Minutes for the
NYSBA Environmental Law Section
Executive Committee Meeting

Regent Parlor Sutton Parlor, 2nd Floor
Hilton New York
1335 Avenue of the Americas, New York City
2:30 – 4:30 PM
January 28, 2011

In attendance: Terresa Bakner, Kevin A. Reilly, Marwa Wieder, Howard Tollin, Christopher Rizzo, Walter Mugdan, Miriam Villani, David Freeman, Ruth A. Moore, Michael Lesser, Laurie Silberfeld, Allan Knauf, George Rodenhausen, Garry Abraham, E. Gail Suchman, Nicholas A. Robinson, John Janna, Jr., Robert J. Kafin, Martin Baker, James Periconi, Daniel Riesel, Andrew Gershon, Maureen F. Leary, James Rigano, John Parker, Joan Leary Matthews, Megan Brillault, Kristen Wilson, Janice Dean, Rob Stout, Jason Kaplan, Lisa Bromberg, Kevin G. Ryan, Larry Schnapf, Daniel Ruzow, Lou Alexander, Bob McLaughlin, Kevin Bernstein, Brody Smith, Melody Kight, Edward Malley, Gail S. Port, John French, John Greenthal, Lisa Bataille, Philip Dixon, Jennifer Grossman, Drayton Grant, Joel Sachs, Erica Powers, Valeria Gheorghia, Reed Super, Liz Leaderman, Al Sargente, Kathleen Martens, Telisport Putsavage, Ginny Robbins, Jan Kublick, Rosemary Nichols, Carl Howard and Barry R. Kogut

AGENDA
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1. Call to Order/Opening Remarks (Barry Kogut)

2. Approval of Minutes from October 3, 2010 Executive Committee Meeting (Terresa Bakner)(copy attached)

3. Presentation by the New York State Bar Foundation (Glenn Lau-Kee, Board Director)

    a. Minority Law Student Fellowship application submitted by Section's Environmental Justice Committee (copy attached)

4. Section Finances (copy of Section Finance Report as of November 30, 2010 and NYSBA Approved Section Budget for Calendar Year 2011 attached) (K. Reilly)

   a. NYCELLI Sponsorship Request (Walter Mugdan)

5. Report of the Section Chair (Barry Kogut)

   a. Annual Meeting Events

      January 27, 2011 Events
      EPA Update
      Business Meeting
      Cocktail Reception and Sponsors
      Nominating Committee/Awards Committees

      January 28, 2011 Events
      CLE Program: *Climate Change - Making a House from Brick - What We Can Do*
      Luncheon speaker

   b. Committee Co-Chair Updates

      Membership Committee – new Co-Chairs: Robert A. Stout Jr. and Jason L. Kaplan
      Kathleen Martens - Historic Preservation, Parks & Recreation Committee
      Legislation Co-Chair – Andrew Wilson
      Air Quality Co-Chair Opening

   c. Bylaw Amendments (copy of proposal attached) and Section Infrastructure Update

      Increase of number of members at large from 15 to 20 (Terresa Bakner)
      Update to Section Journal infrastructure (Miriam Villani)
      Journal Committee/Brownfield Task Force/Legal Ethics Task Force

   d. CLE Committee Update

      NYSBA CLE Committee Overview (Doug Guevera)
      Agriculture and Rural Issues Committee (11/18 Program – R. Moore)

   e. Section Subsidization program (copy of topic materials attached)(Richard Rifkin and Ron Kennedy)

6. DEC Update (John Parker)

7. NYSBA House of Delegates

   a. Section Delegate Report (John Greenthal)(copy of report to Section Cabinet of January 17, 2011 attached)
   b. Section Delegate and Alternate Appointments (effective June 1, 2011)

8. Section Journal (Miriam Villani)

9. Section Committee Reports

   a. Global Climate Change (Virginia Robbins)

   b. Water Quality Committee (George Rodenhausen and Melody Domenica Kight)

   c. Pollution Prevention Committee (Kristen Wilson/Megan Brillault)

   d. Membership Committee (copy of Section membership profile attached) (Howard Tollin): Section membership as of 1/4/2011 - 1,225

   e. Environmental Insurance (Howard Tollin)

   f. Coastal and Wetland Resources (Drayton Grant)

   g. Green Memos by NYS Environmental Organizations (copy attached) - Challenge to the Committees

10. CY 2011 Activities

   a. Petroleum Spills Symposium of April 6, 2011 (Wendy Marsh)

   b. Legislation Committee (Mike Lesser)

      - Legislative Forum
        - Date: May 18, 2011 (NYSBA Office, Albany, New York)
        - Topic: Marcellus Shale
      - Possible field trip prior to Legislative Forum to Marcellus Shale drill site in Pennsylvania

   c. October 2011 Fall Section Meeting at the Gideon Putnam, Saratoga (Phil Dixon)

11. Old Business/New Business

12. Adjourn - Next Executive Committee Meeting – **May 18, 2011**

1. **Call to Order/Opening Remarks** (Barry Kogut)

Barry opened the meeting by thanking the NYSBA representatives who supported the Section in putting on both its business meeting on January 27 and CLE program and luncheon on January 28. Barry also discussed some of the highlights of the past year and mentioned the upcoming Legislative Forum on May 18.

