experience the social and educational benefits of our page!

HOW TO SIGN UP FOR TWITTER

1. Go to <http://twitter.com> and find the sign-up box, or go directly to <https://twitter.com/signup>. You can also download the twitter app on your phone.
2. You will be guided through the sign-up experience and prompted to enter information such as your name and email address.
3. Once you sign up for an account, you can select a username (usernames are unique identifiers on Twitter). We'll tell you if the username you want is available.

This is the name you'll be known as on Twitter (also known as your @name or Twitter Handle). We recommend using your real name if it's available. If not, try and include your name or initials.

4. **Add a photo of you**

Your profile picture is displayed every time you post a tweet so you want to differentiate your tweets from everybody else's. Your profile picture will help.

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You've got 160 characters to tell everyone what you do, why you do it, and what interests you. Make it count!

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7. **Follow Us!**

Once you have your account set up, search our handle (@NYSBAEELS) and click the Follow button in the top right hand corner of the page. You will now receive all our Tweets and updates.

8. **Get tweeting**

The best way to learn is to get involved. Watch the experienced users, ask questions and join in some conversations. To learn how share a tweet, like a post, retweet, or how to use Twitter generally, go to: <https://help.twitter.com/en/using-twitter>.

IT ONLY TAKES 5 MINUTES TO GET STARTED!

Please feel free to contact **Drew Gamils** at dgamils@kblaw.com, **Rachel Partington** at rpartington@nyenvlaw.com, or **Meghan Colligan** at Meaghan.colligan@hkllaw.com for more information.

STATE OF NEW YORK

2072

2019-2020 Regular Sessions

IN SENATE

January 22, 2019

Introduced by Sens. CARLUCCI, ADDABBO, BAILEY, BRESLIN, BROOKS, HOYLMAN, KAMINSKY, KRUEGER, SANDERS, SAVINO, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 1 of the constitution, in relation to the right to clean air and water and a healthful environment

1 Section 1. Resolved (if the Assembly concur), That article 1 of the
2 constitution be amended by adding a new section 19 to read as follows:

3 § 19. Environmental rights. Each person shall have a right to clean
4 air and water, and a healthful environment.

5 § 2. Resolved (if the Assembly concur), That the foregoing amendment
6 be referred to the first regular legislative session convening after the
7 next succeeding general election of members of the assembly, and, in
8 conformity with section 1 of article 19 of the constitution, be
9 published for 3 months previous to the time of such election.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD89064-01-9

MEMORANDUM

To: New York State Bar Association, Environment & Energy Law Section
CC: New York State Bar Association, Constitution Committee
Date: May 22, 2019
From: EELS ad hoc working group on constitutional environmental rights.¹
RE: Analysis of and recommendation to support the Green Amendment; proposal to develop memorandum of support to augment legislative history.

In its August 2017 Report and Recommendations Concerning Environmental Aspects of the New York State Constitution (enclosed) (hereinafter “2017 Task Force Report”), the Task Force on Environmental Aspects of the New York State Constitution recommended that Article I should be amended to articulate and provide for the protection of a right to a clean and healthy environment. At its January 2019 annual meeting, the Environment and Energy Law Section (“EELS”) invited interested members, many of whom served on the original Task Force, to evaluate then-pending legislative proposals to adopt such an amendment as a means to supplement the 2017 Task Force Report and provide an analysis and recommendation to both EELS and the Constitution Committee as to whether the New York State Bar Association (NYSBA) should support these proposals. In April 2019, the State Senate and Assembly voted for first passage of a proposed amendment to the New York State Constitution that would recognize and protect a right to clean water, clean air and a healthful environment (A.2064/S.2072, hereinafter “the Green Amendment”). The Green Amendment would amend the Constitution to add a new Section 19 to Article I, “Environmental rights. Each person shall have a right to clean air and water, and a healthful environment.” The NYSBA’s position on the Green Amendment remains relevant as, in order to amend the Constitution, the Green Amendment must be passed again by the New York Legislature seated in 2021 and adopted by voters.

The EELS ad hoc working group on constitutional environmental rights recommends that the NYSBA support the Green Amendment. As summarized below and set out more fully in the 2017 Task Force Report, constitutional environmental rights can provide significant value as society grapples with emerging environmental challenges. The Green Amendment has the potential to provide an additional and important tool for citizens to enlist the help of courts to avoid or redress serious environmental harms without unduly displacing the legislature’s primary role in developing environmental policy. Notably, however, judicial interpretation of the Green Amendment will significantly define its scope and impact. And, as noted below, judicial interpretation of the Green Amendment will be guided by legislative history accompanying the amendment’s adoption, including *inter alia* memoranda of support provided to the legislature during its consideration for second passage in 2021.

¹ Susan Amron, Claudia K. Braymer, Meaghan Colligan, Robert Glennon, Carl Howard, Jillian Kasow, Robert Knoer, Katrina Fischer Kuh, Peter Lehner, Mary Lyndon, Rosemary Nichols, Frank Piccininni, Nicholas A. Robinson, Thomas Ulasewicz, Nicholas M. Ward-Willis, Neil Woodworth. We thank Patrick DeArmy for his helpful research assistance.

