

1 NEW YORK STATE
2 DEPARTMENT OF ENVIRONMENTAL CONSERVATION

3 In the Matter of
4 PUBLIC MEETING

5 for
6 COMMENTS ON THE REPORT:
7 RECOMMENDATIONS FOR THE NYSDEC
8 ENVIRONMENTAL JUSTICE PROGRAM

9
10
11 DATE: February 11, 2002

12 TIME: 6:14 p.m. to 7:11 p.m.

13 LOCATION: Rochester City Hall Council Chambers
14 30 Church Street
15 Rochester, New York

16 BEFORE: Winnie Deloayza, Facilitator
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1 FOR THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

2 Monica L. Abreu Conley, Esq.

Drusilla Pagan

3 Jeff Gregg

Peter Lent

4 John Hicks

Ed Dardy

5

ALSO PRESENT:

6

Jeff Gregg

7 Brian Lakeman

Kevin Hilton

8 Paul Sawyko

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1 (The meeting commenced at 6:14
2 p.m.)

3 MS. DELOYAZA: It's a small group,
4 but maybe can all introduce ourselves, just to go
5 around, since it's kind of an informal meeting now.

6 I'm Winnie Deloayza, I'm a
7 facilitator, and basically my role is to -- is -- is
8 to make sure that everybody gets heard within the
9 evening in our discussions.

10 So, let's --.

11 MR. LAKEMAN: I'll begin. My name
12 is Brian -- my name is Brian Lakeman. I'm -- I am a
13 transportation planner with the -- with the Genesee
14 Transportation Council.

15 MR. HILTON: I'm Kevin Hilton, the
16 manager of environmental affairs for Rochester Gas
17 and Electric.

18 MR. SAWYKO: I'm Paul Sawyko, I'm
19 the environmental quality coordinator in Rochester
20 Gas and Electric.

21 MS. PAGAN: Drusila Pagan, Division
22 of Fish and Wildlife.

23 MR. GREGG: Jeff Gregg with the
24 D.E.C. Division of Environmental Permits. I'm one of
25 the two people the Department hired to actually

1 implement the Environmental Justice Program when it
2 gets going and all that. And I handle the upstate
3 end of it. I have a counterpart in New York City who
4 handles downstate, and I also handle Native American
5 issues and that position as well.

6 MR. LENT: My name's Peter Lent,
7 I'm the regional permit administrator for D.E.C. in
8 this -- in this region.

9 MR. HICKS: I'm John Hicks
10 (phonetic spelling), D.E.C. regional director out of
11 Avon, region eight.

12 MR. DARDY: I'm Ed Dardy, city of
13 Rochester Commissioner of Environmental Services and
14 I'm also a member of the Environmental Justice
15 Advisory Committee.

16 MS. CONLEY: And I'm Monica Abreu
17 Conley. I am the Environmental Justice Coordinator
18 for the New York State D.E.C. And I welcome you all
19 here. Thank you for taking the time out this
20 evening.

21 Small crowd, so I guess you can all
22 be heard pretty quickly.

23 I'm going to go through the -- I'm
24 going to give you a little background, a little
25 context for this meeting, and then I'm going to go

1 through the report briefly, just to kind of point out
2 a few of the recommendations that the advisory group
3 has made to D.E.C. And I'll -- I'll do it section by
4 section, giving you an opportunity to ask questions
5 and raise comments throughout the --- throughout
6 the -- the meeting.

7 Just as a way of a little
8 background, the Office of Environmental Justice has
9 been -- was created about two years ago with the
10 purpose of addressing environmental justice issues
11 throughout New York State. As part of that program,
12 my position was created, Jeff mentioned his position,
13 and Michele Moore's (phonetic spelling) down in New
14 York City. We have a program aide, secretary and
15 intern, so it's -- it's slowly growing in the right
16 direction. Initially it was just me, so I -- I'm
17 happy to see I have some help.

18 Through the -- throughout the past
19 two years the Commissioner put together, two years
20 ago, an advisory group, which consisted of community
21 people, D.E.C. representatives, local government,
22 state government, federal, business representatives
23 and academic, and everyone with an interest in
24 environmental justice from a different perspective.
25 We met monthly to create recommendations to give to

1 the D.E.C. Commissioner, so that a policy could be
2 made on E.J.

3 And it took us a while. There were
4 a lot of quite complex issues that we had to deal
5 with. And the group came out with, I think, a -- a
6 great set of recommendations; it's a starting point.
7 The D.E.C. will take these recommendations and any
8 comments that we receive throughout these public
9 meetings, and then turn around and -- and create
10 policy for D.E.C. So, this document that you have
11 before you is actually just recommendations from an
12 independent advisory body. And the Commissioner
13 hopes to incorporate as many of these recommendations
14 as -- as we can into the D.E.C. policy.

15 The purpose of -- of this meeting
16 is to talk a little bit about the recommendations,
17 get some comments from you, answer some questions.
18 The purpose of the meeting is not to discuss any
19 specific problems or -- or E.J. issues, except to
20 bring out examples. But it's primarily to give
21 comments on these recommendations so that we can
22 create a good E.J. program.

23 MS. DELOYZA: Feel free to come --
24 pull up a chair and come up a little bit closer.
25 It's a little bit difficult to hear and we have a

1 small group tonight, so let's be cozy.

2 MS. CONLEY: So --

3 MS. DELOAYZA: Thanks.

4 MS. CONLEY: -- I'll -- we'll go
5 into the report now. Is there any questions before I
6 start going into the sections of the report?

7 Okay. The report's broken down
8 into three sections. The first two sections deal
9 with permitting, and the last one deals with other
10 D.E.C. programs, other recommendations that will
11 affect other programs other than -- than permitting.

12 The first section deals with
13 permitting in general, and then the second section
14 deals with changes -- proposed changes to the State
15 Environmental Quality Review Act and other
16 process-oriented changes.

