

AGENDA
New York State Bar Association
Environmental and Energy Law Section
Executive Committee Meeting

May 23, 2018

1. Welcome
2. Approval of Minutes from January Executive Committee Meeting (attachment)
3. Financial Report (attachment)
 - Discussion of Use of Surplus
4. Membership Report
5. 2018-19 Programs
 - Basics of Environmental Law CLE – April 2018 (attachment)
 - Legislative Forum – May 23, 2018
 - Columbia Law School Conference – June 6, 2018 (sponsored in part by EELS)
 - Oil Spill Symposium – June 8, 2018
 - Environmental Insurance – November 2, 2018
 - Brownfields Update – December 5, 2018
 - Fall Meetings – 2018 and 2019 (Marla and Howard)
 - Sponsorships (Howard)
 - Annual Meeting 2019 (Marla)
6. House of Delegates Report (April 14, 2018 meeting) (Linda)
7. Task Forces
 - Part 622
 - FFEP
8. Social Media Report
 - Twitter
 - Communities
9. Committee Reports
10. New Business
11. Motion to Adjourn

NYSBA

MINUTES OF THE JANUARY 25, 2018 EXECUTIVE COMMITTEE MEETING OF THE NYSBA ENVIRONMENTAL AND ENERGY LAW SECTION

The meeting of the NYSBA Environmental and Energy Law Section Executive Committee was convened on January 25, 2018 at the Section's Annual Meeting in New York City, New York. A list of the meeting attendees is attached at the end of the Minutes.

1. Welcome

Chair Kevin Bernstein ("KB") provided a general welcome to the attendees, an overview of the agenda for the Executive Committee meeting and the Section program on Friday. Kevin noted the attendance for the off-site lunch was at 120 members and that he thought the Executive Committee meeting with lunch being provided and being set up in a round table format would be conducive to a productive meeting.

2. Approval of Minutes

The Minutes from the Section's Executive Committee meeting of October 22, 2017 had been previously distributed to the members and were reviewed, with edits to the attendance list. A motion to approve the Minutes, as amended, was made by Rosemary Nichols, and seconded by Howard Tollin and were unanimously approved.

3. Financial Report

Treasurer Howard Tollin ("HT") provided an overview of the Section's 2017 budget and noted that the Section was on budget with respect to its expenditures and he anticipated a surplus in excess of \$15,000.00 over expenses for the 2017 fiscal year. HT noted the Section currently has an \$80,000.00 surplus and the Section received over \$20,000.00 in sponsorship for the Annual Meeting. There was then a general discussion regarding the use of the Section's surplus with Lisa Bataille ("LB") explaining the Association's restrictions on the use of the surplus and stressing that the surplus must be used for programs of relevance to all members and can't be used to subsidize special interest meetings such as the Fall or Annual meeting. Terresa Bakner suggested the Section consider using the surplus for awards and scholarships which resulted in a general discussion. HT then provided an overview of the 2018 budget, attached to the Executive Committee Agenda packet, and answered questions as raised.

4. Membership Report

Rob Stout provided an overview of the Section's membership and noted that the Section surpassed 1,000 members before the end of the 2017 calendar year. He noted that the challenge now is to retain and increase those membership numbers. The NYSBA President's challenge is for the Section to have 1,058 members by December 31, 2018. Various individuals noted there were opportunities for growth and there was a general discussion regarding strategies for membership initiatives. It was noted the Section overlaps with the municipal, real estate and young lawyers section and there should be an effort in 2018 to continue outreach to those members as well as reaching out to law schools. There was a general discussion that other professional organizations are recognizing membership demographics are trending older and there is a need to attract younger professionals and outreach should start with students, which may include law firms hosting receptions. There exist opportunities to expand student membership.

5. House of Delegates Report

Linda Shaw provided an overview of attendance at the House of Delegates meeting noting the last meeting was held prior to the November election and the focus was on the Constitutional Convention. It was noted there is one House of Delegates member per 1,000 members of a Section and that as Linda had been elected to be the Section's Secretary position starting June 1, 2018, the Section would need to have a new representative to the House of Delegates. Any interested individuals should contact Marla. Linda provided an overview of issues discussed at the House of Delegates Section Caucus where leadership from the Association's Sections discussed issues of common concerns.

6. New York Environmental Lawyer Publication

Miriam Villani indicated work is nearing completion on the February issue with its submission deadline of February 15th. Submission deadlines for the balance of the year are June 1st, October 1st and December 31st and anyone with an interest in submitting an article should do so with those deadlines in mind. There was then a general discussion regarding the Section essay contest with submission due by June 1, 2018 and a list of the law school liaisons discussed at the October 22nd meeting is attached to these Minutes as well as a copy of the essay flyer, as Exhibit A.

7. 2018 Programs

John Parker provided an overview of the legislative forum indicating he was looking at dates in May with a focus on May 23rd. There was a general discussion of whether this would be suitable for a CLE course, but it was noted that as there was a requirement that the speakers submit materials and therefore this is not the type of presentation which is appropriate for CLE credit. The Committee then discussed the oil spill symposium and the committee is

still considering dates and pondering if this can be a CLE course. Jim Rigano provided an update with respect to the Environmental Overview CLE which is being offered at four locations (Buffalo, NYC, Long Island, Albany and webcast) on various dates in April 2018. A copy of the program flyer was included in the agenda packet. Anyone interested in speaking at the program should contact Jim. Larry Schnapf indicated there is a potential for Brownfields CLE in the Fall and there was a general discussion regarding the Environmental Insurance Section holding a seminar and discussion of a Corporate Governance and Environmental Compliance program.

Marla then provided an overview of the Fall 2018 program to be held at Mount Tremper, located near Woodstock, on October 19 through October 21, including a discussion of potential topics.

8. Future of Federal Environmental Law Task Force

Dave Freeman provided an overview of the Task Force activities over the past year and indicated that the Co-Chairs of the Task Force, himself, Gail Port and Kevin Healy, convene a conference call once a month and there are approximately 20 attendees. Dave provided an overview of the Task Force activities over the past year as follows:

- 1) Letter to the Congressional Delegation urging the Administration to maintain funding for important environmental programs.
- 2) The NYSBA Bar President's letter to President Trump drafted by the Task Force and approved by the Executive Committee.
- 3) Task Force comments on the rescission of the CPP Act.
- 4) Members of the Task Force testified at the CPP Hearing.
- 5) The Task Force received a call from Congressman Tonko requesting questions for the Congressman to ask of Secretary Pruitt.

It was noted that Lisa Bataille and Ron Kennedy of Bar Association staff are very helpful in assisting the Task Force in navigating the Association's policies on submitting comments on pending and proposed legislation. Gail Port noted the Task Force has received feedback that its input is helpful and the Task Force will continue its efforts in 2018.

9. Social Media

Meaghan Colligan provided an overview of the presentation to be provided at the end of Friday's program to encourage Section members to actively participate in the Section's social media accounts. The Twitter account was activated in August and there are four volunteers who monitor the account and ensure there are active postings. Meaghan encouraged members of the Committee to follow the Section's Twitter handle (@nysbaeels) and tweet. Meaghan noted that in addition to members posting on the Section's Twitter account the Social Media Committee is retweeting articles so as to promote members, working on proposals to tweak the website and working with staff to move old blogs to the NYSBA's community page. It was also suggested to upload committee reports to the blog. Meaghan also requested volunteers for members of the Social Media Task Force.

10. Minority Fellowship

It was noted the first fellowship was awarded in 1992 and the question was raised "where are they now?" A list was prepared and attached to the agenda packet. It was suggested the list be posted on the Section's website. It was also noted that Michael Gerard forwarded the list to the Westchester Foundation on December 6, 2017 seeking funding of no less than \$10,000.00 a year to assist with financing minority fellowships and is awaiting a response.

11. Committee Manual Revisions

Ginny Robbins provided an overview of the edits to the Committee Manual and there was a suggested edit by Nicholas Ward-Willis that a new Section 10 be added to page 5 to read as follows:

In accordance with the request of the Chair of the Social Media Committee, provide an entry on the Section's blog no less than once a year and actively participate on the Section's Twitter account and other social media.

Walter Mugdan seconded the edit and all approved. There was then a motion by Walter Mugdan and seconded by Larry Schnapf to approve the Committee Manual, as edited, which was unanimously approved.

12. Attorney General's Report

Kevin explained the Section has been having discussions as to how to get more involved with the various regulatory agencies and it was agreed it was a benefit to the membership to receive reports from the agencies. To that end, AAG Andrew Gershon of the Environmental Protection Bureau, agreed to provide an update. Andrew provided a detailed and informative overview of the AG's Environmental Protection Bureau, including staffing, the types of matters being handled with specific citation to particular investigations, administrative proceedings and cases of interest. After his presentation and receiving

questions, it was agreed that Mariam would work with Andy to publish the AG's report in the *New York Environmental Lawyer* publication.

13. New Business

There was then a general discussion of miscellaneous matters including Larry Schnapf's suggestion the Section consider providing a new book on environmental law similar to what other Sections have done. Larry volunteered to be the Editor and solicited interest for chapter authors.

There being no further business, a motion to adjourn was made by Rosemary Nichols and seconded by Ginny Nicholas with all in favor.

ATTENDEES

Neil J. Alexander
Susan E. Amron
Terresa M. Bakner
Lisa J. Bataille
Kevin Bernstein
Michael S. Bogin
Meaghan A. Colligan
David J. Freeman
John L. Greenthal
Andrew J. Gershon
Ragna Henrichs
Carl R. Howard
Robert J. Kafin
Amy K. Kendall
John P. Kirkpatrick
Alan J. Knauf
Daniel Mark Krainin
Jan S. Kublick
Eileen D. Millett
Laura L. Mona
Donna Mussio
Rosemary Nichols
Telisport W. Putsavage
Virginia C. Robbins
Steven C. Russo
Daniel A. Ruzow
Joel Sachs
David S. Sampson
Lawrence P. Schnapf
MacKenzie Spring Schoonmaker
Michele Schroeder
Adam J. Schultz
Linda R. Shaw
Keith G. Silliman
Adam Michael Stolorow
Robert Alan Stout, Jr.
Howard M. Tollin
Melissa M. Valle
Miriam E. Villani
Cheryl P. Vollweiler
Nicholas M. Ward-Willis
Marla E. Wieder

EXHIBIT A

EXCERPT FROM OCTOBER 22, 2017 EXECUTIVE COMMITTEE MINUTES:

4. Section Scholarship

There was an extended discussion regarding how to increase outreach to law school students to encourage them to participate in the Section's Annual Essay Contest. Miriam Villani provided an overview of past outreach efforts and noted recruiting students would be more successful if there were individual liaisons to the law schools to promote the essay. After further discussion, it was agreed that the following individuals would be liaisons to the law schools to promote the students to participate in the essay contest: 1) NYU – Michael Bogin; 2) Pace – MacKenzie Shoonmaker; 3) St. John's – Miriam Villani; 4) Fordham – Eric; 5) Albany – Rob Stout; 6) Hofstra – Frank Piccinni and Howard Tollin; 7) University of Buffalo – Amy Kendall; 8) Syracuse – Ginnie Robbins; and 9) Brooklyn Law School – Nicholas Ward-Willis. It was agreed that Nick and Miriam will work in early 2018 to work with liaisons in promoting the essay contest.



NEW YORK STATE BAR ASSOCIATION ENVIRONMENTAL & ENERGY LAW SECTION

2018 Professor William R. Ginsberg Memorial Essay Contest

The Professor William R. Ginsberg Memorial Essay Contest is an annual competition designed to challenge law students to analyze the environmental issues confronting us today.

Topic:

Any topic in environmental law.

Eligibility:

Contest open to all JD and LLM candidate students enrolled in a New York State law school. Essays may have been submitted for course credit or for law reviews, but not as part of paid employment.

Length:

Maximum length, 35 double-spaced pages (including footnotes, which may be single-spaced).

Format:

Each entrant **MUST** submit a hard copy AND an electronic version in Microsoft Word.

Judging:

Criteria for judging entries will be: organization, practicality, originality, quality of research, clarity of style. Entries will be judged by environmental law professors and other distinguished members of the Environmental and Energy Law Section from throughout the State.

Awards:

The first place winner will receive a \$1,000 prize, the second place winner will receive a \$500 prize, and third place will receive \$250. All winners will receive certificates. In addition, the 1st place essay will be published by the New York State Bar Association, and the 2nd and 3rd place essays will be considered for publication. All three winners will receive an invitation to the Fall 2018 conference of the Environmental and Energy Law Section.

To Enter:

Send hard copy to New York State Bar Association, One Elk Street, Albany, New York 12207, and email your entry to kplog@nysba.org. Include with your entry a cover letter stating your name, mailing addresses (both school and permanent), telephone number, email address, name of school, and year of graduation. This letter should also certify that the essay was not written as part of paid work. Please make sure your name and student information do not appear on the essay. No more than one entry per student per year is allowed.

Deadline:

June 1, 2018 (Winners will be announced in early September 2018.)

For Further Information:

Contact your environmental law professor or Miriam E. Villani, Esq.
Sahn Ward Coschignano, PLLC
333 Earle Ovington Blvd., Suite 601
Uniondale, New York 11553
(516-228-1300)



EXHIBIT B
COMMITTEE REPORTS

Corporate Counsel Committee

Petroleum Spills Committee

Environmental Insurance Committee

Hazardous Waste/Site Remediation Committee

Toxic Tort Committee

Legislation Committee

2017 Environmental Energy Law Section Committee Year-End Report

Committee Name: Corporate Counsel

Committee Co-chairs: George A. Rusk; Michael J. Hecker

Date of Report: December 29, 2017

Committee Activities- Please summarize activities completed by the Committee during 2017.

Planning activities/discussions to revitalize dormant committee, including discussions with L. Schnapf (prior to his leaving office as Chair); and, discussions with representatives from the Corporate Counsel Section on a half day CLE program to be co-sponsored by the two sections, including Jeffrey Lanier (former chair) and Jana Behe (then-current chair). Ms. Behe unexpectedly passed away at the end of the summer of 2017, and no formal discussions have been held since. We expect to reengage after the annual meetings with the in-coming chair for a potential 2018 program.

Judicial or Administrative Decisions- Please summarize significant decisions issued in 2017 that involve the jurisdiction of the Committee.

- (1) Ongoing PFOA (perfluorooctanoic acid) administrative and enforcement matters associated with Hoosick Falls properties that involve certain Potentially Responsible Parties ("PRPs") (e.g. DuPont, Honeywell, etc), the United States Environmental Protection Agency ("USEPA") and the New York State Department of Environmental Conservation ("NYSDEC"). Recent actions have been taken by the NYSDEC and NYSDOH associated with the enforcement, and USEPA listed the site located at 14 McCaffrey Street on the National Priorities List;
- (2) The restoration settlement between the United States Department of Justice ("US DOJ"), the Federal government, Onondaga County, and Honeywell International, regarding the Onondaga Lake cleanup;
- (3) The October 2017 Exxon Mobil Corporation/ExxonMobil Oil Corporation Clean Air Act settlement with the US DOJ and the Louisiana Department of Environmental Quality that resolved allegations of failing to properly operate and monitor industrial flares at several petrochemical facilities; and,
- (4) In a pending lawsuit filed by 16 states against the USEPA, the agency agreed in August 2017 to drop its decision to delay Obama administration-era regulations on ozone.

Legislation- Please summarize significant state or federal legislation enacted in 2017 that involve the jurisdiction of the Committee:

(1) The Trump Administration's use of the Congressional Review Act to repeal certain pieces of legislation enacted at the end of the Obama administration's tenure, including revoking the Stream Protection Rule that eliminated stream protections from mining waste coal, and requiring overseas oil producers to disclose payments to foreign governments, amongst others.

Regulations- Please summarize significant state or federal regulations proposed or adopted in 2017 that involve the jurisdiction of the Committee:

(1) New York State's adoption of the amendments to 6 NYCRR Part 597 to include certain PFOA and perfluorooctane sulfonic acid ("PFOS")-based materials as being categorized as hazardous substances, which came into effect as of March 3, 2017;

(2) The adoption of the revisions to the 6 NYCRR Part 360 regulations, which came into effect as of November 4, 2017;

(3) The U.S. EPA's October 10, 2017 Notice of Proposed Rulemaking ("NPRM") proposing to repeal the Clean Power Plan;

(4) The Trump Administration's overturning of 29 rules, including, but not limited to, rules pertaining to flood building standards, freezes on new coal leases on public lands, the banning of a pesticide, offshore drilling bans in the Atlantic and Arctic Oceans, and, royalty regulations for oil, gas, and coal; and,

(5) The U.S. EPA's publication of the final rules for prioritization and risk evaluation under the Toxic Substances Control Act ("TSCA").

Guidance Documents- Please summarize significant state or federal guidance documents or policies issued in 2017 that involve the jurisdiction of the Committee.

(1) The Trump Administration's decision to remove the United States of America from the Paris Climate Agreement. Formal action cannot be taken to withdraw until November 2019;

(2) The NYSDEC revised guidance document DER-32 (Brownfield Cleanup Program Applications and Grants) as of July 28, 2017;

(3) The issuance of the Superfund Task Force recommendation by the USEPA on July 25, 2017;

(3) The USEPA's publication of updated guidance on its nanoscale materials information gathering rule in August 2017; and,

(4) The USEPA's publication of guidance in June 2017 to assist interested persons in developing and submitting draft risk evaluations under TSCA.

Please return completed report to: BernstK@bsk.com

Hi Lisa and Kevin,

Jon Brooks and I (co-chairs of the Environmental Transactions Committee) weren't sure if we needed to provide you with a Committee report (see highlighted language below). The only item we have to report is that the Environmental Law Section (spearheaded by the Environmental Transactions Committee) and the Real Property Law Section co-hosted a half-day program on Halloween titled "The Art of the (Brownfields) Deal."

Regards,

Donna

Donna Mussio

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2017 Environmental Law Section Committee Year-End Report

Committee Name: *Petroleum Spills Committee*

Committee Co-chairs: *Douglas H. Zamelis, Gary S. Bowitch, Melissa M. Valle*

Date of Report: *1/3/2018*

Committee Activities- Please summarize activities completed by the Committee during 2017.

8th Annual Oil Symposium, Wednesday June 7, 2017

Judicial or Administrative Decisions- Please summarize significant decisions issued in 2017 that involve the jurisdiction of the Committee.

State v. Ronnen, Index No. L-00055-14 (Sup. Ct. Albany Co., Jan. 23, 2017 and Mar. 30, 2017, Hon. Michael H. Melkonian, J.). In a cost recovery action for two spills at a former major oil storage facility, the court held that the theory of unjust enrichment by double recovery was inapplicable even though the State received \$223,312 from federal ARRA LUST Stimulus Funding for the cleanup. The court did not address the Defendant's claim that Navigation Law §193 (providing that "no person," defined by Navigation Law §172(14) to include the State, "who receives compensation for damages or cleanup and removal costs pursuant to any other state or federal law shall be permitted to receive compensation for the same damages or cleanup and removal costs under this article") bars recovery by the State.

In a second decision, Judge Melkonian held that the State failed to meet its burden in seeking a protective order for two Investigative Summary Reports ("IRSs") regarding the spills, and a Transmittal Memorandum which transmitted one of the IRSs between employees of NYSDEC. The court rejected the State's argument that the attorney-client privilege applied to any of the documents because the contents were not confidential communications in the context of legal advice, and specifically did not apply to the IRSs because they were not communications with the Attorney General. The court found these documents were simply factual.

Zincke v. P. Energy Corp., 146 A.D.3d 923, 45 N.Y.S.3d 510 (2d Dep't 2017). The Second Department affirmed an order that found that a home heating oil provider failed to raise a triable issue of fact on summary judgment, and thus, was liable under the Oil Spill Act when its employee overfilled a homeowner's basement heating oil tank, causing oil to discharge out of a valve at the bottom of one of the tanks onto the cellar floor, which contained several floor drains that emptied directly into the soil. The court held that it was insufficient for the Defendant to "merely demonstrate that the oil spill . . . did not actually reach the surface or groundwater," rather "[i]t was required to also demonstrate that the oil spill could not have done so."

Zahav Enterprises, Inc. v. Martens, 2017 N.Y. Slip Op. 03522, 1, 2017 WL 1657221 (2d Dep't May 3, 2017). The Second Department affirmed an order denying a hybrid Article 78 challenge seeking to set aside a stipulation by which the Petitioner agreed to remediate, rejecting allegation of bad faith. Further, the Petitioner illegally discharged petroleum, failed to contain

petroleum, and failed to comply with the stipulation, in violation of the Oil Spill Act, so the \$60,000 penalty imposed by the Commissioner (reduced from \$112,500 sought by NYSDEC) was not excessive, and was properly assessed even if the Petitioner was an "innocent owner."

