SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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In the Matter of the Application of

BRONX ENVIRONMENTAL HEALTH AND JUSTICE INC.,

Petitioner,

For a Judgment pursuant to CPLR Article 78 and for Declaratory Relief pursuant to CPLR § 3001

-against-

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

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AFFIDAVIT OF ANGELA LICATA

Index No. 25754/04
Part 4 (Grays, J.)

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

ANGELA LICATA, being duly sworn, deposes and says:

1. I am Assistant Commissioner of the Office of Environmental Planning and Assessment ("OEPA") for the New York City Department of Environmental Protection ("DEP"). I have worked in OEPA for 17 years. My duties as Assistant Commissioner include reviewing DEP infrastructure and other City construction projects to assist in complying with the National Environmental Policy Act, the New York State Environmental Quality Review Act ("SEQRA"), the New York City Environmental Quality Review procedures ("CEQR"), and the New York City Uniform Land Use Review Procedure ("ULURP"). I am often consulted by other New York City agencies to render assistance and counsel in SEQRA/CEQR matters. I am

familiar with all of the environmental review statutes, the implementing regulations and the interpretation of these laws and regulations.

2. Prior to becoming Assistant Commissioner, I held the position of Deputy Director of OEPA for seven years. As Deputy Director, I supervised 38 employees who performed environmental impact assessments, land use and long range planning, and hazardous material assessments. Over the course of my 17 years at DEP, I have reviewed thousands of projects to determine whether SEQRA or CEQR requirements apply and have conducted the requisite environmental reviews.

3. I participated in, and for the past two years have supervised, the environmental review process performed pursuant to CEQR, SEQRA, and ULURP for the Croton water treatment plant ("WTP") project. In addition, I was involved in the planning process for the WTP leading up to these reviews. Therefore, I am personally familiar with the environmental and ULURP reviews performed for the Croton WTP.

4. This affidavit is based on personal knowledge and the books and records of DEP. I submit this affidavit in opposition to petitioner's request for an injunction enjoining the City from continuing with construction of a water treatment plant in Van Cortlandt Park.

History of DEP's Environmental Review of the Croton Water Treatment Plant Project

5. Prior to commencing the environmental assessment of the Croton WTP, DEP performed several engineering studies of the water treatment plant project, including several evaluations of potential sites. Various screening criteria were then employed. This process ended in the full environmental review of eight alternative sites under SEQRA/CEQR.

6. Specifically, in 1998, DEP prepared a Preliminary Draft Environmental Impact Statement ("PDEIS") and a Draft Environmental Impact Statement ("DEIS"). In 1999, DEP issued a Final Environmental Impact Statement ("FEIS") that included a description of the proposed project at Mosholu and the other alternative sites, the need for the project; engineering analyses leading to and alternatives to the proposed project; methods of analysis; descriptions of existing conditions and future conditions without the project; identification and evaluation of potential impacts of the project and its alternatives; mitigation measures; and a discussion of nonfiltration/watershed protection.

7. In 1999, DEP obtained approval under the City's Uniform Land Use Review Procedure to construct the WTP at the Mosholu golf course site in Van Cortlandt Park. The New York City Planning Commission issued a decision approving DEP's ULURP application in June 1999. In July 1999, following a public hearing, the New York City Council approved, with modifications, the decision of the City Planning Commission. In sum, the City Council found that the FEIS met the applicable legal requirements, that the proposed action minimized or avoided adverse environmental effects to the maximum extent practicable, and that adverse environmental effects identified in the environmental impact statement would be minimized or avoided by incorporating the mitigation measures identified as practicable.

8. Both the environmental review process and the ULURP process provided numerous opportunities for public comment and public participation. For example, DEP held three public hearings in 1998 and accepted written comments on the PDEIS in 1998. In 1999, five public hearings were held to receive comments on the DEIS and the ULURP application. DEP received several hundred oral comments and seventy-five written comments

on the DEIS. DEP responded in writing to the comments and, where appropriate, incorporated changes into the FEIS.

9. In 2001, the New York State Court of Appeals held that State legislative approval was required before the City could begin construction of the WTP in Van Cortlandt Park. In May and June 2003, the New York State Assembly and the New York City Council held public hearings to receive comment on proposed legislation to use parkland in Van Cortlandt Park for construction and operation of the WTP. In 2003, the New York State Legislature approved, and the Governor signed, the required legislation. The legislation required that DEP prepare a supplemental environmental impact statement ("SEIS") to evaluate the potential environmental impacts of locating and operating the Croton water treatment plant at the three final sites, including the Mosholu golf course site.

