

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

SENECA LAKE GUARDIAN, INC., et. al,

Plaintiffs,

– against –

SENECA MEADOWS, INC. and the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendants.

Index No. 902866-24

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT SENECA MEADOWS, INC.’S MOTION TO DISMISS**

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INTRODUCTION

Plaintiffs cannot leverage the Environmental Rights Amendment of the New York Constitution (“ERA”) to transform their grievances against the Seneca Meadows Landfill (“Landfill”) into privately enforceable constitutional violations. Nor can they invoke the ERA to cut short the review of Defendant Seneca Meadows, Inc.’s (“SMI”) permit application by Defendant New York State Department of Environmental Conservation (“NYSDEC”). The fifteen-word ERA creates no automatic rights to sue or to remedies because it is not self-executing, and it does not displace agency enforcement discretion or limits on constitutional claims against private parties.

The ERA—adopted in 2021—articulates a “right to clean air and water, and a healthful environment.” N.Y. Const. art I, § 19. It offers no detail as to what these terms mean, or explanation as to how the amendment is to be implemented and enforced in an objective and consistent manner. This reflects the principle found in other New York constitutional provisions that the Legislature must implement the ERA through statutes and rules; it is not self-executing, and the Court’s analysis of the ERA claims need not go further.

Regardless, the ERA could only apply to the actions of the State and its agencies. Absent express language, which the ERA does not contain, it cannot be used to challenge the actions of private parties. And Plaintiffs do not offer any factual allegations to equate SMI’s operation of its Landfill with State action. With respect to Plaintiffs’ claim against NYSDEC, to which SMI is a necessary party, courts have long recognized that agencies have absolute enforcement discretion. The ERA does not disturb this status quo, and Plaintiffs cannot compel enforcement action against SMI.

Likewise, Plaintiffs’ demand that the Court enjoin issuance of a renewed permit for the Landfill is meritless and contravenes black letter administrative law. As Plaintiffs acknowledge,

NYSDEC's review of the permit renewal and modification application is ongoing. NYSDEC still must complete necessary reviews of potential environmental impacts, provide additional opportunities for public comment, and decide whether to deny the application or grant the permit (potentially with conditions). Plaintiffs have not pleaded the irreparable injury required to obtain their injunctive relief. Nor is Plaintiffs' request justiciable because it is not ripe, and they have not exhausted administrative remedies.

Plaintiffs' allegations of widespread impacts are also not viable under New York nuisance law, as multiple Appellate Divisions have dismissed similar private and public nuisance claims against landfills. A private nuisance affects only one or a relatively few people, not the many hundreds that Plaintiffs allege were harmed from the Seneca Meadows Landfill. And the two Plaintiffs claiming economic loss at their businesses cannot maintain a public nuisance claim where they assert the community of businesses surrounding the Landfill shares this harm.

Plaintiffs have no viable claims under the ERA or New York tort law, and their Complaint should be dismissed in its entirety.

BACKGROUND

SMI owns and operates the Seneca Meadows Landfill, an important solid waste management and recycling facility located in Seneca Falls and Waterloo that serves much of New York State. Exhibit 1 to the Affirmation of M. Murphy, dated May 31, 2024 ("Murphy Aff."), Compl. ¶¶ 1, 23 (Mar. 25, 2024). Local, state, and federal agencies closely regulate the Landfill to ensure it is operating in accordance with its Part 360 solid waste management facility permit and Title V air permit. *Id.* ¶ 24. Among other measures, NYSDEC employs a full-time on-site inspector to monitor Landfill operations. *Id.* ¶ 55. As required by its permits, SMI mitigates odor potential through numerous large-scale engineering measures, including covering

waste and maintaining a gas collection and control system that also generates electricity from landfill gas. *Id.* ¶¶ 25, 60-63.

NYSDEC renewed SMI's Part 360 permit in 2017, with an expiration date of December 2025. *Id.* ¶¶ 27, 54-55. In July 2020, SMI applied to NYSDEC to renew and modify the Part 360 permit, seeking to add approximately 47 acres for waste disposal, increase the waste disposal capacity, and extend the life of the Landfill by approximately 15 years. *Id.* ¶¶ 28-29. The proposal would not change the types of or daily limits on accepted waste. Murphy Aff. Ex. 2, Final Scoping Document for Draft Environmental Impact Statement ("EIS") at 2 (Apr. 2024).¹

NYSDEC has not yet made a final decision on the application because the permit review process is still underway. Compl. ¶¶ 28, 30-32, 36. With respect to the requirements under the State Environmental Quality Review Act ("SEQRA"), which must be satisfied before a permit decision may be made, NYSDEC issued in March 2022 a notice requiring the preparation of an EIS. *Id.* ¶¶ 28, 30. Several months later, NYSDEC issued a draft scoping document identifying "potentially significant adverse impacts" and other issues of relevance to the permit application to be addressed in the draft EIS ("DEIS"). 6 NYCRR 617.8; Compl. ¶¶ 31. Plaintiff Seneca Lake Guardian ("SLG") submitted comments on the draft scoping document. Compl. ¶ 34-35. The final scoping document was issued on April 10, 2024.²

¹ Plaintiffs filed their lawsuit on March 25, 2024, before the scoping document was finalized. Compl. ¶ 36; NYSDEC, Notice of Availability of Final Scope, <https://tinyurl.com/64bakcyf>. The Court may take judicial notice of the final scoping document. *See Matter of Charles A. v. State of N.Y.*, 101 A.D.3d 1535, 1536 (3d Dep't 2012) (taking judicial notice of annual report on government website); *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20-21 (2d Dep't 2009).

² NYSDEC reviewed the approximately 600 comments received on the draft scoping document, and the final scoping document now includes "more robust requirements for additional evaluation in the DEIS sections on odors, air quality, water quality, human health visual impacts," as well as a new section related to human health. Murphy Aff. Ex. 2 at 3.

Many steps remain in the SEQRA process. The DEIS must be prepared and released for public review and comment, and NYSDEC can require public hearings on the DEIS. 6 NYCRR 617.2(n), 617.9(a)(3)-(4). Following the close of this public comment period, a final EIS (“FEIS”) must be prepared and issued. 6 NYCRR 617.9(a)(5). NYSDEC must provide a reasonable period for the public to consider the FEIS before it issues a SEQRA findings statement that certifies that the action “avoids or minimizes adverse environmental impacts to the maximum extent practicable,” including by requiring mitigation measures. 6 NYCRR 617.11(a), (d); *see also* ECL § 8-0109(8). Only then does the SEQRA process conclude.

In addition to SEQRA’s obligations, NYSDEC must follow certain steps before deciding the permit application:

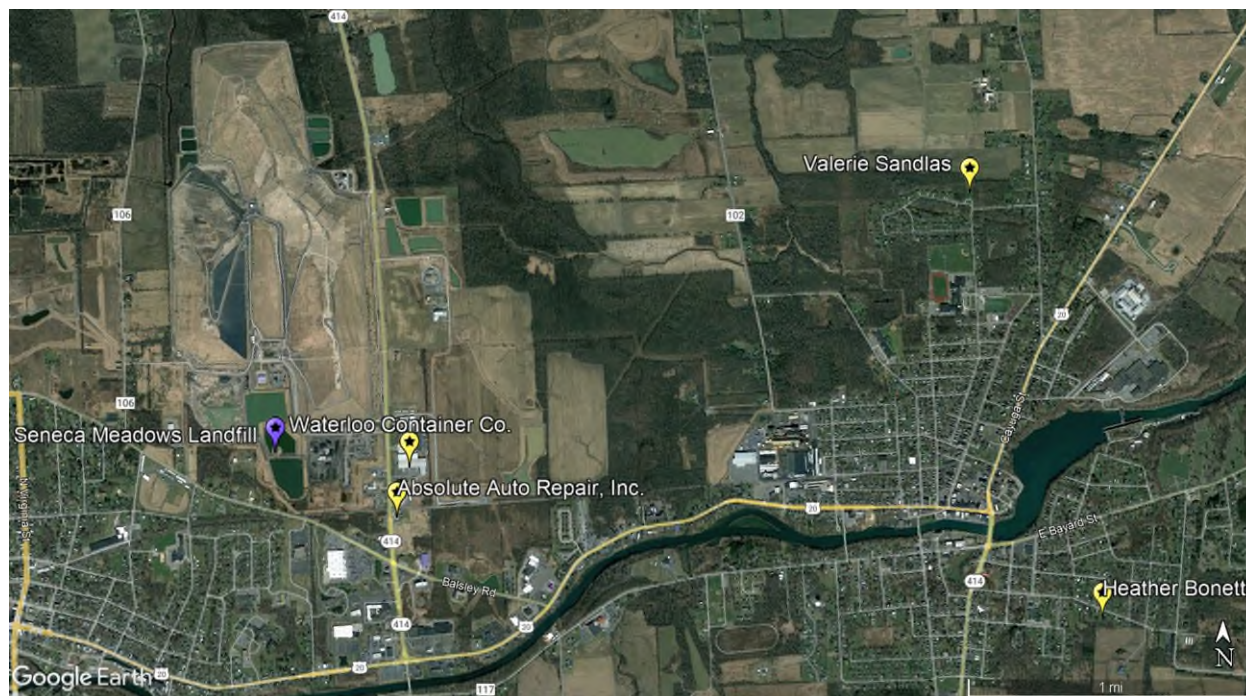
- Requiring SMI to provide detailed information on the application, including demonstrating compliance with New York’s Climate Leadership and Community Protection Act. 6 NYCRR 621.3.
- Publishing notice that the permit application is complete and providing an opportunity for public comment. 6 NYCRR 621.7.
- Ensuring SMI completes engagement on environmental justice issues, including by hosting community meetings at which the public may provide comments. NYSDEC Commissioner Policy 29, Environmental Justice and Permitting (2003).³
- Potentially requiring public comment hearings or adjudicatory hearings on the permit application. 6 NYCRR 621.8.

Only after following these steps, completing the SEQRA process, and considering public comments can NYSDEC issue a permit with or without conditions or deny the application. 6 NYCRR 621.10(a); 6 NYCRR 617.11(c).

Rather than wait for this permit review process to conclude, Plaintiffs filed this lawsuit in March 2024, alleging violations of New York’s ERA and bringing private and public nuisance

³ Plaintiffs have participated in these meetings. Compl. ¶ 33.

claims. Plaintiffs assert that odors from the Seneca Meadows Landfill have caused widespread nuisance impacts and violate their undefined “right to clean air and a healthful environment.” Compl. ¶¶ 71, 79, 93, 104. They seek damages, an order requiring the “abatement of odors and vectors,” and injunctive relief requiring the denial of SMI’s pending permit application. *Id.* at 18-19. Plaintiffs include environmental organizations, businesses, and residents, some of whom live over 2.1 to 2.6 miles from the Landfill (see below).⁴



LEGAL STANDARD

A complaint is appropriately dismissed when it fails to state a claim, based on the documentary evidence, or when the court does not have subject matter jurisdiction. CPLR 3211(a)(1)-(2), (7). Though plaintiffs’ allegations are presumed true on a motion to dismiss, “conclusory allegations—claims consisting of bare legal conclusions with no factual

⁴ *Ryabaya v. City of New York*, 220 A.D.3d 903, 904 (2d Dep’t 2023) (affirming Supreme Court’s judicial notice of Google Maps image); *Connor v. City of New York*, 29 Misc. 3d 1208(A) (Sup Ct. N.Y. Cty. 2010) (taking judicial notice of map locations).

specificity—are insufficient.” *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009); *see also McNeary v. Niagara Mohawk Power Corp.*, 286 A.D.2d 522, 525 (3d Dep’t 2001) (dismissing nuisance claim due to “conclusory and vague” allegations). Thus, dismissal “is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

ARGUMENT

I. The ERA is not self-executing because it provides no rule governing its implementation and enforcement (Counts III and IV).

Because the ERA confers a “right to clean air and water, and a healthful environment,” without any specificity regarding the scope of that right or its implementation and enforcement, it is not self-executing.⁵ N.Y. Const. art I, § 19. A constitutional provision is not self-executing, and requires implementing legislation, when “it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.” *Davis v. Burke*, 179 U.S. 399, 403 (1900) (quotation omitted); 20 N.Y. Jur. 2d Constitutional Law § 41 (2024) (“absence of specificity in a constitutional provision may prevent it from being self-executing”).

The now-repealed constitutional provision concerning responsibility for bank debts demonstrates this controlling principle.⁶ The Court of Appeals held that this provision was not

⁵ The Court should decide now the threshold issue of self-execution, which controls whether Plaintiffs may proceed with their claims under the ERA. Only if the ERA is self-executing will the Court need to delve into when and against whom an ERA claim may proceed. Deciding the issue of self-execution will also serve judicial economy given the potential for similar lawsuits in New York. For example, if the Court dismisses the request to enjoin permit issuance based on, *inter alia*, failure to exhaust administrative remedies, *see infra* Section III, without addressing self-execution, Plaintiffs will likely bring new claims under the ERA if NYSDEC ultimately issues the permit—claims that still will not be viable because the ERA is not self-executing.

⁶ “The stockholders of every corporation and joint stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such

self-executing because it was “couched in general terms” and did not describe the enforcement of the stockholders’ liabilities or define “stockholder,” leaving it ambiguous as to what category of people it applied. *Broderick v. Aaron*, 268 N.Y. 260, 263-64 (1935); *Broderick v. Weinsier*, 278 N.Y. 419, 423-26 (1938). As a result, “statutes were necessary to define what the Constitution has left undefined.” *Weinsier*, 278 N.Y. at 426.

Similarly, the Court of Appeals in 1990 reiterated that the civil rights clause of article I, § 11 in the state constitution is not self-executing, and “prohibits discrimination only as to civil rights which are ‘elsewhere declared’” in law. *People v. Kern*, 75 N.Y.2d 638, 651 (1990) (citing *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 531 (1949)).

The ERA also provides only a general statement of environmental rights—offering no explanation of what “clean air” and “healthful” mean, much less how they are defined or enforceable at law. The ERA’s legislative history sheds no light on this question and underscores the vagueness of “clean air and water” and a “healthful environment.” Assemblyman Steve Englebright, the primary sponsor, offered an entirely subjective definition: “I believe that the words ‘a clean and healthful environment’ is something that each of us would know when we experience it, unless we get sick afterwards. In which case . . . we would know that we had been exposed to something . . . in that environment.” Murphy Aff. Ex. 3, NY Assembly Tr., Apr. 30, 2019, at 35-36; *see also* Murphy Aff. Ex. 4, NY Assembly Tr., Apr. 24, 2018, at 47 (“Clean basically means that if you are interacting with the environment that you’re not being harmed; that if you are consuming water that it does not have poison; if you are breathing air, it is not

corporation or association, for all its debts and liabilities of every kind.” 1894 N.Y. Const., art. VIII, § 7; 1846 N.Y. Const., art. VIII, § 7.

contaminated and will not have a negative impact on the biology of yourself or your loved ones.”).

Only the Legislature can formulate rules for the consistent implementation and enforcement of the ERA—e.g., defining the “clean” and “healthful” standards, identifying the specific chemicals that may interfere with those standards, and determining the levels of those chemicals that could result in adverse effects. *See Weinsier*, 278 N.Y. at 426. The legislative history of the ERA again supports this conclusion, as the primary sponsor recognized the need for legislative action and saw the ERA as being aspirational for state policy. When asked whether the ERA “drop[ped] the role of the Legislature” because it did not include specific language directing the Legislature to implement the policy, Assemblyman Englebright stated, “[t]hat is not correct.” Murphy Aff. Ex. 5, NY Assembly Tr., Feb. 8, 2021, at 82-84. He explained that the ERA is intended to “frame the expectations of the State government” and citizens, and that the Legislature and State agencies would “make recommended new law” and policy to implement the amendment. *Id.* at 34-35, 39, 51-52; *see also id.* at 79-80 (Assemblyman Englebright explained the ERA is “not intended to speak to any particular measure” but “provide context”). Thus, it is the duty of the Legislature, not the courts, to implement the ERA and decide the standards against which to measure State conduct. *See Weinsier*, 278 N.Y. at 426.⁷

⁷ The trial court in *Fresh Air for the Eastside, Inc. v. State*, whose decision is nonbinding and currently on appeal before the Fourth Department, wrongly decided the self-execution issue. Citing a law school article, the court summarily determined that the ERA is enforceable without additional legislation because it does not explicitly reference further action by the Legislature. No. E2022000699, 2022 WL 18141022, at *7 (Sup. Ct. Monroe Cty. Dec. 20, 2022). However, courts have found that even where constitutional provisions do not include this specific language, they are not self-executing where (like the ERA) they lack specificity—differentiating them from other constitutional provisions that provide detailed instructions for their implementation or were modeled on federal constitutional provisions. *Compare Kern*, 75 N.Y.2d at 651 (civil rights clause not self-executing) and *Weinsier*, 278 N.Y. at 426 (former amendment concerning bank debts not self-executing) with N.Y. Const. art. XIV, § 1 (providing detail on amendment’s

Other New York constitutional provisions likewise recognize that it is the duty of the Legislature to protect natural resources and public health. N.Y. Const. art. XIV, § 4 (the Legislature should provide for “the abatement of air and water pollution,” among other measures); *id.* art. XVII, § 3 (the Legislature shall provide for the “protection and promotion” of public health). The ERA was intended to complement these provisions, as Assemblyman Englebright explained, not displace the role of the Legislature by leaving it to the courts to determine how to best protect human health and the environment. Murphy Aff. Ex. 5 at 82-83. This is consistent with long recognized principles in New York of separation of powers and judicial restraint, under which courts “abstain from venturing into areas” where they are “ill-equipped to undertake the responsibility and other branches of government are far more suited to the task.” *Jones v. Beame*, 45 N.Y.2d 402, 409 (1978).

The ERA is not self-executing because it does not provide definitions, operational details, or other objective guidance that would allow it to be interpreted and applied in a principled and fair way that gives guidance to the regulated community. The Legislature has decades of experience in crafting environmental laws and is poised to pursue the goals of the ERA. That is not the role of private litigants and judges. Plaintiffs’ ERA claims should be dismissed.

II. The ERA does not empower Plaintiffs to challenge private operations or undermine an agency’s enforcement discretion.

The ERA is not self-executing, which is dispositive of Counts III and IV. Moreover, the ERA could only be intended to serve as a check on government conduct—meaning the

purpose and objectives, and including specific enforcement mechanisms in article XIV, § 5) and *Brown v. State of N.Y.*, 89 N.Y.2d 172, 188, 190-91 (1996) (constitutional provisions at issue were “hardly new,” and were modeled on federal Equal Protection Clause and Fourth Amendment). The *Fresh Air* court did not address these cases in deciding whether ERA is self-executing and did not explain how courts could interpret the broadly worded ERA in a consistent manner without legislative guidance.

legislative and executive actions of the State and its governmental subdivisions. The ERA does allow claims against private parties for alleged nuisance conditions, as it is silent regarding its applicability to private actors. Nor does the ERA allow Plaintiffs to compel NYSDEC to take enforcement action against SMI, particularly as courts have long recognized the agency's expertise and discretion in this area.

A. The ERA is not enforceable against a private party (Count III).

SMI's private operation of the Landfill is not government conduct, and Plaintiffs are not constitutionally entitled to seek relief under the ERA directly against SMI. The New York Constitution defines and limits "the powers of State government." *SHAD All. v. Smith Haven Mall*, 66 N.Y.2d 496, 502-05 (1985) (free speech amendment "protect[s] the individual against action by governmental authorities, not by private persons"). The Constitution is not enforceable against private parties absent express language allowing that dramatic step. *Id.*

This limitation on constitutional claims is evident when comparing the civil rights clause of article I, § 11 with the equal protection clause of that same section and the freedom of religion clause of article I, § 3 of the New York Constitution. The civil rights clause explicitly prohibits discrimination "by any other person or by any firm, corporation, or institution," in addition to by the State and agencies. N.Y. Const. art. I, § 11. Courts have thus held that this language prohibits State and private discrimination as to civil rights. *See Kern*, 75 N.Y.2d at 651. By contrast, the equal protection clause contains no such language and applies only to government action. *Id.* at 653. The freedom of religion clause likewise does not expressly encompass private actors, and courts have interpreted it to only limit government conduct. *See Matter of Kempf*, 252 A.D. 28, 32 (4th Dep't 1937).

The ERA also does not explicitly regulate private conduct. It thus only applies to government action and does not reach SMI's private operation of its Landfill. *See Fresh Air*, 2022 WL 18141022, at *8 (no ERA claim directly against private entity operating landfill).

Apparently recognizing this, Plaintiffs allege "SMI's acts and omissions are so entwined with governmental policies and are so governmental in nature that they constitute governmental action," Compl. ¶ 93, but missing are any facts indicating State action *by* SMI. "Mere State regulation of a private entity is insufficient" to establish that private activity constitutes government action, even where the regulatory scheme is extensive and detailed. *Moghimzadeh v. Coll. of Saint Rose*, 236 A.D.2d 681, 681-82 (3d Dep't 1997) (no State action shown where private college was subject to regulation and inspection by the Board of Regents); *see also Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351, 358-59 (1974) (operation of heavily regulated, privately owned utility did not involve State action).

Operation of the Seneca Meadows Landfill is not State action simply because SMI was issued a permit by NYSDEC, or because the Landfill is "overseen and regulated by NYSDEC." Compl. ¶¶ 90-92; *see also Downs v. Town of Guilderland*, 70 A.D.3d 1228, 1231 (3d Dep't 2010) (police officer's enforcement of rights of private property owner and annual payment pursuant to special use permit not State action). And Plaintiffs have not pleaded any other NYSDEC involvement in the operation of the Landfill that could constitute government action by SMI. Accordingly, the Court should dismiss Plaintiffs' ERA claim against SMI (Count III).

B. The ERA does not weaken or supplant NYSDEC's enforcement discretion (Count IV).

The ERA does not and cannot force NYSDEC to take specific enforcement action against third parties.⁸ Compl. ¶¶ 94-107. New York courts by law respect agency authority and experience in areas involving judgments that an agency “possesses the discretion and expertise to make.” *Nat. Res. Def. Council, Inc. v. New York State Dep’t of Envtl. Conservation*, 25 N.Y.3d 373, 397 (2015) (refusing to interfere with “reasonable judgments” of NYSDEC in issuing Clean Water Act permit). Questions regarding an agency’s exercise of enforcement discretion are particularly “inappropriate for resolution in the judicial arena,” and courts decline to compel enforcement of a law or regulation. *Kerness v. Berle*, 85 A.D.2d 695, 695-96 (2d Dep’t 1981) (dismissing proceeding to compel NYSDEC to enforce laws, as exercise of statutory duties involve “questions of judgment, discretion and allocation of resources and priorities”), *aff’d*, 57 N.Y.2d 1042 (1982); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (agency has “absolute” enforcement discretion, and decisions not to enforce are generally unsuitable for judicial review).⁹ This Court should do so too with respect to Plaintiffs’ enforcement claim under the ERA.

⁸ While the ERA cannot be enforced directly against a private party (Count III), to the extent Plaintiffs’ Count IV proceeds, SMI as the permittee and owner of the Landfill is a necessary party to Count IV and must be heard to the extent Plaintiffs seek relief that directly or indirectly curtails or impacts SMI’s Landfill operations. *See Llana v. Town of Pittstown*, 234 A.D.2d 881, 883-84 (3d Dep’t 1996) (in action to invalidate subdivision approvals and enjoin construction, homeowners were necessary parties because they could be “inequitably affected by a judgment”); *Baker v. Town of Roxbury*, 220 A.D.2d 961, 963 (3d Dep’t 1995) (property owner and license holder necessary party in proceeding seeking rescission of that license).

⁹ *See also Cmty. Action Against Lead Poisoning v. Lyons*, 43 A.D.2d 201, 203 (3d Dep’t 1974) (county health department could not be compelled to take enforcement action to address lead paint hazards), *aff’d sub nom, Stratton v. Lyons*, 36 N.Y.2d 686 (1975); *All. to End Chickens as Kaporos v. New York City Police Dep’t*, 152 A.D.3d 113, 114, 118-20 (1st Dep’t 2017)

NYSDEC has long possessed broad discretion to enforce its regulations and permits, and courts may not interfere with that discretion. *See, e.g.*, ECL §§ 71-2703(1) (NYSDEC “may” revoke solid waste management permit or enjoin violations), 71-2727 (NYSDEC “may” require solid waste management permittees to implement remedial measures or corrective actions).¹⁰ Nothing in the ERA suggests that it was intended to abrogate this enforcement discretion, and its legislative history confirms that the amendment was not intended to impose “any restrictions on the delegation of authority [given to NYSDEC] to do [its] work in protecting our air and our water.” Murphy Aff. Ex. 3 at 29. Plaintiffs thus cannot bring a claim under the ERA to force NYSDEC to take a specific enforcement action against SMI, and their claim should be dismissed.¹¹

III. Plaintiffs’ request to enjoin NYSDEC from completing its review of SMI’s permit application has no basis under New York law.

Citing an undefined “legal duty” and oblivious to SMI’s right to have its permit application considered in accordance with statutory and regulatory process, Plaintiffs ask the Court to enjoin NYSDEC from issuing SMI a permit before the agency has made any

(plaintiffs could not compel city to enforce law and regulations, as this decision implicated its “reasoning and discretion”), *aff’d*, 32 N.Y.3d 1091 (2018).

¹⁰ Plaintiffs recognize that NYSDEC has enforced its regulations, including by imposing special conditions in the Landfill permit and requiring an on-site monitor. Compl. ¶ 55.

¹¹ Plaintiffs are not without recourse. A party may petition NYSDEC to modify, suspend, or revoke a permit, and NYSDEC is obligated to consider that petition. 6 NYCRR 621.13(b). NYSDEC also provides multiple avenues for reporting violations or concerns. NYSDEC, *Report an Environmental Violation or Problem*, <https://dec.ny.gov/environmental-protection/report-a-problem> (last visited May 31, 2024).

challengeable determination.¹² Compl. ¶¶ 105-07. Plaintiffs' demand violates virtually every principle of administrative law and justiciability and should be summarily rejected.

Compelling agency action is an “extraordinary remedy” that typically must be sought through an Article 78 proceeding. *Kane v. Walsh*, 295 N.Y.198, 205-06 (1946) (dismissing request to enjoin fire commissioner from enforcing regulation as plaintiffs could seek relief under Article 78). A mandatory injunction is permissible only “when irreparable injury is threatened, and the law does not afford an adequate remedy for the contemplated wrong.” *Id.* (quotation omitted); *see also Town of Guilderland v. Swanson*, 29 A.D.2d 717, 719-20 (3d Dep’t 1968) (no mandatory injunction without irreparable injury); *Malik v. Higgins*, 173 A.D.2d 791, 792 (2d Dep’t 1991) (injunction denied absent irreparable injury, and plaintiff had “an adequate remedy” to review agency determination in Article 78 proceeding). Cognizant of the constitutional distribution of powers among the branches of government, New York courts will not interfere with an agency’s administration of its programs. *See Brennan Ctr. for Justice at NYU Sch. of Law v. N.Y. State Bd. of Elections*, 159 A.D.3d 1301, 1304 (3d Dep’t 2018) (issues raised “involve matters of discretion and policy that have been expressly entrusted to another branch of government and are ‘beyond the scope of judicial correction.’” (quoting *Jones*, 45 N.Y.2d at 408)).

¹² SMI’s permit application is governed by existing statutes and regulations that give private plaintiffs no right to bring an action to derail the permitting process. *See* Uniform Procedures Act, ECL § 70-0101 *et seq.*, and statutory provisions governing solid waste management facilities, ECL § 27-0701 *et seq.* For example, in the event of a permit denial, NYSDEC, not a court, is statutorily directed to “provide to the applicant a written statement of the reasons for this determination.” ECL § 27-0707(4); *see also* 6 NYCRR 621.10(a). And if that happens, the permit applicant has an opportunity to challenge permit denial in an adjudicatory proceeding before an administrative law judge. 6 NYCRR 621.10(h). The Court should not interfere with this lawful administrative process.

The extraordinary remedy of a mandatory injunction is not available here. Plaintiffs concede NYSDEC is in the relatively early stages of reviewing SMI's permit application, is considering comments from the public, and has not yet determined whether to grant the application, deny it, or issue a permit with conditions. Compl. ¶¶ 28-36; 6 NYCRR 621.10(a). Because the permit review process is incomplete, Plaintiffs cannot allege the irreparable injury needed for injunctive relief. Plaintiffs also have not shown ripeness or exhausted administrative remedies.

A. An incomplete administrative process cannot support irreparable injury for injunctive relief.

To obtain injunctive relief enjoining issuance of the Landfill permit, Plaintiffs must allege irreparable injury that is “threatened and imminent,” rather than “contingent upon events which may not come to pass.” *1130 President St. Corp. v. Bolton Realty Corp.*, 300 N.Y. 63, 69 (1949) (injunctive relief denied; no “threat of interference” with possession of property shown); *New York State Inspection, Sec. & Law Enf't Emps., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 N.Y.2d 233, 240 (1984) (vacating injunction where harm was contingent on future actions); *see also Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 442 (2d Dep't 1995) (concern about impact of business on commercial district was not imminent irreparable injury). They have not done so here. Numerous steps remain before NYSDEC can decide the permit application, and Plaintiffs have not alleged facts showing that harm will necessarily result from a decision that has not occurred.

Plaintiffs assert, without factual support, that the permit application “will cause increased harm to Plaintiffs, continuing and exacerbating the nuisance and violating Plaintiffs' rights under” the ERA. Compl. ¶ 106; *Godfrey*, 13 N.Y.3d at 373 (dismissing complaint where plaintiffs offered only conclusory allegations about impact of executive order). This outcome is

not certain or even likely. Plaintiffs admit that assessments of the potential effects of the permit application are underway, and they have provided comments requesting analyses of odors and other alleged Landfill impacts on the community. Compl. ¶¶ 31-35. Plaintiffs have asked NYSDEC to identify options to reduce the need for landfill capacity, analyze “odor complaints to determine whether they are related to decomposition gas or another source,” study the use of technology and other options to “objectively evaluate odor issues,” and consider using modeling, field and lab olfactometry, and other tools to “identify odor sources and intensity.” *Id.* ¶ 35. As NYSDEC follows the regulatory procedures for reviewing the application, Plaintiffs will have more opportunities to make their voices heard regarding the alleged Landfill impacts. Depending on its findings, NYSDEC could issue a permit with conditions to address Plaintiffs’ concerns, which Plaintiffs acknowledge NYSDEC has previously done to address potential odors. *Id.* ¶ 55 (asserting that the prior Landfill permit incorporated seven “special conditions intended to” control odors).

Because Plaintiffs are simply speculating that *any decision* on the permit application—even one that considers the types of impacts alleged in this action—will cause harm, their request to enjoin issuance of the Landfill permit should be dismissed for failure to allege irreparable injury. *See Guido v. Town of Ulster Town Bd.*, 74 A.D.3d 1536, 1538 (3d Dep’t 2010) (dismissing request for permanent injunction for failure to allege irreparable harm); *McNeary*, 286 A.D.2d at 525 (similar).

B. Plaintiffs’ request for injunctive relief is not ripe for review, and Plaintiffs have failed to exhaust administrative remedies.

Principles of ripeness and exhaustion of administrative remedies similarly require dismissal of Plaintiffs’ request for injunctive relief. Plaintiffs here do not ask the Court to review or enjoin a final SEQRA determination or permit decision, causes of action potentially

cognizable in an Article 78 proceeding. Rather, Plaintiffs want the Court to halt NYSDEC's review of SMI's application and deny the permit before the agency has even fully considered it. Compl. ¶¶ 105-07. In the absence of a NYSDEC permit decision, there is no justiciable controversy for the Court to address.

A claim is not ripe for review when “the anticipated harm is insignificant, remote or contingent [and] if the claimed harm may be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.” *Adirondack Council, Inc. v. Adirondack Park Agency*, 92 A.D.3d 188, 190 (3d Dep't 2012) (quoting *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 520 (1986) (claim not ripe; effect of law on plaintiff was “incomplete and undetermined” since agency had not acted on request for approval of rebuilding program)). Plaintiffs' claim is not ripe.

Plaintiffs similarly failed to exhaust their administrative remedies before filing this action. *See Connor v. Town of Niskayuna*, 82 A.D.3d 1329, 1330 (3d Dep't 2011) (petition dismissed for failure to exhaust administrative remedies). Even where a constitutional violation is alleged, a party cannot avoid following “established administrative procedures that can provide adequate relief,” particularly where the agency has not yet established the factual record necessary to review that claim. *Sabino v. DiNapoli*, 90 A.D.3d 1392, 1393-94 (3d Dep't 2011) (quotation omitted) (petition dismissed; interpretation of regulations was “best left in the first instance to the administrative agency”). Exhaustion ensures the agency has an opportunity to “develop a complete record which reflects the agency's expertise and judgment” before the court considers a claim. *Tennebaum v. Axelrod*, 128 A.D.2d 968, 969 (3d Dep't 1987).

NYSDEC is currently developing the record regarding SMI's application and has not made a final decision under SEQRA or regarding issuance of the permit. Plaintiffs' pleading

concedes this. *See, e.g.*, Compl. ¶¶ 28-36. Plaintiffs, and other members of the public, have multiple opportunities to be heard on the permit application, including following issuance of the DEIS and notice of complete application and potentially at hearings on the DEIS and application. 6 NYCRR 617.9(a)(3)-(4), 621.7, 621.8. And any conditions that could be included in a permit issued by NYSDEC are unknown. If a permit is issued, Plaintiffs may challenge NYSDEC's determination in an Article 78 proceeding.

The harms alleged by Plaintiffs are speculative because they depend on future actions of NYSDEC, and there is no justiciable controversy for the Court to decide. *See Vill. of Pelham Manor v. Crown Commc'n New York, Inc.*, 222 A.D.3d 804, 805-07 (2d Dep't 2023) (dismissing complaint seeking to enjoin construction of telecommunications tower; action not ripe where SEQRA process regarding tower installation not concluded and final determination by state not made); *Int'l Condo. Corp. v. N.Y. Tel. Co.*, 46 A.D.2d 719, 719 (3d Dep't 1974) (demand for permanent injunctive dismissed where plaintiffs did not exhaust administrative process).¹³ The ERA does not allow Plaintiffs to ignore constitutional guardrails designed to ensure that courts respect the province of other branches of government. Plaintiffs' demand to enjoin permit issuance should be dismissed.

IV. Widespread harm is not actionable in private nuisance (Count I).

Allegations that odors caused widespread harm are incompatible with a private nuisance claim under New York law. Unlike a public nuisance that causes harm to a "considerable number" of people, a private nuisance interferes with the use and enjoyment of property by "one

¹³ *See also Lemmon v. Seneca Meadows, Inc.*, 46 Misc. 3d 1215(A), *6 (Sup. Ct. Seneca Cty. 2015) (alleged violation of mining permit dismissed for failure to exhaust administrative remedies and for lack of ripeness, as NYSDEC must first decide potential amendment to mining permit).

person or a relatively few.” *Copart Indus., Inc. v. Consol. Edison Co. of N.Y., Inc.*, 41 N.Y.2d 564, 568 (1977) (citing Chief Judge Cardozo’s holding in *McFarlane v. City of Niagara Falls*, 247 N.Y. 340, 344 (1928), that a private nuisance “threatens one person or a few”). The Third Department reiterated this limitation on private nuisance claims in *Davies v. S.A. Dunn & Co.*, 200 A.D.3d 8, 11 (3d Dep’t 2021), a landfill odor nuisance case.

Citing *Davies*, the Fourth Department recently dismissed a private nuisance claim in an analogous case alleging widespread harm from landfill odors. *William Metrose, Ltd. v. Waste Mgmt. of N.Y., LLC*, 225 A.D.3d 1223, 1223-24 (4th Dep’t 2024). A real estate developer asserted that odors from the landfill diminished its property values and caused lost profits and reputational harm. *Id.* Because the allegations “indicate[d]” that odors “affected a large number of community residents,” not one person or a relatively few people, the court held that the private nuisance claim was not viable. *Id.* at 1224; *see also Cedar & Wash. Assocs., LLC v. Bovis Lend Lease LMB, Inc.*, 95 A.D.3d 448, 449 (1st Dep’t 2012) (private nuisance claim brought by single plaintiff dismissed because “the alleged nuisance affects a wide area”).