Legislation- Please summarize significant state or federal legislation enacted in 2017 that involve the jurisdiction of the Committee:

N/A

Regulations- Please summarize significant state or federal regulations proposed or adopted in 2017 that involve the jurisdiction of the Committee.

N/A

Guidance Documents- Please summarize significant state or federal guidance documents or policies issued in 2017 that involve the jurisdiction of the Committee.

N/A

2017 Environmental Law Section Committee Report

Committee Name: Environmental Insurance

Committee Co-chairs: Gerard P. Cavaluzzi and Michele Schroeder

Date of Report: December 30, 2017

The Committee is now preparing to offer a half day CLE program in the Fall of 2018.

The Committee will again sponsor the highly regarded CLE program entitled “Emerging Issues in Environmental Insurance”. The program, which will be held in New York City and by webinar. The topics will include an overview of the market for environmental insurance products and trends from the perspectives of insurers, policy holders and brokers, and practical tips for utilizing environmental insurance products in transactions. The program has been well-attended in the past, both online and in person. The program continues the series of programs hosted by our Committee every two years.

Significant legislation or market developments affecting our committee specialty in the current year includes:

Legislation aimed at addressing recent legionella outbreaks contemplates mandatory inspections and monitoring of cooling towers. Additionally, coverage may be limited to new conditions with sub-limits of insurance, and subject to maintenance and monitoring plans associated with water delivery and filtration systems and pathways i.e.: piping infrastructure, HVAC systems, fountains, pool and spa facilities, sprinkler systems, etc.

Contingent business interruption coverage demand associated with pollution releases at locations in proximity to the insured location that result in loss at the insured location. Events such as severe weather conditions/hurricanes, floods, and wildfires resulting in pollution releases having consequential interruption in normal and customary business operations at separate locations due to stigma or denial of access have led to this broker request for coverage. Markets have responded with varied terms and conditions.

Owned property exclusion prohibits all property damage on, at or under an insured location except for damage incurred as a result of remediating a pollution condition, which is commonly referred to as restoration costs or replacement costs. Demand grew for broader restoration costs coverage in an effort to achieve expansion of property damage coverage in the form of replacement costs vs. actual cash value of the property and/or broader coverage not directly caused by a remediation but casually connected to the pollution release. Markets have responded with varied terms and conditions.

Insurance coverage demand conditioned on the failure of an indemnity or failure of an assumption of the responsibility for a cleanup at a location that is the subject of a real estate transaction. The demand for this coverage is from the party receiving the indemnity benefit as a

backstop to non-performance by the party giving the benefit. Select markets have responded with manuscript policy language and varied terms and conditions.

Demand for Remediation Stop Loss coverage continues and in combination with discovery of new pollution conditions. Select markets have refined products with varied terms and conditions and underwriting restrictions.

Significant regulations affecting our committee specialty in the current year includes:

Recently, the New York State Department of Health (NYSDOH) lowered the indoor air guideline for trichloroethene (TCE) from 5 micrometers per cubic meter ($\mu\text{m}/\text{m}^3$) to 2 $\mu\text{m}/\text{m}^3$. TCE is a man-made chemical which is used as a solvent to remove grease in adhesives, in paint stripper, and in manufacturing. The main source of exposure to TCE is through indoor air.

The NYSDOH set this guideline at a concentration that is significantly below levels that are known to have direct negative impacts on human health. When TCE levels exceed this guideline, actions should be taken to reduce exposure. The guideline is used to determine how urgently actions are needed to reduce exposure. As with any chemical found in indoor air, the NYSDOH, along with CA RICH, recommend taking steps to reduce exposure whenever levels are detected above background concentrations (typically 1 $\mu\text{m}/\text{m}^3$ for TCE).

Significant court decisions affecting our committee specialty in the current year includes:

1. The Third Circuit U.S. Court of Appeals on December 14, 2017 affirmed a New Jersey federal judge's ruling in favor of Indian Harbor Insurance Company in an environmental contamination dispute after determining that Indian Harbor's failure to exclude coverage to certain insured's involved in the contamination dispute clearly was a mistake or "scrivener's error". (Indian Harbor Insurance Co. v. NL Environmental Management Services Inc. et al., Nos. 16-3262, 16-3293, 3rd Cir., 2017 U.S. App. LEXIS 25277).
2. The United States District Court for the District of Minnesota on September 12, 2017 decided a motion for summary judgment brought by Illinois Union Insurance Company interpreting the extent of recovery of losses resulting from an outbreak of highly pathogenic avian influenza (HPAI or "bird flu"). The court interpreted the term "replacement costs" in the pollution legal liability policies definition of remediation costs to include certain costs but not others. (Rembrandt Enters. V. Ill. Union Ins. Co. Civ. No. 15-2913 (RHK/HB), 2017 U.S. Dist. LEXIS 147030).
3. The United States District Court for the Northern District of California on March 29, 2017 granted summary judgment to American Guarantee and Liability Insurance Company, Steadfast Insurance Company and Zurich American Insurance Company deciding that the deductible in an environmental impairment liability insurance policy was applicable to the costs of defense. (American Guarantee and Liability Insurance Company, et al., v. Technichem, Inc. Case No. 15-cv-03611-VC, 2017 U.S. Dist. LEXIS 47103).

4. The Commonwealth of Massachusetts, Suffolk, Superior Court on September 7, 2017 denied summary judgment to Steadfast Insurance Company on the basis that material facts existed as to whether a Department of Environmental Protection claim arose from a pollution event existing prior to the policy period. Steadfast argued that coverage applied only for a “new pollution event” and there were no material facts to indicate that pollution event was a “new pollution event”. (Casella Waste Systems, Inc., et al. v. Steadfast Insurance Company, Commonwealth of Massachusetts, Suffolk, ss. Superior Court Civil Action No. 2016-2521 BLS 1, Lawyers Weekly No. 09-008-17).
5. The U.S. District Court for the Western District of Missouri denied Illinois Union Insurance Company’s motion for summary judgment interpreting language associated with a Remediation Cost Cap policy associated with a remediation plan and coverage for new pollution conditions provided by endorsement. The Court rejected Ill. Unions position that costs associated with pollution conditions covered by one policy are necessarily excluded by the other coverage. (Sunflower Redevelopment LLC v. Illinois Union Insurance Co., No. 15-577, W. D. Mo., 2017 U.S. Dist. LEXIS 66466.

2017 Environmental Law Section Committee Year-End Report

Committee Name: Hazardous Waste/Site Remediation

Committee Co-chairs: David J. Freeman, Amy L. Reichhart

Date of Report: January 12, 2017

Committee Activities- Please summarize activities completed by the Committee during 2016.

- We reviewed DEC's proposed revisions to Part 375 regulations, regarding the State's hazardous waste programs, and DEC's proposed new DER-32, reflecting 2015 legislative changes to the State's Brownfield Cleanup Program (BCP).
- Re DER-32, we elected not to recommend that the Section comment because the language of the guidance tracks the statutory changes very closely and is therefore relatively non-controversial.
- Re the Part 375 regulations, members of the Committee held a conference call with representatives of DEC last spring to comment informally on a preliminary draft of the revisions that DEC had provided to us. DEC has apparently taken our comments under advisement, since the agency has not yet formally published its proposed revisions for public comment. When the agency does so, we expect that the Committee will likely (a) hold a meeting or conference call to discuss them; (b) present a CLE program on them, and/or (c) provide the Section with recommendations with respect to formal comments to DEC.

Judicial or Administrative Decisions- Please summarize significant decisions issued in 2016 that involve the jurisdiction of the Committee.

- None this year.

Legislation- Please summarize significant state or federal legislation enacted in 2017 that involve the jurisdiction of the Committee:

- On April 26, 2017, Governor Cuomo signed the Clean Water Infrastructure Act which included making significant changes to provisions of the state Superfund program. The relevant provisions are included in revisions to Title 13 and a new Title 12 of Article 27 of the Environmental Conservation Law.

Regulations- Please summarize significant state or federal regulations proposed or adopted in 2016 that involve the jurisdiction of the Committee.

- While not yet adopted, DEC is in the process of revising the Part 375 regulations.
- Effective March 3, 2017, DEC amended Part 597 - Hazardous Substances Identification, Release Prohibition, and Release Reporting. The amendments under this rule making finalized the (1) addition of perfluorooctanoic acid (PFOA-acid), ammonium perfluorooctanoate (PFOA-salt), perfluorooctane sulfonic acid (PFOS-acid), and perfluorooctane sulfonate (PFOS-salt) to the list of hazardous substances at 6 NYCRR Section 597.3; (2) allowance for continued use of firefighting foam that may contain PFOA-acid, PFOA-salt, PFOS-acid or PFOS-salt to fight fires (but not for training or any other purposes) on or before April 25, 2017 even if such use may result in the release of a reportable quantity (RQ), which is otherwise prohibited; and (3) correction to the list of hazardous substances by providing units for RQs.

Guidance Documents- Please summarize significant state or federal guidance documents or policies issued in 2016 that involve the jurisdiction of the Committee.

- Effective September 8, 2017, DER-32: Brownfield Cleanup Program Applications and Agreements was amended. This document provides guidance on the application process and general terms and conditions for Brownfield Cleanup Agreements (BCAs) under the BCP. It also includes guidance on the process for amending and terminating a BCA.

Bataille, Lisa

From: Cheryl Vollweiler <cvollweiler@traublieberman.com>
Sent: Thursday, January 11, 2018 5:09 PM
To: 'kbernstein@bsk.com'
Cc: Bataille, Lisa; dkrainin@bdlaw.com
Subject: NYSBA Energy & Environmental Law Section - Toxic Tort Committee Report - January 2018

Hi Kevin,

The Toxic Tort Committee ("TTC") had a good rebound in 2017, co-chairing the 2017 Toxic Tort Litigation half-day CLE program with the TICL committee when they had difficulty executing on the program. Although TICL ultimately hogged most of the credit, our committee provided all but two of the speakers for all three locations, which were well received.

Our plan for 2018 is to keep the momentum going. Co-chair Dan Krainin and I have scheduled a committee meeting at the 2018 Annual Meeting later this month and are both planning to attend all of the Section events. We also volunteer to produce another CLE program focusing on hot topics in the environmental toxic tort arena. We are still discussing our options/topics and welcome your input, but we are considering a half day program (e.g., the first 4 bullets below have a strong environmental theme focusing on what we eat, drink and breathe every day). We are, of course, open to discussion about a longer program, shorter programs (e.g., one or more 1-hour webinars), a joint program with another section/committee, presenting at a Section meeting in the Fall, or even chairing the 2019 Annual Meeting. On that note, the TTC has not chaired the annual meeting in quite awhile, but we have done so in the past and I think we are well positioned with an interesting (possibly less politically polarizing) agenda than other environmental issues right now. We are, above all, very flexible and happy to do whatever you think will best serve the section's interests.

The following are some of the topics we are considering:

- "What's In Our Water These Days?" – update on what contaminants are posing current/emerging threats to the air, water and more (it's not just MTBE and lead); federal and state action; claims and litigation
- "Toxic Torts?" There is ongoing debate about whether our food supply is becoming toxic, with issues ranging from GMOs, irradiation, organic v. non-organic and pesticides to sugary drinks/foods, artificial sweeteners and trans fats. This presentation will explore the science, regulation, claims, litigation and forecast for the future of "toxic" food issues.
- Update on Low Level Contamination Claims – what's the risk, science and potential liability when contaminants are present but below government thresholds
- "Nano-Particles – The Next Toxic Tort?" Nanotechnology is everywhere. While we can't see, smell or taste it, and few really even think about it, the potential risks are palpable. This presentation explores both the positive and negative implications of nanotechnology on health, safety and the environment, and a forecast for future regulation, claims and litigation.
- TSCA Reform – In light of the Lautenberg Chemical Safety for the 21st Century Act, how are the changes working; what are the roadblocks; next steps; EPA and NIOSH views; NYS experience/challenges; impact on regulations, workplace, workers and legal enforcement?
- Talc – Scientific and legal debate in light of the recent Johnson & Johnson verdicts (the hits just keep coming)

Dan and I look forward to working with you and the Board this year and to putting a TTC event on the calendar in the near future.

Best,
Cheryl

Cheryl P. Vollweiler | Partner

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**TRAUB LIEBERMAN
STRAUS & SHREWSBERRY LLP**

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2017 Environmental Law Section Committee Year-End Report

Committee Name: Legislation

Committee Co-chairs: John Parker and Jill Kasow

Date of Report: 1/22/18

Committee Activities- Please summarize activities completed by the Committee during 2017.

In May, we held our annual legislative forum in Albany, with a panel discussion titled "Rising to the Top: Clean Water Infrastructure Act of 2017." The speakers of the panel were:

1. Elizabeth Moran, Water and Natural Resources Associate, Env'tl Advocates of NY
2. Dan Shapley, Water Quality Program Director at Riverkeeper
3. Julie Tighe, Assistant Commissioner, Intergovernmental and Legislative Affairs, NYS Department of Environmental Conservation
4. Darren Suarez, Director of Government Affairs at NYS Business Council
5. Mary Beth Bianconi, Senior Project Manager at Delaware Engineering

The event also featured a legislative update by Senator Thomas O'Mara, Chair of the Environmental Conservation Committee in the NYS Senate, and Keynote Speaker Judith Enck, Visiting Scholar at Elisabeth Haub School of Law at Pace University and former EPA Region 2 Administrator.

There were 96 attendees at the annual legislative forum.

Judicial or Administrative Decisions- Please summarize significant decisions issued in 2017 that involve the jurisdiction of the Committee.

Legislation- Please summarize significant state or federal legislation enacted in 2017 that involve the jurisdiction of the Committee:

The Clean Water Infrastructure Act was passed in the New York State budget in 2017. At \$2.5B, it represents the most significant funding in water infrastructure in the state since the 1950s. In the previous two years, the Legislation Committee has held annual panels that focused on the challenges and needs for clean water. These annual Legislative Forums have been a part of the public dialogue on critical water issues as they brought together members of the section and key decision makers. The Section's role in contributing to this important public dialogue represents a significant success in helping shape the state law.

Regulations- Please summarize significant state or federal regulations proposed or adopted in 2017 that involve the jurisdiction of the Committee.

Guidance Documents- Please summarize significant state or federal guidance documents or policies issued in 2017 that involve the jurisdiction of the Committee.

**ENVIRONMENTAL LAW SECTION
SUMMARY FOR THE YEAR
2018**

624

As of 03/31/18

	<u>Annual</u>	<u>Oil Spill Symposium</u>	<u>Fall</u>	<u>Subsidization</u>	<u>Other</u>	<u>Total</u>
<u>Revenue</u>						
<i>Dues</i>					27,317.84	27,317.84
Meetings	6,525.00				451.00	6,976.00
Sponsorship	20,000.00					20,000.00
<i>Newsletters</i>					495.00	495.00
<i>Other</i>					0.00	0.00
<i>Publications</i>					0.00	0.00
 Total Revenue	26,525.00	0.00	0.00	0.00	28,263.84	54,788.84
 <u>Expense</u>						
<i>Postage</i>					555.99	555.99
<i>Awards & Grants</i>					1,500.00	1,500.00
Advertising & Marketing						0.00
Outside Printing						0.00
<i>Diversity</i>					0.00	0.00
Campaigns & Surveys						0.00
Internet						0.00
Gratuities						0.00
Meeting Room	1,626.50					1,626.50
Catering	27,469.71					27,469.71
Beverage	4,297.50					4,297.50
Speaker / Guest	500.00					500.00
Audio/Visual	3,380.26					3,380.26
Promotional						0.00
Ground Transportation						0.00
Activities & Entertainment						0.00
Non Employee Personnel						
<i>Executive Committee Meetings</i>					6,575.13	6,575.13
Committee Meetings						
<i>Officers Expense</i>					1.18	1.18
Misc. Meeting & Program Costs	778.04					778.04
<i>Section Subcommittee Meetings</i>					80.76	80.76
<i>Newsletters</i>					0.00	0.00
<i>Graphics</i>					589.49	589.49
 Total Expense	38,052.01	0.00	0.00	0.00	9,302.55	47,354.56
 Net Revenue	(11,527.01)	0.00	0.00	0.00	18,961.29	7,434.28

Bold, Italics = 2018 Reported as " Other "

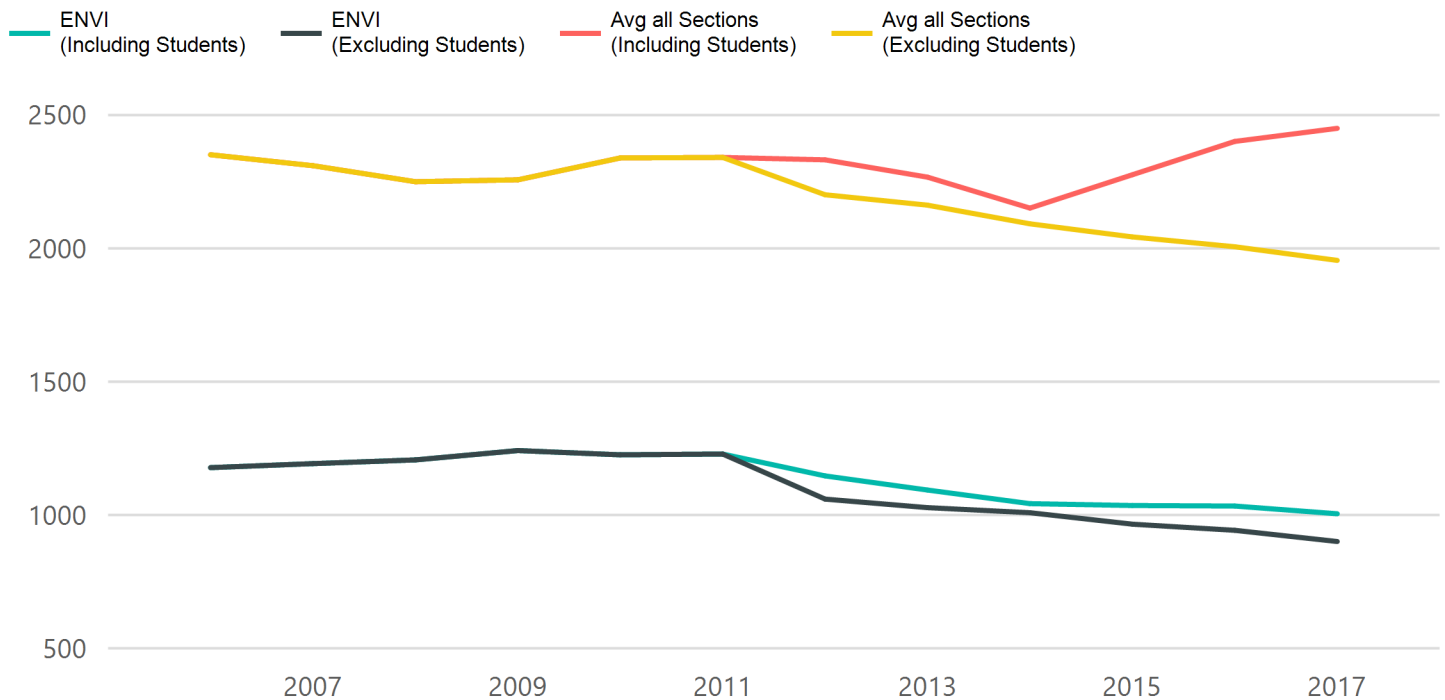
New York State Bar Association
Environmental Law Section
For the Three Months Ending Saturday, March 31, 2018

