MR. GUNNER: Thank you, Judge. Good afternoon, ladies and gentlemen. I am so happy to be here in the Howell Library in Allegany County. Those of you who have read this document know my references here.

(Laughter)

I do have some comments and they are philosophical in nature rather than particular to the types of regulations that are proposed by this document. I think that others have addressed those issues in more detail, I believe, than I can.

First of all, I feel the reasons for and purposes of the Draft Generic Environmental Impact Statement should be specified in the document itself, something which has not been done with sufficient clarity.

The State Environmental Quality Review Act (SEQRA) was enacted in 1976 for the purpose of encouraging "productive and enjoyable harmony between man and his environment".

Environmental Conservation Law (ECL) Section 8-0101. The method chosen by the state legislators to meet this objective was in the form of a mandate to the state agencies and political subdivisions to administer their programs in accordance with the concerns voiced in SEQRA, as follows:

"All agencies which regulate activities... which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage." ECL Section 8-0103(9).

Furthermore, "All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions (of SEQRA)."

As such, SEQRA essentially provides that state agencies such as the Department of Environmental Conservation's Division of Minerals (DEC-DMN) are to assess the activities conducted under their jurisdiction vis-a-vis the environmental impact and potentially damaging results of such activities.
As it relates to DEC-DMN specifically, the SEQRA mandate is for an assessment of the environmental impact of and possible environmental damage resulting from activities conducted in drilling, operating and plugging oil, gas, storage and solution mining wells, at least to the extent these activities fall under DEC-DMN regulatory authority.

SEQRA provides for the preparation of environmental impact statements (EIS's) by agencies such as DEC-DMN on any actions under their jurisdiction which "may have a significant impact on the environment." ECL Section 8-0109(2). Emphasis is added here to the term "action" and the term "significant" since it is felt that the DEC-DMN Draft GEIS goes far beyond dealing with "actions" and "significant" impacts on the environment.

The purposes of the GEIS are extensively discussed throughout the document and they are listed on page 2-2. The determination of "significant" and "non-significant" actions cannot be made without a complete discussion and assessment of the entire regulatory program.
Over the past century, the oil and gas industry has contributed very substantially to the social and economic well-being of numerous citizens of the State and the public in general and it is anticipated that this will continue in the future, yet these facts have been totally ignored in the DEC-DHN Draft GEIS.

The Legislature approved in SEQRA that agencies should avoid duplication of EIS reporting where feasible by combining or consolidating proceedings. ECL Section 8-0107.

In the case of DEC-DHN, this mandate was followed by the preparation of the Draft GEIS which constitutes a generic environmental impact statement designed to cover all oil, gas, storage, and solution mining activity rather than requiring an EIS for each individual well or project.

This is a well-conceived endeavor to the limited extent that the environmental impact or non-impact of drilling an oil or gas well is very much the same for most wells drilled and individual EIS's would be highly duplicative and wasteful of resources.
industry resources.

It is not a well conceived endeavor, however, in that DEC-DNN has attempted to go far beyond their legislative mandate and authority in the preparation of the Draft GEIS.

II. THE DRAFT GEIS SHOULD SERVE A VERY LIMITED PURPOSE AS DEFINED IN SEQRA, WHICH IS TO ASSESS ENVIRONMENTALLY "SIGNIFICANT ACTIONS". INSTEAD, DEC-DNN HAS USED THE OPPORTUNITY OF PREPARING THEIR DRAFT GEIS TO ESPouse THE ALLEGED VIRTUE OF NEW, MORE RESTRICTIVE, REGULATIONS AND ATTEMPTING TO EXPAND THE APPLICATION OF EXISTING REGULATIONS BY INNUENDO. THERE IS NO RATIONAL BASIS FOR THESE ADDITIONS AND EXPANSIONS EXCEPT TO PERPETUATE AND EXPAND THE DEC-DNN BUREAUCRACY.

It is quite important to emphasize that EIS's in general and the Draft GEIS in particular are only asked by SEQRA to address issues which involve "actions" that may have a "significant impact" on the environment.

"Action" is defined in SEQRA as including only those activities or projects requiring the issuance of an entitlement such as a permit by a state agency. ECL Section 8-0105(4).

