

# *Sustainable* JUSTICE



BY ALEXANDER G. BOMSTEIN

**I**n 1989, when the environmental boutique now known as Manko Gold Katcher & Fox spun off from Wolf Block Schorr & Solis-Cohen, *green* was the color of money: an adjective, never a verb. The year the *Exxon Valdez* spilled its toxic guts into Prince William Sound, attorneys at the newly hatched firm took notes on legal pads made of recycled paper and printed letters on recycled stationery. “Environmental stewardship has been part of our culture from the get-go,” affirms John S. Kirk, Manko Gold’s director of administration. Theirs was a rare sentiment at the time.

Twenty years have seen a climatic shift in public consciousness concerning environmental stewardship, a shift that has begun to work its way into mainstream corporate and legal culture. In the last couple of years, law offices have picked up tremendous speed both in becoming better environmental stewards and in developing their practices to reflect the growth of business in renewable energy, green building and related activities.

The reasons for the trend are manifold.

For starters, it’s just good business. The U.S. Chamber of Commerce and the law firm of Pillsbury Winthrop Shaw Pittman conducted a 2007 survey of American businesses’ greening efforts, finding that more than half had made recent changes to their practices, including the increased use of recycled products and the reduction of their electrical use. In fact, the majority of America’s corporate leaders, according to McGraw-Hill Construction’s 2007 *Greening of Corporate America* report, now consider greening to be consistent with their profit mission, while 15 percent are actively transforming their companies into green organizations. It’s clear which way the winds are blowing.

Dusty Kirk, partner in the Pittsburgh office of Pepper Hamilton and leader in the firm’s newly formed Sustainability and Climate Change Team, sees a need for law firms to adapt. “What we want to do is to make sure we are ahead of the curve. We’ll still be protecting our clients, but we have to understand the changing world in which they live.” Many large Pepper Hamilton clients, such as Eli Lilly and GlaxoSmithKline, already have sustainability policies in place. *Sustainability* has been described as “a characteristic of living things that embodies the possibility of flourishing forever.” Our national economy is not currently sustainable; the energy, land, and resources it feeds on are degrading and disappearing faster than nature can restore them.

One of Kirk’s clients, Wal-Mart, now asks its vendors to consider sustainability in their own practices. Wal-Mart hasn’t required Pepper Hamilton to have a sustainability policy — yet — but Kirk sees it as good business sense not to wait until that day. Robert McKinstry, co-founder of Ballard Spahr’s environmental practice group, adds that law firms and other industries are eventually going to be “forced to embrace some of these policies by their customers.”

Promoting conservation at the office can save firms money as well. While the legal industry does not consume resources or generate greenhouse gases on the scale of, say, heavy manufacturing,

lawyers consume large quantities of paper: between 20,000 and 100,000 sheets per attorney per year, according to an informal survey conducted by Arnold & Porter in 2006. They also travel by air frequently and work from office buildings that churn through massive amounts of energy in lighting, heating, cooling and running appliances. Conservation entails using less and spending less. Nowadays, firms that are planning comprehensive environmental initiatives often direct those savings to changes that cost money, such as buying paper with more recycled content.

But when you ask lawyers why they’re doing it, it’s not because of business forecasts or cost savings. It’s because it’s the right thing to do. Attorneys working to make their firms more sustainable cite environmental conservation as their and their firm’s re-

sponsibilities as educated and relatively influential citizens. “I don’t look at this as just an economics issue,” Kirk says, “it really is the sustainability; it’s the conservation of the resources. And I think more and more people are turning to appreciate that.”

#### THERE’S MORE THAN ONE WAY TO GREEN A FIRM

In the last year or two, Philadelphia area law offices have made great strides in planning and implementing new environmental policies, but they do not all work from the same model.

