

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED PART 575 OF TITLE 6 OF THE OFFICIAL COMPILATION OF CODES,
RULES AND REGULATIONS OF THE STATE OF NEW YORK (INVASIVE SPECIES)

HEARING REPORT

by

/s/

Molly T. McBride
Administrative Law Judge

Daniel P. O'Connell
Administrative Law Judge

P. Nicholas Garlick
Administrative Law Judge

Richard Sherman
Administrative Law Judge

May 9, 2014

PROCEEDINGS

The New York State Department of Environmental Conservation (“Department” or “DEC”) scheduled public information sessions and public comment sessions to provide information to the public and provide an opportunity for comment on the Department’s proposed new Part 575 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, pertaining to invasive species.

The proposed invasive species regulations provide rules and procedures to identify, classify and establish a permit system in an effort to restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York, as part of DEC's statewide invasive species management program, as required by Environmental Conservation Law (ECL) Sections 9-1709 and 71-0703. The Department, as lead agency, has determined that the proposed action described would not have a significant adverse environmental impact and has not prepared an Environmental Impact Statement, rather it has issued a Negative Declaration. These draft regulations are jointly proposed by DEC and the New York State Department of Agriculture and Markets (NYS DAM), as both agencies have a clear interest (and authority) in reducing the adverse environmental and economic impacts of invasive species. This rulemaking provides a listing of prohibited invasive species and regulated invasive species, and specifies the criteria used in making such a classification and a means for future classification of species. These regulations, once implemented, are expected to help control invasive species, a form of biological pollution, by reducing the introduction of new and spread of existing populations, thereby having a positive impact on the environment.

A notice of hearing was published in the Department’s *Environmental Notice Bulletin* on October 23, 2013 and in the *State Register* on October 23, 2013. DEC conducted public information meetings and comment sessions on the following dates: December 10, 2013 at the DEC’s Region 9 office located in Buffalo, New York; December 11, 2013 at the New York State Fairgrounds in Syracuse, New York; December 16, 2013 at DEC’s Central Office, Albany, New York; and December 17, 2013 at the DEC’s Region 1 office, Stony Brook, New York.

The deadline for written comments, as stated in the notice of hearing and notice of rulemaking hearing, was December 23, 2013.

BUFFALO

This hearing session was held at 2:00 p.m. on December 10, 2013 at the DEC Region 9 offices, 270 Michigan Avenue, Buffalo, New York. Prior to the public hearing, from 1:30 to 2:00 p.m., Department staff held an informational session during which staff answered questions from the public and provided background materials concerning the proposed regulations.

Approximately 20 people attended the hearing; five attendees provided oral comments. **Ed Dore** representing the New York State Nursery and Landscape Association (NYSNLA) made two points on the record. He noted that little weight was given to the hardiness zones, giving the example that plants grow differently on Long Island than other areas of the State. Also, he asked

that when a plant is listed as prohibited, that a more in depth review be conducted, not just ban a genus and species. **Sally Cunningham** of NYSNLA supports the regulations. The message about invasive species has been given to the industry for years. She has tried to talk to others about the problem but has met skepticism and resentment. She would like a generous phasing out period to help those with a lot of stock. Also, she would like easy to follow procedures. She would also like there to be distinction between hardiness and growing zones. She would like there to be help with educating the industry. **Kathleen McCormick** of Western New York Plant Conservancy noted the group's support of the regulations. **Bob Smith**, also of NYSNLA, spoke about three trees on the prohibited list, *Acer pseudoplatanus*, *Robinia pseudoacacia* and *Phellodendron amurense*. These trees are examples of trees that should be allowed in certain areas due to their specific benefits. **Paul Fuhrmann** also spoke in favor of the regulations. He also believes education is a key piece to the success of the regulations. **Kirk Peryea** would like the regulated species list to address animals. Also, he did not see hybrids addressed. He would like to know how mail order/internet sales will be regulated.

The hearing concluded at 3:00 p.m.

