



## Wendy A. Marsh

*Partner*



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Wendy A. Marsh is the Chair of the Real Estate, Environmental & Land Use Planning Department. She concentrates on representing small and large businesses, manufacturers, contractors, lenders, borrowers, hospitals and educational institutions, in the areas of environmental, zoning and land use law. Ms. Marsh counsels clients on environmental compliance, including assisting on permitting, audits and defending clients in enforcement actions commenced by regulatory agencies including the United States Environmental Protection Agency (USEPA), U.S. Army Corps of Engineers, the New York State Department of Environmental Conservation (NYSDEC) and local environmental authorities. She also has extensive experience in assisting clients through environmental issues that arise during transactions and refinancing activities, which is often the trigger to uncover unknown environmental liabilities.

Ms. Marsh routinely assists clients through the myriad of remediation programs at both the state and federal level, including the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA, or Superfund Program), Inactive Hazardous Waste Program (State Superfund Program), New York State Spills Program, Brownfield Cleanup Program and Voluntary Cleanup Program, as well as compliance with the detailed asbestos requirements in New York State Code Rule 56. She is involved in litigating cases in state and federal court on issues of liability and cost recovery for such remedial activities. Ms. Marsh also assists clients in compliance with the Occupational Safety and Health Act (OSHA).

Ms. Marsh represents clients on land use matters, such as zoning, planning and historic preservation laws. She assists municipal boards, counties and developers on compliance matters relating to applicable zoning laws, as well as compliance with the State Environmental Quality Review Act (SEQRA) and federal, state and local historic preservation laws.

Ms. Marsh represents both boards and developers in navigating through the local development approval process, including compliance with SEQRA. She also prosecutes and defends decisions made by the boards, through which she gains expertise in developing the best way to accomplish a client's goals, often without the need for costly litigation. She brings years of experience to this uniquely local area of law, which comes into play when clients are dealing with controversial projects, such as large-scale wind energy projects. Further, in order to withstand potential legal challenges, Ms. Marsh provides assistance with ensuring SEQRA compliance relating to all the individual components of the local approval process.

## PRACTICE AREAS

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- Environmental
- Government Relations
- Zoning & Land Use
- Health Care

- Education
- Municipal
- Labor & Employment
- Family Business Succession Planning

## REPRESENTATIVE MATTERS

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- Provided legal guidance to complete a large-scale development project involving numerous buildings in a historic district of Upstate New York. The legal work involved compliance with local development laws, SEQRA, State Historic Preservation Act, General Municipal Law, as well as all other aspects of the legal approvals needed for significant development activities. When challenged by a local opposition group, all approvals were upheld.
- Retained as special counsel by municipal boards to review large-scale commercial wind turbine projects throughout the state. This work can involve assistance in developing a wind ordinance to regulate wind projects, but the primary focus is to assist the town attorneys in achieving compliance with SEQRA in reviewing the project, as well as assistance in negotiating the related agreements, such as road use agreements and host agreements. Also assisted municipalities in asking for local legislation to regulate large-scale wind turbines.
- Retained to resolve environmental liabilities that arise in transactions. This work involves assessing and quantifying potential environmental liabilities, as well as developing the contractual structure to resolve those liabilities. Negotiated numerous environmental indemnification agreements, structured environmental escrow funds, and negotiated insurance contracts and other mechanisms to manage the environmental liabilities to allow a transaction to proceed.
- Regularly advise clients on the legal implications associated with environmental liabilities and the business implications associated with managing the risks.
- Frequently retained to resolve numerous OSHA violations with substantially lower penalties achieved as part of settlement negotiations.
- Often retained by local municipalities to assist in controversial and complex projects to ensure the decision of the municipal entity can withstand judicial challenge. These cases often involve controversial zoning decisions between feuding neighbors and/or responding to organized citizen groups. Based upon extensive experience, able to assist the municipal entity in understanding the underlying legal issues associated with the controversial project, the proper process to follow and steps to undertake to document the decision and to withstand legal challenges that the decision is not arbitrary and capricious. These decisions are then defended in court when challenged.
- Frequently represent numerous companies that handle, manage and transport petroleum. Particular expertise on the New York State Navigation Law when defending claims made by the Attorney General's Office commenced on behalf of the Oil Spill Fund. Involved in all aspects of Navigation Law litigation on behalf of clients.
- Frequently assist in advising on the obligations associated with owning and/or renovating property that has been deemed historic on the federal, state or local level. Regularly counsels owners on the true limitations associated with the property and educate the regulating authorities on the boundaries of such limitations in an effort to allow legal development of the properties.

