Protecting New York’s Environment in the Federal System

Office of
New York State
Attorney General
Eric T. Schneiderman
Environmental Protection Agenda

- State Sovereign Interests in Environmental Protection
- Air Quality
- Climate Change
- Energy
- Water Quality
Federalism and the Environment

- Federal Statutes (CAA, CWA)
  - Passed by Congress where States represented
  - Set uniform minimum floor of environmental protection
  - Cooperative federalism: State and Federal regulation and enforcement
  - Citizen suits
Legal Tools, Levers and Other Policy Drivers

- Compel or defend Federal action under existing federal law
- Sue polluters directly
- Defend State action
NY AG History on Fighting Acid Rain (1980s on...)

- First-time AG involvement in federal rulemakings ("Tall Stack" regulations, etc...)
- First-time state-use of citizen suit provisions of CAA
- Successful defense of state acid rain regulations
- Forming successful coalitions of states, NGOs, scientists
- Actively engaging Congress CAA Amendments of 1990
Clean Air Advocacy:
Convergence of Air, Energy and Climate Policy

- Bringing deadline suits for CAAA of 1990 Implementation
- Petitioning EPA on interstate air pollution control
- Cross-State Air Pollution Rule, Mercury and Air Toxics Standard, Clean Power Plan
- Suing polluters directly under the “New Source Review” provisions of CAA
New Source Review (NSR) Cases 2000- Present

- Reached settlements requiring retirement or pollution control upgrades at:
  - 106 coal fired boilers
  - 13 cement plants
- Internal estimates of total annual emissions reductions:
  - ~660,000 tons SO$_2$
  - ~200,000 tons NO$_x$
- Civil penalty monies used for environmental mitigation projects
NY AG actions on Acid Rain and Air Quality have served as a blueprint for actions on Climate Change

- Suing EPA for failure to regulate GHG emissions
- Defending EPA’s “Endangerment Finding”
- Sued the 5 largest power plant companies for public nuisance
- Successfully defended NY’s RGGI regulations
- Deadline suits for 111(d)
- Participation in rulemakings
Aquatic Invasive Species and Vessel Ballast Water Discharges: Achieving Clean Water Act Controls for Biological Pollution

- CWA purpose “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters”
  – 33 U.S.C. § 1251(a)
- EPA denies petition to repeal regulatory exemption- 2003

(continued →)
Aquatic Invasive Species and Vessel Ballast Water Discharges under the CWA

• Six Great Lakes States and NGO’s prevail in lawsuit to vacate ultra vires regulation – NWEA, NY et al. v. EPA, 537 F. 3d 1006 (9th Cir. 2008)

• NY comments on EPA’s Nationwide Vessel General Permit – 2008

• NY prevails in lawsuit defending protective conditions in CWA § 401 State Water Quality Certification – Port of Oswego Auth. v. Grannis. 70 AD3rd 1101, lv. denied, 14 NY3d 714 (2010)