NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION – ALBANY

PROPOSED AMENDMENTS TO THE STATE ENVIRONMENTAL QUALITY
REVIEW ACT (SEQR) REGULATIONS

March 31, 2017
1:00 p.m.
NYS DEC
625 Broadway, Room 129
Albany, New York

BEFORE:  LISA WILKINSON, ALJ
ALJ WILKINSON: If everyone could take a seat, we'll get started here with the comments.

Just a public service announcement before we begin, if everyone could turn off their cell phones or put them on vibrate, we would appreciate it, especially the court reporter.

Good afternoon, my name is Lisa Wilkinson, and I'm an administrative law judge with the New York State Department of Environmental Conservation. I will be presiding over today's public comment hearing regarding the Department's proposal to amend regulations that implement the State Environmental Quality Review Act, known as SEQR, under Title 6 of the Codes, Rules and Regulations of the State of New York, 6 NYCRR Part 617.

The Department has prepared a Draft Generic Environmental Impact Statement to discuss the objectives and the rationale for the proposed amendments. A notice of the proposed rule-making and a notice of this public hearing was published on February 8, 2017 in the Department's Environmental Notice Bulletin and in the New York State Register, and another notice was published in the State Register on February 22, 2017.
Additional notices of this legislative public hearing were published in the New York State Register on February 15, February 22, March 1, March 8, March 15 and March 22, 2017. On March 22, 2017, a notice of additional legislative public hearings and public information sessions on the proposed amendments was published in the New York State Register and Environmental Notice Bulletin.

Information on the proposed rule-making and related documents is available on the registration table and on DEC's website. There is a fact sheet here which is available outside, if you don't already have one.

This hearing is to provide an opportunity for the public to comment on the proposed amendments to the SEQR regulations and the Draft Generic Environmental Impact Statement. This is not a question-and-answer session. If you have questions for DEC staff, however, you can raise them with Jim Eldred and Larry Weintraub after the hearing, time permitting. And Larry and Jim, they will be here after the hearing.

If you do not wish to make an oral statement, you may submit your comments in writing. We have forms available for you to submit a written
comment this afternoon, or you may submit them in
writing by May 19, 2017. The Department has
information at the registration table outside the
auditorium and on the DEC website on how you can
submit comments on the rule-making. All comments,
again, have to be received by May 19, 2017 to be
considered.

If you have written comments with you today
that you would like to submit and you are not
speaking, you may put your comments in the comment
box outside here. If you are speaking and have
prepared written comments that you will be reading
from, we ask that you provide a copy of the
comments to the stenographer here in the front of
the room.

When it is your turn to speak, I will call
your name. Let me apologize ahead of time if I
mispronounce your name, and if I do that please
correct me. After I've called your name, please
come forward and speak into the microphone here in
the front of the room. Please begin with your
name, and if you're speaking on behalf of someone
or some group, please identify exactly who it is
that you are representing.

When you make your statement we ask that
you speak loudly, clearly and slowly, as everything
is being recorded by the stenographer. And if you
see me or the stenographer wave our hands, it means
there is some issue, so please take a pause so we
can sort things out.

As I indicated, if you don't want to make
an oral statement, you can always make a written
comment, and oral statements and written comments
will be given the same weight by staff in their
review.

I will remind everyone that the public
comment period closes on May 19. We will be
hosting three additional public comment hearings on
April 6 in New Paltz at the Department's Region 3
headquarters; on April 13 in Hauppauge, New York;
and on April 18 in Rochester. Those hearings will
commence at 6 p.m., and information on the hearings
is available on the registration table and the fact
sheet.

Thank you for coming, and we will begin
with our first speaker. Albert Annunziata?

MR. ANNUNZIATA: Albert Annunziata.

ALK WILKINSON: Albert Annunziata,

thank you.

MR. ANNUNZIATA: Thank you to DEC and
the officials for this opportunity to speak today.
I have a folder with materials pertinent to the
public hearing today, and I will just go through
the items one by one. I have a letter to
Commissioner Seggos which follows.

My name is Albert A. Annunziata, and I'm
the executive director of the Builders Institute
and Building and Realty Institute of Westchester
County. The institute is a trade association
representing over a thousand member firms in all
facets of residential and commercial building,
construction, property management and related
industries and disciplines in Westchester. We have
been in existence since 1946.

Over the past 16 years, I have represented
the home building and commercial building industry
here in Westchester along with many of my other
builder-developer engineering and planning
colleagues at numerous meetings with a long line of
DEC commissioners and professional staff on how to
make the SEQR process better.

As you can imagine, a considerable amount
of correspondence, memoranda and written
professional testimony and critiques have also been
generated over these years on a need to reform the
Clearly, the current DEC-proposed amendments to SEQR are, in and of themselves, an affirmation and recognition of the need to improve the SEQR review process, for the betterment of not only the State's environmental resources and heritage, but for the State's economic vitality as well.

As desirable as some of your current recommendations may be to some constituencies within the State, we strongly feel the current proposals do not address the major problems in the current SEQR process.

One of the main problems is the absence of binding timetables. The review process often extends for years, with the builder-developer having no recourse but to agree to extension after extension. For DEC's consideration, we submit the following suggestions:

The SEQR review process should be limited to a maximum of 18 months. If a 12-month review process is considered sufficient by the State to review a proposed power plant under Title X, then 18 months should be sufficient for reviewing a proposed residential or commercial project. The
clock could start at the submission of a DEIS or EAF, depending on what's required. The lead agency may take the time it needs at each stage to review the DEIS, subsequent FEIS, and prepare a finding statement. If the finding statement is not approved within 18 months, the SEQR process is deemed completed with a Negative Declaration.

Let me be clear at this point. The limitation to this reasonable and ample review time does not require municipal approval of the proposed project. The proposed project can be denied. If it is denied, the builder-developer at least knows where they stand and can mull their options -- abandon the project, change the project, move to another state or take legal action.

Another area of concern within the SEQR process is as-of-right development situations. The State could follow the lead of New York City, that if a proposed project is as-of-right, conforming to all current zoning and all existing and applicable regulations, it should be a Type-2 action, not requiring review under SEQR.