As in *Metrose*, Plaintiffs here allege harm to far more than one or a few people. They assert that odors have impacted the surrounding area, even affecting neighborhoods over 2.5 miles away from the Landfill. Compl. ¶¶ 17-20, 32, 49-52; *see also* Compl. ¶¶ 3, 66-67 (alleging NYSDEC has failed to protect the “local communities” from harm). Plaintiffs further allege that odors have resulted in “hundreds” of complaints from the nearby communities and interfered with the “rights of the public at large.” Compl. ¶¶ 37-38, 42, 49-52, 69.¹⁴ Under *Copart*, *Davies*,

¹⁴ SLG similarly asserted in its comments on the draft scoping document that the Seneca Meadows Landfill is “producing odors that are causing a nuisance in the surrounding community.” Murphy Aff. Ex. 6, Letter Submitted on Behalf of SLG and Other Entities at 15 (Jan. 27, 2023) (cited at Compl. ¶¶ 34-35). The Court may consider this letter on a motion to dismiss, as it was referenced in the Complaint. *See All. Network, LLC v. Sidley Austin LLP*, 43

and other New York authorities, this alleged widespread harm is not cognizable in private nuisance.

V. Plaintiffs' private action for public nuisance is not viable because they have not pleaded special injury (Count II).

Plaintiffs Waterloo Contractors, Inc. ("Waterloo Contractors") and Absolute Auto Repair, Inc. ("Absolute") allege that odors and gulls have interfered with their business operations and caused economic losses. Compl. ¶¶ 79-82, 86. But fatal to their public nuisance claim, they also assert these harms are shared by the community of businesses surrounding the Seneca Meadows Landfill. *Id.* ¶¶ 3, 10, 38, 49-53. New York courts have conclusively held that this is not the special injury required for private plaintiffs to prosecute a public nuisance and have done so in recently in landfill nuisance cases similar to the claims here.

Public nuisance requires a "substantial interference with the exercise of a common right." 532 *Madison Ave. Gourmet Foods, Inc. v. Finlandia Ctr., Inc.*, 96 N.Y.2d 280, 292 (2001). To avoid the "multiplicity of lawsuits that would follow if everyone were permitted to seek redress" for a public harm, it is typically actionable by a government agency. *Id.* "Government enforcement is particularly apt for such a highly regulated activity as operating a landfill." *Davies*, 200 A.D.3d at 12. Private plaintiffs may only bring a public nuisance claim where they allege "special injury" that differs in kind, not merely in degree, from that of the community. 532 *Madison*, 96 N.Y.2d at 294 (no special injury where economic loss was common to the community of businesses, professionals, and residents). An injury is not special where it is "so

Misc. 3d 848, 852, n.1 (Sup. Ct. N.Y. Cty. 2014); *Deer Consumer Prods., Inc. v. Little*, 32 Misc. 3d 1243(A), *4 (Sup. Ct. N.Y. Cty. 2011) (considering documents from website referenced in complaint).

general and widespread as to affect a whole community, or a very wide area within it.” *Id.* at 293 (quotations omitted).

To determine whether plaintiffs have alleged an injury different in kind from that of the community (i.e., a special injury), courts must first determine the “relevant scope” of that community. *Davies*, 200 A.D.3d at 12. In *Davies and Duncan v. Capital Region Landfills, Inc.*, 198 A.D.3d 1150 (3d Dep’t 2021), each of which involved allegations that landfill odors harmed property rights, two separate panels in the Third Department confirmed that the community is defined by the type of injury alleged in the complaint. In evaluating special injury, the court rejected plaintiffs’ expansive view that the community included “all members of the public who [came] into contact with the noxious odors” or the “general public,” so that the allegedly affected residents made up only a portion of that community. *Davies*, 200 A.D.3d at 12–14 (explaining the Court of Appeals “has taken a different, more limited approach”). The court instead compared plaintiffs’ purported injuries of property value diminution and interference with use and enjoyment to those of “other homeowners and renters impacted by the landfill’s odors.” *Id.* at 15. As this alleged harm was “essentially the same” for these residents, plaintiffs did not have a special injury and could not bring a private action for public nuisance. *Id.* at 10, 15–16; *Duncan*, 198 A.D.3d at 1150–51.

In *Metrose*, the Fourth Department applied *Davies*’ correct framing of special injury in concluding that a real estate developer could not pursue a public nuisance claim for landfill odors. 225 A.D.3d at 1223-25. Allegations that odors diminished property values, leading to lost profits, reputational harm, and other economic losses, did not constitute special injury because the “entire community of property owners” purportedly experienced property value diminution.

Id. The fact that the developer owned more of these properties, causing it a “greater degree” of harm, did not impact this holding. *Id.*

In rejecting private plaintiffs’ public nuisance claims for landfill odors, the Third and Fourth Departments relied on the Court of Appeals’ decision in *532 Madison*. The Court there concluded that while building collapses and street closures in midtown Manhattan interfered with the “right to use the public space,” plaintiffs did not allege special injury because the entire community of businesses and residents experienced economic losses. 96 N.Y.2d at 292–94; *see also Burns Jackson Miller Summit & Spitzer v. Lindner*, 59 N.Y.2d 314, 334–35 (1983) (increased expenses and lost profits not a special injury because economic damages were common to community of businesses and professionals).

Based on *532 Madison*, *Davies*, *Duncan*, and other New York authorities, the relevant community here is limited to businesses surrounding the Landfill. Plaintiffs allege that this entire community (not just Waterloo Containers and Absolute) have experienced economic harm due to odors and other impacts from the Landfill. *See, e.g.*, Compl. ¶¶ 3, 10 (asserting that members of SLG operating businesses around the Landfill “are adversely affected” by odors), 38, 49-53 (alleging the Landfill has negatively impacted tourism-related jobs and general job growth); *see also* Murphy Aff. Ex. 6 at 23-24 (asserting that the Landfill harms the tourism industry and area businesses, and requesting evaluation of economic harm to the surrounding community, including from lost business). Ultimately, the harms alleged by Waterloo Containers and Absolute are not unique or “special” and cannot, as a matter of law, form the basis of a public nuisance claim.

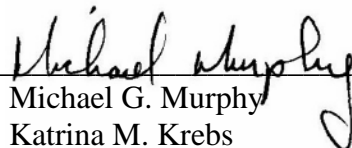
CONCLUSION

The ERA requires further action from the Legislature before it can be implemented, much less enforced by a private litigant against other private parties and the State. The ERA creates no

new avenues for interfering with the operations of a privately run landfill, NYSDEC's enforcement discretion, or an ongoing permit review process. The Third Department's decisions in *Davies* and *Duncan*, and the Fourth Department's decision in *Metrose*, have also foreclosed Plaintiffs' nuisance claims from proceeding further. Plaintiffs' Complaint should be dismissed in its entirety.

Dated: May 31, 2024
New York, New York

BEVERIDGE & DIAMOND, P.C.

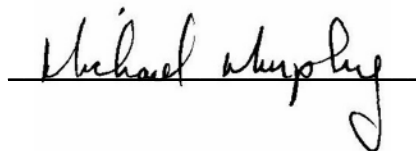
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CERTIFICATION OF COMPLIANCE

I certify that this document complies with the word count limit of 22 NYCRR 202.8-b(a) because it contains 6,987 words, excluding the parts of the document exempted by 22 NYCRR 202.8-b(b).

A handwritten signature in black ink, appearing to read "Michael Murphy", is written over a horizontal line.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

SENECA LAKE GUARDIAN, INC., et. al,

Plaintiffs,

– against –

SENECA MEADOWS, INC. and the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendants.

Index No. 902866-24

AFFIRMATION OF MICHAEL MURPHY

I, MICHAEL MURPHY, an attorney duly admitted to practice law before the courts of the State of New York, affirm the following under penalty of perjury:

1. I am an attorney with Beveridge & Diamond, PC. My firm represents Defendant Seneca Meadows, Inc. (“SMI”) in the above-captioned action. As such, I am fully aware of the circumstances of the underlying action.

2. I am submitting this affirmation in support of SMI’s Motion to Dismiss.

3. Attached hereto as Exhibit 1 is a true and accurate copy of the Complaint, dated March 25, 2024.

4. Attached hereto as Exhibit 2 is a true and accurate copy of the Final Scoping Document for the Draft Environmental Impact Statement, Seneca Meadows Landfill Proposed Valley Infill Project, dated April 10, 2024.

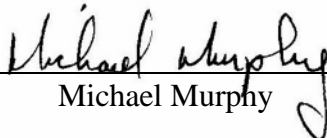
5. Attached hereto as Exhibit 3 is a true and accurate copy of the Transcript of the Proceedings of the New York State Assembly, dated April 30, 2019.

6. Attached hereto as Exhibit 4 is a true and accurate copy of the Transcript of Proceedings of the New York State Assembly, dated April 24, 2018.

7. Attached hereto as Exhibit 5 is a true and accurate copy of the Transcript of the Proceedings of the New York State Assembly, dated February 8, 2021.

8. Attached hereto as Exhibit 6 is a true and accurate copy of the comment letter submitted by Plaintiff Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter on the Draft Scoping Document for the Draft Environmental Impact Statement, dated January 27, 2023.

May 31, 2024



Michael Murphy

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR)

**FINAL SCOPING DOCUMENT FOR
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

PROPOSED VALLEY INFILL PROJECT

**TO EXPAND THE
SENECA MEADOWS LANDFILL
in the TOWNS OF SENECA FALLS and WATERLOO,
SENECA COUNTY, NEW YORK**

April 10, 2024

PROJECT SPONSOR:

Seneca Meadows, Inc.
1786 Salcman Road
Waterloo, New York 13165

SEQR LEAD AGENCY:

New York State Department of Environmental Conservation
Region 8 Office, 6274 E. Avon-Lima Road
Avon, New York 14414

CONTENTS OF FINAL SCOPING DOCUMENT:

- I.** Background
- II.** SEQR and the Scoping Process
- III.** DEIS Outline
- IV.** DEIS Section Descriptions
- V.** Environmental Reviews that will not be included in the DEIS

Seneca Meadows Landfill Valley Infill
Final DEIScoping Outline –

April 2024
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I. BACKGROUND

Seneca Meadows Inc. (“SMI” or “project sponsor”) proposes a lateral and vertical expansion of the existing Seneca Meadows Landfill (“Landfill” or “Facility”) at 1786 Salcman Road in the Towns of Seneca Falls and Waterloo, Seneca County, New York. The proposed Valley Infill project (“Valley Infill” or “project”) would add about fifteen years to the life of the Landfill.

The Valley Infill would increase Landfill’s currently permitted maximum vertical height about 70 feet, from elevation 774 MSL [mean sea level] to elevation 842.5 feet MSL and add about 47 million cubic yards of air space for waste disposal. Waste disposal (“infill”) would occur over the top of the Tantalio Inactive Hazardous Waste Site #850004 (“Tantalio Site”) and in the space (“valley”) between existing higher areas of the Seneca Meadows Landfill, i.e., the Southeast Landfill and Stages 3 and 4 of the Western Expansion. Approximately 47 acres of newly lined disposal cells would be built, with additional disposal area constructed above approximately 126 acres of currently permitted Landfill disposal area.

The project would not change the types of waste disposed from those permitted currently, i.e., non-hazardous solid waste allowed under the State’s solid waste management regulations at 6 NYCRR Part 360 *et seq.*, including residential, commercial, institutional, and industrial wastes. Nor would there be any change to the approved design capacity of the Landfill, which is 6,000 tons per day (TPD). As a result, no increase (beyond existing traffic levels) is expected in truck traffic associated with the waste disposal operations of the Landfill. The project would also relocate or replace some SMI operations; for example, the Shop and Residential Dropoff Center will move to an area south of the Tantalio Site.

The project sponsor must obtain the following project approvals from the New York State Department of Environmental Conservation (“NYSDEC”) for the Valley Infill project: modification of the existing SMI Solid Waste Management Facility permit under ECL Article 27 and 6 NYCRR Parts 360 and 363 (“the Part 360 permit”); the existing SMI Air Title V permit under ECL Article 19 (“the ATV permit”); a Change-of-Use approval for the Tantalio Site; and coverage under the SPDES [State Pollutant Discharge Elimination System] Multi-Sector General Permit for Stormwater Discharges from Industrial Activities (GP-0-17-004). If the Valley Infill project requires any DEC permit held by SMI (e.g., the ECL Article 23, Title 27 mining permit for the Meadow View Mine) to be modified to increase the amount or rate of excavation/production of construction material, the DEIS will include any potential significant environmental impacts (e.g., potential increased traffic) and measures to avoid and mitigate these impacts. SMI must also obtain Site Plan approval from the Town Boards of Seneca Falls and Waterloo (“Town Boards”); Site Plan Approval from each Town’s Planning Board; and Special Use Permits from the Town of Seneca Falls Zoning Board of Appeals and the Town of Waterloo. In addition, the project must also undergo an obstruction review by the U.S. Federal Aviation Authority (“FAA”).

II. SEQR AND THE SCOPING PROCESS:

This proposed project is being reviewed under the New York State Environmental Quality Review Act (“SEQR”) to identify and assess potentially significant adverse environmental impacts and to avoid, minimize, or lastly mitigate these impacts. As SEQR Lead Agency, NYSDEC coordinates the environmental review process in accordance with the SEQR regulations at 6 NYCRR Part 617.

In March of 2022, NYSDEC issued a positive declaration to require the preparation of an Environmental Impact Statement (EIS) for the proposed Valley Infill. Subsequently, notice that a draft scoping document was available for public comment for thirty days was published in the NYSDEC Environmental Notice Bulletin (ENB) in December 2022. The public notice period ran from December 14, 2022 to January 13, 2023 and DEC authorized an additional 15 days to January 27, 2023.

Seneca Meadows Landfill Valley Infill
Final DEIS Scoping Outline –

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A SEQR scoping document describes the content and format of a Draft EIS (DEIS). After NYSDEC reviews any public comment received, NYSDEC will revise the draft document as necessary and issue the final scoping document. The final scoping document is used by the Lead Agency to determine when a prepared DEIS is adequate for public review.

DEC reviewed the approximately 600 public comments received on the draft scoping document. DEC determined that, in many cases, the draft scope had the appropriate level of detail for the DEIS to evaluate the project in light of substantive comments. This Final Scoping Document for the Valley Infill project now includes more robust requirements for additional evaluation in the DEIS sections on odors, air quality, water quality, human health visual impacts, and other sections. DEC added a specific new Section related to human health.

Seneca Meadows Landfill Valley Infill
Final DEIS Scoping Outline –

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Many comments related to odors, air quality, water quality, and traffic. The final written scope, however, does include more robust requirements for additional evaluation in the sections on odors, air quality, water quality, and visual assessment. Also, the final scope includes the addition of a new subsection under Air Quality for evaluation of human health, as well as additional human health evaluation under the Water Quality sections.

The next steps in the Valley Infill project SEQR process during which the public has an opportunity to participate are described briefly below.

WRITTEN PUBLIC COMMENT on the DEIS. Upon the NYSDEC determination to accept the DEIS as adequate with respect to its scope and content for the purpose of commencing public review, NYSDEC will provide a period of at least thirty days for the public to submit written comment on the DEIS. Notice that this period is starting will be published in the Environmental Notice Bulletin (ENB) on the NYSDEC website at [Environmental Notice Bulletin – NYDEC .](#) Copies of the DEIS and supporting documents, including the 2006 DSEIS, 2007 FSEIS (July 2007 Final Supplemental EIS for Seneca Meadows Landfill Expansion) and 2007 NYSDEC Findings Statement prepared for the 2006 – 2007 Seneca Meadows Solid Waste Management Facility Landfill Expansion (in combination, subsequently referenced here as “the earlier SEQR record”), will be made available. To the extent the earlier SEQR record does not already address potential significant adverse environmental impacts from the proposed Valley Infill project, the DEIS prepared for this project will supplement and update impact evaluations provided in the 2006 DSEIS and 2007 FSEIS.

- **HEARING for ORAL PUBLIC COMMENT on the DEIS.** In addition to accepting written comments on the DEIS, it is NYSDEC’s usual practice to hold a public hearing to receive public comments orally during the same period that the DEIS is made available for public review and submission of written public comment. Notice of hearing will be published in an area newspaper at least fourteen days before the hearing is held. The hearing may be held remotely or in person and may be combined with any other public hearings to be held on the Valley Infill project.

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III. DEIS OUTLINE

The outline of the Draft Environmental Impact Statement (DEIS) is presented below in the form of a DEIS Table of Contents. Detailed descriptions of the analyses and information to be provided for each section of the DEIS are provided in Section IV.

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IV. DEIS SECTION DESCRIPTIONS

Each section below describes the information and analyses to be included in the DEIS. In addition, background information is included to provide some preliminary information about the project itself. The organization of these sections follow the DEIS outline above.

COVER SHEET

In accordance with 6 NYCRR § 617.9(b)(3), this will include a single-page cover sheet identifying the type of document (draft, final), title of project, location, name and address of SEQR Lead Agency contact person, name and address of document preparer, date of Lead Agency acceptance, and deadline for acceptance of public and agency comments.

TABLE OF CONTENTS

This will list the contents of the DEIS and page numbers for each section.

EXECUTIVE SUMMARY

In accordance with 6 NYCRR § 617.9(b)(4), this introduction section will present an overview of the project and provide a brief description of the overall proposed project.

1.0 EXECUTIVE SUMMARY/INTRODUCTION

1.1 PROJECT IDENTIFICATION

This section will summarize the history of the Landfill and describe the existing facility. It will include all or some of the following background information:

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The project consists of a plan to build and operate approximately 47 acres of additional landfill area (referred to as the “SMI Valley Infill”, or “the Project”) within its existing solid waste landfill facility located in the M-2 Zoning District of the Town of Seneca Falls, Seneca County, New York. The project applicant is Seneca Meadows, Inc. (SMI), with offices at 1786 Salcman Road, Waterloo, New York 13165. The currently permitted landfill began operation in 1958, with permitted oversight of the Facility by the NYSDEC beginning in 1981. The currently permitted capacity will be filled by about 2025.

A description of the various parts of the existing Facility and a brief overview of the project intentions and main objectives will be provided.

A description of the various parts of the existing Facility, as well as some definitions related to the project, will also be provided.

1.2 DESCRIPTION OF PROJECT AREA

The project will take place entirely within the property located at 1786 Salcman Road, operated by SMI. The project will take place within the extent of the previously active landfilling areas, including over the Tantalio Site. Some of the operational areas at the south end of the property will be changed or relocated to accommodate the project.

1.3 PURPOSE AND NEED FOR THE PROJECT

The project purpose is to extend landfill capacity at the SMI Landfill in the Town of Seneca Falls in a timely fashion to provide critically needed solid waste disposal services locally and for the State. As will be detailed further in Section 1.7, the DEIS will describe the need for the project related to state-wide waste disposal capacity and objectives, and how resource expenditure for out-of-state waste disposal or a new facility within the state can be saved. The DEIS will also discuss current remaining state disposal capacity and break down the critical need of the SMI Landfill to New York State. The project need is demonstrated by the public need for long-term environmentally-sound solid waste disposal capacity.

1.4 SUMMARY OF THE PROJECT

As noted above, the Project is defined as a series of physical activities leading to and including the construction and operation of the SMI Valley Infill. The major activities include:

- Preparation of subgrade areas and utilities, including potential temporary removal of the Tantalio Site geosynthetic cap.
- The expansion of existing stormwater basins, if necessary.
- Relocation of operational buildings and areas including the maintenance shop areas, some fuel tanks, the wheel wash station, and the residential drop-off center.
- The construction and operation of the SMI Valley Infill waste disposal project.

The DEIS will include further details on the project, including specific areas to be lined and filled, and further details on project design and permitting requirements.

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1.5 SUMMARY OF ALTERNATIVES

This section will summarize the results of the analysis of alternatives to be further discussed in Section 5.

1.6 IDENTIFICATION OF POTENTIAL IMPACTS OF THE PROJECT

This section will include a summary of the potential impacts of the project, to be further discussed in Section 6.

1.7 IDENTIFICATION OF MAJOR BENEFITS OF THE PROJECT

This section of the DEIS will summarize benefits that will arise from the project, to be further discussed in Section 6.

1.8 PERMITS AND APPROVALS

This section will provide an overview of the local, state and federal permits and approvals presently anticipated to be required for the proposed project, the agencies responsible for the approvals, and the applicable law or regulations associated with each approval.

1.9 CONCLUSIONS

This section of the DEIS will briefly revisit the conclusions drawn in each part of Section 1 and go over the needs for the project and why it was concluded to be the best option available to provide critically needed solid waste disposal capacity in an environmentally sound and cost-effective manner.

2.0 DESCRIPTION OF PROJECT

2.1 INTRODUCTION AND BACKGROUND

This section will describe the proposed action subject to review in the DEIS (i.e., the project), in accordance with 6 NYCRR § 617.9(b)(5)(i). It will be provided in narrative form, but also include reference to maps, drawings and technical reports that provide the reader sufficient detail to clearly understand the project

SMI proposes approximately 47-acres of new landfill liner area over the Tantalio Site and between the side slopes of the existing facility to the east, west, and north of the Tantalio Site. The project will be contiguous to and overlay approximately 144 acres of the existing landfill. The permitted cell elevation will increase by approximately 70 feet, from 774 feet MSL to 843.5 feet MSL.

The proposed Valley Infill will add approximately 47 million cubic yards of disposal capacity, which will extend the site life by approximately 15 years, depending on the rate of waste receipt.

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The project will begin with the preparation of the new liner areas, including work within the Tantalio Site and on surrounding areas where the double composite liner system will be installed. Once the liner is installed, the Landfill will be developed in phases. Relocation of project related facilities will also be needed.

The DEIS will include, but not be limited to, the following:

- Information on the lead agency and statutory authority for the DEIS and permitting reviews
- Information on the current project permit and landfill filling progress
- A summary of the project information and background

2.2 PROJECT LOCATION

This section of the DEIS will contain the following:

- Description of the site, including the area, boundaries, topography.
- Description of access route, and description of populated areas and zoning.
- Description of facilities proposed and components of the project, and amount of area to be impacted by the proposed facilities.

The Landfill site (the site) is located in the Towns of Seneca Falls and Waterloo, New York. The existing Landfill is just northeast of Village of Waterloo and approximately a mile northwest of the Hamlet of Seneca Falls. Site access is from NYS Route 414, with the entrance to the Landfill site on the west side of Route 414. Internal roadways have been developed on-site to provide access to various parts of the facility. Additional operational areas, such as the Landfill Gas to Energy Facility (LFGTE Facility), are located to the east of Route 414.

The proposed affected area is presently comprised of currently active landfill and landfill support facilities areas, including leachate storage and treatment facilities, stormwater basins, the current machine shop and vehicle fueling areas. It also includes the Tantalio Site which is a Class 4 Inactive Hazardous Waste Disposal Site. A Class 4 site is a site that has been properly closed but that requires continued site management consisting of operation, maintenance and/or monitoring. Compliance with 6 NYCRR Part 360.16(h) for facilities at or near sites undergoing a remedial program will be evaluated. The Tantalio Site has two Operational Units (OU-1 and OU-2). OUs are portions of a site that for technical or administrative reason can be addressed separately to investigate, eliminate or mitigate a release, threat of release or exposure pathway resulting from the site contamination. OU-1 is the soils and the area of the Tantalio Site that addresses the waste mass. OU-2 addresses the overburden and bedrock groundwater below and surrounding the Tantalio Site.

2.3 SITE HISTORY

The currently permitted landfill began operation in 1958, with permitted oversight of the Facility by the NYSDEC beginning in 1981. The currently permitted capacity will be filled by about 2025. The DEIS will contain information on the following project history:

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- Waste disposal history and prior uses of the SMI Landfill site.
- Permitting and regulatory history for the Site, including a discussion on prior Part 360 permits and modifications.
- A breakdown of different historic areas of the Seneca Meadows property, including the Tantalio Site and relevant regulatory and waste disposal background information

2.4 PROJECT DESIGN

This section will present a thorough discussion of the different components of the actual Valley Infill area. The configuration, design, and necessary landfill construction areas will all be discussed. The DEIS will include, but not be limited to, the following information:

2.4.1 Preparation of Subgrade and Related Activities

This section of the DEIS will include the following:

- Discussion of the subgrade preparation and related activities required to prepare the Tantalio Site to be lined over and overfilled.
- A discussion of the necessary bedrock removal for preparation of site subgrades and methodology and removal needs for that work.

2.4.2 Relocation of Operational Buildings

This section will include, but not be limited to, a discussion of the buildings and operational areas which will need to be relocated for the project to be constructed and carried out. These include the maintenance shop, fueling area, wheel wash, Citizens Dropoff Area (CDA) and possibly others.

2.4.3 Construction and Operation of the Valley Infill Area

Background information:

Waste Types and Cell Design including Landfill Liner and Leachate Collection System

The Seneca Meadows facility disposes MSW, commercial, institutional, and industrial wastes, in accordance with its permit. Non-MSW streams are reviewed prior to acceptance. No hazardous wastes, as defined in the pertinent State regulations (6 NYCRR Parts 371), are permitted to be disposed at the Landfill.

As required for landfills receiving this type of waste in New York State, the currently used Landfill cells have been constructed with a double composite liner, a leachate collection system, and a leachate detection system. The proposed Valley Infill cells will be constructed in compliance with current 6 NYCRR Part 363-6 regulations. This type of liner system is currently being used for other landfills in New York State and provides an environmentally protective leachate barrier. This design of the proposed liner systems will be fully described and evaluated for efficacy for ability to monitor leachate and for protection of groundwater.

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The liner system required by 6 NYCRR Part 363-6.6(b) and final cover system required by 6 NYCRR Part 363-6.6(d), will be described, and consistency with the lateral expansion criteria established by 6 NYCRR Part 363-6.1(e) will be demonstrated.

- Leachate management (collection and removal system, and storage facilities) will be described.
- A construction schedule will be presented and discussed. The anticipated Landfill progression (stages of construction) will be shown in a figure and described in the text.
- Landfill Gas management and conveyance will be described.

Site preparation efforts will include the installation of the liner system over the Tantalito Site. Installation of the liner and associated landfill infrastructure may involve partial removal of the existing geo-composite liner system and some waste from the Tantalito Site. Wastes will be sampled in accordance with Part 375, DER-10, and a work plan to determine how waste will be handled.

The Tantalito Site geocomposite liner disturbed during construction will be repaired prior to construction of the base liner for the proposed newly lined areas. The proposed double-liner system for the Valley Infill that will be constructed over the Tantalito Site will be discussed with respect to management of infiltration in the area.

Safety to workers and community related to the disturbance of the Tantalito Site will be discussed along with mitigation measures.

Landfilling Sequence and Method

Landfill phasing with respect to necessary work on the Tantalito Site will be discussed.

The Landfilling operation is a phased operation, with Landfill cells to be constructed as needed, depending on market conditions for waste disposal. New cells would be developed within the Valley Infill area between existing cells.

Equipment used during the construction and operation of the facility is expected to include graders, crawler tractors, front-end loaders, hydraulic excavators, dump trucks, soil screens, water trucks, waste compactors, and soil compactors, all similar to the equipment used for construction and operation of the existing Landfill.

Within each phase of the landfilling operation, final cover construction and closure will proceed on a cell-by-cell basis, as soon as practicable (i.e., after settlement), and no more than five years after each cell reaches final elevation.

A construction schedule will be presented and discussed.

The anticipated Landfill progression (stages of construction) will be shown in a figure and described in the text.

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Grading, Setbacks, and Other Site Features

Applicable NYSDEC regulations and guidance will be followed in the implementation of landfilling activities. The proposed new landfill disposal cells will be at least 100 feet from property lines. The cell caps will be designed with slopes no more than 33% and no less than 4%.

Operating Hours

The Facility hours of operations are as follows:

- Landfill:

- Landfill Operations – 5:00am to 8:00pm, Monday through Sunday
- Scale House Operations – 6:00am to 6:00pm, Monday through Sunday
- The Landfill Facility is prohibited from operating on New Year's Day, July 4th, Memorial Day, Labor Day, Thanksgiving, and Christmas. The Facility may operate the remaining 359 days per year.
- Placement of daily cover shall be limited to the following: Monday through Sunday 6:00 am to 8:00 pm

- Tire Processing Facility

- Under normal operating conditions, the Tire Processing Facility (TPF) operates Monday through Friday 6:00 a.m. to 4:00 p.m. and Saturday 6:00 a.m. to 11:30 a.m.
- The TPF is closed on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, and Christmas Day.
- Upon receipt of approval from the NYSDEC, the Facility may expand operations to accommodate peak construction and production period demands. This approval would permit the Facility to operate Monday through Saturday 6:00 a.m. to 10:00 p.m.

There are no hour restrictions on activities which do not require the operation of waste placement equipment, including equipment and facility maintenance, or office personnel. The operating hours for construction projects will be during daylight hours. The operating hours for the proposed expansion are the same as the existing operating hours.

Storage of Materials

Stripped overburden soils, along with the associated low-level vegetation (grasses, shrubs, etc.) will be stockpiled and used during site restoration. Waste petroleum products (from equipment maintenance) and other wastes generated at the facility which are not disposed of on-site, will be properly containerized and routinely transported to permitted off-site disposal or recycling facilities as required by NYSDEC pursuant to 6NYCRR Part 364.

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Stormwater Management System

- Stormwater management facilities and practices will be discussed, including drainage ditches, swales, sedimentation ponds, and seeding of disturbed areas. The requirements of the SPDES Multi Sector General Permit (GP-0-17-004), and Stormwater Pollution Prevention Plan (SWPPP) will be described. Technical design support information will be referenced as being part of the Engineering Report.

Transportation Systems

- On-site roadways, vehicle maneuvering areas, and related structures to the Valley Infill project will be discussed.

Environmental Monitoring Plan

- Environmental monitoring practices and procedures will be discussed, including the porewater monitoring system and landfill gas probes.

Operational Controls

- Operational controls and monitoring for the project and site will be discussed, including but not limited to: Controls for site access, unauthorized waste, and incoming waste quality control, as well as dust, litter, odor, vector, and noise controls.

2.4.4 Closure Plan

This section will discuss the plans for the closure of the SMI Facility once active filling is complete. This will include, but not be limited to, a discussion of:

- Final grades, design of the maximum slopes, and the plan to grade the landfill to prevent serious settling or stormwater issues.
- The different parts of the Facility's closure procedures and related installations.
- Components of the Final Cover system, including the different designs for sloped or plateau areas
- The Habitat Management planning made part of the existing Landscaping Plan and Closure/Post-Closure Plan will be discussed

2.4.5 Post-Closure Care

This section will discuss the relevant regulations for Post-Closure care at the Facility and plans to maintain the monitoring points and maintenance procedures required to safely maintain the site. In addition, this section will describe the Habitat Management maintenance including final closure surfaces including grassland bird habitat (mowing schedule and seed mix, etc.), solar proposals, etc.

2.5 PERMITS AND APPROVALS

2.5.1 DEC / State approvals

The DEIS will include a list of permits, approvals, and required submissions for the permitting process along with a description of each approval and the approving agency. These permits and approvals tentatively include:

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Air Title V
Part 360 Series
Stormwater General Permit for Construction Change of Use
Approval
Possible Water Quality Certification

2.5.2 Local Approvals

Town of Seneca Falls Site Plan
Town of Seneca Falls Special Use Permit
Town of Seneca Falls approval for acceptance of leachate to Town's Wastewater
Collection and Treatment System
Town of Waterloo Site Plan Approval Town of Waterloo Special Use Permit

2.6 PROJECT NEED AND BENEFITS

The DEIS will include information on the needs and benefits for the project. This will include, but not be limited to, information on the service areas for the landfill, public waste disposal needs, and New York statewide disposal statistics and information; economic benefits and factors related to the project; benefits to the host communities; and information on the conformance of the Project with the objectives of the New York State Solid Waste Management Plan.

3.0 ENVIRONMENTAL SETTING

This section presents a description of the existing regional and site-specific natural resources and the cultural/manmade features which may potentially be affected by the proposed Project.

The DEIS will describe the environmental setting (existing conditions), potentially significant environmental project impacts, and mitigation measures for those impacts within each of the topic areas identified below.

3.1 EARTH RESOURCES

3.1.1 Topography and Physiography

Background Information:

The proposed Project is in the north-central part of Seneca County, New York. The southern third of the County is in the northern New York section of the Appalachian Plateau, while the remaining portion of the County, including the SMI Property, is part of the Central Lowlands. Glacial activity has played a significant role in shaping the present landscape of the area.

The DEIS will include the following:

- Location of project within New York State and surrounding bodies of water
- Classify and define project physiographic provinces within New York State
- Describe impact of glaciers on the project's physiographic provinces
- Site Topography and Physiography

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As a result of the glacial lake plain, the topography in the Project Area and surrounding area is generally flat. The most pronounced topographic relief on the Project Area itself is provided by the disposal areas.

The DEIS will include the following:

- Description of general project area topography
- Description of landfill disposal area topography

3.1.2 SOILS**Background Information:**

The soils in the immediate vicinity of the Project Area are dominated by high-lime soils developed on glacial lake sediments. These soils were mapped in 1972.

The DEIS will include the following:

- Description of site soils as mapped prior to landfill activities at the SMI Property and presented for historical context.

3.1.3 GEOLOGY AND HYDROGEOLOGY

The DEIS will include the following:

- Information drawn from the Part 360 Site Investigation Report prepared for the Seneca Meadow Landfill Expansion last revised in December 2006
- A summary of the Hydrogeologic Report for the Project that has been prepared and submitted in connection with the Part 360 permit application for the SMI Valley Infill

Regional Geology

The DEIS will include the following:

- Timeline of regional geology
- Bedrock formations and composition within the County
- Local rock formations described in order from the oldest to the youngest
- A contour map of bedrock at the Site will be provided

Regional hydrology and Hydrogeology

Seneca County is regionally located in the center of the Western Oswego River Basin, which ultimately drains into Lake Ontario. The project Area does not occur on or adjacent to any primary or principal aquifers. The DEIS will include the following:

- Seneca County river basin description
- River basin drainage flow path
- Black Brook project area watershed description
- Seneca County groundwater description
- Central lowland unconsolidated aquifer description
- Project area unconsolidated aquifer description

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- Erie-Ontario bedrock aquifer description
- Location of primary and principal aquifers near project area
- Regional groundwater flow

3.1.4 GEOTECHNICAL

Project area with respect to seismic impact zones will be discussed.

3.2 WATER RESOURCES

Existing groundwater and surface water resources and wetlands that are present at the site and in the vicinity are addressed in this section of the DEIS.

3.2.1 Groundwater

Background Information:

Groundwater flow at the site occurs in the overburden soils and fractured bedrock. In general, the vertical flow component in overburden units is much greater than the horizontal flow component. Once entering the bedrock, groundwater assumes a predominantly southerly flow direction, consistent with the regional flow field. No bedrock discharge areas occur on the Project Area. Water for various site operations is supplied to the Facility by the Town of Waterloo municipal system, which obtains its water from Seneca Lake.

Precipitation falling on the site that infiltrates into the ground flows vertically through overburden deposits.

Hydrogeological investigations of the Landfill site were conducted during previous permitting processes. Additionally, as part of current Landfill monitoring activities, groundwater monitoring wells have been installed around the facility.

Numerous test borings, groundwater monitoring wells, and test pits have been logged, sampled and tested over the site area.

Water level and water quality data are collected quarterly from monitoring wells to obtain representative groundwater samples from the various soil units underlying the Landfill site.

USGS aquifer mapping shows the Seneca Meadows Landfill Facility is primarily not located over any groundwater features. The Site is not located over a primary or principal aquifer. The overburden units are considered collectively as an aquitard — a low permeability unit that can store and slowly transmit groundwater. Additionally, monitoring under the Operations, Maintenance and Monitoring Plan is required at the Tantalio Site which is a Class 4 site under 6 NYCRR Part 375 regulations.

The DEIS will include a description of the following:

- Groundwater flow within the Project
- Area Water use at the Facility
- Tantalio Waste Disposal Area Declaration of Covenants and Restrictions
- Movement of precipitation within the Project Area
- Groundwater overburden and bedrock direction of flow

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- Area drinking water supply
- Fracturing of bedrock and its impact on groundwater flow in the Project Area
- Depth of water supply well in the vicinity of the Project Area
- Project area groundwater monitoring and groundwater quality
- Summary of areas around the Facility where there are localized contaminated groundwater impacts

3.2.2 SURFACE WATER

Background Information:

Surface water runoff on the site drains to either the East, West, or South Pond Management systems. Stormwater is generally stored in one of the pond systems until samples can be obtained and it is verified that discharges will meet the permit requirements. Surface water drainage from the East and West Pond systems is routed into Black Brook.