17 If you want to follow along in the
18 report, on page three, that's where the key
19 recommendations begin. And the first thing that the
20 group had to try and do was determine what permit
21 programs any environmental justice recommendations
22 would apply to. And the advisory group determined
23 that we should be looking at all major -- all -- all
24 new applications and major modifications for the --
25 the permit -- permits listed there, all the permits

1 issued by D.E.C. under Article 70.

2 We were initially looking at the --
3 we D.E.C. members of the advisory group were
4 initially looking at focusing on the larger programs,
5 the hazardous waste program, water, air. Some of the
6 members were concerned that we would miss some
7 permitting actions by limiting the application of the
8 E.J. recommendations to those few, so they
9 recommended including all of those there.

10 Next, generally is just to educate
11 staff -- D.E.C. staff on environmental justice. It's
12 still a new concept even though it's been around
13 since the early '80s, so the whole bit is just to
14 make staff sensitive to, and be able to identify and
15 address, environmental justice issues.

16 Make information more widely
17 available to the public. One of the major concerns
18 from the environmental justice community is they --
19 they don't receive -- they don't have access to
20 certain information; they don't receive it in a
21 timely manner. So, one of the recommendations was to
22 have the D.E.C. look at their public noticing
23 processes and how they get information out and make
24 sure that they're actually -- it's actually working
25 to -- to reach the -- the low-income minority

1 communities that are the concern of this report.

2 For instance, using -- rather than
3 just using small legal notices in the newspaper,
4 having written public notices which go directly, you
5 know, through a mailing list directly to interested
6 parties, using repositories, using the D.E.C. web
7 site to put as much specific information up as
8 possible.

9 There was a recommendation to hold
10 a -- to have a toll-free hot line which we have
11 installed. It just allows people to -- from all over
12 the state to call my office without incurring
13 charges.

14 And next is to enhance the public
15 notice and public participation procedures. Now,
16 this applies both to the D.E.C. and to permit
17 applicants. Initially it applies to D.E.C., as I
18 mentioned, looking at our public participation, make
19 sure that it's -- it's working.

20 Next, one of the major
21 recommendations is to issue public notices on permits
22 upon receipt rather than upon completion. Currently
23 when the D.E.C. receives a permit application, it's
24 not put in the Environmental Notice Bulletin and
25 noticed to the public until that application is

1 deemed complete. And quite often that's not for some
2 time after we initially receive an application. It
3 could be weeks; it could be months. And that's
4 critical time that the E.J. community feels they
5 could be using to review the stacks and stacks of
6 documents that -- that come in with -- with some
7 permit applications.

8 So, for all the permit applications
9 that we receive, we will be sending out, in our
10 Environmental Notice Bulletin, we'll be saying
11 that -- that we've received this application and
12 giving people contact information for where they can
13 get copies of the information.

14 Encourage applicants to conduct
15 meaningful public participation, encouraging them to
16 do introductory notices; hold meetings in the
17 community as early as possible; try to find out what
18 the issues are and resolve them before they become an
19 issue in the permit -- permit-hearing process. We
20 find that it's -- it's easier to address things up
21 front than later on when it has the potential of
22 holding up permit applications, entering litigation.

23 Providing technical assistance
24 grants. That was one of the recommendations and we
25 didn't flesh that out too much except to say that the

1 D.E.C. should, in fact, pursue providing financial
2 assurance to environmental justice advocates to allow
3 them to hire technical assistance that they need in
4 order to read -- review permit applications and
5 respond in a meaningful way.

6 And encourage alternative-dispute
7 resolutions. I mentioned, you know, a mechanism to
8 try and get the public and the permit applicant to
9 resolve their issues before we get too far in the
10 permit application. And there's two ways that any
11 decisions that are made in this alternative dispute
12 resolution process can be formalized: One would be
13 in the permit itself, for any -- any agreements
14 that -- which the D.E.C. would have the authority
15 to -- to enforce. And where there are agreements
16 outside of D.E.C.'s jurisdiction, it would be a
17 private agreement between a community representative
18 and the company to be enforced by -- by each of those
19 parties.

20 I'll stop at that point. That's
21 the first section. Any questions at this point?

22 MS. DELOYZA: This is a good time.
23 We'll spend about ten minutes in discussion on this,
24 any points of clarification or comments or thoughts
25 that you might have at this time, it's a really good

1 time to share them.

2 Now, the way this will go is we'll
3 have some time after each section, and then have a
4 general discussion at the end. But it -- this is an
5 opportunity to get that clarification.

6 MS. CONLEY: These were all pretty
7 general comments -- general recommendations.

8 None? Okay.

9 We'll move on to the second
10 section.

11 MS. DELOYAZA: We're assuming that
12 your silence means that you have nothing to say; is
13 that correct?

14 UNIDENTIFIED SPEAKER: That's a
15 good assumption.

16 MS. DELOYAZA: Right. Okay. Let's
17 go. Thanks.

18 I'm sorry, I didn't mean to --.

19 MS. CONLEY: No.

20 MS. DELOYAZA: I just wanted to
21 check it out before -- people might have just been
22 winding up in their seats when we went on.

23 MS. CONLEY: The next section gets
24 into the meat of looking at environmental justice,
25 finding the communities, doing an analysis to make

1 sure that those communities are not being
2 disproportionately burdened. Before any of that can
3 be done we need to identify where these low-income
4 minority communities are.

5 And the advisory group looked at
6 several different models for identifying low-income
7 minority communities and decided to recommend that
8 the D.E.C. utilize U.S.E.P.A. region two's program
9 that they recently came up with. It's a G.I.S.,
10 geographic information systems program that allows --
11 that using census data allows us to look at a
12 particular area, map out a community of concern based
13 on proposed impacts from a proposed facility, and try
14 and determine whether, in fact, there are low-income
15 minority communities.