	2018 Budget	March	2018 Year To Date	Percent	2017 Budget	2017 Year To Date	Percent	2016 Year To Date	2015 Year To Date	2014 Year To Date
Income										
Dues	\$29,450.00	\$1,548.75	\$27,317.84	92.76%	\$30,000.00	\$27,247.50	90.83%	\$28,028.75	\$28,919.17	\$30,717.50
Meetings	35,000.00	(235.00)	6,976.00	19.93%	35,000.00	13,815.00	39.47%	14,315.00	15,780.00	15,951.00
Sponsorship	20,000.00		20,000.00	100.00%	8,000.00	17,250.00	215.63%	2,700.00	4,800.00	4,500.00
Newsletters	350.00		485.00	141.43%	200.00	370.00	185.00%	185.00	370.00	535.00
Publications				0.00%			0.00%		25.00	
Prior Years Surplus Used				0.00%			0.00%			
Total Income	84,800.00	1,313.75	54,788.84	64.61%	78,300.00	58,682.50	74.95%	45,208.75	49,804.17	51,703.50
Expenses										
Postage & Shipping	1,500.00		555.99	37.07%	2,000.00	654.20	32.71%	654.25	633.71	186.46
Awards & Grants	3,500.00	5.64	1,500.00	42.86%	3,500.00	663.10	18.95%	22.69	60.53	60.57
Diversity	3,500.00			0.00%	6,000.00		0.00%			
Membership Initiative	1,500.00			0.00%	2,500.00		0.00%			
Meeting Rooms			1,626.50	0.00%			0.00%			
Catering & Banquets	35,000.00	18,307.21	27,469.71	78.48%	35,000.00	28,278.06	80.79%			
Beverage Service & Receptions	12,000.00	3,131.00	4,297.50	35.81%	12,000.00	5,765.76	48.21%			
Speaker & Guest Expense	1,500.00		500.00	33.33%	1,500.00		0.00%			
Audio/Visual Expense	7,500.00	2,555.26	3,360.26	45.07%	5,000.00	3,506.76	70.14%			
Activities & Entertainment	1,000.00			0.00%			0.00%			
Gratuities	300.00			0.00%	300.00		0.00%			
Section Executive Committee Meetings	2,500.00	6,575.13	6,575.13	263.01%	2,500.00	1,428.49	57.14%			9.30
Officers Expense	1,000.00		1.18	0.12%	500.00	72.07	14.41%	58.59		39.33
Miscellaneous Meeting and Program Costs	7,000.00	748.88	778.04	11.11%	2,000.00	3,949.21	197.46%	300.00	532.48	
Section Subcommittee Meetings	500.00		80.76	16.15%	500.00	92.67	18.53%	40.69		119.72
Newsletters	5,000.00			0.00%	3,000.00	3,099.32	103.31%	2,958.02	750.00	3,440.71
Graphic Department Allocations	1,500.00		589.49	39.30%	2,000.00	314.80	15.74%	353.32	187.92	135.20
Total Expenses	84,800.00	31,323.12	47,354.56	55.84%	78,300.00	47,844.44	61.10%	4,387.56	2,174.85	3,991.29
Net Income over Expense		(30,009.37)	7,434.28	0.00%		10,838.06	0.00%	40,821.19	47,729.52	47,712.21

Accumulated Surplus (Deficit) 99,236

DRAFT: Environmental Law Section at a glance

DRAFT: Membership Trends

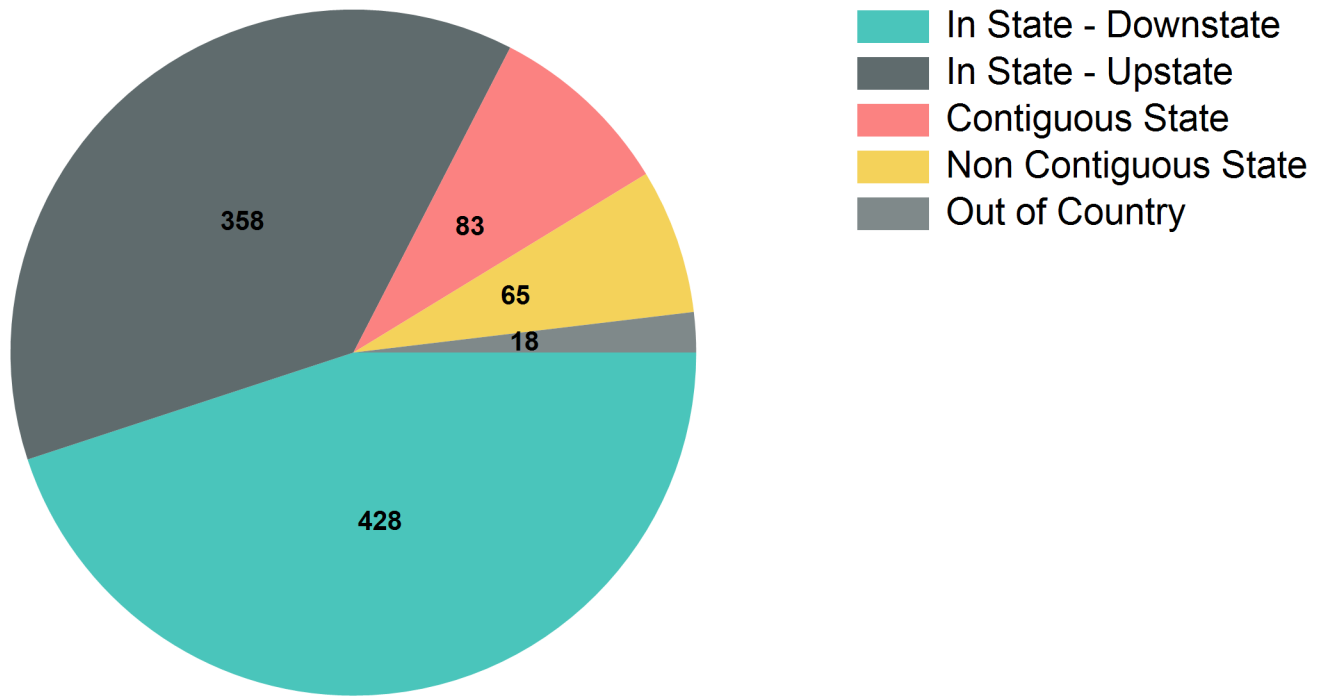


Year	ENVI (Including Students)	ENVI (Excluding Students)	Avg all Sections (Excluding Students)	Avg all Sections (Including Students)
2006	1,178	1,178	2,351	2,351
2007	1,193	1,193	2,310	2,310
2008	1,207	1,207	2,250	2,250
2009	1,242	1,242	2,257	2,257
2010	1,226	1,226	2,339	2,339
2011	1,229	1,229	2,341	2,341
2012	1,147	1,060	2,332	2,201
2013	1,094	1,028	2,267	2,162
2014	1,043	1,009	2,151	2,092
2015	1,036	966	2,276	2,043
2016	1,034	943	2,401	2,006
2017	1,005	901	2,450	1,955

DRAFT: Section Membership Gain/Loss

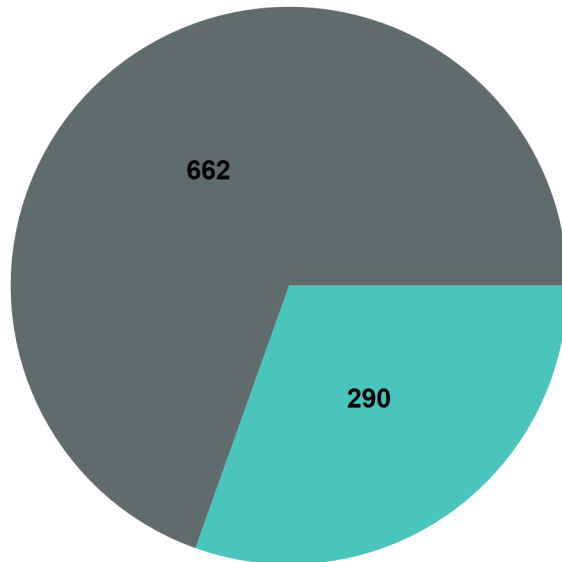
Section	2006	2017	Net Change	% Change
Antitrust Law Section	581	527	(54)	-9.3%
Business Law Section	4,638	3,588	(1,050)	-22.6%
Commercial & Federal Litigation Section	2,339	2,010	(329)	-14.1%
Corporate Counsel Section	1,670	1,599	(71)	-4.3%
Criminal Justice Section	1,549	1,639	90	5.8%
Dispute Resolution Section (since 2008)	533	1,567	1,034	194.0%
Elder Law and Special Needs Section	2,937	2,658	(279)	-9.5%
Entertainment, Arts and Sports Law Section	1,530	1,513	(17)	-1.1%
Environmental Law Section	1,178	1,005	(173)	-14.7%
Family Law Section	2,908	2,524	(384)	-13.2%
Food, Drug & Cosmetic Law Section	290	268	(22)	-7.6%
General Practice Section	2,298	2,133	(165)	-7.2%
Health Law Section	1,236	1,342	106	8.6%
Intellectual Property Law Section	2,120	1,577	(543)	-25.6%
International Section	2,023	1,753	(270)	-13.3%
Judicial (Courts of Record) Section	297	442	145	48.8%
Labor and Employment Law Section	2,334	2,088	(246)	-10.5%
Local and State Government Law Section	1,068	1,123	55	5.1%
Real Property Law Section	5,062	4,348	(714)	-14.1%
Senior Lawyers Section (since 2009)	1,084	3,303	2,219	204.7%
Tax Section	2,601	2,211	(390)	-15.0%
Torts, Insurance & Compensation Law Section	3,303	2,131	(1,172)	-35.5%
Trial Lawyers Section	3,088	1,923	(1,165)	-37.7%
Trusts and Estates Law Section	4,778	4,422	(356)	-7.5%
Young Lawyers Section	3,074	12,124	9,050	294.4%

DRAFT: Geography



Region	Section Member Count	% of Section Population
In State - Downstate	428	45.0%
In State - Upstate	358	37.6%
Contiguous State	83	8.7%
Non Contiguous State	65	6.8%
Out of Country	18	1.9%

DRAFT: Committee Membership



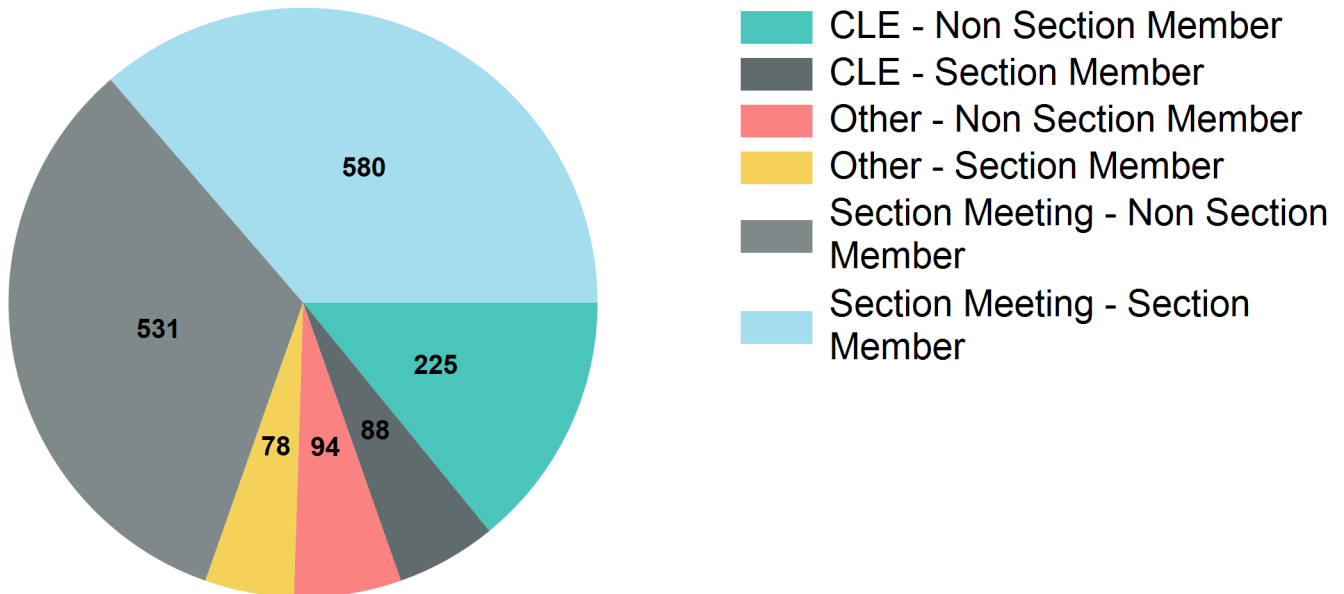
■ Committee Member
■ Non Committee Members

Committee Name	Member Count
Environmental & Energy Law Section Executive Committee	104
Envi: Future of Federal Environmental Policy Task Force	30
Envi: Environmental Impact Assessment	43
Envi: Land Use & Historic Pres. Parks & Rec. & Trans. & Infr	60
Envi: Corporate Counsel	7
Envi: Solid Waste	20
Envi: Hazardous Waste/Site Remediation	61
Envi: Brownfields Task Force	35
Envi: Committee Chairs & Co-Chairs	60
Envi: Water Quality	20
Envi: Enforcement and Compliance	24
Envi: Legislation	21
Envi: Continuing Legal Education & Ethics	21
Envi: Energy	32
Envi: Toxic Torts	17
Envi: Environmental Business Transactions	27
Envi: Coastal and Wetland Resources	30
Envi: Mining and Oil & Gas Exploration	16
Envi: Petroleum Spills	33
Envi: Environmental Insurance	14
Envi: Global Climate Change	23
Envi: Adirondacks, Catskills, Forest Preserve	20
Envi: Environmental Justice	14
Envi: Agriculture and Rural Issues	12

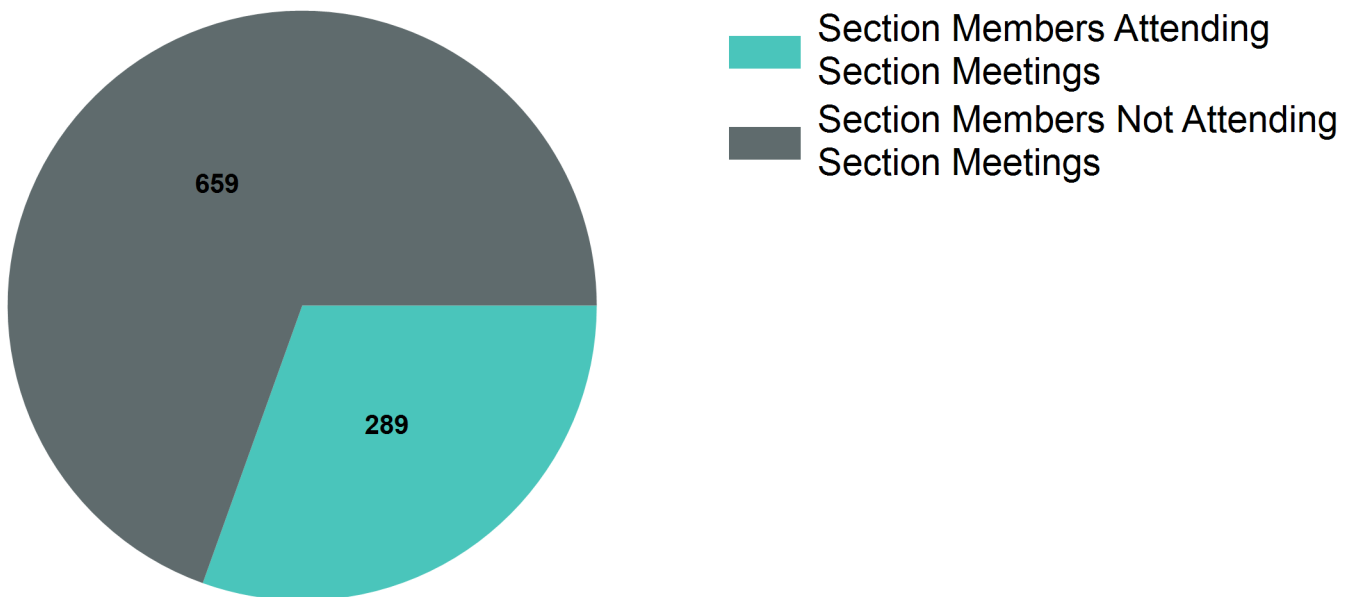
Envi: Section Cabinet	8
Envi: Air Quality	16
Envi: Pesticides	5
Envi: Membership	4
Envi: Diversity	2
Total unique members on committees	290
Total section members	952
Percent of members serving on committee	30.5%

DRAFT: Event Attendance

Section Sponsored Event Attendance by Section Member Type



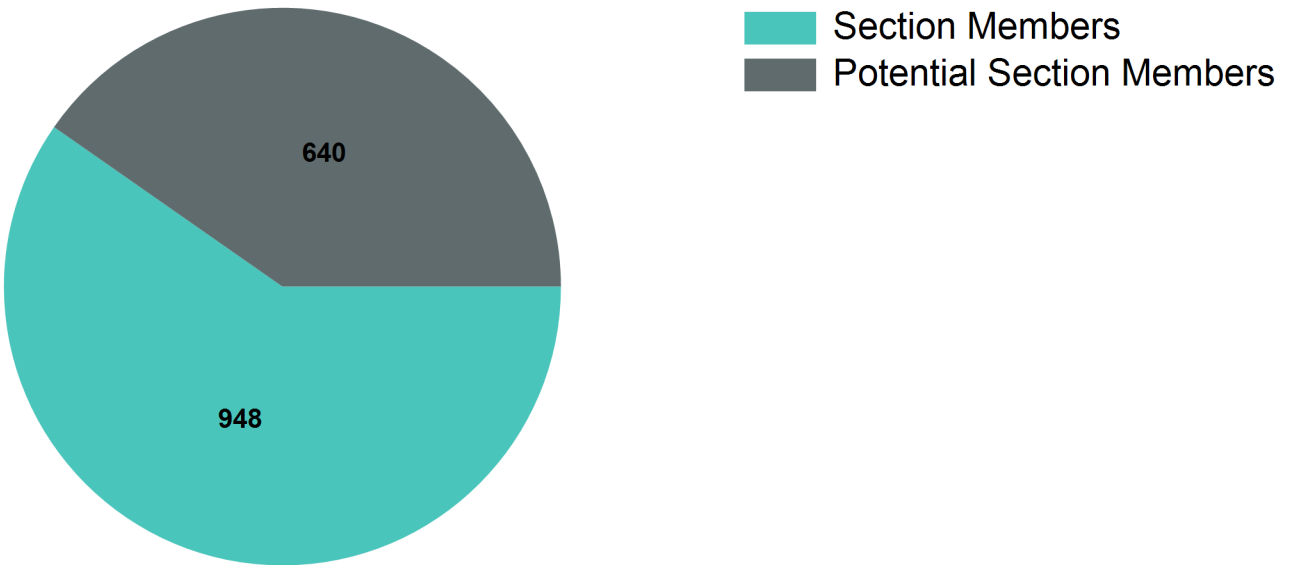
Section Meeting Attendance by Section Members



Meeting	Date	Attendee Count	Section Member Attendee Count
CLE			
Emerging Issues in Environmental Insurance 2016 Live Webcast	October 28, 2016	86	41
Toxic Tort Litigation 2017 SYR	June 2, 2017	23	5
Toxic Tort Litigation 2017 NYC Live & Webcast	June 9, 2017	30	6

The Art of the Brownfield Deal - Live & Webcast	October 31, 2017	72	34
Basics of Environmental Law 2018 BUFF	April 18, 2018	25	0
Basics of Environmental Law 2018 ALB Live & Webcast	April 19, 2018	55	2
Basics of Environmental Law 2018 LI	April 19, 2018	22	0
Other			
RPLS Green Real Estate Committee - RACER Trust	May 18, 2016	27	4
Environmental Law 7th Annual Oil Spill Symposium	June 8, 2016	64	33
Redeveloping Gas Station Sites in New York	September 21, 2016	24	13
Environmental Law 8th Annual Oil Spill Symposium	June 7, 2017	57	28
Section Meeting			
2016 NYSBA Annual Meeting	January 25, 2016	184	135
Recent Developments in Green Building and Microgrids	March 30, 2016	28	13
2016 BLS Public Utility Law Institute	April 7, 2016	115	25
Environmental Law Section Fall Meeting	October 14, 2016	85	69
Local and State Government Law Section Fall Meeting	October 21, 2016	52	9
Update on Hazardous Waste and Site Remediation	November 15, 2016	51	37
2017 NYSBA Annual Meeting	January 23, 2017	185	129
Environmental Law Section RCRA Update	April 13, 2017	35	29
Environmental and Energy Law Section Fall Meeting	October 20, 2017	103	75
Local and State Government Law Section Fall Meeting	October 27, 2017	86	12
2018 NYSBA Annual Meeting	January 22, 2018	187	47

DRAFT: Market Share



Demographic	Market Size
Environmental Law	1,588
Total Unique Potential Members	1,588
Total Section Members	948
Market Penetration	59.7%