There are several good reasons for such a commonsense approach; first, in adopting a zoning ordinance, in conformance with a comprehensive
plan, a municipality has determined that the land
uses are appropriate for the areas designated.
Issues, such as traffic generated and public school
students generated by permitted uses, have already
been determined to be acceptable in the home-rule
process of approving the zoning.

Second, while each individual project will
undoubtedly have site-specific issues -- there
almost always are -- these issues are thoroughly
reviewed during the site plan and subdivision
review process for project approval or disapproval
by the municipality and does not need a duplicate
review process under SEQR.

There is yet another area where the current
SEQR process is wanting. There are instances
during the review process when issues arise in
which the lead agency and builder-developer are in
disagreement; it could be over requirements in the
scoping document, the review of the DEIS or FEIS,
or if the lead agency is taking an inordinate
amount of time throughout.

A SEQR review board within the DEC could
hear appeals from any disputes related to the SEQR
process. The compelling public purpose of such an
appeals process would be for DEC to provide the
technical review of specific dispute situations,
removed from the local politics that often
insidiously and unfairly but inevitably inject
themselves into the SEQR process.

This would form a kind of binding
arbitration to move the process along, if needs be.
As for cost, the SEQR Review Board's cost could be
paid by the party making the appeal to the SEQR
review board.

The SEQR statute already recognizes DEC's
role in the designation of a lead agency when there
is a dispute over such a designation. A review
board could hear appeals from the developer or
existing lead agency, with all pertinent input from
valid third-party stakeholders, and then render a
ruling which would be binding.

There is nothing unreasonable about our
recommendations to improve the SEQR process. There
are no shortcuts if everyone does their proper job
and meets the responsibilities under SEQR. The
process is not short changed, but rather liberated
to do what it was always meant to do. These
reforms would free the SEQR process from local
politics and nimbyism that often turns what was
always meant to be an environmental review process
into an ugly, long, drawn-out battle designed to repel even as-of-right projects, with local governments avoiding their responsibility to formally and officially accept or reject a proposal.

And this is respectfully submitted on this day at DEC headquarters in Albany by yours truly.

In the packet that I have submitted to DEC, in addition -- oh, there is one thing I wanted to bring to DEC's attention. I have a letter from Assemblyman Michael Simanowitz, also directed to Commissioner Seggos, in which the assemblyman is acknowledging some of the areas where SEQR can be improved. And I will read this very quickly. It's a short letter.

Commissioner Seggos, it has come to my attention that New York State Department of Environmental Conservation is making its first update to SEQR regulations in more than 20 years. I would like to draw your attention to my legislation to ensure that the state and environmental reviews are completed in a timely manner, as embodied in A.1176. This legislation adds to the appropriate sections of the Environmental Conservation Law that time periods
for review that will be mandatory and not subject
to extension unless the applicant or the project
sponsor agrees to a period of extension.

And it goes on to explain a little bit more
about the legislation, so I will also -- I
neglected to put a copy of this. I have only one
copy, so if I may, I will submit this --

ALJ WILKINSON: Thank you.

MR. ANNUNZIATA: -- for the record
also.

Finally, in your packets I have an
extensive commentary about your current proposals,
and we put out a builder newspaper, builder and
real estate newspaper, so it's in the packet here.
I have extras, extra packets for you and staff on
the proposed SEQR regs.

And, finally, I have a -- I know it sounds
a little foolish, but I have an article that
appeared in the Journal News in Westchester County
on February 22, 2006 -- 11 years ago -- about the
effective SEQR on one developer's efforts to build
an 11-lot subdivision in northern Westchester. And
after 11 years, 11 years up to this point, in 2006
he still had been grappling with a seemingly
unending process in SEQR to get this subdivision
approved. Ironically, it's been 11 years since this, and I think he's still having -- so this may have been finally approved after so long a time. By putting this here as an example of a very real situation, albeit in 2006, that still remains, you know, a reality for many builders today. And that concludes my comments.

ALJ WILKINSON: Thank you very much. Do we have your written comments here in this packet?

MR. ANNUNZIATA: Yes, they're all in that packet, and I have additional for staff.

ALJ WILKINSON: Your oral comments as well?

MR. ANNUNZIATA: Yes.

ALJ WILKINSON: Okay, thank you.

MR. ANNUNZIATA: May I leave these with you for staff or -- okay.

ALJ WILKINSON: Okay, the next up is Nat Parish.

MR. PARISH: Thank you. I appreciate the opportunity to make these comments. My name is Nathaniel Parish, normally called Nat. I am a professional engineer in the state of New York, and I'm a full member of the American Institute of
Certified Planners. I'm speaking today as a consultant for the Builders Institute. You've just heard from our executive director, Albert Annunziata. I advise the institute on a number of planning and environmental impact issues.

I think I've given my professional resume for the record, but I've been working on a SEQR process since the date that SEQR was first enacted in the 1970s. And I remember my first trip commenting on the regulations; it was a meeting like this in Hauppauge, and I said that the process that you were proposing was overly complicated, extend the process, and so on. Nobody listened to me. After the meeting Bob Weebold, who was then the Department of State, and was shepherding that legislation through, said to me, Hey, Nat, you know, you're going to get a lot of business out of this, you know. And then he looked at me, he said, But, of course, they're not going to take care of your comments. I said, Right. And that's the situation today.

I will be presenting a paper with a detailed discussion of the particular members here, but the comments that I am making are based on my professional experience. I should say I have acted
as consultant to developers and prepared Environmental Impact Statements, over a hundred of them in many parts of the state of New York. I have done review services for lead agencies, and I've also served as consultant to property groups, community groups that have concerns about the project. So I, really, have looked at the regulations and experienced them from all of the views of stakeholders. And I think, without question, Albert has talked about all of the improvements that are needed that are not addressed in these regulations. I won't extend those except to say that, having participated in over the four years of meetings on these proposals, that I am personally very disappointed that I, and a whole bunch of other people, testified and made a whole bunch of recommendations, all of which have been ignored in the proposals that are here today. But nevertheless, I will discuss those that are here today.