We therefore recommend that the NYSBA support the Green Amendment. We further recommend that the NYSBA charge this ad hoc working group, as a next step, with drafting a memorandum in support of the Green Amendment. This memorandum would be designed to be included in the legislative history accompanying the Green Amendment's second passage, thereby aiding its passage and beneficially influencing the Green Amendment's interpretation and implementation. Presumably, the final Memorandum in support of the Green Amendment would be a submission by the NYS Bar Association House of Delegates or jointly by the NYSBA's Constitution Committee and Environment and Energy Law Section Executive Committee.

1. The value of a constitutional environmental right.

Adoption of the Green Amendment would maintain New York's environmental leadership and provide a crucial judicial backstop to empower citizens and support the protection of human health and the environment. The creation of a judicial backstop that empowers courts to act to protect human health and environment even in the absence of timely legislative action is what makes constitutional environmental rights uniquely valuable as a means to augment and support environmental laws and regulations. Evolving scientific knowledge coupled with new extraction and other technology frequently reveal or create new environmental challenges (for example, the detection of contaminants with uncertain health effects in drinking water, emerging understandings of the environmental impacts of hydrofracking, evolving understandings of the rate and impacts of climate change). Often, these issues are not addressed under existing environmental laws. Constitutional environmental rights empower citizens to demand a timely response to these environmental challenges and insure that, as scientific knowledge crystallizes and political solutions develop, the environment and human health are protected. Additionally, a constitutional, judicial backstop will also be important as New York begins to experience more severe impacts from climate change and to move toward deep decarbonization. Other states, including most notably Pennsylvania and Hawaii, possess strong constitutional environmental rights and those rights are proving to be instrumental in limiting ruinous short-term natural resource extraction (Pennsylvania)² and embedding climate change mitigation into state planning (Hawaii).³

2. Implementation of the Green Amendment.

The text of the Green Amendment is both succinct and broad. As with many other provisions in Article I, the Green Amendment does not explicitly address considerations incident to its operation, including whether the provision is self-executing, whether it can be enforced against non-state actors (private parties), and whether it would support damage claims. The legislative history accompanying the Green Amendment's adoption would likely speak to some (perhaps all) of these questions and, if so, that legislative history would guide judicial interpretation of the Green Amendment. Ultimately, however, the precise scope and

² *Robinson Twp. V. Commonwealth*, 83 A.3d 901 (Pa. 2013) (overturning a state statute that would have preempted local zoning limitations on hydrofracking).

³ *In re Application of Maui Electric Co., Ltd.*, 141 Hawai'i 249, 255, 408 P3d 1 (2017) (requiring a hearing to consider greenhouse gas emissions associated with a power purchase agreement).

implementation of the Green Amendment would likely only become clear, and would continue to be developed, through judicial review and interpretation.

The analysis below offers some initial perspectives on how some of the identified questions about the Green Amendment's operation might be resolved.⁴ We conclude that prior constitutional adjudication in New York suggests that it is unlikely either that the Green Amendment would be interpreted so narrowly as to become effectively inert or that it would be interpreted so expansively that it would displace the legislature as the primary author of environmental policy. We are thus comfortable with what we understand to be the range of likely potential outcomes in terms of the Green Amendment's construction and implementation. We also, however, believe that it would be valuable for the NYSBA to contribute to the development of legislative history during second passage of the Green Amendment to increase the likelihood that it will be interpreted and implemented in a robust and meaningful way.

a. Self-execution

If courts interpreting the Green Amendment held that it was not self-executing, the provision would have little to no independent legal force beyond its embodiment in legislation and would thus offer little added value – it would not be worth the effort of amending the Constitution. However, it seems likely (although not certain) that the Green Amendment would be held to be self-executing. In New York, constitutional provisions are presumed to be self-executing⁵ and other broad rights in Article I have been held to be self-executing.⁶ It could be argued that the Green Amendment states a principle too general to provide a “sufficient rule by means of which the right given may be enjoyed and protected,” particularly as the Green Amendment can be understood, in part, to create a positive or substantive right imposing affirmative obligations upon the State yet provides little direction about the scope or content of that right and its resulting obligations.⁷ Notably, however, without directly ruling on whether they are self-executing, courts in New York have entertained claims brought to enforce other positive rights located outside of Article I, for example, objectively evaluating the adequacy of state-provided

⁴ We would welcome input from colleagues specializing in the New York State Constitution on these questions.

⁵ See *People v. Carroll*, 3 N.Y.2d 686, 690-691 (1958) (observing that “the process in this case would have to start with the presumption that the provision is self-executing” and “it is now presumed that constitutional provisions are self-executing.”); *People v. Turza*, 751 N.Y.S.2d 351, 355 (Sup. Ct. 2002) (“Moreover, the well-established rule in New York is that constitutional provisions are presumptively self-executing.”).

⁶ E.g., *People v. Carroll*, 3 N.Y.2d 686, 690-691 (1958) (Article I, Section 2 criminal waiver of trial provision); *People v. Diaz*, 198 N.Y.S.2d 27, 32, *aff'd*, 8 N.Y.2d 1061, 170 N.E.2d 411 (1960) (same); *Boggs v. State*, 25 N.Y.S.3d 545 (N.Y. Ct. Cl. 2015) (Article I, Section 5 cruel and unusual punishment provision); *Remley v. State*, 665 N.Y.S.2d 1005, 1008 (Ct. Cl. 1997) (Article I, Section 6 due process provision); *Under 21, Catholic Home Bureau for Dependent Children v. City of New York*, 481 N.Y.S.2d 632, 642 (Sup. Ct. 1984) (same); *Brown v. State*, 89 N.Y.2d 172 (1996) (Article I, Section 11 equal protection provision and Article I, Section 12 search and seizure provision); *In re Tel. Commc'ns*, 284 N.Y.S.2d 431, 434 (Sup. Ct. 1967) (Article I, Section 12 wiretap provision).

