

# CLINICAL PROGRAM NEW YORK STATE DEPARTMENT OF LAW ENVIRONMENTAL PROTECTION BUREAU

## **I. OVERVIEW**

Law students interning within the Environmental Protection Bureau ("EPB") play an important role in the work of the Bureau. Because our opponents in litigation are often major law firms whose resources far exceed ours, we rely on students to assist staff attorneys in conducting legal research, preparing documents (pleadings, discovery, briefs, and assisting in the development of case strategies. The students are made aware of the importance of their contribution and, historically, have served the Attorney General's office well, producing timely, quality work. The benefit has been mutual- students have consistently found their experience in the EPB to have been very positive in terms of educational value and development of professional contacts. Our former students have found positions with the Department of Environmental Conservation, the U.S. Environmental Protection Agency, environmental organizations, private law firms handling environmental cases, as well as the EPB itself.

Traditionally, interns have been assigned to work with individual EPB attorneys on both long and short term matters. Assignments have varied from traditional research and memo writing to more involved participation in complex cases. Since the EPB also takes an active role in developing policy initiatives and legislative proposals for the Attorney General, students also have the opportunity to work on policy research and legislative drafting.

## **II. SUMMARY OF ENVIRONMENTAL PROTECTION BUREAU ACTIVITIES**

In general, students assist lawyers, paralegals and scientists in litigation, legislative and policy development issues in the environmental arena. The EPB's primary client is the Department of Environmental Conservation ("DEC"). The Bureau also represents other agencies addressing environmental issues, e.g., the Adirondack Park Agency, the Department of Health, the Department of Transportation, and the Office of Parks, Recreation and Historic Preservation.

A. Article 78 Proceedings. When the State (generally DEC) is sued over an administrative decision related to an environmental matter pursuant to Article 78 of the CPLR, law students assist EPB attorneys in amassing the administrative record, preparing the answer (which

generally includes legal and/or technical affidavits), and researching and writing the accompanying memorandum of law. These special proceedings are generally handled expeditiously by the courts, thus often allowing law students to see the end product of their efforts within the period of their placement in the EPB. Since Article 78 rulings are often appealed, students also have the opportunity to assist in the preparation of appellate briefs and in "moot courting" oral arguments.

B. Air Pollution Litigation. During the past several years, New York has led a number of Northeastern states in litigation against large coal-burning power plants in Midwestern states, seeking the installation of state-of-the-art pollution control equipment under the Clean Air Act's "New Source Review" program. Air pollution from such plants falls as acid rain over New York, devastating lakes and forests in the Adirondacks, Catskills and Hudson Highlands and damaging water quality in Long Island Sound. Air pollution also arises from mobile sources, and New York has also been at the forefront in forcing the development of "clean car" technology by requiring that auto manufacturers produce a certain percentage of low- and zero-emission vehicles. Most recently, New York has used common law public nuisance to address perhaps the most pressing environmental and public health issue of our time-- global warming. Joined by seven other states and New York City, New York filed suit in July 2004 against five utility companies that own or operate 174 fossil fuel burning power plants in 20 states, seeking an order obligating defendants to reduce carbon dioxide emissions. These lawsuits provide a number of research assignments related to federal practice, common law, administrative law and judicial construction of a complex, highly technical federal statute.

C. Toxic Waste Litigation. Relying on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or federal Superfund law) and New York's common law of public nuisance, the State sues site owners, transporters and/or generators of hazardous substances to obtain cleanup of inactive hazardous waste sites and/or recovery of funds spent by DEC. CERCLA litigation, which often involves numerous defendants and complex third party practice, provides opportunities for law students to assist attorneys in conducting discovery and in researching a variety of procedural and substantive issues, many of which are not strictly environmental, but relate to such diverse areas as corporate law, bankruptcy, insurance law, and real estate law. Law students also participate in the preparation of summary judgment papers, including affidavits and legal memoranda. In addition to the litigation aspects of hazardous waste cases, students are also exposed to the negotiating process involved in resolving such cases, an essential professional skill that the traditional law school curriculum does not always emphasize.

D. Miscellaneous Enforcement. At any given time, the Bureau is

in court attempting to shut down illegal mines, tire dumps and/or landfills operating without a permit. The Bureau also defends determinations by DEC and other state agencies under the State Environmental Quality Review Act ("SEQRA"). These and other enforcement cases present terrific learning opportunities for law interns.