Specifically excluded from the definition of "action" are activities involving, among other things, "maintenance or repair involving no substantial changes in existing structure or facility."

PHWG-2. Other commentators have praised the GEIS as being a clearly written document. The length is a result of its expansion to serve a public education function.

The environmental impacts of oil, gas, and solution mining activities and the existing and proposed mitigation measures are concisely summarized in Chapters 16 and 17.

The social and economic benefits attributable to the oil and gas industry are detailed in Chapter 18.

Mr. Gunner has misinterpreted and misapplied citations from Article 8-the State Environmental Quality Review Act. The citations used are appropriate for a site-specific EIS. The guidelines for preparation of a Generic Environmental Impact Statement can be found in 6NYCRR Part 617.15. "Generic EIS's may be broader, and more general than site or project specific EIS's and should discuss the logic and rationale for the choices advanced." See 617.15(4)(d).

See Topical Response Number 5 on Reasons for Including the Proposed Regulations in the GEIS.
As such, it is submitted that SEQRA does not authorize or require review or regulation of pre-existing oil and gas operations or prospective operations except to the extent that DEC-DMN permits are required for particular activities. No doubt this protection was included in SEQRA to avoid the prohibition against ex post facto laws.

The Draft GEIS does not draw this distinction between new and pre-existing operations, however, and it appears that DEC-DMN would like statements and regulations promulgated under the guise of the Draft GEIS to be retroactive to operations commenced prior to enactment of SEQRA in 1976 or even prior to enactment of the Conservation Law in 1963.

DEC-DMN has consistently asserted that the power conferred upon them at ECL Section 23-0305(8)(d) to regulate operations means that the "existing pool" distinction has evaporated.

This is not true, however, since DEC-DMN has never enacted new regulations on notice and public hearing, as required, that would eliminate this distinction. The DEC-DMN, in not making this distinction in the Draft GEIS, is attempting to
gloss over and eliminate the distinction ex post facto and confer upon themselves an ad hoc lawmaking power repugnant to the principle of due process of law contained in the state and federal constitutions.

The Draft GEIS should not be used as a subterfuge in an effort to avoid lawful procedures in adopting new regulations and it is not the proper medium for espousing the virtue of proposed new regulations.

The preceding comment applies not only to the existing pool distinction but to the "other than existing pool" regulations as well.

Proposed new regulations have no place in the Draft GEIS and must be compiled in a separate document and adopted only after notice and public hearing.

SEQRA gives some authority for review of existing regulations but to propose regulatory changes within the Draft GEIS document only serves to confuse the issue. Assessment of "significant impacts" should not be posed in a manner so as to suggest that new regulations are necessary to avoid significant environmental impact.

Instead of assessing real and significant impacts in the Draft GEIS under current regulations, the law takes precedence over rules and regulations. Rules and regulations cannot convey any authority above that given in law or legislation. The Oil, Gas, and Solution Mining Law of 1981 clearly eliminated the distinction between old and new oil and gas fields, and the draft GEIS cannot draw any distinction between the old and new oilfields because that distinction has not existed since 1981.

The proposed regulations, many of which are part of the current regulatory program as permit conditions and guidelines, are critical to environmental protection and do have a place in this draft GEIS. See Topical Response Number 5 on Reasons for Including Proposed Regulations in the GEIS.
DEC-DUN has compiled a laundry list of hypothetical impacts upon the basis of which it hopes to have new regulations adopted.

It is submitted that this is, in fact, a thinly-veiled effort to expand and perpetuate the DEC-DUN bureaucracy and that it has nothing whatever to do with real and significant potentialities for environmental damage.

Since many of the hypothetical environmental impacts upon which DEC-DUN predicates its goal of adopting new and more restrictive regulations are dealt with at length in other commentaries, attention will be focused here on several of the more glaring examples.

The first example is DEC-DMN commentary in the Draft GEIS on access roads. Roads have never been regulated under the ECL and to propose such a thing for oil and gas operators only is manifestly unfair. Building an access road may have some minimal impact on the environment, but if such impact is deemed by the State to be of significant proportions, then homeowners building driveways, farmers, loggers, and everyone else who builds a road must be subjected to the same restrictions. To do otherwise constitutes an invidious discrimination against those
attempting to develop the oil and gas resources of the State.

