

*New York***Environmental Reviews to Remain Stringent Under Streamlined Process, Regulators Say**

A plan by New York state to streamline its environmental review process has gained broad support from business interests but has raised concerns among environmental advocates who say the process is likely to become less stringent.

The New York State Department of Environmental Conservation is drafting proposed rules for release later this year to streamline the review and planning process governed by the State Environmental Quality Review Act (SEQRA). The proposed rules are expected to establish a new scoping process for environmental impact statements, tighten the time frames in the review process and reduce certain review requirements.

According to a DEC summary, the changes are intended to “streamline the [SEQRA] process without sacrificing meaningful environmental review.”

The department has been working with interested parties since 2012 in drafting the proposed rules, but it doesn’t have a firm time frame for when they will be released, Emily DeSantis, a spokeswoman for the department, told Bloomberg BNA.

“We’ve had two years of stakeholder meetings,” DEC Commissioner Joseph Martens told a legislative hearing on the state budget Jan. 29. “There’s a lot of disagreement about what is the right way to reform SEQRA, but we are going to put a proposal out for public review hopefully later this year.”

Summary of Proposal. The DEC has proposed a new scoping process that would require mandatory scoping of environmental impact statements, while also clarifying that issues raised after completion of a final scoping document can’t be the basis for rejecting a draft EIS. In addition, the new process would provide greater continuity in content between the environmental assessment process, the final written scope, and the draft EIS.

The DEC also has proposed expanding the list of projects and actions that don’t require SEQRA review as a way to encourage green projects and development in previously developed sites in urban areas.

The timeline for completing a final EIS also would be changed under the DEC proposal. A draft EIS would automatically be deemed complete, if a lead agency fails

to prepare and file a final EIS within 180 days of accepting the draft.

Martens said the DEC’s goals include “trying to eliminate review of things that are universally accepted as not to have impacts on the environment.”

“I would not characterize this as a major overhaul of SEQRA in any way,” he said. “What we’re trying to do is to improve it a bit, encourage the right type of projects so they don’t have to go through SEQRA,” the regulations for implementing the law.

The changes proposed by DEC are generally supported by the Business Council of New York State, particularly those that would change the scoping process and the timeframes. Darren Suarez, a director of government affairs for the Business Council, told Bloomberg BNA that uncertainty in the current process is a major concern for business and industry.

“Our concerns primarily have to do with certainty,” he said. “It’s never clear from a project sponsor’s standpoint what issues are going to be the primary focus of the lead agency.”

Requirement for Impact Assessment. New York enacted the State Environmental Quality Review Act in 1975, some five years after the National Environmental Policy Act was signed into law. The implementing regulations require that most projects, actions and permitting activities proposed by state and local governments be subject to an environmental impact assessment (6 NYCRR Part 617).

SEQRA also requires that the sponsoring or approving governmental body identify and mitigate any significant environmental impacts from the project or action. While some 37 states have “mini-NEPA” statutes, New York’s SEQRA is among the most rigorous, according to Dec. 16 report from the Empire Center for Public Policy, a pro-business policy research organization based in Albany (44 ER 3796, 12/20/13).

The report, which called for a better balance between economic growth and environmental protection, said SEQRA is one of 13 state environmental review laws that require preparation of an environmental impact statement for projects and actions that “may” significantly impact the environment, not just those that “will” have an impact.

“New York’s SEQRA is among a handful of comprehensive state environmental laws that are more widely applicable, more likely to impose a project change, and backed up by comprehensive regulatory structure,” the report said.

The report cites a number of examples of proposed projects that it deemed worthwhile that were killed by SEQRA, including a data center proposed by Verizon in Niagara County, N.Y., in 2010 and a cement plant in Columbia County, N.Y., first proposed in 1999 by Holcim Inc.

Issues Raised by Environmentalists. On the other hand, environmental groups have their own list of projects and actions that have moved through the current SEQR process without sufficient review, especially those in which the DEC itself was the lead agency.

Earthjustice and several environmental groups, for example, filed suit in 2013 against the DEC over regulations that ease requirements on certain concentrated animal feeding operations (CAFOs). The lawsuit alleged that DEC failed to abide by the SEQRA requirements (*Riverkeeper Inc. v. Martens*, N.Y. Sup. Ct., No. 4166-13, 7/26/13).

Earthjustice has also urged the DEC on behalf of several groups to rescind a “negative declaration” on the potential environmental impact of an application by Global Companies LLC to amend its Title V permit for an oil facility at the Port of Albany. A negative declaration, under SEQR, means a project or action won’t have a significant environmental impact and, therefore, will not require an environmental impact statement.

“Within the past year, over one billion gallons of explosive Bakken crude oil has been shipped into the Port by rail, hundreds of crude oil rail cars are being stored just feet away from homes and playgrounds and long lines of crude oil rail cars routinely stretch for miles along Route 787 through the heart of downtown Albany,” Earthjustice said in a Jan. 30 letter to Martens.