Barry also expressed his appreciation to Mr. Richard Fedrizzi of the US Green Building Council for travelling to New York City to be the luncheon speaker.

2. **Approval of Minutes from October 3, 2010 Executive Committee Meeting** (copy attached)

The minutes were moved by Barry Kogut and seconded by Gail Port. They were unanimously adopted with no changes.

3. **Presentation by the New York State Bar Foundation** (Glenn Lau-Kee, Board Director)

Mr. Lau-Kee gave a presentation on the purposes served by the NYS Bar Foundation and asked those present to consider supporting the Foundation. He also indicated the past cooperation between the Foundation and the Section on the Minority Law Student Fellowship. A copy is attached of the pending Minority Law Student Fellowship application submitted by Section's Environmental Justice Committee to the Foundation.

Mr. Lau-Kee also detailed the many programs that are supported by the Foundation and ways in which the Foundation is supporting minority and young lawyer/student participation in Bar Activities.

4. **Section Finances** (copy of Section Finance Report as of November 30, 2010 and NYSBA Approved Section Budget for Calendar Year 2011 attached) (K. Reilly): This item was for information only and no action was necessary.

   a. NYCELLI Sponsorship Request (Walter Mugdan): Walter described the NYCELLI program and the sponsorship request for $1000.00 this year, as well as the Section's long history of supporting the program.

      There was general discussion of ways of reporting on the program and following up on the success of past programs, as well as participation in the Section by past awardees. Walter indicated that of the 45 past program participants, 15 are currently attorneys who are members of the Section. The request was moved by Walter and seconded by Gail Port. The sponsorship request was unanimously approved.

5. **Report of the Section Chair** (Barry Kogut):

a. Annual Meeting events. Barry thanked the participants at the annual meeting events, including the EPA update that was chaired by Carl Howard, the business meeting, the cocktail reception and sponsors, the Nominating and Awards Committees and the CLE panelists and speakers on the climate change issues.

b. Committee Co-Chair Updates. Barry provided the following updates:

Membership Committee – new Co-Chairs: Robert A. Stout Jr. and Jason L. Kaplan, Howard Tollin (who will assume the position of Section delegate as of June 1, 2011) will continue on the committee to provide continuity and assistance in the transition period.
Legislation Co-Chair – Andrew Wilson. Drew will work with Michael Lesser and Jeff Brown in undertaking the Legislative Forum on May 18, as well as a Committee initiative discussed below.
Air Quality Co-Chair Opening - EC members were asked to let the Chair know if they are aware of a Section member who would like to participate in the Air Quality Committee as a Co-Chair.

c. Bylaw Amendments (copy of proposal attached) and Section Infrastructure Update

Increase of number of Members at Large for Section Executive Committee from 15 to 20 (Terresa Bakner)—Barry and Terresa presented the proposal to increase the Members at Large on the Executive Committee. Gail Port asked why the increase was being suggested. Terresa indicated that it was the opinion of the Nominating Committee that it would be helpful to have five (5) additional slots for members especially in those years involving state government transition when it would be helpful to involve incoming attorneys at DEC and the OAG who may not have previously been members at large. The bylaw amendment was moved by Howard Tollin and it was seconded by Ginny Robbins. It was unanimously approved.

Update to Section Journal infrastructure (Miriam Villani)—Miriam described the proposed bylaw change that would remove the Journal Board in favor of the use of separate issue editors. The Board has not functioned for many years and the current structure relies on Issue Editors. The bylaw amendment was moved by Philip Dixon, and seconded by Walter Mugdan. It was unanimously approved.

Miriam also reported that the Journal will be published on April 18, July 15 and October 5. There was extensive discussion of the need to move to only publishing via email (as the Bar Journal is currently published). Lisa indicated that members who want to receive the Bar Section Journal should be able to opt out of receiving a paper copy. The desire of the Section is to have the Journal only available electronically to members unless members specifically request a paper copy. Lisa will follow up on the issue as will Miriam.