In general, I and the Builders Institute support those amendments that are intended to assist in carrying out the sustainable development of clean energy activities and some of the municipal activities, and I won't go through all of
the changes, but certainly we support those. The institute supports absolutely sustainable development of clean energy activities.

But, sadly, there is a lack of the regulation changes that we need and that the SEQR process should address and all too often those create, and certainly in Westchester, particularly in northern Westchester, roadblocks for not just economic development, not just for housing but also for affordable housing, non-profit and for-profit. We have developers who try to build affordable housing, have to run this impossible gauntlet that often deals with issues that go far beyond the original intent of the environmental law.

In terms of these particular amendments, the only amendment that's of some help to our members of home builders is the addition of the small subdivision to the Type II list. That is helpful, and we certainly support that.

We suspect the others comment on those that are of particular interest to our organization. We certainly agree, as I mentioned, a small subdivision addition to the Type II action.

We also think the additions to the Type II list of the reuse of commercial or residential
structures in the section 617.5 amendment is helpful to some property owners but probably of very little help to most of the members, builder members in Westchester County who are doing projects that don't fall into those categories.

The 617.9 (A)(II) and also the one that -- the next one, that's AII, with two Roman numerals, on the preparation contact impact statements, those particular proposals are very helpful, I think, certainly in making clear what the Draft review should be. But I think they raise an issue about whether they might be interpreted as contradicting some of the language that's now in the SEQR handbook, which talks about reviews of DEIS, particularly on page 131 of the SEQR handbook, DEC SEQR handbook, Section D2; there are clauses, and I'm going to quote.

The review -- here's the quote -- should neither expect or require a perfect or exhausting document on environmental issues.

Then there is another quote in that section. The Draft of EIS will not necessarily provide a resolution of any issues.

Now, those two statements, which are in the handbook, may or may not be consistent with the
regulation language that you're now proposing for the review of the DEIS. I suggest that you consider adding that language, or language along those lines, to the particular sections here so that, A, it's not considered to be contrary and, B, to reinforce what the DEC handbook now provides. It's one of the few tools that we have to push along the DEIS review process, which I should tell you is one of the big road blocks when you have a whole series of reviews of the Draft, DEIS. I had one project that went on for about two years with iterations of the review of the Draft, DEIS, and the review consultants keep writing little comments on numerous issues that are discovered after the first iteration, second and third and fourth. It went on forever. So I think, first, your language is good but, more importantly, it could be supplemented by adding the language in the DEC handbook.

Your proposal on fees and costs, I should kind of -- I support it. I support the language, but it is currently standard practice, so you're not really adding anything, but adding the language I guess is okay. But the real problem is that an applicant gets copies of invoice statements but he
has no recourse if the costs are deemed to be unreasonable. And I think there needs to be some -- if it's the arbitration that Albert Annunziata suggested or some other thing or maybe requiring a lump sum agreement in each case so that's it's not an open-ended review process. And I say this, by the way, as a person who does those reviews, and I've always felt that both the applicant, the lead agency are more comfortable if I give the lead agency a lump sum proposal to what my services are going to be so there is no question later that they get invoices that are unreasonable. And I suggest to my clients that they ask for that now, even though there is no rule or regulation that requires it.

With respect to several items that are of absolutely no help and negative, really, are the changes to the Type I actions for municipal populations, where you go from 250 to 200 units and a thousand to 500, that's Section 617.4, and then we'll add to that 617.4 where you discuss the number of parking spaces. I read your SEQR analysis of why these are being proposed, and I don't find that there's any substantial reason. They simply increase the number of units, the
number of projects that are subject to Type I review, and I don't know any reason for that. We want to go in the opposition direction, and this goes in the wrong direction.

I think the Section 617.5 Type II action also includes certain small projects on previously disturbed sites. We certainly support that, but it's hardly going to help any of the projects, most of the projects that we have to do in Westchester, particularly in mid and northern Westchester.

And the same thing is true with 617.5 where you're adding the reuse of a commercial or residential structure which is consistent with current zoning law. Again, it's somewhat helpful but hardly ever going to be helpful.

We have questions about the whole business of making scoping mandatory. At the moment, and since the beginning of, I think, the first regulation, scoping has been optional. Either the applicant could opt for scoping or the lead agency could opt for scoping or both could agree to the scoping process, and it's worked pretty well. In most instances recently, or in recent years, scoping has been acknowledged as the way to go by both the applicant and the lead agency. But in
some instances where certain factors, and there is
no need for scoping to extend forever, the
developers have opted to come in with a DEIS
without scoping. That's permitted under the law.
It's not going to happen all that often, but I know
of absolutely no reason that that should not be
continued to be permitted. I don't know of any
good reason. There is no good reason established
in the SEQR DEIS, the DEIS that's in the record,
for making it mandatory. I mean it's a good idea.
It works in some instances. I should say to those
who are fans of scoping, it has its drawbacks.
It's not just the wonderful -- yeah, you can cite a
lot of good, wonderful, in theory, reasons why
scoping is great. But, first of all, in some
instances you have a number of iterations of
scoping meetings and amended scoping documents and
another amendment and another amendment. There are
some horror stories for how long the scoping
process is going on, despite the fact that it does
have in their regulations a theoretical timeline
that just gets ignored.

Secondly, often items are put -- people
come to a scoping meeting, the lead agency sits
there. The reality is nice people come up and say
Oh, you should study this, that or the other thing, and they write it down and add it, even though the applicant says, Well, wait a second, it has no relevance here. You're talking about an intersection that's a mile away that we will have two percent, one percent of our small traffic is going to go there. Why do we have to do a whole traffic study and look at it? There are things like that that get added to it, but the applicant, once it's added and put there, has no recourse. Who does the applicant go to, to say, wait, this is unreasonable? Nowhere.

ALJ WILKINSON: Mr. Parish, if you could wrap up your comments?