SYRACUSE

The second public hearing convened at 2:00 p.m. on December 11, 2013, in the Martha Eddy Room at the State Fairgrounds in Syracuse. Approximately, fifty people attended and ten spoke. The first speaker was **Bill Laffin**, President of the Keuka Lake Association, who stated that the proposed rules do not install legal barriers to prevent aquatic invasive species from being introduced to water bodies like Keuka Lake. He recommended amendments to include actionable and enforceable rules regulating recreational boaters and their role in the spread of invasive species. The second speaker was **Ted Stetler**, from the Marcellus Nursery, who questioned why Burning Bush (*Euonymus alatus*), a plant introduced over a hundred years ago, was included in the proposed regulations when, in his opinion, it had not spread very far, and he questioned the extent to which this plant occurs in New York. The third speaker was **George Hanford**, a farmer from Marcellus, who questioned how the invasive species in the proposed regulations were chosen and stated that great care should be taken in making such choices. The fourth speaker was **Roxy Johnston**, an employee of the City of Ithaca, who spoke in favor of the proposed rules and advocated for new regulations to address the aquatic transportation of invasive species. The fifth speaker was **David Ryan**, a landscaper and nurseryman, who spoke about the need for the regulations to address the numerous hardiness zones in the State and the different conditions in each zone. Mr. Ryan also suggested that nurseries be given adequate lead time regarding regulated species to minimize economic impacts. The sixth speaker was **Dale Tuttle**, President of the New York State Nursery and Landscape Association (NYSNLA), who spoke briefly and mentioned that his organization would file more lengthy written comments. The seventh speaker was **Michael Grimm**, owner of a landscape tree service business and representative of NYSNLA, who spoke about: (1) the problems of invasive insects, including the emerald ash borer; (2) the need for the regulations to address the different hardiness zones in the State; (3) the fact that some of the regulated and prohibited trees are recommended for planting

on urban streets; and (4) the process by which plants can be added and removed from the regulations. The eighth speaker was **Mark Weiss**, a partner in Lan's Flower Farm, who spoke about the fact that the restriction on Maiden Grass (*Miscanthus sinensis*) and the negative impact it would have on his business. The ninth speaker was **George Aspinall**, the owner of a tree nursery in Chittenango, who spoke about the restrictions on certain species of maple trees and its impact on his business. The final speaker was **Gerry Rubenstein**, who is involved in the growing and sale of grasses, who spoke about the proposed regulation's impact on the sale of Kentucky Blue Grass and Tall Fescue. The hearing concluded at 3:00 p.m.

ALBANY

A public hearing convened at 3:00 p.m. on December 16, 2013 at the Department's Central Offices in Albany, New York, to collect comments from members of the public. Eleven people spoke at the December 16, 2013 hearing session.

Glenda Berman filed comments on behalf of the Native Plant Center at Westchester Community College (WCC) (Tr. at 4-6). The Native Plant Center at WCC supports the proposed regulations. Ms. Berman noted that the lists of prohibited and regulated species in the proposed regulations are five years old. The Department, however, should revise these lists based on changing climate conditions in the State, additional scientific information, and a growing public awareness. For example, the extensive data available in the State's IMAP invasive species database would inform assessments and keep the proposed regulations relevant. Therefore, the lists of prohibited and regulated species should be revised and updated at regular intervals.

Ms. Berman recommended that the Department include the species identified in the regulated lists into the prohibited lists because the directives associated with the prohibited species are clear and forceful. According to Ms. Berman, the directives associated with the regulated species are weak and potentially ineffective. Ms. Berman observed that species listed on the regulated lists may be offered for sale in New York State, which would undermine the management initiative outlined in the proposed regulations. Ms. Berman observed further that the sale of many species proposed to be regulated in 6 NYCRR Part 575 is banned in neighboring states. Adding the regulated species to the prohibited lists would result in a regional ban that would broaden the potential beneficial effects of the proposed regulations.

The Department should adopt the grace period outlined in New York City's planting program, which gives sufficient time for the nursery and landscape industries to use up current stock while they increase native stock alternatives. Ms. Berman noted that this model was successful in Nassau and Suffolk Counties in New York, as well as in Massachusetts and Connecticut.

Ms. Berman said that the Native Plant Center at WCC is concerned about the identification of the Black Locust (*Robinia pseudoacacia*) on the proposed regulated list. According to Ms. Berman, the Black Locust is native to New York State. Ms. Berman

acknowledged that some studies document potential problems with the Black Locust; however, those studies focused on areas where the Black Locust is not an indigenous species. Ms. Berman noted that the Black Locust has positive attributes and is “less aggressive in certain areas.” Ms. Berman emphasized the need to undertake additional studies concerning the potential impacts of the Black Locust if this, and other species, begin to move northward with the changing climate. Finally, Ms. Berman stated that the “Tree-of-Heaven” should be added to the prohibited list.