The Supplemental Environmental Impact Statement Challenged by Petitioners

10. Pursuant to SEQRA/CEQR and the State legislation, DEP prepared an SEIS comparing the potential environmental impacts of the three possible sites it had identified for the Croton WTP: (i) the Mosholu golf course in Van Cortlandt Park in the Bronx; (ii) the Harlem River site in the Bronx; and (iii) the Eastview site in Mount Pleasant, Westchester County. The sole purpose of the SEIS was to compare the potential environmental impacts of constructing the Croton WTP at each of the three sites under consideration, and to select a site for the Croton WTP.

11. Throughout the environmental review process, DEP provided extensive opportunities for public participation. DEP commenced the review process in August 2003 when it issued a draft scope of work for the siting of the WTP to evaluate the potential for

significant environmental impacts from the three sites still under consideration. In September 2003, DEP held public hearings in the Bronx and Westchester County to receive comment on the draft scope of work.

12. Based on the scope of work, DEP prepared and published a Draft Supplemental Environmental Impact Statement ("DSEIS") in December 2003. In February and March 2004, DEP held additional public hearings in the Bronx and Westchester County to receive comment on the DSEIS. Several hours of comments were heard and recorded by a stenographer. In addition, counter to the assertions of the petitioner, sign-in sheets were provided at both the Bronx and the Westchester County hearings. Two sign-in sheets were provided both for the public to provide oral comment and for them to document their presence at the hearing. A written comment period was established for the purpose of receiving written comments. In total, several hundred comments were received by DEP.

13. On June 30, 2004, after considering the comments received from the public during the comment period on the DEIS, DEP issued the Final Supplemental Environmental Impact Statement ("FSEIS") identifying the Mosholu golf course in Van Cortlandt Park as its preferred site for the WTP. (A copy of the FSEIS is attached as Exhibit A). The FSEIS consists of three large volumes exceeding 2,000 double-sided pages, plus a CD-ROM containing the appendices. On July 16, 2004, then DEP Commissioner Christopher Ward issued a Statement of Findings in which he determined, based on the assessment of potential environmental impacts in the FSEIS as well as other considerations set out in the Statement of Findings, that the Mosholu site in Van Cortlandt Park was the most suitable location for the Croton WTP.

14. On September 15, 2004, a committee of the New York City Council held a public hearing to receive comments on the siting of the WTP in Van Cortlandt Park. Almost two weeks later, on September 28, 2004, the City Council gave the final approval necessary to enable the City to move forward with construction of the WTP at the Mosholu golf course site in Van Cortlandt Park.

Overview of SEQRA and CEQR

15. A brief review of legally mandated environmental review in New York City is necessary to put petitioners' allegations into perspective. The New York State Environmental Quality Review Act, known as "SEQRA," requires all state and local governmental agencies to assess the environmental effects of their actions, unless the actions fall within certain exemptions, before undertaking, funding or approving the action. The primary concern of SEQRA is to determine whether the action under review may have a significant, adverse impact on the environment so that the agency can consider any such impacts in its decision-making process.

16. The New York State Department of Environmental Conservation ("NYSDEC") has promulgated extensive regulations that guide the environmental review process. These regulations, found at Part 617 of Title 6 of the New York Codes, Rules and Regulations, provide the criteria that must be considered in determining whether an action may have a significant, adverse impact on the environment.

17. The regulations also permit a local government to promulgate its own rules provided they are not less protective of the environment than the State rules. The City has developed its own set of procedures for determining whether an action may have a significant

adverse environmental impact. These procedures are known as City Environmental Quality Review, or "CEQR." The City has also developed a guidance manual, known as the *CEQR Technical Manual*, that provides guidance on methodologies and determinations of significance in order to assist agencies in performing environmental reviews under SEQRA and CEQR.

Public Availability of Documents

18. It is my understanding that petitioner alleges that DEP violated SEQRA/CEQR by failing to make publicly available certain documents referenced in the DSEIS and FSEIS. This is not accurate. The documents identified by petitioner were not used by DEP to assess the potential environmental impacts of the Croton WTP; nor were they relied upon by DEP in reaching its conclusions in the DSEIS or FSEIS. Contrary to petitioner's assertions, the documents were not incorporated by reference. Rather, these documents were cited simply when DEP provided background information to help the public understand the historical context within which the decision to site and construct a WTP was reached. All information and data upon which DEP based its conclusions in the SEIS are contained within the body of the FSEIS or its appendices.

