

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Environmental LAW

The new NY environmental agenda

Environmental issues did not play a significant role in the gubernatorial contest between Andrew Cuomo and Carl Paladino. Although environmental concerns, from alternative fuels to zebra mussels, spark discussion and attract significant coverage in the media, these issues were largely absent from this fall's political debate, overshadowed by talk of dysfunction, reform, baseball bats and looming budget deficits.

Since the election, the Department of Environmental Conservation has been in the news because it has born the brunt of recent layoffs and because its commissioner was sacked for protesting the cuts in staffing.

Yet, the real environmental issues continue to command attention. Climate change, clean air and clean water, underutilized brownfields, clean energy, renewable energy, and the so-called "green" economy, all vie for attention, leadership and scarce resources. What can New York expect from the new administration?

For those interested in the answer, there is a roadmap. At the very end of the campaign, just three days before the election, the Cuomo campaign issued a 160-page position paper entitled "A Cleaner, Greener NY." The timing of the release is curious, it was not a factor in the election, and apparently not intended to be. However, the statement provides insight into the environmental agenda of the new Cuomo administration.

Cuomo's experiences as a manager of urban development as secretary of HUD in the 1990s and as a prosecutor as attorney general, are clearly reflected in his agenda.

Interestingly, many of the traditional environmental issues — protection of clean water and air and management of solid and hazardous waste — are mentioned, but are largely absent from the discussion. Instead, the focus is on encouraging sustainable development, so-called "smart growth," and promoting energy efficiency and the development of alternative and renewable energy. The overall vision promotes environmental protection as a by-product of economic development through creating a greener economy.

There are no wholly original ideas in the plan, rather the agenda combines aspects developed from a number of sources. As a result, selling the entire plan to the legislature will present a considerable, perhaps insurmountable challenge as each piece

has both promoters and opponents who are already entrenched in their views.

The specific elements of the plan begin with a competitive grant program to incentivize and reward innovative, comprehensive, regional plans. The aim is to combat sprawl development and to encourage urban revitalization and protect open space, but regional planning inevitably challenges traditional concepts of local self-government and has, at best, a mediocre track record in New York. Moreover, the plan does not identify how the key grant program will be funded.

The umbrella of "smart growth" draws together a number of other elements in the agenda, including green infrastructure development, concepts of environmental justice, promoting public transportation and brownfield redevelopment. The agenda supports the continuation of the Brownfields Tax Credit Program as a component of regional planning and urban revitalization.

The program has been under attack for overly generous tax credits in an era of budget deficits. The new governor hopes to find ways to "streamline" the program to overcome these concerns. Exactly what that means to the ongoing battle over the eligibility of various projects as brownfields, which has triggered considerable litigation, is not explained.

On the other hand, Cuomo's stance on the state superfund program is traditional and prosecution-oriented and reemphasizes the "polluter pays" enforcement which has dominated Superfund for 30 years. Many argue this approach has run its course, but that is not reflected in the new agenda.

On the issue of public transportation, the new administration comes down squarely on the side of high-speed rail, setting a goal of reliable service that averages 100 miles per hour from New York City to Buffalo. As goals go, that does not have the ring of promising to put man on the moon, but may be just as costly.

The agenda also promotes the development of green infrastructure, e.g. charging stations for electric vehicles, and singles out the hydrogen fuel vehicle project in Honeoye Falls as a potential economic driver for new jobs and cleaner air.

Continued ...



By **RONALD G. HULL**

Daily Record
Columnist

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

On the contentious and highly publicized debate over drilling into the Marcellus Shale to extract natural gas, the new administration refused to take sides, choosing the more cautious middle road that having the gas would be nice, but not if there are negative environmental impacts.

Although regional, top-down planning is at the core of much of the environmental agenda, the new administration also supports incentives to individual property owners to make energy efficiency projects and conversions to renewable energy (solar, wind, geothermal) more affordable by offering long-term financing repaid through property taxes (Property Assessed Clean Energy) or through calculated utility savings (on-bill recovery); however, the paper is vague on where the funds to underwrite these loan programs would originate.

Interestingly, the new environmental agenda appears to rely less on centralized regulation and programs spearheaded by the

NYSDEC than has been the case in the past for governors, whether Democrat or Republican. The focus of the agenda is more carrot than stick and will require participation and buy-in from a broad cross-section of state government and from the top in Albany down through several layers of local government.

Turning the concept of a green economy into reality will also require providing the business community with the confidence to choose New York.

In short, the new agenda is rosy in outlook and largely ignores the entrenched interest groups and other obstacles which must be overcome, but also presents a coherent, multi-faceted vision for combining environmental protection with economic development.

Ronald G. Hull is a senior attorney in Underberg & Kessler LLP's Litigation Practice Group and co-chairman of the firm's Environmental Practice Group. He has more than 20 years' experience in the areas of environmental and municipal law and litigation.