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New York's Brownfield Cleanup Law

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We are now barely beginning to feel the effects of the “legislation of the decade” in environmental law in New York – the long-awaited passage and signing of a State brownfield law in October. As we did for those who brokered the New York City Watershed Agreement several years ago, the Section awarded, at its Annual Meeting on January 30, Special Section awards to four of those who brokered the passage of New York’s new Brownfield Cleanup Act. Even as the dust is settling, news articles continue to highlight the *Sturm und Drang*, the passion, and what was – even by Albany standards! – the peculiar odyssey leading up to the passage of this law.

We in the Section, on the other hand, ignored all that; we don’t care who the alleged “winners” and “losers” are. Instead, our Brownfields/Superfund Reform Task Force undertook not once, not twice, but three times in about six months analyses of competing bills, including the one that became law. The Task Force resolutely plowed through several bills, describing the complexities in a straightforward yet elegant *explication de texte* fashion, and when necessary, comparing provisions with their predecessors. This evaluative task was not an *ad hoc* effort contingent on the

particular predilections of the individuals who happened to be on the Task Force this year; rather, it was rooted in the principles the Task Force had declared, in October, 1999, to be essential for any brownfield law. See *Report of the Ad Hoc Task Force on Superfund Reform*, THE NEW YORK ENVIRONMENTAL LAWYER, Winter 2000, at 31-32. We sent the three-bill comparison, in June, and the analysis of the fourth bill that we learned would become law, in September, to key legislators and aides to the Governor, the New York State Department of Environmental Conservation, and several environmental groups.

In the Task Force's third undertaking in six months, then, it developed a set of recommendations that, given the credibility it had developed with earlier efforts, the major legislative players genuinely welcomed as thoughtful and independent. These recommendations, sent out in October, 2003, are set out in full later in this issue. They are either all or mostly – depending on your viewpoint – in the nature of “technical” corrections to rectify inconsistencies and just plain errors that crept into this particular legislation-making process, one in which the “making of sausages” metaphor has rarely been so apt!

And as befits the great diversity of views within the Section that makes it so rewarding to participate in its activities, the Association made it clear that the Section's government members had “neither participated in the preparation of the Task Force Report, nor been asked to concur in the proposed changes and clarifications.” (Letter to legislators, et al., of Ronald F. Kennedy, Associate Director, Department of Governmental Relations of the Association, October 31, 2003.) (This issue had also arisen when we considered competing views within the Section on DEC's draft Voluntary Cleanup Program Guide. See John L. Greenthal, *A Message From the Chair*, THE NEW YORK ENVIRONMENTAL LAWYER, Fall 2002, at 1, 2, & 4.)

For any reader who has not been active in Section activities, this is the kind of thing we do best, and that the rest of the environmental law world most looks to us

for – analysis and suggestions from a diversity of opinions, and respect for those who, by virtue of their offices (and personal professional views) have to abstain from or otherwise stand apart in the process. If you haven't up to now, do come join us in the adventure! *jpericoni@periconi.com*.