16 E.P.A.'s policy, they -- they hired
17 statisticians to figure out what would be considered
18 a low-income or a minority community and the
19 statisticians came up with cutoff points. For
20 minority communities they consider -- they have two
21 numbers, an urban number and a rural number. The
22 urban cutoff is forty-eight point five percent, so a
23 community of concern would have to have forty-eight
24 point five percent or more minority residents. And
25 in a -- a rural area that number is thirty-three

1 point five percent.

2 For low income the number was
3 twenty-four point eight percent. As I mentioned,
4 these were statistically derived as meaningful
5 numbers using all census data within New York State.

6 What the recommendations start out
7 with is saying that the D.E.C. should define a
8 community of concern and determine whether the
9 community concerned is a minority or low-income
10 community. And generally this can be done by mapping
11 on -- on -- using this G.I.S. system, pinpointing
12 where the proposed facility might go, and either
13 drawing a radius around to -- around it to see --
14 well, you draw a radius around it and then using
15 the -- the application, based on census block groups,
16 you would get a defining color, which would show you
17 how many of those census block groups were, in fact,
18 minority or low-income. And calculates for the
19 entire range whether, in fact, those communities have
20 reached the -- this threshold of forty-eight point --
21 point five percent and so on.

22 Once -- once we've determined that
23 there are potentially environmental -- potentially
24 low-income or minority communities that may be
25 affected by this -- by a proposed facility, that

1 applicant would -- the applicant and the D.E.C. would
2 be required to do -- look a little more in depth at
3 the application and its effects on those communities.

4 One of the recommendations would be
5 to have the applicant complete a full environmental
6 assessment form for unlisted actions currently. Full
7 environmental assessment forms are required for all
8 type one permit applications. The recommendation is
9 that a full E.A.F. would also be used for unlisted.
10 Right now there's discretion as to D.E.C. could use a
11 short E.A.F. or a long E.A.F. and the recommendation
12 is to use the long one.

13 The thinking behind that is that it
14 provides -- it just provides a little more in-depth
15 information that would allow the D.E.C. to, I guess,
16 identify environmental justice issues. And along
17 with that there's the idea of the recommendation of
18 enhancing the E.A.F. to make sure that it captures
19 all of the information that D.E.C. will need in order
20 to make an assessment of -- of disproportionate
21 impacts.

22 Posting environmental assessment
23 forms on the D.E.C. web site: This is -- just goes
24 along with getting out as much information to the
25 public as possible. The E.A.Fs. provide the public

1 with a lot of initial information: Type of project;
2 the -- the applicant's contact information and such,
3 so the recommendation was to post this so it's easily
4 accessible by the -- by the public.

5 Require a minimum time frame for
6 making significant determinations: This would
7 actually be an amendment to the regulations, and
8 it -- it -- it seeks a change in the regulation that
9 would not -- that would prohibit D.E.C. from making a
10 significant determination until some definable
11 period, either thirty days after public notices, the
12 receipt of application or forty-five days after --
13 here it gives a range, thirty to forty-five days.

14 The thinking behind that was just
15 that it provides the community a set time where they
16 can act on -- review application material before
17 D.E.C. makes a significance finding.

18 Utilizing environmental navigator:
19 I don't know how many of you are familiar with that,
20 but currently on the D.E.C. web site there's a G.I.S.
21 portion which allows you to, you know, pinpoint a
22 facility or a geographic location and find out
23 information. So, the recommendation is for
24 permitting staff to use this and any other sources of
25 information, whether it be information from the

1 public, and use all this information to make its
2 significance determination, determine whether an
3 environmental impact statement should be completed
4 for that project.

5 Assessing significant adverse
6 environmental impacts that have disproportionate
7 adverse environmental impacts on an identified
8 minority or low-income community: That's a mouthful.
9 A lot of steps in there. The -- the D.E.C. has
10 certain thresholds and once a project reaches that
11 threshold the applicant is required to perform an
12 environmental impact statement, an in-depth review on
13 the project. And the threshold is significant
14 adverse impacts, and the -- the advisory group
15 determined that they would use that threshold as part
16 of the environmental justice analysis.

17 If a project was found to have a
18 significant adverse impact then you would go the
19 second step to see if that impact disproportionately
20 affects a low-income or minority community. If a
21 project does not have a significant adverse impact,
22 no environmental impact statement is required and
23 E.J. is -- the E.J. analysis is essentially complete.
24 So, the first trigger is having a significant adverse
25 impact, which is going to capture, you know, a lot of

1 your larger -- larger projects.

2 Once the determination is made that
3 there is significant adverse impact we're suggesting
4 that scoping be required. Currently the regulations
5 allow scoping on a discretionary basis. The D.E.C.
6 has used a practice of requiring scoping always?

7 MR. GREGG: Whenever we're the lead
8 agency.

9 MS. CONLEY: Whenever we're the
10 lead agency and the recommendation is to make that
11 within the D.E.C. standard. When we talk about
12 the -- some of the changes to D.E.C. policy - and
13 this is a good place to point this out - this is
14 something that's discretionary in the regulations.
15 D.E.C. can do it or they can choose not to. We, as a
16 practice, require scoping. Other lead agencies may
17 not require it.

18 The advisory group suggests that we
19 require scoping and then suggests that we go beyond
20 just having the D.E.C. require scoping and actually
21 suggest regulatory changes that would affect SEQRA,
22 and in essence affect other local governments or
23 other agencies and require them to follow suit and --
24 and require scoping.

25 The idea, again, with scoping is

1 just getting people to the table, inviting the
2 community, having them have some input into defining
3 what the environmental impact statement will look
4 like, what will be considered, any cumulative impacts
5 that might be considered.

6 Preparation of the environmental
7 impact statement: One of the recommendations is that
8 the D.E.C. look at their guidance documents for how
9 to conduct an environmental impact statement or an
10 impact review, and enhance that to include some
11 examples of environmental justice and kind of give
12 applicants a better idea of what they should be
13 looking for with respect to environmental justice.