Surface water from the south pond system is discharged in a southerly direction to the Seneca-Cayuga Canal.

Both Black Brook and the Seneca-Cayuga Canal have Class C water quality classifications.

The DEIS will include a description of the following:

- Project Area river basin description and drainage.
- Description of the existing floodplain mapping within the proposed project areas, as well as updates regarding floodplain mapping for the re-routed Black Brook.
- Existing site drainage will be described, including stormwater control features, expected quantities and holding capacity, stormwater sampling procedures, and erosion containment efforts.
- On-site and nearby off-site surface water features will be described, including historic water quality results and quantity where available.
- Classifications of on-site and nearby off-site surface water will be identified and discussed.
- Description of existing stormwater ponds and associated monitoring and discharge
- Documentation of existing facility performance with respect to protection of water resources.
- Description of what makes a proven system to efficiently manage the leachate generated during the life of a waste disposal facility including leachate treatment and disposal See Section 3.7 for more detail.
- Description of leachate collection system.
- Sampling leachate at secondary liner system, various sump locations, and porewater sump and parameters tested.
- Sampling for Emerging Contaminants including per – and poly- fluoroalkyl substances (PFAS) and 1,4-dioxane, as well as radionuclides
- A description of recent leachate test results
- Consideration of future climate risks pursuant to the Community Risk and Resilience Act (CRRRA) with respect to stormwater and floodplains

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3.2.3 Wetlands

The DEIS will include a discussion of the wetlands on the Facility and nearby areas. There are no wetlands or conservation areas within the Project Area, and the Project will not affect nearby wetlands as it is entirely contained within the footprint of areas that have already been used for waste landfilling or landfill facility operations.

3.3 AIR RESOURCES

Background Information:

The site and surrounding area are primarily a rural environment with interspersed commercial establishments. The area has a demonstrated history of compliance with State and Federal air quality standards. In addition to point source and fugitive emissions, nuisance emissions (particularly odor) have been investigated in detail.

The DEIS will include the following:

- Summary and description of existing air quality conditions at the Facility and the surrounding area.
- A description of the existing surface emissions monitoring program intended to satisfy the requirements of the USEPA's New Source Performance Standards (NSPS) for municipal solid waste landfills
- Compilation of the emissions from the Facility
- Quantitative analysis of the emissions from the Existing Landfill
- Existing GHG emissions in preparation of CLCPA analysis

3.3.1 Climate and Meteorology

The DEIS will include a discussion of the following:

- Summary of Seneca County climate.
- Fumigation definition and site analysis
- Closest National Weather Service meteorological stations to the Facility
- Facility typical wind direction
- Dispersion description and site analysis

3.3.2 Ambient Air Quality Monitoring

The DEIS will include a discussion of the following:

- The regional air quality.
- Applicable air quality monitoring standard
- Ambient air quality monitoring data and results, including but not limited to the Ambient Air monitoring for Hydrogen Sulfide, previous ambient air monitoring study for methane and any other testing or studies done on this facility

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- Summary of ambient air samples obtained by Central Office and study that was completed for the Seneca Falls Environmental Action Committee via the DEC's Community Air Screen Program in 2019 (report March 27, 2019, in a letter to Valerie Sandlas). (Include report as appendix, also.) Include summary of SMI Ambient Air Monitoring study. Previous modeling showed compliance with all AGCs and SGCs for HTACs and non-HTACs. Variability in the gas for concentration of H₂S will be discussed along with the further investigations proposed to be conducted and incorporated into the DEIS and ATV permit application and refined modelling report.

3.3.3 Air Emissions from the Seneca Meadows Landfill

Air Emissions:

The DEIS will include a discussion of the following:

- Estimate of emissions associated with the Seneca Meadows Landfill operations and discussion of compliance with National Ambient Air Quality Standards and ambient air quality standards
- Projections and measurements of the resulting air quality impact in surrounding areas
- Landfill gas generation summary and list of control equipment with associated capacities
- Facility gas collection system description
- Analysis of the collection efficiency of the landfill including description and area of cover type
- Part 212 analysis of HTACs and non-HTACs as applicable
- Landfill gas composition including a current lab analysis of the landfill gas
- Other emission sources for the Existing Landfill besides LFG and LFG combustion
- Emissions associated with construction and operation of the existing landfill operations
- Ambient Air Monitoring for H₂S GHG Emissions

3.4 ECOLOGICAL RESOURCES

Background Information:

The Project Area consists exclusively of land that has been previously disturbed by the construction and operation of the Facility and by the operation and remediation of the Tantalito Site. Potential impacts to endangered Indiana Bat roosting habitat can be avoided through seasonal restrictions on project-related tree removal. The project is not likely to adversely affect Indiana bats and no trees exist to remove in waste disposal areas.

The DEIS will include a description of the following:

- The Project Area footprint description
- Limited vegetative communities located in the Project Area
- Little wildlife and no endangered species in the Project Area
- No wetlands in Project Area

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- Project Area impact on Indiana bats, bald eagles, and osprey
- Habitat management planning made part of the existing Landscaping Plan and Closure/Post-Closure Plan

3.5 EXISTING LANDFILL CONDITIONS AND OPERATIONAL SETTING

3.5.1 Grading and Other Site Features

Background Information:

The highest portions of the active SMI Landfill have reached an elevation of approximately 726 feet above mean sea level (MSL). At its current elevation, the SMI Landfill is approximately 245 feet above the surrounding average land grade of 480 feet.

The DEIS will include a discussion of the following:

- Existing grades and other site features (Referencing Sheets 3 and 5 of the Engineering Drawings)
- The tire processing facility and other ancillary structures located on the Facility Site

3.5.2 Existing Landfill Liner and Leachate Collection

System Background Information:

The Facility has liner types consisting of a natural soil containment, an engineered in-situ liner, an engineered recompacted soil liner, and an engineered soil liner with a blanket drain. In 2013 SMI completed the construction and start-up of a treatment system which consists of a reverse osmosis facility and the biological treatment system to provide for the treatment of leachate. One alternative for treatment of the concentrate from the reverse osmosis treatment unit, that has been put into place, is a leachate/concentrate evaporator system. SMI has not recirculated leachate at the landfill since 2016, and a special condition was added to the 2017 Part 360 permit renewal that restricts SMI from recirculating leachate without DEC approval. The DEIS will include a discussion of the following:

- Description of variety of different liner types used at the Facility and how they collect and treat leachate and condensate
- Leachate storage capacity and disposal methodology
- Methods to reduce leachate tanker trucks with the leachate treatment and evaporator system
- Leachate/concentrate evaporator system description
- Historic leachate generation rates
- Emerging Contaminants discussion
- Dynatec Biological Leachate Treatment System, Reverse Osmosis System, and Evaporator
- Permeate and Concentrate disposal
- Historic leachate recirculation procedures

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3.5.3 Landfill Gas Management

System Background Information:

The gas collection system is routinely upgraded to collect additional LFG and to ensure NSPS compliance which requires a system capable of handling all of the LFG generated from the facility. The existing and proposed landfill gas control devices at SMI provide sufficient capacity to combust the expected quantity of gas to be collected by the existing landfill operations.

The DEIS will include a discussion of the following:

- LFG collection system components
- Horizontal collector description
- Vertical gas wells description
- Leachate treatment process description and associated emissions. The condensate/leachate evaporator description
- Historic leachate recirculation procedures
- Existing and future landfill gas production estimations condensate collection and disposal description

3.5.4 Existing Odor Management

System Background Information:

Existing air emission information related to Landfill Gas is found in Section 3.5.3. Seneca Meadows routinely monitors landfill gas emissions by performing quarterly surface emissions monitoring. Based on the 1997 odor investigation findings and results from the completion of the sampling, analysis, and dispersion modeling, no exceedances of published health-based guidance values or guidelines have been identified with landfill gas emissions from the Facility. The results of the 2016 odor assessment showed several areas of improvement to reduce odor. Furthermore, since 2016, the site has enacted several mitigation measures including implementing an odor neutralizing system, suspending leachate recirculation, eliminating the use of C&D fines as cover, installation of enhanced capping, and installation of more horizontal collectors.

The DEIS will include the following:

- A description of the existing surface emissions monitoring program intended to satisfy the requirements of the USEPA's New Source Performance Standards (NSPS) for municipal solid waste landfills.
- 1997 Facility odor investigation summarized
- Information on historic odor and odor complaints, and actions taken to address odor issues at the existing Facility
- Odor Response System: The results of a 2016 odor investigation and enacted mitigation measures to date
- The results of the Ambient Monitoring Work Plan approved on 07/11/2018 and the subsequent Assessment of Odor report on 09/08/2020
- A description of the H₂S Monitoring study that the facility is doing as part of this expansion (both the flux chamber study as well as the ambient air monitoring of hydrogen sulfide with Acrolugs), as well as a discussion of the results.

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3.5.5 Existing Stormwater Management System

Stormwater management will be discussed in Section 3.4.2 Stormwater Quality. A brief summary of stormwater capacity, infrastructure, discharge events, and quality control will be included in this section of the DEIS. Changes to the Stormwater infrastructure will be discussed under Section 2.0.

3.5.6 Existing Sound Levels

Background Information:

The sound level monitoring at the SMI Landfill indicates that the Facility is currently in compliance with part 360 regulations.

The DEIS will include a description of the following:

- Annually performed sound level monitoring at various approved representative receptor locations surrounding the Facility
- Applicable standards for the Site

3.5.7 Existing Groundwater Monitoring System

DEIS to include:

- Description of monitoring well program in Operations, Maintenance, and Monitoring Plan
- Location of wells
- Applicable parameters to be monitored

3.6 COMMUNITY RESOURCES AND CHARACTERISTICS

3.6.1 Land Use, Zoning, and Planning

3.6.1.1 Land Use Background Information:

SMI Landfill is located on approximately 900 acres of land, with the overall Seneca Meadows property encompassing around 2,400 acres. Much of the land surrounding the Facility is in agricultural use.

The DEIS will include a description of the following:

- Facility land size, access, and characteristics
- Land use in surrounding properties
- Significant traffic routes and notable nearby facilities

3.6.1.2 Zoning and Planning

3.6.1.3 Background

Information:

Current zoning of the proposed project area is M-2, Refuse Disposal and Reclamation.

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The DEIS will include the following:

- Facility zoning information in both Waterloo and Seneca Falls Compliance of the Site with zoning laws or ordinances
- Consistency of the proposed expansion with adopted county and town comprehensive plans (Seneca County and Towns of Seneca Falls Waterloo).

3.6.2 Transportation

Existing Traffic Conditions

Background Information:

Access to the Facility for waste vehicles is via one entry located on Salcman Road, at its intersection with NYS Route 414. Additional traffic volumes are generated from the importation of cover soils (also truck traffic), and from employee and visitor traffic (primarily passenger vehicles).

The DEIS will include of the following:

- Summary of the traffic study was performed for the 2006 DEIS for the Expansion Project
- Traffic conditions at the Facility including any changes since 2006 study
- Evaluation of changes to traffic outside of the landfill since the 2006 study due to area growth
- Routes used by short-haul and long-haul trucks.

3.6.3 Utilities and Services

The DEIS will include the following:

- List of public services provided to Facility and related providers
- Description of utilities used by the Facility

3.6.4 Ambient Sound Level Conditions Background Information:

The existing sound levels at the Facility comply with requirements of 6 NYCRR Part 360 Section 360.19(j).

The DEIS will include the following:

- Prior sound level surveys performed to identify levels of environmental noise received along boundaries of the Facility
- Description of 10 testing locations
- Tested sound levels during day and night
- Description of construction activity occurring during testing and relevance to the Project construction areas

3.6.5 Public Parks and Recreation Facilities

The DEIS will include the following:

- Description of public parks and recreation areas around Project Area

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- Parks and recreation development goals
- Description of the Seneca Meadows Wetlands Preserve

3.6.6 Demographics

3.6.6.1 Local and Regional Economy Background Information:

Seneca County is a primarily rural, agricultural community with an industrial and manufacturing-based economy and a population in 2010 of 35,251, according to the US Census.

The DEIS will include the following:

- Seneca County US Census information
- Seneca County employment information and major employers
- Draft Disadvantaged Community and Environmental Justice Communities

3.6.6.2 Existing Jobs and Economic Contributions of Landfill Operations

Background Information:

SMI contributes significantly to the local economy through direct payroll, payments to local vendors, tax payments and other contributions to local government units.

The DEIS will include the following:

- Facility local economy contributions
- Facility seasonal employment information
- Free waste disposal program economic information Facility charity donations
- Facility secondary economic activity Facility tax payments
- Direct cash payments to the Towns of Seneca Falls and Waterloo

3.6.6.3 Population and Housing Background

Information:

Housing unit type is primarily single-family homes, with an owner occupancy rate of 58 percent in 2010 (Town of Seneca Falls).

The DEIS will include the following:

- Seneca County population and housing US Census information

3.6.7 Archaeological and Historical Resources

Background Information:

The Seneca Meadows site is not within an archeologically sensitive area, based on New York State Historic Preservation Act records. There are no structures, ruins, or archeological resources on the site or structures listed on the State or National Registers of Historic Places.

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The DEIS will include the background information above and the following:

- Summarize previous archaeological and historical investigations.

3.6.8 Visual and Aesthetic Conditions:

In addition to describing the visual setting for the project and area, the DEIS will summarize a Visual Resource Assessment performed for the project. The purpose of the Visual Assessment will be to identify potential visual and aesthetic impacts and to provide an objective assessment of the visual character of the project, using standard accepted methodologies of visual assessment, from which agency decision-makers can render a determination of visual significance.

The DEIS will include the following:

- Description of visual character of the regional setting of Project Area
- Visibility of existing landfill from vantage points and scenic areas

3.7 Climate Leadership and Community Protection Act (CLCPA) and Community Risk and Resiliency Act (CRRRA)

3.7.1 CLCPA

3.7.1.1 Disadvantaged Communities (DACs)

The DEIS will describe each of the three DACs in the vicinity of the landfill (GEOIDs: 36099950200, 36099950300, and 36099950400) including:

- Relevant baseline data on existing burdens, including from relevant criteria used to designate the DAC potentially impacted by the project
- Identification of any environmental or public health stressors already borne by the DAC because of existing GHG and co-pollutant burdens in the community

3.7.1.2 Greenhouse Gases

Existing measures used by the landfill to control GHGs as baseline for CLCPA.

3.7.1.3 HAP/PM

The DEIS will include discussion of existing measures taken to control HAPs and PM. Additionally, the DEIS will include an assessment of whether the proposed landfill expansion would disproportionately impact CLCPA Disadvantaged Communities (DACs).

3.7.2 CRRRA

The DEIS will characterize the area with respect to the existing Climate Change Risk, including extreme weather events, food risk, availability of water, and other natural resources needed by the community.

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4.0 POTENTIAL ENVIRONMENTAL IMPACT

This section presents and evaluates the environmental impacts that could potentially occur if the proposed Project is implemented, in conjunction with Section 8 of the DEIS, which presents a summary of the measures that will be utilized to mitigate and/or avoid these impacts.

4.1 EARTH RESOURCES

4.1.1 Topography

The DEIS will include an evaluation of the following potential impacts:

- Operation of the Facility has resulted in modification of the topography of the Project Area
- FAA obstruction standards
- Compliance with the FAA guidance

4.1.2 Geology

The DEIS will include an evaluation of the following potential impacts:

- How the subsurface geological integrity of the Project Area will not be adversely impacted during either the construction or operational phases of the Project
- Minor impacts due to the alteration of the site topography will result in the movement of surficial soils during construction of the lateral portion of the SMI Valley Infill Area and the relocated facilities
- Some bedrock alterations will be made to higher bedrock area at the south end of the project as described in Section 2.4.1.
- Additional bedrock data, if needed, to identify and describe major fractures in the bedrock
- Discuss recent seismic activity regionally and the potential for impacts due to any future seismic activity at the facility

4.1.3 Soils

The DEIS will include an evaluation of the following potential impacts:

- Disturbance of surficial soils in the Project Area
- Soil excavation and movements will be conducted to minimize offsite impacts due to dust and erosion to the maximum extent possible.
- Further description of controls will be provided.
- Potential traffic impacts from these soil deliveries
- How soils/excavated materials for construction (e.g., liner component) and operation (e.g., operating cover) of the Valley Infill project will be obtained – SMI mining and other operations

4.1.4 Geotechnical Impacts

The DEIS will include an evaluation of the following potential impacts:

- Project Area is not located within a seismic impact zone but will be discussed in the DSEIS
- Interface shear strengths will be taken into account in the landfill design and

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construction for landfill slope stability. The DEIS will refer to the Engineering Report for the Project

4.2 Water Resources

4.2.1 Surface Water Resources

The DEIS will include an evaluation of the following potential impacts:

- Potential impacts to floodplains
- Mitigation for Climate Change and criteria for meeting CRRA
- Sedimentation and erosion
- Leachate generation and management, including analytical results and semi-annual monitoring for new Part 363 expanded parameters: PFAS, 1,4-dioxane, and radionuclides
- Discuss proposed leachate recirculation and pilot PFAS treatment and possible impacts to WWTFs
- A brief discussion of the related controls and sampling of surface water will also be included
- Stormwater management and measures to protect surface water will be described
- Stormwater monitoring prior to batch release and surface water monitoring.
- Discuss potential impact to human health from leachate transferred off-site via the sewer line to the Seneca Falls WWTF or by truck to other WWTFs, which discharge to surface waters.

4.2.2 Groundwater Resources

The DEIS will include an evaluation of the following potential impacts:

- Stormwater and leachate control features which will prevent the release of contaminants and will minimize the potential for adverse impacts to groundwater resources
- Continuation of existing monitoring of the amount of liquid removed from the secondary containment system to ensure the integrity of the liner system
- Groundwater monitoring, including new Part 363 expanded parameters: PFAS, 1,4-dioxane, and radionuclides, which will be required by the new 360 permit
- Address concerns about potential impact to drinking water wells and concerns about potable water in the community and neighboring communities
- Assess potential regional hydrogeological impacts
- Summary of 360.16(h) report which assesses the potential impacts of the facility on a remedial program which includes the following:
 - Describe the existing cover system of the Tantalito Site
 - Assess the potential impact of adding the weight of the waste mass from the expansion on top of the Tantalito Site and the potential for plume migration.

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- Assess how the double composite liner system proposed to be constructed over the Tantalio Site may further limit precipitation infiltration into/through the Tantalio Site waste mass, possibly resulting in a reduction of leachate generation
- Summary of how the Project will relate to the potential, ongoing, or completed remedial programs at the Tantalio Site or the original Seneca Meadows Landfill Inactive Hazardous Waste Site including evaluation of groundwater monitoring wells to be removed over the course of the expansion over the Tantalio Site and surrounding areas
- Evaluate monitoring well replacements and additions.
- Evaluate bedrock blasting on groundwater and potential plume movements.
- Discuss ground water monitoring well reports to inform possible changes that occur to plume and associated determinations regarding additional measures needed.
- Assess the potential for impacts if the plume migrates with respect to groundwater and vapor intrusion.
- Evaluate residences and businesses downgradient of the proposed Valley Infill project to determine if all are connected to a public water supply system and whether private wells are used for drinking water within the study area of the related Hydrogeologic Report
- Assess preventative measures/systems related to potential movement of the plume
- Assess need for preventative or containment groundwater systems to be installed prior to monitoring well closures and project construction.

4.3 AIR RESOURCES and ODORS

This section will evaluate potential air impacts resulting from both the construction and operation of the proposed SMI Valley Infill. Potential impacts to air quality from the SMI Valley Infill include fugitive dust, vehicular emissions, and landfill gas emissions.

4.3.1 Estimated Air Pollutant Emissions

4.3.1.1 Construction Emissions

The DEIS will include an evaluation of the following potential impacts:

- DEIS will discuss dust mitigation procedures that may be undertaken at the site, including application of water and other dust controls
- Quick establishment of vegetative cover on completed landfill work areas, and the protection of stockpiled soils with vegetative cover, crusting agents, water and other coatings will also reduce dust problems
- Combined emissions from vehicle exhausts and other equipment used during the construction of the SMI Valley Infill will occur and will be evaluated for potentially significant adverse impacts
- Other controls such as minimization of active areas will be discussed
- Emissions related to opening a portion of the Tantalio Site and removing waste prior to liner construction will be evaluated

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4.3.1.2 Operational Emissions

The DEIS will include an evaluation of the following potential impacts:

- Emissions from the proposed SMI Valley Infill will be generated in the same manner as for the currently permitted landfill operations, which will be described
- SMI Valley Infill will begin to produce LFG shortly after it begins accepting waste and will continue to produce LFG for several years after they stop accepting waste. The facility will provide the gas curve expected as part of the project, as well as the overall gas curve for the entire facility
- Information on expected landfill gas generation will be discussed, as well as control measures and the expected impacts
- The facility will discuss the potential impact of fugitive dust emissions as well as the mitigation to be implemented
- Truck emissions
- GHG emissions will also be discussed in Section 4.6
- H2S emissions

4.3.2 Air Quality Impact Analysis

The DEIS will include an evaluation of the following potential impacts:

- Impacts associated with air emissions from the proposed SMI Valley Infill will be fully evaluated in the Title V permit application review and summarized in the DEIS. The expansion will be evaluated against relevant guidelines for air quality standards including state and federal air regulations and CLCPA to be protective of human health and the environment. The facility will discuss impacts associated with oxides of nitrogen, sulfur dioxide, particulate matter including PM10 and PM 2.5, hydrogen sulfide, volatile organic compounds (VOC), and Hazardous Air Pollutants (HAPs), PFAS and other contaminants that have the potential to exceed federal and state standards and guidelines (e.g., DAR 1).
- A discussion of the peak emissions year modeling for Landfill Gas will be included and compared to the relevant air quality standards. The estimated gas curve for the project, as well as for the entire facility, will be provided
- A discussion of air quality guideline concentrations and health-based standards applicable to the landfill emissions, including landfill gas, working face, and other emissions.
- The ingredients in the deodorizers/neutralizers, resulting emissions, and associated characteristics from the Safety Data Sheets (SDS), including health criteria, such as toxicity, with respect to protecting human health, will be discussed.

4.3.3 Compliance with Standards and Guidelines

The DEIS will include an evaluation of the following potential impacts:

- Relevant regulations will be listed. Compliance with the applicable requirements will be required to be demonstrated during and beyond the active life of the SMI Valley Infill

4.3.4 Odors

- Assess potential odor impacts from the project attributable to the increase in height and size of the landfill and any operational changes
- Assess potential for odor impacts due to the landfill stack emissions and fugitives due to waste decomposition, deodorizers/neutralizers, and other emissions including, but not limited to, the leachate treatment system, the evaporator, and, if developed, compost piles.
- Assess potential changes to emission rates and odors from potential recirculation of biologically treated leachate concentrate, should it be approved by NYSDEC.
- Please summarize the history of odor complaints from the commencement of the last expansion. Please discuss the time period that had the increase in odor complaints and the assessment of the cause(s) of that time period. Also, discuss the remedies/corrective action that was taken to remedy the source of those complaints.
- Describe and evaluate the outcome(s) of the existing Odor Investigation Program and describe changes (if any) that are being proposed with respect to the project (including, but not limited to, the use of a non-biased third party responder, advanced techniques that are viable, etc.). Describe and evaluate the outcome of the ambient air monitoring program that was performed per the 2017 Part 360 permit condition.
- Evaluate viability of use of advanced technologies for determining methane emissions, such as by aerial drones, automatic well balancing, and/or other advanced technologies.
- Evaluate other locations where use of the H₂S monitoring stations would give additional feedback on odors and/or use of the Jerome instrument to verify whether the H₂S standard is being exceeded in locations other than at the Acrulog stations (such as at the Thruway). Discuss weather patterns, wind direction, or other factors (such as farm activities) in assessing observations taken during odor events.
- Note: proposed mitigation measures for air emissions and odors will be described in Section 5.

4.4 ECOLOGICAL RESOURCES

The DEIS will include and evaluation of the following potential impacts:

- Because the project is to be located over the existing landfill and the Tantalio Site, no significant vegetative or wildlife resources are expected to be impacted by the Project
- Project impacts to areas surrounding the proposed Project Area due to noise, air emissions, and human activities at the expansion site, similar to those at the Existing Landfill and in similar or less proximity will be discussed
- The Habitat Management planning made part of the existing Landscaping Plan and Closure/Post-Closure Plan will be described. It will include temporary and permanent (final closure) habitat including seeding, mowing schedule, etc., with respect to grassland birds.

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4.4.1 Rare, Endangered, or Threatened Species

Because the project is to be located over the existing landfill and the Tantalo Site, which are areas with no existing suitable habitat, no significant, rare, threatened, or endangered species are expected to be impacted by the Project.

Results of web searches for these species will be included, as will a summary of the 2006 study findings be briefly described

4.4.2 Wetlands

The SMI Valley Infill will not result in the disturbance of federal and/or New York State jurisdictional wetlands; therefore, this review will not be included in the DEIS.

4.5 COMMUNITY and HUMAN RESOURCES

4.5.1 Land Use, Zoning and Planning

The DEIS will include an evaluation of the following potential impacts:

- Potential impacts to local land use, consistency with comprehensive plans, and zoning will be summarized. Consistency of the project with local planning, zoning, and local laws, related to landfilling, mining, and other operations of landfilling, including Local Law #3, will be discussed as they relate to the existing and proposed landfill

4.5.2 Services and Utilities

The DEIS will include and evaluation of the following potential impacts:

- There are no changes proposed for community services or utilities. The Proposed Project will be evaluated with respect to potential for adverse impacts on community services, including water, sewer, roads, etc.
- A discussion of facility fire controls will be included. This will include an evaluation of the adequacy of on and off site fire hydrants and other water sources, local fire departments, and applicant capabilities.

4.5.3 Transportation

The DEIS will include a description of the following:

- Updated traffic information (from SMI and outside of the facility)
- Assessment of proposed expansion on the existing level of service and the continuation of landfill traffic for the life of the proposed expansion
- The potential for landfill trucks to spread mud or debris on local highways
- A revised roadway debris and track out mitigation plan for State Route 414 will be included in Section 5.
- Assess potential for road damage as a result of truck traffic.
- Assess the routes of traffic and associated impacts in the DAC areas in and adjacent to Seneca Meadows Landfill, respectively

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- Map of traffic routes and mechanisms to encourage/require landfill and mining truck traffic on major highways – Conduct and include a complete update of the 2007 Final Supplemental Environmental Impact Statement (FSEIS) on Traffic, including tractor trailer traffic in the Finger Lakes, based on current conditions, regulations, and policies

4.5.4 Sound Level / Noise Impacts

The DEIS will include an evaluation of the following potential impacts:

- Sources of potential sound impacts and the impacts of Facility scheduling on noise levels will be discussed.
- The sound levels associated with the construction and development of the Project will be thoroughly described as to how they will be consistent with existing sources of Facility operations.
- The DEIS will include an assessment of noise impacts pursuant to the Department's Program Policy, "Assessing and Mitigating Noise Impacts."
- The DEIS will include a summary of a noise evaluation to be prepared to verify noise levels will be in compliance with Part 360 series regulatory standards.
- This will include updated background noise levels and estimated noise levels resulting from the proposed Project

4.5.5 Demographics

Local Economy:

The Project economic impacts to both the local community and the local economy will be discussed, including positive and negative impacts.

Positive impacts to be discussed include continued employment and job creation, fiscal impact to the Town of Seneca Falls and Town of Waterloo, as well as other impacts on the area economy. The Town's host community benefit plans will be discussed

Population and Housing

The DEIS will include an evaluation of the following potential impacts:

- The Project will not restrict development of adjacent properties and is not anticipated to have any adverse impact on current population or housing trends.
- The Host Benefit between the Town of Seneca Falls and Town of Waterloo will be discussed as it relates to supporting Town finances, services, and property value protection.

4.5.6 Archeological and Historical Resources

The DEIS will include an evaluation of the following potential impacts:

- The 2006 DEIS reported no archaeological or historical resource concerns, and as such, the SMI Valley Infill will not impact archaeological or historical resources.
- An updated review by OPRHP will be described.

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- Assess the potential impacts of the landfill expansion on the consideration of the National Heritage Study Feasibility Study – Finger Lakes Heritage Area. designation for the region.

4.5.7 Visual and Aesthetic Impact

Based on the results of the Visual Assessment, the DEIS will include an evaluation of the following potential impacts:

- Comparison of the areas from which the currently permitted facility can be seen and additional areas from which the proposed project will be seen using viewshed mapping and field investigation.
- An evaluation of the project pursuant to the Department's Program Policy, "DEP-00-2 / Assessing and Mitigating Visual and Aesthetic Impact" including an Inventory of Aesthetic Resources, visual character and aesthetic value, visual assessment, and significance.
- Other locations in the surrounding areas from which the proposed project will be visible.
- Identify sensitive aesthetic and scenic resources.
- The visual assessment report will be included to identify potential visual an aesthetic change of visual character and identify impacts related to the Project.
- Proposed temporary and final closure of the landfill slopes with respect to visual impacts (use of different final cover materials, etc.).

4.5.8 Potential Impacts to Human Health

The DEIS will include the following:

- Discussion of how emissions from the proposed project, as calculated and modelled, compare to the applicable regulatory standards and guidelines developed by DEC and EPA to protect human health. Each contaminant will be discussed in relation to each applicable health based standard and guideline. Each standard and guideline will be described in terms of the agency that developed it and basic background on the standard or guideline and how it protects human health. This section may reference other sections of the EIS that demonstrate how the air emissions data generated by SMI demonstrates compliance with the Air Title V permit.
- Discussion of available EPA ambient Geospatial Monitoring for Air Pollution (GMAP) data in relation to any existing landfill or project impacts on ambient air quality in the surrounding areas.

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- Discussion of the March 27, 2019 NYSDEC Community Air Screen Program- Ambient Air Quality Screening Report for Seneca Falls, Seneca County, produced upon the application of Seneca Falls Environmental Action Committee in relation to any existing landfill and project impacts on ambient air quality in the surrounding areas.
- Reference and summary of the mobile emission estimates included in the CLCPA Section 7(3) analysis and discussion of how these emissions may impact human health in the three DACs and beyond.
- Discussion of existing landfill and project impacts as potential factors in relation to reported lung cancer incidence in the surrounding areas. Description of an evaluation of the most up-to-date lung cancer incidence data, to be developed and implemented by NYSDOH, of an appropriate geographic area surrounding the landfill as compared to the appropriate reference population within New York State.
- Discussion of potential emissions from SMI leachate within public sewers in the surrounding areas.

4.6 Climate Leadership and Community Protection Act (CLCPA) and Community Risk and Resiliency Act (CRRRA)

The DEIS will include a summary of the CLCPA Analysis for the project in Appendix J. It will cover the following topics:

4.6.1 Greenhouse Gas Impacts (CLCPA Section 7(2))

Discuss impacts of GHG emissions from the proposed expansion on Climate Change. Include summary of CLCPA evaluation on GHG emissions from the expansion.

4.6.2 Impacts on Disadvantaged Community (CLCPA Section 7(3))

4.6.2.1 Co-pollutant Emissions

4.6.2.2 Other Impacts such as traffic and odors

4.6.3 CRRRA

4.6.3.1 Extreme Weather Events

4.6.3.2 Flood Risk

5.0 DESCRIPTION OF MITIGATION MEASURES

This section discusses the measures to mitigate, minimize, and avoid adverse environmental impacts that are to be incorporated into design elements and operational and closure plans for the Project

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5.1 EARTH RESOURCES

Evaluation of existing and future mitigation measures to avoid soil loss, turbidity, and other impacts. And measures to ensure landfill stability. The DSEIS will discuss design requirements for construction of the landfill expansion related to soils and subsurface geology. This will include bedrock separation, placement of intermediate and final cover materials, re-vegetation of the site, and erosion and sedimentation control during construction and operation.

5.2 WATER RESOURCES

5.2.1 Groundwater

- The assessment of leachate management systems
- A discussion of the double composite liner system and leak detection measures
- The assessment of existing and future mitigation measures to monitor surface and ground water. Also, the assessment of existing and future measures to monitor and prevent plume migration from Tantalito to offsite.

5.2.2 Surface Water

Leachate management system will be described, including:

- Collection
- Removal
- Storage
- Transport

PFAS management including proposed pilot PFAS removal project will be described.

- Site drainage and stormwater management systems will be described.
- The proposed environmental monitoring will be described including locations, parameters, and frequency of surface water monitoring. Monitoring to ensure protection of downstream resources will be identified.
- Describe stormwater management measures for management of increased runoff volumes and patterns for protection of water resources, including Black Brook.

5.3 AIR RESOURCES AND ODORS

- Evaluation of existing and proposed mitigation measures for monitoring and controls for air emissions.
- Evaluation of measures to mitigate odors, including, but not limited to, alternative neutralizing agents; alternative cover materials including material, methods, and frequency to manage gas and solid waste; revisions to the odor monitoring plan, etc.

5.4 ECOLOGICAL RESOURCES

If identified, any measures to mitigate ecological resources.

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5.5 COMMUNITY RESOURCES

Evaluation of Mitigations to identified community resources, unless covered under Section 5.6 below.

Visual impact avoidance and mitigation will be based on “DEP-00-2 Assessing and Mitigating Visual and Aesthetic Impact”

5.6 Climate Leadership and Community Protection Act (CLCPA) and Community Risk and Resiliency Act (CRRA)

Provide a summary of the CLCPA Mitigation Measures including air-related, waste-related, consideration of organics and recycling technologies to supplement/offset landfill operations and other mitigations. Mitigation measures proposed for GHGs will be discussed with respect to Climate Change Mitigation measures under Section 7(2) of CLCPA. Mitigation measures under Section 7(3) of CLCPA related to the DACs will also be discussed including proposed measures for co-pollutants, noise, odors, and traffic. Assess the potential for alternative technologies and other mitigation measures. Many mitigation measures have been proposed to meet 7(2) and 7(3) including, but not limited to, additional gas well monitoring, more frequent cover inspections, installation of gas well dewatering systems, utilization of drone technology for fugitive emissions, installation of synthetic cover over parts of the landfill, monitoring of cover penetrations during quarterly surface scans before required by regulation, installation and operation of gas collection infrastructure before required by regulation, conversion of a portion of operational support vehicles to EV, installation of charging stations for the general public use, and feasibility studies for several options and technologies.

CRRA requires that climate impacts be a part of the planning, permitting and funding process in all counties of New York State to strengthen New York State’s preparedness for the effects of climate change, and help protect communities against severe weather and sea level rise. The DEIS must consider the project with respect to impacts of extreme weather such as storm surge, sea level rise and flooding.

6.0 UNAVOIDABLE ENVIRONMENTAL IMPACTS

This section of the DEIS will identify and discuss environmental impacts that cannot be avoided or mitigated if the proposed project is implemented, in accordance with 6NYCRR 617.9(b)(5)(iii)(b).

7.0 IRREVERSABLE AND IRRETREVEABLE COMMITMENTS OF RESOURCES

This section of the DEIS will identify and discuss the irreversible and irretrievable commitment of resources associated with the proposed action, in accordance with 6 NYCRR 617.9(b)(iii)(c).

8.0 ALTERNATIVES TO THE PROPOSED ACTION

This section of the DEIS will include an evaluation of project alternatives in accordance with 6 NYCRR 617.9(b)(v). It will include the following subsections, summary of existing studies, and supporting data as needed, to summarize the evaluations.

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- 8.1** OBJECTIVES AND CAPABILITIES OF SMI
- 8.2** NO-ACTION ALTERNATIVE
- 8.3** ALTERNATIVE LANDFILL SITES
- 8.4** ALTERNATIVE SITE LAYOUTS ON THE FACILITY SITE
- 8.5** ALTERNATIVE DESIGN CONCEPTS FOR THE SMI VALLEY INFILL
 - 8.5.1** The Tantalio Inactive Hazardous Waste Site: minimizing impacts to its existing cover and monitoring wells, including phased approaches
 - 8.5.2** Alternatives to overfilling Tantalio Inactive Hazardous Waste site including complete waste removal
 - 8.5.3** Overlay areas and associated liners
 - 8.5.4** Other site designs such as forgoing the height increase
- 8.6** CONCLUSION

This section will provide a description of how the Project will include a number of design, construction, and operating practices that will mitigate, minimize, or avoid significant adverse impacts.