MR. PARISH: Yeah, I'm about to.

ALJ WILKINSON: If we have time, we can get back to you, but we have other speakers. Thank you.

MR. PARISH: Okay, I'm about to. Thank you.

So in that case, in any event, I ask for a particular review of that particular thing. I have a few other comments, but I'll leave them for the written document that I will be submitting before May 19. Thank you.
ALJ WILKINSON: Thank you very much.

Kenneth Finger.

MR. FINGER: Good afternoon. Thank you for the time. My name is Kenneth Finger. I'm the general counsel to the Building and Realty Institute of Westchester and the Mid Hudson Region. I would just like to make just a couple of comments.

We submit that the Draft regulations do not deal with the real issues here. The purpose of SEQR has been corrupted over the years by opponents of reasonable and sensitive construction, particularly as to affordable housing by delays upon delays upon delays, so that the paraphrase, the cliche, construction delayed is housing denied.

Moreover, many developers in our region have just packed up and moved out of the State to put their housing elsewhere. The BRI is for environmentally sensitive development, and I second the remarks of Nat Parish and Albert Annunziata and ask that you amend the proposed regulations to incorporate their suggestions. Thank you very much.

ALJ WILKINSON: The next speaker will be William Cooke.
MR. COOKE: Good afternoon. William Cooke, Citizens Campaign for the Environment. We will be providing written testimony at a later date that will be more detailed than what I'm sharing today. I have some written comments.

I certainly want to applaud and recognize that the Department has a significant number of very professional staff who attempt to do the best they can within the parameters that they're allowed to operate.

We also want to acknowledge that there are some proposed changes that will provide environmental and public health benefits, and we applaud the Department on that.

I want to just mention the importance of the Department, given that the EPA now stands for Eliminating Protection of America, and it leaves the states in a position where they're all we have. How long that is going to last, who knows? Perhaps forever.

There are some significant parts of this proposal that we find to be unacceptable and consider a rollback. With the federal administration and where it's going, protection of the public health in New York falls squarely on
state agencies. DEC has proposed that all of the issues of concern must be raised in scoping and, thus, cannot alter the EIS after scoping is done. What does that mean? Well, what it means to lawyers, it's really great news, because SEQR is going to become SEQR through litigation; that's a mistake.

The other issue is it takes away discretion from the lead agency to address critical issues that may come up during the process. This would certainly hurt the public's ability to provide meaningful input. If members of the public are unaware of a potential issue during the early stages scoping, they would lose the ability to address it later.

Additionally, making this worse, there would be a proposed 60-day limit on scoping. Now, some folks would consider 60 days very reasonable, and if the Department had enough staff, it might be, but the truth is the Department does not have enough staff and, therefore, to put in a limit of 60 days is just woefully inappropriate.

We applaud the Department making an effort to address SEQR, but this is not going to work. We believe that any changes to this must be
accompanied by a significant increase in staff resources made available. To work at a department that has the same number of people as when it was created but three times as much work, folks, it's really hard to figure out how that is going to work out for the people. Now, we understand developers. We understand what they do, and they like to do it as fast as possible with loose control, probably with no controls, but that is not in the interest of the people of the state of New York. DEC is not supposed to disappoint every citizen or downplay every concern. DEC is not supposed to stand for Don't Expect Conservation. DEC is supposed to be Doing Everything Conceivable.

We will provide detailed written comments, but we urge the Department leadership, those above the professional staff, to recognize that what they're proposing isn't going to work. We are not interested in a full employment act for lawyers. No disrespect to lawyers. We think this is about protecting the environment, protecting the people and protecting the future.

Thank you for the opportunity to provide a comment today.

ALJ WILKINSON: Thank you, Mr. Cooke.
The next speaker is going to be Kevin C-H-L-A-D.

MR. CHLAD: Chlad.

ALJ WILKINSON: Chlad. Thank you, Mr. Chlad.

MR. CHLAD: Thank you very much for the opportunity to comment. I'll be very brief.

My name is Kevin Chlad, director of government relations for the Adirondack Council.

Let me just start by saying that in the Adirondacks we are so fortunate to have the Adirondack Park Agency Act and its pursuant rules and regulations, which carry a more protective set of SEQR regulations than the rest of the state.

On a global stage, the Adirondacks has long been considered a model for others when it comes to environmental protections. What may be overlooked is that the APA regulations can be a model to the rest of the state.

As the State considers public comment and moves forward with this process, I challenge the DEC to look to the APA SEQR regs to see what they could emulate statewide.

Just one technical comment that I would like to touch on for now, and at a later date I'll provide written comments. Given the fact that the
Department's SEQR regulations, particularly Subdivision 617.4, Section A, Subsection II, currently prohibits any agency from designating any Type II actions listed in DEC SEQR regulations as Type I. We are concerned and have questions about the proposed additions of the new Subdivision 617.5, Section C, Subsection 7, which is, it reads:

Installation of fiber optic or other broadband cable technology and existing highway or utility rights-of-way.

With our state legislature currently considering the passage of a constitutional amendment that would permit the installation of broadband and right-of-ways that lie on the forest preserve, protected by Article 14 of our state's constitution, there has been an explicit expectation throughout that process to develop that amendment, that any and all subsequent environmental reviews for such projects would provide the needed additional layers of protection for the sensitive nature of this work. This proposed action severely risks threatening the ability of certain stakeholders to remain comfortable with the amendment currently being considered. And because of that, we strongly urge
the Department to exercise caution in advancing
this particular regulatory amendment. And thank
you so much.

ALJ WILKINSON: Thank you very much.
The next speaker is Alison King.

MS. KING: Good afternoon, and thank
you for your time. I'll begin by making a
statement on behalf of the League of Women Voters
of New York State.

The League of Women Voters of New York
State support transparency and optimizing public
engagement throughout the environmental review
process. The League also supports a review process
that includes assessments by impartial experts of
actual and potential environmental impacts on both
our natural resources and human health. In
addition, the League supports consistent
enforcement to ensure compliance with the outcome
of the review process.