14 Public comment on the environmental
15 impact statements. Currently the regulations state
16 that the lead agency must public -- must provide
17 public comment opportunity for no less than thirty
18 days, but it can be extended. And the recommendation
19 here suggests that D.E.C., in fact, extend that
20 public comment, again providing additional
21 information for communities -- additional time for
22 communities to consider information. And the
23 recommendation here is that rather than have a
24 minimum of thirty days public comment that it become
25 a minimum of sixty days public comment.

1 And requiring public hearings on
2 draft environmental statements: This is also another
3 area that's discretionary, and the advisory group
4 recommends that in all instances where an application
5 may impact a -- a low-income or minority community
6 that there actually be a hearing.

7 In doing the environmental impact
8 statement there's the suggestion that the applicant
9 go a little further and with the help of D.E.C. - and
10 this has not been completely fleshed out and I
11 welcome your comments - but the applicant and the
12 D.E.C. determine whether there's a disproportionate
13 adverse environmental impact. And the recommendation
14 for doing that would be looking at the -- the
15 facility -- proposed facility, looking at the impacts
16 and then comparing how those impacts affect the
17 community to how they would affect some other
18 reference community. And the way we defined
19 reference community was, you know, let's say we have
20 a -- a publicly owned treatment works that needs to
21 be located within a specific county. That county
22 would be used as a reference area, as opposed to if
23 you had a -- a power-generating facility that could
24 be sited anywhere in the state, the state would be
25 used as the reference community.

1 And then trying to figure out how
2 much burden is on these communities. If there's a
3 low-income or minority community involved, look at
4 the communities, try and figure out what
5 environmental burdens already exist, and figure out
6 on a case by case as to whether there's a
7 disproportionate burden. This part of the
8 recommendations report is not completely fleshed out.

9 It says case-by-case basis because
10 nationally there really is not set way to determine
11 disproportionate burden. And we're kind of hoping
12 that the E.P.A. -- and they've been working on this
13 for many years now, we're hoping that they in fact
14 will, in the next couple years, come out with a
15 definable methodology as to how to calculate
16 disproportionate impacts.

17 Traffic-generating facilities:
18 Primarily in more urbanized areas environmental
19 justice advocates felt that you could have a facility
20 that impacted traffic and it wouldn't quite meet the
21 threshold for requiring an environmental justice --
22 environmental impact statement. So that the
23 recommendation was to look at the thresholds that are
24 used for traffic-generating facilities and perhaps
25 amend that threshold to make sure that -- that in --

1 these facilities are being captured and -- and
2 require an environmental impact statement where they
3 may affect a community.

4 For instance, solid waste treatment
5 facilities that have a lot of truck traffic, a lot of
6 diesel, they may not -- they may not rise to the
7 thousand-vehicle threshold that currently exists. It
8 may be a lot lower, but the diesel emissions may
9 still be significant and -- and affect that community
10 greatly.

11 Permit renewals: I mentioned
12 earlier about what -- I talked a little about what
13 permit applications would be considered for the
14 environmental justice recommendations. I said
15 major -- major -- new permits and major
16 modifications. I didn't mention renewals or -- or
17 minor modifications.

18 Renewals are dealt with separately.
19 They're not going to automatically trigger an
20 environmental justice analysis. But there is the
21 idea that sometimes -- or -- or the perception that
22 D.E.C. rubber stamps renewals and doesn't look
23 completely into the application, any new information
24 that's received. So, the advisory group has
25 recommended that the permit -- permit application

1 reviewer and the D.E.C.'s Division of Environmental
2 Enforcement work closely together to ensure that
3 there are no outstanding violations at a particular
4 facility that's seeking renewal. If there are that
5 those violations are taken care of.

6 Additionally, this section points
7 out that the D.E.C. already has authority to treat a
8 renewal as a new application if some new information
9 arises regarding the -- the impacts of that -- that
10 facility. So, we just wanted to point that out to
11 the community, that -- that it is a possibility and
12 should information come to our -- come to us
13 regarding the need to treat a renewal as a -- as a
14 new permit application, it can be done.

15 And that's -- ends that section.

16 MS. DELOYAZA: So, now we -- the
17 people have questions or comments that they'd like to
18 make on this section --

19 MS. CONLEY: And I know I've --.

20 MS. DELOYAZA: -- specifically?

21 MS. CONLEY: And I --.

22 MS. DELOYAZA: Excuse me.

23 MS. CONLEY: I went over things
24 quite quickly, skipping a few things, so if there's
25 anything you want me to talk about a little more in

1 depth I'd be happy to.

2 MR. LENT: Monica, I would just
3 comment that I'm not hearing or reading anything
4 that's any different than what we should have been
5 doing. What I'm really hearing about environmental
6 justice is more of an awareness, more of a broader
7 concern.

8 MS. CONLEY: Yeah, I -- I -- that's
9 a great statement. I completely agree with you. A
10 big part of environmental justice is lack of
11 information or misinformation. So, if we're doing
12 our job correctly and getting the information out in
13 a timely fashion, including allowing the public to
14 comment, doing environmental impact statements in
15 depth, the way they were meant to be done, you're
16 right, there really is nothing additional that needs
17 to be done.

18 MR. LENT: I'd make one other
19 comment. My own observation, environmental justice
20 cuts both ways, meaning this: That many times we
21 think in terms of minority or Native Americans or --
22 or people we just ignore, that don't have the
23 wherewithall to represent themselves, but it also can
24 work if -- if a low-income subdivision, low-income
25 housing or something is brought into another

1 community, you must examine that impact on the
2 environment just as closely.

3 I think sometimes we're afraid to
4 do that, you know, so that we don't look like --.

5 MS. CONLEY: Do you mean for
6 instance if there's an industrial facility and --?

7 MR. LENT: I'm thinking more in
8 terms of -- I was -- at the particular time I was
9 thinking more in terms of perhaps housing,
10 subdivisions, you know, that really sometimes have a
11 great impact on the environment --

12 MS. CONLEY: Uh-huh.

13 MR. LENT: -- per se. And also if
14 we talk about the cultural sensitivity to Native
15 Americans, there's a culture sensitivity to
16 communities.