19. For example, petitioner alleges that a document it identifies as the "Process Studies Research Project" was relied upon by DEP to support its conclusions in the DSEIS. This document consists of a study, conducted by DEP and SUNY College of Environmental Science and Forestry, of the sources and characteristics of certain nutrients and precursors of disinfection by-products found at sampling locations throughout the City's watershed. The document has nothing whatsoever to do with the potential environmental impacts of a Croton WTP and was not a source of any conclusions contained in the DSEIS.

20. Another document identified by petitioner is entitled "NYCDEP Source Water Monitoring Program." This document pertains to a program in which DEP collects in excess of 35,000 samples from 300 sites throughout the watershed to gather data for watershed management purposes. A third example of a document identified by petitioner is entitled "The Need for a Croton Water Supply System." This study evaluated the role of the Croton system within the City's overall water supply system and concluded that the City should continue to maintain the Croton system to meet projected demand and the City's overall water supply system reliability. Neither of these documents have any bearing on the potential environmental impacts of siting a Croton WTP, and neither document, nor any of the other documents identified by petitioners, was a source of DEP's conclusions in the DSEIS.

21. Petitioner also identifies numerous other documents relating to topics such as best management practices for farmers in the Croton watershed, water quality impacts of different wetland types, and non-point source pollution in the East-of-Hudson basins. None of these documents have any bearing on the potential environmental impacts of a Croton WTP, and none of these documents were a source of DEP's conclusions in the DSEIS. Similarly, petitioner identifies numerous documents that it alleges should have been included with the FSEIS, including the federal consent decree, the Memorandum of Understanding concerning money to be spent on Bronx parks improvements, and other documents that have no bearing on the potential environmental impacts of a Croton WTP and were not a source of DEP's conclusions in the FSEIS.

22. Petitioner also alleges that the appendices to the DSEIS were not included with the copies placed in the repositories. This is not accurate. A CD-ROM

containing the appendices was included with each multi-volume set of the DSEIS that DEP provided to the repositories.

23. Petitioner also alleges that the DSEIS and FSEIS are inadequate because they failed to include certain information about costs of the project. Cost analysis is not an environmental consideration and therefore is not a requirement of SEQRA/CEQR. However, the potential socioeconomic effect of the project is an environmental consideration and was analyzed extensively as part of both the DSEIS and the FSEIS. (A copy of the FSEIS is annexed as Exhibit A. The Socioeconomic Effects chapter is Section 6.7, Volume B of Exhibit A.) In addition, at the time when the SEIS was being prepared, cost calculations were still in the preliminary stages. Nonetheless, DEP disclosed the cost estimates contained in its capital plan at that time. As set forth in the Statement of Findings, the decision to site the WTP at the Mosholu location was not based on pure economics, but rather consisted of a comprehensive consideration and balancing of environmental, engineering, operational and other implications of the project.

DEP's Air Quality Analysis

24. I understand that petitioner has asserted that the analysis of potential air quality impacts in the supplemental environmental impact statement is inadequate. Specifically, petitioner alleges that DEP failed to include particulate matter air quality modeling in the DSEIS, that the background particulate matter levels are not accurate, and that the FSEIS failed to set forth mitigation measures. Petitioner is incorrect. Pursuant to SEQRA/CEQR and in accordance with NYSDEC's procedures, both the DSEIS and the FSEIS prepared by DEP for the Croton WTP project include a comprehensive analysis of the WTP's potential impacts on air

quality, and concluded that the plant would not result in any significant air quality impacts. In addition, it should be pointed out that the statements from the DSEIS that the petitioner cites to assert the deficiencies of the DSEIS were from the Socioeconomic Analysis section of the DSEIS and are taken out of context. A detailed air quality analysis that relies on standard emission estimates and air quality modeling procedures was undertaken and its conclusions were reported in the DSEIS. The Air Quality section specifically states that no significant impacts would occur and concludes that no further analysis is needed.

A. Particulate Matter Analysis

25. The pollutants of concern for air quality analyses in SEQRA/CEQR are those air pollutants identified by national and State regulations, including the air pollutants for which the U.S. Environmental Protection Agency ("EPA") has established National Ambient Air Quality Standards ("NAAQS"), as required by the federal Clean Air Act. Among these are carbon monoxide, nitrogen dioxide, ozone, inhalable particulate matter, sulfur dioxide and lead. It is my understanding that petitioners challenge the adequacy of DEP's particulate matter ("PM") analysis.

