

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>



Memorandum in Support of Environmental Programs

ENVIRONMENTAL AND ENERGY LAW SECTION

Environmental and Energy # 4

August 11, 2017

To: Members of Congress from New York State

Since the establishment of the Environmental Protection Agency by President Nixon forty-seven years ago, Democratic and Republican administrations alike have sought to harmonize environmental protection with robust economic development. They can, and should, go hand in hand. As President Theodore Roosevelt once said, "...a nation behaves well when it leaves its natural resources improved and not impaired in value for future generations...." The Section offers its resources and services to assist you and the new Administration in developing a well thought-out environmental policy agenda that will ensure a healthy environment and promote the public good.

The nation needs programs that continue to maintain high environmental standards, create a level playing field across the country, and spur research and development into more environmentally sound and profitable business practices. To that end, it is important to promote programs and rules that encourage research, continue to make our industries clean and competitive, and facilitate the remediation and repurposing of contaminated sites. It is critically important to businesses in New York and other states to have rules and policies that are predictable and allow regulated entities to plan appropriately for the future. Likewise, it is crucial for EPA to have enough staff to administer these programs, including those to address permitting and other requests, in an efficient and timely manner.

The Section's view is that New York State's environment has benefited greatly by having a strong and well-staffed EPA. In addition to possible changes in – and inconsistencies between – Federal and State laws, the thought of losing a vibrant Federal presence, including through budget cuts and staff reductions, weakens New York State's program because, despite the faith shown, and authority vested, in the State, it lacks the resources to compensate for a weakened EPA. As a result, the partnership and coherent and cohesive working relationship between the two levels of government are assets we do not want see abandoned.

Federal protections are critical for the states, as the environmental consequences of actions in one state are often felt in another. For example, New York suffers acid rain and ambient air pollution as the result of emissions from upwind states. Federal environmental policy, implemented by both Democratic and Republican administrations, allowed marked improvements in air quality, and reduced acid deposition, in New York. Climate change, resulting from emissions from all states and countries, is already having effects throughout the country, including coastal areas from Long Island to Florida. Given the pervasive nature of the causes and effects of climate change, it is imperative that the federal government take the lead in developing a well-considered and comprehensive national approach to this looming problem. Water pollution does not respect state borders, either. Pollution in one state impacts others, as illustrated by the impact of upriver pollution on the Gulf of Mexico and the Gulf Coast states. EPA's continued role is also critical in coordinating ongoing efforts to improve water quality in the Great Lakes, the world's largest surface freshwater system, bordered by several states. These are only some examples showing the critical need for federal protections, which will be the subject of future materials.

Other programs which are of significant concern to the New York Bar, and which also illustrate EPA initiatives that are both pro-business and pro-environment, include:

- **The federal brownfields program** - In 2002, as part of a bipartisan effort, the Bush Administration encouraged Congress to pass amendments to the Superfund law to provide liability protections to parties redeveloping brownfield sites, as well as their secured creditors. The program has been an unqualified success. It has investigated over 26,000 properties, remediated over 1,500 properties, and made over 5,600 properties ready for reuse. On an annual basis it has been responsible for an estimated 8,000 new jobs, \$1.5 billion dollars in redevelopment funding, and \$97 million in increased local tax revenues. Each federal dollar spent in the brownfield program is estimated to leverage \$18 in private investment.¹ The proposed reduction in EPA funding for the program and the cuts to EPA brownfields staff would significantly and negatively impact this important program.
- **The State and Tribal Assistance Grant (STAG) program**, which funds more than 200 staff positions at the New York Department of Environmental Conservation (NYSDEC). Having adequate staffing at NYSDEC is critical to, among others, the efficient administration of state-delegated EPA programs and the timely processing of permits on which businesses and other regulated entities depend. The proposed cuts to the STAG program could have far-reaching impacts on NYSDEC's implementation of the programs it administers.
- **Encouraging energy innovation** is another area which is important both nationally and to New York State. The proposed cut of \$2.4 billion from the Department of Energy's budget for energy programs, including the elimination of the Advanced Research Projects Agency-Energy (ARPA-E) program and a reduction of almost 70% in funding for Energy Efficiency and Renewable Development, will severely handicap America's goal of energy independence, and

has the potential to jeopardize America's global leadership in this area. The Administration's interests in clean coal and in early-stage research and development should not be a bar to encouraging other forms of clean power and supporting later stages of development as well.

The Environmental & Energy Law Section's membership consists of nearly 1,000 attorneys practicing in private and public interest law firms, as in-house corporate counsel, and with federal, state and local governmental agencies.ⁱⁱ

As Congress considers programs and budgets for environmental protection, the Environmental & Energy Law Section strongly recommends proper funding and support by policy makers for these programs -- which are important to our state and our nation.

ⁱ NALGEP/US Conference of Mayors Budget Presentation, April 5, 2017

ⁱⁱ Attorneys with U.S. government agencies took no part in the preparation of this memorandum.