17 MS. CONLEY: Uh-huh.

18 MR. LENT: I know that's a tough
19 one to address.

20 MS. CONLEY: Yeah.

21 MR. LENT: You'd rather not, I
22 know, I shouldn't have even brought it up.

23 MS. CONLEY: No, no. I -- I
24 welcome -- I welcome your comments.

25 MR. DARDY: I just -- I just wanted

1 to make a quick comment on the community of concern.
2 I think that you described the -- the G.I.S. process
3 that we spent a lot time on very accurately. But I
4 think it's important to realize that this is not done
5 in a one-size-fits-all approach. It depends on what
6 the applicant is proposing, and so the method of
7 identifying the potential community of concern and
8 then doing the G.I.S. analysis depends on the nature
9 of what you're doing.

10 If it's a -- if it's an
11 air-emission application or permit you're -- you're
12 applying for, obviously the prevailing winds and
13 everything else may affect the way in which you --
14 you analyze the potential. Or if it's a
15 traffic-generating facility you're going to look at
16 the traffic routes. So, while the intent is to make
17 a determination up front as to whether there is a
18 low-income or minority community, meeting the
19 thresholds that was discussed, there's an art to that
20 more than there's a science. It's not, you know,
21 here's the facility, here's a circle, and we fit or
22 don't fit.

23 So, there's -- it -- it does
24 require that the applicant have some sense as to --
25 to -- of the community and what the impacts of the --

1 the project are, and then attempt to -- to do that
2 kind of analysis in the early phases.

3 MS. CONLEY: That's -- that's a
4 great point. Thank -- yeah, thank you.

5 MR. DARDY: Which is difficult. We
6 played with it on maps and everything else and it --
7 it's - it can be tricky.

8 MS. CONLEY: Yeah. Thank you for
9 pointing that out.

10 Yeah, I mentioned earlier that when
11 we -- we look at a facility we would, you know, draw
12 a community of concern around it, either a radius,
13 but the -- the G.I.S. application actually enables
14 you to draw a specific radius. It also allows you to
15 draw based on modeling, based on the impacts of a
16 particular proposed action and the impacts of those
17 actions. So, you know, it can give you a more
18 accurate picture as to what communities are actually
19 being affected rather than just drawing a circle
20 around it.

21 MR. LENT: You mentioned industry.
22 There was Holley, the village of Holley, New York,
23 recently the episode with one of the chemical --.

24 MR. DARDY: I tried to brief these
25 guys when they came in, thinking they might have some

1 personal knowledge.

2 MR. LENT: Well, only from the
3 standpoint and -- and this is being a sidewalk
4 superintendent, an armchair quarterback: The -- the
5 one thing that struck me about that chemical plant
6 was anyone that lives in western New York knows
7 our -- our -- our weather comes from the -- or you
8 know, from the west, and here you have a chemical
9 plant in a residential neighborhood immediately
10 upwind of a village. It -- that is a good place for
11 an environmental justice --.

12 MS. CONLEY: Yeah. Yeah. Very
13 true.

14 MR. LENT: And -- and I think
15 sometimes, you know, there -- there is always the
16 emphasis on economic development; there's always the
17 emphasis on jobs and so forth. Maybe we're not
18 balancing the need for jobs versus issues.

19 MS. CONLEY: Well, when we -- when
20 the advisory group first started developing the
21 recommendations, we held a -- four or five public
22 meetings similar to this, but just allowing people
23 from the communities generally to talk about
24 environmental justice. And we got both community
25 residents, as well as businesses, and you know, as I

1 mentioned, we had business groups represented on the
2 advisory group, and that was talked about a lot,
3 making sure there was a good balance, that we weren't
4 trying to prohibit any economic development in a
5 particular area.

6 And many of the E.J. advocates said
7 the same thing; we're not trying to keep it out. If
8 it comes in, we want to make sure that it's
9 responsible and environmentally friendly. But we're
10 not trying to keep out development. So, it's a good
11 point.

12 MR. LENT: Well, you know, but
13 anybody that manufactures some product, particularly
14 a chemical, there is going to be, occasionally, a
15 release.

16 MS. CONLEY: Uh-huh.

17 MR. LENT: And you can keep them
18 minimal, but certainly upwind is not the way to do
19 it.

20 MR. DARDY: You know, it's
21 interesting, one of the things that I -- one of the
22 experiences that I came away from this is when we had
23 a meeting at the Onondaga Nation, and we met with a
24 number of the chiefs and they kind of took a view
25 similar to what -- what you were describing, John,

1 which was environmental justice is -- now, this is
2 not the definition and this is not what we talked
3 about, but their viewpoint was, you know, why -- why
4 are you here? You know, don't damage the environment
5 in any way, shape or form. And this is not an issue.

6 And you know, I think another
7 interpretation of that is, you know, do common-sense
8 things like put facilities where it makes sense,
9 and -- and you won't have a lot of these kinds of
10 problems.

11 MR. LENT: Drinking water upstream,
12 sewage downstream; right?

13 MR. DARDY: But nonetheless, as --
14 as we -- you get into the issues, especially in -- in
15 urban areas, it's -- it's very complex stuff, there's
16 a lot -- a lot going on in New York State where
17 there's a lot of difficult issues. People are coming
18 out and we -- we heard a lot, I would say, in the
19 hearings we held of things that I would -- I would
20 describe as just, you know, eye-opening that --
21 that -- that's the kind of reality that people are
22 having to live with. So, there's a lot of tough
23 issues here. And that's just an editorial.