Another example of DEC-DMN's hypothetical environmental impacts are visual and auditory impacts. Such things must be regulated uniformly and not on an industry basis. If drilling rigs or other oil and gas equipment truly pose a significant danger to the environment because they make noise, consequently requiring sound barriers to be constructed around them, then so too must bridges and highways have sound barriers during the construction phase.

Moreover, if visual and auditory impacts pose a significant threat to the environment, then it naturally follows that olfactory pollution must be also eliminated.

With respect to farming operations, an olfactory impact regulation could take the following form: "All pigs and cows must henceforward wear appropriate perfume so as not to offend the olfactory senses of the People of the State of New York."

The list goes on and on, but since others more qualified to do so have devoted substantial time and attention to the itemized treatment of the supposed environmental impacts of each stage of

PHWG-5 Under SEORA, access roads are considered part of the project. The oil and gas industry has not been singled out for over-regulation. See Topical Response Number 4 on Access Roads as Part of the Project.
drilling and production activities, the foregoing
comments will suffice as an illustration of the
laundry list of hypothetical impacts prepared by
DEC-DMN.

III. DEC-DMN SHOULD NOT ATTEMPT TO
INTERFERE WITH LANDOWNER-OPERATOR
NEGOTIATIONS OR RIGHTS IN THE LEASING
OR DEVELOPMENT PHASES OF OIL AND GAS
OPERATIONS.

There are numerous references in the
Draft GEIS to landowner/operator negotiations, all
of which attempt to characterize operators as devious
and evil and landowners as their innocent victims.

DEC-DMN should not make efforts to disturb
the well-established doctrines of the dominance of
the mineral estate over the surface estate and the
reasonable rights of development implicit to owner-
ship of the OGM or a lease.

These doctrines have been established by
the courts throughout this nation over the period of
the last hundred years and they are very well-founded.

DEC-DMN should no more propose conditions
on operators designed to protect the surface owner
subsequent to the lease or purchase negotiation than
they should propose that landowner royalties be
reduced to protect the profits of operators. If
DEC-DMN persists in this effort, they must offer just
compensation to the affected lessees or OGM owners.

PHWG-6 Under SEQR guidelines visual and noise impacts must be assessed. The
conclusion made in the GEIS as a result of that assessment was that for most
routine oil and gas operations, the noise and visual impacts are minor and
temporary. See Topical Response Number 2 on Visual Resources and
Assessment Requirement.

PHWG-7 Providing information to the public on the factors and provisions that a
landowner should consider before signing a lease cannot be reasonably
construed as interference with landowner/operator negotiations. See Topical
Response Number 6 on Surface/Mineral Owner Lease Conflicts.

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IV. CONCLUSIONS

1. Rather than assess the existing regulations regarding significant impacts to the environment, DEC-DGN is attempting to characterize most all impacts of oil and gas drilling and development as significant unless their new regulations are enacted;

2. In their commentary in the Draft GEIS, they are attempting to characterize their power to attach conditions to drill permits for unusual circumstances not encompassed in their regulations as an ad hoc rule-making power which would allow them to promulgate discriminatory rules for different operators on a prejudicial basis;

3. They are attempting in their commentary to avoid distinctions between pre-SEQRA and post-SEQRA activities just as they have attempted to enforce their existing regulations as though there were no "existing pool" - "other than existing pool" distinction;

4. They are proposing that they should somehow be involved in arms-length lease or purchase negotiations to protect the lessor or surface owner - even though such an idea is highly repugnant to the fundamental precepts of democratic capitalist society; and

PHWG-8 The GEIS clearly states throughout the text that most impacts from oil and gas drilling and development are minor, temporary and/or insignificant under the current regulatory program.

PHWG-9 DEC routinely attaches conditions to permits for all its regulatory programs (Wetlands, Stream Disturbance, SPDES), whenever, they are necessary to declare any action non-significant. These conditions are not applied prejudicially. In fact, many of them are standard and that is why they are being proposed for formalization into regulations.

