

The New York Environmental Lawyer

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Message from the Outgoing Chair

It is hard to believe that my term as Chair of the Environmental Law Section is over. Please join me in welcoming Carl Howard as the new Chair. Over the past year, the Section was involved in a variety of activities. Each one seemed to follow close on the heels of the last. It would not have been possible to have pulled them off without the efforts of Section members and NYSBA staff.



Philip H. Dixon

October 2011 saw a successful Fall Meeting, held in Saratoga Springs as a joint meeting with the Municipal Law Section. The program drew more than 135 regis-

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Message from the Incoming Chair

It is an honor and privilege to be the thirty-second Chair of this great Section. Thank you Phil Dixon for a smooth and instructive year (2011-2012) and thank you Arthur Savage, who got us started so well back in 1981. In fact, in my four years as an officer I have had the pleasure to work with truly outstanding Chairs; namely, Joan Leary Matthews, Alan Knauf, Barry Kogut and Phil. That is an all-star lineup. I am delighted to say that the officers who will serve with me, Kevin Reilly as Vice-Chair, Terresa Bakner as Treasurer, and Michael Lesser as Secretary, are all wonderfully dedicated to



Carl Howard

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furthering the great and important work of this Section. Onward!

I have hit the ground running. To me we can all talk the talk, but I'd like to promote walking the walk in everything we do. Whether we are doing work as professionals or just leading our everyday lives at home, the decisions we make have environmental repercussions and ripple outward to those with whom we interact. More often than not our effect on others is subtle and unknown to us. What we wear, what we eat, how we transport ourselves, what we buy, the temperature of our homes, where we vacation, all these things are observed by others who are influenced in some way, exponentially so, as the person who observes you is observed by another who is observed by a couple or a family and on and on.

With this in mind, I have worked with Megan Bril-lault and Kristen Wilson of the P2 (Pollution Prevention) Committee on a Questionnaire that I would like every member of the Section to complete. The questions are intended to do several things. First, I'd like us all to get a sense as to the level of commitment to living green that we have as the Environmental Law Section. I do not mean to overemphasize the Environmental and ignore the Law part of our title, but I think it is important to know what lies behind the Environmental before we pursue the Law. Second, I want to encourage the membership to take a few minutes to examine and think about how we live day-to-day and to find another step we can take, and then another, and then another, at home, at the office, at our children's school, wherever we travel. There is almost always an environmental connection to each and every decision we make and action we take, and when we total it all up, how we all live as Americans, consuming considerable resources and walking with a heavy carbon footprint, our cumulative impact is significant.

Part of the beauty of the Environmental Movement is that it is totally inclusive. Democrats and Republicans call themselves Environmentalists. Democrats and Republicans travel to national parks, go on Safari in Africa, snorkel in the Galapagos, love a pretty sunset and marvel at wildlife. We all want clean air, water, soil, food and a livable planet for our children. And so we can start by uniting on the things we can all agree on, and we can all do the things we are comfortable doing, little things like buying locally grown produce, and bigger things like investing only in companies behaving in ways we approve, and supporting candidates who will pursue the goals we want them to pursue.

My hope is that with a small step like the Questionnaire we can ask ourselves, "Am I doing all I can do? Can I look deeper? Can I do more?" So, fill out the Questionnaire, your answers will be totally confidential. I am only

interested in whether or not you have filled out the Questionnaire and will from time to time urge you to do so. Once we start making the aggregated findings public, we will become aware of what we can do to improve our individual efforts and thereby improve the group's efforts.

Bobby Kennedy and Al Gore and others have called the environmental crisis a "moral" crisis and have called it the civil rights issue of our time. It is all that and more as climate change presents physical threats and dangers to the very foundation that supports civil society, human health and happiness. I believe the stakes are that high and, therefore, people become paralyzed not knowing what to do. One thing we can all do is live our lives as if they matter (to the environment), because they do. Start with the Questionnaire, make changes in your lifestyle where you can, keep an eye out for the efforts others are making all around you, and then we can get to the Law portion of our title. Then we can gather the support we need to elect candidates who "get it" then we can form the kinds of communities we all want to live in with shared values.