24 MS. CONLEY: Any other comments at
25 this point and I'll just finish off the report?

1 MS. DELOYZA: Okay.

2 MS. CONLEY: The last set of
3 recommendations, the last section, just deals with
4 some general recommendations. Addressing Native
5 American environmental justice issues, recognizing
6 the sovereignty of -- of the Indian nations and
7 detailing a few things that we could do to address
8 E.J. either on reservation land or just, you know,
9 anything that might affect Native Americans.

10 A recommendation to continue the
11 environmental justice advisory group as D.E.C.
12 develops policies and begins to implement policies.
13 The advisory group felt that it would be beneficial
14 to the D.E.C. to maintain an advisory group just for
15 input and kind of a check and balance as to how -- to
16 how the policies are being implemented.

17 Assessing distribution of green
18 benefits. Environmental justice deals primarily with
19 assessing disproportionate adverse impacts on a
20 low-income or minority community. But the other side
21 of that is also ensuring that green benefits get to
22 these communities as well. The advisory group
23 recommended that the D.E.C. assess the distribution
24 of green benefits, whether it's grant money coming
25 from the D.E.C. or specific allocations from the

1 legislature, that these green benefits are
2 distributed equitably throughout New York State.

3 Assess our enforcement program to
4 make sure that environmental justice is being
5 considered, that we're doing diligent enforcement in
6 low-income minority areas.

7 Evaluate and address activities in
8 agencies exempt from SEQOR review. There are
9 certain -- certain activities and agencies that don't
10 have to go through the SEQOR process, do an E.I.S. and
11 the recommendation there is that D.E.C. look at those
12 instances and either encourage, or at some point
13 require, those activities or agencies to subject
14 themselves to doing an E.I.S.

15 Review of D.E.C. organizational
16 structure to ensure that E.J. is addressed, that the
17 office of E.J. is properly staffed; develop a
18 translation policy to figure out, you know, what
19 documents might need translating so that they reach
20 non-English-speaking residents of New York State.

21 And the last one is to require
22 state and local government agencies to address
23 environmental justice. And the recommendation there
24 is either to encourage the legislature to enact laws
25 or encourage the governor to issue an executive order

1 which would require other state agencies and local
2 agencies to address environmental justice.

3 The rest of the report consists of
4 supplemental letters that were put together. One is
5 from a contingent of environmentalists and
6 environmental justice advocates, and then the second
7 and third one are both from business representatives,
8 just pointing out -- all supporting the report, just
9 pointing out a few differences or concerns that they
10 might have.

11 That's essentially it. I didn't
12 go -- you know, like I said, I didn't go in depth
13 into a lot. There's a lot of meat to what I've just
14 spent, you know, a half hour or so talking about.
15 And if there are comments or just general concerns,
16 I'd, you know, invite you to raise them now. If
17 you're not prepared to do so, our public comment --
18 our written public comment period ends on February
19 22nd. So, that's another avenue that you can take if
20 you're not prepared to give statements tonight.

21 MR. HILTON: Has the D.E.C.
22 evaluated the potential impact in terms of resources
23 available to manage what appears to me to be a bit of
24 an expanding review process?

25 MS. CONLEY: That's what we're

1 currently doing now. With these -- we received -- at
2 the D.E.C. we've received this recommendation report.
3 Our next step is to be realistic and sit down and
4 figure out how many work-years each activity might
5 entail -- require, and then figure out what resources
6 we need in order to carry some of these things out.
7 And all that will be determined before we enact any
8 policy, any D.E.C. policy, to make sure that we can
9 go through with whatever we're proposing.

10 MR. LENT: Well, that's a good
11 question and I know it's one that --.

12 UNIDENTIFIED SPEAKER: Pete, not
13 saying anything?

14 MR. LENT: Peter. I mean just in
15 our environmental permit section, you know, there's
16 enough work to do even when we're full staff. Now
17 we're two short --

18 MS. CONLEY: Yeah.

19 MR. LENT: -- so, that needs to be
20 addressed.

21 MR. HICKS: It's -- I don't know
22 much more about it than anybody else in this room,
23 although I'm supposed to know more than anybody else
24 in this room.

25 MR. DARDY: We'll have to read

1 about it -- we have to read about it in the paper,
2 right, Pete?

3 MR. HICKS: But you know, things
4 that come to my mind are how can we -- what we're --
5 what we're doing is we're putting another element
6 that maybe should have been in there, into the
7 process, and we have to come up with ways of -- of
8 doing that as -- as timely and as streamlined as
9 possible, but still not short-circuit the whole
10 purpose of -- of getting information out early so we
11 can inform people about what the projects are so that
12 we can -- so that they don't -- so that we're
13 actually talking about the problems with the
14 projects, and not the problems with the
15 communication --

16 MS. CONLEY: Right.

17 MR. HICKS: -- which is what -- how
18 we get disjointed sometimes when we have people
19 objecting to a project.

20 MS. CONLEY: Right.

21 MR. HICKS: It's not -- it's
22 because they don't feel like they're part of the --
23 part of the audience. So -- but more importantly for
24 this region, it's important for me to figure out --
25 to -- to be able to screen projects quickly, and that

1 type of information is what I need to get, I think
2 is -- you know, I need to know where the low-income
3 census tracks are; I need to know where the minority
4 percentages are in the city, and we --.

5 MR. DARDY: One of the things that
6 the -- that the committee talked about was the state
7 of the art in that regard. And I think everybody
8 feels we're -- we're really on the cusp of that kind
9 of information being fairly instantaneously available
10 to people. On the cusp. It means we're not there.

11 MR. LENT: You know who has that?
12 The banks.

13 MR. DARDY: Oh, lots of people have
14 it.

15 MR. LENT: Okay.

16 MR. DARDY: People have it if
17 they've chosen to -- to build it themselves. In
18 other words take the census data and integrate it
19 with G.I.S. That's not -- there -- there's lots of
20 people that have done that. But in terms of doing it
21 specifically for the purposes of environmental
22 applications, the -- the -- the E.P.A. has done a --
23 they have a wonderful program. I thought it was
24 terrific. It was based on 1990 data and it's not
25 Internet-based yet, so, you know, they still got to

1 work out some issues to get that out.