26. Petitioner inappropriately takes out of context the public health chapter from the FSEIS. (The public health chapter is Section 6.19, Volume B of Exhibit A.) The public health chapter clearly indicates that based on the case studies, the causes of increased asthma rates over the past two decades and the trigger for its exacerbation are only partially understood by the scientific community. The studies referenced in the chapter provided many examples indicating the complicated task of linking air quality (which is only one of the many suspected asthma triggers) and constituents of air quality such as sulfur dioxide, ozone and

particulate matter with increase of mortality as a result of asthma. To my knowledge, no reasonable public health threshold of significance for PM10, other than the NAAQS, has been established.

27. The NAAQS have been promulgated by EPA as primary and secondary standards. The primary standards protect public health, and represent levels at which there are no known significant effects on human health. The secondary standards are intended to protect the nation's welfare, and account for air pollutant effects on soil, water, visibility, materials, vegetation, and other aspects of the environment. For PM10, the primary and secondary standards are the same. Because the primary standards of the NAAQS were established to be protective of human health, causing the NAAQS to be exceeded constitutes a potentially significant adverse impact on public health and the environment. Conversely, compliance of PM10 with the NAAQS indicates that there are no significant impacts.

28. PM is emitted into the atmosphere from a variety of sources, including mobile (vehicular) sources, stationary sources such as manufacturing or industrial facilities, and construction-related sources. In conformance with SEQRA/CEQR, DEP analyzed potential PM10 concentrations resulting from the Croton WTP project from all potential sources, both during the construction of the WTP and during its operation.

29. In conformance with the *CEQR Technical Manual* and established SEQRA/CEQR methodology for over 20 years, the PM10 concentrations are predicted for the project being assessed using the updated models approved by EPA and NYSDEC and are added to the existing or predicted future background as appropriate, and then compared with the NAAQS for PM10 to determine the potential for significant adverse impacts. This

methodology is standard and widely-utilized by entities throughout the country for assessing whether predicted air impacts are significant.

30. DEP did extensive PM air quality modeling and determined, using a conservative set of air modeling data and assumptions, that there would be no potential for significant adverse impacts attributable to PM10 resulting from either the construction or operation of the Croton WTP. The modeling approach utilized by DEP included a series of conservative assumptions relating to meteorology, traffic, and background concentration levels, resulting in a conservatively high estimate of expected PM10 concentrations that could ensue from emission sources associated with the proposed facility. For example, DEP reports the highest 24 hour concentration simulated over five years of meteorological data. The construction activities vary over the five plus years of the construction period, whereas the air quality analysis is based on the peak month and year for the entire construction period. Furthermore, the background concentrations are also based on the highest measured background concentration over the three most recent years.

31. The potential impacts on air quality during operation of the facility were predicted to be very small and clearly below all applicable significant impact thresholds. The operation of the facility is expected to produce a very small number of daily truck trips and the only stationary sources are HVAC and emergency generators. The resulting 24-hour maximum PM10 concentration from the operation of the facility is predicted to be 45.4 $\mu g/m^3$.

32. It is my understanding that petitioner specifically alleges that DEP failed to include PM data from construction-related vehicular exhaust in its analysis. This is untrue. DEP calculated potential PM10 concentrations from construction in two parts: engine exhaust

emissions and fugitive dust emissions from reentrainment of dust by wind or machine movement. DEP calculated the exhaust emissions from construction equipment using EPA's NONROAD emissions model. The effect of construction was assessed during the period when the maximum (capacity) peak construction activities are scheduled, which is May 2010. Typically, usage factors are applied to reflect the hours of operation of each construction equipment. However, for this analysis, DEP conservatively assumed continuous operation of most construction equipment and does not take credits for the hours when equipment are not in use. Fugitive dust emissions were calculated using the EPA document AP-42 "Compilation of Air Pollutant Emissions Factors, Fifth Edition, Volume I: Stationary Point and Area Sources."

33. For the potential PM10 emissions during construction, following is a more detailed summary of DEP's air quality methodology. DEP analyzed potential PM10 concentrations from mobile sources by utilizing the MOBILE6.2 modeling approach that is approved by EPA and is widely-applied for evaluating air quality impacts in New York City, New York State, and throughout the country.