The next set of questions I am making as an
individual, a health policy analyst and a
toxicologist. I came up from Cortland County in
the hope that the people up here in Albany might
take steps to repair the SEQR process so that
reality at the local level reflects the letter and
The stated purpose of an environmental quality review is to incorporate consideration of environmental factors into government agency planning and decision-making at the earliest possible time. Tapping public input early and constructively through mandatory public scoping has potential to increase SEQR efficiency. A robust SEQR process must also be responsive to substantive new information and ensure participation of people qualified to evaluate critical impacts.

Furthermore, incentives are needed to translate SEQR policy and to retain practice at the local level and to avoid conflicts of interests, as I will discuss.

The DEC's proposal to mandate public scoping is a positive step; however, for public scoping to produce meaningful improvements in local SEQR practices, clarification of scoping requirements is also needed. The following specific suggestions are intended to better ensure that government officials understand scoping requirements, that adequate time is allotted to evaluate public comments and lead agencies incorporate relevant, substantive comments into the
final scope, thus, strengthening the evaluation of
environmental impact, so here are some specific
suggestions.

First revise the definition of scoping in
617.2 to ensure consistency with Section 617.8 by
referring readers to the scoping requirements of
Section 617.8F, and here I'm referring to the
current law sections.

Second, amend section 617.8 to state that
the lead agency must provide a period of time for
the public to review and provide written comments
on a draft scope; must, not may. Also, insert that
the final written scope shall incorporate public
comments on topics in Section 617.8F 1 through 6
unless the comments are determined to be
unreasonable or irrelevant. This addition is
intended to ensure that someone reads the public
scoping comments, evaluates the comments and acts
upon them.

Third, in Section 617.8, where it states
that the final scope must include the reasonable
alternatives to be considered, insert including
social, economic and other essential
considerations.

New York State Environmental Conservation
Law states that, quote, agencies shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse and environmental effects, including effects revealed in the Environmental Impact Statement process. To evaluate alternatives, for example, our local decision-makers need to evaluate economic impact of those alternatives. That needs to be included. The expectation should be established up front in the scoping, in the DEIS, and this information should be publicly available.

To enable response to public comments on the Draft scope, SEQR should increase the time for the lead agency to provide a final written scope to at least 90 days from receipt of the Draft, but also allow for extension of this time period, when necessary, consistent with regions provided in the current Section 617.9 AF2.

Public participation is important throughout the SEQR process. It is unrealistic to expect full public participation at the initial scoping stage when project awareness may be low. The SEQR process should be responsive to substantive new information. The proposed
restriction of DEIS content to information included in the final scope is counterproductive and unreasonable. The proposed amendment to section 618.8h should be removed. It would inappropriately curtail the authority of the lead agency to judge content of the DEIS.

The proposed SEQR amendments do not address a serious flaw that undermines the integrity of SEQR. Local governments, as we all know, operate with very limited discretionary budgets and staff. Involved agencies and their agents often lack personnel who are qualified to evaluate health impacts and other complex issues. Local government officials, the decision-makers, may not know what questions to ask. An engineering firm retained to prepare an EIS may have little incentive to hire health experts or to clue the decision-makers in on what these real issues are.

Amendments to SEQR regulations should establish a process and resources for evaluation of health risks. One potential remedy is designation of trained staff within the Department of Health as SEQR consultants and evaluators of EIS adequacy. Likewise, investment in DEC staff and resources might enable oversight to assess whether basic SEQR
standards are met.

Numerous provisions in SEQR regulations, including regulatory time frames, are based on a scenario where the lead agency, project sponsor and applicant are separate entities; however, in cases where a proposed governmental action triggers SEQR -- for instance, siting a new jail -- there is an inherent conflict of interest if the project's proponent is also designated as a lead agency. SEQR amendments are needed to minimize impact of such conflicts which may inappropriately delay initiation of SEQR and bias the SEQR process.

At a local level, SEQR missteps are common. Type I actions are miscategorized as unlisted or Type II. Projects are advanced with substantial expenditure of public funds before initiation of SEQR. Public comments are dismissed with little consideration and no consequence. To illustrate, the appendix, the written comments I will submit, documents problems in the conduct of SEQR for solid waste projects.

Changing SEQR practices at the village, town and county level requires not only education but also a substantial shift in expectations. The impact of SEQR amendments is likely to be modest
without enforcement through incentives, penalties
for non-compliance or both.

Currently the recourse for citizens seeking
SEQR enforcement is expensive, an Article 78
proceeding. New York's stewardship of the
environment is broken if citizens must sue to get
the system to work. The environmental protection
of New York State will improve if local government
officials understand SEQR requirements and act
responsibly without litigation. Thank you.

ALJ WILKINSON: Thank you very much.

Just a reminder that if you are speaking and can
provide your comments to the stenographer, we would
appreciate it.

Next up is Grace Nichols.

MS. NICHOLS: I want to thank you for
the opportunity to speak today and speak for the
grass roots environmental community.

My name is Grace Nichols. I am with
Bethlehem Eco Defense, and we're part of 140 group
coalition that opposes the Northern Access Pipeline
Project, the Dominion Project, the Pilgrim
Pipelines Project, the Anchorage Project, the
fossil fuel trains that rumble through the Port of
Albany, the Aim Spectral Project. So when we're
looking at the SEQR process, we remind you what
time it is.

In the current environment globally,
Ireland just divested from fossil fuels; Kenya
outlawed plastic bags, a petroleum project; much of
Europe has phased out landfills reducing methane
emissions, and much of Europe is moving towards
carbon neutrality. China, just this week, called
the United States selfish with respect to the Paris
Agreement on Climate.

In this environment and in a time in which
the public is losing their faith in the EPA -- it's
protection for us -- I think it's a difficult time
to change the most stable legislation the public
has to comment on projects coming into our
communities that have environmental impacts.

New Yorker's face an assault of fossil
fuels on New York State and a fossil fuel
infrastructure. We face pipelines in communities
constructed by the same pipeline companies whose
pipelines have blown up in Pennsylvania. We face
health effects on our children's children who live
near compressor stations. We are still finding
pockets of rare cancers near landfills, and we are
weathering a relentless onslaught by the fossil
fuel industry on New York State with the intent of exporting fossil fuels to Europe.