9.0 GROWTH INDUCING IMPACTS

This section of the DEIS will identify and discuss growth inducing impacts associated with the proposed action, in accordance with 6 NYCRR 617.9(b)(iii)(d).

10.0 EFFECTS OF THE USE AND CONSERVATION OF ENERGY

Background information:

The proposed Project will involve the phased construction of the SMI Valley Infill in accordance with the engineering design. As such, energy consumption in the form of fuel use will be required for baseliner preparation and construction of the expanded landfill areas. However, on an annual basis, no significant increase in fuel use or energy consumption is anticipated to occur as a result of the Project. Although similar equipment used to carry out the construction, operations and maintenance activities at the SMI Valley Infill, an increase of approximately 15 years in the duration of operational energy (i.e., fuel and electricity) consumption will occur.

There will be no increase in the waste acceptance rate at the SMI Valley Infill. Therefore, there will be no increase in the number of vehicles traveling to and from the facility or in the number or type landfill equipment at the working face to deposit, compact and cover the waste.

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The DEIS will discuss the ramifications on fuel use if the Project were not developed and waste haulers were required to travel longer distances to remaining available solid waste disposal sites.

In addition, Seneca Meadows will continue to utilize landfill gas as a source of renewable energy including, but not limited to renewable natural gas (RNG, or High Btu)) and other technologies as they become available. While the preferred use of landfill gas is renewable energy, the flares will continue to be utilized for operational purposes as required (by air permit).

Furthermore, the High BTU plant has infrastructure in place to generate renewable natural gas by utilizing landfill gases produced from the waste being disposed at the landfill and sending it to the natural gas pipeline. This offsets some fuel consumed by consumers.

The DEIS will include the background information above and additional detail on the following:

- Anticipated short-term and long-term level of consumption
- Indirect effects on energy consumption
- Energy conservation measures
- CLCPA goals for energy

11.0 REFERENCES

The reference list will include the 2006 DEIS and subsequent DEIS documentation, the SMI Valley Infill Part 360/363 Permit Application Package, as well as all other applicable references.

12.0 TABLES AND FIGURES

13.0 APPENDICES

Appendices will include materials not suitable for insertion in the main body of the DSEIS, and shall include key SEQR documents, technical reports.

They are anticipated to include:

Appendix A – Current Part 360 Permit and SEQR Documentation

Appendix B – Part 360 Water Quality Parameters (including Part 375 Extended Parameters)

Appendix C – New York State Air Quality Monitoring Locations & Data (may be a part of the Title V application)

Appendix D – Emissions Inventory & Air Quality Monitoring Protocol (may be a part of the Title V application)

Appendix E – 2018 Annual Noise Survey and 2022 New Noise Assessment for Proposed Project

Appendix F – Seneca Meadows Visual Resource Assessment

Appendix G – FAA Determination Correspondence

Appendix H – Air Studies (Including: Community Air Screen Program in 2019 (report March 27, 2019); SMI Ambient Air Monitoring study and new air study and modelling for H2S.)

Appendix I - Correspondence from NYSOPRHP

Appendix J – CLCPA Analysis

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14.0 ENVIRONMENTAL REVIEWS NOT PROPOSED FOR INCLUSION IN THE DEIS

In accordance with 6NYCRR 617.8(f)(7), this section of the scoping document is reserved for those prominent issues that are raised during the public scoping and determined to be not relevant or not environmentally significant, or that have been adequately addresses in a prior environmental review.

There are no prominent issues that were raised during the public scoping that were determined to be not relevant or environmentally significant for purposes of this final scope and the DEIS. All relevant issues are being addressed in the DEIS.

TUESDAY, APRIL 30, 2019

2:29 P.M.

ACTING SPEAKER AUBRY: The House will come to order.

Imam Abjulkadir Elmi will say a prayer.

IMAM ABJULKADIR ELM: On behalf of all the religions that our State have, I am proud to open this Session, which is a Session that's one of those that our legislators do every day. Sessions that they come up with ideas and strive to make the lives of all New Yorkers better every day. Sessions and legislations that they make and New York to be the best in the nation in so many aspects. I'm proud also to be a New Yorker whom my legislatives are enrolled with always in making this State great. People call it the "Big Apple." I call it the "Great Apple." Why I call it the Great Apple is because this State is leading in diversity, leading in progress, leading in

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improving the lives of its residents. People do good deeds, and we know good deeds are rewarding. Nothing is more rewarding than discussing and debating matters that improve the lives of so many millions of our State. Indeed, not only improving, but preserving the good things that New York has. To discuss and debate matters of that magnitude are, to me, one of the most rewarding that anybody can involved in. We really appreciate and applaud you, the everyday matters that you discuss which affects us. And I would say keep on the good things that you are doing. May God Almighty prosper and be on your side in working for us.

Thank you very much.

ACTING SPEAKER AUBRY: Amen.

(Applause)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Monday, April 29th.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move to dispense with the further reading of the Journal of Monday, April 29th, and that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

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Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. This is the opportunity where I like to share with the guests in our Chambers, our colleagues, staff and all, a quote that is by Robert Louis Stevenson. Mr. Stevenson, as most of you know, was a Scottish essayist, a poetrist, and an author of fiction and travel books. His quote today, Mr. Speaker, is, "Don't judge each day by the harvest you reap, but by the seeds you plant." Again, that one is from Mr. Robert Louis Stevenson.

Mr. Speaker, members do have on their desk a main Calendar, and after any introductions and/or housekeeping, we will have a brief Majority conference, and following that Majority conference, we will consent new bills on the main Calendar, beginning with No. 195 on page 17. Our principal work for today, however, Mr. Speaker, will be our Earth Day package as we celebrate this great earth that was left to us by the Creator.

In addition, we will be calling the following committees off the floor: Ways and Means, Housing and Racing and Wagering. And for Majority members, there will be a need for an additional Majority conference after Session today.

Well, with that, Mr. Speaker, we'll certainly adhere to the needs of our colleagues on the other side. And that's a general outline. So, are there any introductions and housekeeping that we should take up?

ACTING SPEAKER AUBRY: No housekeeping,

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but introductions.

Ms. Fahy for the purposes of an introduction.

MS. FAHY: Thank you, Mr. Speaker, for allowing me to interrupt the proceedings for an introduction today. And I want to start -- I have a number of imams that are here, but I want to commend Imam Abjulkadir Elmi of Masjid As-Salam, the House of Peace here in Albany who did our welcoming, our opening prayer. And I also want to say while I introduce a number of others who are present with us that prior to the opening of Session today, we had a -- a beautiful luncheon in the Well of the Legislative Office Building. And I'm extraordinarily proud to have helped with a number of my colleagues. This is the second time we have done a luncheon of this type to kick off the holy month of Ramadan. And in so many ways, this year more than others, I think it was a well-timed one because we have seen so many attacks, horrific attacks in the last few weeks, and as recently again as Saturday night, on our -- Saturday morning on our faith-based community. And it is a -- with the kickoff of Ramadan, the holy month of Ramadan, it is a good reminder that we all need to remember and embrace our faith-based community and remind ourselves of our common spirituality.

And with that, I have a number of others. I am doing this -- I am doing this welcoming on behalf of a number of members in the Capital Region, along with a number of members who joined us at the luncheon this morning. In the Capital Region it's myself, John McDonald, Angelo Santabarbara, Phil Steck, Carrie Woerner. The

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Speaker, Carl Heastie, also joined us this morning at the luncheon, along with a number of colleagues including Michael Blake, Catalina Cruz, Assemblymember Charles Fall, Felix Ortiz and Nader Sayegh and -- and Assemblyman Epstein as well.

Joining us in the back are a number of imams. I don't have all the names, but Imam Jafer Sebkaoui Al-Hidaya of the Islamic Community Center in Latham, New York - please forgive me for my pronunciations - Imam Abdul-Rahman Yaki of the Islamic Center of the Capital District in Schenectady, New York; Imam Mohamed Rabie of Al Arqam of the Center of Saratoga, Waterford -- in Waterford, New York. The person that spent months coordinating these efforts with us is Alione Mbodj, as well as Ilham Almahamid and Taynor Nakee. Again, forgive me on the pronunciations.

But Speaker, it was the warmest of luncheons today, and if you would please welcome our guests and grant them the cordialities of the House. Thank you.

ACTING SPEAKER AUBRY: Certainly. First, Imam Elmi, we thank you so very much for coming and offering prayer. *As-Salaam Alaikum*. We wish you a good life and a happy Ramadan.

And to all our guests who are here on behalf of Ms. Fahy, Mr. [sic] Cruz, Mr. Fall, Mr. McDonald, Mr. Ortiz, Mr. Santabarbara, Mr. Steck, Ms. Woerner, Mr. Blake and Mr. Epstein, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor.

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This is the People's House. You are always welcome here. You grace us with your presence. Thank you so very much for being here.

(Applause)

For the purposes of an introduction, Ms. Lifton.

MS. LIFTON: Thank you, Mr. Speaker. It's my honor today to introduce the Lansing Varsity Boys Soccer Team. It's getting to be a regular thing here. They were here last year for an introduction when they won the State Class C Boys Soccer Championship, and here they are again with their second State title, 2008 [sic] Class C Boys Soccer Champions. They tell me they're not tired of winning yet, so maybe we'll see them back here for another win. Don't want to jinx it though, we won't jinx it. They clearly have some smart pols in the group, too, Mr. Speaker. They've brought a blue bow tie, our Sergeant-at-Arms is -- is wearing a new blue bow tie for the Lansing colors. They understand who controls this Chamber, who runs the Chamber --

(Laughter)

And so we see some pols in the making there. This year's record was 21-1, led by Coach Benjamin Parks. Twenty-eight players on the team, as you see, Mr. Speaker, a full bench or two or three. And if you please, Mr. Speaker, would give them a welcome and offer them the cordialities of the House, I would greatly appreciate it.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Lifton, the Speaker, all the members, Lansing Soccer Team,

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congratulations, well done. We extend to you the privileges of the floor, welcome you here to Albany as usual. Hope that you will appreciate our proceedings, but also that you are here on a day when you understand the true diversity of New York State in just the guests that have arrived to share with us as well as the members. And so, since soccer is an international sport, more than some of the traditional American sports, we welcome you here under that auspices, knowing that if you go on, you're going to compete against the world. Thank you so very much. You are welcome here.

(Applause)

Mr. Jones for purposes of an introduction.

MR. JONES: Thank you, Mr. Speaker. And I don't know if this group is sick of winning yet either, but I rise today to acknowledge and congratulate the Plattsburgh State Women's Hockey Team on winning the NCAA Division III National Championship. Led by --

(Applause)

Led by Coach Kevin Houle and Assistant Coach Danielle Blanchard, the Cardinals ended their season with a 29-2-0 record, tying their program record for most wins in a season. The Cardinals defeated Hamline University in a 4-0 victory in St. Paul, Minnesota to win Plattsburgh's fifth title in six years, and now hold the record with seven national championships in Division III women's hockey. Joining the team and coaches today are Athletic Director Mike Howard and Sports Information Director Brian Savard. On

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behalf of their dedicated fan base and the entire Plattsburgh region and New York State, I want to say how proud we are of these young women.

Mr. Speaker, would you please extend all the cordialities of the floor to the team, their coaches and their directors. Thank you.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Jones, the Speaker and all the members, congratulations, you have done it again. An extraordinary group of young women who have learned truly how to compete and how to be successful, a great lesson for life. To you and your coaches and your families, congratulations. You do the State of New York proud. Thank you. You are always welcome here.

(Applause)

Ms. Lupardo for the purposes of an introduction.

MS. LUPARDO: Yes, thank you very much, Mr. Speaker. Today is Student Press Day, and we have a group of students up in the Gallery who have been visiting with many of the members today from a variety of high schools across the State. We have representatives from Corning-Painted Post; Curtis High School, my alma mater, on Staten Island; Francis Lewis High School in Queens; and Townsend Harris High School in Queens as well. They are joined by Mike Simons and Katina Paron. Katina is with Baruch College and the New York City High School Journalism Collaborative, and Mike is with Corning-Painted Post High School.

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These journalists are here to discuss with us the importance of encouraging and supporting student reporters, because journalism is so important in these -- these days when they are under attack. We are here to welcome them. They had an amazing experience interacting with our colleagues today, talking about their issues and concerns. And on behalf of Assemblyman Palmesano, the Staten Island contingent and -- and Ms. Rozic and others, we would wish you to offer them a welcome.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Lupardo, the Staten Island delegation, the Queens delegation, we welcome these budding journalists here to the New York State Assembly. We extend to you the privileges of the floor. We hope that your trip to Albany has been both instructive and beneficial to you. We have an annual vote to seat the -- the journalists that provide coverage of the New York State Assembly, and usually they get booed. However, we believe that you, a new generation, will change that to cheers. Thank you so very much. We're happy to have you.

(Applause)

Mr. Miller.

MR. M. MILLER: Thank you, Mr. Speaker. Today we are joined by members of the Sikh community of Richmond Hill. On April 9th I introduced a resolution recognizing Baisakhi, which marks the Sikh's New Year. It is one of the historically significant days of the year for Sikhs. Today -- they are here today to be

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recognized for their outstanding contributions to our community. Sikh-Americans make rich contributions to the social, cultural and economic vibrancy of the United States. The State of New York is greatly enriched by its large population of Sikh-Americans. The Legislative Body is proud to congratulate the Sikh community upon the occasion of celebrating the 550th birthday of Guru Nanak Dev, founder of Sikhism. Sikhs have been living in the United States for more than 100 years, and during the early 20th Century thousands of Sikh-Americans worked on farms, lumber mills, mines and on the Oregon, Pacific and Eastern railroads. Sikhism is the fifth-largest religion in the world today. There are more than 30 million Sikhs worldwide, and 500,000 Sikh-Americans, with the highest population in New York.

Today I would like to introduce, if I can, Karamjit Singh, Mukhtiar Singh Ghuman, Kuldeep Singh Dhillon, Gurdev Singh Kang, Sukhjinder Singh Nijjer, Gurmeet Singh from the Sikh Cultural Historical Society. They are joined by a priest from the Cultural Center, Bhai Bhupinder Singh. In addition, Sarbjit Singh Samota, Surinder Singh Cheema from the Guru Nanak Darbar in Albany. And also, Daler Singh.

On behalf of Assemblyman Weprin and myself and everyone from Queens, could you please extend the cordialities of the House, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Miller, Ms. Titus, Mr. Weprin, Ms. Hyndman, myself, the

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Speaker and all the members, we welcome you here to the New York State Assembly, extend to you the privileges of the floor, only to say Happy New Year, glad that you have come to share this day with us. Please know that you are always welcome here and always appreciated in the State of New York. Thank you so very much.

(Applause)

Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. I'm pleased to ask you to welcome the Board of Trustees of Environmental Advocates, the environmental conscience of New York State. This is that organization's 50th anniversary, and their Board of Trustees and certain key members of their staff are visiting with us today, Earth Day. How appropriate. This includes John Buttrick, the Chairman of the Board of Trustees; Carol Ash; Ernest Tollerson; Douglas Bateson; Peter Lehner; Michael Kink; Alexis Strongin; and the gentleman named Bob Sweeney, who is seated, appropriately, back on the floor here, who we miss very much, my predecessor. In fact, a number of the people associated with this great environmental organization are former distinguished officials in New York State, including, of course, Carol Ash, the former Commissioner of the New York State Office of Parks, Recreation and Historic Preservation, and their CEO Peter Iwanowicz, who was with the Attorney General's Office. It is wonderful to have them here today to be a part of our efforts to improve the quality of life and the quality of the environment on this Earth Day.

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I'd appreciate very much if you would welcome them and give them the privileges.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Englebright, the Speaker and all the members, we welcome this distinguished group of New Yorkers here to the New York State Assembly. We extend to you the privileges of the floor. Understand that this is the People's House. You are always welcome here. Many of you have deep relationships in this House. None more than Bob Sweeney. You are a former member, you are always welcome here, you are always family. It is so good to see you. It doesn't look like you've aged a minute since you left us.

(Laughter)

That hasn't happened to all of us, Bob. So, thank you again.

(Applause)

Mr. Palmesano for an introduction.

MR. PALMESANO: Yes, thank you, Mr. Speaker and my -- my colleagues. Up in the balcony to your left are some students from Watkins Glen High School and their teacher, Travis Durfee, if you guys would please rise. They are heavily engaged on policy and issues. They're involved in debate. We met with them earlier to ask very important questions about issues we're facing in this House that affect their future. They're -- they're very, very intelligent, smart, inquisitive, and each year they always make a trip up here to talk to us and come to see the interactions of the House.

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So, as you always do, if you could just please extend your warm and gracious greetings to the students of Watkins Glen High School, please. Thank you.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Palmesano, the Speaker and all the members, we welcome these students from Watkins Glen here to the New York State Assembly. We extend to you the privileges of the floor, hope that your time here has been beneficial, and be assured that we are always watching racing at Watkins Glen. You have already (inaudible) and I'm sure your government work will add to that and your interest in government adds to that. Thank you so very much.

(Applause)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could just take a brief Conference, Majority Conference, for about 10, 15 minutes. Thank you.

ACTING SPEAKER AUBRY: Majority Conference, Speaker's Conference Room. The House will stand at ease.

(Whereupon, the House stood at ease.)

* * * * *

ACTING SPEAKER AUBRY: The House will come to order.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, we have two additional introductions; first one by Mr. McDonald. I also have

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one by myself.

ACTING SPEAKER AUBRY: Certainly on behalf --
Mr. McDonald for the purposes of a [sic] introduction.

MR. MCDONALD: Thank you, Mr. Speaker. It's a pleasure to interrupt our proceedings today. We have guests here today from the Leukemia and Lymphoma Society, known as LLS. And they are here, of course, as you know, at -- as they are at the forefront of the fight to cure cancer. And Member Fahy and myself are pleased to welcome them to the Chamber. Today either survivors, family members and LLS board members are here to educate lawmakers about important treatments and breakthroughs in treating blood cancers, as well as support LLS provides to blood cancer patients in our community. What you should also know, Mr. Speaker, which is a welcome relief, is that they're not here to ask for anything, just to say hello and thank you.

So, I am very pleased to just mention their names, Maureen O'Brien-Thornton, who is the Executive Director; Mike Miller; Laura Dorado; Bill Teeter; Bill Keneally; my hometown favorites from Cohoes, Carolyn and Lucas Santoro; Tania and Rylyn Swierzewski; and Kiki and Davon Wagner. And I should also note for the record that Rylyn, who is the Student of the Year for LLS, is also the granddaughter of former Assemblyman from Rockland County, Robert Connor.

So, Mr. Speaker, if you could please welcome this fine group here to the Assembly, I would appreciate it.

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ACTING SPEAKER AUBRY: Certainly. On behalf Mr. McDonald, Ms. Fahy, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. This is the People's House and we commend you on the work that you're doing to help others who are in need. It is truly the best that we can do in life and you are doing that, and I hope you are going to be both successful in your endeavors, but also receive the joy it comes with helping other people. Thank you so very much. You are always welcome here. Thank you.

(Applause)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I'm interrupting the proceedings to ask you to welcome one of our previous members, Ms. Naomi Rivera, as you know is the daughter of our own Josè Rivera. Naomi served with us for four terms. Since she's left us, she's now a grandma. And so, if you could welcome her to the Chambers, Mr. Speaker, and provide her the cordialities of the floor, I would greatly appreciate it.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mrs. Peoples-Stokes, your father, missing in his chair, as usual, we -- he's hiding in the corner taking a picture. I know that man. Welcome, Naomi, you're a member, you will always be a member, you always have the privileges of the floor. Can't believe you're a grandma, but things happen, right. And so, you're doing well with it. Thank you so very much.

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(Applause)

MRS. PEOPLES-STOKES: Mr. Speaker, if you could please call the Housing Committee to the Speaker's Conference Room for a Housing Committee meeting.

ACTING SPEAKER AUBRY: Housing Committee, Speaker's Conference Room immediately.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: And then we will proceed to our Calendar, page 3, beginning with Assembly No. 317.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly Resolution No. 317, Mr. Hevesi. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 30, 2019, as Adverse Childhood Experiences Awareness Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 318, Mr. Thiele. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim June 8, 2019, as Dragonfly Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye. The resolution is adopted.

THE CLERK: Assembly Resolution No. 319, Ms. Buttenschon. Legislative Resolution memorializing Governor

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Andrew M. Cuomo to proclaim September 2019, as Brain Aneurism Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 320, Ms. Simotas. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 2019, as Arab-American Heritage Month in the State of New York.

ACTING SPEAKER AUBRY: Ms. Frontus.

MS. FRONTUS: Thank you, Mr. Speaker. As a co-sponsor of the resolution commemorating April as Arab-American Heritage Month, I am proud to stand today to say a few words about the important contribution of Arab-Americans to our great State of New York. As the Assemblymember for the 46th Assembly District, I am proud to represent a number of southern Brooklyn communities with a significant representation of Arab-Americans, such as Coney Island, Brighton Beach and Bay Ridge, in particular, which has one of the largest Arab populations in the United States. In New York City, Bay Ridge is home to the largest number of Americans who speak Arabic at home and is sometimes referred to as "Arab Central of New York", while others call it "Little Palestine".

With immigrants who have emigrated from Lebanon, Jordan, Palestine, Egypt, Somalia, Sudan, Algeria, Morocco, Iraq, Yemen and Syria, Bay Ridge is indeed an enclave of pan-Arab culture

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and identities, and boasts an array of civic groups and cultural institutions which are woven into the fabric of this very vibrant neighborhood. In Bay Ridge, we have the Arab-American Association of New York, a non-profit organization founded by prominent community members whose mission is to support and empower the Arab immigrant community by providing services to help them adjust to the United States and become active members of society, such as ESL courses, immigration, legal services, mental health services, advocacy and civic engagement. They're also heavily involved in fighting for social justice issues and host an annual solidarity march of peace for Dr. Martin Luther King's birthday.

We have also have the Yemeni-American Merchants Association, an organization working to help better the lives of Yemeni-Americans by providing trade and business deals between the Yemeni community and others, advocating on behalf of this immigrant group to empower them and educate the community through programs and workshops. We also have the Moroccan-American House Association, a community organization based on -- dedicated to help the Moroccan immigrants with any problems or concern. According to the President of this Association, whether it be the death of a person, someone who is sick or lost a job, the organization's mission is very clear. They want to coordinate with other communities in Brooklyn and have a better Moroccan community.

We have, in Bay Ridge, the Islamic Center of Bay

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Ridge, a neighborhood mosque serving between 600 and 700 worshipers during Friday prayers. The Islamic Center is so popular that it often fills to capacity during prayer service, leaving latecomers to pray outside on the sidewalk. The mosque also serves as a community center offering ESL classes, tutoring for students and even opening their doors for town hall meetings.

On the political front, the Arab community in Bay Ridge is on the move. We have Yalla Brooklyn, meaning "hurry up" or "let's go" in Arabic, a political group which was born in Bay Ridge which seeks to build the power of Arab and Muslim voters and expand the electorate in southern Brooklyn. They were particularly active in getting out the Arab vote for the November 2018 election. We also have the Arab Women's Voice, a new Women- and Minority-Owned political consulting firm founded by two Bay Ridge activists, and their mission is to help candidates who are committed to the Arab-American community connect with this previously taken-for-granted demographic of Arab voters.

Mr. Speaker, I could go on, but the point is that whether it's the small business owners on Coney Island who hail from Yemen or Syria, or the many activists and community leaders in Bay Ridge, the Arab-American immigrants across the 46th District are making great strides and leaving a legacy behind for the next generation. They are creating the institutions they need to respond to the needs of their community and looking out for one another, even as they experience discrimination and worry about the security of their

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families.

While most Arabs in the US are Christian, the majority of Arabs in my district are Muslim, which means that since 9-11, they have experienced racial profiling and discrimination in one form or another. Just days ago, a group of Yemeni-American bodega owners launched a boycott of the *New York Post* due to what they perceived to be consistently racist portrayals of Muslims by that newspaper. Today's recognition of Arab-American Heritage Month takes on special meaning, in light of the constant barrage of prejudice, racial profiling and blatant discrimination which Arab-Americans continue to face. I am proud to represent such a large concentration of Arab-Americans, and I'm happy to join my colleagues today in celebrating their rich culture and heritage. To all of my Arab-American friends and neighbors working hard to make the 46th Assembly District a better place, I want to say to all of you, *shukran*.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 321, Ms. McMahon. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 2019, as Esophageal Cancer Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; those opposed. The resolution is adopted.

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Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could now go to Calendar No. 61, it's on page 8 [sic], and following that, Mr. Speaker, we'll go to Calendar No. 180, which is on page 15.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A02501-A, Calendar No. 61, Englebright, Thiele, Colton, Galef, L. Rosenthal, Fahy, Abinanti, Otis, Pichardo, Gottfried, Glick, D'Urso, Fernandez, Weprin. An act to amend the Environmental Conservation Law, in relation to the reduction of mercury in mercury-added lamps.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: This is our first vote of today, Mr. Speaker. I know we've been here for a while and we've gotten a lot accomplished, but now it's time to accomplish the important work, take the vote. So, please, if you're in and around the Chamber, please cast your vote ASAP. Thank you.

ACTING SPEAKER AUBRY: First vote of the day, members. If you are in your chairs, please vote now. If you're in the sound of our voice, please come to the Chamber and cast your vote. Thank you.

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Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I understand that the Housing Committee has completed its work. If you could please call on Mr. Pretlow and the Racing and Wagering Committee to head to the Speaker's Conference Room.

ACTING SPEAKER AUBRY: Racing and Wagering, Speaker's Conference Room, Mr. Pretlow awaits. Thank you.

The Clerk will read.

THE CLERK: Assembly No. A01779, Calendar No. 180, Peoples-Stokes, L. Rosenthal, Colton, Otis, Galef, Mosley, Hunter, Gottfried, Thiele, De La Rosa, Williams, Weprin, Glick, D'Urso, Crespo, Fahy, Fernandez, Reyes. An act to amend the Environmental Conversation Law, in relation to high local environmental impact communities.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes, an explanation is requested.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The purpose of this legislation is to -- to have the Department of Environmental Conservation to put together a list that identifies where there are local environmental impact zones. And it will provide for these zones to be made -- zones that have negative

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impacts on people's lives to be made available publicly.

ACTING SPEAKER AUBRY: Mr. Ra.

MR. RA: Thank you, Mr. Speaker. Will the Majority Leader yield?

ACTING SPEAKER AUBRY: Will you yield, Mrs. Peoples-Stokes?

MRS. PEOPLES-STOKES: Of course I would.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. RA: Thank you. So, just a couple of questions on this. I know that we have passed this bill in the past, so one of the issues was that this bill many years ago had been vetoed by Governor Patterson. Is this bill identical to that bill and do we feel that any -- any of the concerns addressed in that veto message are taken care of at this point?

MRS. PEOPLES-STOKES: I -- if I can remember the veto message from 2010, Mr. Ra, I believe the former Governor was concerned that there would not be the availability of resources to add additional staff to keep track of these records. Quite honestly, I don't believe in 2010 that it called for the need to add additional staff, but I certainly don't believe that in 2019 it calls for additional staff. I think it calls for a higher level of technology, which I believe we have upgraded that equipment in the Department of Environmental Conservation more than once.

MR. RA: Sure. So --

MRS. PEOPLES-STOKES: So nothing has

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changed --

MR. RA: Okay.

MRS. PEOPLES-STOKES: -- in spite of the veto message.

MR. RA: So, just in terms of putting together this information, this -- this requires this list to be put together. Does it require or is it contemplated that what then would be done with this information other than making it publicly available? Would it, you know, direct the Department to -- to do anything further with the list in terms of remediating or making sure different types of, you know, environmentally sensitive types of activities don't take place in these areas?

MRS. PEOPLES-STOKES: No, I think it actually -- if, in fact, the Department already has access to this information, which in some cases I personally believe that it does, it should be alerting citizens that live in and around those environmental conditions as to the potential impact on their health. But it certainly could be used as a planning strategy to figure out where either development should go and/or where additional business should go, et cetera.

MR. RA: Okay. Thank you very much.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Ra.

MR. RA: Briefly on this, there have been some concerns raised, you know, certainly in terms of compiling the

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information, but -- but also in the impact it could have on some of these areas. You know, I think that the DEC has several programs and we do have some laws in place to try to make sure that when decisions are being made that impact the local community, that environmental impacts are considered and are -- and are mitigated and addressed, whether it's through our SEQR process, certainly the DEC has Policy 29, which, you know, is a general policy promoting environmental justice through -- through their permitting process and their programs and regulations. And there are other initiatives under -- underway and that have been taking place within the DEC, both from the direction of this Legislature and otherwise.

But also, there -- there's a concern and -- and I think there's been a few negative votes on this in the past with the concern that perhaps the more this information is -- is put out public that it could have a negative impact on those communities in terms of the values of -- of property, whether it be for the individual homeowner, whether it be for a business that might be seeking to locate themselves within a particular place that might be -- might be flagged as being, you know, a [sic] environmentally, you know, hazardous area. But -- but I do think that it's important that we work to address areas that -- that have been impacted by environmental concerns and, certainly, you know, the general policy of -- of trying to help those areas recover and flourish both for the, you know, property owners and homeowners there and our local businesses is a positive thing for our State.

So, thank you.

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ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mrs. Peoples-Stokes to explain her vote.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker, for the opportunity to explain my vote. I actually started my interest into the world of organizing and -- around both policy issues and politics around environmental issues. There was an attempt to put a medical waste incinerator literally on top of a residential community at a hospital that would burn all of the medical waste for the entire region's hospitals. My neighbors and I organized and we stopped that. And there are a number of other issues. There was a playground in the City of Buffalo that was built on top of a company that made arsenic products. People who worked in that playground and played in that playground ended up with cancer and died. There's also the issue of the GM plant that left the area, knew they left PCBs, gave the DEC resources to clean up, they never did a thing, never said a thing. People get sick from that. There's also the issue of an expressway that literally goes right through the middle of a residential community where the levels of asthma are high, children are sicker, adults are sicker, people die earlier.

The environment has an impact on the quality of people's life and the quality of the conditions in which they live. If the

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DE -- Department of Environmental Conservation is in place to serve the people, then I say it has to serve all of the people all of the time, not some of the people when it's convenient for business or convenient for folks to feel comfortable. We need to be trying to save all of the people and so I would ask my colleagues to join me in supporting this legislation once again and ask the DEC to do what they've been charged to do, take care of all of the people all of the time. This list will help us begin to move that process forward. And, Mr. Speaker, I thank you for the opportunity and vote in the affirmative.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could now go to page 15 take and take up Calendar No. 181, and page 16 [sic] and take up Calendar No. 183.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A02064, Calendar No. 181, Englebright, Gottfried, Santabarbara, Ortiz, Dinowitz, Colton, Lifton, Glick, Fahy, Abinanti, Otis, Jean-Pierre, Lavine, Mosley, Simon, Galef, Jaffee, Cook, Rivera, D'Urso, Hunter, Steck, Peoples-Stokes, Williams, Bichotte, Ramos, Weprin, Titus, Hyndman, Seawright, Lupardo, L. Rosenthal, Barron, Walker, Carroll, Barrett,

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De La Rosa, Cahill, Thiele, Reyes, Gunther, Davila, Epstein.

Concurrent Resolution of the Senate and Assembly proposing an amendment to Article I of the Constitution, in relation to the right to clean air and water and a healthful environment.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This proposed Constitutional amendment would enable the presence in our Constitution of what is clearly something that everyone should be aware is a right, the right to clean air, clean water and a healthful environment. This proposal is beautiful by its simplicity, not complicated, no curve balls, it is what it says: The right that every citizen of our great State should have to know that they can bring their families to our State and grow them in the context of a healthful environment.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright yields.

MR. GOODELL: Thank you, Mr. Englebright. And I certainly appreciate your desire that I think all of us share that we have clean air and water and a healthy environment. A lot of times we look at Constitutional amendments because either the Legislature

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doesn't have the authority or we need to change restrictions that may apply. Under the current Constitutional provision, are there any restrictions on the Legislature's ability to enact appropriate legislation to ensure clean air, clean water or a healthy environment?

MR. ENGLEBRIGHT: No.

MR. GOODELL: And, of course, we have the Department of Environmental Conservation, we provide substantial funding to them every year, we appropriate \$300 million on average every year to the Environmental Protection Fund. Is there any restrictions on the delegation of authority that we give them for them to do their work in protecting our air and our water?

MR. ENGLEBRIGHT: No.

MR. GOODELL: As you know, our New York State Constitution already includes provisions dealing specifically with the environment, I'm referencing Article 14. How is this different than the broad language contained in Article 14 of the Constitution that already exists?

MR. ENGLEBRIGHT: Well, it compliments and supplements the expectation. It does not in any way conflict with Article 14, but it does certainly add the additional assurance that is the very simple statement that every person shall have the right to clean air and water and a healthful environment. That clarification in these troubled times particularly is useful. It reinforces our mission to protect the people who sent us. It also reinforces the mission of the Department of Environmental Conservation. Within that context,

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placing this plain language expectation before our voters is in the Bill of Rights of the State is, I believe, a timely and useful thing to do.

MR. GOODELL: Well, as we've already discussed a little bit today, this Legislature has very broad power to enact laws to ensure clean air and water and a healthy environment. We've given our regulatory agencies a great deal of discretionary authority to pursue clean air and clean water through regulations. We have a number of statutory provisions, of course, we have enacted over the years, including SEQR and a number of others. But right now, it seems that the responsibility under our current State Constitution to develop appropriate laws and appropriate regulations starts with the Legislature. If we enact this as a Constitutional amendment, then it will be the courts, not the Legislature, that decide whether or not someone's individual right to clean air and clean water or a healthy environment is being violated. Why would we want to transfer authority from this Legislature and our environmental experts in the DEC and the Department of Health and elsewhere to the court system?

MR. ENGLEBRIGHT: Well, I appreciate your perspective, but I respectfully disagree that we will be transferring anything or losing anything. This is -- if you want to think of all of the environmental protections that each of the units of government, including ourselves, might be able to provide as the composition of a painting, this is the frame for that painting.

MR. GOODELL: I -- I don't have that painting on

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my wall yet, Mr. Englebright --

MR. ENGLEBRIGHT: I -- I wondered whether you had that painting in your mind, but I hope that you would give it some thought, because it certainly frames the expectation of our citizens that all parts of government, including the Legislature, including the Judiciary, including the agency, all are working in concert with one another for a composition that will result in better protection for their -- their families, for their communities, for the environment.

MR. GOODELL: Thank you for explaining that metaphor, right. And I appreciate that. Under the current framework that we have, if a business or industry is complying with all the regulatory requirements and all the statutory requirements, they know that they're operating lawfully and can continue to operate with their manufacturing or their employment operations or whatever. Does this Constitutional amendment create uncertainty with a business in the sense that somebody might claim that the regulations or the statutory provisions are not strict enough?

MR. ENGLEBRIGHT: No, I don't believe there is anything negative about this at all. It offers no uncertainty, but rather a more clear expectation for all of our citizens, all of our -- our legally operating businesses.

MR. GOODELL: Is there any --

MR. ENGLEBRIGHT: We have not seen anything in the six other states that have adopted a similar provision in their Constitution that would suggest that there's any negative effect upon

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business whatsoever.

MR. GOODELL: Well, actually, as you know there was a similar Constitutional provision in Pennsylvania, our neighboring state to the south, and there were a lot of problems with that implementation and a lot of court cases. Are you familiar with those court cases and how the Pennsylvania Supreme Court wrestled with those issues?

MR. ENGLEBRIGHT: Well, any new law will certainly have a period of time when it is going to be tested. We have not observed, however, that any of those tests have resulted in any dislocation of business productivity or the well-being of business or the environment.

MR. GOODELL: Is there any --

MR. ENGLEBRIGHT: They seem -- they seem to me to be both important. I'm -- I'm sure you would agree with that. This will not interrupt either business or the environment.

MR. GOODELL: Well, actually, as an attorney, I -- I am very uneasy because if our current regulations in our current statute provide a safe harbor, if you will, for business entities and employers throughout our State in having a reasonable comfort level that they won't be sued or brought into court, then this language would add nothing. If this language does add something, then that means that a business or an industry that's complying with all of our current statutory regulatory provisions could still be subjected to lawsuits from somebody claiming that even though they're complying in every

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respect, they are creating air or water that's not "clean". Is there anything in this language at all that gives a safe harbor for individuals or businesses from lawsuits or -- or being dragged into court if they're complying with all statutory and regulatory provisions?