Section Journal Committee. Miriam also mentioned that the issue editors were functioning in lieu of any committee and the previous Journal Editor Kevin Reilly indicated that the committee never really functioned. Rosemary Nicols made a motion to abolish the committee and it was seconded by Walter Mugdan. The motion was unanimously approved.

Miriam also mentioned that an effort will be made to post all of the back issues of the journal to the Section website.

Brownfields Task Force and Legal Ethics Task Force. It was decided to allow the Brownfield Task Force to continue with a focus on certain issues. Barry advised that he would send out an e-mail to allow Section members an opportunity to join the Task Force. David Freeman will be putting together a memorandum detailing the plans for the Brownfields Task Force for the coming year.

As for the Legal Ethics Task Force, Barry raised the possibility of it moving to Committee status and the issue will be discussed at a later time.

d. **CLE Committee Update**

NYSBA CLE Committee Overview: In response to Barry's request, Doug Guevara, Senior Director of the NYSBA CLE Department had agreed to make a presentation to the Executive Committee and answer certain questions that have arisen in connection with CLE programs developed by the Section. Unfortunately, Mr. Guevara was unexpectedly required to leave early to return to Albany, and in lieu of his planned appearance at the EC meriting, he provided a memorandum dated January 25, 2011(copy attached) and a promise to confer later with Section Cabinet and CLE Committee members.

Mr. Guevara's memorandum was not available sufficiently in advance of the meeting for Executive Committee members to have read and digested the information. However, two of the current CLE Committee co-chairs, Maureen Leary and Jim Periconi expressed concern that the Bar staff are attempting to "control" the topics for the CLE programs that are co-sponsored by the Bar CLE.

Information provided on page 4 of the memorandum purported to show losses and gains for CLE programs solely from a monetary perspective. The co-chairs as well as several members of the Executive Committee expressed frustration that more information was not compiled on what resulted in the loss and that participant reaction to the programs (that is, program evaluations) was not included in the report. The CLE Committee will be reporting on this issue after further discussions with Doug.

Agriculture and Rural Issues Committee (11/18 Program – R. Moore): Ruth discussed several brown bag events via telephone that the Committee has undertaken over the past year. Ruth encouraged other committees to use this vehicle as a way to stay in touch on issues throughout the year. Some of the topics that have been covered include CAFOs and shale drilling issues related to agricultural land leases.

e. Section Subsidization program (copy of topic materials attached) (Richard Rifkin and Ron Kennedy of the NYSBA): Richard Rifkin spoke at length on the various ethical issues raised by the Section Subsidization program. After his presentation, there followed a lively discussion, as well as a question and answers session.

Since 2000, the Section has had a subsidization program that was approved by the Bar. That program was continued in the same form until 2008. In 2008, the Bar, as an entity that lobbies the State Legislature but not local government bodies, determined that the subsidization program had to be neutral as to the qualifying factors for participating in the subsidization program. As a result the subsidization program was changed to allow any attorney member of the Section whose income fell below a certain level, to apply for reimbursement for costs associated with attending Section programs, that is, hotel, travel and program registration. That reconfigured subsidization program was reportedly approved by the Bar and the Public Integrity Commission. Section members who are DEC employees also had it reviewed by their agency's ethics officer.

In light of recent opinions by the Public Integrity Commission, Mr. Rifkin on behalf of the Bar is taking another look at the Section's subsidization program. NYSBA would prefer to cast it as a grant program. Joan Leary Matthews remarked that her agency's ethics officer did not think that a grant approach would be appropriate because it would allow reimbursement for expenses that would otherwise be precluded under the ethics law and Commission opinions.

As a result of the foregoing, the Section's subsidization program has been suspended. The Section requested that the Bar and its staff propose an alternative approach that is acceptable to the Commission, NYSBA, and the Section Cabinet. It remains the desire of the Section to try and provide assistance to attorneys who cannot otherwise afford to participate in the Section programs to allow them to participate.

6. **DEC Update** (John Parker).

a. Staffing Issues

Joseph Martens
Acting Commissioner

Since 1998, Mr. Martens has served as President of the Open Space Institute, directing and overseeing land acquisition, sustainable development, historic preservation and farmland protection.

Mr. Martens served as Deputy Secretary to the Governor for Energy and the Environment from 1992-94 and before that Assistant Secretary from 1990-92.

He is the Chair of the Olympic Regional Development Authority, which operates the 1932 and 1980 winter Olympic venues in Lake Placid and Wilmington, NY and Gore Mountain Ski Area in Johnsburg, NY.