NYSBA Section Profile Report for Environmental Law Section

Total Members: 939

			Valid	
	Count	Percent	Percent	
A) Gender				
F	274	29.18%	31.82%	
M	587	62.51%	68.18%	
X (no data)	78	8.31%		
	939	100.00%	100.00%	
B) Practice Setting				
Government	8	0.85%	1.15%	
Government - Federal	13	1.38%	1.87%	
Government - Municipal	19	2.02%	2.74%	
Government - State	28	2.98%	4.03%	
In-House Counsel	52	5.54%	7.49%	
Judiciary	4	0.43%	0.58%	
Law School - Faculty	9	0.96%	1.30%	
Law School - Student	1	0.11%	0.14%	
Legal Aid	2	0.21%	0.29%	
Non-Law Related	13	1.38%	1.87%	
Non-Profit	17	1.81%	2.45%	
Other	15	1.60%	2.16%	
Part-Time Attorney	5	0.53%	0.72%	
Private Practice	484	51.54%	69.74%	
Public Interest	5	0.53%	0.72%	
Retired	10	1.06%	1.44%	
Trade/Professional Association	5	0.53%	0.72%	
Unemployed	4	0.43%	0.58%	
X (no data)	245	26.09%		
	939	100.00%	100.00%	
C) Office Size				
Fifty to 99	76	8.09%	11.43%	
One Hundred and greater	177	18.85%	26.62%	
Six to Nine	46	4.90%	6.92%	
Solo Practitioner	95	10.12%	14.29%	
Ten to Nineteen	74	7.88%	11.13%	
Twenty to 49	94	10.01%	14.14%	
Two to Five	103	10.97%	15.49%	
X (no data)	274	29.18%		
	939	100.00%	100.00%	
D) Position				
Academic	14	1.49%	2.24%	
Administrative Law Judge/Hearing Officer	2	0.21%	0.32%	
Associate	94	10.01%	15.02%	
Court Personnel	1	0.11%	0.16%	
E) Age				
24 and Under	21	2.24%	2.36%	
25 to 35	158	16.83%	17.79%	
36 to 45	110	11.71%	12.39%	
46 to 55	150	15.97%	16.89%	
56 to 65	248	26.41%	27.93%	
66 and Over	201	21.41%	22.64%	
X (no data)	51	5.43%		
	939	100.00%	100.00%	
F) Race/Ethnic Group				
Asian/Pacific Islander	8	0.85%	1.47%	
Black/African American	6	0.64%	1.10%	
Decline to Answer	41	4.37%	7.54%	
Hispanic	8	0.85%	1.47%	
Multiple Race/Ethnic Group	4	0.43%	0.74%	
Other	1	0.11%	0.18%	
White/Caucasian	476	50.69%	87.50%	
X (no data)	395	42.07%		
	939	100.00%	100.00%	
G) Who Paid For Membership Dues				
Collectively by Firm and Member	25	2.66%	4.52%	
Fully by Firm or School or Organization	292	31.10%	52.80%	
Member	229	24.39%	41.41%	
No Dues Paid	7	0.75%	1.27%	
X (no data)	386	41.11%		
	939	100.00%	100.00%	
H) Number of Years Admitted to Bar				
0 (Less than 1)	2	0.21%	0.21%	
1 to 3	76	8.09%	8.09%	
4 to 5	30	3.19%	3.19%	

			Valid	
	Count	Percent	Percent	
6 to 7	27	2.88%	2.88%	
8 to 14	105	11.18%	11.18%	
15 to 19	61	6.50%	6.50%	
20+	538	57.29%	57.29%	
No Admit Date	100	10.65%	10.65%	
X (no data)	100	10.65%		
	1,039	110.65%	100.00%	
I) Disability				
Decline to Answer	82	8.73%	15.07%	
No	453	48.24%	83.27%	
X (no data)	395	42.07%		
Yes	9	0.96%	1.65%	
	939	100.00%	100.00%	
J) Sexual Orientation				
Decline to Answer	58	6.18%	14.25%	
Heterosexual	341	36.32%	83.78%	
Lesbian/Gay/Bisexual	1	0.11%	0.25%	
Lesbian/Gay/Bisexual/Transgender	7	0.75%	1.72%	
X (no data)	532	56.66%		
	939	100.00%	100.00%	

K) Dues Billing Category				
a) NY Admitted 8 Plus Years	524	55.80%	55.57%	
b) NY Admitted 6-7 Years	28	2.98%	2.97%	
c) NY Admitted 4-5 Years	21	2.24%	2.23%	
d) NY Admitted 2-3 Years	39	4.15%	4.14%	
e) NY Newly Admitted	19	2.02%	2.01%	
f) NY Sustaining	12	1.28%	1.27%	
g) OOS Admitted 8 Plus Years	97	10.33%	10.29%	
h) OOS Admitted 6-7 Years	6	0.64%	0.64%	
i) OOS Admitted 4-5 Years	4	0.43%	0.42%	
j) OOS Admitted 2-3 Years	13	1.38%	1.38%	
k) OOS Newly Admitted	14	1.49%	1.48%	
l) OOS Sustaining	5	0.53%	0.53%	
n) Complimentary	22	2.34%	2.33%	
o) Law Student	98	10.44%	10.39%	
p) Over 70, 25 yr Member	10	1.06%	1.06%	
z) Mis-Marked	31	3.30%	3.29%	
	943	100.43%	100.00%	

L) New Section Members (This Month)				
c) NY Admitted 4-5 Years	1	0.11%	20.00%	
j) OOS Admitted 2-3 Years	1	0.11%	20.00%	
k) OOS Newly Admitted	2	0.21%	40.00%	
o) Law Student	1	0.11%	20.00%	
	5	0.53%	100.00%	

			Valid	
	Count	Percent	Percent	
M) Judicial District				
01	169	18.00%	18.00%	
02	18	1.92%	1.92%	
03	148	15.76%	15.76%	
04	25	2.66%	2.66%	
05	59	6.28%	6.28%	
06	20	2.13%	2.13%	
07	45	4.79%	4.79%	
08	56	5.96%	5.96%	
09	135	14.38%	14.38%	
10	84	8.95%	8.95%	
11	13	1.38%	1.38%	
12	3	0.32%	0.32%	
13	2	0.21%	0.21%	
99	158	16.83%	16.83%	
Unknown	4	0.43%	0.43%	
	939	100.00%	100.00%	

N) Sections				
Antitrust Law Section	24	2.56%	0.98%	
Business Law Section	82	8.73%	3.36%	
Commercial & Federal Litigation Section	55	5.86%	2.26%	
Corporate Counsel Section	46	4.90%	1.89%	
Criminal Justice Section	31	3.30%	1.27%	
Dispute Resolution Section	51	5.43%	2.09%	
Elder Law and Special Needs Section	42	4.47%	1.72%	
Entertainment, Arts and Sports Law Section	29	3.09%	1.19%	
Environmental Law Section	939	100.00%	38.50%	
Family Law Section	29	3.09%	1.19%	
Food, Drug & Cosmetic Law Section	38	4.05%	1.56%	
General Practice Section	51	5.43%	2.09%	
Health Law Section	36	3.83%	1.48%	
Intellectual Property Law Section	32	3.41%	1.31%	
International Section	58	6.18%	2.38%	
Judicial (Courts of Record) Section	25	2.66%	1.03%	
Labor and Employment Law Section	46	4.90%	1.89%	
Local and State Government Law Section	196	20.87%	8.04%	
Real Property Law Section	183	19.49%	7.50%	
Senior Lawyers Section	88	9.37%	3.61%	
Tax Section	36	3.83%	1.48%	
Torts, Insurance & Compensation Law Secit	59	6.28%	2.42%	
Trial Lawyers Section	51	5.43%	2.09%	
Trusts and Estates Law Section	44	4.69%	1.80%	
Young Lawyers Section	168	17.89%	6.89%	
	2,439	259.74%	100.00%	

O) Member/Non-Member

Member	Valid		
	Count	Percent	Percent
	939	100.00%	100.00%
	939	100.00%	100.00%
P) State, City (Top 25)			
*Non-US			
DC, Washington	18	1.92%	3.03%
NJ, Englewood Cliffs	23	2.45%	3.87%
NJ, Morristown	5	0.53%	0.84%
NJ, Newark	7	0.75%	1.18%
NY, Albany	6	0.64%	1.01%
NY, Binghamton	112	11.93%	18.86%
NY, Brooklyn	5	0.53%	0.84%
NY, Buffalo	18	1.92%	3.03%
NY, Delmar	42	4.47%	7.07%
NY, Garden City	6	0.64%	1.01%
NY, Glens Falls	7	0.75%	1.18%
NY, Ithaca	7	0.75%	1.18%
NY, Melville	4	0.43%	0.67%
NY, Mount Kisco	5	0.53%	0.84%
NY, New City	4	0.43%	0.67%
NY, New York	4	0.43%	0.67%
NY, Port Washington	169	18.00%	28.45%
NY, Poughkeepsie	5	0.53%	0.84%
NY, Riverhead	8	0.85%	1.35%
NY, Rochester	4	0.43%	0.67%
NY, Saratoga Springs	37	3.94%	6.23%
NY, Syracuse	5	0.53%	0.84%
NY, Uniondale	42	4.47%	7.07%
NY, White Plains	9	0.96%	1.52%
	42	4.47%	7.07%
	594	63.26%	100.00%
Q) New Members (based on Join Date)			
01-January	2	0.21%	16.67%
02-February	5	0.53%	41.67%
03-March	5	0.53%	41.67%
	12	1.28%	100.00%
R) NY Law Schools			
Albany Law School	82	8.73%	15.19%
Brooklyn Law School	24	2.56%	4.44%
Columbia University	27	2.88%	5.00%
Cornell University	24	2.56%	4.44%
CUNY - City University of New York	7	0.75%	1.30%
Fordham University	26	2.77%	4.81%
Hofstra University	26	2.77%	4.81%
New York Law School	25	2.66%	4.63%
New York University	33	3.51%	6.11%
Pace University	105	11.18%	19.44%

	Valid		
	Count	Percent	Percent
St. Johns University	25	2.66%	4.63%
SUNY at Buffalo	59	6.28%	10.93%
Syracuse University	48	5.11%	8.89%
Touro College	11	1.17%	2.04%
Yeshiva University - Benjamin N. Cardozo S	18	1.92%	3.33%
	540	57.51%	100.00%
S) Non-NY Law Schools (Top 25)			
American University	5	0.53%	2.65%
Boston College	3	0.32%	1.59%
Boston University	7	0.75%	3.70%
California, University of - Los Angeles	2	0.21%	1.06%
Catholic University of America	5	0.53%	2.65%
Chicago, University of	3	0.32%	1.59%
Duke University	4	0.43%	2.12%
Foreign (outside of United States)	8	0.85%	4.23%
Franklin Pierce Law Center	2	0.21%	1.06%
George Washington University	5	0.53%	2.65%
Georgetown University	12	1.28%	6.35%
Harvard University	17	1.81%	8.99%
Michigan, University of	4	0.43%	2.12%
Northeastern University	3	0.32%	1.59%
Out Of State	31	3.30%	16.40%
Pennsylvania, University of	4	0.43%	2.12%
Rutgers University - Camden	4	0.43%	2.12%
Rutgers University - Newark	11	1.17%	5.82%
Seton Hall University	5	0.53%	2.65%
Vermont Law School	35	3.73%	18.52%
Villanova University	3	0.32%	1.59%
Virginia, University of	7	0.75%	3.70%
Western New England	3	0.32%	1.59%
X (no data)	140	14.91%	
Yale University	6	0.64%	3.17%
	329	35.04%	100.00%
Z) Areas of Concentration			
Administrative Law	199	21.19%	
Agriculture	30	3.19%	
Antitrust and Trade	12	1.28%	
Appellate Law	85	9.05%	
Arbitration/Mediation	41	4.37%	
Banking	22	2.34%	
Bankruptcy/Insolvency	15	1.60%	
Business Law	87	9.27%	
Civil Rights	37	3.94%	
Commercial Litigation	104	11.08%	
Communication	9	0.96%	
Computer Law	7	0.75%	

	Valid		Valid	
	Count	Percent	Count	Percent
Construction	78	8.31%		
Contracts	91	9.69%		
Corporate Law	97	10.33%		
Creditors' Rights and Collections	6	0.64%		
Criminal Law	36	3.83%		
Derivatives and Structured Products	2	0.21%		
Elder Law	24	2.56%		
Employee Benefits	13	1.38%		
Entertainment, Arts and Sports	11	1.17%		
Environmental Law	550	58.57%		
Ethics	12	1.28%		
Family Law	29	3.09%		
Finance and Securities	22	2.34%		
Food, Drug & Cosmetics	20	2.13%		
Franchise Law	6	0.64%		
General Practice	81	8.63%		
Government	103	10.97%		
Health Law	24	2.56%		
Immigration Law	20	2.13%		
Insurance	65	6.92%		
Intellectual Property and Copyrights	28	2.98%		
International Law	33	3.51%		
Labor and Employment Law	46	4.90%		
Law Office Economics and Management	16	1.70%		
Leases And Leasing	50	5.32%		
Libel	6	0.64%		
Litigation - General Civil	176	18.74%		
Medical Malpractice	16	1.70%		
Municipal Law	187	19.91%		
Personal or Property Injury	60	6.39%		
Product Liability	62	6.60%		
Professional Liability	12	1.28%		
Public Contract	35	3.73%		
Public Utility	74	7.88%		
Real Property Law	243	25.88%		
Social Security Law	9	0.96%		
Tax - Corporate Business	20	2.13%		
Tax - Personal	9	0.96%		
Transportation	21	2.24%		
Trust and Estates Law	61	6.50%		
Workers Compensation	9	0.96%		
Zoning, Planning And Land Use	260	27.69%		
	3,371	359.00%	100.00%	100.00%



NEW YORK STATE BAR ASSOCIATION

Environmental & Energy Law Section

Committee on Legislation

2018 LEGISLATIVE FORUM and LUNCHEON

Wednesday, May 23, 2018, 10:00 a.m. – 2:00 p.m.

Speaking on legislative agenda:

Hon. Steve Englebright

Chair, Assembly Environmental Committee
4th Assembly District

Followed by panel discussion:

The Intersection of Energy, Land Use, and Agriculture

*Is There a Sunny and Bright Line for Achieving New York's Renewable Energy Goals
While Preserving Our Most Productive Farmland?*

Amanda Lefton

Deputy Policy Director
The Nature Conservancy

Ruth A. Moore, Esq.

Executive Director
Cornell Cooperative Extension
Dutchess County

Taier Perlman, Esq.

Staff Attorney, Rural Law Initiative (RLI)
Government Law Center, Albany Law School

Anne Reynolds

Executive Director
Alliance for Clean Energy New York (ACE NY)

Darren Suarez

Director of Government Affairs
Business Council of New York

Concluding with Keynote Speaker and Luncheon:

MAYA K. VAN ROSSUM

Delaware Riverkeeper and

Author, *The Green Amendment, Securing Our Right to a Healthy Environment*

Great Hall

New York State Bar Center, One Elk Street, Albany
John Parker, Jillian Kasow, Co-Chairs, Committee on Legislation

Bataille, Lisa

To: Richards, Thomas
Subject: RE: Thank You! - Melville, Long Island - NYSBA Basics of Environmental Law - April 19, 2018

From: Richards, Thomas
Sent: Wednesday, April 25, 2018 9:32 AM
To: 'Jim Rigano'
Subject: RE: Thank You! - Melville, Long Island - NYSBA Basics of Environmental Law - April 19, 2018

Hi Jim:

Here are the numbers for **Basics of Environmental Law** – Spring 2018. I've also attached a report that breaks down attendance by geographic area, area of practice, etc.

Buffalo, April 18: **24**
Melville, April 19: **27**
Albany, April 19: **29**
Webcast (from Albany), April 19: **32**

Link to video:
<http://cle.nysba.org/AM/CustomSource/OnlineCLE/index.cfm?ID=0FC61&Order=99409081023240>.

Link to materials: <http://www.nysba.org/EnvironmentalLawMaterials/>.

Thank you again for serving as chair of this program. I look forward to working on future programs!

Tom Richards



Thomas J. Richards, Esq. Staff Attorney, Continuing Legal Education
New York State Bar Association
One Elk Street, Albany, NY 12207

direct/fax: 518.487.5593 | **main:** 518.463.3200 | **email:** trichards@nysba.org | www.nysba.org

Connect with NYSBA:



From: Jim Rigano [<mailto:JRigano@riganollc.com>]
Sent: Tuesday, April 24, 2018 5:53 PM
To: Richards, Thomas
Subject: RE: Thank You! - Melville, Long Island - NYSBA Basics of Environmental Law - April 19, 2018

Thank you. I wanted to provide a report to the section on the program. Can you give me the numbers for each location including the NYC registration

James P. Rigano, Esq.

Profile Report for Event Series: 0FC6

Total Number of Records: 112

			Valid				
			Count	Percent	Percent	Count	Percent
A) Gender							
F	46	41.07%	42.59%			42	37.50%
M	62	55.36%	57.41%			112	100.00%
X (no data)	4	3.57%					
	112	100.00%	100.00%				
B) Practice Setting							
Government	1	0.89%	1.28%			28	25.00%
Government - Federal	3	2.68%	3.85%			14	12.50%
Government - Municipal	3	2.68%	3.85%			14	12.50%
Government - State	7	6.25%	8.97%			28	25.00%
In-House Counsel	7	6.25%	8.97%			18	16.07%
Law School - Faculty	1	0.89%	1.28%			10	8.93%
Non-Law Related	1	0.89%	1.28%			112	100.00%
Non-Profit	1	0.89%	1.28%				
Other	4	3.57%	5.13%				
Private Practice	47	41.96%	60.26%			16	14.29%
Retired	1	0.89%	1.28%			6	5.36%
Unemployed	2	1.79%	2.56%			54	48.21%
X (no data)	34	30.36%				8	7.14%
	112	100.00%	100.00%			120	107.14%
C) Office Size							
Fifty to 99	5	4.46%	7.14%			9	8.04%
One Hundred and greater	9	8.04%	12.86%			2	1.79%
Six to Nine	6	5.36%	8.57%			22	19.64%
Solo Practitioner	16	14.29%	22.86%			6	5.36%
Ten to Nineteen	4	3.57%	5.71%			10	8.93%
Twenty to 49	8	7.14%	11.43%			11	9.82%
Two to Five	22	19.64%	31.43%			15	13.39%
X (no data)	42	37.50%				12	10.71%
	112	100.00%	100.00%			17	15.18%
D) Position							
Academic	1	0.89%	1.43%			2	1.79%
Associate	15	13.39%	21.43%			5	4.46%
Court Personnel	1	0.89%	1.43%			1	0.89%
Managing Partner	3	2.68%	4.29%			112	100.00%
Of Counsel	2	1.79%	2.86%				
Other	16	14.29%	22.86%				
Partner	18	16.07%	25.71%			37	33.04%
Senior Associate	2	1.79%	2.86%			6	5.36%
Solo Practitioner	7	6.25%	10.00%			5	4.46%
Staff Attorney	5	4.46%	7.14%			1	0.89%
E) Age							
X (no data)							
25 to 35							
36 to 45							
46 to 55							
56 to 65							
66 and Over							
X (no data)							
F) Number of Years Admitted to Bar							
0 (Less than 1)							
1 to 3							
4 to 5							
6 to 7							
8 to 14							
15 to 19							
20+							
No Admit Date							
X (no data)							
G) Judicial District							
01							
02							
03							
04							
05							
07							
08							
09							
10							
11							
99							
Unknown							
H) Sections							
_No Sections							
Business Law Section							
Commercial & Federal Litigation Section							
Corporate Counsel Section							
Criminal Justice Section							

	Count	Percent	Valid Percent
Dispute Resolution Section	2	1.79%	1.09%
Entertainment, Arts and Sports Law Section	1	0.89%	0.54%
Environmental Law Section	51	45.54%	27.72%
Family Law Section	1	0.89%	0.54%
General Practice Section	6	5.36%	3.26%
Health Law Section	1	0.89%	0.54%
International Section	1	0.89%	0.54%
Labor and Employment Law Section	3	2.68%	1.63%
Local and State Government Law Section	14	12.50%	7.61%
Real Property Law Section	18	16.07%	9.78%
Senior Lawyers Section	7	6.25%	3.80%
Tax Section	3	2.68%	1.63%
Torts, Insurance & Compensation Law Sectic	4	3.57%	2.17%
Trial Lawyers Section	1	0.89%	0.54%
Trusts and Estates Law Section	4	3.57%	2.17%
Young Lawyers Section	13	11.61%	7.07%
	184	164.29%	100.00%

