

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

Proposed Amendments to the Environmental Assessment Forms
appended to Title 6 of the Official Compilation of Codes, Rules
and Regulations of the State of New York (6 NYCRR) Part 617
(State Environmental Quality Review [SEQR])

SUMMARY HEARING REPORT

- by -

_____/s/_____
Daniel P. O'Connell
Administrative Law Judge

February 25, 2011

Proceedings

To provide members of the public with the opportunity to comment about proposed amendments to the Environmental Assessment Forms appended to Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) part 617 (State Environmental Quality Review [SEQR]) a legislative hearing convened at 1:00 p.m. on January 25, 2011 in Public Assembly Room 129 A at the Department's Central Office located at 625 Broadway, Albany, New York. The Environmental Assessment Forms are model forms used by agencies when they assess the potential environmental significance of actions that may be undertaken, funded or approved.

Staff from the New York State Department of Environmental Conservation, Division of Environmental Permits (Department staff), requested an administrative law judge (ALJ) from the Department's Office of Hearings and Mediation Services to conduct the January 25, 2011 legislative hearing. The matter was assigned to ALJ Daniel P. O'Connell.

Department staff published the Notice of Proposed Rulemaking (the Notice) in the Department's *Environmental Notice Bulletin (ENB)* on November 24, 2010. Department staff also published the Notice in the *New York State Register* on November 24, 2010 (Volume XXXII, Issue 47). In addition to the legislative public hearing session held on January 25, 2011, the Notice provided a written comment period until February 18, 2011. As set forth in the Notice, written comments were directed to the attention of Robert Ewing in the Division of Environmental Permits. In a subsequent Notice published in the *ENB* on February 16, 2011, Department staff extended the written comment period until April 8, 2011.

The Environmental Assessment Forms are required by Environmental Conservation Law (ECL) § 8-0113 (State Environmental Quality Review Act [Rules and Regulations]). The rulemaking procedures, which provide for a legislative hearing, are outlined in Article 2 of the State Administrative Procedure Act.

Summary of Oral Statements

Approximately 30 people attended the legislative public hearing on January 25, 2011. A stenographic record of the hearing was made. On February 3, 2011, the Office of Hearings and Mediation Services received the transcript of the legislative hearing.

The following is a brief summary of the statements made at the legislative hearing held on January 25, 2011. Department staff will be preparing a responsiveness summary with respect to all comments received.

Jack Nasca is the Director for the Division of Environment Permits. During his presentation on behalf of **Department staff**, Mr. Nasca outlined the proposed revisions to the full Environmental Assessment Form (EAF) and the short EAF. Pursuant to ECL 8-0113(2)(1), the Department is required to prepare model forms, which are appended to the regulations at 6 NYCRR part 617. The current forms are out-of-date. The full EAF has not been substantially revised since it was initially adopted in 1978. The short EAF was last revised in 1987.

The proposed revisions include new environmental issues such as, brownfield remediation, environmental justice, pollution prevention, and potential impacts related to climate change. Elements of the visual EAF, which is currently a separate form, would be incorporated into the proposed forms. The length of the proposed short EAF would increase from two to four pages in an effort to encourage its use for most Unlisted Actions.

In order to complete the forms with reliable information, Department staff proposes to develop a companion workbook that would provide links to spatial data. For example, if a project would be located near a regulated freshwater wetland, the workbook would link to digital copies of the promulgated freshwater wetland maps in order to identify the applicable wetland. Department staff anticipates that the forms would be posted on the Department's website as either a fillable PDF document, or in some other format where a completed form could be printed out or filed in electronically.

William Cook is the Director of Government Relations for **Citizens Campaign for the Environment** (CCE). CCE is a not-for-profit environmental and public health advocacy organization with 80,000 members. Mr. Cook stated that CCE supports Department staff's efforts to update the EAF, and noted that the proposed amendments are a significant step in the right direction.

CCE proposed some revised language for Department staff's consideration. For example, in the proposed forms the terms, "in the vicinity" or "near" are used. CCE recommended that these terms be defined and, if possible, quantified to avoid ambiguity. With respect to air impacts, CCE recommended that mobile sources of air emissions associated with the construction phase(s) of a project should be identified as a potential impact. Mobile sources should include the transportation of construction personnel, equipment, and building materials to the site.

CCE recommended that sponsors for smaller projects should be required to consider alternative green infrastructure. For example, waste water discharges associated with storm water runoff, and point sources should be addressed on site using green infrastructure.

CCE opposed inquiries in the proposed forms concerning job creation and protection. According to CCE, such considerations should be kept separate from the consideration of the potential environmental impacts associated with a particular proposal.

CCE appreciated the importance of being able to complete the proposed EAF quickly, with accurate information, and the need for agencies to review the completed forms in a timely manner. On behalf of CCE, Mr. Cook advised that he would be filing additional written comments before the close of the comment period.

Roger Downs is the Conservation Program Associate with the **Sierra Club, Atlantic Chapter**. The Sierra Club is a volunteer-led environmental organization dedicated to protecting New York's air, land, water and remaining wild places. The Sierra Club, Atlantic Chapter, has 38,000 members.

The Sierra Club supports the amendments to the proposed forms. Mr. Downs noted that since the forms were originally

issued, many communities have significantly modernized their zoning and comprehensive plans to keep pace with the growing complexity of New York's landscape. Accordingly, the forms should also be updated to include topics related to climate change, smart growth, energy efficiency, brownfield cleanup and redevelopment, environmental justice, and biodiversity planning and protection.