PHWG-10 Clearly, it is not possible to apply SEQRA to actions which have occurred in the past. SEQRA applies to future or planned actions which now require a DEC permit. There is no distinction in the law between old and new pools.

PHWG-11 Statement of opinion is noted.
5. All of the foregoing is done with the purpose of expanding and perpetuating their bureaucracy. In support of this premise citation is made to the suspected growth in staff and finances of DEC-DMN since its inception although industry has actually contracted. Actual figures are not available, however, since they are so reluctant to let anyone know how many taxpayer dollars they really are consuming.

Mr. Hungerford: My name is Thomas E. Hungerford. I am President of the New York State Oil Producers Association. We would like to offer the comments here as written.

The Association contends, and has long believed, that a Generic Environmental Impact Statement, or site specific environmental impact statement are not necessary for the protection of the environment and certainly not for the environmental impacts recited in the Generic Environmental Impact Statement.

The environmental impacts resulting from routine oil and gas operations are minimal and surely anyone who observes the lush vegetation and excellent water supplies in Western New York sees evidence of an undamaged area. This is true even in intensely drilled old oil areas which have been producing over one hundred years.

Mr. Hungerford's verbal testimony corresponds very closely to the written comments submitted by the New York State Oil Producers Association. Please see responses OPA-1 to OPA-20.
MR. SCHAPPNER: Your Honor, I am told that these hearings have been sparsely attended up to this point. So, therefore, I am delighted and thank you people for showing up as concerned citizens to this important meeting.

I have been in the oil field supply business for 54 years. I have worked in Pennsylvania, Illinois, Indiana and Kentucky, but except for three and a half years helping win World War II, most of my time has been spent in New York State, specifically Allegany County. That is spelled A-l-l-e-g-a-n-y.

(Laughter)

I comment today as a private citizen who is concerned about probable destruction of an industry that has contributed so mightily to the well-being of our community. Oil production taxes have built most of our schools and highways.
Energy people have been hard-working, tax-paying citizens, contributors to our society, not the Dallas types at all, and I will be sorry to have them disappear.

And they will disappear if the Generic Environmental Impact Statement as presented in this second draft is approved. I have lived in Allegheny County except for out-of-state work and Air Force Service since 1923. Oil has been produced in this county since 1879 and it is still a verdant place.

I find it hard to accept the Division of Mineral Resources claiming that ours is a disaster area, that they have a tremendous backlog of work to correct alleged disaster areas. I live here and I would be the first to protest any activity that would damage my environment, but over the long years this has not happened.

In their SEQRA, the Environmental Impact Statements are to be prepared so as to be "clearly written in a concise manner capable of being read and understood by the public".

Well, here is the second draft. Clearly written? Concise? Capable of being read and understood by the public? I don't think so.

Incidentally, the first draft which was
produced almost two years ago was about half the size of the second draft and it took almost an act of Congress to secure a copy.

Many of my colleagues have labored long and hard to review and comment on this draft. If their suggestions are not followed, the energy industry in New York will die an unnatural death.

My sources tell me that over 1 million taxpayer dollars have been spent so far on the Generic Environmental Impact Statement Study; so, therefore, Greg, let's spend another $100,000 and get it right this time.

My main concern is intensely practical. I refer to the loss of jobs in our area, the results of which I believe is our harsh regulatory climate. Regulation is acceptable, but not a police state!

Last December I prepared for our Congressman an informal study of jobs lost in the 34th Congressional District, jobs related to the energy industry. This report indicates that in the 18 months preceding December 1987, 178 jobs we lost and an estimated payroll of almost $4 million.

A random sample of oil and gas operators in the Southern Tier, the 34th Congressional District indicated a drop in jobs and in payroll dollars in

PHMS-2 The original GEIS outline was expanded to include those topics requested by both the public and industry at the scoping hearings. We believe the public is capable of reading and understanding this document. The GEIS draft referred to was the second draft which was distributed to the Oil, Gas, and Solution Mining Board for their technical review before distribution to the public. Review by the Advisory Board is part of the Department's internal review process. Copies of this draft were made and distributed without the Department's knowledge and consent.
the last 18 months.