J) Member/Non-Member	
Member	95
Non-Member	17
	112
	84.82%
	15.18%
	100.00%

J) State, City (Top 25)			
NY, Albany	12	10.71%	15.58%
NY, Buffalo	11	9.82%	14.29%
NY, Chappaqua	1	0.89%	1.30%
NY, Delmar	2	1.79%	2.60%
NY, Garden City	1	0.89%	1.30%
NY, Glens Falls	1	0.89%	1.30%
NY, Goshen	1	0.89%	1.30%
NY, Huntington Station	1	0.89%	1.30%
NY, Jamestown	1	0.89%	1.30%
NY, Kingston	1	0.89%	1.30%
NY, Latham	1	0.89%	1.30%
NY, Lima	1	0.89%	1.30%
NY, Little Neck	1	0.89%	1.30%
NY, Lockport	2	1.79%	2.60%
NY, Malone	1	0.89%	1.30%
NY, Melville	2	1.79%	2.60%
NY, New York	9	8.04%	11.69%
NY, Ossining	2	1.79%	2.60%
NY, Rochester	9	8.04%	11.69%
NY, Schenectady	2	1.79%	2.60%
NY, Slingerlands	2	1.79%	2.60%
NY, Syracuse	7	6.25%	9.09%
NY, Uniondale	3	2.68%	3.90%
NY, White Plains	3	2.68%	3.90%

	Count	Percent	Valid Percent
X (no data)	2	1.79%	
	79	70.54%	100.00%

Q) New Members (based on Join Date)			
01-January	1	0.89%	33.33%
03-March	2	1.79%	66.67%
	3	2.68%	100.00%

R) NY Law Schools			
01-January	1	0.00%	15.67%
03-March	2	0.00%	31.33%
	3	0.00%	47.00%

R) NY Law Schools			
Albany Law School	10	8.93%	16.67%
Brooklyn Law School	3	2.68%	5.00%
Fordham University	2	1.79%	3.33%
Hofstra University	3	2.68%	5.00%
New York Law School	2	1.79%	3.33%
New York University	3	2.68%	5.00%
Pace University	10	8.93%	16.67%
St. Johns University	3	2.68%	5.00%
SUNY at Buffalo	12	10.71%	20.00%
Syracuse University	7	6.25%	11.67%
Touro College	3	2.68%	5.00%
Yeshiva University - Benjamin N. Cardozo S	2	1.79%	3.33%
	60	53.57%	100.00%

S) Non-NY Law Schools (Top 25)			
American University	2	1.79%	6.90%
Baltimore, University of	1	0.89%	3.45%
Boston University	2	1.79%	6.90%
Case Western Reserve University	1	0.89%	3.45%
Harvard University	1	0.89%	3.45%
Maryland, University of	1	0.89%	3.45%
Michigan, University of	1	0.89%	3.45%
Northeastern University	1	0.89%	3.45%
Ohio State University	1	0.89%	3.45%
Out Of State	2	1.79%	6.90%
Richmond, University of	1	0.89%	3.45%
Roger Williams University	1	0.89%	3.45%
Stanford University	2	1.79%	6.90%
Stetson University	1	0.89%	3.45%
Vermont Law School	6	5.36%	20.69%
Villanova University	1	0.89%	3.45%
Waiting Admission	1	0.89%	3.45%
Washington University	1	0.89%	3.45%
Widener University	1	0.89%	3.45%
X (no data)	23	20.54%	
Yale University	1	0.89%	3.45%

Z) Areas of Concentration		
Administrative Law	20	17.86%

	Valid	
	Count	Percent
Agriculture	2	1.79%
Antitrust and Trade	1	0.89%
Appellate Law	10	8.93%
Arbitration/Mediation	7	6.25%
Banking	4	3.57%
Bankruptcy/Insolvency	3	2.68%
Business Law	13	11.61%
Civil Rights	4	3.57%
Commercial Litigation	14	12.50%
Communication	1	0.89%
Construction	7	6.25%
Contracts	11	9.82%
Corporate Law	16	14.29%
Criminal Law	6	5.36%
Elder Law	4	3.57%
Employee Benefits	3	2.68%
Entertainment, Arts and Sports	7	6.25%
Environmental Law	46	41.07%
Ethics	1	0.89%
Family Law	7	6.25%
Finance and Securities	1	0.89%
Food, Drug & Cosmetics	2	1.79%
General Practice	13	11.61%
Government	14	12.50%
Immigration Law	1	0.89%
Insurance	8	7.14%
Intellectual Property and Copyrights	2	1.79%
International Law	4	3.57%
Labor and Employment Law	8	7.14%
Leases And Leasing	4	3.57%
Libel	2	1.79%
Litigation - General Civil	30	26.79%
Medical Malpractice	2	1.79%
Municipal Law	22	19.64%
Personal or Property Injury	9	8.04%
Product Liability	6	5.36%
Professional Liability	1	0.89%
Public Contract	6	5.36%
Public Utility	8	7.14%
Real Property Law	24	21.43%
Social Security Law	1	0.89%
Tax - Corporate Business	1	0.89%
Tax - Personal	1	0.89%
Transportation	2	1.79%
Trust and Estates Law	6	5.36%
Workers Compensation	1	0.89%
Zoning, Planning And Land Use	28	25.00%

Valid	
Count	Percent
394	351.79%
	100.00%

Count	Percent	Valid Percent
		100.00%

Count	Percent	Valid Percent

House of Delegates Meeting

New York State Bar Association Center, Albany

April 14, 2018

Meeting commenced at 9.30AM

The efforts of the NYSBA Executive Director and staff to reorient and update the main hall were acknowledged. The efforts of Chuck Francia and Gary Toat, NYSBA maintenance staff, were also recognized, and each of was presented with a certificate of appreciation. Finally, Kathleen Baxter, NYSBA Counsel, was recognized for her continuing contributions to the Association.

The minutes of the 1/26/18 meeting were accepted with corrective amendments.

Treasurer's report -

- revenue down by \$5K from last year. However, this year's decline was much less than the \$12,000 decline year to year which occurred between 2016 and 2017
- CLE revenue is up substantially - up \$220K from 2017, with revenue up for every delivery method
- dues revenue is down slightly from last year, continuing a decrease from the year before. However, the rate of decrease is demonstrably less
- expenses are \$4,7 million, c. \$365,000 less than last year, resulting in an increase in net revenue of about \$359,000.
- much of the reduction in expenses is due to reduced salary, fringe benefits, and annual meeting costs
- moving forward, changes to the main room and furnishings should eliminate some expenses (new tables eliminate the need for table cloths) and make the space more attractive for rentals and the associated revenue.

Election -

District representatives/alternates – slate elected by single ballot, one nay

ABA Delegates (2 year term) - Sharon Stern Gerstman, Henry M. Greenberg, Kathryn Grant Madigan, David P. Miranda, Kenneth G. Standard - elected by single ballot, unanimous consent

ABA Young Lawyer Delegate - Natasha Shishov, Garden City

Report/Rec from Criminal Justice Section - Town/Village Justice Report

- issues addressed - counsel of first appearance, justice training, and court reorganization

- information for the report was gathered by interview/survey - no good data set was available; gathered info shared with Indigent Legal Services (ILS)
- first appearance - counsel at arraignments - funding provided initially to 5 counties under the Hurrell-Harring settlement. Funding was recently extended statewide, and to allow "off hours" coverage (measured by when courts would not normally be in session, not necessarily by business hours)
- the report made ten recommendations (two in subsequently modified form), related to counsel and process for first arraignments, adoption of a centralized arraignment plan, universal court access to proper forms and training, training of judges, judicial record keeping and audit, creation of a public database to track judicial discipline, and establishment of "misdemeanor courts" or expanded use of courts of record with criminal jurisdiction

Noted concerns expressed by third parties regarding the report:

- Magistrates Association object to the proposed random audits of judges, and to the creation of the proposed database of judicial discipline.
 - the committee noted that judges (both lawyer and non-lawyer) are subject to oversight by the Commission on Judicial Conduct, and that Commission has a database of judicial discipline. The committee also acknowledged that 43% of disciplinary actions involved town and village non-lawyer judges. However, because non-lawyer judges are not responsible to oversight by the full range of disciplinary bodies to which lawyer judges are subject, enhanced oversight is warranted.
- objection to court consolidation/misdemeanor courts based on claim that it would cost \$1 million to establish each court.
 - the committee noted that no source was given for the \$1 million dollar estimate, that actual numbers can be obtained from actual costs associated with analogous courts, that establishment of the centralized courts may realize other savings, and spending the money would be in furtherance of fundamental values, of which the appropriate administration of justice and the protection of constitutional rights are two.

Discussion

- Several speakers offered comment as part of a vibrant discussion, raising points both in support and opposition. Among the issues raised/points made -
 - Support for goal, but questions raised about report as being dated, ignoring Dunn commission report, which concluded that system simply can't be replaced, that it disregards systems some districts have put in place to provide off-hours support of justices/arraignments, and that the report should have included participation of judicial section of NYSBA, DA's association, etc.
 - another commenter supported centralization for arraignment as addressing geographic and logistical issues

- concern about accuracy of statements re discipline of non-lawyer judges - may be 45% overall, but a per capita breakdown would show that it is proportional
- need to do what is right, and not be constrained by concern over cost, including the need to ensure protection of due process by having law-trained judges
- observed prior NYSBA positions that judges should be lawyers
- suggestion that NYSBA do what it can to consolidate town courts

Report accepted

President's report -

Ms. Gerstman provided an overview of what the Association has done during her term, and of what remains to be done.

- She tried, but didn't entirely succeed, in visiting every county bar association. About 20 associations could not be visited for various reasons. Nonetheless, bonds have been strengthened between the NYSBA and the county associations.
- She met with the executive committee of each NYSBA section, and attended many of the section meetings, to answer questions and address concerns, and attended multiple NYSBA CLEs.
- Working to engage large law firm associates, including initiating a program to provide large firms a dues discount if they sign up 100% of their attorneys.
- Looking ahead, NYSBA is recognized as force for law. She sought input from each section and committee for project ideas to further improve the law. Examples of such projects to date include an NYSBA report to the ABA on the lack of female corporate counsels, a project of the international section to develop a voluntary global attorney code of ethics, efforts to improve funding for civil legal services, passage of legislation providing that communications to Lawyer Referral Services are confidential, budget success to ensure adequate legal services funding, and a report on bail reform.

She concluded her report with thanks to staff, especially the Executive Director, senior staff, bar officers, the NYSBA executive committee and the House of Delegates.

Membership report -

Tom Maroney, Chair, Committee on Membership -

- current paid membership is 42,695; 61% in-state, 24% out of state, 15% law students, affiliate. With an additional 16,159 non-paid membership, total NYSBA membership is 58,854

- of members who drop, 66% are in NYS, 34% are from outside NY, and 9% are from outside the US; 46% are admitted 1-3 yrs, 23% are admitted 9+ yrs.
- churn among members who recently joined, and drop, are of less concern than those who drop after having been members for a long period.
- with the decline in membership, 3200 fewer members were invoiced in 2018 than 2017; the 2018 dues revenue goal equals the total collected in 2017 - have collected 94% of \$10,050,000 dues goal for 2018. Although the membership base is lower than in past years, the retention rate has improved.
- on line auto-renewal has been a success, and is expanding; the goal is to make both joining and renewing easier
- outreach to local bars has been institutionalized wherever the bar or its sections travel, including efforts to provide gathering or CLE opportunities where there are clusters of members, including internationally. For example, in May there will be a meeting at the 2d Circuit courthouse in Foley Square, with possible future meetings elsewhere in the state. Current plans also include outreach efforts in London and Dublin associated with an upcoming section trip to Ireland.
- finally, it's never too early to start thinking about Cooperstown and the silent auction, including your contribution to the auction

Diversity/Inclusion

Presentation of the 7th edition of the diversity report card -

- 2/3 of members declined to provide census information re race/sexual orientation/disability in 2017; desire to improve response rate
- the new edition of the report card improves the way the data is presented
- the survey is being re-tooled, particularly with regard to gender/gender identity
- NYSBA has implemented many of the Committee's recommendations, including the addition of a diversity/inclusion specialist
- many Section diversity chairs have met with the Committee (on Diversity and Inclusion) to determine means of increasing section diversity, and to identify candidates for diverse leadership
- developed a PSA, which is being refined
- those who haven't responded can address the issue by amending membership profile

Report approved

Report on Families and the Law

This report builds on long-standing policy in support of indigent defense to address the need for the representation of indigent parents, the latter of which is recognized constitutionally, judicially, and by statute. However, there is as yet no uniform system of state support for such representation.

- court system focus on need for better support for parent representation, responding to funding, oversight/training/resource issues
- report focuses on 4 principles (similar to indigent defense) - timely access to counsel, uniform and consistently applied guidelines for determining eligibility, manageable caseloads, and supports to ensure competent representation, including oversight, staff support, etc.
- report approved

New York Bar Foundation Report

Mr. Gross, whose term as president is ending, gave his last report. Current vice President Leslie Rosenthal will be assuming the presidency on June 1.

- since 2002, Foundation revenue has more than doubled to c. \$2.2 million in the current year; grants have increased from \$300,000 to \$700K; now supporting c. 100 legal services organizations statewide;
- during the past few years Foundation efforts have focused on increasing its visibility as NYSBA's charitable arm, on the endowment, and on low-income legal assistance in multiple practice areas
- NYSBA members were encouraged to continue their support, particularly given the great need for services supported by the Foundation

New Business

- a resolution to end the Association's use of Federal Express given the latter's position vis a vis the National Rifle Association.

- those addressing the proposal questioned whether the issue was better addressed by the Association's executive/finance/audit committees rather than the House of Delegates, and suggested deferring to those committees. A motion was made to rule the resolution out of order as premature, and a ruling to that effect was eventually issued.

- A new motion was made to direct the executive/finance/audit committees to investigate the Association's position regarding such vendors. Discussion on that motion raised concerns as to methods, suggesting the bar's most valuable role was to use expertise rather than boycotts. The motion passed.

Administrative items

- approved designation of HOD delegates for the upcoming year, as filed by the county and local bar associations.
- approved the HOD delegates roster for the upcoming year
- thanks from the Chair to HOD and to Ms. Gerstman, recognition of the work and accomplishments of NYSBA and its committees, and acknowledgment of members who have died during the past year
- the gavel was transferred to Henry M. Greenberg

Adjourned 12:07 PM



TO: Environmental Committee

FROM: Linda Shaw

DATE: April 14, 2018

RE: **NEW YORK STATE BAR ASSOCIATION
SECTION CAUCUS MINUTES**

MEMO

Section Delegates Caucus FRIDAY April 13, 2018

After adopting the minutes from the last meeting, the substantive meeting began.

Finance Committee: Section Surpluses (Jay Himes) The push is to get the Sections to use their surpluses to help membership. While the Big Bar is not allegedly threatening to take the surplus money, they see a lot of money (\$3.5M) just sitting in our section accounts and is getting jealous because they are needy at this time; membership is down and therefore revenue is down. The optimum cushion should be based on asking the question: if no money came in for a year how long could the section survive? So essentially the answer is a 4 month to one-year budget. One section with a large surplus offered free CLEs first to law students and then to 1-5 year attorneys and “ate” these CLE costs. Our surplus was \$99K in 2017, which represented more than a one-year cushion (1.26). However, among all of the Sections, ours is right in the middle – not too high and not too low. Therefore, we should be aware the Big Bar will be pushing us to using our surplus money appropriately to add members.

Operating Rules Review: Caucus Executive Committee Qualifications (Jean Gerbini). The Caucus did not have much discussion on the attached new Operating Rule amendments, but they were passed and are attached.

Best Practices Committee: Follow up on Section Leaders Survey Results (Rosemarie Tully) There was a technology update summary provided and our section is still doing far better than other sections on providing webinars and electronic materials. However, our on-line sales were still fairly low. Therefore, we may want to think about marketing to law students for membership and providing some free CLE materials from the most recent webinars.

Membership Committee: What Sections are Doing to Drive Membership (Violet Samuels, Michelle Wildgrube) There was not too much conversation about this topic since it would be a big

topic at tomorrow's HOD meeting.

Ad Hoc Committee on Legislative and Media Guidelines: Next Steps (Leah Nowotarski). This committee did not finalize the guidelines to date.

Section CLE Offerings: Revenue Sharing; Coordination with the CLE Department (Rosemarie Tully, Greg Arenson by phone as available) – The biggest question raised was “where does the CLE money go?” Some caucus members do not believe the correct amount is going to the sections. This will be raised at the Big Bar tomorrow.

**Section Delegates Caucus
SATURDAY April 14, 2018**

Unfortunately, the audio conference call connection did not work. All of us on the phone could hear each other but we could not hear the meeting. We were on from 8 AM and hung up at 8:17 AM.

PART 622

UNIFORM ENFORCEMENT HEARING PROCEDURES

(Statutory Authority: Environmental Conservation Law
§§ 3-0301, 15-0901, 17-0303, [17-1709], 19-0301, 23-0305, 33-0303, 70-0107[1], 71-0301, and
71-1709, and State Administrative Procedure Act, [Article] art. 3)

[Effective Date: January 9, 1994, as
amended effective September 6, 2006]

	<u>PAGE</u>
622.1 Applicability.....	2
622.2 Definitions.....	3
622.3 Commencement of a proceeding.....	5
622.4 Answer.....	7
622.5 Amendment of pleadings.....	8
622.6 General rules of practice.....	8
622.7 [Discovery] <u>Disclosure</u>	11
622.8 The pre-hearing conference.....	13
622.9 Statement of readiness for adjudicatory hearing <u>and</u> <u>notice of enforcement hearing</u>	13
622.10 Conduct of the hearing.....	15
622.11 Evidence, burden of proof and standard of proof.....	19
622.12 Motion for order without hearing.....	21
622.13 Expedited fact finding.....	22
622.14 Summary abatement and summary suspension orders.....	22
622.15 Default procedures.....	23
622.16 Ex parte rule.....	24
622.17 Record of the hearing.....	25
622.18 Final [decision] <u>order</u>	26
622.19 <u>Mediation</u>	27

§ 622.1 Applicability.

(a) This Part is applicable to hearings conducted by the department arising out of the following circumstances, and supersedes any inconsistent regulations except to the extent explicitly noted[.];

(1) all administrative enforcement proceedings brought pursuant to the Environmental Conservation Law (ECL) or other laws administered by the commissioner;

(2) any proceeding brought pursuant to ECL 71-0301 (summary abatement) or ECL 71-1709 except to the extent inconsistent with the provisions of Part 620 of this Title;

(3) any proceeding brought pursuant to State Administrative Procedure Act (SAPA) § 401(3);

(4) any proceeding brought pursuant to ECL 15-0507 or ECL 15-0511 (dam safety);

(5) any proceeding brought pursuant to ECL 27-1313 (inactive hazardous waste disposal site remedial programs) unless superseded by Part 375 of this Title;

(6) a request for a hearing made by a permittee pursuant to provisions of section 621.13 of this Title (permit modifications, suspensions or revocations by the department) or any other department initiated modification, suspension or revocation where the basis for modification, suspension or revocation is founded on matters which, in whole or in substantial part, constitute a violation of the ECL, its implementing regulations or an order[,] or permit, as defined herein, [license or other entitlement] issued by the department;

(7) any expedited proceeding brought pursuant to paragraph 613-5.4(a)(3) (delivery prohibition) of this Title except to the extent inconsistent with the provisions of that paragraph;

~~[(7)]~~(8) proceedings on termination of appointment pursuant to Parts 183 and 184 of this Title and denial of state operation and maintenance aid for municipal sewage treatment plants; and

~~[(8)]~~(9) any other proceeding which is either enforcement or disciplinary in character.

(b) The provisions of this Part do not apply to the determination of disputed environmental regulatory program fees and penalties that are assessed pursuant to ECL Article 72. Enforcement proceedings arising out of a failure to comply with a final determination as to [such] the fees and penalties issued pursuant to procedures set forth in ECL Article 72 or its implementing regulations are governed by this Part.

(c) Provisions of this Part apply to those proceedings commenced on or after the effective date of these regulations.

§ 622.2 Definitions.

Whenever used in this Part, unless otherwise expressly stated, the following terms [will] shall have the meanings indicated in this section. The definitions [of] in this section are not intended to change any statutory or common law meaning of these terms[, but are merely plain language explanations of legal terms].