Although the proposed forms would be longer than the current ones, Mr. Downs stated that, when completed, the proposed forms would provide a comprehensive assessment, which in turn would avoid subsequent requests for additional information from reviewing agencies. Mr. Downs noted that requests for additional information often extend the local review of projects, and increase their costs.

With respect to enforcement, Mr. Downs noted that accurate and comprehensive SEQRA assessments facilitate the review and understanding of proposals by planning boards, environmental groups, and members of the public. With the proposed forms, Mr. Downs said that uncertainty and speculation about proposals should be removed from the review process.

To ensure that the information presented in the forms is accurate, the Sierra Club recommended including space to identify the bases for responses or to provide references. For example, the bases for statements related to endangered species, and cultural resources should be required. With respect to the former, the project sponsor could provide biological survey results. With respect to the latter, the project sponsor could provide documentation from an archeologist, or other sources such as the Natural Heritage Program or New York State Office of Parks, Recreation and Historic Preservation.

Sierra Club greatly appreciated incorporating climate change considerations in the proposed full EAF. Climate change considerations would be applicable to Title 5 air permits, and the associated greenhouse gas emissions. Sierra Club recommended that the workbook include instructions about completing the climate change portion of the full EAF. Sierra Club also recommended that developers of mid-size and large projects provide information about the anticipated carbon footprint of their proposals. According to Sierra Club, the inquiry would prompt developers to consider more efficient alternatives when designing and developing their projects, which

in turn would save development, construction, and operating costs.

Kari Gathen, Esq., is an attorney from the Office of General Counsel, **New York State Department of State** (NYS DOS). Ms. Gathen provides counsel for the State's Coastal Management Program. In addition to the State's Coastal Management Program, Ms. Gathen said that the NYS DOS implements a number of other local government programs. In addition, the NYS DOS provides training and other services to local governments.

With respect to the implementation of the State's Coastal Management Program, the NYS DOS assists local governments to develop Local Waterfront Revitalization Plans, and State agencies to undertake the State Consistency Review. Ms. Gathen explained that projects located in the coastal area, or projects requiring State permits or approvals that may affect coastal uses or resources of New York State must be reviewed to determine whether they would be consistent with the State's 44 coastal policies. Ms. Gathen explained further that NYS DOS is also responsible for undertaking the federal consistency review when a federal permit is involved.

NYS DOS recommended the following changes to the proposed full EAF concerning coastal resources. On page 2 of the full EAF under Section B(1)(i) entitled, *Coastal Resources*, the question at B(1)(i)(i) asks, in part, whether the project would be located in "a Coastal Management Area."

Ms. Gathen said that Executive Law Article 42 governs the implementation of the Coastal Zone Management Act. NYS DOS recommended that the language in the full EAF should be "within the coastal area," rather than "within a coastal management area." Ms. Gathen explained that the reference to the "coastal area" would mirror the language in Executive Law Article 42, which defines the term.

Furthermore, Ms. Gathen noted that the term, "coastal area" is broadly defined in the Executive Law, and would include shorelines, barrier islands and so forth. Ms. Gathen noted further that Executive Law Article 42 also defines the term, "coastal area boundary," which references a map filed with the NYS DOS Secretary on which is delineated the State's coastal boundary. A coastal consistency review is likely when a project would be located within the coastal area boundary.

Ms. Gathen observed that the question at Section B(1)(i)(i) of the proposed EAF also refers to "the waterfront area of a Designated Inland Waterway." Ms. Gathen stated that this second phrase is not necessary and, for the following reasons, should be deleted from the proposed full EAF. Ms. Gathen explained that Executive Law Article 42 also applies to designated inland waterways. In New York State, designated inland waterways are not part of the coastal area. Rather, they may be inland lakes, streams, or rivers where local communities have expressed interest in developing a local waterfront revitalization program. According to Ms. Gathen, a "legislative process" is required to designate an inland waterway. Prior to this designation, NYS DOS must approve a community's local waterfront revitalization plan.

NYS DOS recommended adding a reference on the proposed full EAF that would direct a developer to complete the Coastal Assessment Form to ensure compliance with Executive Law Article 42. The Coastal Assessment Form, among other things, identifies the previously mentioned 44 policies; with respect to Long Island Sound there is a subset of 13 policies.

At Section B(1)(i)(ii) of the proposed EAF, Ms. Gathen noted there is a question whether the project site is "located in a community with an approved Local Waterfront Revitalization Plan." Under this circumstance, Ms. Gathen said projects would be located in either the coastal area or a designated inland waterway with a NYS DOS-approved local waterfront revitalization plan. Projects that would be located in designated inland waterways must comply with the applicable local waterfront revitalization plan.

On page 3 of the proposed full EAF, Ms. Gathen noted there is a question at Section C(2)(b) about whether a project would be located, among other places, in "a local waterfront revitalization planning area within a coastal area or adjoining a designated inland waterway." Ms. Gathen said that this portion of the question at C(2)(b) is not necessary because inquiry was made above in Section B. Ms. Gathen said that NYS DOS would be providing additional comments in writing before the close of the written comment period.

Written Comments

As provided by the Notice, all written comments were directed to Mr. Ewing's attention. Therefore, any written comments received are not summarized in this Hearing Report. Those interested in reviewing the written comments filed with respect to the proposed amendments to the Environmental Assessment Forms should contact Mr. Ewing in the Department's Division of Environmental Permits (625 Broadway, 4th Floor, Albany, New York 12233-1750).