Duane Morris’s greening began with central planning through the firm’s facilities management group, a pre-existing body with the proper expertise and focus to move forward on changes in energy use, recycling and the like. This firm has been implementing such changes on a rolling basis, typically during build-outs and renovations at its various offices. These changes include the obvious, such as replacement of incandescent lighting with more energy-efficient lighting and installation of recycling bins in offices, to the less-obvious, such as purchases of energy-efficient appliances and office products made from recycled materials, including ceiling tiles, floor substrates, and furniture.

Seth v.d.H. Cooley, chair of Duane Morris’ environmental law practice group, explains that, while the facilities management group includes no lawyers, lawyers have contributed their own ideas. The firm’s new Renewable Energy and Sustainability practice group in particular has been a breeding ground for discussions of policy changes. Within the energy and environmental practice groups, as Cooley describes, “There’s universal excitement about this.”

Nixon Peabody has taken a different approach, making headlines in its appointment of counsel Carolyn Kaplan as chief sustainability officer — a position previously unheard of at a law firm. Although Nixon Peabody’s offices had made progress on sustainability on an office-by-office basis, the firm didn’t launch its unifying firm-wide initiative, called Legally Green, until November 2007. While other institutions have similar positions, Kaplan has not heard of another law firm with a CSO. According to Kaplan, the position itself “might be broad, including concepts such as pro bono and diversity and health benefits as well as internal sustainability, but we at Nixon Peabody have divided it up.”

Nixon Peabody administers Legally Green through its Green Operations Steering Committee, which includes Kaplan as well as several officers in charge of administration, purchasing and infor

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mation technology. Each Nixon Peabody office has a local sustainability team comprising attorneys and staff interested in sustainability, and led by the office administrator. Fox Rothschild operates off a model similar to that of Nixon Peabody in organizing a central committee to direct its sustainability initiative, but also creating subcommittees to investigate particular proposals, with local committees at each office.

Kaplan remarks that, as Cooley found at Duane Morris, “There’s a synergy between our environmental sustainability program and our green practice areas.” Nixon Peabody’s clients have taken interest in the firm’s strides, and have even begun to ask the firm for ways in which the clients can make themselves more sustainable – inquiries that have also yielded more business for the firm.

Ballard Spahr’s newly developed Commitment to Sustainability embraces a concept of the term that goes beyond the environmental responsibility promoted at other area firms. Robert McKinstry participated in drafting the ABA Model Sustainability Policy and Implementation Guidelines for Law Organizations after which Ballard Spahr’s Commitment to Sustainability is modeled. Indeed, Ballard is one of the Pilot Firms of the ABA’s Section of Environment, Energy and Resources (SEER), a designation shared by Manko Gold. Pilot Firms agree to adopt resolutions in line with the policy and “develop and execute an implementation plan that takes into account the guidelines and checklist” developed by SEER.

The model policy is one of *sustainable development*, a concept which emphasizes, as McKinstry puts it, “the three legs of the tripod: economic development, social equity, and environmental sustainability.” This is also known as the Triple Bottom Line, a concept widely used in corporate sustainability policies. As of this writing, Ballard Spahr is in the process of developing initiatives to implement its Commitment to Sustainability.

#### **BUT WHAT IS THERE TO DO?**

Organizing a committee or drafting a policy statement by itself, of course, does little. Many of the important initiatives a law office can undertake are good ideas for most offices, regardless of the industry: double-sided printing, energy-efficient lighting and appliances, reuse and recycling of supplies,

turning things off when not needed, incentivizing employees to commute by means other than single-passenger motor vehicle — the list is endless. The EPA has partnered with the ABA in creating the ABA-EPA Law Office Climate Challenge, a program into which law offices can enroll to reduce their ecological footprint and gain recognition as a Law Office Climate Challenge Partner. The Climate Challenge Web site ([www.abanet.org/enviro/climatechallenge](http://www.abanet.org/enviro/climatechallenge)) serves as a great resource and starting point for law offices hoping to go green.