⁷ 20 N.Y. JUR. 2D CONSTITUTIONAL LAW § 40. Negative constitutional rights bar prohibited state action and are typically enforced to prevent, stop or provide a damages remedy for wrongful state action. Positive, or substantive, constitutional rights can be enforced to compel government action. See Jeffrey Omar Usman, *Good Enough for Government Work: The Interpretation of Positive Constitutional Rights in State Constitutions*, 73 ALB. L. REV. 1459, 1459 (2010).

education against the requirements of the Education Article⁸ and whether statutes violate the obligation to provide care for the needy as set forth in Article XVII, Section 1.⁹ Thus, on balance, it seems likely that the Green Amendment would be deemed to be self-executing because of the location of the Green Amendment in Article I, the many instances in which other provisions in the Bill of Rights have been held to be self-executing, and the presumption that constitutional rights are self-executing.

b. Enforcement against private parties

Absent legislative history clearly directing otherwise, it seems unlikely that New York courts would interpret the Green Amendment to impose restraints or obligations directly upon private parties. New York courts have repeatedly recognized that “Constitutions do not generally restrict the actions of private parties.”¹⁰ The text of the Green Amendment does not address this question, rendering it analogous to the text of Article I, Section 3, which provides that “[t]he free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind.”¹¹ And Article I, Section 3, has not been applied to private parties or conduct.¹² Similarly, Article I, Section 8, does not expressly state that its reach is limited to the government, providing broadly that “[e]very citizen may freely speak, write and publish his or her sentiments on all subjects,”¹³ and courts have declined to apply it to private conduct.¹⁴ By way of comparison, the text of the second part of Article I, Section 11, expressly extends its mandate to private parties (providing that “[n]o person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state”).¹⁵ The unelaborated text of the Green Amendment would thus likely be interpreted to apply exclusively to state actors unless an intent to apply its mandate to private parties was expressed in the legislative history accompanying its adoption.

c. Damages remedy

⁸ Campaign for Fiscal Equity, Inc. v State, 86 NY2d 307, 315 (1995) (referencing the existence of a “constitutional floor with respect to educational adequacy” and concluding “that a duty exists and that we are responsible for adjudicating the nature of that duty”).

⁹ Tucker v Toia, 43 NY2d 1, 8 (1977) (“In view of this legislative history, as well as the mandatory language of the provision itself, it is clear that section 1 of article XVII imposes upon the State an affirmative duty to aid the needy.”).

¹⁰ Brown v. State, 89 N.Y.2d 172, 182 (1996).

¹¹ N.Y. CONST. art. I, § 3.

¹² E.g., Lown v Salvation Army, Inc., 393 F Supp 2d 223, 245 (SDNY 2005) (“Section Three does not explicitly restrict its application to government action. Nevertheless, plaintiffs have cited no cases employing Section Three to constrain private conduct. By contrast, several New York courts have held that Section Three only pertains to state action.”).

¹³ N.Y. CONST. art. I, § 8.

¹⁴ SHAD All. v Smith Haven Mall, 66 N.Y.2d 496, 502-03 (1985) (“That a Bill of Rights is designed to protect individual rights against the government is standard constitutional doctrine . . . and, while the drafters of the 1821 free speech clause may not have envisioned shopping malls, there can be no question that they intended the State Constitution to govern the rights of citizens with respect to their government and not the rights of private individuals against private individuals.”).

¹⁵ N.Y. CONST. art. I, § 11.

It is possible courts would interpret the Green Amendment to support a damages remedy, although the likelihood of this outcome is difficult to predict and would, again, depend in part upon expressions about the purpose and scope of the right developed in the legislative history accompanying the Green Amendment's adoption. The text of the Green Amendment does not speak directly to whether a damages remedy is available and courts would thus need to imply a damage cause of action. In *Brown v. State*, the Court of Appeals held that a cause of action to recover damages could be asserted against the State for violation of the Equal Protection and Search and Seizure Clauses.¹⁶ Factors considered in evaluating whether a damage remedy is properly implied for a constitutional violation include whether the guaranteed rights "have common-law antecedents warranting a tort remedy for invasion of the rights they recognize" and whether "implying a damage remedy . . . is consistent with the purposes underlying the duties imposed" by the relevant constitutional provisions "and is necessary and appropriate to ensure the full realization of the rights they state."¹⁷ The complexity and nuance of this inquiry makes it difficult to predict an outcome, particularly in the absence of relevant legislative history and without knowing the contours of claims that might be raised seeking damages for violation of the Green Amendment. It is perhaps worth noting, however, that the decision in *Brown* has since been applied with significant restraint; indeed, even in *Brown*, the Court of Appeals emphasized the limited nature of its decision, characterizing its holding as "recognizing a narrow remedy" designed to "provide appropriate protection against official misconduct."¹⁸