## RECOGNITIONS AND HONORS

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- Rated, AV Preeminent, Martindale-Hubbell

## PROFESSIONAL AND COMMUNITY ACTIVITIES

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- Board Member and Past Chair, The Smith Center for the Arts, Inc. (d/b/a Smith Opera House)

- Board Member, ESF College Foundation
- Board Member, Geneva Chamber of Commerce
- Co-Chair, New York State Bar Association, Petroleum Spills Committee
- Member, New York State Bar Association, Environmental Section
- Member, New York State Bar Association, Municipal Section
- Member, New York State Bar Association, Real Estate Law Section
- Member and Past Chair, Central New York Air & Waste Management Association (AWMA)
- Member and Past Chair, Onondaga County Bar Association, Environmental Law Section
- Member, Ontario County Bar Association
- Member, Central New York Women's Bar Association

## SPEAKING ENGAGEMENTS

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- Hancock Estabrook Sixth Annual Advisors to Small Business Symposium (June 2018)
- 34th Annual NYS Federation of Lake Associations Conference, "New York Not-for-Profits: What Are the Rules?" (May 2017)
- Hancock Estabrook Ithaca Seminar Series, "Commercial Real Estate - From Concept to Occupancy & Beyond" (November 2016)
- The County Attorneys' Association of the State of New York, "How SEQRA Can Impact Large or Controversial Projects: A Review of the SEQRA Basics and Common Pitfalls" (December 2015)
- Hancock Estabrook's Third Annual Advisors to Small Business Symposium (June 2015)
- NYSBA Environmental Law Section 5th Annual Oil Spill Symposium, "Proposed New Petroleum Bulk Storage Regulation" (April 2014)
- Hancock Estabrook's 9th Annual Labor & Employment Law Symposium (September 2013)
- Environmental Breakfast Club, "Petroleum Bulk Storage Requirements, Part 1: Review of the Current Lay of the Land" (September 2013)
- New York State Bar Association, "Petroleum Spills Symposium" (April 2010 and 2011)
- New York State Bar Association, "Hot Topics in Real Property Law and Practice" (November 2008)
- Accelerate 2008, "Incorporating Environmental Decisions Into Development of Your Energy Project Using SEQRA as a Development Tool" (April 2008)
- New York State Bar Association, "Practical Skills: Environmental Law for New Environmental Practitioners and Newly Admitted Attorneys" (November 2007)
- New York State Bar Association, "Solving the SEQRA Mystery" (October 2007)
- Half Moon, LLC, "Legal Issues for New York Architects, Understanding the State Environmental Quality Review Act ("SEQRA") and Its Impact" (July 2007)
- New York State Bar Association, "Transactions and the Environment, Environmental Contamination" (June 2006)
- New York State Bar Association, "The Nuts and Bolts of the Administration and Enforcement of Land Use Laws and Regulations: Interplay of SEQRA with Municipal Land Use Laws and Regulations" (May 2005)
- Hospitals for a Healthy Environment Teleconference, "Resource Conservation and Recovery Act (RCRA) for Hospitals - What to Expect When an EPA Inspector Comes to Your Door" (January 2005)
- New York State Bar Association, "Basics of Environmental Law" (November 2003)
- The American Institute of Architects, "Avoiding Litigation in Environmental, Energy Land and Contract Issues Development Projects"
- SUNY-ESF, Guest Lecturer for Land Use and Zoning Laws Class

## PRESS AND PUBLICATIONS

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- ["Taxation of Contaminated Property: Should Property Owners Get a Break?"](#), *Hancock Estabrook Newsletter*, November 2012

- "Challenging Cleanup and Removal Costs from Petroleum Discharges", *New York Law Journal*, July 2008
- "The Challenges of Purchasing a Medical Office", *Central New York M.D. News*, October 2006

## EDUCATION

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- University at Buffalo Law School, J.D., 1995
- State University of New York at Albany, B.S., *magna cum laude*, 1992

## ADMISSIONS

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- New York
- United States District Court (EDNY)
- United States District Court (NDNY)
- United States District Court (WDNY)