While offices can implement some policies behind the scenes, such as purchasing renewable energy, changing end-user consumption habits forms a vital part of any comprehensive campaign. And people

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in the office usually want to change, Kaplan discovered. “We have found that our employees and all our personnel have really rallied around the program.” At Manko Gold, Kirk describes the firm’s environmental consciousness as “second-nature. ... It’s part of our daily routine.”

Green building policies involve less routine and more long-term planning. Some area firms are seeking green building certification for their new office construction or renovations through the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) program. Fox Rothschild, for example, moved its Chester County office into a new space in Exton in 2006. Its office is now LEED Certified in the Commercial Interiors and Core and Shell categories.

Tricia Sadd, co-chair of Montgomery McCracken’s Sustainable Business Practice Group in Philadelphia, is the firm’s first LEED Accredited Professional, one of only a few dozen nationwide. The designation means that that attorney’s clients can earn one point toward LEED certification (in the “Innovation & Design” category) for the building projects the attorney participates in.

Having an Accredited Professional, however, is worth more than points. A LEED Accredited Professional can bring significant green building know-how to the table that the untrained cannot. Sadd says her accreditation has been a “key element” in developing Montgomery McCracken’s Sustainable Business Practice Group.

That’s no surprise, given the forecasts.

According to *Greening of Corporate America*, green building is expected to comprise 5 to 10 percent of all commercial construction by 2010. No conservation plan can afford to ignore green building, as buildings use a stunning 71 percent of this nation’s electricity and 40 percent of its total energy consumption.

Anticipating future growth, Pepper Hamilton is moving toward having LEED Accredited Professional attorneys in each of its offices, the first being Vicki Harding in its Detroit office. This is part of a broader effort, in conjunction with the firm’s internal sustainability initiative, to alter its practice groups’ strategies to reflect the growing focus on sustainability. These changes will affect not just the firm’s environmental practice group, but every other practice group as well. An increase in new energy technologies and green innovation

will affect intellectual property lawyers, for example, and tax departments must stay apprised of new federal and state tax incentives for certain environmental practices.

According to M. Joel Bolstein, co-chair of Fox Rothschild’s Environmental Practice, when Fox decided in 2007 that it wanted to launch a firmwide sustainability initiative, it scoured the nation for good firm models to draw from, and crunched its own energy use numbers to reckon the value of various proposals. It found, for example, that every 100 computers left on overnight and on weekends used the equivalent of 20 tons of coal and generated the equivalent of 50 tons of CO<sub>2</sub> emissions per year. Bolstein has spoken with Manko Gold’s John Kirk to get an experienced perspective on what

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committed to implement explicit reductions in GHGs, develop a plan to adapt to global climate change, and urge the U.S. Congress to establish a federal GHG emissions trading system. To fulfill its commitments, the city created a "Sustainability Working Group" and, in April 2007, released its widely touted Local Action Plan for Climate Change, which called for an overall reduction in GHG emissions attributable to the city and private entities by 10 percent below 1990 levels by 2010. Interestingly, by the time the Local Action Plan was created, the city government and community were already on track to decrease their GHG emissions by 11.6 percent and 8.9 percent, respectively, by the year 2010. The city expects to be able to implement additional measures to further reduce its GHG emissions by an additional 3.5 percent by 2010.

Many of the plan's recommendations focus on reducing energy use in the construction and operation of buildings, which accounts for about 60 percent of city government and community GHG emissions. Additional recommendations focus on reducing transportation energy use, improving various industry practices including waste management, increasing green and open space, and engaging in public education and outreach efforts.

The city's Local Action Plan recommended enactment of laws and internal city operation changes to achieve further GHG reductions, including: fostering Transit-Oriented Development; fostering Green Building; improving parking and reducing idling; strengthening greening and open space requirements; requiring the use of certified energy-efficient Energy Star® products in all city-financed projects; requiring achievement of energy-efficient Energy Star Homes® certifications in city-supported affordable housing; requir-

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*Philadelphia enjoys an economy-of-scale enabling interested government and private entities to stay on the cutting edge of advancements in sustainability, and a strong coalition of citizens and very well organized community, non-profit and public-private partnerships promoting sustainable industries and practices.*

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ing city construction and renovation projects greater than 10,000 feet to achieve Leadership in Energy and Environmental Design (LEED) "Silver" certification and use 20 percent less energy than standard practices; and establishing an Office of Sustainability and Environment.

