

RIVERKEEPER[®]

February 16, 2010

New York State Department of Environmental Conservation
Office of General Counsel
Governor's Office of Regulatory Reform

Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
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RE: Executive Order No. 25

Comments on –

- air regulations
- environmental permit regulations
- environmental remediation regulations
- fish, wildlife and marine resources regulations
- forest protection regulations
- hearings and mediation services regulations
- lands and forests regulations
- law enforcement regulations
- mineral resources regulations
- solid and hazardous materials regulations
- water resources regulations

I. Riverkeeper opposes the mandate of Executive Order 25 on the DEC

Riverkeeper is opposed to the premise of Executive Order 25. The Order is inherently biased towards reducing or eliminating regulations, because it requires agencies to identify a minimum number of regulations that are “unpopular,” and gives the Review Committee the power to override the agency’s Commissioner to decide which regulations survive, and which are eliminated. The Order will create more work, not less, for state agencies like the DEC and Department of Health, whose staffs are struggling to protect the environment and public health with slashed budgets and dwindling tax revenues, by forcing them to review thousands of

regulations that have already undergone extensive public review. It grants almost unlimited power to a small group of political appointees to remake the state's regulatory system to serve their political interests, not the needs of the people of New York or its environment.

The Governor's mandate in Executive Order 25 to reform or repeal rules and requirements to reduce unnecessary burdens, costs and inefficiencies of business is clearly inconsistent with the DEC and other agencies' regulatory mandate of maintaining appropriate protections for the public health and safety and the environment. Changing the regulatory process in favor of business contradicts the essence of environmental conservation. Under the Environmental Conservation Law (ECL), it is the role of the Department under the Commissioner, rather than the Governor's Review Committee appointees, to "amend or repeal environmental standards, criteria and those rules and regulations having the force and effect of standards and criteria to carry out the purposes and provisions of [the ECL]" (New York Environmental Conservation Law § 03-0101(2)(a)).

In order to improve the DEC's regulatory approach, the agency needs to improve the way it implements and enforces the existing regulations; simply amending or repealing current regulations because a particular subset of the public thinks they are an "unnecessary burden" will not improve the economy, and will not protect the environment. Successful environmental regulation depends upon efficient, consistent enforcement, and clear, consistent interpretation of current laws and regulations. A cleaner, better regulated environment is a prerequisite to a healthy economy (recognized in New York Environmental Conservation Law § 1-0101(1)). Also, it is critical that the DEC, the agency with the expertise and experience to protect the environment, be in charge of periodically reviewing and revising its own regulations; this responsibility should not be delegated to a politically motivated and economically driven review committee that has neither the experience nor the perspective needed to make sound decisions regarding environmental protection.

While Riverkeeper opposes the fundamental premise of Executive Order 25, we offer the following comments to DEC regarding its implementation of the Order's regulatory review mandate.

II. The "Trustee of the Environment" should foster support for stewards of the environment

Serving as a trustee of the environment requires that the DEC consider the short-term and long-term effects on the environment of any regulatory action it undertakes. In accordance with the Governor's directive in Executive Order 25 for the DEC to review comments submitted over the past several years in making its determination of selecting regulations to revise, we urge the Agency to carefully review and fully consider comments aimed at increasing enforcement and strengthening regulatory oversight, reflecting the belief that protecting the environment will stabilize the economy and promote economic growth in both the short and long term.

Given the stated and implied legislative purpose of the DEC to serve as a “trustee of the environment for the present and future generations,” the agency’s review of its regulations should only consider revisions or amendments to regulations that are consistent with the agency’s mission of abating pollution and conserving natural resources.

Focusing on making regulations more stringent is not only in line with the DEC’s purpose, but also creates an economic opportunity for businesses and products focused on environmentally-friendly principles, such as renewable energy, alternative fuels, green infrastructure (e.g. green roofs, permeable pavement, and other stormwater reduction technologies), and “green architecture” (modular housing, LEED certification, use of recycled building materials, etc.).

III. The DEC should view this executive mandate as an opportunity to engage the public in a meaningful dialogue that will lead to improving, not reducing effective environmental regulation in New York

Riverkeeper urges the DEC to take advantage of the mandate contained in Executive Order to actively engage the public in a process that emphasizes transparency and robust public participation, including the following actions.

- DEC should publish a summary of the public comments received pursuant to Section 5 of the Order through the comment period ending February 16, 2010 on the DEC website. The summary should list which regulations were commented upon, volume of comments, etc., so that the public is fully informed of the scope, volume and content of all comments received. Simply posting individual comments on the DEC website is insufficient.
- DEC must publish the draft report prepared for the Review Committee pursuant to Section 8 of the Order for public comment either prior to or concurrently with the submission of the report to the Review Committee, in order to allow the public a meaningful opportunity to comment on the agency’s draft decision.
 - Under Section 8-9 of the Order, the Review Committee has the discretion to decide whether to issue the draft report for public comment – this denies the public a valuable opportunity to provide feedback on the agency and Review Committee’s draft decision before any final decision is made to amend or revise existing regulations. Public opportunity for comment must be made available as early and as often as possible.
 - Following receipt of public comments on the draft report, the DEC should issue a final report that includes the agency and the Review Committee’s responses to specific comments and an adequate explanation of the reasons for the agency and Review Committee’s decision.

- Any proposed rulemaking, repeal or amendment of existing regulations must comply with the State Administrative Procedure Act (SAPA) in all respects – the provisions for limited public comment and review contained in Executive Order 25 should only supplement, and not supplant the SAPA process.

IV. Examples of Recommended Improvements to DEC Regulations

The following are simply examples of potential regulatory changes that could promote more efficient regulation without reducing environmental protection.

- In the regulations for SEQR, DEC should make the scoping process mandatory under 6 NYCRR § 617.8. Focusing on mitigation measures early in the review process has the potential to decrease costs of businesses and developers substantially. Also, it creates an opportunity to decrease greenhouse gas emissions in accordance with Executive Order 24 and the DEC’s 2009 policy, “Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements.”
- DEC should explore ways to promote and increase the use of Alternative Dispute Resolution (ADR) in permitting, SEQR and enforcement proceedings. The implementation of proper ADR procedures can increase efficiency and predictability and reduce the frequency of administrative and judicial litigation.

On behalf of Riverkeeper, we appreciate this opportunity to provide comments on Executive Order 25, and urge DEC to avoid taking any action that carries the risk of reducing environmental protection and thereby failing the agency’s legislative mandate.

Respectfully submitted,

_____/s_____

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_____/s_____

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