

Key Points to Make When Arguing for a Second SGEIS Comment Period

(1) *The NYS DEC has received over 14,000 comments, many of which point out serious weaknesses and omissions in the draft SGEIS. [Click [here](#) to see a selection of submitted comments.]*

(2) *Addressing these comments properly requires a significant revision of the draft SGEIS.*

Major Omissions from the draft SGEIS to Address to Make the SGEIS Legal Under SEQRA:

(A) Lack of an Executive Summary: DEC did not provide "a precise summary which adequately and accurately summarizes the statement," as is required under 6 NYCRR section 617.9(b)(4). Arguably, if DEC provides the executive summary in the next iteration, it should submit the document to public review again. Given how long, technical, and internally inconsistent the draft was, people really could have benefited from an Executive Summary that made it perfectly clear what DEC's conclusions were, and one inserted in the final version won't cure the problem.

(B) Lack of Analysis of Cumulative Impacts of Multiple Wells, Pipelines and Compressor Stations:

6 NYCRR section 617.3 (g) says:

"Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.

(1) Considering only a part or segment of an action is contrary to the intent of SEQRA. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible."

(3) *To satisfy the SEQRA process, a substantially revised SGEIS should have a second comment period.*

The purpose of SEQRA will not be served if the final SGEIS differs substantially from the draft, and the public has had no opportunity to comment on the changes. The New York Court of Appeals (the State's highest court) said in a case called *Webster Associates v. Town of Webster*, 59 N.Y.2d 220, 228 (1983), that "the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS."

(4) *There is no law preventing a second comment period. The DEC, at its own discretion, can choose to hold additional comment periods.*

(5) *There is a precedent for holding additional public comment periods, most recently regarding burn barrel regulations.*

In May 2008 NYS released their regulations on burn barrels; the public comment period went through August 14, 2008. They received 1,800 comments. (Compare this to how many more they got for the draft SGEIS on gas drilling!) NYS then revised the regulations and released them again in 2009, and gave the public a second comment period on them.

(6) 6 NYCRR section 617.3 (d) says “The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQOR process.”

(7) Senator Antoine Thompson, Chair of the NYS Senate Environmental Conservation Committee, has requested a second comment period.

Excerpted from pp. 5 to 6 of Senator Antoine Thompson’s Comments on the draft SGEIS:

“I request the DEC to strongly consider a 2nd comment period once staff has processed these comments in the next draft of the DSGEIS. I recommend giving the citizens a second opportunity to comment after their concerns have been weighed and integrated by the DEC, a process that will hopefully provide a substantially broadened and strengthened document. In the meantime, Congress and the US EPA should have progressed in their consideration of the impacts of Horizontal Drilling and High-Volume Hydraulic Fracturing (HDHVHF)....

Given the possibility that the above factors will provide a stronger perspective for viewing the DSGEIS, I believe a second comment period is warranted, and in the best interests of the people of the State of New York. The gas in New York’s low permeability shale will stay where it is; there is no need to rush a process with such profound implications for the health, environment and economy of New York and its citizens.”