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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-322-OL-3
(Emergency Planning)

DIRECT TESTIMONY OF LANGDON MARSH
ON BEHALF OF THE STATE OF NEW YORK
REGARDING LILCO'S PROFFERED EVIDENCE OF JANUARY 11

Q. Please state your name and your employment status.

A. My name is Langdon Marsh. I am the Executive Deputy
Commissioner for the New York State Department of Environmental
Conservation ("DEC").

Q. What is the work of your department?

A. DEC is responsible for administering New York State's
Environmental Conservation Law ("ECL"). The ECL includes the
State Environmental Quality Review Act ("SEQRA") (ECL § 8-0101
et. seq.) and the Environmental Conservation Water Pollution
Control Act (ECL § 17-0103 et. seq.). DEC is expressly empowered
to prevent and abate water pollution related to radiation. ECL §
3-0301(1)(i).

Q. What is the purpose of your testimony?

A. It has come to our attention that Nassau County has
agreed that in the aftermath of a radiological emergency at the

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Shoreham Nuclear Power Plant, LILCO will be permitted to use the Nassau County Coliseum to decontaminate persons, using the Coliseum's shower facilities and sinks, and to wash down contaminated cars in the Coliseum's parking lots (see letters dated 9/25/84 and 10/1/84 attached to LILCO's proffered evidence of January 11, 1985). It seems apparent that this would result in releasing radiological materials into the sewer system, and into the ground water system as well. This raises a number of questions. Would the discharge have a significant effect on the environment? Would the discharge render the receiving sewer pipes and receiving sewage treatment plant radioactive? Would the discharge have any effect on the receiving body of water? Would the discharge violate the department's regulations on radioactive substances (6 NYCRR Part 380)? Would the discharge from the sewage treatment plant violate any of the terms of the plant's State Pollutant Discharge Elimination System ("SPDES") permit? Would runoff of radioactive water from the parking lot enter the ground water and contaminate it?

It appears that the foregoing issues raised by this new proposed use of the Coliseum will need to be addressed by County and State authorities.

ENVIRONMENTAL IMPACT STATEMENT

Q. What does SEQRA require?

A. SEQRA § 8-0109(2) requires an environmental impact statement for any action that agencies, including counties "propose or approve which may have a significant effect on the environment" (emphasis supplied). Without complying with SEQRA, a county has no power to approve or implement the action it intends to take. 6 NYCRR § 617.3(a).

Q. Is it enough to comply with the spirit of the law?

A. Literal rather than substantial compliance with SEQRA is required. Glen Head -- Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay, 88 A.D.2d 484, 453 N.Y.S.2d 732 (1982). The New York Courts have described this standard as a "low threshold," Onondaga Landfill Systems, Inc. v. Flacke, 81 A.D.2d 1022, 440 N.Y.S.2d 788 (4th Dept., 1981), to be given the broadest possible construction. Niagara Recycling, Inc. v. Town Board of Town of Niagara, 108 Misc.2d 277, 437 N.Y.S.2d 560 (1981). See also Matter of Town of Henrietta v. Department of Environmental Conservation, 76 A.D.2d 215, 430 N.Y.S.2d 440 (4th Dept., 1980); Save the Pine Bush, Inc. v. Planning Board of City of Albany, 96 A.D.2d 986, 466 N.Y.S.2d 828 (1983), appeal dismissed and motion for leave to appeal denied, 61 N.Y.2d 668, 472 N.Y.S.2d 89; Soule v. Town of Colonie, 95 A.D.2d 979, 464 N.Y.S.2d (1983).

Q. What is required if a county decides that there is no impact on the environment?

A. Normally, there would be coordination between the county and any other State and local government agencies with permit or approval authority over the action. The county and these agencies would agree on a lead agency which would make the SEQRA determination. See ECL 8-0109.4; 6 NYCRR 617.6, .7. If the county is the lead agency, the minimum required of it is that it make a determination that an environmental impact statement is not needed. This decision must include a written analysis called a negative declaration.

In order to support a negative declaration that a project will have no significant impact on the environment, the county must show it identified the relevant areas of environmental concerns, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination. Cohalan v. Carey, 88 A.D.2d 77, 452 N.Y.S.2d 639 (1982). The initial determination is subject to appeal to the courts.

Q. What happens if the county decides there should be an EIS?

A. The county prepares a draft EIS, files it with the DEC, circulates it to federal, state, regional and local agencies and the public for comment, ECL § 8-0109(4), and determines whether a hearing is needed. ECL § 8-0109(5). The adopted EIS and comments must be submitted to DEC. ECL § 8-0109(6).

Q. Has Nassau County submitted a negative declaration, a draft EIS or a final EIS, or any SEQRA findings to DEC approving its plan to permit LILCO to use the Nassau County Coliseum as a decontamination center?

A. To the best of my knowledge, the County has not submitted anything to DEC.

Q. Which Nassau County agency would make a negative declaration or initial determination that this action will have no significant impact on the environment?

A. I understand that the Nassau County charter provides that the Nassau County Planning Commission would make such a decision.

Q. Have they made a negative declaration?

A. To the best of my knowledge, they have not.

Q. Is the county supposed to decide quickly whether an EIS is required?

A. Under 6 NYCRR § 617.5, as soon as an agency receives an application for an approval action, it must determine whether the action is subject to SEQRA. See also 6 NYCRR §§ 617.7(c), 617.11-.13 and Tri-County Taxpayers Ass'n, Inc. v. Town Board of Queensbury, 79 A.D.2d 337, 437 N.Y.S.2d 981 (1981), modified on other grounds, 55 N.Y.2d 41, 447 N.Y.S.2d 699, 432, N.E.2d 592.

