

**AGENDA**  
**NYSBA Environmental Law Section**  
**Executive Committee Meeting**  
**Marriott Marquis**  
**January 30, 2009**

**In attendance:** Joan Leary Matthews, Chair; Louis Alexander, Vincent Altieri, Megan Brillault, Philip Dixon, Carl Howard, Alan Knauf, Barry Kogut, John Marwell, Jean McCarroll, Walter Mugdan, John Parker, Kevin Reilly, Virginia Robbins, Miriam Villani, Dominic Cordisco, Larry Schnapf, Glen Bruening, Lisa Bromberg, Joel Sachs, George Bradlau, Phillip Weinberg, David Quist, Jeff Brown, Marla Weider, Christopher Rizzo, Cullen Howe, George Rodenhausen, Phillip Musegaas, Ragna Henrichs, Gerard Avaluzzi, John Hanna Jr., Daniel Riesel, Richard Brickwedde, Robert Kafin, Martin Baker, David Freeman, Terresa Baker, Colin French, Laurie Silberfeld, Jennifer Hairie, Kevin Bernstein, Drayton Grant, Gary Abraham, Bob McLaughlin, Gail Port, Kevin Healy, Ruth Moore, Jan Kublick, Rachel Deming, Gail Suchman, Kit Kennedy, Telisport Putsavage, Andrew Gershon, John Greenthal, Daniel Morrison, Jeff Baker, John Marwell, Kristen Wilson, C. Nicloe Simmons, Jacalyn Fleming, Yvonne Marciano, Alice Kryzan, Eleanor Stein and Staff Assistant, Lisa Bataille.

1. **Call to Order.** Section Chair Joan Leary Matthews called the meeting to order at 3pm.
2. **Approval of Minutes.** The Minutes from the September 28, 2008, Executive Committee Meeting were approved.
3. **Presentation by New York Bar Foundation Representative, Kay Crawford Murray.** Ms. Murray noted that 50 grants were awarded in 2008. Money was raised from lawyers, law firms, and elsewhere for scholarships and fellowships. Members of our section can donate money when we renew our membership and/or we can request that our firms and organizations donate tax deductible sums, all of which can be done on line. Joel Sachs suggested that ELS get involved with aiding disadvantaged people. He will give the Executive Committee a proposal on this issue.
4. **Report of the Section Chair.** Joan Leary Matthews
  - a. Annual Meeting Program. Matthews thanked Program Chairs Alan Knauf, Vince Altieri, Kevin Healy, Virginia Robbins and Eleanor Stein for jobs well done.
  - b. Proskauer Rose Reception. Matthews thanked Gail Port for her work in making the reception a success and she thanked Barry Kogut for his work on law firm sponsorships.
  - c. EPA Update. Matthews thanked Walter Mugdan and Eric Schaaf for their EPA Update program on Thursday afternoon. The program was well attended.
  - d. NYSBA Diversity Summit & Reception. Matthews noted that on January 26, 2009, Luis Martinez and Janice Dean attended this successful event.

- e. Committee Co-Chair Vacancies & Appointment. Matthews noted the following Committee Co-Chair vacancies:
    - CLE (1)
    - Air Quality (1)
    - Internet Coordinating (1)
    - Public Participation, Intervention & ADR – has been filled by Rachel Deming, who was welcomed to the Executive Committee.
  - f. NYSBA Membership Challenge. Matthews reminded the attendees of the Executive Committee meeting that our goal is to increase membership in the Section by 118 members by 2010. Each Executive Committee Member is challenged with enlisting 2 new members.
  - g. Update on Section Subsidization Program and Government Personnel Restrictions. Matthews noted that State government employees could likely continue to participate in the Section’s Subsidization Program to request reimbursement of registration fees, but probably not for hotel or travel expenses. Additionally, State employees can likely continue to attend the government attorney luncheon because it is a “widely attended gathering.” The State employees should nevertheless consult with their department ethics officers.
  - h. Classroom Project. Mathews reported that this would go “live” soon and she was eager to have Executive Committee members participate. She thanked Peter Casper, Aliza Cinamon, Bridget Lee, Brody Smith, and Joseph Mouallem for their work on this project. They compiled teaching materials on environmental and environmental law topics, organized by grade level, for Section members to review and use in a classroom.
  - i. Section Blog. Matthews reported that Cullen Howe will be leading the new Section blog, which will soon be live. This is another effort to move the Section into the 21<sup>st</sup> Century.
5. **Treasurer’s Report.** Phil Dixon gave the treasurer’s report and distributed copies.
6. **Environmental Minority Fellowship Program.** This effort is headed by Jean McCarroll and Luis Martinez. McCarroll reported that this program is in need of funding. \$100,000 has been spent over the past four years. Lou Alexander noted that the Section will not charge Section membership fees for minority fellows for three years and we will give them complimentary program books for two years. We will also invite the prior year’s recipients to the Annual Meeting and reception. This is a good way to keep them involved in the Section.
7. **Peter A.A. Berle Environmental Integrity Award.** Lou Alexander urged the membership to look into submitting nominations of worthy candidates for this important award.