Bill McKibben, who addressed the Section at our Fall Meeting in Lake Placid, Oct 12-14, founded and leads 350.org. He has demonstrated the immense power of the Internet as his efforts have circled the globe in minutes and involved millions of people in tens of thousands of demonstrations. People care and want to act. We can tell them what to do, but even better, we can show them, we can lead. In fact, we do lead, every day and in everything we do. The question is, "Which way are we headed?"

Mr. McKibben wrote in his latest book *Eaarth* that we no longer reside on the planet we all grew up on and thought we knew. The old, largely predictable, mostly stable earth enjoyed an atmosphere that protected it from too much heat and dangerous rays from the sun, and that atmosphere had a level of carbon that, for most of the 10,000 years of human habitation, was a steady 350 parts per million. At 350 ppm, the ice sheets at the poles were stable, winter build-up of glaciers melted at the right pace to supply water for drinking and irrigation to hundreds of millions of people globally, the oceans remained at fairly constant levels in terms of height and acidity. Many other global patterns were stable and predictable as well, including rainfall, temperature, seasonal fluctuations of flora and fauna. In short, the delicate balance of ecological life-support systems was in sync. That earth, according to Mr. McKibben and the vast majority of the world's leading scientists unaffiliated with the oil and gas industry, no longer exists.

The bad news is that the problem has proven to be beyond the ability of the world's leaders to handle. The last-second desperately and hastily negotiated Copenhagen

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Accord lacks any targets or time frame to reduce carbon emissions and has aptly been described as “a historic failure that will live in infamy.” The level of carbon currently in the atmosphere is around 400 ppm and rising, with no relief in sight. If every pledge made by the attending countries was put in place, by 2100 carbon levels would likely exceed 725 ppm! If we assume that every wildly optimistic carbon-reduction strategy proposed by every country to have even bothered to make a proposal was put in place, carbon levels might only reach 600 ppm. At these levels the amount of environmental destruction and human misery is too much to contemplate. I am not being hysterical when I say the problems that Mr. McKibben and so many others have detailed are present, they are measurable and they are going to get worse.

Our work in this Section is as relevant to this discussion as is the lifestyle of each member of this Section. We need to conform our way of life in private and in public, at home and at work, to this reality. I am asking you to take the time to think about the issues raised in the Questionnaire, and to go way beyond these basic questions and do what you feel you can do to be part of the solution to this enormous threat.

Recently I read a series of articles about the Internet “cloud.” I do not have any questions in the Questionnaire about the cloud or Internet usage but this is another insight into the impact of the carbon footprint from our everyday lives. Most of us were under the impression that the Internet was a “green” enterprise, that sending Email and e-copies of documents and pictures was “low impact” and environmentally friendly (“save a tree!”). Think again. The fact of the matter is that the amount of energy required to run all the servers that support our Internet usage and store (the “cloud”) the fantastic amount of data that we send and store every day is astronomical. Many remote farming communities across the globe are being

developed with enormous warehouses to store acres of servers to support our Internet-dependant businesses and hobbies and communications. And these servers must never be allowed to “go down” and are therefore backed by tremendous diesel-powered generators which emit huge amounts of pollution, including greenhouse gases and particulates. So what do we do about that? For one thing we can become aware of these facts, send and store fewer electronic communications and pick up the phone more often (and not necessarily a cell phone as they require “rare earth,” an uncommon commodity the mining of which is environmentally destructive!). As I say, there are almost always environmental consequences to our daily actions and often these consequences are significant, especially multiplied by the billions of us who perform such actions on a daily basis and the billions of times such actions (like eating, traveling, communicating, heating/cooling our home/offices) are repeated. So please spend some time thinking about these issues.

Please fill out the Questionnaire online (yes, I know the servers will be using energy to store all this information but at least we won't be killing trees; there's always a trade-off). I also ask that you interact with us. Give us feedback. There is space in the Questionnaire for you to express yourself. We want to hear from you. And/or you can post your comments on the Section's website, and/or you can email me directly. As you can tell, I care deeply about so many issues, and I care about leading by example. I'm looking forward to working with all of you this year and I hope to hear from many of you too. Let's start with the Questionnaire. Feel free to forward it to others, even beyond our Section. The more the merrier. The Questionnaire is available through the Section's website (www.nysba.org/environmental), and more directly, here: www.nysba.org/ELSQuestionnaire.

Carl Howard