“All of this has occurred without the thorough environmental review required by state law and without any attempt to engage the residential communities that are bearing the brunt of this unprecedented industrial activity.”

Backers of Hydraulic Fracturing Seek Changes. The need for changes in SEQRA has been highlighted by supporters of high-volume hydraulic fracturing. They have cited the state’s long delay in issuing an environmental impact statement on the natural gas drilling practice known as fracking as a prime example of the need for SEQRA reform.

In one case, the trustee for a bankrupt energy company sued New York Dec. 17 to compel the DEC to complete its long-awaited environmental impact statement on fracking (*Wallach v. New York State Dep’t of Env’tl. Conservation*, N.Y. Sup. Ct., No. 677-13, 12/17/13; 45 ER 36, 1/3/14).

The lawsuit, which was filed by the bankruptcy trustee of Norse Energy Corp. USA, alleged that the DEC violated SEQRA by failing to issue the environmental impact statement in a timely manner. The case is scheduled for a hearing in state supreme court March 7.

“The State Environmental Quality Review Act was never intended as a tool to delay development and de-

stroy mineral rights,” Thomas West, managing partner of The West Firm and attorney for the bankruptcy trustee, told Bloomberg BNA in an email statement.

“This should serve as a call to action for reforms of the SEQRA process to prevent political gamesmanship with property rights.”

A second similar lawsuit was filed Feb. 14 by a coalition of property owners (*Joint Landowners Coalition of New York Inc. v. Cuomo*, N.Y. Sup. Ct., No. 843-14, 2/14/14; 45 ER 532, 2/21/14).

Scott R. Kurkoski, an attorney for the coalition with the Binghamton, N.Y., firm Levene, Gouldin & Thompson, LLP, said “it is undisputed that SEQRA was not intended to be a tool to stop development.”

“Rather, SEQRA’s purpose is to inform agency decision-making by incorporating environmental factors into the process and ultimately striking a balance among environmental, social and economic considerations,” Kurkoski said in a Jan. 31 letter to Martens, threatening legal action against the state.

Lawmakers Seek Repeal of Rules. SEQRA also has received renewed attention since the New York State Senate Majority Coalition issued a report Jan. 13 calling for the repeal or easing of hundreds of rules that they say burden business and industry. The report is based in part on several public forums held across the state to solicit input from business leaders.

Business groups from a range of industries testified at the forums and cited the need for changes in SEQRA as a priority. The groups included Unshackle Upstate, the Manufacturers Association of Central New York, the Long Island Builders Institute and the New York State Hospitality and Tourism Association.

Among the recommended changes were:

- simplification of the draft environmental impact statement process;
- adoption of final environmental impact statements within six months of the close of public hearings;
- creation of an expedited process for certain green projects;
- creation of mandatory and enforceable deadlines, with default provisions for non-compliance; and
- codification of a legal standard set by the state’s highest court for when a plaintiff has legal standing to challenge an action under SEQRA.

Sierra Club Opposes Changes. The proposed changes to the SEQR program are opposed by the Atlantic Chapter of the Sierra Club, which has participated in the drafting process.

“The final product may be different and reflect our earlier objections, but, with pressure now from the State Senate to roll back SEQRA, we are not feeling hopeful,” Roger Downs, chapter conservation program manager for the Atlantic Chapter of the Sierra Club, told Bloomberg BNA in an email.

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Downs, in a Jan. 14 newsletter to members, said the changes proposed by the DEC “will forever weaken environmental standards statewide and further subvert public participation.”

According to Downs, the changes proposed in the scoping process would limit the thoroughness of reviews because, in many cases, important information on a project doesn’t come out until after scoping is complete.

“By placing limitations on the introduction of new information after the completion of the final written scope, the DEC is unnecessarily weakening the thoroughness of reviews, and creating an incentive for applicants to withhold information about a project until after the final scoping document is complete,” he said.

The Sierra Club also opposes changes in the timeline for completing a final EIS, favoring the current open-ended process, according to Downs.

“While thousands of development proposals sail through the process annually, a minority of stalled bad proposals is being cited by some in government and industry as justification for undermining SEQRA and

public participation in protecting the environment,” Downs said.

“The Sierra Club has long argued that it is not SEQRA at fault for lengthy delays to bad proposals, but the poorly conceived proposals themselves.”

Assemblyman Steve Englebright (D), chairman of the Assembly Governmental Operations Committee, is also concerned about the proposed changes. Englebright, questioning Commissioner Martens at a recent legislative budget hearing, asked the commissioner, “Why is this in the public interest?”

“I’m cautious about changing SEQRA,” Englebright said. “You’re planning to make some substantial changes.”

BY GERALD B. SILVERMAN

To contact the reporter on this story: Gerald B. Silverman in Albany, N.Y., at gsilverman@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The New York state proposal to change the SEQRA review process is available at <http://www.dec.ny.gov/permits/83389.html>.