(a) *Administrative [L]law [J]judge* or [ALJ] ALJ means the commissioner's representative who conducts the hearing.

(b) *Commissioner* means the Commissioner of Environmental Conservation of the State of New York or the commissioner's designee.

(c) *CPLR* means the [New York State] Civil Practice Law and Rules.

(d) *Department* means the Department of Environmental Conservation of the State of New York.

(e) *Department staff* means those department personnel participating in the hearing, but does not include the commissioner, any personnel of the Office of Hearings and Mediation Services, the ALJ or [those]any person advising or consulting with [them] the commissioner or ALJ.

(f) *[Discovery]Disclosure* means disclosure of facts, [titles,] documents, or other [things] matters which are [in the exclusive knowledge] known by or in the possession of a [party] person and which are material and necessary [to the person requesting the discovery as a part of the requester's] in the prosecution or defense of the [case] proceeding regardless of the burden of proof.

(g) *ECL* means the [New York State] Environmental Conservation Law.

(h) *Electronically stored information or ESI* means any information that is created, stored or utilized with computer technology of any type. ESI includes but is not limited to word-processing files, audio files, video files, spreadsheets, images, emails and other electronic messaging information that are stored electronically. Active data means ESI that is located in a computer's memory or in storage media (including servers, desktop or laptop computers, tablets, cellphones, hard drives, flash drives, compact discs, digital video discs, and portable media players) that is immediately available in the normal course of business.

([h]i) *Evidence* means sworn or affirmed testimony of [a] witnesses, and physical objects, documents, records, or photographs [representative of facts which have been admitted into the record by the ALJ] that tend to prove or disprove the existence of an alleged fact.

([i]j) *Hearsay* means a statement, other than one made by a witness testifying at the hearing, offered into evidence to prove the truth of the matter asserted.

([j]k) *Interrogatories* means written questions regarding the [case which] proceeding that are served by a party on an adversarial party[,], [which the adversary must then a] Answers to interrogatories shall be in writing and made under oath.

(l) *Mediation* means a voluntary discussion between department staff and respondent concerning the violations alleged in an enforcement proceeding, facilitated by an ALJ assigned as mediator. The mediation may address some but not all the allegations raised in the enforcement proceeding, or involve some but not all respondents.

([k]m) *Motion* means a request for a ruling or an order.

([l]n) *Office of Hearings and Mediation Services* means the office within the department principally responsible for conducting adjudicatory hearings and providing mediation services.

([m]o) *Party* means [the] department staff, all persons designated respondent and any [party] person granted intervenor status pursuant to subdivision 622.10(f) of this Part but does not include the commissioner or the Office of Hearings and Mediation Services.

([n]p) *Permit* means any permit, certificate, license, registration or other form of department approval, other than an enforcement order, issued in connection with any regulatory program administered by the department.

([o]q) *Person* means any individual, public or private corporation, limited liability company, bi-state authority, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, trust, estate or any legal entity whatsoever.

(r) *Proof of service* means an affirmation of an attorney or affidavit if made by any other person specifying the papers served, the person served, the date and manner of service and setting forth facts showing that service was made by an authorized person and in an authorized manner.

([p]s) *Protective [O]rder* means an order denying, limiting, conditioning or regulating the use or production of material requested through [discovery] disclosure.

([q]t) *Relevant evidence* means [tending to support or refute the existence of any fact that is of consequence or material to one or more issues in the proceeding] evidence tending to make

the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would without the evidence.

([r]u) *Report* means the ALJ's summary of the hearing record, including the ALJ's findings of fact, [and] conclusions of law and recommendations for the commissioner's consideration.

([s]v) *Respondent* means the person or persons charged with one or more violations of the ECL or other laws administered by the commissioner, rules and regulations promulgated thereunder or any permit[, certificate] or order issued thereunder or a person or persons alleged by department staff to be [a]_responsible[party] for the relief sought.

([t]w) *SAPA* means the [New York] State Administrative Procedure Act.

([u]x) *Service* means the delivery of a document to a [party] person by authorized means and, where applicable, the filing of a document with the ALJ, the Office of Hearings and Mediation Services or the commissioner.

([v]y) *Stipulation* means an agreement between two or more parties to a [hearing] proceeding, and entered into the hearing record, concerning one or more issues of fact or law[, which] that are the subject of the [hearing] proceeding.

([w]z) *Subpoena* means a legal document that requires a person to appear at a hearing and testify, [and/or bring] to produce documents or physical objects, or both.

§ 622.3 Commencement of a proceeding.

(a) Notice of hearing and complaint.

(1) [The d] Department staff may commence an administrative proceeding by the service of a notice of hearing. If the [action] proceeding is commenced by a notice of hearing, it [must] shall be accompanied by a complaint. The complaint [must] shall be signed and dated by a department attorney and contain:

(i) a statement of the legal authority and jurisdiction under which the proceeding is to be held;

(ii) a reference to the particular sections, subsections, paragraphs and subparagraphs of the statutes, rules and regulations [involved] alleged to have been violated; [and]

(iii) a plain and concise statement of the matters asserted in consecutively numbered paragraphs. Each cause of action shall be separately stated and numbered[.];

(iv) a demand for the relief sought, which may include relief in the alternative or different types of relief; and

(v) the name, address and telephone number of the department attorney.

(vi) The complaint shall be considered to have been signed by a department attorney if it bears:

(a) the physical signature of the attorney; or

(b) the attorney's signature scanned into an electronic format that reproduces the signature, provided the signatory affixed the digital image of his or her signature to the complaint.

(2) The notice of hearing [must] shall state that a hearing date [will] shall be set by the Office of Hearings and Mediation Services upon the filing of a statement of readiness for adjudicatory hearing as set forth in section 622.9 of this Part. The notice of hearing [must] shall also contain a statement that any affirmative defenses, including exemptions to permit requirements, [will] shall be waived unless raised in the answer and may set forth the date, time and place of a pre-hearing conference. The notice [must] shall contain a statement that the failure to answer, [or] failure to attend a pre-hearing conference that is scheduled for a date after the time to answer has expired, or failure to attend the hearing, [will] shall result in a default and a waiver of respondent's right to a hearing.

(3) Service of the notice of hearing and complaint [must] shall be by personal service consistent with the CPLR or by certified mail. Where service is by certified mail, service shall be complete when the notice of hearing and complaint is received. If personal service and service by certified mail is impracticable, upon application by [the] department staff the ALJ may provide for an alternative method of service consistent with CPLR [section 308.5] 308(5).

(4) If a notice of hearing is served with a complaint and statement of readiness, the notice shall state the date, time and place of the hearing set by the Office of Hearings and Mediation Services.

(b) Other methods [for] of commencing a proceeding.

(1) Proceedings may be commenced pursuant to sections 622.12 and 622.14 of this Part.

(2) Where a proceeding arises out of department staff's notification of intent to take specified action [which] that [will] shall become final unless a hearing is requested, [such] the notification shall take the place of a complaint. Service of the notice of intent shall be in the

same manner as prescribed in [subdivision] paragraph (a)(3) of this section. [In these cases, the] A request for a hearing shall take the place of an answer.

(3) Where a proceeding arises out of department staff's notice of expedited hearing issued pursuant to paragraph 613-5.4(a)(3) of this Title together with a written notification of any delivery prohibition, the notice of expedited hearing shall state that the failure of the facility to appear at the time and place scheduled for the expedited hearing shall constitute a waiver of the opportunity for an expedited hearing. Service of the notice of expedited hearing and written notification of any delivery prohibition shall be in the same manner as prescribed in paragraph (a)(3) of this section. The facility may answer at any time up to and including the date of the expedited hearing. The notification of any delivery prohibition:

(i) shall take the place of a complaint; and

(ii) shall state the alleged facts or relevant conditions that are the basis for the delivery prohibition.

§ 622.4 Answer.

(a) Within 20 days of receiving the notice of hearing and complaint or an amended complaint, [the] respondent [must] shall serve on [the] department staff an answer signed by respondent, respondent's attorney or other authorized representative. The time to answer may be extended by consent of department staff or by [a ruling] permission of the ALJ. Failure to make timely service of an answer shall constitute a default and a waiver of [the] respondent's right to a hearing.

(b) [The r] Respondent [must] shall specify in [its] the answer [which] each allegation[s it] respondent admits, [which] each allegation[s it] respondent denies, and [which] each allegation[s] [it has insufficient information upon which to form an opinion regarding the allegation] as to which respondent lacks information sufficient to form a belief as to the truth or accuracy of such allegation.

(c) [The r] Respondent's answer [must] shall explicitly assert any affirmative defenses including those listed in CPLR 3018 together with a statement of the facts as may be necessary to provide notice [which constitute the grounds] of each affirmative defense asserted. Whenever the complaint alleges that respondent conducted an activity without a required permit, a defense based upon the inapplicability of the permit requirement to the activity shall constitute an affirmative defense. Inability to pay shall be an affirmative defense, but only to department staff's request for a penalty and not a defense to liability.

(d) Affirmative defenses not [pled] pleaded in the answer may not be raised in the hearing unless allowed by the ALJ. The ALJ shall only allow [such] the defense upon the filing

of a satisfactory explanation as to why the defense was not [pled] pleaded in the answer and a showing that [such] the affirmative defense is likely to be meritorious.

(e) [The r] Respondent may move for a more definite statement of the complaint within 10 days of completion of service on the grounds that the complaint is so vague or ambiguous that respondent cannot reasonably be required to frame an answer.

(1) If the motion is denied, respondent [must] shall answer within 10 days of receipt of notice that the motion is denied.

(2) If the motion is granted, [the] department staff [must]shall serve an amended complaint within 15 days of receipt of notice that the motion is granted and respondent [must] shall serve an answer within 20 days of the receipt of the amended complaint.

(f) The department staff may move for [clarification] a more definite statement of affirmative defenses within 10 days of completion of service of the answer on the grounds that the affirmative defenses [pled] pleaded in the answer are vague or ambiguous and that department staff is not thereby placed on notice of the facts or legal theory upon which respondent's defense is based.

§ 622.5 Amendment of pleadings.

(a) A party may amend its pleading once without permission at any time before the period for responding expires or, if no responsive pleading is required, within 20 days after service of the pleading [at least 20 days prior to commencement of the hearing].

(b) Consistent with [the] CPLR 3025, a party may amend its pleading at any time prior to the final [decision]order of the commissioner by permission of the ALJ or the commissioner, and absent prejudice to the ability of any other party to respond.

§ 622.6 General rules of practice.

(a) *Service of papers.*

(1) [Rule] CPLR 2103 [of the CPLR will] shall govern service of papers except that papers may be served by a party and service upon [the] respondent's duly authorized representative may be made by the same means as provided for service upon an attorney. Notwithstanding any other rule to the contrary, service may be made by transmission of papers by email, provided the email address is designated by the party, attorney, or duly authorized representative for that purpose. The designation of an email address by an attorney or authorized representative in the address block subscribed on a paper served or filed in the course of a proceeding shall constitute consent to service by email transmission in accordance with this subdivision.

(2) Any required filing or proof of service [must] shall be [made] filed with the Office of Hearings and Mediation Services.

(3) When service of motion and request papers by facsimile transmission or email is authorized by the ALJ or is designated by the parties for the service of papers, the parties shall simultaneously send a copy of the papers transmitted by facsimile or email to the recipient by first class mail.

(b) *Computation of time limits.*

(1) Computation of time [will] shall be according to the rules of the [New York State] General Construction Law sections 20 and 25-a.

(2) If a period of time prescribed under this Part is measured from the date of service of a paper or the date of the ruling, pleading, motion, appeal, decision or other communication instead of the date of service,

(i) five days [will] shall be added to the prescribed period if [notification] service of papers is by [ordinary] first class mail; [and]

(ii) one day [will] shall be added to the prescribed period if [notification] service of papers is by express mail or other overnight delivery[.];

(iii) if service of papers is by facsimile transmission, the service is complete upon the receipt by the sender of a signal from the equipment of the party served that the transmission was received; and

(iv) if service of papers is by email only, the service is complete upon transmission. Service by email is not complete upon transmission if the serving party receives notification that the papers sent by email did not reach the person to be served.

(c) *Motion practice.*

(1) Motions and requests made at any time [must] shall be part of the record. Motions and requests made prior to the hearing [must] shall be [filed] in writing [with the ALJ]. All motion papers shall be filed by personal delivery or first class mail with the ALJ, together with proof of service of the motion on all parties. In addition to filing by personal delivery or mail, an ALJ may authorize the parties to file motions by electronic means. During the course of the hearing, motions may be made orally except where otherwise directed by the ALJ. If no ALJ has been assigned to the [case] proceeding, the motion [must] shall be filed by first class mail with the Chief ALJ.

(2) Every motion [must] shall clearly state [its objective] the relief requested and the legal arguments, any facts or other supporting materials upon which [it] the motion is based, [and may present legal argument in support of the motion.]

(3) All parties have five days after a motion is served to serve a response. Thereafter, no further responsive [pleadings] papers [will] shall be allowed without permission of the ALJ. All responsive papers shall be filed by personal delivery or first class mail with the ALJ, together with proof of service on all parties. An ALJ may authorize the parties to file additional copies of the responsive papers by electronic means.

(4) The ALJ should rule on a motion within five days after a response has been served or the time to serve a response has expired. The ALJ [must] shall rule on all pending motions prior to the completion of testimony. Any motions not ruled upon at that time will be deemed denied.

(d) *Office of Hearings and Mediation Services.*

(1) Prior to the appointment of an ALJ to hear a particular [case] proceeding, the [commissioner or the commissioner's designee from the Office of Hearings] Chief ALJ may take any action which an ALJ is authorized to take.

(2) The [Office of Hearings] Chief ALJ may establish a schedule for hearing pretrial motions and other matters for [cases which] proceedings that have no assigned ALJ.

(e) *Expedited Appeals.* The time periods for expedited appeals filed pursuant to [section] paragraph 622.10(d)(2) of this Part are as follows:

(1) (i) Expedited appeals pursuant to subparagraph 622.10(d)(2)(i) of this Part [or applications for leave to appeal must] shall be filed with the commissioner and the assistant commissioner for hearings and mediation services in writing within [five] ten days of the disputed ruling. All parties have five days after a notice of expedited appeal is served to serve a response to the appeal[or motion].

(ii) Motions for permission to appeal pursuant to 622.10(d)(2)(ii) of this Part shall be filed with the commissioner and assistant commissioner for hearings and mediation services in writing within ten days of the disputed ruling. All parties have five days after a motion for permission to appeal is served to serve a response to the motion.

(2) Upon being granted [leave] permission to appeal, appellant [must] shall file and serve the appeal in writing within five days of permission being granted [if it has not already been filed as part of appellant's motion papers]. Thereafter the other parties may file [briefs or other arguments] a response in support of or in opposition to the appeal[ed issues] within five days of service of the appeal.

(3) Notice of the appeal or motion for [leave] permission to appeal and a copy of all briefs [must] shall be filed with the ALJ, Chief ALJ and assistant commissioner for hearings and mediation services and served on all parties to the hearing. [Upon receipt of notice of any appeal, the ALJ may adjourn or continue the hearing or make such other order protecting the interests of the parties.]

(f) To avoid prejudice to any of the parties, all rules of practice involving time periods may be modified by direction of the ALJ or commissioner and, for the same reasons, any other rule may be modified by the commissioner upon recommendation of the ALJ or upon [his] the commissioner's own initiative.

(g) [Tape recording or televising of the adjudicatory hearing for rebroadcast is prohibited by] Consistent with section 52 of the [New York State] Civil Rights Law, the audio or visual recording, photographing, filming, televising, broadcasting, or streaming of the adjudicatory hearing by use of any device or media is prohibited.

§ 622.7 [Discovery] Disclosure.

(a) *Scope.* (1) Except as noted below, [T]the scope of [discovery] disclosure [must] shall be as broad as [that provided] the scope of disclosure under CPLR article 31[of the CPLR].

(2) Electronically stored information (ESI).

(i) Unless authorized by the ALJ, discovery of ESI is limited to active data only.

(ii) Upon motion of any party demonstrating substantial prejudice, the ALJ may order additional discovery of ESI, subject to any terms and conditions deemed appropriate by the ALJ.

(b) [Discovery] Disclosure devices.

(1) Except as noted below, the parties may employ any disclosure device contained in CPLR article 31[of the CPLR]. Where production and inspection of documents is sought, the requested documents [must] shall be furnished within [10] 20 days of receipt of the discovery [request] demand unless a motion for a protective order is made.

(2) Depositions and written interrogatories [will] shall only be allowed [with] by permission of the ALJ upon a finding that they are likely to expedite the proceeding.

(3) Bills of particulars are not permitted.

(c) *Protective order and motion to compel.*

(1) A party against whom [discovery] disclosure is demanded may make a motion to the ALJ for a protective order, in general conformance with CPLR [Section] 3103, to deny, limit, condition or regulate the use of any disclosure device in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Such a motion [must] shall be filed within [10] 20 days of the receipt of the [discovery] disclosure demand and [must] shall be accompanied by an [affidavit] affirmation of [counsel] an attorney, or [by] an affidavit of the moving party if not represented by [counsel] an attorney, [reciting] describing the good faith efforts to resolve the dispute without resort to a motion.

(2) If a party fails to comply with a [discovery] disclosure demand without having made a timely objection, the proponent of the [discovery] disclosure demand may [apply] make a motion to the ALJ to compel disclosure. Such a motion shall be accompanied by an affirmation of an attorney or an affidavit of the moving party if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(3) Sanctions. [The ALJ may direct that any party failing to comply with discovery after being directed to do so by the ALJ suffer preclusion from the hearing of the material demanded. Further, a failure to comply with the ALJ's direction will allow the ALJ or the commissioner to draw the inference that the material demanded is unfavorable to the noncomplying party's position.] Upon failure by a party to comply with a ruling or order by the ALJ or the commissioner to produce material or information demanded in disclosure, the ALJ or commissioner may exclude the material or information. In addition, the ALJ or the commissioner may draw an adverse inference regarding the non-producing party with respect to the material or information the party did not produce or grant other appropriate relief consistent with CPLR 3216. The award of attorneys' fees or other costs is not authorized.

(d) *Subpoenas*. Consistent with the CPLR, any attorney of record in a proceeding has the power to issue subpoenas. A party not represented by an attorney admitted to practice in New York may request the ALJ to issue a subpoena, stating the items or witnesses needed by the party to present its case. The service of a subpoena is the responsibility of its sponsor. This [p]Part does not affect the authority of an attorney of record for any party to issue subpoenas under [the provisions of section] CPLR 2302[of the CPLR], except that all subpoenas shall give notice that the ALJ may quash or modify the subpoena pursuant to the standards set forth under CPLR article 23. A subpoena duces tecum to be served upon a library, department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things, shall be issued consistent with CPLR 2307 by the ALJ assigned to the proceeding or, if no ALJ has been assigned to the proceeding, the Chief ALJ.

(e) When [the hearing] department staff seeks the revocation of a [license or]permit previously granted by the department, either party shall, upon demand, and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses[.]; provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or

material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after [such] the disclosure, a party determines to rely upon other witnesses or [information] documentary evidence, the party shall, as soon as practicable, supplement its disclosure by providing the names of [such] the witnesses or the [additional documents] documentary evidence.

§ 622.8 The pre-hearing conference.

(a) A pre-hearing conference [must] shall be held when notice thereof, including the date, time and location, is provided in the notice of hearing. A pre-hearing conference [may] shall not be held when a proceeding is commenced by motion for an order without hearing in lieu of complaint. In any situation where provisional relief is imposed prior to the opportunity for a hearing or where [the] respondent is entitled by law or regulation to a hearing within a stated period of time, a pre-hearing conference may only be [permitted] held with the consent of [the] respondent.

(b) The purpose of the pre-hearing conference is to resolve, define and clarify issues between the parties prior to the hearing. No stenographic transcriptions or recordings of the conference will be made.

(c) Department staff and respondent shall attend [T]the pre-hearing conference. [must be attended by department staff and the respondent(s).] [No ALJ will be] If an ALJ is not present at the pre-hearing conference, [but] the parties may consult by conference call or in person with the Office of Hearings and Mediation Services. [during the conference.] Attendance at the conference is mandatory. [and f] Failure to attend the pre-hearing conference constitutes a default and a waiver of the opportunity for a hearing if at the time of the conference, respondent's time to answer has expired.

