NYSBA Environmental Law Section
Executive Committee Meeting
Marriott Marquis, January 28, 2005

Attendees:

Louis Alexander
Michael Altieri
Lisa Bataille
Dick Brickwedde
Lisa Bromberg
Glen Bruening
Mark A. Chertok
Jeanne Compitello
Phil Dixon
Chris Dow
Louis A. Evans
William C. Fahey
Bob Feller
David Freeman
John French
William R. Ginsberg
John Greenthal
John Hanna
Kevin Healy
Ragna Henrichs
Ernie Ierardi
Robert Kafin
Kristen Kelly
Barry R. Kogut
Allan Knauf
Peter Lehner
Jeanne M. McCarroll
Terrence McDonald
Bob McLaughlin
Joan Leary Matthews
Dorothy M. Miner
Daniel Morrison
Walter Mugdan
James Periconi
Gail Port
Telisport Putsavage
Kevin Reilly
James Rigano
Virginia Robbins
Nick Robinson
George Rodenhausen
Peter Ruppar
Laurie Silberfeld
Miriam Villani
Cheryl Vollweiler
Phil Weinberg

1. Call to order. The meeting was called to order at 3:30 p.m. Section Chair Virginia (Ginny) Robbins welcomed Executive Committee members and congratulated the co-chairs of the Annual Program for the successful CLE program held in the morning. The program co-chairs were Walter Mugdan, Stan Alpert, and Cheryl Vollweiler.

2. Remarks of NYSBA President Kenneth G. Standard. Ken Standard provided the Executive Committee with an update of two issues currently before the House of Delegates: same sex relationships and the definition of pro bono representation. As to same sex relationships, the House of Delegates has been presented with disparate positions and will consider the issue for a vote in April. The Sections have an opportunity now to comment on the recent report and regulations of the Special Committee to Study Issues Affecting Same-Sex Couples.

As to the pro bono issue, the current debate is over how to define pro bono representation. The question is whether the definition should be limited to the provision of concrete legal services to the indigent or whether it should be expanded. He mentioned that many worthy legal assistance efforts might be adversely affected by a restrictive definition. For example, the Bar Association

provides free legal services for various causes – military being deployed to Iraq, people suffering from a disaster – and does not conduct a needs test for these services. He further stated that the expertise of Section members is different from the expertise of other attorneys and so a more expansive definition of pro bono might be appropriate for the work that we perform.

He furthered mentioned that the Bar Association has identified four legislative priorities: (1) no-fault divorce, (2) videotape recording of custodial interrogations of suspects, (3) tort reform, and (4) cost-effective legal representation for middle income people.

Ginny Robbins thanked President Standard for coming to the Section's Executive Committee meeting and for sharing this information with the Committee.

3. Approval of minutes of minutes of October 3, 2004. Kevin Reilly asked that the minutes be corrected to reflect his attendance at the October 3, 2004, Executive Committee meeting. Gail Port moved to approve the minutes of the October 3, 2004, Executive Committee meeting, as corrected. Kevin Reilly seconded the motion, and it was unanimously approved.

4. Treasurer's Report. Lou Alexander distributed the Section's income and expense report as of December 31, 2004, which indicates that the Section completed the year with a $16,900 surplus, the highest surplus in five years. This good financial news is attributed to a number of efforts. Last year, Jim Periconi created a task force to determine where we could make economies. This year, Ginny Robbins has done a lot of work to fund raise for some of our events and so we have received $10,000 more this year for meetings than we anticipated. Ginny mentioned that Miriam Villani, Kevin Ryan, and Judy Drabicki also helped with fund raising. Lou mentioned that the accumulated surplus to date is approximately $23,000. Phil Weinberg moved to approve the Treasurer's report. The motion was seconded by Bob Kafin, and it was unanimously approved.

5. Membership. Ginny Robbins announced the following appointments to Committees:

Energy Committee – Jennifer Hairie, DEC
Water Quality Committee – Michael Altieri, DEC

Eileen Millett has resigned from the Environmental Justice Committee after several years of service; Ginny has requested Jean McCaroll to serve as Co-Chair and Jean has accepted. Ginny will present this to the Section Cabinet for approval in February.

Lou Alexander reported on the outreach effort to include government attorneys who are already members to become active participants in the section. Dick Brickwedde mentioned that the Regional Attorneys used to meet in New York City on Thursday prior to the Friday Annual program and perhaps that could be reinstated as a way to encourage more participation and attendance at the Section's Annual program by DEC attorneys. Lou will look into that.