So if we were to actually consider changing the lead environmental legislation in the State of New York, we could do a few things. One of the things that we could do is say that all new projects in the State of New York must be carbon neutral, and if they are to emit any carbon dioxide or methane, they must purchase carbon credits in order to do so. We could change it, you know, and say that all fossil fuel projects that intend to transport fossil fuels throughout New York State, with the intent to export to Europe, are banned, so we don't have to review them at all.

Thank you very much. We could change this law in a way that would protect our environment, our atmosphere, our water and our land; we could do that. But if we were to fail that standard, and we are not going to drastically change this law in order to protect the environment, then the grassroots community will not support any amendment to this legislation. This is what we have to stand on, and we don't trust these amendments. We do not think that they're in our interest.

So with that in mind, I wanted to talk
about some environmental history. There have been other times in which the grass roots environmental community has felt that state regulation was not in their interest, and the time I can think about is in the late '80s in California when we felt that a loophole -- they didn't even change the laws; it was the California Department of Forestry. They were a rubber-stamp agency anyway. They didn't even change the law, but the lumber companies utilize a loophole, so once we had a temporary restraining order through the courts stopping the clear cut of all species growth, because that went into effect on a Monday and it was announced on a Friday, or Thursday, Wednesday, I'm not sure, there was something that we now call the Thanksgiving Massacre, in which the lumber company went in and clear cut all species growth. And because the environmental community had their heart strings wrapped around those trees -- and it was an old growth forest, prime old growth forest, redwoods and douglas fir -- we launched a campaign that was the largest civil disobedience campaign in the history on environmental struggle in the United States.

Five years later I was at a direct-action
training camp in northern California, and we locked
down at a lumber company. And the police came, and
they swabbed people's eyes with pepper spray, and
the courts actually ruled that that was torture.
So I was down south at an Earth First Event where
we were going to discuss the court case, and I get
the call, and it turns out that our fiend, Gypsy,
has died in the woods because -- we have it on
videotape -- because a lumber company employee
felled a tree on him. And it was the first
fatality in the entire Earth First Campaign to
change the actions of the California Department of
Forestry and the lumber companies. And that's when
I quit. All right? I went to the press. I was
the first one at the event. The press comes to me,
and they want me to discuss the first fatality in
the first campaign, which had been going on since
redwood summer in 1911, and I said that the lumber
companies', timber companies' practice in the woods
was so criminal that it endangered the ecosystem,
and it endangered the worker, such that it was the
number two most dangerous industry in the U.S.
behind mining and, these days, behind fracking, I
would imagine. I did not say that a logger out
there committed murder and we can prove it. And
the parents of Gypsy, David Chain, who is a
24-year-old activist from Texas, also did not
allege murder because we did not want a war between
timber workers and environmentalists. We wanted to
save the environment.

And I want to remind you that if I cannot
convince my people that this legislation actually
protects the environment and actually gives the
same public comment weight that we currently have,
or better -- we're not talking about me. Okay? To
many people, I have not been arrested in 20 years.
A lot of people thought that was impossible, but to
my people, some people, I'm a sellout, I'm a
liberal. I came to New York State, I got a science
degree, and I decided to use SEQR to preserve land.

I know there's over a thousand species
going extinct here on this planet, and I feel it's
my moral obligation to do something, but I use the
law, but if this law appears to be squishy in a
time when communities are trying to fight for not
even just the trees but, you know, the wellbeing of
their children, I would say you might have an
expensive struggle ahead of you. Thank you very
much.

ALJ WILKINSON: Thank you very much.
The next speaker will be Mike Dulong.

MR. DULONG: Good afternoon. Judge Wilkinson, thank you for the opportunity to comment today. My name is Mike Dulong. I'm a staff attorney with Hudson River Keeper. We're a non-profit environmental watch dog organization dedicated to defending the Hudson River and protecting the drinking water supply of 9 million New York City and Hudson Valley residents.

We will submit detailed written comments covering a range of issues, but today I would like to take the opportunity to call the public's attention to a proposal that could shake the foundation of SEQR. Municipalities and lead agencies should focus on this issue, as they will be disempowered, and New Yorker's should have cause for concern, as this will limit public engagement in the SEQR process.

The issue is scoping. Now, mandatory scoping, as proposed by DEC, is a good idea. Involvement in the scoping process gets involvement in an early stage by as many people as possible, it helps share information, and it sets expectations for the rest of the process, so River Keeper would support that standing alone. However, what DEC is
attempting to do, or what DEC proposes to do, is to
restrict the lead agency's ability to reject the
Draft EIS based on information that comes to light
after the SEQR process -- or after the scoping
process is finished. In other words, communities,
individuals or lead agencies raise new substantive
issues, the lead agency would be prohibited from
factoring those issues into whether a Draft EIS was
sufficient or not. So there is a lot to unpack
there. What is important is how this is going to
affect lead agencies and communities.

Scoping is a good process, but it's not a
perfect process, as we heard before. Despite the
best intentions of the lead agencies, project
developers of the community, not every issue is
going to be raised at that stage. Some issues may
only come to light after a Draft EIS has been
completed, after the issues have been studied.

Moreover, changes to the project, or in the
surrounding circumstances, are common. So the lead
agency would be in a position of having to deal
with all of those new things at the final EIS
stage. And they would not have the benefit of a
public comment process on those new issues.

So what a Draft EIS does is it serves as
sort of a litmus test of whether the Draft EIS, whether the final EIS is going to be sufficient. Subjected to public review, you get all of the objections. You see what the flaws may be, everything that might be wrong with it, and then you fix those, and you leave it up to the lead agency to determine whether a new draft test be issued to get further comment or whether they're comfortable with what is coming out and whether they're comfortable with the final.