Marilyn Wyman is from the Cornell Cooperative Extension of Columbia and Greene Counties (Tr. at 6-7). Ms. Wyman expressed concern about the identification of the Black Locust on the regulated list. Ms. Wyman works with foresters and loggers, who said that the Black Locust has commercial value in New York State. For example, Black Locust is used as a fence-post material. According to Ms. Wyman, silva-pasturing integrates agricultural and rotational grazing into a forested setting, and the Black Locust can play a role in this process.

Randy Herrington is a nurseryman from Faddegon’s Nursery, Inc. (Tr. at 7-8). Mr. Herrington is concerned about the potential economic impact that the proposed regulations may have on the nursery and landscaping businesses. Mr. Herrington said that species of Barberry and *Euonymus fortunei*, among others, have significant retail value, and that certain cultivars of these species are less invasive than others. Mr. Herrington requested that the Department consider the potential adverse economic impacts from regulating and prohibiting certain popular ornamental landscape plants.

Ann Patton is Co-Chair of the Philipstown Garden Club. Ms. Patton is also a member of the Native Plant Center at the Westchester Community College, and a native plant fundamentalist (Tr. at 8-10). With reference to Doug Tallamy (*Bringing Nature Home*), Ms. Patton said that non-native species do nothing for the local ecosystem. Non-natives do not promote bio-diversity. Rather, they inhibit bio-diversity. As an example, Ms. Patton said that “sterile lawns” support only Japanese beetles.

Ms. Patton noted that the local ecosystem depends on native plant species. These plants serve as habitat and food sources for native insects, which are food sources for bird species. Ms. Patton stated that since the 1960s, bird counts are down from 17 million to 5 million – a reduction of 70%.

Ms. Patton explained there is a connection between Japanese Barberry and Lyme disease. Predators do not pursue small mammals that live among the thorny Japanese Barberry. The resulting shelter allows small mammal populations, and the disease bearing ticks associated with the small mammals, to proliferate.

Ms. Patton noted that buyers for nurseries and garden centers from neighboring states come to New York State to purchase various plant species, such as Japanese Barberry, that are banned in these neighboring states. Ms. Patton maintained that the proposed regulations would result in a regional ban that would broaden the potential beneficial effects of the proposed

regulations.

Eric Carlson is President of the Empire State Forest Products Association (Tr. at 10-11). The association helped to develop the proposed regulations through its participation with staff from the Departments of Environmental Conservation, and Agriculture and Markets, and the Invasive Species Advisory Council. The association supports the proposed regulations because they would control forest pests.

Mr. Carlson explained that forest pests often “hitch-hike” on invasive plant species. These hitch-hikers include insects and fungi. Mr. Carlson recommended that the proposed regulations clarify acceptable disposal processes for certain invasive plant species so that any potential hitch-hikers are contained or destroyed.

David Linehan is a shrubber from Glens Falls, New York, and is a reporter for the New York State Nursery Landscape Association (Tr. at 12-22). Mr. Linehan supports the proposed regulations, and acknowledged the efforts undertaken by staff from the Departments of Environmental Conservation, and Agriculture and Markets to develop them. According to Mr. Linehan, the proposed regulations fulfill the mandates of the Invasive Species Prevention Act. Mr. Linehan is hopeful that budgetary appropriations will be available to provide education opportunities, and to promote efforts to inventory and manage invasive species at the local level throughout the State.

Mr. Linehan provided comments about certain proposed provisions of 6 NYCRR Part 575. They are summarized below.

Mr. Linehan recommended that the proposed definition for the term “native species” at 6 NYCRR 575.2(u) should refer to ecosystems within the boundaries of New York State. In comparison, Mr. Linehan noted that the proposed definition for the term “nonnative species” (*see* 6 NYCRR 575.2[w]) references New York State. According to Mr. Linehan, the proposed definitions of the terms “control” (*see* 6 NYCRR 575.2[f]), “disposal” (*see* 6 NYCRR 575.2[i]), and “transport” (*see* 6 NYCRR 575.2[l]) may be in conflict. Mr. Linehan is concerned that the control and disposal of invasive species may result in their transport within the State which, as currently proposed, would be prohibited. Mr. Linehan recommended that the term “transport” expressly exclude the movement of invasive species when the transport would be incident to the disposal of invasive species as part of an integrated management plan to eradicate or control invasive species.