He also chairs the Adirondack Lake Survey Corporation, which continuously monitors Adirondack lakes and streams to determine the extent and magnitude of acidification in the Adirondack region

Eugene Leff
Deputy Commissioner for Remediation and Materials Management

At Attorney General's Office since 1983
Acting Bureau Chief EBP
Toxics Litigation Section Chief
Involved in Superfund and Brownfields, and notably the Hudson River NRD
Exxon Mobil Greenpoint Settlement

Office of General Counsel changes

Mark Sanza
Division of Fish and Wildlife
SPDES/BTA

Mike Caruso
DMM. Cristin Clarke
Bureau of Marine Resources

Michelle Stefanucci
Wetlands and tidal Wetlands

Staff Layoffs
Incentives/ERI
800 since 2008
Current level is 3,014

DEC Budget

Submission on February 1, 2011

Hearing on February 8, 2011

b. Operation Eco-quality

The PILOT environmental justice initiative is being developed in DEC Region 3. The Eco-Quality initiative consists of community outreach and consultation efforts with stakeholders and the regulated community, followed up by community policing efforts focused on compliance and enforcement. Environmental Justice is a priority for Governor Cuomo.

The purpose of the initiative is to achieve compliance and to fully and fairly enforce the environmental laws of New York, focusing on quality of life violations and crimes. Regulated facilities subject to compliance include dry cleaners, gas stations, auto shops, etc., and in diesel truck transport activities. Specifically, the initiative is operational in potential environmental justice areas in three inner city areas of cities located in Westchester County. The initiative is principled on the use of Departmental resources consistent with Commissioner's Policy 29. The initiative has many origins, including the highly successful Stop Smoking Trucks and Idling Vehicles Initiative initiated in 2008 and which was also conducted in Newburgh, Beacon, Peekskill and Yonkers.

c. Environmental Assessment open for public comment; all should take advantage of that opportunity.

Model long and short form

Open for public comment until 2/18/11

Areas now explicitly covered:

Addresses planning and zoning issues
Brownfields
Climate change and energy
Environmental justice
Pollution prevention
Smart-growth questions

7. **NYSBA House of Delegates**

a. Section Delegate Report (John Greenthal) (copy of report to Section Cabinet of January 17, 2011 attached). John reported on several issues he thought would be of interest to the Section, including a concern that arose regarding having reports or recommendations by Sections that are not reviewed and approved by the delegates as a whole. A procedure was developed to address this concern and it involves special web notice of a proposed report or recommendation and a certain

period of time is given to the section delegates to comment. A copy of the procedure is attached to these minutes.

John also discussed the recommended changes to the Public Officers law by the Government Ethics Taskforce established by the Bar. Several questions arose concerning the recommendation as it related to a proposed obligation to disclose certain attorney client relationships and how that could be accomplished while maintaining client confidentiality.
Finally, John reported on a proposal to pay for defense costs associated with Judges who have been charged with an ethics violation. Walter Mugden suggested that there should be some ability to decline to be responsible for such costs where an independent investigation determines that certain thresholds of behavior have been crossed. This would be similar to the federal approach.

b. Section Delegate and Alternate Appointments (effective June 1, 2011)—At the end of his current term as Section Delegate, John Greenthal will have reached the maximum 4 year period when anyone can serve in that position. John reported that he has been happy to these past almost 4 years as the Section representative to the House of Delegates but that he was also happy to turn the position over to Howard Tollin who was appointed by the Section Cabinet as the new Section Delegate, effective June 1, 2011. Terresa Bakner was designated as the Alternative Delegate to serve in the event Howard is unable to attend a meeting. Howard indicated that he is looking forward to undertaking the Section Delegate responsibilities.

8. **Section Journal** (Miriam Villani) (see above discussion under bylaw change related to the Journal)

9. **Section Committee Reports**

a. Global Climate Change (Virginia Robbins): Ginny spoke about the Pace Law student update on the NYSBA task force report (chaired by Mike Gerrard) on global warming. The Committee co-chairs, Mike Gerrard, Kevin Healy and Ginny agreed that the students did a great job. Four of the students were present at the Annual program, and two were able to stay for the lunch. Ginny indicated that the update would be available on the website.

b. Water Quality Committee (George Rodenhausen and Melody Domenica Kight): George reported on behalf of the Committee. The Committee's focus for this year will be on the proposed Chesapeake Bay TMDLs and the effect that the program is likely to have on agriculture, forestry and development, generally, in the portion of the State that is covered by the TMDLs.

George indicated that they would seek input from Ruth Moore's committee on the agricultural issues. George expressed concern that for those Towns affected by the TMDLs, it is anticipated that phase 1 will cost $40 million (15 Towns) with

phase II estimated to cost $400 million (40 Towns). No source of funds exists at this time to cover this.