MR. ENGLEBRIGHT: Today, any citizen can bring a lawsuit, as you know. I think you referred to this earlier, obliquely. There is nothing to prevent someone from bringing an action in court now. After this passes, that will still be the case.

MR. GOODELL: Well, actually --

MR. ENGLEBRIGHT: This doesn't give --

MR. GOODELL: -- I mean there's standing issues -- I mean under current law, there's standing issues that limit a person's access, there's statute of limitations, there's specific procedures under SEQR, for example, all of which --

MR. ENGLEBRIGHT: This doesn't --

MR. GOODELL: -- is denying --

MR. ENGLEBRIGHT: -- change any of that. All it does is reassure all participants within the context and, again, this is a context setting initiative, within the context of expectation that if you are a citizen of this State, that you have the right to know that you can grow your family and yourself and stay in our State and contribute to its destiny by knowing that the environment is expected to be healthful for you and your loved ones.

MR. GOODELL: Well, you started out your comments, and I appreciated the fact that you noted that this language

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is simplicity in its beauty, or beauty in its simplicity, right?

MR. ENGLEBRIGHT: It is.

MR. GOODELL: Which is unique in some respects from a lot of things that we do here. As you know, many of our environmental laws and regulations are extraordinarily voluminous and extraordinarily detailed.

MR. ENGLEBRIGHT: Yes.

MR. GOODELL: And, in fact, we just dealt with an amendment to the law that set very, very specific standards for mercury, as an example.

MR. ENGLEBRIGHT: Mm-hmm.

MR. GOODELL: The flip side of language that has no definition, if you will, or no detail is that it doesn't have any detail. So, this language says that everyone has an individual right to clean air and water. Does "clean" mean that the water that's supplied under the public water system doesn't have any additive -- any chemicals added to it?

MR. ENGLEBRIGHT: I'm glad you asked the question. Again --

MR. GOODELL: My question is, what's "clean"? Surely, we don't mean "distilled".

MR. ENGLEBRIGHT: I understand your question. I believe that the intent is very clear, that you should be able to consume water through your public water supply without any harm. That doesn't mean that the water is distilled. We know that some of

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the best tasting water is because there are parts of what you're tasting that is not H2O. If you drank distilled water, you would have no taste at all. That would be less than satisfying. Let's be clear: The real difference between distilled water and what is appropriate and desirable for a public water supply involves other chemicals, other substances. But they should not harm you. They should not do injury to your young children, to your wife or to your family in any way. That's what this means.

MR. GOODELL: So, it's your view that the word "clean" means not harmful?

ACTING SPEAKER AUBRY: One minute. We have --

MR. ENGLEBRIGHT: Clean --

ACTING SPEAKER AUBRY: We have a lot of background noise. Members are having problems hearing the debate. So if we will please end all the side conversations, the aisle conversations so that we can concentrate on the speakers.

Please proceed.

MR. ENGLEBRIGHT: "Clean" means healthful to human beings, healthful to our fellow creatures in the environment. "Healthful" means that it will do no harm to consume that water.

MR. GOODELL: Am I correct to assume that clean -- this Constitutional language for clean air and water could be violated by odors? Smell?

MR. ENGLEBRIGHT: Look, if you want to get to

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hypotheticals regarding your nose and my nose, I don't smell very well, maybe you do, I wouldn't measure --

MR. GOODELL: I don't smell badly.

(Laughter)

MR. ENGLEBRIGHT: I wouldn't -- I wouldn't measure based on smell in the first place as to whether or not a clean and healthful environment is something that we might both be looking at. I do know that if there was any injury to either yourself or your loved ones or myself, or my constituents, or my -- my family, that that would be outside of the bounds of expectation that should be part of the guarantee that you have as being a citizen of this great State.

MR. GOODELL: So, your thought is that if the odor were significant enough to affect property values, for example, or health, then it would be within the ambit of this language?

MR. ENGLEBRIGHT: You're asking me a very general question, my answer will be general. I believe that the words "a clean and healthful environment" is something that each of us would know when we experience it, unless we get sick afterwards. In which case we knew -- we would know that we had been exposed to something --

MR. GOODELL: Is that one of those things --

MR. ENGLEBRIGHT: -- in that environment.

MR. GOODELL: -- we would know and smell if we saw it or heard it or smelled it? Yeah.

If I can, what about things like dust?

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MR. ENGLEBRIGHT: A clean and healthful environment would include clean air. Knowledge that you can bring your children up without the risk of them being subjected to asthma, being subjected to excessive fumes from internal combustion engine exhaust --

MR. GOODELL: And would a health --

MR. ENGLEBRIGHT: -- being able to grow up in any part of our State and breathe deeply and know that you're not injuring your lungs.

MR. GOODELL: And would a healthfully -- healthful environment also include issues like food safety? GMOs, for example? Pesticide use on agricultural products? Or other food safety issues?

MR. ENGLEBRIGHT: I don't think there's any doubt that all of these are part and parcel of what it means to grow up in a healthful environment. If you able to buy fresh produce and the produce is without contamination in the way that nature intended it to be consumed, it will be healthful. If it is something that poisons you, that causes disease or convulsion, that is the opposite. We're looking for the former, not the latter to be the norm in this State.

MR. GOODELL: Thank you very much, Mr. Englebright, I know we're out of time. We may talk later. But thank you so much for your comments.

MR. ENGLEBRIGHT: My pleasure.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

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MRS. PEOPLES-STOKES: Mr. Speaker, if we could interrupt the debate for just a few minutes to ask you to call the Ways and Means Committee to the Speaker's Conference Room, Member Weinstein is awaiting.

ACTING SPEAKER AUBRY: Ways and Means, Speaker's Conference Room, Ms. Weinstein awaits.

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker. Will the sponsor yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright yields.

MR. MANKTELOW: Thank you Assemblyman, just a couple of quick questions. From an Ag side, we have a lot of general Ag practices that we do. Would agricultural practices be exempt from this?

MR. ENGLEBRIGHT: There is no specific provision addressing any of the activities of agriculture or business, or industry. They're not specifically addressed here. I will say to you that I grew up on a farm. I have great regard for people like, no doubt, your constituents, because I -- I have a large family still in the midwest in the -- in the farm belt of our nation that brought me up -- many of the values that I hold today are derivatives of having grown up in a -- in a farm family environment. So I -- I respect the concern that you bring.

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MR. MANKTELOW: Okay. So, as -- as a farmer myself, harvesting wheat, harvesting soy beans, it has to be dry, very dusty operation. Also in the springtime when the land gets dry, a lot of dust is being put into the air. So, those -- those types of practices would not be exempt?

MR. ENGLEBRIGHT: There are no specific exemptions or rules. It is a -- again, it is the role of the Legislature on a very small, granular level to try to make sure that activities such as industry or -- or commerce might carry out are not going to harm our citizens on a very situation by situation specific basis. The general frame of this composition, though, is that it is the right of every citizen of this State to grow and prosper in a clean and healthful general environment.

MR. MANKTELOW: And also from the agricultural side, we have the freedom -- the Right to Farm Act that gives us the opportunity to farm and a lot of that stuff is covered in there. I'm just very concerned that by putting this in here anybody, any citizen could say, *I'm being harmed by the dust, I'm being harmed by the smell*, anything like that. I just have grave concern for our industry, for our Ag industry.

MR. ENGLEBRIGHT: I -- I don't think you're wrong to raise the question. I think -- I do think, though, that it's important for you to know that you should sleep well tonight because this isn't going to change anything that isn't already on the books. If somebody is doing something truly egregious to their neighbors, causing harm,

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throwing dust into the air, carrying out inappropriate agricultural practices that allow drift onto their neighbors' property, that's already covered in law. This doesn't change anything in that regard. There are no new rights of inappropriate expectation that are built into this. Quite the opposite. It simply frames the overall environment of our State as being something that should be healthful to its residents.

MR. MANKTELOW: Okay. So, one other question. Is odor considered a clean air? Is that part of clean air?

MR. ENGLEBRIGHT: I didn't hear the question.

MR. MANKTELOW: I'm sorry. Is -- can we have odor -- odor in that clean air part of it?

MR. ENGLEBRIGHT: Is there order in it?

MR. MANKTELOW: Odor.

MR. ENGLEBRIGHT: Oh, odor. I'm sorry. Yes. That is -- if it's harmful, if it can cause a disease or cause someone to have biological harm to their person, yes, that would probably fall outside of the expectations of this initiative. We want odors -- we -- we -- that's why we have noses, basically, to enjoy and in some cases to be warned. So all of that is -- is normal. This bill doesn't cause anything to be abnormal.

MR. MANKTELOW: Okay. The -- the reason I ask is, up in our area in our district we have two very large landfills and we have a lot of -- we have the trash train, as it's called, coming through our district. And the smell's been an issue. The landfill smell is an issue.

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MR. ENGLEBRIGHT: Yeah.

MR. MANKTELOW: It never seems to stop. So, are those individuals that have those issues with the smell, are they going to have the opportunity to have that addressed through this change?

MR. ENGLEBRIGHT: They already have that right.

MR. MANKTELOW: Okay.

MR. ENGLEBRIGHT: And so, this does not alter their right, either proactively or in a regressive way. This does, however, and I'm glad you raised this particular example, it illustrates that municipalities also would have to really be more conscious and self-conscious and aware of the expectation of their citizens for municipal activities, such as a landfill, to make sure that that landfill is not intruding upon the -- what would, if this becomes law after being voted upon by the people of the State, be a new expectation. General, yes, but for many of our citizens, they would look at a landfill such as the one you described which is harming people in the community and they would say, *We have a right and our government is not living up to its obligation.*

MR. MANKTELOW: Okay. I thank you for your time and I have nothing else.

MR. ENGLEBRIGHT: My pleasure. Thank you for your questions.

ACTING SPEAKER PICHARDO: Mr. Daniel Stec.

MR. STEC: Thank you, Mr. Speaker.

On the bill.

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ACTING SPEAKER PICHARDO: On the bill, sir.

MR. STEC: All right. Thank you. Certainly, I even got fewer examples of a motherhood and apple pie kind of idea as this. I don't think there's anyone in this Chamber or anyone in the State that would argue that they don't want clean and healthful environment. And I've been listening to the debate and I appreciated the -- the back and forth between my colleagues as they -- they touched on some of these issues, but I -- as -- as -- as silly a notion would be that anyone would say they don't want a healthful or clean environment, I think it's equally as ridiculous to suggest that New York State does not already have ample, in fact, voluminous regulations, an army of people in the DEC and the Department of Health that are working to ensure that we have clean -- and the bill almost suggests that we've done nothing in these last 200 years. Whereas, I think there's lots of evidence that, in fact, we may in fact lead the nation in our efforts as a State to address our -- our healthful and clean issues with the environment.

So, the question that I -- I get to in this is, well, what are we trying to accomplish? What does this very simple, clean, short statement about clean and healthful mean? And certainly, at the end of the day, a lot of these issues are going to boil down to dollars and cents. If went to eliminate crime, we can do that. The flip side is we will live in a very expensive police state. If we want to eliminate fire hazards, that's it, we build everything out of asbestos and we have a fire truck on every street corner. Very expensive. And the asbestos

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part isn't very healthful. So, it's always a balancing act.

And what are we trying to get to? Certainly, though, if money becomes part of the solution here, part of the equation, part of the final analysis in what we're trying to accomplish, you have to -- you have to wonder what are we waiting for? We've got report after report that says that we need to make investment in tens of billions of dollars in water and wastewater infrastructure in the State that we're aware of already. So, if we want to put our money where our mouth is as a Legislature, instead of, you know, the high minded and -- and lofty words, and we can certainly at budget time be pushing to do more for water and wastewater and that -- but that's going to include a significant capital expenditure.

Now, one of the points that came out on debate was "clean and healthful". You know, I mean, it's one of those things, I know -- I know what it is when I see it, but as sure as God made little green apples, and there's 150 of us in here, there's going to be 150 different ideas of what clean is and what healthful is. And there's going to be people that are going to say that *Clean to me means pure. Clean to me means pristine. Clean means without contamination. Distilled.* Now, I think that's silly. I'm encouraged that the sponsor agrees that - I don't want to put words in his mouth, he didn't say "silly", but that is not his intent, I know his heart on this, that is not his intent. His intent I think is he's -- he's aiming for a good goal, but words matter and we are in the business of putting down what's going to be enacted as law. And one of the other concerns that came up on

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the debate that caught my attention is that we -- absent of words that define clean and healthful and given the litigious nature of our society, we -- one, we will expand standing to everyone in the -- the State has cause for action anywhere in the State, that is not currently the law, but they will -- they will be arguing over what clean and healthful is and we will be burdening ourselves, our businesses, and our sub municipalities, our counties, our towns, our cities and villages with more litigation exposure because they're the ones that are supposed to be delivering clean water. And the businesses are supposed to be delivering clean air.

Now one word that we didn't talk about the definition of is "environment". Many of my constituents would say that they think that they have -- they should have Constitutional guarantee of economically healthy environment. A tax climate healthy environment. A politically clean environment. So, there are other sides to this issue of what are we trying do that we have to factor in when we start talking about what we mean for our environment.

The last point that I'd like to make and I -- as I often do on these bills, the Business Council, the Farm Bureau, these are two significantly sized lots of -- tens of thousands of New Yorkers belong to them or are affected by them. The words that they use, their concern: "Uncertainty", "duplicative", "litigation", "unclear", "ambiguous", "negative impacts", "the potential for an increase in litigation and duplicative litigation as a result of this proposed provision may discourage economic development in the State." So,

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these are some of the concerns I have and I think it all goes back to the debate that I've heard so far, is the -- while there's -- there's something to be said about short and sweet and simple, that absent of firm definition of what exactly we are trying to accomplish, we are opening a very ill-defined, but potentially large and expensive, can of worms here.

So while I appreciate the sponsor's goals and intentions, again, I'll go back, I'll close with we all want something that's clean and healthful, we also want to know that we're not walking into or creating more problems by not doing it right the first time in this Chamber. So, for that reason, I would caution my colleagues and I'll be voting against this -- the resolution. Thank you.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: I appreciate all the comments from my colleagues. What's been clear in this debate, first of all, is that there's no need for this Constitutional amendment. This Legislature and our regulatory organizations have ample Constitutional authority to ensure that all reasonable steps are taken for clear air, clean water and a healthy environment. And the bills we're passing today are simply small examples of the Legislative history of this State dealing with those issues.

So, if we don't need it, is there a harm? Well, if this

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simple language does nothing more than what we've already done, then we don't need to pass it. But what we've been assured is it will do more than what we've done. What's that mean? That means if you're complying with every law and every regulation in your business you could still be sued. It means if you're doing farming operations and you create dust as part of the normal operation -- and, by the way, just a little tip from the countryside, don't buy a vacation house downstream from a manure field from a dairy farm. You'll find it's unpleasant during certain times of the year. We know that there are critical operations that are essential for New York State to be successful. Everyone appreciates that when we flush the toilet, things disappear, but they reappear at a sewer treatment plant, and no one wants to live next to it. We appreciate that the lights come on when turn on the switch, but nobody wants to live next to a power plant. And that's why we have Article X in the Public Service Law so that we can balance those competing needs and reach an appropriate solution.

This would no longer allow us to give any safe harbor, no safe harbor for any employer, no safe harbor for any manufacturer. Our municipalities would be at risk for a private lawsuit dealing with their sewer treatment plants or their landfills or putting salt on the roads or adding chloride or chlorine to the water system or whatever it is that some individual thinks is contrary to their concept of clean air, clean water or a healthy environment. Now, when I grew up, I had four brothers and it turned out from time to time

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that the five boys, my brothers and I, had a different concept of what was clean than my mother. It was a source of some minor friction. This would convert that differences in our concept of what's clean into a Constitutional right that will flood our courts.

Now, some of you, in fact, I would guess almost all of us here like the consent of green energy. But I will tell you in my county there's been a tremendous amount of controversy over the addition of windmills because of flicker, because of low frequency sound, because of the impact on migratory birds, including protected species. This legislation would give all of the neighbors the right to bring a private lawsuit claiming that their Constitutional rights to a clean and healthy environment are being adversely impacted.

New York leads the nation on environmental regulations. We lead the nation in taxes. We lead the nation on out-migration. The last thing we need to do is lead the nation on environmental uncertainty that pulls the rug out from all of our employers, all of your friends and neighbors and leaves us all wondering whether our neighbor has the same concept as we do when it comes to clean and healthy. So while I certainly appreciate the desire to have clean air and clean water and a healthy environment objectives I support, I believe that this Legislative Body and our environmental experts are the best ones capable of addressing those competing issues and making sure we have an appropriate balance. Thank you, Mr. Speaker. And again, thank you to my colleagues.

ACTING SPEAKER AUBRY: Read the last section.

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THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Hold on one minute. On a motion by Mr. Englebright, the Senate Bill is before the House. The Senate Bill is advanced. Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Epstein to explain his vote.

MR. EPSTEIN: Thank you, Mr. Speaker, I rise to explain my vote. I just want to thank the sponsor of this bill. The reality is that we know that our environment is slowly deteriorating and the issues of climate change have serious impact on all of us. Issues of clean water, air is such a fundamental right to have them folded in our Constitution will really take us forward. I want to encourage everyone to think about this as our future as generations come, what we leave behind, what does the air, the water and our environment look like. I encourage us to vote in favor of this bill and I'll be voting in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Mr. Epstein in the affirmative.

Mr. Englebright to explain his vote.

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MR. ENGLEBRIGHT: Thank you, Mr. Speaker. So, this is an historic moment, first passage of a Constitutional amendment that should be part of the basic citizenship of every citizen of this great State. As you can see, it has passed in the Senate. Our passage of it here today is just moments away. I think that this is an expression of optimism that is good news in a -- in a time when our State is assaulted by climate change, by storms that should come once in a century that arrive every three or four years, by the invasion of the southern pine beetle, by all of the ravages of change, people need to know and be assured that we, in the Legislature, are not going to be conceited to think that only we should manage the environment, but that, in fact, citizens have a participatory expectation and right.

I'm very pleased that we are about to pass this bill. This proposal is based on the premise that the right to clean air and a -- and clean water and a healthful environment is an elementary part of living in this great State. I am pleased to vote yes and recommend to my -- my colleagues that they also support this measure. Thank you, Mr. Speaker.

Mr. Englebright in the affirmative.

Mr. DiPietro.

MR. DIPIETRO: Thank you, Mr. Speaker, I rise to explain my vote. What this bill does, it says we failed. We failed here in the Assembly, we failed at the Governor's desk and we failed in every issue and DEC, EPA, because if we're saying now that we have to have the right to a healthful environment and clean air and clean

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water, then I would call on the Governor to immediately look at every institution, starting with the DEC and turn it upsidedown because they're not doing their job. The EPA is not doing their job. A number of issues and us in this Chamber are not doing our job because we're not protecting our citizens. So, if we have to pass this legislation when we already have every law on the book -- books for clean air, clean water, which we're all for, but it's just not going far enough, then we have all failed and it's time that this Chamber and get the Senate and get the Governor and start looking at every single institution that we have in New York State that provides for our safety and they should be turned upsidedown and find out what's wrong because we have to now tell our citizens that we're not doing our job, we have to pass this because there's a problem. So, I'll be voting in the negative. Thank you.

ACTING SPEAKER AUBRY: Mr. DiPietro in the negative.

Mr. Lavine.

MR. LAVINE: Thanks, Mr. Speaker. So, this has been a real good example of the difference in philosophies and political philosophies. Some who oppose this Constitutional amendment to guarantee our children and succeeding generations clean air and water delight in the fact that the United States Government is so now led by a radical climate change denier who believes that climate change is a hoax perpetrated by China. We are led by a nation in which we have successive EPA administrators

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whose careers have been spent attacking environmental protection. We are led by people who want to increase fossil fuel use, and view environmental regulations, as has been described here on the floor, as business impediments. We have been removed from the Paris Climate Accords and we follow an American -- America First Energy Plan that relies more on combustible fossil fuel -- fuels and repeals the Climate Action Plan. There will be more drilling in our national parks and offshore, and this same philosophy limits the EPA's mission of protecting air and quality.

I am not a follower of that political philosophy; in fact, quite the opposite. These are the words on which I would rely: *The Earth will not continue to offer its harvest except with faithful stewardship. We cannot say we love the land and then take steps to destroy it from use by future generations.* Those are words of Pope John Paul II.

I want to thank the sponsor of this and everyone else who fights to protect our land and the State of New York. And the State of New York must, again, have the responsibility of leading the way and by voting for this we will -- we will take that step. I am delighted to vote in the affirmative and appreciate the opportunity to speak on this subject. Thank you.

ACTING SPEAKER AUBRY: Mr. Lavine in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

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The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could go now to Calendar No. 183, it's on page 16 [sic], by Ms. Hunter.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A02286, Calendar No. 183, Hunter, Colton, Thiele, L. Rosenthal, Rozic, Quart, Lifton, Dinowitz, Lupardo, Zebrowski, Paulin, Gottfried, Mosley, Galef, Jean-Pierre, Ortiz, Steck, Abinanti, De La Rosa, Weprin, Carroll, Solages, Glick, Lavine, Seawright, Epstein, Peoples-Stokes, Rodriguez, D'Urso. An act to amend the Environmental Conservation Law, in relation to water saving performance standards.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect January 1st, 2022.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could now go to page 20 and take up Calendar No. 207 by Mr. Englebright, and Calendar No. 209 by Mr. Englebright, as well.

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ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A06296-A, Calendar No. 207, Englebright, Gottfried, Dinowitz, D'Urso, Fernandez, Carroll, Griffin, Quart, Colton, L. Rosenthal, Otis, Galef, Ortiz, Stern, Thiele, Jaffee, Romeo, Lifton, Reyes. An act to amend the Environmental Conservation Law, in relation to regulation of toxic chemicals in children's products.

ACTING SPEAKER AUBRY: Mr. Englebright, an explanation is requested, sir.

MR. ENGLEBRIGHT: Yes, thank you, Mr. Speaker. This measure would help to protect the children of our State in their formative years. Children are much more vulnerable to exposure of harmful chemicals than they are in their later years. So, between the time of birth and the age of 12, this bill would address harmful chemicals and products that are sold for use by children and require the Department of Environmental Conservation to prepare two lists; the first being to post a list of chemicals of concern; and secondly, a list of dangerous chemicals, chemicals more dangerous than just of concern. And this would be placed on its public website within 180 days passage. And they would also consult with the Department of Health, and periodically review such lists.

ACTING SPEAKER AUBRY: Mr. Goodell.

Oh. Mr. Stec.

MR. STEC: Thank you, Mr. Speaker. Would the sponsor yield, please?

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ACTING SPEAKER AUBRY: Would you yield, Mr. Englebright?

MR. ENGLEBRIGHT: I yield.

MR. STEC: All right. Thank you. Thank you, Mr. Speaker, thank you, Chairman. We've -- we've debated this bill in the past, and like many other bills, you know, I -- I've got some concerns as to New York State going it alone. Do you know -- I assume that there'll be a cost, right? There'll be more work for the Department of Environmental Conservation if they're going to start duplicating and replicating the level of efforts that the Federal government does in keeping us safe with chemical -- from chemicals. Do you have an idea of what that financial impact to the State's budget and the Department of Environmental Conservation may be?

MR. ENGLEBRIGHT: Manufacturers would be required to report as a fundamental expectation of this as law. They would pay for that. This would not be paid for by the taxpayers.

MR. STEC: So, this -- there will be no cost to the taxpayers to enforce, to collate and create a database and send people to verify and audit and -- and then bring to task anyone that's not following the law? There'll be no cost?

MR. ENGLEBRIGHT: There is no new costs imposed. Just like the drug take-back program, enforcement will result in fines being paid. There needs to be personnel within the agencies who do their normal jobs. But, do we have to create a whole new bureaucracy? No. And the reports are paid for by the industry.

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MR. STEC: All right. I could've sworn that in 2016 on debate, Mr. Goodell had asked you about the cost, and you had talked about that there's a -- a small fee. In fact, you were almost apologetic in mentioning it because it was admittedly pretty small that -- that producers would pay into this. But I don't recall a discussion that we didn't anticipate any cost to the taxpayers. Is there -- is this bill the same as it was in 2016?

MR. ENGLEBRIGHT: Your memory is quite excellent. We --

MR. STEC: Can I get a note -- can I get a note to that effect for my wife?

MR. ENGLEBRIGHT: Yes. I'd be happy to give you a hall pass, also.

MR. STEC: Thank you.

(Laughter)

MR. ENGLEBRIGHT: I'd be...

MR. STEC: Whoa.

(Laughter)

MR. ENGLEBRIGHT: All joking aside, your memory is excellent, and you do remember correctly. We have changed the bill, based in part upon the concerns you raised in that earlier debate. The new bill has been amended to more clearly conform to chemicals listed in other states and streamlined the list of dangerous chemicals. And we've also removed antimony and cobalt, modified the initial dangerous chemicals that are subject to the sales

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prohibition. And importantly to your specific concern, modified the fee structure to specify the fees must cover the reasonable costs of administration and enforcement by the DEC. Among other changes that are consistent with what I've just stated.

MR. STEC: So, thank you for that. All right. So, we aren't anticipating any additional cost to the taxpayer [sic]. Would it surprise you to learn that the Federal budget for chemical management is over \$200 million annually? I mean, I -- I would think if they're expending \$200 million to do this, would -- would that cost us more --

MR. ENGLEBRIGHT: I -- I would not be surprised to learn that at the Federal level that there is direct cost of management. That's not what this is.

MR. STEC: Right.

MR. ENGLEBRIGHT: This is informational and regulatory, but it is not a product management initiative, per se.

MR. STEC: And -- and again, just so that I'm crystal clear. So, you do not anticipate DEC requiring any additional funding or specifically staff to enforce, to track, to collate and organize all the -- I mean, there's -- there's tens of thousands of chemicals that --

MR. ENGLEBRIGHT: As you know, each year, my first question to the Commissioner is, do you need more staff?

MR. STEC: I love that question.

MR. ENGLEBRIGHT: And I -- I think you will recall that the Commissioner says he does not need any more staff. You and I both have spoken privately about whether that is a credible

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response --

MR. STEC: It's a job security --

MR. ENGLEBRIGHT: It is a job security response, no doubt.

MR. STEC: And I kid the Commissioner about that. But I understand the position we put him in when we ask him that question.

MR. ENGLEBRIGHT: But we -- we have found it very difficult to get any other response, no matter who the Commissioner is, and no matter who the Governor is. This just seems to be part of some sort of... of a question and answer... convention at this point, a conventional-type of response. I would like to see, as I suspect you on the need -- days also would like to see the agency made more robust and more capable --

MR. STEC: Well, we agree there.

MR. ENGLEBRIGHT: But when the Commissioner says no, I don't need any more help, we have in the past tried to put money in the budget to -- to give additional support to the possibility of people being hired. And what has happened is that we get laughed at by the Division of Budget, they just take the money and lay it aside, and we do not see the agency gain in -- in its number of positions or its effectiveness. It's a frustration that both you and I and many of the other members here experience, not just with this department, but in the -- the general dance that we call the budget.

MR. STEC: I know that the last time we debated this

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on the floor was 2016. But the bill, I believe, is approximately ten years old. It's --

MR. ENGLEBRIGHT: I believe it is, yes.

MR. STEC: Have -- have any of the Assembly one-House budgets included funding in the past to -- I mean, I won't ask you ten years ago, but the last -- this year's one-House budget -- or last year's one-House budget, did the Assembly try to set aside any funding to implement this?

MR. ENGLEBRIGHT: Well, I don't think that we have anticipated any costs, for the reason I stated a moment ago.

MR. STEC: Fair enough.

MR. ENGLEBRIGHT: But I would also note that the Governor had a version of this bill in his proposed Executive Budget. He did not associate any additional expenditures with that proposal that he had put into the budget.

MR. STEC: All right. Thank you. Thank you very much, Chairman.

MR. ENGLEBRIGHT: You're welcome.

MR. STEC: On the bill.

ACTING SPEAKER AUBRY: On the bill.

MR. STEC: Thank you, Chairman -- or thank you, Mr. Speaker. As I mentioned in previous debate a couple bills ago on the -- regarding the amendment similarly, there isn't a soul in New York State that doesn't want child products to be safe. The children that are in contact with things that their parents or adult care providers

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are giving them on a daily basis to keep them safe, sleep in, eat, play with, we -- we want those products to be safe. I mean, hopefully, that goes without saying. I don't think there's anyone in this Chamber, certainly, that would disagree with that. Flip side, however, it is, again, to suggest that New York State and the Federal government has been derelict in its duties -- I mean, the EPA and the Consumer Product Safety Commission, these are robust entities tasked with this, given the technical expertise, the staffing, the budget resources to chase us down and set us -- notwithstanding the argument that there's a lot of value in being consistent from coast to coast within our nation as to what products can use what chemicals where. I mean, can you imagine a manufacturer of a crib or a -- or a -- or a bottle or a toy that has to shut down and shift over because now we've got to make the -- the New York version of this product, and then we got to make the California because California's got to be one better than New York, so we've got to make the California version. And then who's going to pay for those changeovers, that cost? The consumers will pay for that. So, I hope we all agree that we want products to be safe and hopefully we all agree that we already have a pretty robust system in place for that.

With that said, New York does not have the -- a good reputation for business climate, for the cost of doing business, the certainty of doing business, knowing that the rules aren't going to change, the football isn't going to be yanked away, you know, like Lucy and -- and Charlie Brown right before -- and this is big dollars

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and this is tens of thousands of jobs. One of the biggest employment sectors in manufacturing in New York has been the chemical -- the chemical sector, and we went from fifth to eighth in the country. We are losing ground. We are losing share. We are not producing. Why? Is it because all of a sudden Americans aren't consuming these products? No. They're being -- companies are selecting to make them elsewhere. So, are we now encouraging manufacturers that might be in New York to say let's leave New York, let's go set up shop where there's less oversight and there's less hassle and less cost, and maybe also with that comes less safety. I'm concerned with our State's ability to enforce this at no cost to the taxpayer. I am concerned as to whether or not we will really achieve any added safety. I'm not aware of data that says that there is a chemical safety problem that's rampant in our country that the Federal government has ignored for decades and that New York is going to ride to the rescue and correct it all by itself. So, like I said, while I certainly appreciate the sponsors' and supporters' opinions on -- on the importance of child product safety, again, I think if there's an analysis done on this as to bang for the buck, is this -- get the job done? Does this make any children safer versus the cost of that? The analysis involved merely identifying a chemical versus what is the actual risk or hazard associated with the chemical being in that product. What happens to the product if we remove that chemical and all -- and substitute an alternate that isn't on a list somewhere? Maybe in some ways now that chem -- that product is less safe or much more expensive. So, again, for these reasons I

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think that there's a reason why this bill didn't get out of the Senate in the past. I suspect that that may change this year. But, with that said, those are my concerns, and I will be voting against this bill. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mr. Stec. And your prognostication is true.

On a motion by Mr. Englebright, the Senate bill is before the House. The Senate bill is advanced.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Englebright.

Other states have adopted similar language, the European Union has similar provisions under their REACH program, but many of those other programs have exceptions for de minimis amounts of chemical. Does this bill have an exception for de minimis amounts of a chemical?

MR. ENGLEBRIGHT: We're aware of the trace contaminant conundrum in terms of how to define boundaries and standards and -- and defying standards. We are not done with this issue simply by passing it here today. In days to come we are working

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on an amendment that will specifically address trace amounts of contaminants, and it will compliment this measure that we're about to vote on here today.

MR. GOODELL: And I appreciate that initiative and I think it's a valuable initiative to -- to pursue, excluding trace elements or de minimis amounts, as most of the other states, and certainly the European Union have already done.

Another question: Does this bill exclude components that are inaccessible? As you know, the outside of a toy is obviously very accessible, but many toys also have components within the toy that are inaccessible to a child. Does this exclude any chemicals that are inside the toy that are inaccessible to a consumer?

MR. ENGLEBRIGHT: It does not specifically address what you are asking about. But, then again, children are little geniuses sometimes -- often actually, and can unexpectedly defeat the safety mechanisms. For example, some toys in the past had magnets in them and were supposedly embedded in such a way that they were completely inaccessible. And after several children managed to extract the magnets and swallow them, and in some cases die from their ingenuity, it became clear that putting magnets in children's toys was not a great idea. Similarly, we do not have exclusions here because we believe that our children are ingenious and unpredictable. And so we caution thinking that we can outsmart them, and instead, anticipate that there is a need to be safe rather than sorry.

MR. GOODELL: Isn't there a TV show like that, *Are*

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You Smarter Than a... whatever child? But, getting back to this bill. Am I correct, though, that other State Legislatures have moved in this direction have excluded components?

MR. ENGLEBRIGHT: Some have. There are a number of states that have adopted similar - I'm glad you brought this up - have adopted similar laws. I would point out that those states are prospering. California comes to mind, has passed a similar law, has not suffered a collapse of its business activities.

MR. GOODELL: Did they have de minimis -- did they have --

MR. ENGLEBRIGHT: -- State of Washington, the State of Connecticut, Minnesota and Maine also have passed similar measures.

MR. GOODELL: But those -- those states did have broader list of exceptions, right? I meant, all those states had broader lists of exceptions. Correct?

MR. ENGLEBRIGHT: I am not a student of all of those other states' laws in great detail. I understand that they vary from state to state. I don't know that we have the ability to compare other states, but I am reminded from previous debates with yourself that it is not something that we wish to reference in our own State law here in New York. So, I'm learning and --

MR. GOODELL: And I appreciate that.

MR. ENGLEBRIGHT: -- sometimes I acknowledge you are a very good teacher.

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MR. GOODELL: I looked specifically for that in this legislation and appreciate that you've made some of those changes.

One other question I think -- and that is, there are, of course, a number of Federal statutory provisions that relate to this: The Lautenberg Chemical Safety for the 21st Century Act, the Toxic Substances Control Act, Consumer Product Safety Improvement Act, to list a few. Of course, our own DEC has broad statutory authority. Is it your position that neither the DEC nor the Federal government with their multiple statutory frameworks and the \$200 million budget are adequately protecting the children of this nation? And in particular, our children?

MR. ENGLEBRIGHT: Well, the first thing to note is that we are not preempted by the Federal government. The Federal government that we have currently seems to be trying to return to a time when there was less protection for the public. And it does fall to the states, in particularly to this great State as a leader in our nation to act to protect the people of New York, and by example, other states as well. The -- the measures that you mention in particular, please note that the Federal government under the TSCA, the Toxic Substances Control Act, did not ban any chemicals, not even asbestos. Asbestos, as I'm sure you know, is very harmful, has created a great deal of -- of harm in body products, such as talcum powder causing ovarian cancer. Having that in -- just give this example, in toys, is something that we certainly don't want our children chewing on or being exposed to the dust of -- if the -- if the asbestos is, for example, contained in an

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adhesive that is holding together some of the parts of a toy. So --

MR. GOODELL: But there are multiple Federal statutes. And so the fact that it might not have been precluded under the Toxic Substance [sic] Act doesn't mean it wasn't addressed in a Consumer Product Safety Act or in any of the other provisions. I mean, it's not lawful --

MR. ENGLEBRIGHT: We don't have any bans --

MR. GOODELL: -- to have asbestos --

MR. ENGLEBRIGHT: We don't have anything --

MR. GOODELL: -- viable asbestos toys --

MR. ENGLEBRIGHT: -- satisfactory. And I would also point out that when we're dealing with our children, if we are redundant, redundancy is good pedagogy. Redundancy is good public safety.

MR. GOODELL: Now, I note that there are some components of children's toys that are expressly excluded, and there's a whole category of potential children toys that are excluded from this legislation. For example, all the batteries, which are filled with toxic material, they're excluded. And all electronic consumer electronic products are excluded. All of which are probably the source of the largest amount of toxic materials in any children's toys. Why is it we exclude from coverage all the most obvious toxins that are readily available in batteries and consumer electronic products?

MR. ENGLEBRIGHT: Because no single measure can be complete and perfect. But the search for the perfect should not

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work against our efforts to produce the good. I believe that we can produce good law here today and return in the fine grain need as we go forward of amending this law and adding to it to cover those topics that it may, in its initial passage, not be able to include.