I suggest that if one considers shut
down drilling rigs, service companies that have
eliminated jobs, and other allied industries, the
above figures could be increased by 100%. The
ripple effect resulting from these job losses is
troubling.

Certainly the depressed economic situation
has had its effect on the energy-producing area, but
I suggest that a large portion of these losses can
be attributed to the draconian measures of the
Environmental Protection Agency and the Department of
Environmental Conservation.

In conclusion, we accept that the DEC
people are God's children, too, and we must love
them, but in their approach to our alleged problems
they are wrong, wrong, wrong, as wrong as whiskey for
breakfast.

Now, are there any press people here
representatives of Houghton or Hofstra? Good to
see you. I have got some stuff for you, Gloria.
Thank you very much.
MR. PFEIFLE: My name is James J. Pfeifle. I worked for National Fuel Gas. I did work as a storage engineer.

What I would like to address is the specific Section 14 and the comments addressed there. One comment that I have is as to the regulation of an abandonment of a storage field. I feel that that is not part of the Department of Environmental Conservation's regulations because an abandoned storage field becomes a production field at that time and, therefore, the actual abandonment of the facilities may be thirty or forty years down the future. They can deal with the abandonment at that time.

The final thing that I have to say is about the gas loss provisions that they have addressed in there. I feel that that is a very simplistic approach to a very complex problem and that it should be deleted. Thank you.
MR. PLANTS: My name is Paul Plants. I would just like to make a couple of comments.

First of all, as for my qualifications. I was born and raised on a dairy farm from which the mineral rights or the royalty rights had been sold. So, I was well aware of an environment long before the Department of Environmental Conservation, the Environmental Protection Agency, the Sierra Club, Greenpeace, Friends of Animals or any of the other ones were in existence.

I am still a beef farmer. I own and operate an oil lease in Allegany County. To me the statement that a drilling rig setting on a hillside is aesthetically impractical to the public, I think the public that they are talking about are the people that are driving around on taxpayer dollars in taxpayers' cars and on public assistance.

I think that my second point is that if the Department of Environmental Conservation would like to expand their responsibility, I would suggest that they accept the responsibility of the injection wells in New York State and thereby relieving the operator of double indemnity because he has to bond two wells, one with the State and one with the Environmental Protection Agency because the EPA will not accept bonds that are currently used and endorsed by the Department of Environmental Conservation.

Since it is impossible to plug a well twice, I submit that we are being unduly regulated in this area.

My last point is that if the Department of Environmental Conservation would accept this responsibility, it would return to the State a large chunk of taxpayer dollars. Thank you.

PHPP-1 Statement of opinion is noted.

PHPP-2 The money put up for bond is not money given to the federal or State government. This money is held by the bonding company until the well is plugged and abandoned; it is then returned to the operator. The New York oil and gas industry declined to support State implementation of the UIC program in 1981.
MR. GUNNER: Judge, if we have other questions that we would like to have answered, do we have to make official Freedom of Information Act requests or will they be answered for us forthrightly by the Department?

JUDGE DICKERSON: Perhaps maybe Mr. Sovas can address this question. Why don't you toss the question out?

MR. GUNNER: There are a number of questions that have come to my mind and they increase as each person gets up to speak. A very important question is: How much did it cost to make this study?

JUDGE DICKERSON: I can't give you an answer because I don't know.

MR. GUNNER: I am not asking you, Judge. I am asking Mr. Sovas. I suspect that in this age of information, Mr. Sovas knows exactly how much it costs.

MR. SOVAS: I don't know.

JUDGE DICKERSON: The only comment that I can make is just knowing how the government works maybe a little closer than some people.

MR. GUNNER: Thank you, Judge.

JUDGE DICKERSON: I had a very interesting comment at another hearing last week where somebody commented that the government agencies are like bosses and they will only tell you what was wrong, but not what was right. That comment brought the house down.

I can say that it is fairly easy in the State budgeting process to come up with time and fairly easy to come up with some aspect on printing costs because contract costs are recorded. As far as anything else, I am not sure that it would be possible to come up with an accurate answer.

You might get some ballpark answers. Just to lay it out fairly, you might get some approximations, but just to nail it down as you would or I would in our checkbook as to the closest dollar fifty, or whatever, I don't know if it could be done. I don't know if it could be done. There are too many accounts involved.