Conclusion

The above analysis indicates that in its implementation, the Green Amendment would likely conform in important respects to the recommendations offered, and explained in greater detail, in the 2017 Task Force Report. Notably, that Report recommended that a constitutional environmental right be self-executing against the State and its subdivisions. While the text of the Green Amendment describes the contours of the environmental right in a somewhat more general manner than suggested in the 2017 Task Force Report (which noted the potential benefits of grounding the right in the public trust doctrine and adopting an ecosystem framework), the Green Amendment's references to clean air and water and a healthful environment, coupled with New York's existing environmental laws and regulations and the body of case law from other states enforcing rights to a healthy environment, provide a useful framework to guide judicial interpretation. And the flexibility afforded by a more open-ended text may prove beneficial as science, technology and climate change combine to present unprecedented challenges. There remains, however, a risk that courts will prove reluctant to enforce the Green Amendment in a robust manner in the absence of more detail about the scope of its protections. A thoughtful and well-developed legislative history (to which the NYSBA might helpfully contribute) could describe in greater detail the purpose and intended meaning of the Green Amendment, thereby providing courts with greater guidance and encouraging robust interpretation and enforcement. We therefore recommend that the NYSBA (1) support the Green Amendment; and (2) further charge the ad hoc working group with preparing a memorandum that could be submitted by the NYSBA in 2021 prior to a second vote of the Legislature in support of the Green Amendment

¹⁶ *Brown v. State*, 89 N.Y.2d 172, 232-35 (1996).

¹⁷ *Id.* at 233.

¹⁸ *Id.* at 235. Subsequent cases have similarly emphasized the narrow remedy afforded in *Brown* and required that plaintiffs show the unavailability of other remedies. *E.g.*, *Martinez v City of Schenectady*, 97 NY2d 78, 83 (2001).

and contribute to the legislative history that will guide its interpretation and application, if adopted.

NEW YORK STATE BAR ASSOCIATION
ENVIRONMENTAL & ENERGY LAW SECTION
"GREEN" GUIDELINES

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Approved at the October 3, 2010 Section Executive Committee Meeting; Amendments
approved on _____, 2019

In our efforts to "green" the Bar Association, the Environmental & Energy Law Section has adopted the following guidelines to minimize the environmental impact of Section activities.

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1. Announcements. To the extent feasible, publicity for Section events or other announcements should be circulated electronically, through Communities, social media, etc. by email. Only one hard copy, printed on recycled paper, should be mailed for events.

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2. Journals. The New York Environmental Lawyer (TNYEL) has been available for electronic delivery since 2011. We encourage Section members to opt-out of the hardcopy delivery method. Each edition of TNYEL shall include instructions on how to opt-out. Periodic reminders will be sent to Section members by a TNYEL representative or Cabinet, requesting they do so. By 2011, the Section Journal should be available by electronic delivery. Section members will be given a choice to indicate whether they want the Journal to be delivered electronically or by hard copy.

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3. Meetings. Whenever feasible, participants should be offered the opportunity to participate in Executive Committee and other committee meetings by telephone, webcast or video link. All agendas and other materials should only be circulated by email or web link (or other in electronic form) unless a special request is made. Extra copies of agendas and smaller documents can be made available at the meeting place. Wireless internet access should be provided to live participants, to the extent reasonably feasible and affordable so they can view materials that are on the internet without printing.

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a. Meeting Locations – To the extent feasible, meetings should be held at environmentally friendly venues. Meeting organizers should work with any venue to

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ensure the Section's event is organized and implemented in such a way as to minimize negative impacts on the environment. Factors to consider include: recycling and waste minimization programs at venue, minimize disposable products (e.g. bottled water and single-use plastics), recyclable or reusable handouts, badges, signage, paper products and food service ware.

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hotels or other office

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locations that are members of the New York State Department of Environmental Conservation's ("NYSDEC") Green Hotel Certification Pilot Program.

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b. Group Transportation – For meetings that are held in locations that are not easily reached by public transportation, options for group transportation (e.g. buses, car pooling) should be considered.

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4. CLE and Other Presentations.

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a. Remote Participation. Whenever feasible and permissible under CLE rules, participants should be offered the opportunity to participate by telephone, webinar or webcast.

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b. Materials. No more than a small hard copy book of course materials should be provided, which could include an agenda for the event, and actual outlines or short articles on of the materials that will be presented. The rest of the materials should be uploaded to the Section's website. book may be

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accompanied by a CD or web site for more lengthy materials, or may include citations to materials available on the internet. As a general practice, statutes, regulations, and cases will not be reprinted if they can be obtained electronically. P An exception would be, for example, a new court decision that is the subject of the presentation. If Power Point slides are included in the course book, preferably they would be reprinted as six (6) slides to a page, or three (3) slides to a page with room for notes on the side. If possible, participants should be given the web link to download any materials posted on the internet in advance of the session. All printed materials should be printed on recycled paper.

5. Section Website. Section documentation, including By-Laws, Minutes, Agendas, and

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Policies, should all be made available on the Section web site. Further, to the extent feasible, Power Point presentations and other materials should be posted to the website within a reasonable time after meetings/events occur.

6. Meeting Co-Chairs Promotion by the Pollution Prevention ("P2") Committee and ELS Members and the Section Liaison. The Meeting Co-Chairs and the Section Liaison members of the P2 Committee will attempt to should meet with the appropriate managers/personnel at the facilities where EELS events will be held to discuss and promote ways to "Green" their events, operations and encourage becoming "Green-Certified" through the NYSDEC. As part of these meetings, the initiatives set forth in the American Bar Association's "Climate Challenge" program should be discussed and the organizations should be encouraged to sign up for one of the four "tracks" of the Climate Challenge program. Members of ELS should also encourage its firms/organizations/offices to implement some of the Guidelines and to join one of the four tracks of the Climate Change programs. The goal is to have at least 100 enrollees in one of the programs by the fall meeting in 2011.

