

COUNCIL ON ENVIRONMENTAL QUALITY



Barbara C. Wagner
Chair

M. Howard Beach

Janet P. Brooks

Bruce R. Fernandez

Karyl Lee Hall

John M. Mandycyk

Richard Sherman

Ryan Suerth

Norman VanCor

Karl J. Wagener
Executive Director

DATE: May 5, 2010

TO: Daniel Morley
Policy Development Coordinator
Office of Policy and Management

FROM: Karl J. Wagener
Executive Director

RE: Proposed Generic Environmental Classification Document (ECD)

The Council has reviewed and discussed the new proposed Generic ECD and offers several recommendations.

The Council notes that some of the recommendations of its July 29, 2009 comments are contained in this new draft, including deletion of the adjective "state-owned" in some (though not all) places. However, some of the recommendations considered by the Council to be very important are not included. Also, the Council sees one major problem that probably cannot be corrected in an ECD. These points are described below.

First, however, the Council notes that 2009 marked seven years since CEPA was amended with no corresponding amendment of the regulations. We are now in year eight, approaching year nine. The lack of updated regulations is impeding a smooth amendment of the generic ECD.

1. Language Re: State Facilities – What is the need to retain the modifiers "state leased, licensed, or owned" in describing the facilities that would be covered by Category II-a? A building of a specific size is likely to have impacts that are not defined by the ownership. This ECD should apply whenever a state agency's involvement is an "action" under the regulations; if it is not an "action," then the ECD should not be relevant. The Council recommends deletion of those modifiers.

2. Sale or Transfer of Properties – Transfer of a property out of state ownership when the intended use of the property is different from the existing use requires the agency to examine the need for an EIE. Please see the Attorney General's August 18, 2006 opinion to OPM. Such property transfers must be included in the ECD.

3. Category IV (Actions That Do Not Warrant Review) – Again: After considerable discussion, the Council concluded that "demolition of state structures" should be deleted from this category. Further review of the regulations reveals that this entire category is not mentioned in the regulations and therefore should be deleted.

4. Grants that Result in Foreseeable Negative Impacts – Category II should include the following: h. Grants to municipalities or other entities for actions (acquisition or destruction of real property, for example) where the grantee has contractual obligations to conduct or allow actions that might have a significant environmental impact.

5. Category III (Joint Federal/State Actions) – Proposed language should be expanded to clarify the following point: A decision by a federal agency that no environmental review is required by NEPA does not necessarily mean that no review is required by CEPA; the sponsoring agency must examine the applicability of CEPA.

6. ECD vs. Regulations – This proposal includes an interesting new procedure for an agency to exit the CEPA process after scoping. If it were to be implemented, the Council could modify the Environmental Monitor with little difficulty to accommodate the new category of memo. However, the proposed procedure is not anticipated in the least by the regulations. Any change of this magnitude should be made in the regulations, where such change could be reviewed and commented on by the public at a public hearing and reviewed by the Regulation Review Committee of the General Assembly (and, in the extreme, appealed). The Council cannot agree that the regulations allow for a purely administrative change to the basic process of public notice.

Furthermore, the proposed change would raise havoc with public comprehension of the CEPA process because it would apply only to agencies that use the generic ECD; it would not apply to the DEP, DOT, or DECD. The CEPA process can be confusing enough to the general public. Adoption of the proposed ECD would require a citizen to comprehend two entirely separate processes, each depending on the name of the sponsoring agency. Such a change should not be made for the convenience of the sponsoring agencies; any change should be made with the citizen foremost in mind. The regulations require EIEs to be “clear, concise, and to the point, and written in plain language so that it may be understood by the general public.” So too should all aspects of the process.

The Council must ask: Where is the fire? Why should the generic ECD be rushed to revision before the regulations are revised? Waiting for the anticipated regulations would allow any change to apply to all agencies and would allow for greater public discussion of the proposed changes.

Finally, the Council repeats its recommendation that agencies should complete EIEs for all projects, and they should focus their efforts on producing concise, simple documents.

Thank you for your consideration of these comments. The Council looks forward to discussing these recommendations (and any others that might be submitted) with you.