MR. GUNNER: I think that is fair, Judge, as long as they are willing to make some effort to address the question.
JUDGE DICKERSON: You have to go through the Freedom of Information Act request. I would encourage that you discuss it gently with the Department's staff.

Now, if there are any additional comments on the GEIS, we are going to keep the record open until July the 8th for second thoughts, afterthoughts or whatever. The last thing is, there will be one more session this evening at 7:00 p.m. back here at the Library. That is about it. I did see one more hand up.

MR. SCHAFFNER: Your Honor, very gently did I hear Greg Sovas say he did not know what the cost was?

MR. GUNNER: Yes, you did, Mr. Schaffner.

JUDGE DICKERSON: I gave a straight answer. Exactly how much, who knows? By the same token, approximation I don't know. It is not something like you and I running a checkbook because there are too many accounts involved.

Whether that can be determined, whether it can be determined to the nearest buck or fifty bucks, I don't know. I am just telling you that there would be a lot of work involved in digging it out.

PHGCO-1 The speculated $1,000,000 cost for GEIS preparation far exceeds the actual preparation cost calculated by the Department.

The GEIS was prepared in-house by DMN staff. The estimated total cost, which includes the printing and distribution of the final GEIS is approximately $275,000. Staff in the Program Development Section responsible for preparation of the GEIS do not work on it full time. In addition to the responsibility of keeping DMN in compliance with SEQRA, SAPA, and the State Coastal Zone Management (CZM) Act, they have other duties which include: regulation of underground gas storage and solution mining activities, coordination of State and Federal UIC program, and protection of New York State's interest under the federal Outer Continental Shelf (OCS) oil and gas leasing program.
MR. SCHAFNER: Yes.

JUDGE DICKERSON: Just give us your name again for the record.

MR. SCHAFNER: Mike Schaffer from Bolivar. You were kind enough to allow comments and questions this afternoon. Thank you. I have a comment.

As you pointed out, this meeting was widely advertised, but yet I see no one or I have heard no one coming in here and complaining about their bad water and about the destruction of their property by the oil and gas industry. I find it strange unless these people do not exist.

I have a question. The question was raised this afternoon, Greg, about the annual budget for your Department, the cost of the Generic Environmental Impact Statement. You said that you didn't know what that was. Am I permitted to ask you what is your annual budget for the Department?

JUDGE DICKERSON: I am not sure that we even know right now given the present budget situation.

MR. SCHAFNER: I will be very helpful and tell you what it is.

JUDGE DICKERSON: Given what is happening
in Albany, I wouldn't bet on it.

MR. SCHAFFNER: Well, this Greg Sovas is a great salesman because he asked for $3.3 million. He got $3.7 million. It is interesting how I came about this. Even your Department wouldn't tell our Assemblyman what these figures were.

I invoked the Freedom of Information Act and this came from your people up there. Just for the record, $3.7 million is a lot of dough of our dollars. Thank you.

(Applause)

JUDGE DICKERSON: Mr. Schaffner, let's be fair just so we understand each other given what is happening. I have only been reading it in the newspapers.

MR. SCHAFFNER: I read that, too. I read the newspapers.

JUDGE DICKERSON: In any event, we don't know what is happening. I am accepting information that you have provided.

MR. SCHAFFNER: This comes from their Department.

JUDGE DICKERSON: But that was before the recent revelations of the budget. We are $900 million in the hole.

PHMS-5 The additional funds were added to the budget request for accounting purposes only. The oil and gas account funds designated for the plugging of hazardous abandoned wells are added and subtracted every year in the accounting books.
MR. GUNNER: Yes, Judge. I am just wondering what is the procedure from here for approval of this Draft Generic Environmental Impact Statement?

JUDGE DICKERSON: As prescribed in Part 617 and 6NYCRR and in Article 8 of the Environmental Conservation Law, basically in a nutshell and in layman’s language, all of the comments have to be compiled and considered; and then the Draft Environmental Impact Statement considered in light of those comments. A Final Environmental Impact Statement has to be prepared and accepted and Notice that the Final Environmental Impact Statement is available.