In his campaign, Mayor Michael Nutter stated that his goals include making Philadelphia a leader in sustainability and achieving resultant economic benefits. Last year, Mayor Nutter set forth his plans for a greener Philadelphia in a campaign white paper titled "The Nutter Plan for a Sustainable Philadelphia Environment Now and Tomorrow." The Nutter Plan, available at [nutter2007.com/images/uploads/Sustainability.pdf](http://nutter2007.com/images/uploads/Sustainability.pdf), consists of five components:

- Create a Sustainability Cabinet of department heads and senior officials, headed by a Sustainability Coordinator, whom Nutter recently identified as Dr. Mark Allen Hughes
- Reform the governance and funding of Fairmount Park
- Coordinate agencies and departments to reduce the city's energy consumption by at least 10 percent each year
- Achieve solutions to a variety of additional problems, including the ten identified by the Next Great City Coalition (go to [nextgreatcity.com/actions](http://nextgreatcity.com/actions) for more information)
- Brand Philadelphia as a City of the Future and pursue environmental innovation relentlessly with the goal of creating opportunities for Philadelphians

Like the Local Action Plan, the Nutter Plan calls for specific actions, including: increasing the number of LEED accredited professionals employed by the city by 25 employees; adding LEED specifications to all City construction and maintenance RFPs and RFQs; implementing LEED for Existing Buildings-based plans for municipal buildings; pooling the city's green purchasing power with other cities; creating a Sustainability Advisory Group; and providing assistance to revise the city's Building and Zoning Codes and urban planning practices to emphasize sustainable design.

On top of these goals and action items, Mayor Nutter announced his appointment of Andy Altman as both commerce director and deputy mayor for planning and economic development. Meanwhile, Mayor Nutter has been making appointments to the city's Zoning Reform Commission. Although we have yet to see what green initiatives Altman and the Zoning Reform Commission will pursue, these appointments will no doubt aid the city to develop and implement significantly improved planning and zoning to build a sustainable Philadelphia while stimulating economic prosperity.

The city has already implemented a number of practices to reduce GHG emissions. By April 2007, the city had achieved significant GHG reductions by improving procurement, construction and facility management, replacing traffic lamps with light emitting diodes (LEDs), purchasing wind energy, constructing a facility to capture and utilize sewage treatment plant gases, and switching from coal and fuel oil to natural gas.

Prior to that, November 2006 marked the effective date of the city's revised stormwater control regulations, which are among the most demanding in the country. The regulations are intended to reduce stream erosion, flooding, and groundwater recharge losses caused by collecting and quickly removing stormwater from developed properties, which in preceding decades was recognized at Pennsylva-

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works and what doesn't. Kirk speaks on the topic frequently and is a good go-to person for those with questions on greening their firms.

What a law office should do depends on its individual circumstances, and sustainability leaders at firms recommend starting out cautiously. Kaplan advises firms to test particular changes on a small-scale before rolling them out firmwide. Each firm needs to find what gives it the most "bang for the buck," says Kaplan.

#### LOOKING TO THE FUTURE

Sadd is philosophical about the incremental changes seen at law firms dur-

ing the past few decades. "It's a matter of progress, not perfection." Although progress seems slow, it has come a long way since the old consensus embodied in the late Milton Friedman's dismissive "the business of business is business." That narrow approach, McKinstry finds, can blind businesses to the discovery that sustainability "is a very good strategic approach." Just as law offices have embraced pro bono and diversity efforts, neither of which primarily concerns itself with profit, they now are beginning to embrace sustainability. "Lawyers are as well educated as any group in society," notes Bolstein. "They're well-read, they pay attention to

the news, and I think that makes them even more conscious of the fact that we all need to take action to create a sustainable environment."