If you're putting the lead agency in the unenviable position of finalizing EIS without public comments on new issues that may be raised, that's likely to increase litigation, and not all lead agencies are created alike. Some are depending on the public and on outside parties to raise these issues so that they can see what might be wrong with the Draft EIS.

Now, on the public side there's, again, no opportunity at the Draft EIS stage to review the treatment, the lead agency's treatment of issues in the Draft EIS. Now, that is the stage, the Draft EIS stage, of where the public learns how they're going to be effected and whether the study has been good or not, whether the lead agency has gone
through the paces and really shown everything that
they could about an environmental impact.

Instead, the public is going to be focusing
they're public comments at the scoping stage. And
I hate to be the person to break this to DEC, but
not everybody reads the EMB every week. There is
not usually full public awareness of these issues
at the scoping stage, and there certainly isn't a
basis for everyone to read a document, read an
Environmental Impact Statement and understand what
those issues might be and what issues may be
missing, what additional issues might be out there.
And environmental justice communities are going to
be hit worse by this. They are the ones that are
least likely to have access to environmental
professionals, the ones that are least likely to be
informed that these environmental reviews are
taking place.

Now, the upshot of all of this, really, is
that something like fracking, the momentous
fracking ban put in place by DEC, would never have
happened if these regulations were put in place at
the time. It was through the drafting process that
the additional environmental impacts, the impacts
of public health came to light, and those are the
issues that DEC and the Department of Health relied
on to realize that this practice, this highly
industrial practice could not take place in New
York State. And I just think this is the wrong way
to go, and I think this would be the wrong legacy
to leave if we're talking about another 20 years of
the SEQR process.

There is one other piece of the scoping
process; that's the 60-day time limit on the
scoping. That's not enough time to give a 30-day
comment period for every lead agency, every town
board across the State, every planning board to
review those comments at that stage and move
forward, especially if there is this new focus on
public comment at the scoping stage.

So, look, SEQR is not a perfect process,
but it's not broken, and this provision would be
gifted developers at the expense of communities and
lead agencies. Now, lead agencies should remain in
control of their processes in terms of timing, and
they're the ones that are ultimately responsible
for the final decision, so they should be
comfortable that the Draft documents are leading to
the sufficient final review, one that will legally
support their determination.
Thank very much for the opportunity to submit comments today. We look forward to working with the agency today on these really important regulations that will impact the future of human health and the environment in New York.

ALJ WILKINSON: Thank you very much. Roger Downs. And if you have comments, if you spoke today and have comments, we would appreciate them provided to the court reporter.

MR. DOWNS: Thank you. My name is Roger Downs. I'm the conservation director for the Sierra Club, Atlantic Chapter. We are a volunteer-led, environmental organization of 48,000 members statewide, dedicated to protecting New York's air, water and remaining wild places.

We thank you for the opportunity to provide testimony. We will be providing more substantive comments by the May 19 deadline.

I would like to begin by saying that Sierra Club, fundamentally, rejects the notion that SEQR needs to be streamlined in order to find better balance between environmental protection and the needs of the development community. We believe there has always been a disproportionate focus upon the complaints of a small group of developers about
how SEQR is cumbersome and unnecessarily burdensome to business in New York. While thousands of development proposals sail through the process annually with little controversy or hardship, it is this minority of delayed, bad proposals that seems to be behind the effort to streamline the State Environmental Quality Review Act and subvert public participation protecting the environment. The Sierra Club has long argued that it is not SEQR at fault for lengthy delays to bad proposals, it is the poorly conceived proposals themselves that are to blame. We believe that the Department has to do a better job in portraying the EIS process as a valuable tool to developers and municipalities, as a means to build better and more harmonious communities rather than the pejorative messaging around streamlining.

The most problematic aspect of the SEQR revisions, as I think Mike Dulong brilliantly laid out, are the changes to the effect that scoping has on the lead agency's ability to make sure that the Environmental Impact Statements are comprehensive and effective.

We support the Department's decision to make scoping mandatory for all EIS's, but we cannot
let that early information-gathering process
constrain the acceptance of important issues later
in the environmental review. Scoping plays a
critical role in not only identifying issues
germane to an environmental review but also in
enlisting public participation early in the
process. In our experience, many issues of local
significance are not raised during scoping because
the public is still learning about the proposal
before them. It is often months after scoping is
finalized that a critical mass of public awareness
developments and new and important information
comes forward. By placing limitations on the
introduction of new information, after the
completion of the final written scope, is no longer
a basis by which the lead agency can reject a Draft
EIS as inadequate. The Department is unnecessarily
weakening the thoroughness of reviews and creating
an incentive for applicants to withhold concerning
information about a project until after the final
scoping document is complete. Facts that come to
light afterwards will have a difficult time getting
included in the Draft EIS. Suggesting that
withheld information could be captured later in a
supplemental EIS is simply not practical and
creates an undue burden for lead agencies and an
uphill battle for citizen enforcement of SEQR in
the courts.

We also believe that front loading the
importance of scoping should not come with a
constrained cap upon the length of the scoping
period. If, indeed, all of the relevant review
topics for an EIS must be identified during
scoping, then the lead agency must be given the
discretion to allow for longer scoping periods than
60 days to ensure all essential information is
allowed to come forward in a comfortable time
frame.

Moving to the Type II list, additions to
the Type II lists are certainly less problematic
than what was originally proposed in 2013. The
Sierra Club still has concerns with the philosophy
that we can incentivize good projects by giving
them exemptions from environmental reviews. We
believe that environmentally advantageous
development that has built-in smart growth
principles, or utilizes green infrastructure,
already has advantages over other developments that
may languish in the review and implementation
process because of whatever conflict they present
to the environment.

While, in general, most of the additions to the Type II list do not seem to present serious environmental impact, the Department has not made a compelling case that any of these additions are frequently stifled by unnecessary environmental reviews. We remain unconvinced that leaving the door open for a lead agency to use all of the tools of SEQR, even for green projects, is a bad idea.