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7. Awards and Promotional Materials. All awards and EELS promotional materials should be environmentally-friendly and made from sustainable or recycled materials.

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Outside Counsel

Expert Analysis

SEQRA Statute of Limitations: When Will The Courts Reach Finality on This Issue?

The Second Department's recent decision in *Stengel v. Town of Poughkeepsie Planning Board, et al.*, 2018 WL 6519207 (2d Dept. Dec. 12, 2018), unfortunately seems to confirm that the best advice when it comes to statutes of limitations for determinations issued under the State Environmental Quality Review Act (SEQRA) may simply be to sue "early and often." See also Ward, "SEQRA Challenges and the Statute of Limitations: Sue 'Early and Often,'" 6 Albany L. Envtl. Outlook J. 89, 94 (2002). Conflicting case law has created confusion regarding when SEQRA determinations that conclude the environmental review process—i.e., negative declarations or findings statements—become ripe for judicial review. It shouldn't have to be this way. SEQRA practitioners, their clients, and agencies involved in SEQRA disputes all deserve a clear rule establishing when challenges to such SEQRA determinations ripen in order to avoid unnecessary litigation and motion practice. Legislative action may be required to resolve this issue.

DANIEL M. RICHMOND is a partner at Zarin & Steinmetz, which concentrates in zoning, land use, and environmental law. Mr. Richmond has spoken on a variety of issues relating to the implementation of the New York State Environmental Quality Review Act (SEQRA).

By
Daniel M.
Richmond



Stengel concerned a challenge to a Planning Board's issuance of a determination under SEQRA not to require an environmental impact statement (i.e., a negative declaration). The negative declaration in *Stengel* preceded by several months the Planning Board's issuance of site plan approval for a gas station project. The *Stengel* court held that "the statute of limitations began to run with the issuance of the negative declaration ... as this constituted the Planning Board's final act under SEQRA." *Stengel*, 2018 WL 6519207, at *1. The *Stengel* court made no attempt to harmonize its decision with the Second Department's previous holding in *Patel v. Board of Trustees of Muttontown*, 115 A.D.3d 862, 864 (2d Dept. 2014). In *Patel*, the Second Department held that "the issuance of a SEQRA findings statement did not inflict injury in the absence of an actual determination of the subject applications for a special use permit and

site-plan approval and, thus, the challenge to the adoption of the findings statement is not ripe for adjudication." Thus, while *Patel* seemed to stand for the proposition that a SEQRA determination that concludes the environmental process is not, standing alone, ripe for adjudication, *Stengel* indicates that such a SEQRA determination is.

To be fair to the Second Department, much of the uncertainty surrounding SEQRA statutes of limitations issues can be attributed to the Court of Appeals, which has issued several seemingly conflicting decisions on this issue. For much of SEQRA's history, the Court of Appeals

Ultimately, legislative action may be the best way to resolve this conundrum.

left unchallenged Appellate Court decisions holding that a SEQRA determination that concluded the environmental review process was just "a preliminary step in the decision-making process' and, therefore, not ripe for judicial review." See, e.g., *In re Matter of Town of Coeymans v. City of Albany*, 237 A.D.2d 856, 857 (3d Dept. 1997) (citation omitted), leave to appeal denied, 90 N.Y.2d 803 (Table) (1997).

In 2003, however, in *Stop-The-Barge v. Cahill*, 1 N.Y.3d 218, 223 (2003), the Court of Appeals held that a challenge to a SEQRA determination by the New York City Department of Environmental Protection (DEP) ripened when that agency's "SEQRA review ended," and, accordingly, "to the extent that petitioners challenge the conclusions reached by DEP from its SEQRA review, the period of limitations must be measured at the latest from the time that" its SEQRA determination became final. The Court of Appeals in *Stop-The-Barge* appeared to be influenced by the fact that the petitioners in that case failed to alert DEP to its concerns during the underlying administrative proceeding, as well as the fact that there was a significant time lag between the issuance of DEP's SEQRA determination and the issuance of a challenged air permit by the New York State Department of Environmental Conservation. See *id.* at 223-24.

Regardless, *Stop-The-Barge* suggested that a final SEQRA determination would generally be ripe for review, regardless of whether the agency had actually taken action, such as by issuing the underlying permit or approval. In *Jones v. Amicone*, 27 A.D.3d 465, 469 (2d Dept. 2006), for example, the Second Department, citing *Stop-The-Barge*, affirmed the Supreme Court's dismissal of a SEQRA challenge as time-barred because the respondent City of Yonkers City Council's "adoption of the SEQRA findings statement was a final determination" with respect to that claim.