Mr. Linehan observed that Long Island is located in USDA hardiness Zone 7 and has approximately 200 frost-free days, but that most of upstate New York is located in USDA hardiness Zone 5 and has approximately 100 frost-free days. In the proposed regulations, 6 NYCRR 575.3 provides lists of prohibited invasive species, and 6 NYCRR 575.4 provides lists of regulated invasive species. Mr. Linehan inquired whether the Department would “consider moving [species] from the prohibited list to the regulated list for use in management ecosystems

upstate when [the Department is] evaluating the two different lists” (Tr. at 14-15).

Mr. Linehan recommended that the following proposed prohibited species should be moved to the regulated list. The Urban Horticulture Institute recommends Sycamore Maple (*Acer pseudoplatanus*) in urban environments because the tree is tolerant of a wide range of soil pH, and salt compounds used to de-ice roadways. The Urban Horticulture Institute also recommends Amur Cork Tree (*Phellodendron amurense*) in urban environments. Due to the dioecious nature of the Amur Cork Tree, the use of male individuals should be specified and authorized for use in urban environments. Given the colder climate in upstate areas, the two bamboos (*Phyllostachys aurea*, and *Phyllostachys aureosulcata*) can be controlled if containerized.

According to Mr. Linehan, the following plants should remain on the proposed regulated list. Mr. Linehan noted that since the 1970's, the Norway Maple (*Acer platanoides*) has been an important tree in the urban environment and pointed to its prevalence at the Empire State Plaza. With respect to Japanese Virgin's Bower (*Clematis terniflora*), Mr. Linehan said there may be confusion about the common and scientific names of these plants that may need to be clarified. Mr. Linehan said that Burning Bush (*Euonymus alatus*) is an important and popular deciduous ornamental shrub that should be regulated, and that Winter Creeper (*Euonymus fortunei*) is a popular ground cover. According to Mr. Linehan, Chinese Silver Grass (*Miscanthus sinensis*) is an important environmental grass in upstate New York.

Mr. Linehan objected to including the Black Locust (*Robinia pseudoacacia*) as a statewide regulated species. Although native to southern states, Mr. Linehan said that the Urban Horticultural Institute, nevertheless, recommends the Black Locust because it is salt tolerant. Because the tree matures slowly, he noted that reasonable management practices would control undesirable populations in New York State. He noted further that the Black Locust is a phenological indicator plant for the emergence of the Emerald Ash Borer, an invasive insect.

With respect to the species listed in 6 NYCRR 575.4 (Regulated Invasive Species), Mr. Linehan stated that members of the public may want assistance in identifying the proposed regulated invasive species before purchasing them or deciding how to manage these species. Mr. Linehan recommended that the final regulations should include a picture of each regulated invasive species to facilitate in their identification.

With respect to 6 NYCRR 575.5 (Classifications), Mr. Linehan inquired whether taxonomists would be available to identify hybrids of native and non-native species when new species are considered for the prohibited and regulated lists. For example, among the varieties of bittersweet, there are Oriental Bittersweet (*Celastrus orbiculatis*) and Rock-and-Roll Bittersweet, which would be prohibited as invasive species, but American Bittersweet (*Celastrus scandens*) is a native plant.

Pursuant to 6 NYCRR 575.6 (Conditions Governing Regulated Invasive Species), regulated plant species must be labeled. Mr. Linehan inquired whether the wording on the label could be expanded to reference a particular ecosystem that would be harmed, such as aquatic environments. Mr. Linehan also suggested that the labels could include either alternative, non-invasive species that could be substituted for the regulated invasive species, or a “QR code” that would provide a link to additional information on the internet.

Mr. Linehan inquired whether the requirements of the State Environmental Quality Review Act (SEQRA [Environmental Conservation Law Article 8]) would apply to the review provided by 6 NYCRR 575.7 concerning petitions to add species to the invasive species list or to remove species from the invasive species list. Also, Mr. Linehan requested clarification of the criterion listed at 6 NYCRR 575.7(b)(8) concerning the distribution of a potential non-native species in New York State. Does the distribution pertain to whether, and if so, where a plant, for example, is offered for sale in the State, or whether a particular species has invaded natural or critical environmental areas of the State?

Mr. Linehan requested clarification of provisions proposed in 6 NYCRR 575.8 (Exemptions) when invasive plants may be disposed. For example, would permits from the Department be required to remove soil from areas that may include vegetative materials, such as roots or seeds that could redistribute the invasive plant species.