As I recall, although it doesn’t directly apply in this case, it is very similar, but there is at least a ten-day waiting period before anything can be done about it after that notice is issued. There will be a Notice of Availability and Completion of a Final Environmental Impact Statement as prescribed in the law and rules.

MR. GUNNER: Okay. Judge, you said that had to be accepted?

JUDGE DICKERSON: Yes.

MR. GUNNER: Who does it have to be accepted by?

JUDGE DICKERSON: By the Department. Now, it depends who’s the lead agency. Normally the lead agency has to make those determinations. This document plus the comments, just to put it again in layman’s language, have to be reworked into a final document. Only when that is done is that legal notice then published.

MR. GUNNER: There is no more comment period then?

JUDGE DICKERSON: Speaking very frankly, some agencies do allow an additional comment period. The law does not, however, require it. I haven’t
found anything that recognizes an additional comment period.

There is, as I said, a ten-day waiting period between the issuance of availability of a Final Environmental Impact Statement and any action that can be taken. Whether that was built in to allow for comments or not, the law and the regulations are silent.

Some agencies will allow receipt of additional comments in that period of time. Some agencies don't. I can't call that shot ahead of time.

However, the law has the ten-day waiting period expressed but it is silent on the question of additional comments. I know that certain local agencies have said that they will accept additional comments on the Final Environmental Impact Statement during that period of time, but the law is silent on that.

MR. GUNNER: Also, Judge, is a transcript of all of the Public Hearings going to be available before the deadline for written comments?

JUDGE DICKERSON: I hope so. However, I can't guarantee it. We will probably have it in that time period.

MR. GUNNER: How will this be obtained by
the members of the general public?

JUDGE DICKERSON: Either directly through the court reporter as a purchase or as a request through the Department. It is a public record, Mr. Gunner.

MR. GUNNER: So, therefore, we don't have to pay the court reporter but we can request a copy from Mr. Sovas? I would like to request one now on the record, Judge.

JUDGE DICKERSON: I would suggest the following. First of all, you can make your own deal with the court reporter for the extra copy. If you catch him tonight, it will probably be cheaper.

Secondly, you can then request access to the transcript because it is a public document. However, you may not want to make a copy of the whole thing but just consult it and make copies of certain pages. I wouldn't buy the whole thing.

MR. GUNNER: My question is, Judge, whether or not we can actually get a copy at the Department's expense before we have to make our written comments?

JUDGE DICKERSON: Mr. Gunner, there is no way that you can get a copy of the transcript at the Department's expense. As I said, you can have access to the transcript at the Department.
Mr. Gunner: That doesn't seem to be fair, Judge.

Judge Dickerson: I am going to lay it out very directly. It is available to you and accessible to you.

We have another unfortunate situation where we used to provide copies of a limited number of pages free. If you want them now, you have to pay the copying price because that is the way that the government is doing business now. It is 25 cents a page.

I was trying to level with you and say look at it very carefully. I am sure that you don't want to copy my opening remarks at every hearing. You may want the last five or ten pages of comments. It is available to you. Don't buy the whole thing unless you want it.

Mr. Gunner: Thank you, Judge.

Mr. Pfeifle: Judge, I just have a question.

Judge Dickerson: Identify yourself for the record, please.

Mr. Pfeifle: James J. Pfeifle, National Fuel Gas. Is there going to be a written response to all of the points raised, the comments raised?

Judge Dickerson: That should be included.
by regulation in the Environmental Impact Statement.

The practice is to require that the Final Environmental Impact Statement by regulation incorporate the comments and the considerations given to you. Sometimes the Final Environmental Impact Statement grows a little bit. That is part of the process.

Now, whether you are going to get an individual written letter back, I wouldn't guarantee it. The requirement is that the comments be addressed in the Final Environmental Impact Statement.

Now, that goes for any Environmental Impact Statement across the board whether the lead agency is the Town, County, City or the State.

I will get a little philosophical for about thirty seconds. The SRQR Quality Review process sort of forces attention to the comments. They have to be incorporated in the Final Environmental Impact Statement when it comes out.

MR. PFEIFLE: Thank you.