Just a few months after the Second Department's decision in *Jones*, however, the Court of Appeals held in *Eadie v. Town Board of North Greenbush*, 7 N.Y.3d 306, 316 (2006), that, where a Town Council issued SEQRA Findings before taking a rezoning action, "no concrete injury was inflicted until the rezoning was enacted." The *Eadie* court

distinguished *Stop-The-Barge* because the underlying agency action "did not involve 'the enactment of legislation,'" and because in *Stop-The-Barge* "the completion of the SEQRA process was the last action taken by the agency whose determination petitioners challenged." *Id.* at 317 (citations omitted). Somewhat mysteriously, however, and frustratingly for SEQRA practitioners, the *Eadie* court added that "[t]his does not mean that, in every case where a SEQRA process precedes a rezoning, the statute of limitations runs from the latter event, for in some cases it may be the SEQRA process, not the rezoning, that inflicts the injury of which the petitioner complains." *Id.*

Against this backdrop, in *Patel v. Board of Trustees of Incorporated Village of Muttontown*, 115 A.D.3d 862, 864 (2d Dept. 2014), the Second Department held that a Board's adoption of a findings statement pursuant to its obligations under SEQRA was not, standing alone, final agency action ripe for judicial review. The Second Department held in *Patel* that the SEQRA findings statement at issue "did not inflict injury in the absence of an actual determination of the subject applications for a special use permit and site-plan approval, and, thus, the challenge to the adoption of the findings statement is not ripe for adjudication." *Id.* In *Patel*, the Second Department did not mention, must less distinguish, its seemingly contradictory decision in *Jones*.

The mixed signals coming from the courts may perhaps be understandable, but they still present real and present potential pitfalls to practitioners and their clients. So long as *Stengel* and seemingly contradictory decisions, such as *Patel*, remain unharmonized, the most prudent course for practitioners would appear to challenge final SEQRA determinations, regardless of

whether or not they are accompanied by substantive agency action, such as a site plan or special permit approval. This obviously may cause unnecessary litigation and waste scarce judicial resources.

To avoid the cost and expense of unnecessary litigation where it remains unclear whether an agency will ultimately actually take a concrete action, parties may wish to consider entering "tolling" arrangements to avoid unnecessary litigation. Since it does not appear that parties can actually waive the applicable statute of limitations, (see *John J. Kassner & Co. v. City of New York*, 46 N.Y.2d 544 (1979)), the parties can consider allowing the petitioners to file a bare bones Article 78 Petition, and then adjourning the matter until such time as the agency may take more recognizably concrete action.

Ultimately, legislative action may be the best way to resolve this conundrum. The legislature could adopt legislation clarifying that a SEQRA determination that concludes the environmental review process remains unripe until an entitlement of some form is issued in connection with the action under consideration. Until clarity comes from either the courts or the Legislature, again, the most prudent course appears to remain to sue early and often.



2019 Minority Fellowship in Environmental & Energy Law

Sponsored by
New York State Bar Association
Environmental & Energy Law Section

The Fellowship

- \$7,500 stipend to spend the summer of 2019 (8 weeks minimum) working on legal matters for a government environmental or energy agency or public interest environmental organization in New York State.
- Invitation to the annual meeting of the NYSBA's Environmental & Energy Law Section
- Assignment of a mentor from the environmental or energy bar

Eligibility

First-year, second-year, and third-year (night students only) minority group members who are: 1) enrolled in a law school in New York State; or 2) permanent New York State residents, and enrolled in a law school in the United States. Minority group members are persons who are: African American, Latino, Native American, Alaskan native, Asian or Pacific Islander.

Fellowship Criteria

Interest in environmental or energy issues; *strong* academic record (undergraduate and/or law school); outstanding personal qualities; leadership abilities; *stet* financial need. (A law school course in environmental law is not a prerequisite.)

All applicants must be a member of NYSBA and the Environmental & Energy Law Section. A Law Student Application is attached.

Application Requirements

Applications must contain a completed application form; a resume; an undergraduate transcript; a law school transcript (except for first-year law students); an essay describing applicant's interest in environmental issues and reasons for wanting to participate in the Fellowship; and two letters of recommendation.

Application Deadline

All applications must be received by ~~December 12, 2018~~ *or energy October 4, 2019*. Completed applications should be mailed to: New York State Bar Association, Environmental & Energy Law Section, One Elk Street, Albany, NY 12207 or emailed to: kplog@nysba.org.

For Further Information

Detailed information, and application forms, may be obtained by contacting: kplog@nysba.org or online at: www.nysba.org/ENVMinorityFellowship.

Need this copy

Minority Fellowship



MINORITY FELLOWSHIP IN ENVIRONMENTAL & ENERGY LAW

New York State Bar Association
Environmental & Energy Law Section

Application Form

Name: _____

Permanent address: _____ Phone: _____

_____ Email: _____

School address: _____ Phone: _____
(if different)

_____ Email (if different): _____

Law school attended: _____

/ / Day student / / Evening student

/ / First year / / Second year / / Third year (evening only)

/ / African American

/ / Latino -- person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American origin

/ / Native American or Alaskan native -- person having origins in any of the original peoples of America

/ / Asian or Pacific Islander -- person having origins in any of the Far East Countries, South East Asia, the Indian subcontinent or the Pacific Islands

Prior Education

College Name	Address	Major	Dates Attended	Degree

supporting
Attach the following materials to this application:

1. A resume describing your prior employment and other relevant activities and qualifications.

2. An undergraduate transcript, and (except for first-year law students) a law school transcript. (Transcripts need not be certified; finalists may be asked to provide certified transcripts.)

3. An essay (maximum *of energy* two double-spaced typewritten pages) describing your interest in environmental issues, and reasons for wanting to participate in the Fellowship, *your personal qualities and leadership ability,* including *your* information about financial need. ✓

4. *4.* ~~Two letters of recommendation.~~
5 *5* A. Two letters of recommendation. (These may be the same as used for law school applications. If these letters are confidential, they may be sent directly to the Fellowship Committee at address below.)