Mr. Linehan supports the provision at 6 NYCRR 575.11 (Coordination), that would not limit the scope of the authority of the Department of Agriculture and Markets pursuant to Agricultural and Markets Law Article 14, section 166.

Finally, with respect to severability (*see* 6 NYCRR 575.12), Mr. Linehan inquired about the effect that the proposed regulations may have on the implementation of 7 USC 104 (Paragraph 7, Section 7712) concerning the regulation of plants, etc. that may be exported or moved in interstate commerce. Mr. Linehan recommended that a representative from the New York State Department of Health should be added to the Invasive Species Council given the potential impacts that invasive species may have on human health. To support this recommendation, Mr. Linehan referred to the link between Japanese Barberry and Lyme disease as previously discussed in other comments.

Troy Weldy is from the Nature Conservancy, and co-author of the *New York Flora Atlas* (Tr. at 23-26). In addition to his oral comments, Mr. Weldy stated that he would be filing a written statement.

Mr. Weldy recommended that the proposed regulations should outline a streamlined process for updating the lists of regulated and prohibited species. Mr. Weldy noted that staff at the Departments of Environmental Conservation, and Agriculture and Markets are limited and have limited resources. Mr. Weldy suggested that the Invasive Species Council and the Invasive Species Advisory Committee could provide resources to update the lists of regulated and

prohibited species.

Mr. Weldy expressed concern about how plant hybrids would be addressed in the regulations. For example, a hybrid results when Oriental Bittersweet and American Bittersweet are crossed. The former, however, would be a prohibited invasive species (*see* 6 NYCRR 575.3[d][2][xiii]), and the latter is a native species. The proposed regulations, according to Mr. Weldy, are silent about the status of such a hybrid. Mr. Weldy suggested that this type of hybrid could be treated in a manner similar to cultivars.

Mr. Weldy said that the Nature Conservancy and partners based on Long Island have developed a cultivar exemption protocol. Mr. Weldy recommended that staff from the Departments of Environmental Conservation, and Agriculture and Markets review this protocol, and incorporate it into the regulations so that cultivars would be assessed in the same manner as other species.

Mr. Weldy noted that the Nature Conservancy participated in prior educational campaigns limiting the movement of firewood as a way to contain the Emerald Ash Borer. The Nature Conservancy is willing to participate in future education campaigns concerning invasive species.

Tom Denny is the Chair of the Urban Forestry Project for a Sustainable Saratoga (Tr. at 26-32). In addition, Mr. Denny was employed for 30 years at Skidmore College. Over this period of time, Mr. Denny witnessed the degradation of the Northwoods located on the Skidmore College campus by Burning Bush.

Mr. Denny recommended that ornamental landscape plants such as Burning Bush and Norway Maple be moved from the regulated list to the prohibited list for the following reasons. First, invasive species are a regional problem. Therefore, to eradicate them, New York and neighboring states must treat invasive plants in the same manner. According to Mr. Denny, New Hampshire, Massachusetts and Vermont prohibit the sale of Burning Bush, Norway Maple and Japanese Barberry. Mr. Denny acknowledged the need to accommodate the nursery industry by providing a reasonable grace period to phase out their sale.

Mr. Denny said that the Northwoods have become degraded with Knotweed and Garlic Mustard. Mr. Denny has provided the Department with a video that depicts the progress of invasive plant species in the Northwoods.

Nancy Heinzen is the program coordinator for the Stormwater Coalition of Albany County (Tr. at 33-34). Ms. Heinzen explained that she works closely with municipalities to help them implement stormwater regulations. This process includes the design, construction and maintenance of stormwater ponds and rain gardens. Ms. Heinzen expressed concern about how stormwater ponds and rain gardens should be maintained when invasive plant species start to crowd out the native plants. For example, Ms. Heinzen inquired about how should Garlic Mustard be collected, and how or where should it be disposed of so that it does not spread to

another area. Ms. Heinzen recommended that the proposed regulations should be cross-referenced with other regulations administered by the Department's Division of Water concerning stormwater management.

Heidi Mortensen represents Prides Corner Farms, which is a 500-acre wholesale nursery in Lebanon, Connecticut (Tr. at 35-37). Prides Corner Farms sells stock to hundreds of garden centers in New York State. Ms. Mortensen explained that the whole-sale nursery industry has been doing research with respect to invasive plant species in conjunction with the University of Connecticut, and has found sterile triploid versions of Burning Bush. Other examples of sterile triploid cultivars include Barberry. Ms. Mortensen recommended that the Department consider cultivars individually rather than requiring broad bans.