34. MOBILE6.2 is the most current emissions model capable of calculating engine emission factors for various vehicle types. To estimate concentrations of PM10 for 24-hour and annual average time periods, DEP used CAL3QHCR, EPA's recommended dispersion models for mobile sources. This analysis follows the general methodology recommended for microscale mobile source modeling as described in the City's *CEQR Technical Manual.*

35. DEP analyzed potential PM10 concentrations from stationary sources by utilizing the Industrial Source Complex Short Term, Version 3 (ISCST3) model. ISCST3 is an EPA recommended, refined computerized dispersion model that calculates impacts at receptors

from multiple point, area and volume sources. The ISCST3 model is capable of calculating pollutant concentrations at locations where the plume from the exhaust stack is affected by the aerodynamic wakes and eddies (downwash) produced by different structures. It utilizes five years of actual meteorological data such as hour-by-hour temperature, stability class, wind speed and wind direction to simulate the potential impact of the project. In the FSEIS, DEP reported the highest concentrations over the five-year period in an effort to be conservative.

36. Based on the analyses described above DEP conservatively predicts 24-hour PM10 concentrations during construction to be 46.3 $\mu g/m^3$. This concentration is added to the background of 45 $\mu g/m^3$, resulting in a total estimated fenceline concentration of 91.3 $\mu g/m^3$. This total concentration is well below the NAAQS of 150 $\mu g/m^3$. It is important to emphasize that this maximum predicted concentration represents the potential peak concentration that could occur if the construction activities during the peak month persist for five years and if the peak period coincided with the day of the highest monitored background concentration. Moreover, this represents the maximum peak concentrations near the construction boundary. As the nature of construction PM is localized to the immediate area of construction, PM10 concentrations will fall off rapidly with distance from the construction site.

37. DEP concluded that construction and operation of the Croton WTP at the Mosholu golf course site in Van Cortlandt Park would not create significant adverse impacts on air quality. The potential for public health concerns, particularly asthma, were considered very seriously in both the DSEIS and FSEIS. Detailed emission data and running time of construction equipment associated with both on-road and off-road sources were conservatively estimated. The methodology used to determine the resultant pollutant concentrations at

sensitive receptor locations from these sources was laboriously studied and thoroughly estimated. The methodology used was presented in the draft and final scopes of work and is the methodology that, to the best of my knowledge, is employed by all City, State and Federal agencies. Based on these sound methods, DEP concluded that there is no potential for significant air quality impacts and therefore, no need for mitigation from this project to reduce the small increases in PM10 emissions anticipated during the temporary construction period. Nevertheless, DEP is planning on incorporating all known best management practices during construction to minimize any potential emissions.

B. Location of Monitoring Stations

38. It is my understanding that petitioner also alleges that it was improper to determine $PM_{2.5}$ background levels for the Van Cortlandt Park site using data from an air monitor located five miles away in the Bronx Botanical Gardens rather than in a less distant urban area. This is inaccurate and factually incorrect. First, the Botanical Gardens monitoring station is 1.5 miles away from the Van Cortlandt Park site, not five miles. Second, monitoring stations are maintained by the New York State Department of Environmental Conservation and are located at a limited number of fixed points within New York City. The Botanical Gardens monitoring station is the closest $PM_{2.5}$ station to the Van Cortlandt Park site. Finally, it was reasonable and scientifically sound to use data from the Botanical Gardens monitoring station to determine background levels since the air quality in the Botanical Gardens is comparable to the air quality one can expect to find inside a large green space such as Van Cortlandt Park.

C. Differences Between the DSEIS and FSEIS

39. It is my understanding that petitioner also alleges that the FSEIS is deficient because it allegedly contains information that was not included in the DSEIS. Contrary to petitioner's assertions, the DSEIS contained a comprehensive and thorough analysis of the potential impacts of PM10 on all potential receptors, which also includes sensitive populations such as children and the elderly. In conformance with standard practice, the air quality analysis was refined in several ways between publication of the DSEIS and the FSEIS. Specifically, the calculations were revised due to the release of updated versions of the EPA models for mobile and construction sources. In addition, the analysis was updated in the FSEIS to incorporate revised construction schedules and equipment lists and usage factors. The construction emissions calculations were also revised to reflect the commitment of using ultra-low sulfur diesel fuel in on-road and off-road construction vehicles to reduce emissions. All of these refinements were incorporated into the FSEIS in order to present the most recent information available on the project and to respond to community comments on the DSEIS. As demonstrated in the FSEIS, incorporating these revisions has no material effect on the conclusion of no significance reached in the analysis.