Ginny Robbins announced that she was forming a Task Force on Membership. The Task Force would follow up the work of the Committee on Committees at the Arden Retreat. Ginny asked for four to five volunteers to serve on the Task Force for a brief period of time to look at membership issues. The Section currently has 1242 members; this represents a downward trend, which the Section would like to reverse.

6. House of Delegates Report. John Hanna reported that the NYSBA Special Committee to Study Issues Affecting Same-Sex Couples has presented three different resolutions and that a memo setting forth these resolutions has been distributed to the Executive Committee. The House of Delegates will vote on these resolutions in April and is seeking comments by March 1, 2005. Ginny Robbins noted that the Cabinet has scheduled a conference call to consider this issue on February 16, 2005, at 3:30 p.m. Lisa Bataille will send an e-mail about the call to all Executive Committee members.

7. Minority Law Student Fellowship Program. Jean McCarroll reported that this year, we are funding four fellows at $6,000 for each fellow.

Ginny Robbins reported that the ABA grant for 2005 is $5,000; the NYSBA Foundation has provided $5,000 for 2005. The Section is funding two additional fellowships at $6,000 each from grants in former years. We are likely to receive $50,000 this year and another $50,000 next year from the New York Community Trust through a joint program with the City Bar and the ABA. This additional money will allow us to award additional fellowships and to be more generous with our past and present fellows by allowing them to travel to our meetings. The applicants were very good this year and the Section hopes to continue to receive such applicants in the future and to be able to pay for them.

John Greenthal noted that the grants do not allow fellows to be placed in private firms, which also could provide a worthwhile professional opportunity for minority law students. He will present a proposal to the Executive Committee in April for an effort to raise funds from corporations and law firms to place fellows in private firms.

8. Pro Bono Task Force.
NYSBA Proposed Definition Revision. Phil Dixon reported that NYSBA is looking into this issue because OCA is pushing for some sort of mandatory pro bono requirements. As an interim measure, it may impose a reporting requirement as part of attorneys' biennial registrations. He reiterated Ken Standard's comment that various Sections have proposed revisions to the definition of pro bono. This Section submitted comments to NYSBA that suggested that the definition of pro bono include a specific reference to the environment as opposed to relying on the general and unspecified reference to "public rights." NYSBA needs more time to consider this issue and we can expect a further revision to the definition in early February, with comments to be submitted by early March. Bill Ginsburg mentioned that this issue came up when he was

Chair of the Section and that perhaps we should recommend that the representation of not for profit organizations qualify under the definition of pro bono representation.

Bus Idling Pro Bono Project. Joan Matthews reported on a pro bono opportunity for Section members involving working with school districts to adopt no idling policies. She mentioned how this was accomplished in the Bethlehem Central School District in Albany: organizing a parents' committee, drafting a report, meeting with school officials and bus drivers, drafting a policy, and obtaining funding for signs. Joan can share the Bethlehem documents with Section members who would like to work on a similar project in their school districts. Joan will send further information about this project to Alan Knauf for posting on the Section's website and to Kevin Reilly for publication in the Section Journal.

9. Legislative Forum. Phil Dixon reported that the Legislative Forum is scheduled for April 13, 2005. One potential topic is wetlands. A bill introduced last year would expand DEC's jurisdiction over wetlands from 12.4 acres to one acre. The bill would also make DEC wetland maps informational only. Marc Chertok mentioned that if DEC's jurisdiction is expanded, it needs to be accompanied by sufficient funding to accommodate increased permit reviews. Gail Port further mentioned that mercury is a hot topic these days, which might also provide a good topic for the Forum.

10. Fall meeting. Miriam Villani reported that the fall meeting is schedule for September 23-25, 2005, at the Sagamore on Lake George. This is a joint meeting with the Municipal Law Section. Both Sections are currently working on selecting the topics for the program.

11. NYS Department of Environmental Conservation Report. Lou Alexander provided written information about the N.G. Kaul Memorial Scholarship as well as a schematic of the DEC office sites. He further distributed a list of topics that DEC has recently been involved in and briefly highlighted some of those topics: DEC's budget proposal, coal plant settlements, two environmental justice reports, some recent guidances on management of sediment and dredge material, a pesticides draft program policy for commercial lawn applications, and the Governor's State of the State message. He will provide this information to Kevin Reilly for publication in the Journal.

12. Office of the New York State Attorney General Report. Peter Lehner reported that the Department has been very active on a number of clean air issues, including enforcing the new source review provisions of the Clean Air Act. The D.C. Circuit heard arguments this week for four hours in a challenge to the Bush Administration's changes to the new source review regulations. In other new source review matters, a trial will soon begin against the largest power producer in country, the Department received a verdict on liability against Ohio Edison, a case against Synergy is going to trial soon, and a new case has been filed against Allegheny Energy.