MR. GOODELL: Now, I appreciate very much your comment that there are amendments coming. Would you recommend we table this until those amendments are available?

MR. ENGLEBRIGHT: No, I would recommend that we proceed; that we pass this today, as the Senate has already done; that we then return to a conversation as to adequacy, which is the thrust of your concerns. And I -- I respect those concerns. And we'll continue to work on this going forward until we get it right in every way.

MR. GOODELL: Thank you so much, Mr. Englebright.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I certainly appreciate my colleague's comments. And we all, of course, want safe toys for our children, which is why children's toys are so extensively regulated on the Federal level and even on the State level. And I very much appreciate my colleague's comments that amendments are forthcoming to make this bill more reasonable by excluding de minimis quantities or trace quantities, which are very important to --

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to exclude, because they don't pose any harm. I would hope that future amendments also consider inaccessible parts so that our exclusions are similar in scope and quantity as all of our other states, so that we, once again, do not distinguish ourselves as having the most onerous regulations that other states have changed when they realized there was a problem with. We should follow their lead and -- and I look forward to those amendments. Although my normal instinct would be to make a motion to table, I don't want to slow us down from our rush to pass legislation that we anticipate we'll need to amend. I anticipate, with a little luck, I'll be supporting the amendments, but until it's amended, I will not be supporting this bill and urge my colleagues to vote against it. Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect March 1st, 2020.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Ortiz to explain his vote.

MR. ORTIZ: Thank you, Mr. Speaker, for allowing me to explain my vote. I would like to really congratulate the sponsor of this bill. This bill has been around for a while. It's about time that we protect our children and we give our children the opportunity to be safe and to buy toys and equipment that will be free from toxic

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chemical. I think they -- finally the day has come where we have a helping hand on the other side of the aisle in the Senate where they already have moved this bill forward. I know we will be waiting for an amendment, Mr. Speaker, but I would like to also thank the Speaker and all those who have managed to work, all those advocate that year after year have come to Albany to advocate on behalf of this particular piece of legislation which I have been managed to be part of it. So, today's a great day for the State of New York join other six states. So, I hope that we continue to do what is right on behalf of our children and to make sure that we continue to protect our children that anything that they touch, that anything go to their mouth is safe without toxics and chemical. Therefore, Mr. Speaker, I am withdrawing and I will be voting in the affirmative.

ACTING SPEAKER AUBRY: Mr. Ortiz in the affirmative.

Mr. Englebright.

MR. ENGLEBRIGHT: Mr. Speaker, rarely do we get an opportunity to take such a definitive step to protect the most precious asset of our State, our children. They are the future. They are our hope for everything in our lives and to have them exposed to poisons, substances, to harmful materials as they -- as they play is a sin. We have a measure before us that as Mr. Ortiz has already indicated, we have worked on as a Conference for many years. We're about to take the step because I see that it has passed in the Senate, the step to send this to the Governor's desk and thereby better protect the

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next generation and the future of our State. I very proudly vote yes.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A06600, Calendar No. 209, Englebright, Gottfried, Fahy, D'Urso, Ortiz, Simon, Zebrowski, Weprin, Glick, Lifton, Otis, Griffin, Epstein, Colton, L. Rosenthal. An act to amend the Environmental Conservation Law, in relation to designating certain species as vulnerable species and prohibiting the sale of articles made from such vulnerable species; and to require the Department of Environmental Conservation to designate the giraffe as a vulnerable species.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Would the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Englebright. I note that this bill sets up a New York State Vulnerable Species Provision that makes it illegal to sell or possess with the intent to sell of certain vulnerable species, correct, or components of them?

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MR. ENGLEBRIGHT: That is correct.

MR. GOODELL: And, of course, the components would all be whatever by-products or trophies or something made of the animal after it's no longer alive.

MR. ENGLEBRIGHT: Any parts of these species or the entire animal unit or plant unit would be covered.

MR. GOODELL: And this would apply even though the animal was killed in a different country?

MR. ENGLEBRIGHT: Yes.

MR. GOODELL: And even though it may be lawfully hunted in the other country?

MR. ENGLEBRIGHT: That is correct, but it --

MR. GOODELL: So New York State is saying that we don't care what the foreign country believes is appropriate, you can't hunt in that foreign country and bring it back if you have an intent to sell or possess --

MR. ENGLEBRIGHT: Our reach is only within our own State.

MR. GOODELL: Correct.

MR. ENGLEBRIGHT: It deals only with the -- the possession in this State of -- along with the intent to sell or trade on that item.

MR. GOODELL: Now, I note that there are certain exceptions for articles that involve protected species, correct?

MR. ENGLEBRIGHT: There are restrictions.

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MR. GOODELL: But there's also exceptions.

MR. ENGLEBRIGHT: There are exceptions. I would like, for example, to revisit this measure and explore the appropriateness in the future after doing some more consultation with experts in the field, but I believe that certain fish, certain shellfish and crustacea may warrant inclusion in the future. We're going to study that.

MR. GOODELL: One of the questions I had on the exception, you exclude, of course, antiques, but you define "antiques" as those that were created prior to 1919.

MR. ENGLEBRIGHT: Correct.

MR. GOODELL: A hundred years old. Most antiques don't come with a date stamp, so I'm not quite sure how we establish that, but -- but stepping aside from that technical issue for a minute, not all species have been in limited number throughout their history and, in fact, this specifically references a precipitous decline in the number of species over a ten-year period as one of the qualifying aspects, right, to be identified as a protected species?

MR. ENGLEBRIGHT: That's -- that's correct, but regarding --

MR. GOODELL: So my question is --

MR. ENGLEBRIGHT: -- the -- the question of antiquity, part of our reach in this bill is to include provenance --

MR. GOODELL: I'm --

MR. ENGLEBRIGHT: Provenance; site of

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origination, if you will. So, knowledge about where this originates gives us a handle on how old a particular artifact may be. Also, the measure specifically authorizes bona fide museums that are certified, not -- not sales outlets on the side of the street that call themselves "the Main Street Museum" or something, but, in fact, bona fide museum institutions.

MR. GOODELL: Now, I note that -- I guess my question before I leave the "exception". If a species was plentiful ten years ago and is now vulnerable because of a 30 percent drop in population, why should it be illegal to sell or possess with the intent to sell products from that species when that was -- that was created lawfully under both the laws of New York, the Federal laws, the home country laws, at a time when the species was plentiful. Shouldn't the exception kick in only when the species is no longer plentiful or when it's at risk of becoming vulnerable?

MR. ENGLEBRIGHT: We have as our model legislation now law that we passed relating to ivory. We don't want to wait until the particular species is so far depleted that it, in fact, is eligible to be listed as endangered. This is intended, in fact, to anticipate and notice patterns of population decline or excessive market interest in the parts and skins and horns and teeth of -- of these animals. We would note that worldwide, most major vertebrates have undergone between a 40 and 60 percent decline in their populations. In some cases, this is because they are being poached. Again, it's outside of the reach of New York State to be able to dictate to these

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other parts of the world how they should manage their wildlife populations, but in this State, we believe it is important not to accelerate the marketability of, for example, giraffe skins from giraffes that have been machine-gunned.

MR. GOODELL: Now, I note that we specifically exclude articles that are for a museum.

MR. ENGLEBRIGHT: I'm sorry?

MR. GOODELL: We exclude articles that are for museum.

MR. ENGLEBRIGHT: Yes.

MR. GOODELL: But we don't explicitly exclude zoos. Is there a reason why we list museums and not zoos?

MR. ENGLEBRIGHT: Well, zoos, that's covered under other law, trade and living organisms is not part of the -- of the reach of this bill. We do not try to dictate to the zoos and botanical gardens and aquaria of this State through this measure. I would point out, however, that the Environmental Protection Fund does fund the bona fide zoos, botanical gardens, aquaria and nature preserves of the State and this year we have \$16 million in the Budget for these great institutions, which I am so pleased to say are all around our State, our Upstate areas from the Watertown Zoo, to the Bronx Zoo. We have professionals and we are maintaining high levels of professionalism that set the standard for the world here in New York State.

So, I'm not as worried about the bona fide zoos, the botanical gardens and aquaria and nature preserves as I am about the

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trade of body parts that otherwise, for animals that are undergoing significant population depletion should be on the watch list and should be something that our Department of Environmental Conservation attends to.

MR. GOODELL: Thank you very much, Mr. Englebright.

MR. ENGLEBRIGHT: You're -- you're quite welcome.

MR. GOODELL: On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I appreciate the comments of my colleagues and the desire to reduce the trade in articles that are made from animals that are endangered or are suffering a substantial loss in population. I think it's a laudable goal and one -- a goal I certainly support. I would suggest, however, that the more appropriate response would be to have a bill that applies prospectively from the date we adopt it or from some designated date rather than apply it retroactively back a hundred years. And the problem is when you apply it retroactively back a hundred years, there are people within our State that may have valuable -- I mean, very, very valuable items that were articles that included species that are now endangered, but were not in any way endangered at the time the article was created.

And so, we certainly want to play a positive role in discouraging and cutting back on poaching or efforts to kill any

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endangered species going forward, but there are Constitutional issues on due process and taking of property when we are, in effect, passing a law retroactive that goes back a hundred years and says even though you have a valuable item that you acquired lawfully at a time when the species was not endangered, unless you did so a hundred years ago, which would make me even older than I am now, you cannot sell it in New York State. So, I -- I support the sponsor's desire as it relates to moving forward, but I think the law, for Constitutional reasons and otherwise, should be prospective and not retroactive going back an entire century.

Thank you so much, sir.

ACTING SPEAKER AUBRY: On a motion by Mr. Englebright, the Senate bill is before the House. The Senate bill is advanced.

Mr. Daniel Stec.

MR. STEC: Thank you, Mr. Speaker. Would the sponsor yield, please?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

MR. STEC: Thank you, Mr. Chairman. Cost to DEC to implement this; any idea? This is law enforcement. There's got to be a cost here somewhere.

MR. ENGLEBRIGHT: We don't anticipate any significant or even measurable new cost because the Department

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already regulates threatened and endangered species. So, vulnerable species, those in, if you will, in the run-up to becoming threatened or endangered, would just be a natural addendum to lists that are already maintained.

MR. STEC: All right. Thank you. Now, again, I notice the Federal government has, for decades, done a good job enforcing endangered species and threatened species list, management, laws. New York State has found additional wisdom and we're going to go an extra step and now we are going to take it on ourselves to empower the DEC and create a new list, a vulnerable list?

MR. ENGLEBRIGHT: Well, actually, I respectfully decline to accept that the Federal government has done a terrific job.

MR. STEC: All right.

MR. ENGLEBRIGHT: If they had done a terrific job, the great elephants of Earth would not have become as endangered as they are; it would not have necessitated this Body to act earlier to protect them. We don't want to see that same lack of Federal effectiveness visited upon other great species that grace our planet and so we are, in a manner similar to what has previously been done for elephants and ivory, we are putting forward this measure to hopefully prevent. This is a bill to prevent extinction and prevent the loss of these species.

MR. STEC: Do you disagree that this is duplication of efforts in many ways, that the Federal government is doing?

MR. ENGLEBRIGHT: No; no, not at all. This is

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something that I wish the Federal government had done. I wish all of the other states -- I wish we were last in taking this issue on, but the great Port of New York and the great border to the north of our -- of our State with the Nation of Canada are both vulnerable to trade in animal parts and plant segments that if we do not act to prevent them from being part of the market that New York is with our great population, we are likely to see many more species become actually listed as endangered and threatened. Once they are endangered, for many of these species the point of no return has been crossed. The thrust of this measure is to prevent us from being at the threshold of extinction.

MR. STEC: Would you agree, though, that, you know, certainly a population of 19 million versus a population of 320 million, that certainly efforts in this regard would have a -- move the needle more significantly if they were done at the Federal level as opposed to how -- how big an impact on the giraffe population is this law going to have only in New York?

MR. ENGLEBRIGHT: I believe that New York always is noticed when it does responsible law, that it is emulated, that it stimulates conversations within the law enforcement community that lead to a wider acceptance of their potential, very effective role in protecting wildlife. I believe that this is well beyond just symbolic. I know that we can't directly address China, I think that may be the nation you were referring to, but we can set a new expectation and new international standard simply because we are the

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Empire State. We are the great State of New York and we do set national standards and global expectations.

MR. STEC: The statistics in the memos and in the research on the giraffe is alarming. From 1985 to 2015, the giraffe population declined 36 to 40 percent; that is truly alarming. Is it fair to say that this is the -- the main thrust of the bill or the -- the first or the largest or most concerning species, and the follow-up question to that would be how many other species are likely to be on this list in its early stages?

MR. ENGLEBRIGHT: All of the major mammal species of Earth have undergone precipitous decline in the last decade. I only wish that we could say that this is going to be a short list. The giraffes are only emblematic, they only suggest the beginning of what we really need to -- to confront. But I can't tell you, because we -- we at this moment only really have a couple of international lists that we're working off of, they no doubt will be refined going forward.

MR. STEC: Now in the past years, I can think of two examples where this Chamber and I believe the entire Legislature considered and passed legislation specific to species, namely sharks and shark fin, and then ivory, elephant ivory as stand-alone pieces of legislation.

MR. ENGLEBRIGHT: Right.

MR. STEC: Now -- so I guess my question here would be, why would we, as a Legislature, want to empower the DEC to generate the list, whereas we've had no problems coming up with

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our own as needed. We identify, we control its destiny and -- because I'll forewarn you, my follow-up question is if we can't -- if we need an all-encompassing bill for these prospective lists that we might have, then why, in God's name, do every June we sit down and do dozens of fish bills? Why don't we let DEC handle those?

MR. ENGLEBRIGHT: You've asked several questions, let me first address the question of why are we putting forward a measure that empowers the Department to use best available information to protect numerous species. And the reason is because the crisis is so severe that if we, as a Legislature, tried to do that on a species-by-species basis, it would leave us no time for anything else. That's how serious this issue is.

MR. STEC: We could make that time up on these non-controversial annual fish bills that we --

MR. ENGLEBRIGHT: But the fish bills -- the second part of your question, the fish bills are direct species of our State within our territorial waters of New York State that we manage and we need to make sure that our management oversight is as complete as possible, because the fate of our fishing industries and many jobs and the well-being of many of our coastal communities depend upon our efficient oversight. So, our oversight function of species native to New York that are commercially, by definition, commercially fished, is very different from species that have no commercial purpose except for exploitation of their body parts. It's very different and they're not part of -- in many cases, not part of the

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natural ecosystem of New York.

MR. STEC: Well, I appreciate your answers. I don't have a big issue with this bill, but I wanted to make this point about the fish bills versus -- I respectfully don't share the same conclusion as you. I think that because the fish bills are noncontroversial, they don't get debate and they do clog up -- I mean, there are dozens of them every year, that I have no problem doing them as an omnibus; we do many other things like that around here, and that would still be us. I mean, you know, we could do those as an omnibus, it would be our control. I just -- it struck me the difference of our willingness to let DEC generate this other list by themselves in comparison to how we do the fish bills here. I thought it warranted making a remark on. I'm not losing sleep over it, but maybe it's something to consider. But, on the bill itself, I'm not -- I'm not overly concerned, I just wanted to ask those questions.

Thank you, Mr. Chairman. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

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MRS. PEOPLES-STOKES: Mr. Speaker, if we could now complete our work today on the Earth Day projects with Calendar No. 186, it actually is located on page 16.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A02477-B, Calendar No. 186, Englebright, Gottfried, Glick, Lifton, Peoples-Stokes, Jaffee, Thiele, D'Urso, Cahill, Galef, Lavine, Zebrowski, Steck, Seawright, Mosley, Simon, Rivera, Santabarbara, Pichardo, Otis, Fahy, Colton, Rozic, Weprin, Abinanti, L. Rosenthal, Simotas, Ortiz, Epstein, Reyes, Griffin, Carroll, Dinowitz. An act to amend the Environmental Conservation Law, in relation to prohibiting the use of chlorpyrifos; and providing for the repeal of such provisions upon expiration thereof.

ACTING SPEAKER AUBRY: On a motion by Mr. -- Mr. Englebright, the Senate bill is before the House. The Senate bill is advanced.

Mr. Goodell?

An explanation is requested, Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This is an initiative to remove a dangerous poisonous substance from the environment that is causing harm to children, to pollinators, to everyone who comes in contact with this chemical. The chemical is a derivative of -- it's called chlorpyrifos, it's a derivative of organic phosphate family of poisons which were originally developed to kill people in World War II. This chemical entered our environment in

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1965. There seems to be a strong correlation between its widespread use and the incidents of declining IQ's among children, and a dramatic drop in pollinators, which threaten our food supply.

ACTING SPEAKER AUBRY: Mr. Miller.

MR. B. MILLER: Will the Chairman yield?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Certainly. Mr. Miller, give us some base voice, there. Thank you.

MR. B. MILLER: Thank you, Mr. Englebright. I know we've had many discussions on this organal phosphate; I'm not going to try to say the chemical name, because I'll probably say it wrong 12 times, but, you know, I was a -- I was an applicator, I was an apple grower for many years and I understand this -- this pesticide very well, being -- using it. But, you know, I have a few questions here. Do we have an opinion from the DEC on the prohibition of -- of this use?

MR. ENGLEBRIGHT: To the best of my knowledge, no.

MR. B. MILLER: Is there any reason why the DEC hasn't stepped in and gave us an opinion on it?

MR. ENGLEBRIGHT: Well, you're asking me to speculate. I can only say with certainty that no standards have been set by the State, even though there is a clear scientific demonstration

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of a need to address this. It has been banned at the Federal level from use inside of homes, that goes back to 2000-2001 timeframe, and it was recommended to be banned by the last Administration in Washington. This current Administration has a long history, in fact, of efforts by advocates to bring this to a decision at the Federal level that would exclude it from contacting our children. There appears to be a lot of really good scientific basis for -- for that effort. We were disappointed when Secretary of -- Secretary Scott Pruitt declined to follow the advice of the scientists of the Environmental Protection Agency.

So, again, it falls to the states to protect its citizens when the Federal government fails. That redundancy in government is sometimes a source of frustration because of our levels of government being so numerous and expensive, I recognize that, but it is a failsafe; call it an insurance policy for the most fundamental part of being a citizen, which is to have good health.

MR. B. MILLER: Okay. With the -- with the prohibition -- prohibition of use indoors, we're talking about our children, our children being exposed to -- to this pesticide.

MR. ENGLEBRIGHT: Chlorpyrifos, yes.

MR. B. MILLER: Chlorpyrifos. The exposure would be by drift, correct?

MR. ENGLEBRIGHT: Exposure can be through any number of vectors. Drift, as you rightly point out, is a real problem in farm country within the State, but so is exposure through food. Most

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of the exposure to children, in fact, other than farm families, is through food. Scientists have essentially warned that this is also exceedingly dangerous. This is a neurotoxin. It basically affects the IQ of developing brains in young children, in particular. Even contact with food such as oranges that have been treated with chlorpyrifos, even if you take the skin off, sometimes the chlorpyrifos can be found in the meat of the orange. So, if you're a child and you're exposed to this, it has a devastating effect. We do not have any acceptable level that has been able to be identified for human consumption.

And in the environment itself, you may appreciate this as a member of the -- previous member, or perhaps current, of the agricultural community, that there's a precipitous drop in pollinators. One of the correlations that appears to be quite worrisome is the presence in the environment since 1965 of a widespread use - it's only that far back - and a correlating drop in European honey bee and other pollinators that our farm communities depend upon for pollinating the crops. I know that that's a contradiction because farmers are not unwise, but the use of this chemical appears to be unwise. I should also point out that in the farm communities of our State, there are many, almost 200 farms that are organic and the organic produce, that is to say unless they are next to a farm that causes drift to come over and contaminate their product, the organic farms are in high demand. And farmers from organic farms throughout the State support this ban.

MR. B. MILLER: Okay. We can talk about pollinators, the organic phosphate, chlorpyrifos, is used before bloom

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and in the apple industry, it's used with a horticultural oil before half inch green, okay. So, you know, the argument with harm of pollinators, the agricultural community doesn't -- doesn't want the extinction of pollinators, either. So, you know, we use this product per label used as directed. But there's usually a -- but I guess, how do you expect this bill to decrease the exposure of this pesticide? If this is -- is voted on and passed and banned here in New York State, there isn't any other state or country who ships produce or whatever to us. You know, this is used on soybeans, this is used on apples, this is used on just about any -- any produce out there, or any fruit. But if New York State bans this, the only other state that has a ban on this is Hawaii.

So, wouldn't we be putting our -- our agricultural community at a severe disadvantage? Because we're talking about a 2021 ban on -- on applying this -- this pesticide. And, you know, and the EPA is going to look at this again in 2022, on October -- October 1st.

MR. ENGLEBRIGHT: Well, they're required by law at the EPA to revisit this at that date. Certainly, Scott Pruitt should have acted differently. He had no scientific basis, none of the recommendations that came out of the scientific community or his own agency's scientists would have suggested that he should have acted the way he did. That notwithstanding, again, it falls to the states. Many of the states, you mentioned Hawaii, that have been watching this and not trusting the Federal government to do the right

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thing have acted independently already. Hawaii, as you mentioned --

MR. B. MILLER: Hawaii is the only state.

MR. ENGLEBRIGHT: -- has a huge pineapple industry and other tropical fruits, and California has severely restricted this. But many of the other states, including this one, have waited. We knew that the evidence was accumulating that should have led to a decision at the Federal level which would have applied to all of the states; that didn't happen for reasons that we can only speculate. They seem to be unwholesome reasons rather than wholesome ones, but we would have to have a separate debate about that.

MR. B. MILLER: Well, that's an opinion.

MR. ENGLEBRIGHT: What is clear is that it's time for New York to act, and we are trying to act in a responsible manner. Apple trees, for example, in the way that we have this crafted, would be able to -- they can't spray after 2021, they would have to apply to probably by brush to the trunks of the trees. That, however, is a measure that still is not satisfactory. We believe that this extraordinarily water soluble and toxic chemical will still find its way into produce.

So, this is a first step, an important step. What's at stake is really a choice between the health of our children, particularly the youngest among us, and the continued convenience of a -- of use of a chemical that is relatively new to the market, 1965 wasn't so long ago. So, we've had all of the benefits of apple production and other fruits and vegetable production for many years in this State for several

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centuries that did not rely upon the use of chlorpyrifos.

MR. B. MILLER: Well, it's not just an apple product. You know, we talk about how to apply this to the trunks of the trees. It's sprayed on and it's not just applied to the trunks of the trees, it's applied to the whole tree.

MR. ENGLEBRIGHT: It's not an aerial spraying.

MR. B. MILLER: It isn't? Well, it's not a --

MR. ENGLEBRIGHT: It shouldn't be.

MR. B. MILLER: Well, it's not a helicopter, it's an air blast sprayer pulled behind your tractor, so it is an aerial spray.

MR. ENGLEBRIGHT: Well, in which case I question what you inferred a moment ago, which was that there would be no damage to pollinators.

MR. B. MILLER: Well, if you --

MR. ENGLEBRIGHT: So, it was my understanding and thank you for giving me more information --

MR. B. MILLER: But it's not used --

MR. ENGLEBRIGHT: -- but it was my understanding that this would be very neatly applied by brush to the tree trunks. You're telling me that it's still a spray device and I know that that will affect pollinators.

MR. B. MILLER: Well, this is put on pre-bloom, okay, when we talk about bud development --

MR. ENGLEBRIGHT: Bees are active almost all year unless it's so cold that they can't get out of the hive.

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MR. B. MILLER: I was a beekeeper, I understand --

MR. ENGLEBRIGHT: My chief-of-staff is a
beekeeper.

MR. B. MILLER: Okay. But we can debate that all
day -- all day long.

MR. ENGLEBRIGHT: A bee colony is kept literally
across the street from my office --

MR. B. MILLER: Okay, but, this is applied before
the flowers come out on the tree.

MR. ENGLEBRIGHT: -- so I follow the reality that
the bees are necessary for farming, are necessary for agriculture, and
that they are having a population decline. This neurological poison is
weakening their defense against mites, weakening their defense
against other diseases and is the likely main culprit for the decline
nationwide of the pollinators that we depend upon for our food crops.

MR. B. MILLER: Okay. Well, if the honey industry
was absolutely sure that this was the decline of all the pollinators, I'm
sure that this -- this wouldn't even be a debate here if they could
pinpoint that.

MR. ENGLEBRIGHT: Most of the studies have
focused on children. It still shouldn't be a point of great debate.
When you're talking about children, you're talking about the future of
our State. Why should we subject our children when they eat food to
chlorpyrifos? That is absurd. There is no reason that this chemical
should be in our children. That shouldn't be a point of debate.

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MR. B. MILLER: When the pesticides are applied, there's a day of application to a day of harvest and then they start breaking down. Now, the test that we're looking at was the Columbia University test?

MR. ENGLEBRIGHT: Columbia University did a very detailed scientific study, yes.

MR. B. MILLER: No, that was used -- no, that was used -- the scientific study was used on insect --

MR. ENGLEBRIGHT: They indicated in that study that some of our children are exposed to up to --

MR. B. MILLER: -- on indoor applications?

ACTING SPEAKER AUBRY: Gentlemen, gentlemen, gentlemen; let us be civil.

MR. B. MILLER: Okay.

MR. ENGLEBRIGHT: I am trying to be civil, sir.

ACTING SPEAKER AUBRY: I understand, but we need to let a question and an answer, a question and an answer and not cross each other. Thank you.

MR. B. MILLER: So, whose turn is it, mine now?

MR. ENGLEBRIGHT: Well, I'd be happy to do that.

ACTING SPEAKER AUBRY: You've been back and forth so much, why don't you take it?

MR. B. MILLER: I'll start. So, the Columbia University study was done on inside application, correct?

MR. ENGLEBRIGHT: I believe so, yes.

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MR. B. MILLER: And it was done --

MR. ENGLEBRIGHT: Did it also go outside? It's hard to know. It was an examination of human health assessment for all food exposures, so that would not necessarily -- I believe it was mostly in an urban setting, though.

MR. B. MILLER: It was in an urban setting, it was in the Bronx and some other place down in the City. So, that didn't take in effect, you know, some of the arguments we're talking about here with -- with drift, with exposure to water. It was -- it was done on a specific test subject, test site, indoor applications for cockroaches, I don't know what it was -- what it was for. But, you know, all tests that I've seen is, you know, the EPA is not using the same test as -- as Columbia University did. They were using it on the metabolites, which is the breakdown of the pesticide and it found -- found that to be safe. And, of course, I -- we all want our children to be -- to be safe.

MR. ENGLEBRIGHT: I respect that you are, from your own experience, able to say that this is an effective chemical for reducing pests on crops. What I am equally sensitive to, though, is the fact that it is not a poison that is targeted, that if it is on the produce, then it goes to market and then it's in the bodies of our children. If given a choice between protecting --

ACTING SPEAKER AUBRY: Mr. Miller's time is up, by the way. You can finish your statement, but your time is up. You have another 15 available to you, but we do have other

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individuals.

MR. B. MILLER: On the bill.

ACTING SPEAKER AUBRY: No, sir. You'll have to come back.

MR. B. MILLER: Okay. I'll come back.

ACTING SPEAKER AUBRY: Mr. Manktelow.

MR. ENGLEBRIGHT: Okay. Hopefully we'll have a chance to finish.

MR. MANKTELOW: Thank you, Mr. Speaker. Will the sponsor yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright yields.

MR. MANKTELOW: This was debated last year and one of the questions I had -- (inaudible/mic off).

MR. ENGLEBRIGHT: One of the questions you had is what? Your mic doesn't work.

MR. MANKTELOW: I'm sorry. So, for the last 15 minutes we've been debating this bill. So, one of the questions I have is moving forward as an agricultural producer, making sure our agricultural producers have things to -- to use in this State. If this -- if this bill does pass, what's the plan of action for our -- for our producers at that point?

MR. ENGLEBRIGHT: What is the plan of action?

MR. MANKTELOW: Yes.

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MR. ENGLEBRIGHT: We would have a phaseout of the use of this chemical.

MR. MANKTELOW: And how long will that phaseout be?

MR. ENGLEBRIGHT: We would also, I anticipate, use alternatives. There are alternatives.

MR. MANKTELOW: What -- what are some of those alternatives?

MR. ENGLEBRIGHT: Whatever was in use prior to 1965 other than DDT. There are a number of rotational -- you can rotate crops. You can have a more efficient way of -- of managing the -- the crop production in a manner similar to what your organic farmers throughout the State are already doing. We have almost 200 such major farms. It depends upon how you plant, how you manage your crop and whether or not you use crop rotation and such techniques as planting later in the season and missing certain of the population explosions of the unwanted pests.

MR. MANKTELOW: Well -- well, in fruit production, a lot of our fruit growers, they put the tree in the ground and the tree's there for 15 to 20 years. You cannot rotate that crop through, whether it be stone fruit, apples. Once -- once that tree's in the ground, at a great expense, you've got to keep it there.

MR. ENGLEBRIGHT: Well, it's my understanding that there are alternatives, that those alternatives are well-known and in widespread use among organic farmers. So, I would urge you to

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speak with those who have successfully been able to use techniques such as rotating crops and making sure that -- that you do not kill off the natural predators of some of the -- of the target pests because this is an indiscriminate poison. It kills off both the predators and the prey.

I should also point out there was a study that I'm aware of in New York that found no difference in fruit damage between blocks -- squares, if you will, of orchards that were treated with reduced risk -- excuse me, reduced-risk pesticides and blocks treated with standard chlorpyrifos types of pesticides and organic phosphate-based poisons. The result in the blocks that were treated with chlorpyrifos, they had clean fruit between 93 and 96 percent of the time, and in the blocks that were treated with reduced-risk pesticides, they had clean fruit up to 96 percent of the time, as well. Not a very significant difference, and I can get you the reference for that, that's in Angelo et. al: Reduced Risk Pest Management Programs for Eastern U.S. Apple and Peach Orchards, a four-year regional project published in 2009.

MR. MANKTELOW: Do you know if those blocks were side-by-side trials?

MR. ENGLEBRIGHT: I -- I believe that they were separated only to prevent contamination. So, they weren't -- they weren't far apart.

MR. MANKTELOW: Okay. So -- so probably seeing a lot of trials over my many years --

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MR. ENGLEBRIGHT: You're speculating, I'm not going to confirm a speculation.

MR. MANKTELOW: I'm not speculating, sir. I've seen the trials firsthand, I've seen what happens. I'm definitely not speculating.

MR. ENGLEBRIGHT: So, you're -- you're suggesting that the clean fruit in the reduced pesticide areas was because of contamination; you're helping to make my point. This is a pretty insidious substance if you accept, and I do not, accept the premise that we're seeing drift or other contamination. I wouldn't expect that a published study would be so careless.

MR. MANKTELOW: Okay. So, you're talking about using new products, new different types of chemicals to take --

MR. ENGLEBRIGHT: Not really new, not necessarily, let me say --

MR. MANKTELOW: Okay.

MR. ENGLEBRIGHT: -- do they have to be new. This chemical has only been in the market since 1965. So, we've had apples for a long time. We've had apples, we've been competitive and, in fact, since 1965, we have a new demand for organic fruit and vegetables that is the cause of a development of whole new distribution and sales outlets. They're in my district --

MR. MANKTELOW: They're -- they're all over the place.

MR. ENGLEBRIGHT: -- where they specialize in

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selling organic fruits and vegetables and other wholesome, uncontaminated food.

MR. MANKTELOW: Okay. So -- so, we're not going to change the landscape of our agricultural producers overnight, but we're definitely not all going to go to organic, that's impossible. It can't be done.

MR. ENGLEBRIGHT: Well, you should -- you should ask the farmers who are, in fact --

MR. MANKTELOW: I have.

MR. ENGLEBRIGHT: -- doing that because they're succeeding, and I have --

MR. MANKTELOW: Absolutely, at a small scale, at a very small scale.

MR. ENGLEBRIGHT: It may be small scale, but we count approximately 188 such farms in the State and they're producing -- they're producing successfully for the market.

MR. MANKTELOW: Okay. So, talking to some of our producers, there are better products that are on the market coming through. One of the deterrents in New York State is they'll be -- they'll be passed outside of New York State and when they get to New York State, they've got to go through another range of checks and balances to make sure they're going to work in New York State. And some of the -- some of the manufactures of these chemicals will not bring them to New York State because it takes too long, too costly to do business in New York. What we're going to hurt are producers,

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and it's not just apples. It's our onions, it's our vegetables, our broccoli, our cauliflower; many different vegetables and fruits. And I'm just so concerned that once this product is gone, what are we going to do in the short-term?

MR. ENGLEBRIGHT: Well, your question parallels similar questions about the use of DDT. DDT has been banned in this country. It's still sold internationally, sadly, to devastating ecological effects, but great profitability to our US manufacturers.

MR. MANKTELOW: Do you think some of those products make their way into -- into New York?

MR. ENGLEBRIGHT: You know, I wouldn't be astonished, but I know that what we're discussing today is chlorpyrifos, which is used in this State. And so, rather than speculate about international trade patterns, all I can say is that your questioning about whether or not agriculture is going to be damaged in New York if, for example, we stop the use in New York of DDT or chlorpyrifos, the arguments that I'm hearing from you are similar. Nothing collapsed when we banned DDT in New York State.

MR. MANKTELOW: And all I'm trying to say to you, sir, is if we're going to ban this, we need to make it easier for our producers to get the products that are used outside of the State of New York throughout the United States, but cannot come into the State of New York because of the way we do business.

MR. ENGLEBRIGHT: That's a separate --

MR. MANKTELOW: I understand.

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MR. ENGLEBRIGHT: -- but relevant conversation --

MR. MANKTELOW: Yes.

MR. ENGLEBRIGHT: -- that I would welcome and that I would be happy to participate with you on. We're not trying to harm anyone, we are trying to prevent harm to our children and that is really the bottom line on this bill. Chlorpyrifos has been measured just from food exposure at 143 times the allowable level of -- of one part per billion. We don't even know that the one part per billion is safe. There seems to be no safe exposure at any level and the developmental problems, the neurological problems, the possibility that this is one of the causes of autism, all has yet to be finally determined. But we do know that there is a devastating impact upon young developing neurological systems of children less than seven years old.

MR. MANKTELOW: So is there anything that we're doing -- once -- once we're out of production or if people stop growing things because we cannot use this, and these fruits and vegetables are still going to be coming into New York State, what are we doing as New York State to stop those pieces of apples, of cabbage coming into the State? How are we going to check them? If we're going to hold our producers at such a high level and then our competitors outside of the State are allowed to do -- to use this product at a lower cost and then also allow to ship it into New York State, what are we going to do to help our producers?

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MR. ENGLEBRIGHT: I believe that New York continues to be a beacon of inspiration for consumers and for people who care about what happens to their children and the environment. I anticipate that the alternatives, as we've discussed, that have been tested in the -- in the apple groves of New York State don't really show a great difference in outcome at the end of the season when the crop is harvested. I point out again, this is a relatively new entry into the marketplace, only since 1965, and we've had apples in this State for centuries.

MR. MANKTELOW: I'm sorry. I can't hear half of what you're saying, it's just the background noise I can't --

MR. ENGLEBRIGHT: I would just point out that we are going to be able to implement this effectively. I don't think there's any cause for undue alarm. We've given a lead time of two years for implementation for apples, in particular.

MR. MANKTELOW: Well, according to the amendment that I'm looking at here, this is going to take effect -- some of it will take effect January 1st, 2020; that's just a few months away.

MR. ENGLEBRIGHT: For that section of the -- of the activities that this law would cover that involve spraying, that is true. But for other -- in particular, for apples, there is no final closure on this until December of 2021.

MR. MANKTELOW: January 1, 2021; that's correct.

MR. ENGLEBRIGHT: January in 2021 is the limit

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on apples, but the activity would be allowable through the end of that growing season until December of 2021.

MR. MANKTELOW: Okay. So, but on the rest of the crops that we're growing that we're using that, that's going to take effect 2020, correct?

MR. ENGLEBRIGHT: For spring, it would be earlier, yes.

MR. MANKTELOW: So how on Earth are we going to make this happen for our producers in a few short months?

MR. ENGLEBRIGHT: They would use alternate --

MR. MANKTELOW: Pardon me?

MR. ENGLEBRIGHT: They would have to use alternate techniques. There's no doubt that there would have to be some adjustment.

