

**NYSBA Environmental Law Section
Executive Committee Meeting
NYSBA Bar Center, Albany
April 13, 2005**

Attendees:

Louis Alexander	Robert Feller	Michael Naughton
Stan Alpert	David Freedman	Rosemary Nichols
Michael Altieri	John Greenthal	Telisport Putsavage
Vince Altieri	Jennifer Hairie	David Quist
Jeff Baker	John Hanna	Kevin Reilly
Kevin Bernstein	Alan Knauf	Daniel Reisel
Dominic Cordisco	Maureen Leary	Virginia Robbins
Philip Dixon	Joan Matthews	Laurie Silberfeld
Judy Drabicki	Jean McCarroll	Dean Sommer
William Fahey	Walter Mugdan	Miriam Villani

1. **Call to Order/Opening Remarks.** Section Chair Ginny Robbins called the meeting to order at 2:15 p.m. She welcomed new Executive Committee members and congratulated Phil Dixon and Michael Lesser, the co-chairs of the Legislation Committee, for the morning's successful and informative Legislative Forum on wetlands.
2. **Approval of Minutes from January 28, 2005, Annual and Executive Committee Meetings.** Walter Mugdan moved to approve the minutes of the January 28, 2005, Executive Committee and Annual Meetings. Rosemary Nichols seconded the motion and the minutes were unanimously approved.
3. **Treasurer's Report.** Lou Alexander distributed the Section's income and expense report as of March 31, 2005. The accumulated surplus of \$23,405 includes a carryover pre-2004 surplus of approximately \$7,000 and 2004's surplus of approximately \$16,000. Credit for rebuilding the surplus goes in part to Miriam Villani and Walter Mugdan for instituting cost cutting measures in 2003 and to Ginny Robbins for the successful fundraising for the Fall 2004 meeting.
4. **Executive Committee.** Ginny Robbins announced the following appointments to Committees:
 - Energy – Jennifer Hairie, NYSDEC
 - Environmental Justice – Jean McCarroll, Carter Ledyard, and Luis Martinez, NRDC
 - Task Force on Petroleum Spills (as of June 1, 2005) – Gary Bowitch
 - Water Quality – Michael Altieri, NYSDEC
 - At-Large – Vince Altieri, NYSDEC
 - At-Large – Michael Naughton, NYSDEC

Other Committee Changes:

Delegate to House of Delegates. John Hanna announced that he has resigned as Delegate to the House of Delegates for the Environmental Law Section and will serve as the Alternate Delegate for the International Law and Practice Section. Ginny Robbins moved that Phil Dixon be appointed to serve as the Delegate for the Environmental Law Section. Rosemary Nichols seconded the motion and it was unanimously approved.

Task Force to a Committee. Dominic Cordisco requested that the Task Force on Mining and Oil and Gas Exploration become a full Committee. He also reported that Laura Zeisel resigned from the Section, and thus as Co-Chair of the Task Force, because she moved to Vermont.

Alan Knauf moved to convert the Task Force to a committee. Maureen Leary seconded the motion and it was unanimously approved.

Ad hoc Work Group to Examine the Propriety of the Submission of Section Comments. Maureen Leary raised the issue of whether the Section should be commenting on agency matters when the views of the Section members are so varied. Maureen referred to the proposed Brownfields and soil vapor intrusion guidances as examples. She requested that we place this issue on the agenda for the Executive Committee meeting at the Fall meeting. John Greenthal suggested that a small work group be convened to prepare a document setting forth the issues. Other Executive Committee members volunteered to be part of the work group: Dan Reisel, Rosemary Nichols, Maureen Leary, Walter Mugdan, John Greenthal, Kevin Reilly, Dave Freeman, and Joan Matthews (ex officio). Maureen Leary was designated as the chair.

5. **Fall Meeting, September 23-25, 2005, Sagamore Hotel.** Miriam Villani reported that we are coordinating with the Municipal Law Section on topics of mutual interest, though we may have some separate panels. Marla Rubin will have an ethics component that will include some role playing. Bill Ginsberg and Nick Robinson will present a case study of the redevelopment of the former General Motors North Tarrytown site; the FEIS should be done by the September meeting. Other panel topics include the exercise of eminent domain for private redevelopment, an update on brownfields, and the new stormwater regulations.
6. **Report on the NYS Department of Environmental Conservation.** Lou Alexander distributed a written summary of an update of recent DEC activities and initiatives of DEC. Acting Commissioner Sheehan addressed many of these activities in her remarks at the luncheon immediately preceding this meeting. One additional item generating considerable attention is chronic wasting disease, which has come to the forefront as a result of several deer in Oneida County being infected.
7. **Section Journal.** Kevin Reilly reported that the deadline for submission of articles for the next issue is June 1. He also reported that the Journal would like to run a Hudson River Symposium issue this summer. The last Symposium issue had addressed the public trust doctrine. He expects that this Symposium issue will contain more articles.