The AG's office is receiving more cases from the Adirondack Park Agency and the Lake George

Park Commission as these agencies are working on their case backlogs. The AG's office recently had a victory challenging the Army Corps of Engineers' declination of jurisdiction in a wetlands case in Central New York. The AG's office demonstrated, through use of a ping pong ball, that the wetlands were hydrologically connected to a nearby surface water, prompting the Corps to assert jurisdiction over the wetlands. Peter noted that even though EPA had withdrawn its advanced notice of public rulemaking that would go beyond the holding in SWANCC, the Corps in the New York and Buffalo districts are nonetheless declining to exercise jurisdiction over wetlands in greater numbers than before.
The AG's office also recently prosecuted the second enforcement case ever of the State ESA. Sour Mountain (timber rattlesnake) was the first case and this new case involves the protection of the tiger salamander on land that is being developed in Nassau County. The developer failed to obtain an ESA permit. Finally, the AG is continuing to litigate its climate change actions.

13. Section Journal. Editor Kevin Reilly stated that the next deadline for the Journal is March 1, 2005. He would like to proceed with a Hudson River Symposium and asks that Executive Committee members submit articles. He will issue a written call for articles.

14. Committee Reports. Prior to hearing from individual committees, Ginny Robbins urged at-large Executive Committee members to feel free to get involved in any of the Section's many activities.

Miscellaneous Committee Issues. Ginny reported that she asked the CLE Committee to look into a request by the New York Academy of Sciences to be able to provide information about the Academy to Section members. Nick Robinson said that NYAS is a worthwhile organization and we should follow up on this request.

Ginny also mentioned that she received a request from the Special Committee on Animals in the Law asking whether the Section could comment on an amendment to the federal Animal Welfare Act. Walter Mugdan volunteered to look at the language and report back to the Section.

Nick Robinson distributed a brochure of a symposium held at Pace in December, entitled "The Judiciary and Environmental Law, An International Symposium on Comparative Judicial Practice in Canada, the United States and Mexico, and in Selected other Countries." The proceedings of the Symposium will be published soon and he urged Section members to get involved in this interesting project.

a. Hazardous Waste/Site Remediation. Dave Freeman reported that the Committee submitted comments to DEC's proposed changes to the eligibility criteria for the Brownfields Cleanup Program and that the Committee continues to monitor implementation of the new Brownfields law. He indicated that the Committee is drafting comments on the Soil Vapor Intrusion program policy and would be circulating that for Executive Committee comment.

b. Environmental Business Transactions. Lou Evans reported that the Committee is planning a spring CLE program with the Business Law Section entitled " Emerging Environmental Topics for Corporate Lawyers." The program will address environmental issues affecting a variety of transactions, and it will be held in a few locations around the state.

c. Internet Coordinating Committee. Alan Knauf reported that we are updating our web site. Some Committee information has already been posted, and we are hoping to post additional information (including possibly the presentations from the January 28, 2005, Vapor Intrusion program).

d. Task Force on Petroleum Spills. Alan Knauf reported that the Task Force on Petroleum Spills is having a conference call on March 16, 2005, at 4:00 p.m. Issues to be discussed include the Task Force's request to DEC that it expand and enhance its spill inventory to be more fully searchable.

Dick Brickwedde reported that DEC often destroys old records, such as spill reports, after seven years due to lack of storage space. He suggested our Section take a position against this practice. Dick will prepare a draft letter for consideration.

e. Transportation Committee. Phil Weinberg reported that the Transportation Committee will be co-sponsoring, with the New York City Bar Association, a program in early May (exact date to be determined) on Funding for Mass Transit.

15. Old Business. Ginny Robbins reported that approximately 20 Section members attended the tour of the Court of Appeals lead by Judge Susan Phillips Read on November 4, 2005. The Judge was a very gracious host.

16. New Business. Dave Freeman advised that the Environmental Business Association of New York is holding a Symposium on Urban Environmental Issues on March 3, 2005, and has asked our Section to be a co-sponsor. Dave recommended we agree to the request. Kevin Healy pointed out that a similar arrangement was entered into with EBA on a global climate change symposium. Dave's recommendation was agreed to without objection.

Ginny Robbins reported that Mike Gerrard has asked that our Section co-sponsor, with the ABA, a conference on "Little NEPAs" to be held May 30, 2005, in Boston. The Committee agreed to this request without objection. Mark Chertok will be our Section's liaison for this conference.

17. Adjourn. The meeting was adjourned at 5:08 p.m.

Respectfully submitted,

Joan Leary Matthews
Secretary