(d) [No stenographic record of the conference will be made.] If respondent fails to appear at the pre-hearing conference and an ALJ is present, department staff may request a hearing record be opened at the time of the pre-hearing conference, note respondent's failure to appear and move for a default on the record and proceed with the hearing, if:

(1) department staff provided notice to respondent that failure to appear at the pre-hearing conference will constitute a default and a waiver of respondent's right to a hearing, and staff may proceed in respondent's absence; and

(2) respondent's time to answer has expired.

[(e) At the conclusion of the pre-hearing conference, the parties [will] shall notify the Office of Hearings and Mediation Services of any resulting agreement or stipulation.]

§ 622.9 Statement of readiness for adjudicatory hearing and notice of enforcement hearing.

(a) *General.* [A case will be placed on the hearing calendar u] Upon department staff's filing of a statement of readiness for adjudicatory hearing and a copy of the pleadings with the [Office of Hearings] Chief ALJ and ALJ, if one has been assigned, a proceeding shall be scheduled for hearing. [Such] The statement of readiness [must] shall be in a form established by the department and [must] shall be served on all parties to the hearing. However, wherever

[the]respondent is entitled by law or regulation to a hearing within a stated period of time, the [case] proceeding [will] shall be [placed on the hearing calendar] scheduled for hearing upon the filing of a copy of the answer with the Office of Hearings and Mediation Services.

(b) *Contents*. The statement of readiness for adjudicatory hearing [must] shall include:

(1) the name, address and telephone number of each [of the parties] party and [their] the party's attorney[s] or authorized representative;

(2) a statement that [discovery] disclosure is complete or has been waived or an explanation as to why [it hasn't] disclosure has not been completed;

(3) a[n affirmative assertion] statement that a reasonable attempt has been made to settle, and that the [case] proceeding is ready for adjudication; and

(4) a request for[the setting of] a hearing date.

(c) The accuracy and sufficiency of the statement of readiness [will] shall not be subject to motion practice or any form of adjudication.

(d) [On receipt of a statement of readiness for adjudicatory hearing that conforms to the requirements of this section] Unless an ALJ is already assigned to a proceeding, the Office of Hearings and Mediation Services [will] shall, upon receipt of a statement of readiness for adjudicatory hearing that conforms to the requirements of this section, assign an ALJ to [hear] the [case] proceeding. The ALJ [and will] shall thereafter schedule a hearing date.

(e) [The ALJ will notify all parties to the hearing in writing of the time, date and place of the hearing. Such notification shall also contain a statement that the failure to appear at the hearing constitutes a default and a waiver of respondent's right to a hearing.] The ALJ shall cause a written notice of enforcement hearing to be served on all parties to the proceeding. The notice shall:

(1) set forth the time, date and place of the hearing;

(2) contain a statement that the failure to appear at the hearing constitutes a default and a waiver of respondent's right to a hearing; and

(3) notify the parties that a plain language summary of this Part is available from the Office of Hearings and Mediation Services.

§ 622.10 Conduct of the hearing.

(a) Order of events.

(1) Before any evidence is offered, [the] department staff and then respondent may make an opening statement.

(2) The ALJ [will] shall determine the order in which parties present evidence but [will] shall generally require [that] the party with the burden of proof to present its case first. Department staff may present a rebuttal case with respect to any affirmative defenses presented by [the] respondent. At the discretion of the ALJ, rebuttal cases may be allowed in other situations.

(3) Each witness [will] shall first be questioned by the party calling the witness (direct examination) and then examined by the opposing party (cross examination). These examinations may be followed by re-direct and re-cross examinations.

(4) The ALJ [will] shall determine the sequence in which the issues [will] shall be tried and otherwise regulate the conduct of the hearing in order to achieve a speedy and fair disposition of the matters at issue.

(5) At the conclusion of the evidentiary hearing, the ALJ may give the parties an opportunity to make closing statements or to file briefs.

(6) A hearing shall be conducted as nearly as practicable in the manner of a [trial by court] civil judicial proceeding.

(b) The ALJ.

(1) The ALJ has the power to:

(i) rule upon motions and requests, including those that decide the ultimate merits of the proceeding;

(ii) set the time and the place of hearing, recesses and adjournments;

(iii) administer oaths and affirmations;

(iv) issue subpoenas upon request of a party not represented by [counsel] an attorney admitted to practice in New York State;

(v) upon the request of a party, issue a subpoena duces tecum to be served upon a library, department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things;

([v]vi) upon the request of a party, issue, quash and modify subpoenas except that in the case of a non-party witness the ALJ may quash or modify a subpoena regardless of whether or not a party has so requested;

([vi]vii) summon and examine witnesses;

([vii]viii) admit or exclude evidence including the exclusion of evidence on grounds of privilege or confidentiality;

([viii]ix) allow oral argument, so long as it is recorded;

([ix]x) hear and determine argument on facts and law;

([x]xi) do all acts and take all measures necessary for the maintenance of order and efficient conduct of the hearing;

([xi]xii) direct the convening of any conference required for administrative efficiency;

([xii]xiii) preclude irrelevant, immaterial or unduly repetitious, tangential or speculative [testimony] evidence, [or]argument, examination or cross-examination;

([xiii]xiv) issue orders limiting the length of cross-examination, [size] the form and content of briefs, and similar matters; and

([xiv]xv) exercise any other authority available to ALJs under this Part or presiding officers under SAPA article 3[of the SAPA].

(2) Impartiality of the ALJ and motions for recusal:

(i) The ALJ [will] shall conduct the hearing in a fair and impartial manner.

(ii) An ALJ [must] shall not be assigned to any proceeding in which the ALJ has a personal interest.

(iii) Any party may file with the ALJ a motion in conformance with section 622.6 of this Part, together with supporting affidavits, requesting that the ALJ be recused on the basis of personal bias or other good cause. Such motions [will] shall be determined as part of the record of the hearing.

(iv) Upon being notified that an ALJ declines or fails to serve, or in the case of the ALJ's death, illness, resignation, removal or recusal, the Chief ALJ [must] shall designate a successor.

(3) The designation of an ALJ as the commissioner's representative [must] shall be in writing and filed in the Office of Hearings and Mediation Services.

(c) *Appearances.*

(1) A party may appear in person or by [counsel] an attorney or other authorized representative.

(2) Any person appearing on behalf of a party in a representative capacity may be required by the ALJ to show and state on the record his or her authority to act in such capacity and [must] to file a notice of appearance with the ALJ.

(3) A party shall provide notice of the change or withdrawal of the party's attorney or authorized representative, within ten days of the change or withdrawal, to the ALJ and the attorneys or authorized representatives of all other parties, or if a party appears without an attorney or authorized representative, to the party.

(d) *Appeals of ALJ rulings.*

(1) Any ruling of an ALJ may be appealed to the commissioner after the completion of all testimony as part of a party's final brief or by [motion] notice of appeal and appeal where no final brief [is provided for] has been authorized. The notice of appeal and appeal shall be served on all parties and filed with the commissioner, assistant commissioner for hearings and mediation services and ALJ.

(2) During the course of the hearing, in conformance with section 622.6(e) of this Part, the following rulings may be appealed to the commissioner on an expedited basis:

(i) any ruling in which the ALJ has denied a motion for recusal.

(ii) any other ruling of the ALJ by seeking [leave] permission to file an expedited appeal, [any other ruling of the ALJ where it is demonstrated] upon a demonstration that the failure to decide such an appeal on an expedited basis would be unduly prejudicial to one of the parties, or would result in significant inefficiency in the hearing process. In all such cases, the commissioner's determination to entertain the appeal on an expedited basis is discretionary.

(3) A motion for [leave] permission to file an expedited appeal must demonstrate that the ruling in question falls within [one of] the [categories] criteria set forth in subparagraph (2)(ii) of this subdivision.

(4) The commissioner may review any ruling of the ALJ on an expedited basis upon the commissioner's own initiative or upon a determination by the ALJ that the ruling should be [appealable] appealed.

(5) Whenever the commissioner grants [leave] permission to file an expedited appeal, the parties [must] shall be [so] notified[and provided with an opportunity to file a response to the appeal]. The appellant shall be provided the opportunity to file a brief on appeal and the other parties shall be provided with the opportunity to file a response to the appeal.

(6) Failure to file an expedited appeal or the denial of permission to file an expedited appeal [will] shall not preclude an appeal[ing] from the ruling to the commissioner after the hearing.

(7) [There will] The hearing shall not be [no adjournment of the hearing] adjourned while an appeal is pending except by permission of the ALJ or the commissioner.

(e) *Consolidation and severance.*

(1) In proceedings [which] that involve common questions of fact, the Chief ALJ upon the Chief ALJ's own initiative or upon motion of any party, may order a consolidation of proceedings or a joint hearing of any or all issues.

(2) The ALJ, upon the ALJ's own initiative or upon request of any party, in order to avoid prejudice or to achieve administrative efficiency, may order a severance of the hearing and hear separately any issue or any party to the proceeding.

(f) *Intervention.*

(1) At any time after the [institution] commencement of a proceeding, the commissioner or the ALJ, upon receipt of a [verified] petition verified consistent with CPLR 3020 in writing and for good cause shown, may permit a person to intervene as a party.

(2) The petition of any person desiring to intervene as a party [must] shall state [with preciseness and particularity]:

- (i) the petitioner's [relationship to] interest in the matters involved[,];
- (ii) the nature of the [material] evidence petitioner intends to present[in evidence,];
- (iii) the nature of the argument petitioner intends to make[,]; and
- (iv) any other reason that the petitioner should be allowed to intervene.

(3) Intervention [will] shall only be granted [where it is demonstrated that there is] upon a showing of a reasonable likelihood that the petitioner's private rights would be substantially adversely affected by the relief requested, and that those rights cannot be adequately represented by the parties to the hearing.

(g) *Adjournment.* After a date has been set for the hearing, adjournments [will] shall be granted only for good cause and with the permission of the ALJ. A request for an adjournment prior to the commencement of the hearing [must] shall be in writing and [must] shall be filed with the ALJ and served on all parties prior to the hearing. Adjournments [must] shall specify the time, day and place when the hearing [will] shall resume or specify the time and day on which the parties [will] shall advise the ALJ of the status of the [case] proceeding.

§ 622.11 Evidence, burden of proof and standard of proof.

(a) Evidence.

(1) Before testifying, each witness [must] shall be sworn or make an affirmation.

(2) [When necessary, in order to prevent undue prolongation of the hearing] In order to ensure a fair and efficient hearing process, the ALJ may limit the repetitious examination or cross-examination of witnesses or the amount of corroborative or cumulative testimony.

(3) The rules of evidence need not be strictly applied; provided, however, the ALJ [will exclude irrelevant, immaterial or unduly repetitious evidence and must] shall give effect to the rules of privilege recognized by New York State law. Hearsay evidence shall be admissible as long as it is reasonably reliable, relevant and probative.

(4) Every party [must have] has the right to present evidence and cross-examine witnesses.

(5) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the department. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to the final [decision] order of the commissioner to dispute the fact or its materiality.

(6) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, [must]shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the ALJ finds that it was made in the regular course of any business and that it was the regular course of [such] the business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable

time thereafter. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but [they will] shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(7) Where a public officer is required or authorized by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed by [him] the officer in the course of [his] the officer's official duty, and to file or deposit it in a public office of the State, the certificate or affidavit so filed or deposited is prima facie evidence of the facts stated.

(8) A statement signed by an officer or a qualified agent or representative having legal custody of specified official records of the United States or of any state, [country] county, town, village or city or of any court thereof, or kept in any public office thereof, that [he has made] a diligent search of the records was made and [has found] no record or entry of a specified nature was found, is prima facie evidence that the records contain no such record or entry, but only if the statement is accompanied by a [certificate] certification that legal custody of the specified official records belongs to such person. The certification [must] shall be made by a person described in [rule] CPLR 4540 of the CPLR].

(9) All maps, surveys and official records affecting real property, which are on file in the State in the office of the registrar of any county, any county clerk, any court of record or any department of the State or City of New York are prima facie evidence of their contents.

(10) By permission of the ALJ, [S] samples may be displayed at the hearing and may be described for purposes of the record, but need not be admitted in evidence as exhibits.

(11) All written statements, charts, tabulations and similar data offered in evidence at the hearing [must] shall, upon a showing satisfactory to the ALJ of their authenticity[, relevancy] and [materiality] relevance, be received in evidence and constitute a part of the record.

(12) Where the testimony of a witness refers to a statute, a report or a document, the ALJ [must,] shall, after being satisfied of the identity of [such] the statute, report or document, determine whether it [will] shall be produced at the hearing and physically made a part of the record or [of] if it [will] shall be incorporated in the record by reference.

(b) *Burden of proof.*

(1) [The d] Department staff bears the burden of proof on all [charges] violations alleged and matters [which they] affirmatively asserted in the instrument [which initiated] that commenced the proceeding.

(2) [The r] Respondent bears the burden of proof regarding all affirmative defenses.

(3) The party making a motion bears the burden of proof on that motion.

(c) *Standard of proof.* Whenever factual matters are involved, the party bearing the burden of proof [must] shall sustain that burden by a preponderance of the evidence unless a higher standard has been established by statute or regulation. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR article 78.

§ 622.12 Motion for order without hearing.

(a) In lieu of or in addition to a notice of hearing and complaint, [the]department staff may serve[, in the same manner,] a motion for order without hearing together with supporting affidavits reciting all the material facts and other available documentary evidence. Simultaneously with the service of the motion for order without hearing or as soon as practical thereafter, department staff shall [send] file with the Chief ALJ a copy of the motion and supporting papers [to the Chief ALJ] together with proof of service on [the] each respondent.

(1) A motion for order without hearing in lieu of complaint shall be served in the manner prescribed in paragraph 622.3(a)(3) of this Part.

(2) A motion for order without hearing served after service of a notice of hearing and complaint shall be served in the manner prescribed in subdivision 622.6(a) of this Part.

(3) A motion for order without hearing served after service of a notice of hearing and complaint may amend the pleadings subject to the requirements of section 622.5 of this Part.

(b) [The] A motion for order without hearing in lieu of complaint shall include a statement that a response [must] shall be filed with the assigned ALJ, or if no ALJ has been assigned to the proceeding, the Chief ALJ, within 20 days after [the] each respondent's receipt of the motion, and that the failure to [answer] respond to the motion constitutes a default.

(c) Within 20 days of receipt of [such] a motion for order without hearing, [the] each respondent [must] shall file [a response]with the assigned ALJ, or if no ALJ has been assigned to the proceeding, the Chief ALJ and serve on department staff a response to the motion, which shall [also]include supporting affidavits and other available documentary evidence. When it appears from affidavits and documentary evidence filed in opposition to the motion[,] that facts essential to justify opposition may exist but cannot then be stated, the assigned ALJ may deny the motion or order a continuance to permit the submission of [such] the essential facts, and may make such other [orders] rulings as may be just and proper.

(d) A contested motion for order without hearing [will] shall be granted if, upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant

granting summary judgment under the CPLR in favor of any party. Likewise, where the motion includes several causes of action[s], the motion may be granted in part as to one or more [if it is found that some but not all such] causes of action or any defense thereto [is sufficiently] if it is determined the cause of action or defense is established sufficiently to warrant the grant of summary judgment. Upon determining that the motion should be granted, in whole or in part, the ALJ shall prepare a report and submit it to the commissioner pursuant to section 622.18 of this Part.

(e) [The motion must] A contested motion for order without hearing shall be denied with respect to particular causes of action if any party shows the existence of [substantive disputes of facts] one or more triable issues of fact requiring [sufficient to require] a hearing. If a motion for order without hearing is denied, the ALJ may, if practicable, ascertain what facts are not in dispute or are [incontrovertible] established as a matter of law by examining the evidence filed, interrogating a party or a party's [counsel] attorney or representative, [and/]or directing a conference. The ALJ [will] shall thereupon make a ruling denying the motion and specifying [what] those facts, if any, [will] that shall be deemed established for all purposes in the hearing. Where the motion for order without hearing is in lieu of complaint, [U]pon the issuance of such a ruling, the moving and responsive papers [will] shall be deemed the complaint and answer, respectively, and the hearing [will] shall proceed pursuant to this [rule] Part.

(f) The existence of a triable issue of fact regarding the amount of civil penalties which should be imposed [will] shall not bar the granting of a motion for an order without hearing. If this issue is the only triable issue of fact presented, the ALJ [must] shall [immediately convene a] schedule the matter for hearing to [assess] determine the amount of penalties to be recommended to the commissioner.

§ 622.13 Expedited fact finding.

Where a complaint includes the allegation that a respondent is unlawfully conducting an activity without a permit, the ALJ [must] shall, upon motion from department staff or respondent, sever this issue from the other allegations for expedited adjudication. Upon completion of the expedited adjudication, the ALJ [will] shall submit a report to the commissioner containing findings of fact, conclusions of law and recommendations limited to [the issue of] whether [or not the] respondent is unlawfully conducting an activity [which requires] without a permit. Upon determining that respondent is conducting the unpermitted activity, [T]he commissioner may issue an order [to desist upon finding that] directing respondent [is conducting such an] to discontinue the unpermitted activity. All remaining issues, including the assessment of civil penalties, [must] shall be heard and resolved as part of the original proceeding.

§ 622.14 Summary abatement and summary suspension orders.

(a) [The d] Department staff may commence a proceeding by serving upon a person a summary abatement order pursuant to ECL 71-0301 and 71-1709 or a summary suspension order pursuant to SAPA § 401(3). Any such order [must] shall provide a clear statement of its basis and of the opportunity for a hearing. The date for the hearing [must] shall be set in the order and the order shall also contain a statement that the failure to appear at the hearing constitutes a default and the waiver of the right to a hearing.

(b) Sections 622.3, 622.4, 622.8, 622.9 and 622.13 of this Part are not applicable to proceedings brought pursuant to this section.

(c) In a summary abatement proceeding, the provisions of Part 620 of this Title also apply and supersede any inconsistent provision of this Part.

(d) Where a person is served with a summary abatement order or a summary suspension order, [such] the person may also be served with a complaint as provided in section 622.3 of this Part. Whenever possible, but without prejudice to respondent's rights, the matters that are the subject of the complaint may be heard together with those that are the subject of the summary abatement or summary suspension order.

§ 622.15 Default procedures.

(a) A respondent's failure to file a timely answer or, even if a timely answer is filed, failure to appear at the hearing or the pre-hearing conference [(if one has been scheduled pursuant to section 622.8 of this Part)] constitutes a default and a waiver of respondent's right to a hearing. If [any of these events occurs] a respondent fails to answer or to appear, [the] department staff may make a motion to the ALJ for a default judgment.

(b) The motion for a default judgment may be made orally on the record or in writing and [must]shall contain:

(1) Proof of service upon [the] respondent of the notice of hearing and complaint or such other document which commenced the proceeding;

(2) Proof of [the] respondent's failure to appear or failure to file a timely answer;
[and]

(3) Consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged;

([3]4) A concise statement of the relief requested [proposed order.];

(5) A statement of authority and support for any penalty or relief requested; and

(6) Proof of mailing the notice required by subdivision (d) of this section, where applicable.

(c) Upon a finding by the ALJ that the requirements of subdivision (b) of this section have been adequately met and that a default may be granted under the CPLR, the ALJ [will] shall submit a summary report, which [will] shall [be limited to a description of] address the circumstances of the default[,] as well as the matters set forth in subdivision (b) of this section, and [the proposed order] provide recommendations to the commissioner.

(d) Notice.

(1) Except as otherwise provided with respect to specific proceedings, whenever a written motion for a default judgment is made to the ALJ or Office of Hearings and Mediation Services, department staff shall serve the motion and supporting papers on respondent, pursuant to section 622.6 of this Part. This notice requirement does not apply to matters that have been scheduled for hearing where:

(i) respondent was served the notice of hearing;

(ii) department staff appears at the hearing ready to proceed;

(iii) respondent fails to appear at the hearing; and

(iv) due to respondent's failure to appear at the hearing, department staff makes an oral motion for a default judgment and provides to the ALJ at the hearing the other proof required by subdivision (b) of this section.

(2) When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation that has been served process pursuant to paragraph (b) of section 306 of the Business Corporation Law, a domestic or authorized foreign limited liability company that has been served process pursuant to paragraph (a) of section 303 of the Limited Liability Company Law, or a not-for-profit corporation that has been served process pursuant paragraph (b) of section 306 of the Not-For-Profit Corporation Law, department staff shall provide respondent the additional notice required by CPLR 3215(g)(4).

(e) Where the ALJ concludes that the motion for default judgment should be denied, the ALJ shall issue a ruling stating the reasons for the denial.