8. **House of Delegates Report.** Phil Dixon (the Section's Alternate Delegate) attended the April meeting of the NYSBA House of Delegates in Albany on behalf of the Section and reported on two issues: Issues Affecting Same-Sex Couples and the Definition of Pro Bono.

Same Sex Couples. The House of Delegates considered three positions:

1. Same sex couples should be afforded all of the rights of married couples, and the State and Federal Constitutions mandate this.
2. Same sex couples should be afforded the same rights as married couples, and these rights can be effectuated by a domestic partner registry, marriage, or some other vehicle but are not constitutionally mandated.
3. This is an issue of social policy as to which NYSBA should not intrude. (This position was dubbed the dissenters' position.)

The Section polled its members on these three positions via e-mail. Approximately 15% responded, with 45% supporting position one, 30% supporting position two, and 25-30% supporting position three (that NYSBA should take no position).

Phil stated that the debate at the House of Delegates was a most inspirational and momentous occasion. The degree and strength of feelings of those who spoke and the degree of respect accorded the different views was tremendous. Some initial procedural motions, e.g., wait for the Court of Appeals to rule on the issue, were rejected. Then position number three was voted down overwhelmingly. Position number one lost by a vote of 84-88. Position number two passed by a vote of 120-40. Some former State Bar Leaders supported the dissenters (position number 3), but the Delegates rejected that position. On behalf of the Section, and after discussion with the Section's Officers, Phil voted at first for position one. When that was defeated, he voted for position two.

Definition of Pro Bono. The House of Delegates also expanded the definition of pro bono that would include a reference to "public interest" representation and not representation exclusively of poor people. The House of Delegates also adopted an aspirational goal for the Lawyer's Code of Professional Responsibility of a certain number of hours, i.e., 20 hours, dedicated to legal representation of the poor.

9. **Committee Reports**

- a. CLE Guidelines. An issue has arisen about the lack of diversity of speakers that we select for Section programs. The Diversity Committee will work with the CLE Committee to encourage diversity by identifying diverse speakers and providing a speaker list and guidelines for selecting speakers to Committee chairs.
- b. Environmental Justice – Minority Environmental Law Fellowship Program. Jean McCarroll reported that she recently attended a meeting of the New York Community Trust, which has awarded a \$100,000 grant for two years to fund our fellowship program. Ginny Robbins clarified that (1) the money from the Trust is coming through the American Bar Association and (2) the Section's fellowship program is a joint program with the City Bar. This additional money from the Trust will help us to be more generous with our fellows, in terms of paying for lodging and travel to our meetings. We will determine whether we are required to spend the money in two years. Jean further reported that the Section will also keep better track of the fellows once their respective fellowships have concluded.
- c. Diversity Plan Implementation. Joan Matthews reported that the Diversity Committee is working on drafting guidelines for the selection of speakers and to establish a list of speakers.
- d. SEQRA Standing Legislation. Joan Matthews reported that the Assembly is poised to adopt its bill that would remove the special harm requirement for plaintiffs who challenge SEQRA determinations. The Senate has an identical bill. Jeff Baker, Dave Sampson, Michael Gerrard, and Phil Weinberg are also working on this issue. This working group will continue to work on this issue in the Senate.
- e. Transportation. Bill Fahey reported that he is working with Phil Weinberg on a program on May 3, 2005, 1:00 p.m., at the City Bar that would address various capital transportation projects proposed for New York City.
- f. Hazardous Waste Committee. The Committee submitted comments to DEC's proposed policy on Soil Vapor Intrusion. The next administrative proposal is DOH's Technical Guidance (risk assessment), but the Committee is not sure if legal issues are presented. Maureen Leary stated that the proposal is highly technical and might not present an opportunity to comment on legal issues. Dave Freeman is not a proponent of filing comments. Walter Mugdan does not see a reason to engage in a discussion over the DOH Guidance. Dan Reisel said that commenting on policy is important. Maureen Leary moved that we not submit comments on this technical guidance. Dave Freeman seconded the motion but asked for guidance as to whether there was any interest in submitting comments. Dave Quist and Lou Alexander recused themselves from the discussion. Dan Reisel moved to table the motion and Dave Freeman seconded. The motion to table carried.

10. **Old Business.** No topics of old business were raised.
11. **New Business.** Lou Alexander congratulated Ginny Robbins for a very successful year as Section Chair. These sentiments were echoed by all in attendance.

The meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Joan Leary Matthews
Secretary