According to Ms. Mortensen, annual sales of Burning Bush and Barberry total \$25 million. Consequently, the demand by the public for these, and similar plants, is high. To preserve business and tax revenues, Ms. Mortensen recommended that the proposed regulations allow for the sale of sterile triploid cultivars.

Kevin Chlad is the legislative associate at the Adirondack Council (Tr. at 38-41). The Adirondack Council supports the proposed regulations because there would be a net positive impact on the environment. According to Mr. Chlad, invasive species are significant threats to the environment and the economy of the Adirondack Park. Mr. Chlad said that the Adirondack Council would also file written comments about the proposed regulations.

With respect to 6 NYCRR 575.8, Mr. Chlad requested clarification concerning the transport of invasive species for purposes of management, control and disposal. Mr. Chlad recommended that the proposed regulations include specific precautions for the proper disposal of invasive plant species. Also, the exemption proposed in this provision should be extended to property owners when the "transport" of an invasive species is the result of a storm event.

For the following reasons, Mr. Chlad recommended that the one-year grace period concerning the sale of Japanese Barberry should be removed from the proposed regulations (*see* 6 NYCRR 575.3) as a matter of public health. Mr. Chlad said that Japanese Barberry is highly invasive, and provides protective shelter to small mammals that carry deer ticks, which may be infected with Lyme disease.

The hearing concluded at 4:10 p.m.

STONY BROOK

This hearing session was held at 2:00 p.m. on December 17, 2013 at the DEC Region 1 offices, 50 Circle Road, Stony Brook, New York. Prior to the public hearing, from 1:30 to 2:00 p.m., Department staff held an informational session during which staff answered questions from the public and provided background materials concerning the proposed regulations.

Approximately 50 people attended the hearing; eight attendees provided oral comments and two (Donna W. Moramarco, CNLP, and John W. Ratto) submitted comments in writing only. Most speakers represented landscaping or nursery interests. Individuals from the Nature Conservancy and the Long Island Invasive Species Management Area (LIISMA) also provided comments.

All eight speakers supported the regulation of invasives, but some questioned specific aspects of the proposed regulations. Several speakers questioned why certain species were included on, or excluded from, the prohibited or regulated species lists. These speakers generally sought to ensure that the methodology used to determine which species were listed was science-based and consistently applied.

The first speaker, **Jonathan Lehrer**, Co-chair Cultivar Subcommittee, LIISMA, advocated for the adoption of LIISMA's Cultivar Invasiveness Assessment Protocol to ensure that listing determinations are science-based. He stated that this approach would reduce the economic impact of the proposed regulations while ensuring that harmful invasives are controlled. **Melissa Daniels**, President, Long Island Nursery & Landscape Association (LINLA); **Dr. Marilyn Jordan**, Senior Conservation Scientist, The Nature Conservancy; **Dwight Andrews**, Past President and Secretary, LINLA; and **Carol Saporito**, Director of Marketing, Bissett Nursery, all expressed support for use of science-based protocols for making listing determinations. Ms. Daniels, Mr. Andrews and Ms. Saporito, also expressed concern over the possibility that "politics" may influence the decision to include or exclude certain species from the lists. Mr. Andrews and Ms. Saporito, noted that some plants are particularly desirable or useful for specific applications (e.g., to control beach erosion or in areas subject to significant deer grazing), and that use of these plants should be allowed under appropriate circumstances.

The other three speakers were **Evan Dackow**, Chief Operations Officer, Jolly Green Landscaping; **Steve Greenspan**, BambooRemoval.com; and **Ron Wikso**, President, Best Poison Ivy Removal Inc. Mr. Dackow stated the proposed regulations may use "too wide of a brush" by failing to account for plant hardiness zones which can limit the viability of certain species outside a particular area. Messrs. Greenspan and Wikso praised the proposed regulation for addressing "running" bamboo species, which spread rapidly by rhizomes and can cause significant damage. Mr. Wikso added that the rhizomes must be removed and incinerated to ensure their destruction and that legislation may be required to ensure that the rhizomes are properly destroyed.

The hearing record was closed at approximately 3:10 p.m. Department staff remained at the hearing location for approximately one-half hour after the hearing closed to answer additional questions from attendees.