Q. What happens when the action involves a federal agency?

A. If a federal agency has required an EIS for an action, and a final EIS has been prepared, then an agency may not require an additional EIS. 6 NYCRR 617.16. However, the agency may not

undertake or approve the action until the final EIS has been completed and the agency has made the findings prescribed in 6 NYCRR 617.19. These are written findings that:

- (a) Consistent with social, economic, and other essential considerations, and from among reasonable alternatives, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable.
- (b) Consistent with the social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process are avoided or minimized by incorporating as conditions to the decision practical mitigative measures.

Also, the agency must prepare a written statement of the facts and conclusions which it relies upon in the EIS to support its decision, and indicate the social, economic and other factors and standards which formed the bases of its decision.

Q. Has such a written statement been prepared?

A. To the best of my knowledge, it has not.

Q. Does the federal EIS for the Shoreham Nuclear Power Station address this action?

A. It is my understanding that the Shoreham EIS does not address an emergency evacuation plan and does not address the use of the Nassau County Coliseum as a decontamination center. Thus,

it appears that Nassau County will need to make the determinations called for under SEQRA.

Q. What are the criteria for determining whether a proposed action is significant enough to warrant an EIS?

A. Keep in mind that the law requires an EIS for any action that "may have a significant effect on the environment." ECL § 8-0109(2). In fact, § 8-0109(1) requires agencies to "act or choose alternatives which minimize or avoid adverse environmental effects." The regulations, 6 NYCRR § 617.11(a), include these indicators:

- (1) a substantial adverse change in existing . . . water quality
- (4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted
- (7) the creation of a hazard to human health or safety;
- (8) a substantial change in the use, or intensity of use, of land or other natural resources or in their capacity to support existing uses

Q. Is public controversy significant in evaluating whether an action has environmental impact?

A. Yes. 6 NYCRR § 617.3(f) requires agencies to make every reasonable effort to involve the public in the SEQRA process. The Environmental Assessment Forms ("EAFs"), which are used to assist an agency in determining the significance or non-significance of an action (§ 617.2(1)), direct the agency to

answer a series of questions. If the answer to any of them is "yes," the form states that "the project may be significant and a completed environmental assessment form is necessary." § 617.19 Part III(b) short form (6). The questions include:

- (4) Will project have a potentially large impact on groundwater quality? ☐ yes ☐ no
- (13) Will project have any impact on public health or safety? ☐ yes ☐ no
- (15) Is there public controversy concerning the project?
☐ yes ☐ no

See also Part II, long form, questions (5), (16), (18). Examples of public controversy are "Either government or citizens or adjacent communities have expressed opposition or rejected the project or have not been contacted" and "Objections to the project from within the community." Id. (18).

Q. In your opinion, are these criteria met in this case?

A. It appears likely that an EIS will be necessary.

Assuming that contaminated persons will use the Coliseum's showers causing runoff into the sewer system and that cars will be washed down in the Coliseum's parking lots, the application of the § 617.11(a) criteria strongly suggests the need for an environmental impact statement. See Inland Valve Farm Company v. Stergianopoulos, 478 N.Y.S.2d 926 (A.D.2d Dept, 1984) -- where the Second Department ordered an environmental impact statement on the basis of, inter alia, serious questions posed by the possible contamination of drinking water by runoff from a

development's parking lot. Further, the acknowledged public controversy regarding this matter also makes it likely that an EIS must be prepared.

SPDES PERMIT

Q. Does DEC administer other state environmental laws which apply to Nassau County's action in this case?

A. Yes. ECL § 17-0803 states that it is unlawful to discharge pollutants into the waters of the State without a "state pollutant discharge elimination system" ("SPDES") permit. Radioactive materials are pollutants under ECL § 17-0105(17).

Q. Doesn't this law apply only to the construction of new sewage disposal systems?

A. No. The prohibitions against discharging pollutants apply to the "use of an outlet," ECL § 17-0505, the "modification of wastes discharged through existing outlet(s)," ECL § 17-0507, and the increase or change of the content of discharges by volume or chemical characteristics, ECL § 17-0701(1)(c) (emphasis added).

Q. What do the regulations prohibit?

A. No person shall discharge or cause a discharge of any pollutant without a SPDES permit. 10 NYCRR § 751.1. Additionally, the discharge, if permitted, can be done only in the manner prescribed by the permit. Id.

Q. Where do persons apply for such a permit?

A. Applications must be made to the DEC, 10 NYCRR § 752.1, which provides forms, does site visits, id., makes tentative determinations, § 752.5, issues public notice of the application §§ 753.1, 753.4, 753.5, invites public comment, § 753.2, and holds public hearings, §§ 753-7-753.8. After this, DEC may issue SPDES permits with set limitations and schedules for compliance. DEC also has the authority to monitor compliance and modify or revoke the permit. §§ 754-757.

Q. Does Nassau County have a SPDES permit to discharge radioactive materials from the showers and the parking lot of the Nassau County Coliseum into the sewage system and/or ground water?

A. No. Nassau County has a permit to discharge treated waste water from the Bay Park Sewage Treatment Plant, which is a Nassau County plant. However, this permit does not cover the discharge of any radioactive pollutants.