D. Mitigation Measures for Air Quality Impacts

40. Petitioner incorrectly alleges that PM10 will cause an increase in mortality rates for the communities around Van Cortlandt Park. As set forth above, PM10 levels for the project fall below the NAAQS threshold of significance. In addition, petitioners misconstrue the findings of the *New England Journal of Medicine* article referenced in the FSEIS. Although that study indicates a correlation between PM10 concentrations and mortality

rates, this correlation is attributable to that portion of PM10 that consists of $PM_{2.5}$, the smaller particulates that are more likely to lodge in the lungs when inhaled. Therefore, $PM_{2.5}$ is the driving factor when dealing with respiratory mortality. As set forth in the FSEIS, the WTP at the Van Cortlandt Park site falls below the health-based threshold for $PM_{2.5}$ set by DEP and the New York State Department of Environmental Conservation. In the absence of any Federal guidance thresholds, and based on the fact that PM levels do not exceed State or City interim guidance thresholds for determining significant increases in $PM_{2.5}$ on the public, DEP reasonably concluded that there is no potential for significant air quality impacts and therefore, no need for mitigation from this project.

E. Vehicle Exhaust Impacts

41. It is my understanding that petitioner alleges that DEP's analysis of vehicle exhaust emissions is inadequate. This is incorrect. DEP performed a through analysis of the potential impacts on air quality of vehicle emissions, including potential impacts on asthma rates. Petitioner incorrectly alleges that DEP stated in the FSEIS that it had not examined this issue. In fact, the FSEIS states only that the health data surrounding this issue require further study by the scientific community, not that DEP failed to fully examine the issue based on the available data.

42. DEP performed a comprehensive traffic analysis using modal split information and reverse journey-to-work data from the New York Metropolitan Transportation Council to calculate estimated vehicle trips to and from the WTP site. Using conservative assumptions and applying the criteria set forth in the *CEQR Technical Manual*, DEP reasonably concluded that the project posed no potentially significant adverse impacts from traffic. The

traffic analysis used to support DEP's mobile air quality analysis is consistent and fully supported by the data.

Public Participation

43. It is my understanding that petitioner alleges that DEP failed to involve the public in the environmental review process. This is incorrect. As set forth more fully above, DEP extensively involved the public in the environmental review process, including holding multiple public hearings and soliciting and responding to hundreds of written comments. DEP fully complied with the public participation requirements of SEQRA/CEQR.

44. Petitioner erroneously alleges that DEP was required to provide a question and answer session at the public hearing it convened. As set forth in the SEQRA regulations, the purpose of the public hearing is to provide a forum for collecting public comment in order to aid and inform the lead agency's decision-making process. The *CEQR Technical Manual* also states that the purpose of the public hearing is to receive comments. SEQRA/CEQR do not require the agency to convene a question and answer session.

45. Petitioner also alleges that public participation was inadequate due to DEP's alleged failure to control disruptive members of the public at the DSEIS hearing in the Bronx. DEP received several hundred comments on the DSEIS from members of the public, including 46 oral comments provided at the hearing in the Bronx. Even if members of the public were unable to give their comments orally at the hearing, pursuant to SEQRA/CEQR, they had an additional 10 days following the hearing to submit their comments in writing. In compliance with SEQRA/CEQR requirements, DEP responded to all public comments in the FSEIS.

46. Petitioner also alleges that DEP failed to provide adequate time for public consideration of the FSEIS prior to issuing its Statement of Findings. DEP fully satisfied the SEQRA regulations, set forth at 6 NYCRR § 617.11, which require only that the lead agency allow the public not less than 10 days to consider a final EIS before issuing a written findings statement. It is well-established that the purpose of the consideration period is to provide an opportunity for the decision-maker, involved agencies, and the public to evaluate the final EIS prior to issuing the findings statement. The lead agency is not required to take any further action to respond to additional comments submitted by the public during the consideration period.

Analysis of Alternatives

47. It is my understanding that petitioner alleges that DEP's analysis of alternatives is inadequate. This is incorrect. DEP performed a thorough alternatives analysis that fully complies with the requirements of SEQRA/CEQR.

A. Environmental Justice

48. I understand that petitioner asserts that the alternatives analysis is inadequate because of what petitioner characterizes as an improperly enlarged study area for the Eastview site in Westchester County. To support this assertion, petitioner refers to an analysis included in the FSEIS as Section 11. That section contains what is referred to as an "environmental justice" analysis, assessing the potential impacts of the plant on minority communities. This argument is incorrect.

49. SEQRA/CEQR do not require an agency to perform an environmental justice analysis – the analysis challenged by petitioners – as part of the environmental review of

an action. Rather, an environmental justice analysis is required as part of the separate permitting process when an applicant seeks a permit from the New York State Department of Environmental Conservation ("DEC"). Moreover, even in that context, the requirement to perform an environmental justice analysis is set forth in a DEC guidance document, not in the State regulations. DEC policy guidance CP-29, entitled "Environmental Justice and Permitting," governs only applications for DEC permits. (A copy of CP-29 is annexed as Exhibit B.) DEP has not yet applied for (or been required to apply for) any DEC permit for the WTP that requires it to perform an environmental justice analysis.