2 The environmental navigator of the
3 D.E.C., I don't know if that's on your --

4 MS. CONLEY: I think it --

5 MR. DARDY: -- active web --

6 MS. CONLEY: It is.

7 MR. DARDY: -- web page yet; right?

8 It was experimental when --?

9 MS. CONLEY: It's -- it's out now.

10 MR. DARDY: That's a tool that
11 people have available. Other organizations, the city
12 will be putting something on its web site very
13 shortly that will not necessarily give you the census
14 data, but will give you other pieces that you need.
15 So, I think there's a feeling that some of the
16 workload involved in this will be -- this may be
17 the -- the beneficiary of -- of technology that --
18 that -- that we're just about there, but we're not
19 quite there yet.

20 MS. CONLEY: There are a few
21 things --.

22 MR. LENT: So, put that down,
23 Monica, we need a programmer, too.

24 MS. CONLEY: A programmer. Okay.

25 MR. DARDY: Hey, but what they're

1 doing in -- in -- in the central office, with -- with
2 regard to programming is -- is -- we got a
3 presentation and we were quite impressed, and I think
4 that that -- that -- the environmental navigator may
5 ultimately be the tool that everybody can use to do
6 this.

7 MS. CONLEY: Yeah. There are a few
8 things we can do by just, you know, setting them up,
9 you know, one-time basis setting up. For instance,
10 getting the notice of application upon receipt out in
11 the Environmental Notice Bulletin. From what I've
12 been told it's just keying something into a database
13 so that every time, I think it's a weekly scan, it
14 would send that information directly to the E.N.B.
15 So, that's, you know, not really resource-intensive.

16 This locating the low-income
17 minority communities using the G.I.S., once we
18 actually have the software on our computers, that's
19 going to be pretty quick as well. So, there are a
20 few things that really aren't going to take up too
21 much time. And then the other things we have to look
22 at before we can say yeah, we can do them.

23 MR. HILTON: During the public
24 hearings that you conducted around -- that the
25 committee conducted around, did you get any sense, in

1 terms of feedback, that you would imagine some people
2 utilizing this mechanism as a -- as a means to
3 forestall what might otherwise be appropriate
4 development?

5 MS. CONLEY: That concern has been
6 raised. And just in the past couple of years I've
7 received -- you know, people aren't sure what
8 environmental justice is, so I've received under the
9 guise of E.J., you know, many -- many e-mails and
10 many phone calls asking if I can assist them. I
11 think it's a matter of defining what we're going to
12 consider E.J. and using the tools that - like this
13 G.I.S. system - so that we can pinpoint the
14 communities and actually assess whether they're being
15 impacted.

16 You know, there may be a minority
17 or low-income community here and the facility is
18 here. If there are air impacts and the air flow is
19 going this way, you know, there's -- there will be no
20 adverse impact to that community and therefore, you
21 know, there's no E.J. So --.

22 MR. HILTON: Well, let -- let me --
23 let me pose the question a little bit more directly:
24 In the absence of a definition about what
25 disproportionate impact is, don't you feel -- do you

1 feel as though an opportunity exists, in virtually
2 every scenario, for someone to interfere, perhaps
3 unnecessarily, to advance their own personal agenda?

4 MS. CONLEY: I think the potential
5 exists.

6 MR. DARDY: It does today. I mean,
7 I -- I -- it's an interesting question, Kevin, and
8 I -- and I suspect that the whole label of
9 environmental justice will serve that -- and already
10 does serve that purpose. I think the idea here is to
11 try to define some steps that -- that we all agree
12 are part of the process. I think the -- the more you
13 do that, the more specific you get, the more you
14 protect against the -- the kind of condition that --
15 that I think you're concerned with.

16 But nonetheless, it will be there,
17 I mean, you know, people have the right to -- to
18 advocate and they will. And some will certainly use
19 this process to -- to -- to -- to go further.

20 We talked about one of the issues
21 and -- and it was interesting, there were very
22 different viewpoints. I -- I was surprised at the
23 viewpoints of some of the community leaders in New
24 York City, especially when we talked about the
25 potential chilling effect of investment in inner-city

1 communities, you know, that this could maybe -- maybe
2 could add to that.

3 And -- and there was not a shared
4 perception among community people that that -- that
5 that was a major concern as compared to the
6 perception of -- of the environmental burdens that --
7 that are placed on -- on communities. And there was
8 clearly, I thought -- this is my own assessment, I
9 mean, not -- not everybody on the committee or the
10 staff will agree with this; it was a personal
11 perception that I got, that there was not an extreme
12 concern about that. And what I mean by that is -- is
13 that they felt -- a lot of people felt that that was
14 not an issue that they were worried about.

15 MS. CONLEY: The business
16 representatives did have a concern that, you know,
17 there be definable steps, that not much be left to
18 discretion, so that there could be some certainty
19 when an applicant is going through this process. And
20 this is a first step, and I suspect that as the years
21 go on as policy is developed there will be
22 refinements -- continual refinements as we begin to
23 learn more about a particular -- you know, about how
24 to do these types of assessments, you know, this is a
25 starting point. So, to answer your question, yeah,

1 there's the potential.

2 MR. GREGG: And I think the bottom
3 line is you can have a determination in the end that
4 there is a disproportionate impact, but like all the
5 other things that go into the SEQR equation, that's
6 just -- that's one thing that you have to look at.
7 It might be something that needs to be mitigated or
8 what have you. It's not necessarily a show stopper,
9 you know, it's -- it's the whole weighing of social,
10 economic, environmental, bottom line.