8. **Awards Committee Guidelines.** Louis A. Alexander distributed guidelines for the Executive Committee to consult in making Section awards. The guidelines were written by Phil Weinberg, Kathleen Martens, Gail Suchman, and Lou Alexander.
9. **Upcoming meetings.** Matthews reported on the following upcoming meetings:
  - a. The Fall Meeting is scheduled for October 23-25, 2009, at the Canandaigua Inn on the Lake, in the Finger Lakes region of NY. This meeting will be co-sponsored by the Municipal Law Section and Alan Knauf will be heading it. The focus will be on sustainable development, alternative energy, and historic preservation. There will be A & B tracks, and attendees can choose which tract they prefer (one track will be for new lawyers). Sunday morning, October 25, will include a DEC Update and the Executive Committee meeting. Alan is looking for another program chair. He asked if the Section should run a bus from downstate to Albany and on to Lake Canandaigua.
  - b. The Fall Meeting for 2010 is expected to be at The Otesaga, in Cooperstown, October 1-3.
  - c. The Legislative Forum is scheduled for May 6, 2009, at the State Bar Center, Albany, NY. The program is being put together by Teresa Bakner, Jeff Brown, and Mike Lesser, as follows:

Forum, 10:00 a.m. –12:00 noon  
Luncheon, 12:30 – 2:00 p.m.  
Executive Committee Meeting, 2:00 – 4:00 p.m.
  - d. The 2010 Annual Meeting is scheduled for the New York Hilton Hotel. The Executive Committee officers would like the P2 (Pollution Prevention) Committee to be involved with the planning of the meeting with the hotel in an attempt to minimize the amount of waste generated at our meetings.
10. **Update on Advocacy Issues.**
  - Walter Mugdan addressed the Bottle Bill and distributed a memo which was written by Kristen Wilson and Megan Brillault Matthews stated that the Executive Committee need not vote on this as it has already adopted a position in favor of the proposal.
  - Matthews addressed the SEQRA Standing issue and cited a recent case, Save the Pine Bush v. Common Council of City of Albany (3d Dept., 10/9/08), to illustrate the need for a change in the special harm rule. This area of the law remains unpredictable and much litigated.
11. **New York State Executive Budget.** Phillip Musegaas reported on issues regarding the budget and its Impact on Environmental Programs. He noted that there were cuts across the board including the EPF which was cut \$50 million (\$255m to \$205m); NYSDEC suffered a \$91 million cut and the elimination of 241 FTE positions. The Hudson River Greenway

council was proposed for elimination. Dan Riesel stated that people will lobby to protect their interests and we should be advocating protecting the environment, that while budget cuts are necessary so is law enforcement and environmental protection. We should argue as a Section that other cuts should be made ahead of these. Jean McCarroll noted that \$800 billion in stimulus money is going to states and cities to avoid cuts in their budgets; we should suggest that some of this money be dedicated for environmental purposes and to reduce the proposed cuts. With regard to citizen suit provisions, Maureen noted the Section had supported prior program bills and that Lisa Bataille may have background information on this. Mugdan proposed a motion that it is the sense of this Section that we understand that budgets need to be cut but we want to be certain that the environment is not disproportionately affected and we feel strongly that environmental enforcement must not be compromised. The motion carried and the following members abstained: Joan Leary Matthews, Eleanor Stein, Glen Bruening, Maureen Leary, David Quist, Louis Alexander, and John Parker. There was additional discussion about the importance of supporting a citizen suit bill but that such a bill should not take the place of vigorous enforcement. It was the sense of the Committee that the citizen suit issue should be divorced from our motion and the focus should be on upholding vigorous enforcement but that we should push the citizens suit bill as well, but separately. Eleanor abstained from joining the Committee's position.