George also compared the TMDLs to the issues that previously arose in the Catskill Watershed due to the NYCDEP proposal to avoid filtration of the City water supply.

Finally, George noted that the Conservation Easement Program sponsored by the Section and the Bar this past year went well and that he and his co participants were considering doing another such program.

c. Pollution Prevention Committee (Kristen Wilson/Megan Brillault): Kristen and Megan circulated at the meeting a proposal for a climate challenge initiative. The members of the Executive Committee were given a week to provide any comments on the e-mail. The Committee will be free to circulate the initiative/challenge after the week is up. There was general support for the proposal.

d. Membership Committee (copy of Section membership profile attached) (Howard Tollin): Section membership as of 1/4/2011 - 1,225. The two new members of the committee were welcomed, Rob Stout and Jason Kaplan. Several young lawyer membership initiatives were discussed. Janice Dean and Howard Tollin were commended for their past service on the committee. Howard will continue as co-chair to provide continuity

The Committee will be looking at brownbag lunches on topics of interest to young lawyers and at enhancing participation through coordinating with environmental law groups at law schools, such as Buffalo, Pace, Albany, etc. They also plan on coordinating with other Bar Sections on young lawyer issues.

e. Environmental Insurance (Howard Tollin): Last year the committee had a CLE program on Insurance. On the off year, the Committee is considering working on a webcast that may address environmental insurance issues in the context of Europe, Latin American or Asia.

f. Coastal and Wetland Resources (Drayton Grant): Drayton reported on the committee's proposal this year to do a brown bag lunch on coastal issues raised by climate change adaptation with particular emphasis on the engineering and technical issues raised by storm surge mitigation measures (e.g. barriers).

g. Green Memos by NYS Environmental Organizations (copy attached) – Barry referred to these memos which were included with the EC agenda materials and challenged the various Committees to consider getting involved in one or more of the issues raised by the memos.

10. **CY 2011 Activities**

a. Petroleum Spills Symposium of April 6, 2011 (Wendy Marsh): no report at the meeting but Barry indicated that the committee is working on the program which is a follow up to a similar symposium held last year.

b. Legislation Committee (Mike Lesser): Mike indicated that the Legislative Forum will be held May 18, 2011 (NYSBA Office, Albany, New York) and the Topic will be: Marcellus Shale.

One of the speakers will be Paul Hartman of Chesapeake Energy. Mr. Hartman also invited Section members to visit a Marcellus Shale drill site in Pennsylvania and participate in an information session. (Barry will follow up on this invite with Section members more generally.) The other contemplated speakers at the Forum will include a legislator from the Senate and one from the Assembly, a representative of a public interest group, and a government representative.

The Committee also prepared a historical summary of all of the topics that have been covered at the Legislative Forums over the years. That summary has been posted to the Section website and is available to all. The Chair also asked the Committee to look at pending legislation and to make the Section members aware of such legislation on a regular basis. With Drew's addition to the co-chairs, the Committee is confident it will be able to provide the requested information.

Mike also commented that the meal provided at the Legislative Forum was part of the Forum, and as such was determined to be covered under the "educational program" exception to the ethics rules.

c. October 2011 Fall Section Meeting (10/21 through 10/23) at the Gideon Putnam, Saratoga (Phil Dixon)—The Fall meeting will be a joint effort with the Municipal Law Section. The development of the topics will be a joint effort and program co-chairs have been appointed. Two suggested topics include issues associated with Marcellus Shale and proposed changes to the SEQRA Part 1, 2 and 3 forms, as well as a general SEQRA law update.

11. Old Business/New Business—John French reported to the Section that John Adams of NRDC was being awarded the Presidential Medal of Freedom. He requested that the Section authorize Barry to send a letter of congratulations from the Section. Ginny Robbins made the motion and Laurie Silberfeld seconded it. The motion was unanimously approved.

12. Adjourn - Next Executive Committee Meeting – **May 18, 2011**

Respectfully Submitted, Terresa Bakner, Section Secretary

ATTACHMENTS
To
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1. Minutes from October 3, 2010 Executive Committee Meeting

2. Minority Law Student Fellowship Application from Section's Environmental Justice Committee

3. Section Finance Report as of November 30, 2010 and NYSBA Approved Section Budget for Calendar Year 2011

4. Bylaw Amendments (Proposal)

5. Section Subsidization program (topic materials)

6. Section Delegate Report to Section Cabinet of January 17, 2011

7. Section membership profile

8. Green Memos by NYS Environmental Organizations