

**New York State Bar Association
Environmental Law Section
Executive Committee Meeting
New York State Bar Center
1 Elk Street, Albany, New York
April 5, 2006**

Attendees:

Louis Alexander	Drayton Grant	Michael Naughton
Jeff Baker	John Greenthal	Rosemary Nichols
Therresa Bakner	Jennifer Hairie	James Periconi
Gary Bowitch	John Hanna, Jr.	David Quist
Philip Dixon	Alan Knauf	Kevin A. Reilly
Judy Drabichi	Joan Leary Matthews	Peter Ruppap
William Fahey	Peter Lehner	Laurie Silberfeld
David Freeman	Walter Mugdan	Miriam Villani
James Ferreira		

1. **Call to Order/Opening Remarks.** Section Chair Miriam Villani called the meeting to order at 2:14 p.m. She thanked Phil Dixon and Mike Lesser and the others involved for their work on the great Legislative Forum on “Brownfield Legislation - How is it Working?” that was held earlier in the day. Walter Mugdan then thanked Miriam Villani for her devoted service to the Section as Chairperson, since this was her last meeting.
2. **Approval of Minutes from January 27, 2006 General Meeting in Section and Executive Committee Meeting.** Peter Ruppap moved to approve the minutes of the January 27, 2006 General in the Section and the Executive Committee meeting held the same day. His motion was seconded by Phil Dixon, and the motion was unanimously approved.
3. **Treasurer’s Report.** A report was given by Joan Leary Matthews. The Section has a surplus of \$39,702.00 from previous years. This is in large part due to austerity measures taken by the Section, as well as fundraising. According to Treasurer Matthews, we are in good shape financially. A copy of the Treasurer’s Report is attached as Appendix A to these Minutes.
4. **Membership.** Chair Villani reported that Howard Tolin had been appointed Co-Chair of the Membership Committee. Lou Alexander reported we need co-chairs for Biotechnology and Solid Waste.
5. **Minority Law Student Fellowship Program Justice.** There was no report.
6. **EPA Library Closures.** John Hanna reported that EPA is closing libraries, and urged us to comment on this. Drayton Grant moved, and John Hanna seconded, that the Section urge that the EPA budget be preserved to protect the EPA libraries. The motion was unanimously

approved.

7. **Government Agency Reports.**

- A. **New York State Environmental Conservation.** Lou Alexander gave a report, a copy of which is attached as Appendix B to these Minutes.
- B. **Environmental Protection Agency.** Walter Mugdan noted that the EPA Region II Conference was being held on April 28 at Fordham Law School. He also noted that the New York State Attorney General had been successful lately in enforcement efforts.
- C. **Office of New York State Attorney General.** The Attorney General has been working on bus idling emissions along with EPA and DEC. They succeeded in getting compliance for busses serving 90% of New York City school children.

8. **Section Journal.** Kevin Reilly stated that the deadline for the next issue will be June 1. He needs articles. He is soliciting submissions from Committees.

9. **Policy and Procedures for Environmental Law Section Comments on Legislation, Regulations and Agency Guidance Documents.** Walter Mugdan explained the process the working group for this issue had gone through to develop a proposed Policy and Procedures for Environmental Law Comments on Legislation, Regulations and Agency Guidance Documents, which had been circulated to the Executive Committee. A copy is attached as Appendix C to these Minutes. He also explained that the proposed process was being used, on a trial basis, with respect to proposed comments on the Wetlands Bill.

Walter Mugdan also explained that the one issue that the working group had left open was whether a supermajority vote should be required to take a position, and then whether it should be two-thirds or 75%. John Hanna stated that he supported a simple majority, but believed that the size of the vote might be a factor in the influence the decision would make. Peter Lehner supported a supermajority vote of 75%.

Peter Ruppap stated that you should be able vote by e-mail. John Greenfield questioned whether we can lobby at all, but Miriam Villani stated that we can.

Chairperson Villani called for a straw vote on whether a supermajority would be required, and if that passed, on the size of the supermajority. First a vote of 21 in favor, 2 opposed (Hanna and Nichols) and 2 abstaining (Alexander and Quist) was taken in favor of requiring a supermajority. Then, a second straw vote was taken on the size of the supermajority was taken, and the vote was 18 in favor of a two-thirds vote, 4 in favor of a three-quarters vote, 1 in favor of a 70% majority, and 2 abstaining (Alexander and Quist).

Rosemary Nichols moved, and Phil Dixon seconded, a motion to adopt the proposed Policy, including a supermajority requirement of a two-thirds vote. It was unanimously passed by a vote of 23 to 0, with 2 abstentions (Alexander and Quist).

The Cabinet will decide what to do with the wetlands issue. A proposal will probably be circulated for a vote by e-mail.

10. **Presentation of Board Members of NY Bar Foundation.** Representatives from the Bar Foundation gave a presentation on the Foundation. It is a 501(c) (3) organization, so contributions are tax deductible. In its last round, the Foundation gave \$300,000 in grants, using income from its funds. Last year it gave \$500,000 to over 50 organizations. An informational brochure on the Foundation was distributed.
11. **Committee Reports.**
 - A. **Adirondacks and Land Use.** Rosemary Nichols and Nick Robinson wrote an article on the cutting of trees in the Adirondacks. A Consent Order has been signed by the New York State Department of Transportation to resolve the matter, and a copy was distributed.
 - B. **Continuing Legal Education.** A series on Environmental Law Impacts of Real Estate Transactions is being presented around the state in Long Island, Westchester, Albany, Rochester and New York City.
 - C. **Hazardous Waste/Site Remediation.** The Committee had prepared comments on the proposed Part 375 Regulations, which were submitted, as revised by the Executive Committee, to DEC. A copy was circulated.
 - D. **International Law.** The Committee is planning a trip to China in the Fall.
12. **House of Delegates.** Phil Dixon, reported that House of Delegates, had approved replacing the current Code of Professional Responsibility with a Code formatted like the Model Rules of Professional Conduct. There had been discussion of the Kelo decision. A report recommended that no “precipitous action” be taken to restrict condemnation authority, and that a temporary commission should be established by the state on the issues. The House approved recommendations on unlawful practice of law, and urged elimination of a requirement of waiver of the attorney/client privilege by corporations in proposed federal sentencing guidelines. The House of Delegates will meet again in June. Dixon submitted a written report, which is annexed as Appendix D to these Minutes.
13. **Fall Meeting.** The Fall Meeting will be held at the Otesaga in Cooperstown on October 13 through 15, 2006. Jennifer Hairie and others are planning a four-hour program on alternative energy, including wind, coal gasification and biomass energy. There may be a field trip to a wind farm.

14. **Co-sponsored Programs.** Upcoming programs that the Section is co-sponsoring include a program on Climate Change at Albany Law School on April 18, and the EPA Region II Conference at Fordham Law School on April 28. The New York City Environmental Law Leadership Institute has requested that we co-sponsor a program for field training for new environmental lawyers, and the Executive Committee was agreeable.
15. **Old Business/New Business.** According to Alexander, our membership is down to 1058. A list of dropped members will be circulated so we can make calls.

Alan Knauf reported that he was working on a program on CAFOs that would be held in Albany in the Fall, with the assistance of the Agricultural and Rural Issues Committee. It would be co-sponsored by the Special Committee on Animals and the Law, and the City Bar Committee on Legal Issues Pertaining to Animals.

16. **Adjournment.** On motion of Lou Alexander, seconded by Walter Mugdan and unanimously carried the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Alan J. Knauf

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Secretary