MR. MANKTELOW: How and what are those adjustments?

MR. ENGLEBRIGHT: I would -- I would point you toward those other states that we have discussed; Hawaii, California, both restricted aerial spraying. The first part of the implementation of this proposed new law is aerial spraying. It didn't collapse the agriculture in those other states, I don't anticipate that it will here, either.

MR. MANKTELOW: Well, that's not what I'm hearing from the producers.

MR. ENGLEBRIGHT: I'm sure that you are hearing

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from people who don't want any change in the convenience of using this neurological poison that has no -- no specific target capability. Widespread use has, in fact, been demonstrated to be harmful, harmful to our children. That is really kind of the bottom line here. Do you want to have our children neurologically damaged, to lose their IQ capability? That's what the Columbia study said.

MR. MANKTELOW: Okay.

MR. ENGLEBRIGHT: Severe damage to the cognitive functioning of -- of children.

MR. MANKTELOW: I don't disagree with that study or wherever that came from, but if we're so concerned about our young people, then we had better come up with a solution of stopping the fruits and vegetables coming into the State from throughout the rest of the United States because what's going to happen is some of our producers are going to go out of business. They cannot afford to do this in short-term time. And those products are going to be coming into New York State and without having a plan of action to take care of that and making sure that doesn't happen, we're only hurting our producers and allowing the people that we -- that we compete against outside the State to have a leg up on us.

Thank you. Thank you for your time.

MR. ENGLEBRIGHT: You're quite welcome.

ACTING SPEAKER AUBRY: Ms. Woerner.

MS. WOERNER: Thank you, Mr. Speaker.

On the bill.

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ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. WOERNER: There are good bugs and there are bad bugs. Good bugs are pollinators; bad bugs are the ones that come in every year from different places, typically on wooden pallets brought in from far flung places. New York, which is the leading producer of fruit and vegetable crops in the Eastern part of our country, our approach to managing bugs is an integrated one. We try to eliminate the bad bugs while allowing the good bugs to do the helpful work that they do. Chlorpyrifos has been a key part of the State's integrated pest management approach for four decades. It is heavily regulated by the State's Department of Environmental Conservation which limits where it can be used, how it can be used, how much can be used and when it can be used. For example, they don't allow you to apply it once the tree has flowered because that impacts the pollinators.

Cabbages, onions, cherries, peaches, sweet corn and apples are all important crops in New York. These farms depend upon chlorpyrifos to defend against bad bugs while not harming the good bugs. Because the chemical degrades quickly on the foliage, it does not impact the fruit or vegetable itself or the ultimate consumer of the fruit and vegetable. The same cannot be said of the three-chemical cocktail which is the alternative. Neonic, one of the three, is one of the leading causes of colony collapse in honey bees, for example. I'm really pleased to see that the bill has been amended to allow the apple farmers time to shift to an alternative, but there are

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other commodities that will be impacted right away: Cabbages, onions, cherries, peaches, sweet corn. And the alternative cocktail is problematic.

So, as I said, chlorpyrifos has been used for four decades. More than 4,000 studies and reports have been done to evaluate its safe use. It is authorized in nearly 100 countries. It is labeled for use on more than 50 agricultural crops.

New York State is one of only a handful of states that has its own regulatory agency to oversee environmental impacts. That agency is given the authority to approve or disapprove the use of chemicals in agricultural settings. So in this discussion, I find myself asking two questions. First, if you accept the premise that the chemical remains on the fruit, and the agricultural community is confident that it does not, and we pass the bill, then if New York's vegetable and fruit farmers are unsuccessful at fighting off bad bugs that destroy crops, and now your local grocery stores are sourcing its onions, its cabbages, its peaches, its cherries, its sweet corn from Pennsylvania, say, have we really done anything to make New Yorkers healthier? And then secondly, I ask myself - and I have to say, I take great pride in the diversity of backgrounds that sit in this room - but what is the point of having DEC if we, as legislators, and I don't believe there are any chemists or chemical engineers or environmental engineers in this room, if we're going to substitute our judgment for theirs, what is the point of having this agency to begin with.

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I'll be voting no on this bill and I would urge my colleagues to take a close look at all of the information about chlorpyrifos and vote with the agricultural community in opposition to this. Thank you.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: There have been a number of studies -- well, two in particular, that have identified a correlation between prenatal exposure to this chemical and adverse implications to a newborn. Both studies examine the impact of the exposure of this chemical, and the cohorts that they examined, the people that were examined were pregnant women in the late 90's who lived in northern Manhattan or the southern part of the Bronx. The study that's been referenced repeatedly here as a basis for banning this chemical, the Columbia study, did not examine women who were outside of Manhattan and the Bronx. And the study focused on women who were pregnant in 1998 and 1999.

Why is that relevant? Because in 2000, the US EPA and the State of New York banned this chemical from use for insect control inside. And prior to 2000, this was the most common chemical used to treat cockroaches, ants and other insect infestations inside. So when we're told that there's a correlation between the use of this chemical and serious impacts on developing children, that is

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exactly why this chemical has been banned for 18 years from use inside. Does that mean that we should therefore ban the use in the agricultural context, even though our own environmental scientists in the DEC, they say it's okay to use it in the agricultural context. And so does the US EPA. And as my colleague noted, so do a hundred other developed countries based on 4,000 studies that indicate if it's used outside in a limited manner in an agricultural context, it can be used safely.

My friends, over the last five years, just in the last five years, New York State has lost over 7 percent of its farms. In my county, it's gone from over 1,500 to less than 1,250. This chemical is not applied to the fruit. It's not applied to the vegetable. It's applied to the tree trunk. It's applied before the trees even blossom. It's applied to the vines that produce our grapes. These are trees that take years, if not decades, to mature before they can produce fruit.

Over the years, every few years this chemical is examined, the application rates are examined, the -- we've moved as a State toward integrated pest management. We lead the nation in that regard. So we should not take an urban study that was based on how it was used in the 1990's that has been banned for 18 years and use that study to justify hurting our farmers throughout our State by depriving them of one of the most effective, safe chemicals that is designed to protect their trees and their vines and their plants with no demonstrated adverse impact on any of us, recognizing if we put more of our farmers out of business, you and I and our children will still be

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consuming vegetables, won't we, and fruit, that have all been treated with the same chemical because it's approved in 49 other states, except for Hawaii, but it won't be produced in New York State anymore.

It's time to recognize that we need to honor and respect the scientists that we employ ourselves in the New York State DEC and reflect on the fact that maybe the scientists are employed by the EPA and the hundred other countries around this world know more about the toxicity of this chemical and how it can be applied safely than even 150 Assemblymembers, with all due respect to my colleagues who are all experts in this field.

Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 365th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

To explain her vote, Ms. Niou.

MS. NIOU: Thank you, Mr. Speaker, for allowing me to explain my vote. I want to thank the sponsor for this bill. My dad is a chemist and it's really -- it really sucked, actually, because I used to write a lot on my own arm and, you know, with pen ink, and so, he actually got the ink tested in the lab and he found out that there was all kinds of chemicals that were in it that were soaking into my

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skin. And your skin is your largest organ. I ended up, you know, never writing on myself again, but my -- my father's words still ring true to this day, and what he told me was, you know, when I was a kid, we used to play with mercury. And now we know that there's no level of mercury that is acceptable, and that exposure can actually harm.

CPS is actually an organic phosphate that actually is a pesticide that we all know used on crops, animals, buildings, et cetera, but it acts on the nervous system directly of insects and other things. And so that's why we know that it actually has harmful effects and that's why it actually kills insects. But it kills good and bad insects including bees and worms. And we all know, as we were brought up as kids, that bees and worms are farmers best friends.

And the other thing is that there are many alternatives. One of the most effective insecticides is actually a natural one. It's called Neem and it was an Indian plant that is far-reaching and very well-used and when we were organic farming on our school college farm, it was one of the most effective ways that bees and worms were not harmed while aphids and certain beetles were harmed and, you know, they are also -- it's more of a repellent. And so, it's actually very, very effective.

In the market, we also know that before we had a lot of different things that were being used, but, for example, California has moved to having a more organic farming method and actually has increased their farmers' market share, and it also has increased the

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way and changed the way that we eat and -- and -- and shop for vegetables and fruits, and I think that that is, in a way, that's going to be good for New York. So, I wanted to thank the sponsor and I wanted to put on these points. Thank you. And I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Niou in the affirmative.

Mr. Englebright to explain his vote.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. You know, the several studies that have been referenced here are worth repeating. One of them, in particular, has been referenced several times, which is the study by Columbia University. By all accounts, it was an objective, independent study. And the quote from that study is included in the support letter from the New York State United Teachers. They are the individuals in our society who, in many cases, have to try to overcome the negative effects of IQ loss and damage to our children. So, the concluding part of the NYSUT memo I think is worth adding to the record. *NYSUT feels that the years of testing and research that led to the ban of chlorpyrifos is sound. And we, therefore, support its continued ban under this bill as the safety of our citizens is of -- and children is of utmost support -- importance. And for the above reasons, New York State United Teachers strongly supports passage of this legislation.*

So, we're not acting in a vacuum at all. This is a choice between the health of our children and the convenience of the

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marketplace. I will always, in such a circumstance, come down on the safety of our children. I urge my colleagues to do the same. Thank you, Mr. Speaker. I vote yes.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, could you please call on Mr. Otis for an announcement?

ACTING SPEAKER AUBRY: Mr. Otis for the purpose of a [sic] announcement.

MR. OTIS: There will be a meeting of the Democratic Conference immediately following the conclusion of Session tonight. Thank you.

ACTING SPEAKER AUBRY: Democratic Conference following Session.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, do you have any further housekeeping or resolutions?

ACTING SPEAKER AUBRY: No housekeeping, but resolutions we will take up with one vote. On the resolutions, all those in favor signify by saying aye; opposed, no. The resolutions are adopted.

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(Whereupon, Assembly Resolution Nos. 322-324 and 326-329 were unanimously approved.)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: I now move that the Assembly stand adjourned until 10:30 a.m., Wednesday, May the 1st, tomorrow being a Session day.

ACTING SPEAKER AUBRY: The Assembly will stand adjourned.

(Whereupon, at 6:28 p.m., the Assembly stood adjourned until Wednesday, May 1st at 10:30 a.m., Wednesday being a Session day.)

TUESDAY, APRIL 24, 2018

2:26 P.M.

ACTING SPEAKER AUBRY: The House will come to order.

In the absence of clergy, let us pause for a moment of silence.

(Whereupon, a moment of silence was observed.)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Monday, April 23rd.

Mr. Morelle.

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MR. MORELLE: Thank you, Mr. Speaker. I move to dispense with the further reading of the Journal of Monday, April 23rd and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mr. Morelle.

MR. MORELLE: Yes, thank you, Mr. Speaker, colleagues. Before I give our schedule for the day, let me note that on this day in 1962, the word -- or the initials "M.I.T." became the first television image transmitted by communication satellite. The transmission was delivered from MIT, Massachusetts Institute of Technology's Lincoln Laboratory Station in Camp Parks, California to Millstone Hill in Westford, Massachusetts, 2,700 miles away. And if they can only see now the images that are flashed by satellite on television today. What a difference that would be.

And, "Did you know," under the heading of that, the oldest Santa Claus School is located in Albion, New York? Albion sits within the 139th Assembly District which belongs to the -- our dear colleague, Mr. Hawley, who is not here to hear this great introduction. The -- Charles Howard became well-known and sought after in his community for his ability to portray Santa Claus. He then opened a school, the Charles W. Howard Santa Claus School, in 1937 where people to this day can learn the methods and philosophies of portraying Kris Kringle. Howard became so well-known at being Santa that from 1948 to 1965, he could be seen as Jolly Old St. Nick

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in the Macy's Thanksgiving Day Parade in New York City.

So, this will be a jolly day, as well, I am certain, and let me give an outline of our work for the day. Members have on their desks a main Calendar, as well as a debate list. After introductions and housekeeping, and I note there are a number of introductions today - we're joined by people from all over the State - once we've done that we will continue our consent of the new bills on the Calendar, beginning with Calendar No. 744, which people will find on page 80 of the Calendar. We will also be taking up bills from the debate list, including our Earth Day Package, and we will be calling the following Committees off the floor, so if you're a member of any of these Committees, please pay special attention to the announcements from the desk for the call of these Committees: Aging, Consumer Affairs, Election Law, Labor and Tourism. Majority members should note that there will be the need for a Democratic Conference at the conclusion of our Session today and, as always, I will consult with my colleagues and friends on the Minority side throughout the day to see if they have any Conference needs.

So, with that, Mr. Speaker, any housekeeping you have would be appropriate to take up at this time, as well as introductions.

ACTING SPEAKER AUBRY: No housekeeping, Mr. Morelle, but we will go directly to introductions.

And for that purpose, Mr. Brindisi.

MR. BRINDISI: Thank you, Mr. Speaker. I rise

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today for purposes of an introduction, a very special introduction for me. And, as you know, Mr. Speaker this week, many school-aged children are on spring break and while many children get to go to Disney World or Myrtle Beach or some sun in the fun -- fun in the sun location, my children get to spend their spring break at the most exciting destination, Albany, New York.

(Applause)

So with me today in the Chamber, Mr. Speaker, are my children, Lily Brindisi and Anthony Brindisi. And we are joined by several guests in the rear of the Chamber: My lovely wife, Erica, is here with us today, as well as several of my children's friends. We're joined by Danielle Marino and her children, Anthony, Joey, Christopher and Isabella; Cindy Hudson and her daughter, Arianna; Janet Martinez and her children, Joshua and Ashley. Mr. Speaker, this is the best spring break they're ever going to have --

(Laughter)

-- so please give them a warm introduction, sir.

(Applause)

ACTING SPEAKER AUBRY: On behalf of your father, Assemblyman Brindisi, the Speaker and all the members, we welcome this quite distinguished group here to the floor of the Assembly. As family, you are always welcome here; you always have the privileges of the floor. You have brought quite a bit of sunshine yourselves to these Chambers. Thank you for coming. We hope you enjoy this time with us and with your dad. You certainly have made

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him happy, and that's always good for us. Thank you all so very much for being here, and to the Brindisi family.

(Applause)

Mr. Cusick for an introduction.

MR. CUSICK: Thank you. Thank you, Mr. Speaker.

Mr. Speaker, earlier this month this House passed a privileged resolution commending the New York State AOH and New York State LAOH in commending them for honoring the 1918 Freedom Mandate. The 1918 Freedom Mandate is in remembrance of the 1918 Democratic Election which ratified the April 24th, 2016 Easter proclamation and created the Free Irish Parliament that now exists. In 2016, Mr. Speaker, we had a resolution honoring the Easter Rising. Today, we want to recognize the -- the members of the AOH and the Ladies AOH for honoring the 1918 Freedom Mandate.

So, Mr. Speaker, I'd like to ask you to welcome the New York State President of the AOH, Mr. Victor Vogel.

(Applause)

The New York State Ladies AOH President,
Jacqueline Clute.

(Applause)

The New York State AOH Freedom for All Ireland
Committee Chairman, Mr. Martin Galvin.

(Applause)

The New York State Ladies AOH Freedom for All
Ireland Committee Chairwoman, Dolores Desch.

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(Applause)

Mr. Speaker, on behalf of the members of the American-Irish legislators here in the State Capitol, I'd like to ask you to welcome the members of the New York State AOH and Ladies AOH and offer them all the privileges of the House. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: And Ms. Nolan for a (sic) additional recognition.

MS. NOLAN: Thank you, Mr. Speaker, and my colleagues. I really appreciate everything that was just said about this wonderful organization, but it's a particularly happy day for me, first-time visit to Albany, my wonderful cousin, Bob Nolan, who is the President of the Bronx County AOH for the last five years, a member of our City's Health and Hospital Corporation and even after 30 years, he retired from the Bronx Borough President's Office, he's active, as I said, in Health and Hospitals, but also as the President of a senior center and he's just -- in addition to talking just as fast as I do, loves politics, loves his family and, yet, even with all that, it's his first-time visit to Albany. So please, colleagues, extend a warm welcome to him. I'm so happy he's here today, made my day.

(Applause)

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Cusick, Ms. Nolan, Mr. Dinowitz, Ms. Melissa Miller, Mr. Finch and all the Irish-American legislators, the Speaker and all the legislators, we welcome this extraordinary group here to the New

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York State Assembly. We extend to you the privileges of the floor. This is the People's House and your celebration of freedom in Ireland is a -- synonyms with the freedom that we enjoy here in the United States. We treasure it, as I'm sure you treasure yours. Thank you so much for being here and we're honored to have you. Thank you.

(Applause)

Mr. Santabarbara.

MR. SANTABARBARA: Thank you, Mr. Speaker.

Today, I'm very pleased to welcome the Varsity Boys Basketball Team from Mohonasen High School in my hometown of Rotterdam. This Mohonasen Warriors team excelled during the 2017-2018 season, with many players winning numerous awards for their dedication and perseverance. They began their season winning the Kirvin Cup. They also prevailed to become the 2018 New York State Public High School Athletic Association Section II, Class A Champions. The team captured the 2018 Regional Title before advancing to the State Final 4. Duncan Tallman was named Section 2 Class A Tournament MVP, and Avery Deas was named the all -- to the All Tournament Team.

In true Warrior spirit, they fought their way to victory while showing good sportsmanship throughout. These young men have made our community very proud not only for their achievements on the court, but also in the classroom. As student athletes, they have shown that teamwork and dedication are the keys to success. The team is led by Head Coach Joshua Peck and Assistant Coaches Tom --

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Tom Geddes, Graham Macbeth, Kyle Kauffman, Ray Kearney and Patrick Petty. Mr. Speaker, I'm so very pleased to have them in the Chamber joining us today to congratulate them and thank them for inspiring our community and future students at Mohonasen. If you would please welcome them to the Chamber and extend to them all the cordialities of the House.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Santabarbara, the Speaker and all the members, we welcome this extraordinary basketball team here to the New York State Assembly. We extend to you the privileges of the floor. We hope that your success in basketball is going to lead to greater success in your lives, whether you continue that effort in basketball into the college years or even beyond, remember that winning is something that becomes a part of our lives no matter how we engage in that. And so, we're proud of you. We're proud of your coaches and the families that have supported you. Please know that you're always welcome here and continue your good work in school. Thank you so very much.

(Applause)

Mr. Finch.

MR. FINCH: Mr. Speaker, for a purpose of an introduction. Many of -- colleagues, many of you have noticed some facsimiles of gravestones that have been in the Concourse on the way from our offices in the LOB to over here, and they represent many young adults who have died from heroin overdoses. And we have here with us this afternoon two gentlemen who lost their children to

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an overdose. One is Kevin Jones; his daughter, Jessica, a graduate of SUNY Cortland, summa cum laude, died of an overdose of heroin. Nick Campagnola also died of an overdose of heroin. One hundred and seventy two people die every day from heroin overdoses. Cayuga County, the county -- one of the counties I represent has had 40 deaths from heroin overdose. Seventy-nine thousand people live in our county, one of the small ones; we've had 40 deaths in the last two years. A real, true crisis.

So, we have Mr. Jones with us who founded a group call HEAL, it's Heroin Epidemic Action League, and it's spreading across the straight -- State. He's a great advocate, along with Mr. Campagnola for their -- for their children and for having their children represent something to do some good that came out of a terrible tragedy. So please welcome them. They're here today. Look at the pictures on those gravestones. They're all vibrant, healthy young adults. They're all deceased and there's many, many more every day that die from this terrible disease, and it is a disease. Mr. Speaker, the gentlemen are back there. Please give them every cordiality of the House.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Finch, the Speaker and all the members, we welcome you here to the New York State Assembly. We commend you on the work that you're doing to save other -- other's lives from this terrible epidemic. We hope that everything that is possible to be done will be done on your behalf and with you, and many of us are reminded of our own

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days as we face the challenges that you're facing now. Thank you so very much. Continue that work and know that you are always in our hearts. Thank you.

(Applause)

Ms. Woerner for an introduction.

MS. WOERNER: Thank you, Mr. Speaker, for allowing me to interrupt the proceedings for purposes of an introduction. I am joined today in the Chamber by two young women, Kiera Myer (phonetic) - stand up - and Mia Hayes (phonetic). Kiera and Mia are student leaders from the Maple Avenue Middle School in Saratoga Springs. They were instrumental in organizing their school's March 14th Walkout in response to the Parkland Shooting, and they are here today to get an inside view on how government works. At least one of them has an interest in government, and I'm certainly, after having spent a few hours with them, I'm hoping I'm ready to retire before they're ready to run.

(Laughter)

So, Mr. Speaker, if you will kindly afford them the cordialities of the House, it would be something much appreciated.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Woerner, the Speaker and all the members, we welcome these two activists here to the New York State Assembly. We extend to you the privileges of the floor, hoping that you will continue that activism in your lives and continue to work to make this society a better and safer place. Thank you so very much.

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(Applause)

Mr. Hawley for an introduction.

MR. HAWLEY: Thank you, Mr. Speaker. As a proud veteran and a member of the Veterans' Affairs Committee that is Chaired by the great Michael DenDekker who's not in the House, I see -- someplace he is. There he is, standing right there. It gives me great pleasure to announce that a great veterans' services officer from Western New York is here with us today. He's a veteran himself, of course, served in Afghanistan and was in the same Platoon as Senator Rob Ort. So, I'd like you to give all the cordialities of the floor to a great veteran and a veterans' services officer, as well, in Orleans County, Earl Schmidt. Thanks so much.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Hawley and Mr. DenDekker, who's in the corner, we welcome you here, sir, to the New York State Assembly. We extend to you the privileges of the floor. This is the People's House and we are so proud of the service that you have provided to our country and the service you are now providing to those who return to us from combat. Thank you so very much. Continue that great work.

(Applause)

Ms. Seawright.

MS. SEAWRIGHT: Thank you, Mr. Speaker, for allowing me to interrupt our proceedings for an introduction. It is my privilege to introduce the Reverend Dr. Katrina Foster who is an outdoor enthusiast and, more importantly, serves our communities.

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She was the Chair of the Lutheran HIV/AIDS Education and Prevention Task Force. In 2010, she served Incarnation in St. Michael's Lutheran Church on the East End of Long Island. Pastor Foster was also a member of the Bridgehampton Fire Department, serving as a member of the Fire Police and Department Chaplain. In 2015, Pastor Foster began serving St. John's Lutheran Church in Greenpoint, Brooklyn and essentially saved it from closing its doors. So, if you'd please extend the cordialities of the House to the Reverend Dr. Katrina Foster. Thank you.

ACTING SPEAKER AUBRY: Certainly. On behalf of -- on behalf of Ms. Seawright and Mr. Lentol, the Speaker and all the members, Pastor, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. We hope that you continue the great work that you're doing in New York City and you're particularly blessed because you're here on Ms. Seawright's birthday, so this has got to be an auspicious occasion for both of you. Thank you so very much, and welcome.

(Applause)

Ms. Jenne.

MS. JENNE: Thank you, Mr. Speaker. I rise for the purposes of an introduction, as well. Joining us here in the Gallery are two constituents of mine, Mary Hamilton and her grandson, Gabriel Rutherford. They are from Waddington, New York. They're standing. Gabriel will be participating in the National Speech and Debate Competition later on this year, a national competition, and he

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is choosing to spend part of his spring break watching us instead of being on a beach somewhere. So, clearly his priorities are in the right place. So, I just want to -- to ask you to extend all the cordialities of this House to Mr. Rutherford, as well as to his wonderful grandmother who is making sure that he can come here and engage in activities here at the Capitol. And he hopes also to be active in government and politics someday. So, I'm in the same position as my colleague, Ms. Woerner, on the other side of the Chamber, who have such wonderfully-talented young people in their area that hopefully we have moved on to greener pastures by the time they're able to run for office. So, thank you, Mr. Speaker for -- for making them welcome today.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Jenne, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to you the aerial privileges of the floor. We hope that you have enjoyed this day and will continue your interest in government, and I think next year maybe you can go to the southern shores and enjoy yourself. Thank you so very much for being here.

(Applause)

Mr. Santabarbara.

MR. SANTABARBARA: Thank you, Mr. Speaker. As we get ready to take up a resolution recognizing Organ and Tissue Donor Awareness Month and Donate Life Month, one of my constituents, Mr. Donald Whiting, is joining us, and he's a testament

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to how organ donation is truly the Gift of Life.

In June, 2015 Donald collapsed at the gym and was rushed to St. Peter's Hospital here in Albany where he had two heart attacks that left him in a coma. When he came out of the coma, Donald -- Donald was told that he was lucky to be alive, but he still had a -- a long way to go. His heart was so damaged that it wouldn't be able to pump blood on its own. Donald would need a heart transplant, and it was especially scary as a single father. After three weeks at St. Peter's, Donald was stable enough to be transferred to Boston where he received an LVAD, Left Ventricular Assist Device, to help his heart and keep him alive. He was told by two hospitals due to the LVAD that his blood -- and his blood type that he may have to wait up to five years for a new heart, if it ever came. Fortunately, a third hospital put Donald on their transplant list and he was able to secure a new heart after three months. Thanks to that brave donor, Donald could raise his ten-year-old daughter today and guide her into adulthood.

Mr. Speaker, he is here today and I ask that you welcome him to the Chamber and extend to him all the cordialities of the House.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Santabarbara, the Speaker and all the members, Donald, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. Thank you for, you know, being here, because that is not always a given, and I understand that as well as

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anybody. Thank you again so much, and we appreciate your effort and your time. Thank you.

(Applause)

Mr. Palmesano.

MR. PALMESANO: Yes, Mr. Speaker. Thank you for allowing me to interrupt the proceedings for the purpose of an introduction. Joining me in the back of the Chambers from my home district in Corning are two students and an advisor from the Corning-Painted Post High School: Mike Simons, he's the yearbook and media advisor; Mina Theramuti (phonetic) is a senior at Corning-Painted Post High School; and Lauren Thomas (phonetic) is a junior at Corning-Painted Post High School. Their yearbook is called the Tessarae Yearbook.

The reason they're here today is they're up here visiting the Capitol to advocate and educate on behalf of student journalists and student journalists' rights in this State. They've been doing a great job of -- of making myself aware. They met with my colleague and friend, Assemblywoman Lupardo, and just up here talking to people about an important issue to them that they brought to my attention a long time ago. These -- when you see young people like this that have such a passion, it makes me feel good about the future of our State; young people want to get involved and make a difference. So, if you could just welcome them for their journey here and extend the cordialities of the House.

ACTING SPEAKER AUBRY: Certainly. On behalf

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of Mr. Palmesano, the Speaker and all the members, we welcome you here to the New York State Assembly. We salute you both young journalists and your advisor, thank you for continuing your work in this area and advocating for other students who may be so interested in that important fourth estate that we protect in this country. Thank you so very much.

(Applause)

Mr. Thiele for an introduction.

MR. THIELE: Thank you, Mr. Speaker. I have a group from Long Island that is just entering the Chamber now. Actually, they are more than a group. They are individuals who really are the descendents of the first inhabitants of Long Island, members of Long Island's indigenous people. Members of the Long -- of the Montauk Indian Nation and they are here today to advocate -- you know, we're certainly not allowed to talk about issues and what they're advocating for, and I'm not going to do that today, but what makes this group unusual is they're here to advocate not on an issue, but about recognition about their -- of their very existence.

So, it is my pleasure to welcome them here today and I know that they've had a very fruitful day in the Capitol. We are joined by Sandy Brewster-Walker (phonetic), Roneyse Bun (phonetic), Vicky Lewis (phonetic), Mandy Miller-Jackson (phonetic), Denise Jackson-Shephard (phonetic), Albert Miller, Jr. (phonetic), Terry Cauldwell-O'Neil (phonetic) and Latent Delgardo (phonetic). And, finally, by an advisor of theirs who is not a member of the

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Montauk Indian Nation, but has been a great friend to the Montauk indigenous people on Long Island. He is also my former college history professor at South Hampton College at Long Island University, Professor John Strong. I wish that you would welcome them to the changer -- the Chamber and extend to them all the courtesies of the House.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Thiele, the Speaker and all the members, we welcome members of the Montauk Tribe here and your advisor. We extend to you the privileges of the floor. We hope that your time in Albany has been fruitful and we salute you, that you continue to defend and represent your own heritage. Thank you so very much.

(Applause)

And now, Mr. Morelle.

MR. MORELLE: Why thank you, sir. If we could go to page 3, the resolutions, and begin with Assembly Resolution No. 1035 by Mr. Thiele, and I understand each of the succeeding resolutions people wish to be heard on them.

ACTING SPEAKER AUBRY: Certainly.

The Clerk will read.

THE CLERK: Assembly Resolution No. 1035, Mr. Thiele. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim June 9, 2018 as Dragonfly Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all

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those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 1036, Mrs. Barrett. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim May 2018 as Lyme Disease Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: Mrs. Barrett on the resolution, but I would like a little quiet in the Chamber so that we may hear the speakers on the resolution. Staff in the back, folks. Shh.

Proceed, Mrs. Barrett.

MRS. BARRETT: Thank you, Mr. Speaker and thank you, colleagues. It's that time of year again, Lyme Disease Awareness Month. I would say that Lyme Disease is the first public health epidemic of climate change, plaguing hundreds of thousands of people each year in all of our districts. Because global average temperatures are rising, ticks are becoming active and dangerous weeks earlier and staying out later during their season, during the typical seasons and this has led many experts, particularly Rick Ostfeld from the Cary Institute who's doing the tick study to suggest that Lyme Disease Awareness Month should actually be moved to April, which is why we wanted to be sure and pass this resolution right now.

Since the 1990s, the number of Lyme Disease cases has doubled, and in that same period, the number of counties identified as high risk for Lyme has increased by more than 320

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percent. Habitat fragmentation, over-exploitation of resources and climate change are contributing factors to explosion in tick populations, and New York State is ranked third highest in the country for infection -- infection rates of Lyme Disease. My two counties, Columbia and Dutchess, have among the highest rates of Lyme and tick-borne diseases in the entire country and, as a result, almost everyone in our region knows someone whose been touched by one of these diseases.

And to understand how frustrating this can be, ticks and -- Lyme and tick-borne disease need to be receiving more attention because funding, for example, of Zika Virus is over \$1 billion, but Lyme Disease receives less than \$30 million, yet it's the largest of the vector-borne diseases. It's critically important for the public to be made aware through education campaigns and to recognize the environmental, as well as the medical implications of this. Our office and others in this Chamber have introduced bills to address this, and we will continue to fight to make sure that we champion progressive policies and ensure that New York State makes available the most current and the most progressive information available for access to education, diagnosis and treatment in this Lyme and tick-borne crisis. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Mrs. Barrett.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

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THE CLERK: Assembly Resolution No. 1037, Mr. Walter. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 2018 as Esophageal Cancer Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: Mr. Walter on the resolution.

MR. WALTER: Thank you, Mr. Speaker, for the opportunity to talk on this resolution. Four years ago I first sponsored this resolution at the request of a constituent, Mrs. Ruth Lipsitz. Her husband, Gregg, had recently been diagnosed with Esophageal Cancer and Ruth made it her mission to raise awareness of this terrible disease. Esophageal Cancer is curable if detected early enough. Sadly, Gregg's was not and he lost his battle this past September 26th, 2017. I ask that you keep the Lipsitz family, Ruth, their sons, Daniel, Joseph and Max and the entire Lipsitz family in your thoughts and prayers, and we hope that through the efforts like this resolution we can raise awareness of Esophageal Cancer and save lives through early detection. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir. On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 1038, Mr. Ortiz. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 2018 as Organ and Tissue Donor Awareness Month in the State of New York, in conjunction with the observance

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of National Donation -- Donate Life Month.

ACTING SPEAKER AUBRY: Mr. Ortiz on the resolution.

MR. ORTIZ: Thank you, Mr. Speaker, for allowing me to speak on this resolution. I would like to thank my colleague Assemblyman Phil Palmesano for the longer he'll be working with me on this particular issue. And also, I would like to mention the name of Richard (sic) Conte, former Assemblymember Richard (sic) Conte who happened to be my neighbor when I first came here to the New York State Assembly in 1995 on the fourth floor. When I first met Mr. Conte, Rest in Peace, I find out that we had something in common, not that we was Italian, but that we had somebody who needed a kidney transplant. And he was on the waiting list for a kidney transplant while my mother was also a recipient of a kidney transplant. My mother in 1993 received a kidney transplant from my sister, Nancy, and at that point in 1992, she received a second kidney transplant from my brother with the same name like me, Felix. At the same token, Mr. Speaker, this has been an issue that has been in my family for many, many, many years about tackling the issue of organ donation.

In 1970, my grandmother who happened to come from Puerto Rico to New York looking for -- also for a transplant because she -- her heart was in a very bad condition. So, she received what they called a metallic transplant, which was waiting to receive a transplant from someone who will be donated. Took about two years

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for her to get the first transplant back in 1972. So, currently, Mr. Speaker, we have so many people in (sic) the waiting list and I hope that as we bring awareness about this important issue that is -- that makes New York to be the last out of the 50 States on organ donation, and we have 10,000 people in (sic) the waiting list as we speak, and we have 10 people who die every day as a result that they cannot receive an organ donation. So, I am -- encourage my colleagues to continue to please put in their newsletter that it is important for people when they register to drive that they go to the DMV, that they will become organ donors; that when they register for voter registration, that they become to be organ donor. That we can open our office at least for one day to bring awareness about this important issue.

And I would say lastly that - and I say this every time that I speak on the floor - you know, I also have my own son who are (sic) on the waiting list now for seven years waiting for a heart transplant. His heart sometimes go up and down. He is not one of those candidates that they can put a defibrillator on it so -- so he has to hang in there very tight. So I do hope that every single one of us will be able to send a clear message to our constituents and to those people that we can recruit to be become organ donor. Therefore, Mr. Speaker, I will be voting in the affirmative on this resolution and I hope that my colleagues will do the same. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Palmesano.

MR. PALMESANO: Yes, thank you, Mr. Speaker.

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I, too, lend my voice to support this resolution. It's been a privilege to work with my friend and colleague, Mr. Ortiz, over the past several years to bring this resolution to the floor. You know, from -- and Mr. Ortiz mentioned this, you know, from 1992 to 2012 our former colleague, Jim Conte, used to introduce and lead this resolution on the floor. As Mr. Ortiz mentioned, Jim was a two-time kidney transplant recipient, a great human being and a staunch and tireless advocate when it came to the issue of promoting organ donation in our State. He sat right here in front of me where Mr. Goodell is sitting. You know, unfortunately, we lost Mr. Conte in October 2012, and although his passing left a hole in the heart of this Chamber, his memory still lives in this Chamber, especially when we talk about this very important issue.

And, you know, it's incumbent upon each and every one of us to carry on that mission and message because it literally saves lives and improves the quality of life of so many individuals. When Jim Conte used to speak about this issue, he used to speak about it with emotion, with passion and with facts. Let's just talk about some of the facts, the startling facts, the statistics that we have here in New York when we talk about organ donation.

Right now in New York, we have nearly 9,500 New Yorkers waiting for an organ transplant; 1,700 have been waiting for more than five years. There are 52 registries across this State. New York is rated number 51 out of 52, we are only ahead of Puerto Rico. We have the third highest need for organ transplants, but the second

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worst registry in the country. The national average for organ donation is 54 percent. The State of Montana is number one at 92 percent. The State of New York is 51 at 30 percent. Last year, we had nearly 450 men, women and children die waiting for a life-saving organ transplant. The good news, though, is one person, one person who donates at the time of their death can save up to eight lives and impact the lives of 75 others. I want to repeat that statistic again: One person who donates at the time of their death can save up to eight lives and impact up to 75 others.

You know, there are so many personal stories about this around the Chamber, past and present members. I just want to talk about a couple past members who were here. Assemblyman Bill Hoyt died on the Assembly floor waiting for a heart transplant and no one knew until that day. Our former Assemblyman Richard Brodsky, his daughter, Willie, received a kidney from his wife. You heard Mr. Ortiz talk about his personal experiences, so many have talked about their personal experiences. Andy Goodell, his daughter donated to a high school classmate. Michael Fitzpatrick's Chief-of-Staff donated to a complete stranger. For me, the story comes close to me because of my sister, Teresa, who was a two-time organ transplant recipient. She was a juvenile diabetic, a disease that ravaged her body over her years. The first time she received a transplant was in 2000 from the kindness of a stranger and in 2006, I had the privilege to donate a kidney to my sister, Teresa. Unfortunately, in 2013 my sister passed away, not from the complications to the kidney, but from the complications to the

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diabetes. But what it showed me, Mr. Speaker and my colleagues, is the impact that organ donation can have on a family. It saves lives and it can impact the quality of life. You know, I realized, though, she was the lucky one. She had two transplants. I didn't know how bad the numbers were in New York until I came up here.