The momentum is gathering. "There's going to be a train leaving the station and everybody's going to have to be getting on it," Bolstein says, "because you're not going to be the firm that's doing zero to help the environment. Once people figure it out, they'll get on board." ■

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*Alexander G. Bomstein is an associate at the law firm of Pepper Hamilton LLP. His e-mail address is bomsteia@pepperlaw.com*

nia common law as the "common enemy." In a nutshell, the stormwater regulations allow a number of means to reduce the quantity and velocity of stormwater runoff, and to increase the quality of that runoff. The runoff reductions and water quality improvements can be met through a wide variety of Best Management Practices (BMPs), such as disconnecting impervious surface area from stormwater management facilities, creating slow-draining detention basins, and constructing "rain gardens," pervious pavement and green roofs. The Water Department recently announced a policy of providing a fast-track 5-day "Green Project Review" of qualifying projects. To cover its costs and incentivize the use of BMPs, on November 1, 2008, the department will begin charging each nonresidential property a stormwater fee based on its ability to reduce stormwater runoff.

City Council has already proposed and enacted regulatory changes and adopted resolutions specifically designed to reduce GHG emissions and improve sustainability. In its January 2008 sessions, City Council passed a resolution authorizing the Committee on Environment to examine the airport's recycling policies and goals and explore alternatives to increase its recycling and referred to the Environment Committee a bill requiring city-financed construction, extension or renovation exceeding a gross floor area of 10,000 square feet to achieve at least a Silver LEED rating, or the equivalent.

Also in 2007, City Council passed a resolution authorizing the Committee on Environment to investigate the School District's use of green technologies in the construction and renovation of school buildings and explore the feasibility of using technologies such as LEED for all school construction and renovation activities.

Finally, City Council considered other green bills last year that lapsed but are expected to be introduced this term. These include a bill requiring that LEED or similar green building design standards and Energy Star® ratings must be achieved for all construction, extension or renovation exceeding 50 percent of the gross floor area of any structure exceeding 4,000 square feet in gross floor area for which a building or use permit is required, except for single family dwellings. Another bill amends the city's Zoning and Planning Code to add a new commercial district labeled a

Transit-Oriented Development (TOD) District. TOD is defined as "development that supports the use of public transit, as well as walking and bicycling." The bill would allow and require unique elements for TOD Districts to foster mixed-use, higher density development near transit stations.

In order to have a positive impact on the city's sustainability efforts, the bills must be followed by the development of sensible implementing regulations, policies, procedures and the addition of many qualified staff. To minimize implementation problems, interested entities should follow these bills, participate in hearings and provide input into their content.

An important issue for developers is whether the benefits of achieving LEED certification override the construction, operation and management costs. A recent survey, "2007 Green Survey: Existing Buildings," was conducted jointly by Real Estate Media, the Building Owners & Managers Association International and the U.S. Green Building Council. Its results indicate that tenants are increasingly looking for LEED-certified space, and nearly 20 percent are willing to pay at least a 5 percent premium for it. Most developers stated that the added costs range in the single digits, and about 60 percent said that they enjoyed a positive ROI through savings on energy and water use, and are largely offset by energy and tax credits and, of owner-occupiers, by employee retention and recruitment. Respondents were split on whether further green initiatives take the form of financial incentives that would avoid penalizing builders with less capital, versus government mandates for green buildings, which would force architectural and engineering professions to stay abreast of advancements in building design and certification. These results suggest that, if properly drafted and implemented, the pending and anticipated green initiatives can achieve their green goals while satisfying the city's citizens and developers. ■

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*Paul M. Schmidt is co-chair of the Environmental Practice Group of the law firm of Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C. and a member of the Philadelphia Bar Association Real Property Section's Executive Committee. His e-mail address is pmschmidt@zarwin.com.*