

THE DAILY REPORTER

COLUMBUS' ONLY DAILY BUSINESS AND LEGAL NEWSPAPER - ESTABLISHED 1896

Growth in renewable, clean energy industry has turned attorneys green

By JACKIE NASH
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Green energy is growing in popularity for businesses looking to protect the environment and perhaps save some of the other type of "green," and that growth has resulted in new or expanded areas of practice for law firms.

Michael Zimmer, attorney at Thompson Hine LLP and co-chair of the American Bar Association's Renewable and Distributed Energy Resources Committee, said the distribution of advanced (clean) and renewable energy is one of the fastest growing areas of law.

"It's a transformative experience, it's not an industry that is a temporary transition, and the transformative effect of clean-tech, renewable energy in the manufacturing, building and consumer-product marketplace will be as extensive as the Internet revolution when the Internet was brought online and became part of the fabric of our society in the '80s and early '90s. I think this is going to become the fabric of our society," Zimmer said.

As environmental development has expanded, so has the need for effective counsel that specializes in the field, and as law students and new attorneys recognize that need, more are shifting gears to concentrate on the field.

"What we are seeing is a lot of interest in the law schools, and a lot of interest in our young people going through college right now, who are focusing on sustainability or environmental-related issues. It's an area that they want to serve and be specialized in or dedicated to in the future," Zimmer said.

"A lot of law schools are now starting to accelerate the inclusion of renewable energy programs, patent intellectual property programs and things like that to make sure that the specialized skill sets are now being taught."

Also indicative of a boost in environmental law interest is the growing membership of some ABA committees, Zimmer added. The ABA Renewable and Distributed Energy Resources Committee has grown 10 to 12 percent in the past year, and its Climate Change Committee membership also increased considerably, he said.

Zimmer said there are three main reasons why it is necessary for renewable energy facilities to have legal counsel: to help them avoid disputes or problems; to aid with regulatory issues, such as contracts and permits; and to help companies realize potential tax and grant incentives.

"These are very specialized incentives — grants, loan guarantees or other programs of federal, county and state nature that you want to make sure you avail yourself of, or know that they might be available as part of your project or as part of your company's plans. If you aren't aware of the nuances of these programs and what they offer, you will not be serving your client well," Zimmer said.

Currently, most environmentally focused attorneys are working with fledgling companies that are looking for help finding financing options, drafting provisions, disseminating contracts so that problems don't occur down the road, anticipating issues and allocating risks between other parties involved.

Although disputes regarding advanced and renewable energy projects are relatively uncommon now, they

could occur in the future and it is important to have counsel to alleviate the potential for litigation.

"There are a lot of forecasts yet to come as there is more market penetration in these projects ... There could be disputes or claims regarding green building performance, concerns about indoor pollution in buildings — if the buildings are tightened up to avoid air flows and avoid loss of energy, creating potentially unintended consequences," said Zimmer.

David Nash, partner at McMahon DeGulis LLP, noted that the need for attorneys in the alternative energy field mainly is due to the ominous red tape that burdens many new companies. Because companies have to go through so many separate entities to obtain permits, it helps to have an attorney tie up all loose ends, he explained.

"Eventually, as the state of Ohio gets experience with these types of projects, I think you will see a move toward revising our statutes, and revising the rules, ordinances and zoning to responsibly site these exciting clean energy projects. ... We are working with regulators to invent a template and fill gaps that are in the existing regulatory structure," Nash said.

Despite the cumbersome regulatory process energy facilities have to go through, the advanced and renewable energy industry has continued to flourish, he said.

"We got one new solar project and one new wind project just yesterday, so things are moving fast, and I think that's true for all lawyers in the state of Ohio," Nash said, adding that McMahon DeGulis LLP is the largest Ohio firm working with advanced and renewable energy facilities.

The firm's recent projects include working to put wind turbines in Lake Erie — the first wind-turbine project that would be developed in fresh water, Nash explained.

However, he noted, the alternative energy field has been growing for several Ohio law firms, especially bigger firms in Columbus that have traditionally represented utility practices.

"The renewable and advanced energy market in the United States generally, and in Ohio, is really like the wild, wild west in the sense that it's all brand new," Nash said. "People perceive a gold rush, and people have to be careful or they'll get burned, whether you're a developer or a landowner, or even a utility, and we also see lots of lawyers joining the gold rush too. ... They are really learning fast and they are really working hard to figure it out."

Nash added that a potential source for litigation with alternative energy projects, is location, as it pertains to safety risks.

"I think lawyers are especially suited to resolve those stakeholder differences," he said. "But Ohio residents have been very receptive to these projects because they know they mean jobs."

Suzanne Fisher-Edwards, partner at McMahon DeGulis LLP, said litigation in the advanced and renewable energy industry is nearly nonexistent now, because so many businesses and attorneys are just jumping on board.

"Even just two years ago, there was 'What's this renewable stuff?' But now, everybody wants to know how it can benefit their business," Fisher-Edwards said.

"We are really at the front end of things, getting things set up contractually and going through the regulations," she said. "It's an exciting time."