11 MR. SAWYKO: What kind of time
12 frame --

13 MS. CONLEY: Oh, for --

14 MR. SAWYKO: -- do we have here --

15 MS. CONLEY: -- for implementation.

16 MR. SAWYKO: -- the schedule of
17 D.E.C.?

18 MS. CONLEY: The D.E.C. is -- there
19 are -- you know, as I mentioned, there are the
20 recommendations on permitting and then the other
21 general recommendations. And our initial focus is
22 going to be on the permitting process. And the
23 Commissioner would like to have a policy implemented
24 this summer. So, July, around there.

25 And then after -- you know, that

1 will be the initial focus and then after that,
2 additional policies, be it on translation or you
3 know, Native American issues will follow soon after
4 that.

5 MR. HILTON: So, this will start as
6 a policy and then be followed up with regulatory
7 support?

8 MS. CONLEY: Right. Right. And
9 within the -- within the written document it -- it
10 pinpoints the areas where the D.E.C. should seek
11 regulatory amendment.

12 MS. DELOAYZA: Other questions or
13 comments, concerns?

14 MR. HILTON: This applicability
15 to -- to permits that you point out, is that -- is
16 that likely to begin -- is -- is that going to follow
17 some sort of phase-in of new permits and then
18 renewals or some sequence?

19 MS. CONLEY: For the -- for all
20 these recommendations?

21 MR. HILTON: For applicability of
22 the policy.

23 MS. CONLEY: For the policy.
24 That's something that the group never actually
25 discussed and we don't have a recommendation for

1 that. I think in one of -- I think in the business
2 groups supplemental letter they may touch on that, or
3 recommend that applications from the date of -- the
4 date the -- the policy becomes effective, any
5 application received after that point is
6 considered --.

7 MR. HILTON: Be it a review or a
8 new application?

9 MS. CONLEY: Uh-huh. Well, for
10 renewals -- as I mentioned, for renewals, renewals
11 are not required to go through most of the
12 recommendations in here. Renewals, there's just the
13 recommendation that the permit applicant -- that the
14 permit reviewer be in touch with our Division of
15 Environmental Enforcement to ensure that there are no
16 outstanding violations. But renewals will be
17 processed as they are currently processed now, just
18 with heightened awareness on facilities in low-income
19 minority communities and making sure that we're not
20 just rubber stamping them. If there are serious
21 issues with a facility, the D.E.C. should look at it
22 further.

23 MR. LENT: But during the renewal
24 process there is that opportunity to address -- even
25 though it may be, so to speak, grandfathered in,

1 there is that opportunity at that time to mutually
2 address a -- a concern, a remediation or whatever.
3 And I see -- and we see that happening anyway.

4 Well, I'm headed for the country
5 then; is it okay?

6 MS. CONLEY: Absolutely. Thank you
7 very much for coming tonight.

8 MR. LENT: Thanks, John.

9 MS. CONLEY: I will stick around
10 for a while longer and give you opportunity if anyone
11 wants just to look through the document and ask
12 questions. Otherwise, you're free to go.

13 (Off-the-record discussion)

14 MS. CONLEY: From Fish and
15 Wildlife. She's come up with a questionnaire and do
16 you just want to talk briefly about it?

17 MR. PAGAN: My name is Drusila
18 Pagan, and I work for the Division of Fish and
19 Wildlife and Marine Resource. With the Cornell --.

20 MS. CONLEY: You got to -- you got
21 to come up --.

22 MS. PAGAN: I can speak louder if
23 you want.

24 My name is Drusila Pagan. I work
25 for New York State Department of Environmental

1 Conservation for the Division of Fish, Wildlife and
2 Marine Resource. And we are doing a -- a survey with
3 Cornell University concerning the opinion and
4 interest of the Spanish community in New York State,
5 and we want to find out what information they would
6 like to have in Spanish in the Internet or any
7 pamphlet or any program they don't -- they don't
8 understand, so we can translate into Spanish.

9 We give out a questionnaire, you
10 know, if any of you see any or know any -- a Spanish
11 group, organization, that they would like to
12 contribute on how to, you know, develop this program.

13 The questionnaires -- we brought
14 some questionnaires. If you maybe know any
15 organization in Spanish that would like to help us,
16 you know, with this information, I really appreciate
17 that. Okay. Thank you.

18 Is Sandra Sevikal (phonetic
19 spelling) here?

20 MR. DARDY: I'm sorry.

21 MS. PAGAN: Is there a Sandra
22 Sevikal?

23 MR. DARDY: I don't think that's --
24 That doesn't ring a bell.

25 We have -- yeah, the Ibero-American

1 Action Movement is probably the most active. There's
2 also a Spanish Coalition. There are a number of
3 other community groups that represent Hispanics, but
4 those two are the big ones, that, you know, are the
5 most --.

6 MS. CONLEY: Do you have -- do you
7 have their addresses there?

8 MR. DARDY: Oh yes.

9 MS. CONLEY: I'll contact their
10 office then, too.

11 MR. DARDY: The -- the Spanish
12 Coalition was actually fairly interested in
13 participating in this process when I mailed them the
14 first and there weren't any hearings. They actually
15 raised some issues that turned out to be more like
16 city issues, so we worked with them on those, but
17 they did express some interest.

18 City Councilwoman Satisgar Santiago
19 (phonetic spelling) is the -- the Executive Director
20 of the Ibero-American Action Movement. She -- she
21 would be very interested in -- in getting that
22 information.

23 MS. PAGAN: Thank you.

24 MS. DELOYZA: I want to thank you
25 for all coming tonight and being here and for being

1 good about coming up front and sharing the space up
2 here.

3 MR. LENT: I didn't know we had a
4 choice. Did you guys know we had a choice?

5 MS. DELOYZA: Well, you could have
6 said no, we're not going to do that; we're going to
7 sit in the back. But you didn't, and I appreciate
8 that. It's like, you know, the coaches who are at
9 their school events; they all sit in the back.

10 Thanks.

11 (The meeting concluded at 7:11
12 p.m.)

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1 I, Howard P. Hubbard, do hereby certify that the
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