50. Despite the fact that it was not required to do so, DEP included an environmental justice analysis in the FSEIS to address public comments about the WTP and in preparation for the full analysis and public participation process it anticipates undertaking in the future when it applies for DEC permits requiring an environmental justice analysis. The environmental justice analysis included in the FSEIS is based on the methodologies contained in DEC policy guidance CP-29. In accordance with those methodologies, DEP selected study areas for the various sites by using racial, ethnic and socioeconomic data from the United States Census Bureau. DEP then took into consideration the size of the project and the potential impacts the project could have on traffic, noise, historic and archaeological resources, natural resources, air quality, and hazardous materials.

51. The study areas selected for the Eastview and Mosholu Golf Course sites are approximately the same size, each being roughly one half mile in radius from the respective project sites. I understand that the petitioner complains that DEP arbitrarily extended the southern radius of the Eastview study area in order to include minority communities that

petitioner alleges would not be impacted by the project. Contrary to petitioner's allegations, the Eastview study area was rationally based on the area's rural character and diffuse populations, as well as the potential impacts of the project. The Mosholu site is surrounded by dense, urban populations and is immediately adjacent to the expressway on and off-ramps, and therefore any impacts will be localized. In contrast, the Eastview site is more rural and will require the use of smaller local roads for truck traffic to and from the site. Impacts from this truck traffic were identified in a community just over one half mile to the south of the site. Therefore, in order to include these potential impacts in its environmental justice analysis, DEP rationally used a study area with a radius slightly larger than one half mile.

52. Although SEQRA/CEQR do not govern the methodologies for the environmental justice analysis — and although the City's *CEQR Technical Manual* does not indicate how the environmental justice study area should be determined — DEP's decision to use a slightly extended study area to account for a community that potentially would be significantly impacted by the project is in accordance with accepted SEQRA/CEQR methodologies. For example, in its discussion of study areas for analyzing socioeconomic impacts, the *CEQR Technical Manual* clearly states that the study area should be based on those areas identified in the EIS as likely to be affected by a project. DEP followed this methodology in choosing its study area for the environmental analysis. At the Eastview site, this meant that the study area as described above encompassed a community outside the half-mile radius that potentially would be impacted by truck traffic. If DEP had selected a uniform one-half mile study area, as suggested by the petitioner, the community directly affected by traffic congestion resulting from construction of the project to the south of the Eastview site would not have been

taken into consideration as part of the environmental justice analysis. Therefore, even if SEQRA/CEQR required an environmental justice analysis, the study areas utilized in the FSEIS were appropriate under SEQRA/CEQR.

53. In addition, the petitioner seems to argue that the only communities in the Eastview study area with a minority population exceeding the environmental justice threshold are the block groups in the census tract to the south of the WTP, which the petitioner argues should have been excluded from the study area. The petitioner is incorrect. Even if the study area did not include the portion of block groups in the southern tract contested by the petitioner, the Eastview plant would still impact a significant minority population. Indeed, the Eastview site would still fall under the definition of an environmental justice community largely due to the high minority population of the block group which is located in the northern portion of the study area.

54. Finally, petitioner is incorrect in asserting that the density of the community is relevant to determining whether a community qualifies as an "environmental justice community" under the DEC guidance document. On the contrary, the methodologies presented in the DEC guidance document CP-29 state that determining whether a community qualifies as an "environmental justice community" is based on the percentage of the community population that is either a minority or low-income. CP-29 establishes that a minority community consists of a community with a minority population equal to or greater than 51.1% of the total population in an urban area and 33.8% in a rural area. The guidance also establishes that a low-income community is a community with a low-income population equal to or greater than 23.59% of the total population. As set forth in DEP's analysis in the FSEIS, the potentially

impacted communities in the vicinity of both the Eastview and Mosholu Golf Course sites fall within the definition of an "environmental justice community" as set forth in the DEC guidance.