Application deadline: ~~December 12, 2018~~ *2019*; Close of Business

Mail applications to: New York State Bar Association
Environmental & Energy Law Section
Minority Fellowship in Environmental Law
One Elk Street
Albany, New York 12207

or

Email applications to: kplog@nysba.org

Certification

I hereby certify that all the statements contained and information provided in this application, and in the attachments hereto, are truthful, to the best of my knowledge and that I meet the eligibility requirements for the Minority Fellowship in Environmental Law.

I further certify that I am a member of the NYSBA and the Environmental & Energy Law Section or that my application for free membership is attached.

Applicant's Signature

Date:

Environmental & Energy Law Section Officer – Committee Liaison Responsibilities: June 2019 – June 2021 – 6/1/19 DRAFT

<u>Nick Ward-Willis</u>	<u>Linda Shaw</u>	<u>James Rizano</u>	<u>Howard Tollin</u>
<p align="center">Brownfields Task Force</p> <p>Co-Chair Lawrence Schnapf (Larry@Schnapflaw.com) Co-Chair David Freeman (dfreeman@gibbonslaw.com)</p>	<p align="center">By-Laws</p> <p>Co-Chair Mike Lesser (mlesser@nycap.rr.com) Co-Chair Kevin Reilly (kneilly@courts.state.ny.us) Co-Chair Alita Giuda (agiuda@couchwhite.com)</p>	<p align="center">Hazardous Waste/Site Remediation</p> <p>Co-Chair David Freeman (dfreeman@gibbonslaw.com) Co-Chair Amy Lynn Reichart (areichart@nixonpeabody.com)</p>	<p align="center">Environmental Insurance</p> <p>Co-Chair Michele Schroeder (mschroeder@environrisk.com) Co-Chair Jerry Cavaluzzi (jerrycavaluzzi@kennedyjenks.com)</p>
<p align="center">Environmental Business Transactions</p> <p>Co-Chair Jon Schuyler Brooks (jbrooks@mrlp.com) Co-Chair Robert Feller (rfeller@bsk.com) Co-Chair Donna Mussio (Donna.Mussio@friedfrank.com)</p>	<p align="center">Agriculture & Rural Issues</p> <p>Co-Chair Elizabeth C. Dribusch (edribusch@nyfb.org) Co-Chair Scott H. Wyner (shwyner@gmail.com)</p>	<p align="center">Solid Waste</p> <p>Co-Chair Michael S. Bogin (mbogin@sprlaw.com) Co-Chair Steven C. Russo (trussos@gtlaw.com)</p>	<p align="center">Continuing Legal Education</p> <p>Co-Chair Genevieve M. Trigg (gtrigg@woh.com) Co-Chair Maria Wieder (Wieder.Marla@epa.gov) Co-Chair Lawrence Schnapf (Larry@Schnapflaw.com)</p>
<p align="center">Environmental Impact Assessment</p> <p>Co-Chair Adam Stolorow (Astolorow@sprlaw.com) Co-Chair Adam Schultz (aschultz@couchwhite.com) Co-Chair Rick Leland (richard.leland@akerman.com)</p>	<p align="center">Water Quality</p> <p>Co-Chair Philip H. Dixon (pdixon@woh.com) Co-Chair George A. Rodenhausen (grodenshausen@rodenhausenchale.com) Co-Chair Melody Westfall (scalffone@scalffonelaw.com)</p>	<p align="center">Pesticides</p> <p>Co-Chair Tailsport W. Putsavage (putsavagelaw@gmail.com) Co-Chair Mackenzie Schoonmaker (mschoonmaker@bdlaw.com)</p>	<p align="center">Corporate Counsel</p> <p>Co-Chair George A. Rusk (grusk@ene.com) Co-Chair Michael Hecker (MHecker@hodgsonruss.com)</p>

Environmental & Energy Law Section Officer – Committee Liaison Responsibilities: June 2019 – June 2021 – 6/1/19 DRAFT