([d]f) Any motion for a default judgment or motion to reopen a default filed prior to the issuance of the final order of the commissioner [must] shall be made to the ALJ. A motion to reopen a default judgment may be granted consistent with CPLR [section] 5015. The ALJ may grant a motion to reopen a default upon a showing that a meritorious defense to the alleged violations or penalty requested is likely to exist and that good cause for reopening the default exists.

([e]g) The defaulting party [must] shall be served with a copy of the final [determination and]order of the commissioner.

§ 622.16 Ex parte rule.

(a) Except as provided below, an ALJ [must] shall not communicate, directly or through a representative, with any person in connection with any issue that relates in any way to the merits of the proceeding without providing notice and an opportunity for all parties to participate.

(b) An ALJ may consult on questions of law or procedure with supervisors and other staff of the Office of Hearings and Mediation Services, provided that [such] the supervisors or staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

(c) An ALJ[s], the Chief ALJ and the assistant commissioner for hearings and mediation services may communicate with any person on ministerial matters, such as scheduling or the location of a hearing.

(d) Parties or their representatives [must] shall not communicate with the ALJ, Chief ALJ, assistant commissioner for hearings and mediation services or the commissioner, or any person advising or consulting with either of them, in connection with any issue without providing proper notice to all the other parties.

§ 622.17 Record of the hearing.

(a) Testimony given and other proceedings at a hearing [must] shall be recorded verbatim. For this purpose and consistent with respondent's rights, the ALJ may use whatever means the ALJ deems appropriate, including but not limited to the use of stenographic transcriptions or recording devices. [At the ALJ's discretion, part or all of the transcripts may also be required in electronic or other form.]

(b) The record of the hearing [must] shall include: the notice of hearing, complaint and any other [pleadings] documents commencing the proceeding; motions and requests filed, and rulings thereon; the transcript or recording of the testimony taken at the hearing; exhibits submitted and [filed] received; stipulations, if any; a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; the hearing report; and briefs as may have been filed including any comments to the hearing report filed pursuant to section 622.18(a)(3) of this Part.

(c) A copy of the stenographic transcript of the hearing, or if the hearing is recorded, a copy of the media on which the recording is saved, such as tape, hard drive or disc, or a transcript of the recording [will] shall be available to any party upon request to the stenographer or department, as appropriate, and upon payment of the fees allowed by law.

(d) At the conclusion of the hearing, the ALJ shall determine whether to allow the submission of written post-hearing briefs. The hearing record will be closed upon the close of the hearing; the receipt by the ALJ of the stenographic transcript, if one was made; the receipt of additional technical data or other material agreed at the hearing to be made available after the hearing; or the submission of briefs and reply briefs, and memoranda, if any, by the various parties, whichever occurs last. The ALJ shall notify the parties in writing upon the closing of the hearing record.

§ 622.18 Final [decision] order.

(a) Hearing report.

(1) The ALJ [will] shall submit a hearing report to the commissioner within 45 days after the close of the record. The report [must] shall include findings of fact, conclusions of law and recommendations on all issues before the ALJ.

(2) The hearing report [may] shall be circulated to the parties as a recommended decision when:

- (i) required by law; or
- (ii) directed by the commissioner.

(3) All parties to the hearing [must] shall have 14 days after receipt of the recommended decision to file comments to the commissioner, unless [such] the time is [varied] shortened or lengthened by the ALJ or the commissioner.

(b) Final [decisions] orders.

(1) Where a recommended decision has not been issued, the final [decision] order of the commissioner, together with the hearing report of the ALJ, [will] shall be issued 60 days after the close of the record.

(2) Where a recommended decision has been issued, the final order of the commissioner [will] shall be issued within 30 days after the close of the record, such event occurring at the expiration of the time allowed for comment on the recommended decision.

(c) *Stipulations.* At [A]any time prior to [receipt of the ALJ's report or recommended] a final [decision] order, the department and respondent may enter into a stipulation on any matter. Where a stipulation is reached on all [charges] violations alleged against all respondents, [the] any hearing [will] shall be canceled and no further action of the commissioner [will] shall be required. Within five days of the stipulations execution, department staff shall serve a copy of the fully executed stipulation on all parties and file a copy of the fully executed stipulation with the ALJ. Upon receipt of the executed stipulation, the ALJ shall close the matter.

(d) *Reopening the record.* At any time prior to issuing the final [decision] order, the commissioner or the ALJ may direct that the hearing record be reopened to consider significant new evidence.

(e) The final determination [will] shall be embodied in an order, which [must] shall contain findings of fact and conclusions of law or reasons for the final determination and may provide for:

(1) a finding of liability or the dismissal of the [charges] alleged violations;

(2) assessment of penalties or other sanctions consistent with the applicable provisions of the ECL;

(3) direction for abatement, [or]restoration or other remedial activity, or provision for financial security;

(4) a combination of any or all of the foregoing; and

(5) any determination deemed appropriate under the circumstances, and consistent with applicable provisions of the [Environmental Conservation Law] ECL or other laws administered by the commissioner, or the rules and regulations promulgated thereunder.

(f) A copy of the final [determination and] order [will] shall be served on the parties in the same manner as [is provided for the service of notice of hearing by these rules] prescribed in paragraph 622.3(a)(3) of this Part.

§ 622.19 Mediation.

(a) ALJs shall have the authority to mediate enforcement matters.

(b) Mediation can be requested by the parties at any time after commencement of an enforcement proceeding. The request shall be made to the assigned hearing ALJ or to the Chief ALJ if an ALJ has not been assigned to the matter. Upon consent of all parties, the matter shall

be set down for mediation and an ALJ shall be assigned to mediate the matter. Unless the parties agree otherwise, the assigned hearing ALJ shall not be assigned to mediate the matter.

(c) The hearing shall not be adjourned, in whole or part, without permission of the assigned hearing ALJ or the Chief ALJ if an ALJ has not been assigned to the proceeding.

(d) The assigned mediator shall not discuss the merits of the matter with the assigned hearing ALJ or other members of the Office of Hearings and Mediation Services involved in the adjudication of the matter, and no records, notes or memoranda of the mediation and no offers of settlement, compromise or similar disclosures made during the mediation shall be introduced into the adjudicatory hearing record, without the consent of the parties unless authorized under CPLR 4547.

(e) The ALJ assigned as mediator shall have the power to:

(1) conduct the mediation and direct any adjournments or continuances thereof;

(2) offer opinions on the relative merits of the parties' positions and defenses;

(3) facilitate the resolution of the matters at issue in the enforcement proceedings commenced;

(4) in furtherance of the objectives of paragraphs (2) and (3) of this subdivision, caucus separately with the parties; and

(5) close the mediation if no reasonable progress towards resolution is being made.

KEVIN M. BERNSTEIN
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May 22, 2018

Louis A. Alexander, Esq.
Assistant Commissioner for Hearings and Mediation Services
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1010

Re: *Preliminary Draft Part 622 Regulation Amendments*

Dear Lou:

On behalf of the New York State Bar Association Environmental and Energy Law Section, we would like to thank you for the opportunity afforded to the Section to comment on the preliminary draft revised Part 622 regulations. Additionally, we would like to express our appreciation to you, Chief ALJ James McClymonds and ALJ Michael Caruso for your participation in our April 19 conference call during which our Task Force had the opportunity to seek clarification on some of the preliminary draft revisions. Below are the Section's comments on the preliminary draft Part 622 regulation amendments for your consideration.

§622.2 Definitions

- (v): A comma should be inserted after the existing language "or order issued thereunder".
- (x): Replace "by authorized means" with "by means authorized by the CPLR".

§622.4 Answer

- The language "of the complaint" or "in the complaint" should be referenced and inserted after the word "allegation" is used in paragraph (b).

§622.5 Amendment of pleadings

- Whereas the current regulations are quite precise in terms of references to "paragraphs", "subdivisions", "titles", etc. the preliminary revisions sometimes omit a reference to "rule" or "section" when referring to the CPLR (e.g. Section 3101, Rule 3216, Section 2302, Section 2307, Section 3020, etc.). While a

specific section is referenced in the proposed amendment to this Section, there are other instances (e.g. 622.3(a)(3), 622.12(d)) when that is still not the case.

§622.6 General rules of practice

- (a)(1): With electronic filing becoming common place, many attorneys not familiar with Department practice and regulations probably put their email address in their “signature block” as a matter of course without knowing they are consenting to service by the Department and other parties by email which could become problematic.
- (a)(3): “request papers” is not defined in the regulations and the definition of motion already includes a “request for a ruling or an order”.
- (b)(2)(ii): The term “express mail” is ambiguous.

§622.8 The pre-hearing conference

- Whether a controversy is subject to mediation should be up to the ALJ/OHMS on request of a party, and should not require the consent of Department staff.
- Suggest adding to the end of paragraph (b) the following language: “unless requested by a respondent. Under such request, the respondent shall provide for the stenographic services or recordings including cost and provide one copy to department staff.”

§622.9 Statement of readiness for adjudicatory hearing and notice of enforcement hearing

- It would be beneficial to the decision-maker to add the following language as paragraph (b)(5): “Where mediation has been requested, a statement to that effect and the name of the party and its reasoning for declining such mediation.”

§622.10 Conduct of the hearing

- Add the following statement to the subsection: “Only one attorney or authorized representative may examine an individual witness for any party.”
- The language of (c)(3) is awkward. The notice should come before the actual “change or withdrawal” or precipitate a short adjournment. The language “or if a party appears without an attorney or authorized representative, to the party” seems disjunctive to earlier text. We recommend the rule be rewritten to be clearer.

- The formatting of paragraph (g) is inconsistent with the rest of the section.
- Include “an ALJ’s denial of submission of written post-hearings briefs” as an individual subsection under §622.10 (see, for example §622.17(d) under “Record of the hearing”).

§622.11 Evidence, burden of proof and standard of proof

- The language of paragraph (a) is sometimes difficult to understand and may not provide the direction to practitioners that is useful. With regard to hearsay evidence, it is difficult to determine what “reasonably reliable” means. As proposed by the Department, the rule on hearsay is: “Hearsay evidence shall be admissible as long as it is reasonably reliable, relevant and probative.” This section is followed by subsections 5 to 9 which reflect some of the exceptions to the Hearsay Rule found in Article 45 of the CPLR. Article 45 has at least 18 exceptions and in several instances the details of the exception are spelled out. The problem is that it is hard to determine what “reasonably reliable” means if it extends beyond the statutory exceptions to the Hearsay Rule. It is suggested given the allowance of Hearsay and the difficulty of managing its admission, it would be useful to have a more expansive rule. As such, we would prefer to see the last sentence of §622.11(a) removed and replaced with the following language:

“Out of court statements offered for the truth of the matter, commonly known as hearsay, shall not be admitted unless the proponent of such statement first demonstrates that the statement falls within one of the exceptions to the exclusion of hearsay set forth in Article 45 of the CPLR, or is shown to be reliable in a comparable manner or are an out of court statement usually relied on by an expert in formulating opinions.”

Additionally, paragraphs 6 through 8 relating to exceptions to the Hearsay Rule should be deleted.

- The preliminary §622 amendments does not address procedural safeguards against unreliable expert testimony, despite the prominence of expert opinion in environmental cases. The CPLR provides such a requirement in Section 3101(d) which requires the proponent of expert testimony to first identify the expert and provide a statement of the facts and opinion on which the expert will testify. Such a precaution is more important in Departmental proceedings than in judicial proceedings because of the presumption against depositions in DEC

proceedings. Accordingly, it may be appropriate to add an additional section at the end of Section 622.11, which tracks CPLR 3101(d) such as:

“Upon written request, each party, including the Department, shall identify each person that the party expects to call as an expert witness at the hearing and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert’s opinion.”

While this is a modest addition to the Section, it would go a long way to ensuring reliable opinion testimony and also to regulate the course of a hearing.

§622.15 Default procedures

- Add the following language to the end of paragraph (d)(1)(i) “and appropriate proof of service is provided.”

§622.18 Final order

- To further ensure the enforcement of deadlines, add the following language into the section (perhaps as a new (b)(3)):

“Subject to Stipulations or Reopening the Record as provided in this subsection, the commissioner shall render a final order as provided herein or a respondent’s position shall be upheld by default, unless all parties agree to a definitive extension of time for such final order based on a written request to the Chief ALJ no later than 5 business days after said final order was due.”

- The language “Within five days of the stipulations execution,” in paragraph (c) should be singular possessive and read “Within five days of the stipulation’s execution,”

§622.19 Mediation

- In situations where the request for mediation is turned down by a party, we would like to see the ability of the requesting party to be able to appeal the request to the Chief ALJ.

Louis A. Alexander, Esq.
May 22, 2018
Page 5

Thank you again for this opportunity to review and comment on the preliminary draft Part 622 regulations.

Sincerely,

BOND, SCHOENECK & KING, PLLC

Kevin M. Bernstein

KMB/ajh

cc:

**Comments on the New York State Department of Environmental Conservation
Proposed Amendments to 6 NYCRR Part 617 SEQRA Implementing Regulations**

ENVIRONMENTAL & ENERGY LAW SECTION

The New York State Environmental Quality Review Act, New York Environmental Conservation Law Sections 8-0101 et seq. (“SEQRA”), mandates that all state and local agencies incorporate a review of the environmental impacts of their decisions to undertake, fund or approve their actions. ECL Section 8-0113 directed the Commissioner of the Department of Environmental Conservation (“DEC” or the “Department”) to establish, by regulation, procedures to guide state and local agencies in their implementation of SEQRA. DEC’s regulations, which are codified in Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”) were initially promulgated in 1976 and have been amended several times in the forty years since then, most notably in 1978, 1987 and 1995.

On January 20, 2017, after a lengthy internal review process and with input from a large variety of stakeholders, DEC proposed a new set of regulatory amendments, designed to streamline SEQRA review. DEC held a series of public hearings on the proposed regulations in March and April of 2017 and accepted public comments through May 2017. On April 4, 2018 DEC published revisions to its proposed regulatory amendments along with a Revised Draft Generic Environmental Impact Statement (“R-DGEIS”) that included responses to public comments.

The Environmental & Energy Law Section of the New York State Bar Association (the “Section”) is pleased to have the opportunity to comment on the proposed amendments to the SEQRA implementing regulations. The following comments were prepared by the Section’s Environmental Impact Assessment Committee and have been approved by the Section’s Executive Committee.

We agree in most instances with the revisions made by the Department in response to public comments received in 2017, including revisions made specifically in response to comments submitted by the Section. We have the following additional comments on the 2018 revised proposed regulations, which are arranged in sequential order by section of the proposed regulations.

Type II Actions

§ 617.5(b)

The revised proposed regulations include the following new language in § 617.5(b):

The fact that an action is identified as a Type II action in an agency’s procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures.

The new language is unnecessary and may lead to confusion between lead agencies and involved agencies as to how to classify an action for review. The existing language of § 617.5(b) is sufficiently clear that each agency may adopt its own list of Type II actions and is not bound by another agency's list. The reference in the new language to "involved agency" makes it sound as though an involved agency may make its own classification of an action during coordinated review after a lead agency has classified an action. The new language should be removed, but if it stays, the Department should delete the word "involved" from the new language or clarify that the new language applies only to uncoordinated review.

§ 617.5(c)(14)-(15)

By adopting a Type II for solar installations, the Section believe that the agency is continuing to make energy policy in the guise of regulations (*see* Section comments submitted to DEC on May 25, 2017 at page 7). Notwithstanding that comment, the newly proposed 25-acre Type II ceiling for solar installations is not consistent with other SEQRA thresholds and should be lowered to 10 acres. The definition of Type I actions under 6 NYCRR § 617.4(b)(6)(i) includes "a project or action that involves the physical alteration of 10 acres" or more. Thus, a 10-acre threshold for solar installations would be consistent with the Type I threshold set forth at § 617.4(b)(6)(i), while the currently proposed 25-acre limit is not.

The Section is also troubled by the blanket statement in the R-DGEIS that "utility scale and individual solar energy systems, when placed in specific locations, do not have a significant impact on the environment" (R-DGEIS at 47). This conclusion is unsupported and unsupportable in regard to any disturbance of 25 acres of land whether for a solar installation or for any other purpose.

Scoping

§ 617.8(g)

The Section objects to the revised language in § 617.8(g) that removes the discretion of the lead agency and/or project sponsor to reject late comments, submitted after scoping, that seek to change the scope of the EIS. The 2017 version of the proposed regulations only required that "substantive information" submitted in accordance with § 617.8(f) to be considered as a public comment on the draft EIS (meaning that such information would be responded to in the final EIS) if the project sponsor determined not to incorporate the information into the draft EIS. The revised language makes it mandatory to incorporate late comments in the draft EIS either in the body of the draft EIS or in an appendix.

During the drafting process with stakeholders, the rationale for making scoping mandatory was that impacts reviewed in the EIS would be limited, thereby helping to streamline the SEQRA process. The 2017 version of the proposed § 617.8(g) provided regulatory certainty and made clear that the project sponsor had the ability to weed out

issues that are not significant impacts. The Department now appears to be watering down its original proposed language and requiring that late comments on impacts outside scoping be reviewed and included in one way or another in the draft EIS. In effect, the revised proposed language of § 617.8(g) would allow scoping to become a continually iterative process that evolves past the end of the scoping period, allowing opponents of an action to delay the finalization of the scope and the issuance of the draft EIS process by submitting substantive comments that could have been addressed during scoping. This proposed change negates the deadlines set forth in § 617.8 and is inconsistent with SEQRA's stated objective to accomplish a review "with minimum procedural and administrative delay," as well as the admonition by the Court of Appeals in *Matter of Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 425 (1986), that SEQRA is not meant to be an iterative process.

A common-sense approach to limiting the type of information that may be submitted after scoping could be based on the requirements for a supplemental EIS in § 617.9(a)(7). Re-opening the scope of an EIS should be limited to specific potentially significant adverse environmental impacts not identified in the scoping process that arise from: a) changes proposed for the project; b) newly discovered information; or c) a change in circumstances related to the project.

MEMORANDUM

To: Kevin Bernstein, Esq., Chair of NYSBA EELS, and
Executive Committee of EELS
From: Meaghan A. Colligan, Esq.
Date: May 17, 2018
Re: Social Media Task Force Update

Below please find an update from the NYSBA EELS Social Media Task Force regarding our website, Twitter account, and use of Communities.

A. Website – Blog Page

1. We removed “EnviroSphere” from the main horizontal heading, and created new language to describe and link to the EELS Section (“Section”) Communities Blog.



The “[blog](#)” hyperlink brings the user to the community Blog. Any blogs that have been set to the “public” view are accessible without logging in. Right now we have one primary blogger from the Section, Carl Howard. Thanks, Carl! We expect this may change with each Committee posting at least one blog a year pursuant to the recent bylaw change.



B. Twitter

1. Analytics:
 - a. We have posted 368 Tweets since August of 2017.
 - b. We have 123 Followers.
 - c. We are regularly mentioned by other Tweeters outside of the Section membership.
 - d. A few of our Section members interact with us, most of whom are on the Executive Committee.
 - e. Our most active “Tweet-periods” are around events. Thank you to everyone who participates!
2. Use of Hashtags in Programing (ex. #BrownfieldDeal):
 - a. If you are hosting a program and/or CLE, we can create a hashtag for your event.
 - b. Please include us in your planning so we can start using the hashtag long before the event! We can use the hashtag for marketing on social media, and it can be included on the programming brochures.
 - c. On the date of the event, people will use the hashtag to communicate with one another.
 - d. We had great success with use of hashtags at the 2017 Fall Meeting, the Art of the Brownfield Deal, and the 2018 Annual Meeting.
3. New Team Member:
 - a. We have recruited a new team member. He is a recent law graduate from Tulane. He is working on suggestions for streamlining our Twitter posts, and will likely be assisting us with our Tweeting capacity. I will update the group further once it is confirmed that he is active.
4. Executive Committee Involvement:
 - a. Please “tag” the Section in your applicable Tweets so we can easily re-Tweet you! Recall, however, that we are tasked with posting only position neutral Tweets.
 - b. Please send us cases, regulations, event invitations, or anything you think our members would like to know about.

C. Use of the Section Community

1. Committee Communities:
 - a. We have created two new Communities for the Wetland Committee and Petroleum Committee. These committees are interacting directly and exclusively with one another through the Community, rather than email.
 - b. We suggest that all committees, including the Executive Committee and Cabinet, have a “Community Page.” Once these communities are created, our committees can communicate exclusively this way. We hope this idea will encourage the entire section to be using communities.