B. Cumulative Impacts, Traffic, and Neighborhood Character

55. Petitioner erroneously argues that DEP failed to consider combined impacts of other projects in the area around Van Cortlandt Park, while taking into consideration impacts of other projects planned for the Eastview site. The petitioner inaccurately asserts that DEP's more detailed analysis of the Ultraviolet Disinfection Facility at the Eastview site – an unrelated project to the Croton WTP – constitutes an unequal level of analysis between the Eastview and Mosholu Golf Course sites. This is unfounded. Both the Eastview and the Mosholu site analyses considered other projects in their analyses of potential significant impacts, as set forth in the FSEIS (see Table 5.2-3 and Section 6.2.2.2.1 of Volume B of Exhibit A.). One reason weighing against choosing the Eastview site for the Croton WTP was that DEP is proposing two large, critical capital projects (including the Ultraviolet Disinfection Facility) to be built at the Eastview site during the same construction period as the Croton WTP. In order to accurately portray the environmental effect of this scenario, DEP utilized the high level of detail it possesses about the two capital projects in order to provide a more accurate assessment of the potential environmental impacts of concurrent construction of the two capital projects and the Croton WTP. In addition, the Ultraviolet Disinfection Facility at the Eastview site is a project with considerable certainty, including site plan review by the Town of Mount Pleasant and an environmental impact statement that was well underway at the time the FSEIS was being prepared. Therefore, it was reasonable and appropriate for DEP to analyze potential cumulative impacts of these large facilities being constructed adjacent to one another at the same time.

Petitioner identifies no other major projects with a considerable likelihood of being built in the vicinity of Van Cortlandt Park, and SEQRA/CEQR do not require DEP to speculate about every potential project that might be undertaken in the area.

56. It should also be clarified that the petitioner is incorrect in asserting that the work to be undertaken in the vicinity of the Jerome Park Reservoir should have been analyzed as a combined impact with the construction of a Croton WTP at the Mosholu Golf Course site. As DEP stated in its response to comments on the DSEIS: "The possibility of cumulative impacts was considered for Jerome Park Reservoir in conjunction with either one of the Bronx sites. The potential impacts of work around Jerome Park Reservoir are described in Section 8.2 of the Draft SEIS. This work would be of a much smaller scale than any work previously planned for this site. The potential for cumulative impacts was considered but construction traffic patterns for the two sites would not overlap. Traffic to the Mosholu Site would arrive from the north, whereas traffic to Jerome Park Reservoir, which is small to begin with, would go to the Major Deegan from the west. It was determined that the locations (JPR/Mosholu and JPR/Harlem River Site) were far enough apart that there would not be substantial cumulative impacts to receptors due to construction activities."

57. Petitioner also argues erroneously that the FSEIS is inadequate because the traffic section for the Eastview site analyzes more intersections than the traffic section for the Mosholu site. The traffic analyses for both sites fully comply with SEQRA/CEQR, which in no way require that an identical number of intersections be studied for all potential sites. In conformance with standard SEQRA/CEQR methodology, DEP looked at where potential traffic impacts are likely to occur. In the case of the Eastview site, a larger number of intersections

were analyzed because traffic traveling to and from the site from major roadways would travel through a large number of intersections. In contrast, at the Mosholu site, fewer intersections were analyzed because fewer intersections were anticipated to be affected by the project since the Mosholu site is in near proximity to the Major Deegan Expressway.

58. Petitioner also argues that the FSEIS is inadequate because it does not consider the neighborhood character impacts for the Mosholu site. This is incorrect. In conformance with SEQRA/CEQR, both the DSEIS and FSEIS thoroughly analyzed neighborhood character impacts within a half-mile study area that might result from the project, including traffic impacts, and reasonably concluded that the project would not have significant, adverse impacts on neighborhood character.

C. Open Space

59. It is also my understanding that Petitioner asserts that the City's decision to build the water treatment plant at the Mosholu Golf Course site would result in a disparate impact on the amount of park space available to the local minority residents. This is incorrect. During the construction of the WTP the Mosholu site, the public in the vicinity of the site would have access to open space at a ratio of 21.3 acres per 1,000 residents. During operation of the WTP at the Mosholu site, the public in the vicinity of the site would have access to open space at a ratio of approximately 22.3 acres per 1,000 residents. These open space ratios are substantially above the 2.5 acres per 1,000 residents that is the City's goal pursuant to the *CEQR Technical Manual*. In practice, however, the open space ratio in many parts of New York City is less than 2.5 acres per 1,000 residents. Therefore, construction and operation of

the WTP at the Mosholu site will not create a disparate impact on the amount of open space available to minority communities.

Conclusion

For these reasons, I respectfully request that the court deny petitioner's request for an injunction enjoining the City from continuing with construction of the Croton water treatment plant in Van Cortlandt Park.

ANGELA LICATA

Sworn to before me this 11th
day of January, 2005.

Notary Public
ROBERTA O. PEDERSEN
Notary Public, State of New York
No. 02PE4871058
Qualified in Queens County
Commission Expires Aug. 18, 2006