<p>Co-Chair John Parker (parkerjp@gmail.com) Co-Chair Charles Gottlieb (ggottlieb@woh.com) * Legislative Forum in Spring</p>	<p>Diversity Co-Chair Christine Leas (cleas@sprlaw.com) Co-Chair Sarah Lobe (Sarah.Lobe@gmail.com) * Coordinate on Minority Fellowship</p>	<p>Land Use Co-Chair Dan Richmond (dmrichmond@zarin-steinmetz.com) Co-Chair John Kirkpatrick (jkirk@kirklawllc.com) Co-Chair Frank Piccininni (fpiccininni@sterlingrisk.com)</p>	<p>Enforcement & Compliance Co-Chair Reed Super (reed@superlawgroup.com) Co-Chair *Vacancy</p>
<p>Petroleum Spills Co-Chair Gary S. Bowitch (bowitch@bcalbany.com) Co-Chair Douglas H. Zamelis (dzamelis@windstream.net) Co-Chair Melissa M. Valle (mvalle@nyenlaw.com) * Annual Spills Conference</p>	<p>Environmental Justice Co-Chair Jose Almanzar (jalmanzar@periconi.com) Co-Chair Jessica Steinberg Albin (jalbinas22@hotmail.com) * Coordinate on Minority Fellowship</p>	<p>Toxic Torts Co-Chair Cheryl P. Vollweiler (cvollweiler@traublieberman.com) Co-Chair Dan Krainin (DKrainin@bdlaw.com)</p>	<p>Global Climate Change Co-Chair Carl Howard (howard.carl@epa.gov) Co-Chair Michael Gerrard (michael.gerrard@aporter.com) Co-Chair Kevin Healy (jkhealy@bryancave.com) Co-Chair Ginny Robbins (vrobbins@bsk.com)</p>
<p>Mining and Oil & Gas Exploration Co-Chair Alta Giuda (agiuda@couchwhite.com) Co-Chair Kevin Bernstein (kbernstkt@bsk.com></p>	<p>Energy Co-Chair Yvonne E. Hennessey (yhennessey@hblaw.com) Co-Chair Keith G. Silliman (kgsilliman@gmail.com)</p>	<p>Coastal & Wetland Resources Co-Chair Amy K. Kendall (akendall@nyenlaw.com) Co-Chair Teresa M. Bakner (tbakner@woh.com)</p>	<p>Membership Co-Chair Robert Stout (rstout@woh.com) • Vacancy</p>
<p>Social Media & Communications Co-Chair Drew Gamils (dgamils@kblaw.com) Co-Chair Meaghan Colligan (Meaghan.Colligan@hklaw.com) Co-Chair Rachel Partington (rpartington@nyenlaw.com) * Twitter, LinkedIn & Communities</p>	<p>The NY Environmental Lawyer Journal Chair Miriam E. Villani (mvillani@swc-law.com) * TNVEL + Essay Contest</p>	<p>Adirondacks, Catskills, Forest Preserve & National Resource Management Co-Chair Claudia K. Braymer (cbraymer@cafrylawoffice.com) Co-Chair Thomas A. Ulasewicz (tau@fmbf-law.com)</p>	<p>Future of Federal Env'tl Policy Taskforce David Freeman (dfreeman@gibbonslaw.com) Gail Port (gport@proskauer.com) Kevin Healy (jkhealy@bryancave.com) * coordinate response to issues of import</p>

Environmental & Energy Law Section Officer – Committee Liaison Responsibilities: June 2019 – June 2021 – 6/1/19 DRAFT

- Representative to the House of Delegates: Amy Kendall
- Representative to the NYSBA Executive Committee: Robert Schofield, Whiteman, Osterman & Hanna
- Counsel to Cabinet: Teresa Bakner
- Liaison to NYSBA Cannabis Committee: Telisport W. Putsavage
- Awards Committee: Lou Alexander + rotating members; propose awardees + Coordinate on Minority Fellowship
- Nominating Committee: Current Secretary + rotating members – nominate next cabinet member + members at large, etc.

NYSBA EELS
Conference Issues – Speakers/Panelists
Registration, Meals, Expenses & Travel Reimbursement – Current Policy
Draft Dec. 3, 2018 - edited



Section v. NYSBA Programs:

Section Program:

Any EELS program done on its own, outside of the NYSBA CLE Department.

EELS Section Programs: Annual Meeting, Oil Spill Symposium, Legislative Forum & Fall Meeting.

NB: Annual Meeting – registration fees/EELS meeting fees get charged back to the section b/c of the venue costs

NYSBA/Association Programs:

The one-day programs held around the state such as the Environmental Update, Environmental Insurance Program & the Superfund/Brownfield program coordinated through the NYBA CLE Department.

Conference Speaker Registration, Expenses, etc.:

For Section Programs

(Annual Meeting, Oil Spill Symposium, Legislative Forum & Fall Meeting):

- Non-member speakers - EELS pay for (program + invite to lunch).
- NYSBA/EELS Members - pay their own way (program + lunch).
- NYS/Public Officials - payment varies b/c of the ethics rules (see below/Lou for details)
NB: Federal rules = different
- If speaker/consultant = sponsor, we should pay (program + lunch).
- Student Members - up to 5 = free (must register in advance); EELS pay for any student members over 5 (EELS reimburse NYSBA for registration/course fee)

NB: EELS agreed years ago (when we were in the red) to have members who were speakers pay their own way. EELS can change this policy & cover everyone who speaks. Other Sections cover all of their speakers & many utilize speakers who don't need hotel/travel reimbursement.

Compromise: cover registration for members, but not ex. comm. members? Or no change?

For NYSBA / Association Programs

(Environmental Update, Environmental Insurance Program & the Superfund/Brownfield program):

- Non-member / member / sponsor speakers do not have to register / pay
- Same issue w/ State/Fed speakers as above
- EELS can invite student members to attend (for free)

NYS Speakers/public officials:

- Reimbursement varies / It's "meeting specific"
- Annual Meeting = "Widely Attended Event (WAE)" so JCOPE & lobbying rules apply.
- If a meeting = WAE, there are some exceptions; Lisa will run situation by Ron Kennedy, Gov'tl Relations (+ Mark (lobbying) at Greenberg Turig).
- Hotels costs - usually, EELS cannot pay overnight costs.
- Meals: EELS can provide lunch/food at the reception, if everyone else is also participating.
- Travel: There have been times when EELS covered train fare.

Re: Travel Reimbursement:

- Our rule on conference speakers was at one time, no travel reimbursement (when we were in the red) but we softened on that once we were securely back in the black.
- More recent practice is:
 - IF asked - we'd consider some reimbursement of travel costs if we were dealing w/ a non-profit speaker, academic, gov't or someone that would clearly not be reimbursed.
- Should consider setting a \$ limit & formalize our policy (~\$500)
 - reimbursement of travel costs up to \$X, IF asked, IF the speakers fit the bill & IF we need/want that speaker?
 - See LB's email b/4 Fall meeting w/ samples of other sections' policies.
- Any change to either 'policy' should NOT go into the by-laws