12. **Section Journal.** Matthews and Barry Kogut thanked Kevin Reilly for years of excellent work on the Section Journal as Editor-in-Chief. Because Kevin will become an Executive Committee Officer next year, he will not continue as editor of the Journal. Matthews was delighted to report that Miriam Villani will become the new Editor-in-Chief and that she will report on other changes for the Journal in the coming weeks.
13. **NYSBA House of Delegates** – John Greenthal reported on three issues:
  1. Global Warming Task Force Report by Mike Gerrard (which Ginny Robbins, Kevin Healy, and Jim Sevinsky worked on). John has a copy. It will be the basis for certain recommendations for action which will be presented to the House of Delegates in April 2009.
  2. Privacy Task Force will be making recommendations regarding the protection of privacy interests relating to technological advances, ID theft, and stalking.
  3. Court structure in many villages where 72% of the justices are not attorneys. It should be the Bar Association's position that such justices should be attorneys.
14. **NYSBA Request to Comment on Proposal by ABA Section on Environment, Energy, and Resources (SEER)** – Joan Leary Matthews and John Greenthal.

NYSBA requested that the Section comment on a proposal by the ABE Section on Environment, Energy, and Resources that urges law offices to adopt sustainable measures. John Greenthal moved that the Section should support this proposal, but urge SEER to do more, and provide the NYSBA Global Warming Task Force Report as an example of further efforts toward sustainability. The motion was adopted. Matthews will work with Greenthal

on a letter to convey this position.

15. **Webinars Pilot Program.** Alan Knauf is heading this effort. Alan reported that Committees could do short program, maybe 1.5 hours at lunch. Programs could be organized with other sections. One program recently had 500 participants. Generally 2 or 3 speakers will suffice. The cost of CLE credit is \$30 per person but for \$30 many others can listen in but only one CLE credit would be offered per \$30. The moderator would take questions via email. Listeners would be muted. Materials must be offered in order to qualify for CLE credits but not a lot of material is needed. These materials should be submitted 2-3 weeks ahead of time.

16. **Committee Reports.**

**CLE** - Maureen Leary (working with Jim Rigano and Jim Periconi) reported on an upcoming June, 2009 Brownfields program, and asked anyone who wished to be a speaker to contact Jim Rigano. Another program is being planned by Dominic Cordisco on the Marcellus Shale. Leary reported that CLE programs are using CDs and people are bringing their laptops and/or they can download the materials on line.

**Global Climate Change Committee** - Eleanor Stein (working with Kevin Healy, Ginny Robbins, and Vince Altieri) gave a report of recent activities.

**Membership Committee** – Howard Tollin and Janice Dean reported that 21 law students registered for today’s meeting and NYSBA paid for them.

**Other Committees:**

Joel Sachs reported that a Fall meeting is planned by the **International Environmental Law Committee** for Singapore; he asked if there was any interest in having a meeting with the International Law Section. Joel will give Lisa Bataille a memo to distribute.

Rachel Deming gave a report on **ADR** for environmental interest disputes and noted that at the end of March, and May, 2009, there would be a seminar on techniques to communicate to client ADR options for environmental issues.

Dominic Cordisco reported on **Mining Committee** activities.

Lisa Bromberg reported that the new New Jersey Commissioner of Environmental Protection, Mark Mauriello, expects to use enforcement work to generate funds, but their offices will be working four days per week due to budget cuts.

17. **White Paper on Oil Spill Consent Orders, Update.** John Greenthal. Greenthal reported that it is DEC policy that if a party cleans up an oil spill, it must waive any claim against the oil spill fund. The ad hoc group working on this has drafted a memo suggesting an alternative approach, and its discussions with DEC are continuing.
18. **Old Business/New Business.** New business: Mugdan noted that we can all reduce our carbon footprint by buying renewable energy; EPA Region 2 buys wind energy, 100%. The Section should encourage NYSBA to do the same, and all members should encourage their

employers to do likewise and as individuals we should seek to do likewise where available. A motion to this effect was passed. Gary Abraham abstained.

19. **Adjourned** at 4:50 p.m.

Respectfully submitted,

Carl R. Howard  
Secretary, NYSBA Environmental Law Section