One of the classifications of Type II additions that gives us some pause is the redevelopment of municipal centers, as the new Type II lists, list as 19, 20, 22 and 22, that all correspond with population density. While we find the guidance sentiment of urban redevelopment admirable, we have no confidence that the exemptions provided will have the desired effect upon driving development back into our city centers. Negating the possibility of an environmental review for relatively large developments in an under-defined municipal center of a city can lead to unmitigation issues of traffic, toxic exposure, noise, public health concerns and community character. We are concerned that this action will have a negative impact on
environmental justice communities that may want to use the SEQR process as a tool to positively shape development in their communities.

We request that the Department make an extra effort to reach out to each advocacy organization and communities of color to make sure these exemptions from SEQR are really something that they want.

I don't want to paint this as all bad. I think that there are, you know, good intentions behind what the Department is doing. We support the changes in the thresholds to the Type I lists as a means to capture more problematic developments in both housing and the expansion of parking lots. We appreciate the consideration of climate change and the fulfillment of EIS's in addressing issues of adaptation and mitigation. But even though we can see some benefit to these revisions, we don't see that there is balance, especially with the new and inappropriate way placed on scoping. We feel that New York's environment could be harmed if the SEQR streamline proposal is adopted, whole cloth.

Again, we will be submitting more substantial written comments, but our general sentiment is the DEC should take the no-action
alternative for this proposal in its entirety.

Thank you.

ALJ WILKINSON: Thank you very much.

And I have, as a last speaker, Peter Looker. If anyone else wants to speak today, please fill out a speaker card, and you will be welcome to speak.

MR. LOOKER: Thanks. My name is Peter Looker. I'm a citizen, business person, parent, part of our living ecosystem.

First off, I believe in KISS, Keep It Simple Stupid; however, those who create complex projects, create the need for complex and public examination of those projects.

I'm concerned with the idea of dramatically increasing Type II non-reviews. To not even to fill out an EAF takes away a simple requirement of project sponsors, our government, and the ability of we, the people, to examine the project impacts, alternatives and mitigation options.

I find a lot to be gained by examination by self and by others. I find, personally, a lot of projects, particularly at the local level where I'm most familiar, do not seem to care much about people, next generations, or our earth. To, at least, examine and make public the ecological seems
very important.

We, the people of the earth, need to strive to leave things better than we found them. I leave it to the people with more expertise than me and who care for the earth more than short-term profit to help work out the details. Thank you.

ALJ WILKINSON: Thank you very much. Is there anyone else who wishes to speak today?

Okay, so I just want to remind everybody that there are additional public hearings coming up. Next week there is a public hearing on April 6 in New Paltz; the following week, April 13, in Hauppauge, New York; and on April 18 in Rochester, New York. All those hearings will commence at 6 p.m.

And as a reminder, the public comment period will close on May 19, so if you want to submit written comments, please get them in by then. We have information on the registration table outside, and I thank everyone for coming.

(Whereupon, the matter, in the above-entitled proceeding, concluded at 2:11 p.m.)
CERTIFICATE

I, Kyle Alexy, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me is a true and accurate transcript of the same, to the best of my ability and belief.

___________________
Kyle Alexy

DATE: April 5, 2017.
bad [4] 47/5 47/10 50/9 51/9
bags [1] 36/5
balance [2] 46/22 51/19
ban [1] 44/21
banned [1] 37/13
based [3] 14/24 34/3 42/3
basic [1] 33/25
basis [2] 44/9 48/16
battle [2] 11/1 49/2
be [92]
become [1] 25/6
been [20] 6/14 6/24 9/5 12/24 13/1 13/3 14/7 15/17 20/19 20/24 23/11 27/15 28/16 31/8 39/17 40/11 42/17 42/18 43/24 46/24/26/31
beef [2] 11/1 23/22 34/16 42/13 48/10
begin [5] 2/4 2/41 5/20 29/7 46/19
beginning [1] 20/18
being [3] 5/2 19/23 28/24
be 

A

apologize [1] 4/17
appeal [1] 10/8
appeared [1] 12/19
appears [1] 40/19
appendix [1] 34/19
applicable [1] 8/20
applicants [9] 12/2 18/25 19/9 20/20 20/25 22/3 22/9 22/11 34/5
approved [1] 48/19
approve [2] 9/2 11/24
apparatus [2] 8/10 9/11
approved [3] 8/6 13/1 13/3
approving [1] 9/6
arbitration [2] 10/6 19/3
are [85]
area [2] 8/16 9/14
argue [1] 47/9
arise [1] 9/16
around [2] 38/19 47/17
arrested [1] 40/11
article [3] 12/18 25/35 34/4
as [53] 2/13 5/1 5/6 6/22 7/7 7/9 7/9 8/17 8/19 9/3 10/7 11/2 11/23 13/4 13/13 14/1 15/1 15/6 16/22 17/12 19/7 20/24 23/13 26/3 26/4 26/6 26/8 27/19 28/4 29/20 30/14 33/9 33/22 34/9 34/14 41/5 41/17 41/20 41/22 41/22 42/13 42/25 47/13 47/14 47/19 48/17 50/12 50/13 51/2 51/9 51/13 52/4 53/16
as-of-right [3] 8/17 8/19 11/2
aspect [1] 47/18
assault [1] 36/17
assess [1] 33/25
assessments [1] 29/14
assist [1] 15/23
association [1] 6/9
at [43] 4/3 5/4 15/7 6/19 8/1 8/3 8/8 8/12 11/7 14/18 15/7 20/17 22/8 24/3 26/2 27/24 29/25 30/5 30/13 32/16 32/22 34/13 34/22 36/1 37/14 38/25 39/2 39/5 39/15 42/16 42/22 43/20 44/4 44/8 44/22 45/13 45/15 45/18 47/5 52/22 52/24 53/14 53/22
Atlantic [4] 46/12
atmosphere [1] 37/17
attempt [1] 24/8
attempting [1] 42/1
attorney [1] 41/5
authority [1] 33/5
avoid [2] 30/14 32/4
avoiding [1] 11/3
awareness [3] 32/23 44/7 48/11
away [3] 22/5 25/8 52/16
B

back [2] 22/17 50/18