We can make a difference with this issue. I know some people don't even want to think about this issue because you're really thinking about your own death and I understand that, but think about it from this perspective. What if your husband or wife, mother or father or God forbid your son or daughter were in need of a life-saving organ transplant and then you just heard those statistics that we talked about, 51 out of 52; 30 percent registration rate. We can and we must do better.

But we have made progress, my friends and my colleagues. Two years ago when we talked about this issue, it wasn't 30 percent, it was 23 percent. Two years when we talked about this issue it wasn't almost 9,500 people, it was over 10,000. It's because of actions we're taking in this Chamber, it's because of things we're doing back home to promote awareness, whether it's passage of Lauren's Law. A couple years ago we passed a registry to allow 16-and 17-year-olds to register, and probably one of the most transformational things we've done, last year the online registry became active where now people with a few clicks of a button can go on and sign up to give the Gift of Life.

But there's more we need to do. You received a

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packet in your offices through e-mail about social media, media packets, things you can do to promote organ donation. You can send out e-mails. You can use your mailings to get information out there, post a link on your website. We passed a lot of laws in this bill -- in this Chamber, but not all of them deal with saving lives. This can save lives, but it takes a commitment on our end and a dedication on our -- our -- our end. Individually, no one can do as much as Jim Conte did in this Chamber, but collectively we can do so much more. So, let's continue to bring awareness and education on this very, very important issue because it saves lives and it's the right thing to do. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

Mr. Brabenec for the purposes of a (sic) introduction.

MR. BRABENEC: Good afternoon, Mr. Speaker. I am honored to have with us here today a group of 30 young American students here from the Greenwood Lake Middle School in Greenwood Lake, New York, if you guys could stand up. They're here to visit the Capitol to see how government works. Many are here for the very first time so please, Mr. Speaker, welcome them to Albany and give them a hearty welcome.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Brabenec, the Speaker and all the members, we welcome you here to the New York State Assembly, this bright class of students.

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We hope that this is the first of many trips that you will share with us. This is the People's House. This is where Democracy will preside in our State. Thank you so very much for being here. Continue that learning experience. Thank you.

(Applause)

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker, for allowing me to introduce a very distinguished group of individuals who have joined us the -- as guests of Mr. Miller, Ms. Nolan, Mr. Barnwell, Mr. DenDekker, yourself, Mr. Dilan and I understand all of the Queens Delegation. We have representatives from the Nepalese community who are here in the Chamber today. They are from various groups, the Nepalese Society, the Himalayan Credit Union and the Himalayan Rotary Club. And they've stopped by and we're delighted to have all them. And I want to acknowledge a couple of their leaders, Dr. Tara Niraula, Mohan Gyawali Chhetri, Sailesh Shrestha, Man B Rana Magar and BR Lama, who are leaders of these groups and we are delighted to have them with us to observe the proceedings and to enjoy hopefully the discussion that will ensue in the next few minutes. So, if you'd please extend all the cordialities of the House to this fine group.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Miller, myself, Mr. DenDekker, Mr. Barnwell, Ms. Nolan and the entire Queens Delegation, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to

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you the privileges of the floor. We are so happy that you have been able to join us here today, hope that this is the first of many trips, hope that your efforts here in Albany today will be fruitful. We thank you for coming and we're always pleased to have you. See the joy in our faces that you have joined us on this great day. Thank you.

(Applause)

Mr. Morelle.

MR. MORELLE: Thank you, sir. If we could now turn our attention to page 80 of the main Calendar, I'd like to begin with Calendar No. 744 by Mr. Bronson.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A08344, Calendar No. 744, Bronson, Blake. An act to amend the Executive Law, in relation to requiring the collection of certain demographic information by certain State agencies, boards and commissions.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A08687-A, Calendar No. 745, Otis, McDonald, Brabenec. An act to amend the Criminal Procedure Law, in relation to the definition of an accusatory instrument.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A08723-A, Calendar No. 746, Jones, D'Urso, Blankenbush, McDonald, Gottfried, Mosley, Montesano, Lawrence, Crouch, Blake, Jenne. An act to amend the Executive Law, in relation to designating Chazy Lake as an inland

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waterway for the purposes of waterfront revitalization.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Morelle.

MR. MORELLE: Yes, thank you, Mr. Speaker. This is going to be a twofer. First of all, this is our first vote of the day so, ladies and gentlemen, please cast your votes. And as an extra special bonus, those of you on the Consumer Affairs Committee can join Mr. Titone after you've voted the first vote of the day and head to the Speaker's Conference Room for Consumer Affairs. How's that for efficiency, sir?

ACTING SPEAKER AUBRY: You're knocking 'em dead, Mr. Morelle.

(Laughter)

First vote of the day, members. And Consumer Affairs, please vote then go to the Speaker's Conference Room. If you are in the sound of our voice not yet in the Chamber, proceed here expeditiously.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

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MR. MORELLE: Thank you, Mr. Speaker, for allowing this brief interruption to acknowledge some guests of Mr. Rodriguez. We are joined by the Financial Services Institute, members Michelle Carroll Foster, Frank Tauches, George Brown and Jim Davos. The institute is a member organization which is comprised of individuals who are financial advisors and broker dealers, and they are working on a number of initiatives, particularly around financial literacy and elder abuse. They've stopped by the Chamber today to observe the proceedings and, hopefully, be educated on our process and the Legislative process. If you'd please extend all the privileges of the floor.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Rodriguez, the Speaker and all the members, we welcome these three gentlemen and lady here to the New York State Assembly. We extend to you the privileges of the floor, hope you enjoy our proceedings and thank you for coming here to Albany and sharing your expertise with us and helping those who need the assistance that you provide. Thank you so very much. Always be welcome and come back. Thank you.

(Applause)

Mr. Ra.

MR. RA: Thank you, Mr. Speaker. I have the pleasure of introducing some very special guests of our colleague, Mr. Palmesano. He has also arranged for the great trip to Albany for his kids that are on spring break this week. Joining us today are Phil's

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wife, Laura, his daughter, Leah, who's 15 and a sophomore in high school, and his son, Sam, who's 13 and in seventh grade. If you can extend to them the privileges of the floor and welcome them, I'd appreciate it. Thank you.

ACTING SPEAKER AUBRY: Certainly. On behalf of your father, the Speaker and all the members, we welcome you here as family to the New York State Assembly. As family, you are always -- have the privileges of the floor. We appreciate that you've taken this time to come and share with your husband and your dad the experiences that we have here in Albany. What joy! Thank you so very much for coming.

(Applause)

The Clerk will read.

THE CLERK: Assembly No. A08747, Calendar No. 747, Englebright, Weprin. An act to amend Chapter 464 of the Laws of 2016 relating to creating the New York State Ocean Acidification Task Force, in relation to the effectiveness thereof.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

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Mr. Morelle.

MR. MORELLE: Yes, Mr. Speaker. Before we continue on, could you please ask members of the Aging Committee to meet with the Chair, Ms. Lupardo, in the Speaker's Conference Room; Aging.

ACTING SPEAKER AUBRY: Aging Committee, Ms. Lupardo, Speaker's Conference Room. Thank you.

The Clerk will read.

THE CLERK: Assembly No. A08766-A, Calendar No. 748, Galef, Schimminger, Mosley, Cook, Gunther, Morinello, Lawrence, Errigo, B. Miller, Raia, Montesano, Giglio, Hawley, Crouch, Ortiz, DenDekker. An act to amend the Public Authorities Law, in relation to the ceremonial designation of the "Bear Mountain Bridge" as the "Purple Heart Veterans Memorial Bridge."

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

The bill is laid aside.

THE CLERK: Assembly No. A08789, Calendar No. 749, Hunter, Stirpe. An act to amend the Executive Law, in relation to designating Ley Creek and Butternut Creek as inland waterways.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

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ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

ACTING SPEAKER PICHARDO: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A08921, Calendar No.

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ACTING SPEAKER PICHARDO: Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. Sorry for that, Mary-Anne.

ACTING SPEAKER PICHARDO: No worries.

MR. MORELLE: What I'd like to do, Mr. Speaker, is first of all, I ask folks -- I know this is a sort of a festive atmosphere here today. We're always happy to have that in the People's House, but we have a number of important bills to take up so we'd ask people to try to keep it down to a low roar.

And with that, let me give you, Mr. Speaker, the next three bills I'd like to take up in this order, part of our Earth Day Package: First of all, begin with Calendar No. 131 by Ms. Fahy which is on page 17 of the main Calendar, follow that with Calendar No. 140 on page 18, that's by Mrs. Peoples-Stokes, and then this grouping, I'd like to conclude with Calendar No. 443 by Mr. Englebright which can be found on page 54 of the main Calendar.

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ACTING SPEAKER PICHARDO: Thank you, Mr. Morelle.

The Clerk will read.

THE CLERK: Assembly No. A01773, Calendar No. 131, Fahy, Steck, Ortiz, Galef, Brindisi, Mosley, Barrett, Gottfried, Skoufis, Stirpe, L. Rosenthal, Otis, Dinowitz, Thiele, Hunter, Colton, Sepulveda, Skartados, Williams. An act to amend the Navigation Law, in relation to financial responsibility for the liability of a major facility or vessel.

ACTING SPEAKER PICHARDO: An explanation has been requested, Ms. Fahy.

MS. FAHY: This bill would require that an owner/operator of a major facility, in this case, a storage refinery or a major port facility, or deep water port, I should say, have evidence that they would share with the Department of Environmental Conservation, evidence of a financial responsibility should a disaster or a spill occur. Such as -- in this case, they would have to show that they have a surety bond or an insurance type policy to cover that spill or disaster should one happen. And this is in cases where they store petroleum products such as crude oil. The legislation is one I sponsored going back a half dozen years and it was an outgrowth of quite a horrific disaster in Canada, the Lac-Mégantic train disaster that ended up leaving the taxpayers in Canada on the hook for a few billions -- billions of dollars because of that disaster.

And so all this is requiring is that a bulk storage or

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related facility show that they have a surety bond or the insurance to address any type of major spill or accident, again, so that the taxpayers would not be left on the hook should an accident occur.

ACTING SPEAKER PICHARDO: Mr. Goodell.

MR. GOODELL: Thank you very much. Would the sponsor yield?

ACTING SPEAKER PICHARDO: Will you yield, Ms. Fahy?

MS. FAHY: Sure. Thank you.

ACTING SPEAKER PICHARDO: The sponsor yields.

MR. GOODELL: Thank you very much, Ms. Fahy. I note that this bill applies to what's defined as a "major facility."

MS. FAHY: Yes.

MR. GOODELL: And major facilities are defined under Section 172 of the Navigation Law?

MS. FAHY: Yes.

MR. GOODELL: And that would include, but not be limited to any storage or transfer facility used or capable of being used to store, handle, transfer or transport petroleum or petroleum products; is that correct?

MS. FAHY: Yes.

MR. GOODELL: And the definition of a major facility is not defined in terms of the capacity of the facility, correct? It applies to any storage facility.

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MS. FAHY: Yes; however we really do mean major in this case because it would to have the above ground or buried storage capacity of 400,000 gallons. So, we really do mean major in this instance.

MR. GOODELL: And where in your bill is the reference to 400,000?

MS. FAHY: My understanding is that it's a part of the definition of -- of major facility.

MR. GOODELL: Under the Navigation Law?

MS. FAHY: Yes. It's further on down from where you were reading earlier, Mr. Goodell.

MR. GOODELL: Well, it references -- it goes on to say, "A vessel would not be considered major facility solely on rendering of care," et cetera, "of assistance, in response to discharge of petroleum. Facilities with a total combined above ground or buried storage capacity of less than 400,000 gallons are not major facilities." In that context, facilities with 400,000 gallons or less; are you aware of how many major facilities there are in New York?

MS. FAHY: Yes. It's 400,000 or more that are major. The one that we're most familiar with in this region is at the Albany Port, the facilities, the storage facilities there. And in this broad region, I think it's the only one and one of only a few Upstate, but that's the one that we used as an example in this -- in this region.

MR. GOODELL: I had received information from the industry indicating that this would apply to upwards of 1,000 small

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businesses that meet that definition; is that correct?

MS. FAHY: That is not one that's been shared with me. That seems -- that seems very high, but we would be more than happy to go back and -- and check into that again. Four hundred thousand gallons is a -- is -- meets my definition of "major facility" and as -- as best we know in this broad region; in fact, I think it's one of the few Upstate areas that have this type of major facility. Now, it could apply to a pipeline, but that would have to be, I don't know of any pipeline carrying that -- having that type of storage affiliated with it, nor any type of drilling platform in this -- in this region. A thousand does seem high. We're not familiar.

MR. GOODELL: Thank you very much. I appreciate your comments. Thank you, Mr. Speaker.

MS. FAHY: Thank you.

ACTING SPEAKER PICHARDO: Thank you.

Read the last section.

THE CLERK: This act shall take effect on the 120th day.

ACTING SPEAKER PICHARDO: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

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MR. MORELLE: Thank you, Mr. Speaker. I'd like to ask members of the Election Law Committee to join the Chair, Mr. Lavine, in the Speaker's Conference Room. Election Law, Speaker's Conference Room.

ACTING SPEAKER PICHARDO: Election Law, Speaker's Conference Room. Mr. Lavine is eagerly anticipating your arrival. Thank you. Or he's still sitting in his seat.

The Clerk will read.

THE CLERK: Assembly No. A01862, Calendar No. 140, Peoples-Stokes, L. Rosenthal, Colton, Sepulveda, Otis, Galef, Mosley, Hunter, Gottfried, Thiele, De La Rosa, Williams. An act to amend the Environmental Conservation Law, in relation to high local environmental impact communities.

ACTING SPEAKER PICHARDO: An explanation has been requested, Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Yes, of course, Mr. Speaker. This bill is a bill that we've actually passed before and what it does is it asks the DEC to provide high impact areas where there may be high impacts of negative environments on people's lives. This bill was passed last year. It was passed in 2010. It was vetoed by the Governor in 2010. At that moment, Mr. Speaker, the Governor did think that he would need to have resources to do that. Being that we are now in 2018, I think that resources are not as needed since our computer capabilities are in such condition that we should be able to push a couple of buttons and get out to locations where people live to

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let them know if they're living in high environmental negative impact zones.

ACTING SPEAKER PICHARDO: Mr. Ra.

MR. RA: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER PICHARDO: Will you yield?

MRS. PEOPLES-STOKES: Of course.

ACTING SPEAKER PICHARDO: She -- the sponsor yields.

MR. RA: So let's start there with what you just mentioned and the previous veto from Governor Paterson. So, is this the exact same bill that was vetoed?

MRS. PEOPLES-STOKES: Yes, sir, it is; this is the exact same bill.

MR. RA: Okay. And you mentioned that concern that was raised in terms of resources for the DEC. I think, obviously, disseminating information is probably easier in terms of, you know, the technology that we -- that we have at our disposal, but what -- I mean, I would assume there still is going to need people with some expertise to be looking at this data. Would that not cause increased costs to the DEC?

MRS. PEOPLES-STOKES: In my estimation, it would not, Mr. Ra. I think, one, we have a very highly qualified staff at DEC to want to understand the negative impacts of environmental hazards in districts and, two, I think we have the computer technology

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to put those two things together and come up with a list of where the areas are that are most dangerous to people.

MR. RA: Okay. And then, so they're going to put all this data together and presumably it's going, you know, it's going to be available to people. What is going to happen with the data then? Is there any measures that you foresee that we're going to take actually in -- in response to that data that we've now put together?

MRS. PEOPLES-STOKES: Well, I would hope that DEC would use it to determine their budget strategies on which areas need cleanup the fastest, which areas have more people in them that maybe need to be relocated; in fact, some people upon them understanding the negatives of the environment that they live in, they might want to move.

MR. RA: Okay. Thank you.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Ra.

MR. RA: I -- I -- I think it's -- it's certainly, you know, a good goal to be able to put together this information and let people know and -- and hopefully the Department would then be able to utilize that data in some meaningful way to address the environmental concerns, but -- but I know that many have a few concerns with this bill. Number one, there is still that concern of the DEC having adequate resources. We all know that going back many years now, many of our State agencies have -- have really not experienced any growth in their -- in their budgets and many of them

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are starved for resources. And then additionally not knowing exactly what we're going to do with the data could cause some issues. Yeah, there may be people that are looking to move. There may be people that are looking at starting businesses that may say, *You know what? I don't want to -- I don't want to go there*, so it could have a really negative impact to the local economy of an area of the State that's been identified as -- as one of these areas of high environmental impact.

So, I think that it's important that, certainly, we -- we let the public know when there's environmental issues, but I hope that we can address some of those concerns with this bill moving forward. Thank you.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Barron to explain your vote. Please, go ahead. I didn't see your light.

MR. BARRON: That's all right.

I just wanted to support the sponsor of this bill. You know, people don't want to talk about environmental racism that when you look in communities of color we have more bus depots, we have more -- everything you could think of that includes pollutants is in our communities. We have brownfields. We have all of this in our

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communities and you're going to talk to me about some money that they don't have to make sure that a community is environmentally safe. In East New York we had to fight against them wanting to bring in a (sic) environmentally hazardous incinerator that would convert wastewood into electricity for some corporation to make millions of dollars, but the emissions on that, high counts of particulate matter, carbon dioxide, all of that would be right next to public housing, right next to daycare centers.

So, this is a very serious bill and for us to get up here and talk about some little pennies that they don't have to save people's lives is absurd. I think the bill is right on target. I think we need to -- and as the sponsor said, there's more technology now to make it less costful to do this. But even if it costs you \$1 million, if it's going to save a life, then it's worth it. And we need to put more worth into people's lives then into money. So, I want to commend the sponsor for this bill and we all should be supporting it.

ACTING SPEAKER AUBRY: Mr. Barron in the affirmative.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker, for the opportunity to explain my vote and certainly encourage a positive vote on this legislation. I -- I represent a community that lives right in the midst of a former General Motors plant. And when General Motors left this area in Buffalo, New York, DEC knew that they had left PCBs there and, as a matter of fact, they

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charged them for it. But they never said anything to the people. They never said anything to the community. And, by the way, it's just now being cleaned up. This is years later. Mr. Speaker, that's not fair and, quite frankly, there's no reason why DEC could not have informed the City of Buffalo, informed the residents who lived across the street from this facility about the fact that there were PCBs there in the ground water. No reason why they couldn't have done that, but they chose not to. That information they had they had to have it on their computer basis and they also had to know the location where it was, and they also had to know that there are people who lived in that community.

And so, Mr. Speaker, I'm just imploring on them.

This -- this has a long-ranging impact, not just on the people who are there, but it has an impact, quite frankly, on our budget because if it's negatively impacting people's health, we pay for that. If it's negatively impacting children's education, we pay for that. At some point, businesses have to be responsible for the problems they create. And secondly, DEC is charged to protect us, that's their job. That's why we have that operation over there. Everybody who works over there is working in our interest to protect us against negatives that are in the environment. If they can't figure out how to do this without additional resources, Mr. Speaker, I think we have a lot more to question than this legislation. With that, I'll vote in the affirmative and encourage my colleagues to do likewise.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes

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in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. I absolutely agree with the comments of my colleagues, Mrs. Peoples-Stokes, Mr. Barron and others about the need to address areas of high environmental risk. My concern is that this bill only calls for the identification of those areas and does not require any affirmative action to address it. And the concern that I have as a result is that there are many areas of environmental -- high environmental risk in our State that are in lower-income hous -- neighborhoods or industrial neighborhoods and if we publish a list that says these areas have high environmental problems, that list will destroy the property values in that area and will discourage new businesses from coming into those areas and will have an incredible negative impact on those areas.

So, I think my colleagues are absolutely right that we need to aggressively address and resolve environmental issues, but publishing a list without any obligation included in the list to address those creates a lot of lost value for those who live in that area, will discourage anyone from moving into those areas, will discourage business from moving in to those areas and has some very negative unanticipated consequences. That's why I will be voting no. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

The Clerk will announce the results.

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(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Yes, thank you, sir. I understand if you're a member of the Tourism Committee that Mr. O'Donnell would like to extend an invitation to the Speaker's Conference Room for the Committee on Tourism, Speaker's Conference Room.

ACTING SPEAKER AUBRY: Mr. O'Donnell invites you to the Speaker's Conference Room. Committee on Tourism, please, now.

The Clerk will read.

THE CLERK: Assembly No. A06279, Calendar No. 443, Englebright, Gottfried, Santabarbara, Ortiz, Dinowitz, Colton, Lifton, Glick, Fahy, Titone, Abinanti, Otis, Jean-Pierre, Lavine, Mosley, Simon, Galef, Jaffee, Cook, Rivera, D'Urso, Hunter, Hooper, Steck, Peoples-Stokes, Sepulveda, Skoufis, Williams, Bichotte, Ramos, Weprin, Titus, Hyndman, Seawright, Lupardo, L. Rosenthal, Barron, Walker, Carroll, Barrett, De La Rosa. Concurrent Resolution of the Senate and Assembly proposing an amendment to Article I of the Constitution, in relation to the right to clean air and water and a healthful environment.

ACTING SPEAKER AUBRY: Mr. Englebright, a (sic) explanation is requested. Shh.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This is a legislative resolution that is beautiful by its simplicity. It is a

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proposed Constitutional amendment to establish a fundamental right and a clean and healthful environment. The language is quite simple: *The environmental rights of each person shall be to a clean air -- to clean air and clean water and a healthful environment.* I'd just like to also mention that this is an important part of the Assembly's Earth Day Package which we're seeing unfolding before us here and I just want to take a moment to thank Speaker Carl Heastie for making sure that we pay attention to the needs of our citizens and their health and the health of the environment on this very special day. And this particular measure is one of several that we're going to have a chance to vote on today out of respect for the people of the State and the environment that supports them.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Will you yield --

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright will yield, Mr. Goodell.

MR. GOODELL: Thank you very much, Mr. Englebright. You correctly note, of course, that this is a very simply-worded Constitutional amendment that states that people would have a right to clean air and water and a healthful environment. Can you tell us what you mean by "clean" and, for example, we turn on our tap water, we use it to wash, bathe, drink, but our tap water is

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certainly not distilled so any tap water in the State of New York has some impurities. What do you mean by "clean?"

MR. ENGLEBRIGHT: Clean basically means that if you are interacting with the environment that you're not being harmed; that if you are consuming water that it does not have poison; if you are breathing air, it is not contaminated and will not have a negative impact on the biology of yourself or your loved ones.

MR. GOODELL: Then by clean do you mean that the water or the product or whatever subject matter is meets current environmental standards as defined by this Legislature or the DEC, the EPA or other regulatory entities?

MR. ENGLEBRIGHT: At the very least, yes, but in a larger sense, this language is meant to reassure each and every citizen of this great State that a part of being a citizen of this State is to know that the Legislature has taken time to place before the voters the very premise of whether or not being healthy is -- is worthy of our attention. I believe that if we are able to place this before the voters that they will answer yes.

MR. GOODELL: Well, as you know, we have a substantial agricultural presence in the State of New York. Successful agricultural practice involves, not surprisingly, the application of fertilizer. It also involves integrated pest management which can involve the application of pesticides, all of which are tightly regulated, the application of pesticides both in quantity and methodology. Does this give a basis for people who move in next to a farm to bring an

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action to ban the use of pesticides on the farm for crop protection?

MR. ENGLEBRIGHT: There's no specific leverage provided in that direction by the passage of this measure. This is very clearly a -- a very general premise, but let me just point out as one who grew up on a farm that I greatly respect the tradition of farming. It's something common to each and every community in New York. There is no intent to contradict that tradition or to unhinge the production of food in any way. We only hope that the individuals who are operating the given farm do so in a manner that is conducive to good public health.

MR. GOODELL: I appreciate your farming background and I think you bring a valuable perspective. As you know, though, sometimes those who are on a farm very much appreciate the important role of herbicides, pesticides, fertilizer and other routine activities that are not always understood or appreciated by those who neighbor a farm. And so, we have a lot of dairy farms, for example, in my district. We certainly appreciate having that wholesome milk. Not everyone appreciates living downwind. I just bring that to your attention that what some people perceive as clean air and water may very much depend on their perspective.

But I -- I want to move on. This also talks about healthful environment. As you know, there's been a lot of controversy overtime over whether or not fluoride should be added into drinking water for municipal systems. And at one time, a lot of people argued against it claiming that the addition of this chemical would be

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harmful. Others argue that the addition of this artificial chemical - I mean, it's not naturally occurring - this chemical was healthy and would promote better teeth. Does -- can you explain how -- how would this language dealing with a healthful environment play out in all those areas where government has additives, whether it's Vitamin A, government or industry, private sector, whether it's additional vitamins or additional chemicals into our drinking water like flourine -- fluoride; how would this play out?

MR. ENGLEBRIGHT: It doesn't really have any negative impact upon the use of chemicals that are important to our quality of life and to the quality of our health. What healthful means is that we're going to have policies that are conducive to good health. That does not exclude the judicious and appropriate use of chemicals. We're made of chemicals. We live in an environment that is full of chemicals. Simply saying somebody's using chemicals does not disqualify the possibility that they may be using it wisely or overall in a manner that is consistent with a healthful overall environment.

MR. GOODELL: As you know, more recently we've had a lot of controversy over GMOs, genetically modified organisms, GMOs, and we've had a lot of controversy over whether a product should be labeled as "organic." We even have controversy over what that means. Would this Constitutional provision provide a basis for individuals or anyone to say you cannot have GMOs, or you can have GMOs? I mean, keep in mind, on GMOs, some people argue that GMOs are healthful because it's a natural way of combating insect and

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disease, others -- and it's an extension of our normal good husbandry. Others argue the opposite. So, doesn't this give an independent judicial platform to address those issues?

MR. ENGLEBRIGHT: I don't believe it does. We consulted with the National Council of State Legislatures. There are six other states that have passed a measure very, very similar to this. We have not seen any notable trend of increased litigation or lawsuits. I'm just not aware that GMOs are within the reach of this particular measure. What this measure is intended to do is set the stage for a general expectation on the part of every citizen that they have as strong a right as the right to free speech to grow up without being injured, without being poisoned, without being contaminated, to have an opportunity to bring their children into the world and know that they, too, will have those same rights.

MR. GOODELL: There is no Constitutional impediment for us as a Legislature to adopt environmental laws on any particular subject, is there?

MR. ENGLEBRIGHT: There is not.

MR. GOODELL: And so, we don't -- so, we don't need this amendment in order to authorize us to act.

MR. ENGLEBRIGHT: This amendment does not negatively impact us in any way; indeed, it does not take away, but rather adds, it adds a context so that when we pass very specific legislation, the context, the larger context, is already well-defined. That's what this does. It enlarges the circle. It does not shrink away

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from our ability to do good things for the people who sent us here.

MR. GOODELL: Thank you very much, Mr. Englebright.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I certainly appreciate and share Mr. Englebright's desire that our residents have clean air and water and a healthy environment. Nobody in this room disputes that. Now, as my colleague correctly pointed out, we as a Legislature absolutely have the power to regulate in this area. We don't need a Constitutional amendment for us to exercise our discretion to ensure that our residents have a clean and healthy environment. Nor is this amendment needed for our Department of Environmental Conservation or others to enact regulations to ensure that we have clean water and air and a healthy environment.

So, what does this Constitutional amendment do? If we don't need it and the regulatory Bodies don't need it, why should we adopt it? I want to keep everyone mindful that when you put in a Constitutional amendment of this nature, you are shifting power away from the Legislature, away from us, to the Judiciary. And so no longer will the Legislature be solely responsible for ensuring clean air and water. No longer will the DEC and its experts be responsible for ensuring clean air and water, but this would give a Constitutional right to every individual to bring a private right of action against their local

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government or against the MTA or against NYSERDA or against their city claiming that whatever the city is doing or the MTA is doing or the City of New York is doing or any local government is doing or any local business or industry is violating their Constitutional right. And that litigation won't be heard here, that will be heard in the courts. It'll be heard by someone ultimately who is not elected, that was appointed in the Court of Appeals.

And so, my friends, if we want to retain the authority to make sure that we have the correct balance, that we want to allow a local government to include fluoride in their water because we've made a determination that the benefits exceed the risks. If we want to make sure that our agricultural community can continue to operate and our business can operate, we should retain that authority and not transfer it to the courts. Since there's no compelling reason to enact this, there's no legal justification as to why we need to enact it, but there's a lot of potential mischief if we just open up the door to anyone with any concept of what might be healthy or not healthy, or whether they think it's clean or clean enough and that's a balancing act that should be done carefully, thoughtfully by the Legislature and those who are -- have the expertise to do so. Thank you, Mr. Speaker.

Thank you, Mr. Sponsor.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

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(The Clerk recorded the vote.)

Mr. Cahill to explain his vote.

MR. CAHILL: Thank you, Mr. Speaker. This -- the elegance and simplicity of this measure is exceeded only by its great importance to New Yorkers and to future generations. The air, water and a healthful environment are as fundamental to us as speech, religion, assembly and other basic rights. It's important to make this statement. It's important to amend our Constitution to demonstrate a recognition that while our time here is temporary, maybe even momentary, our obligation to generations to come is permanent. I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Cahill in the affirmative.

Mr. Englebright to explain his vote.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. I just want to add that there is a context of need to reassure the people of the State that this proposed Constitutional amendment is intended to address. That need is defined in the newspapers almost every day: New contamination events, new threats to the public health in places like Hoosick Falls and Newburgh and West Hampton. There's a need to reassure the people that it is their right to know that this is a priority, that the environment itself deserves to have the support of our attention and that the proposed amendment to our Constitution is an initiative that will, I believe, enhance the expectation that the intertwined and mutually-interdependent ideas of environmental

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protection and public health are worthy of our collective best efforts and attention. I am pleased to recommend this measure to my colleagues, and I vote yes.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. The Labor Committee would conclude our Committee work for the day, so I'd like to ask members of that Committee to join Ms. Titus in the Speaker's Conference Room. Labor in the Speaker's Conference Room.

ACTING SPEAKER AUBRY: Ms. Titus is in the Speaker's Conference Room momentarily. Please join her.

The Clerk will read.

MR. MORELLE: Actually, Mr. Speaker, let me give you the next several bills that I'd like to ask us to take up.

ACTING SPEAKER AUBRY: Certainly.

MR. MORELLE: Calendar No. 600 by Mr. Englebright, which is on page 71. I'd like to follow that with Calendar No. 766, also by Mr. Englebright, on page 85; then Calendar No. 773 on page 86 by Mr. Englebright and then to complete the grand slam, another Mr. Englebright bill, Calendar No. 774, which is on page 86

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of the Calendar.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A08270-B, Calendar No. 600, Englebright, Lifton, Fahy, Ortiz, Cahill, Walker, Sepulveda, Carroll, L. Rosenthal, Thiele, Jaffee, Simon, Otis, Dinowitz, Williams, Rozic, Abinanti, Mosley, Barrett, Skoufis, Titone, Steck, Galef, Gottfried, Lupardo, Pheffer Amato, De La Rosa, Jean-Pierre, Colton, Pellegrino, Cusick. An act to amend the Environmental Conservation Law, the Public Service Law, the Public Authorities Law, the Labor Law and the Community Risk and Resiliency Act, in relation to establishing the New York State Climate and Community Protection Act.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This is a measure that follows a request from the Speaker to make our attention to the problems surrounding climate change a priority. We've held a number of hearings. We have, with the Speaker's close assistance, formed a legislative working group on climate change. We've given a great deal of thought to how we, at the State level, can address a global issue, a problem that really crosses state boundaries. And what we have before us now is a measure that we believe might very well serve as a national model. It is a bill that has, in many ways, both the short- and long-term needs of the people of the State in mind.

We know that there are serious problems in the State:

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Invasion of pests from the South such as the southern pine beetle, increased storms. The Lone Star State has given us their tick which is bringing disease. We know that extra tropical storms are increasing in voracity and intensity and frequency, and that they are devastating our coast lines and even our Upstate areas, the more remote parts of the State where these storms are causing flooding conditions that are washing houses in some cases off of their foundations and reactivating giant boulders and streams that threaten to crush downstream areas.

These are just some of the examples of what climate change has begun to do to our quality of life and the predictability that we need to have that the future is good. We don't really know that the future is going to be good if we watch all these things and do nothing. And so, we're going to try our very best to address these needs in meaningful ways. To his credit, our Governor has taken this as a major issue and has put forward a number of initiatives at the Executive level. We strongly feel that these are good initiatives that need to be codified into law, and that is what this measure attempts to do.

ACTING SPEAKER AUBRY: Assemblymember
Stec.

MR. STEC: Thank you, Mr. Speaker. Would the
sponsor yield, please?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright
yields.

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MR. STEC: Thank you, Chairman, and good afternoon. It's Earth Day again, I note, and I appreciate your efforts on the behalf of our environment and enjoyed working with you on a lot of them. With that said, though, I do have some questions about this legislation we've debated it in the past. At the heart of this legislation as I understand it, it sets a timeline and a goal for the reduction of greenhouse carbon gas emissions; is that fair to say?

MR. ENGLEBRIGHT: I believe that is a very succinct and accurate summary.

MR. STEC: Is -- it references as a bench -- benchmark 1990. Why 1990 emissions, and do you know what -- where we, as a percentage of 1990 emissions, do you know what our current emissions are in the State or on the planet?

MR. ENGLEBRIGHT: 1990 is the last good year as a benchmark for data. As -- as we search for an anchor for where to begin to calibrate from, that's a good anchor. We have pretty good data for 1990. Your other -- the other part of your question is where are we now? We're doing a little better, but we don't have precise data at this moment.

MR. STEC: Well, I appreciate that and -- and, honestly, I didn't know the answer. So, let me restate what I was trying to get at, is we don't know right now in 2018 whether we're above or below even 1990. I mean, I would guess that we're greater than 1990 emissions, but are we 110 percent or are we 200 percent? Are you saying that we really don't -- don't know?

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MR. ENGLEBRIGHT: Well, part of the purpose of this bill is to help answer that question that you so rightly posed. Part of the purpose of the bill, in a sense, is to recalibrate and remeasure and to have a better understanding of where we are in what is clearly a very dynamic series of processes.

MR. STEC: Now, I --I understand some work has been done here in the State, obviously. There's been the subject of a lot of discussion around the world and, certainly, in -- in national politics, but we've done work. Governor Paterson did in 2009. Governor Cuomo in 2015 directed, you know, marching in this general direction and while I'm sure there are people that would argue whether or not we need to debate whether that is necessary, I'm certainly not going to go there. I'm really look more at the pragmatic where are we and how are we going to get there. And my understanding is a lot of -- of the -- well, let me ask: Do we have the technologies in existence today to get to the stated goal that would become law, if we adopted this, of zero percent of 1990 emissions by the year 2050? I mean how is that even mathematically possible?

MR. ENGLEBRIGHT: To qualify, yes. We're really looking at the anthropogenic emissions, manmade emissions, as the target of this legislative initiative. There are some emissions that are natural. That is not part of the reach. Some of those natural emissions of greenhouse gases are related to the soils. Some are related to herds of cattle, farming activities, those are not within the reach of this bill; however anthrogenic (sic) emissions include such things as heating

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and cooling for houses, cars, transportation derived from the combustion of hydrocarbons. That is something that we have the technology for. That is -- all of those are things that we have the ability to actually do something meaningful about. And so, the answer is yes, this is achievable, but not if we just say, *Oh, well*, as a matter of policy and watch things deteriorate.

MR. STEC: Are -- are you concerned at all on the impact that this would have on our State's economy, on the ability of people to find employment, to move an economy forward, to stay here, raise their children, pay their taxes. We're a big tax state.

MR. ENGLEBRIGHT: I am not concerned in the negative. I am concerned that we do this for the positive. I point to the sister State of California that has seen an increase in jobs based upon renewable programs and laws in that state that are in echo of what we're proposing here today. I believe that we will be left out of the renewable revolution if we do not move forward in an aggressive manner and that this measure is an important step in that direction.

MR. STEC: Are you familiar with - I'm sure you must be - and could you perhaps describe the term "carbon leakage" and how that --

MR. ENGLEBRIGHT: Sure.

MR. STEC: -- may play a factor here in what we're doing? Could we be killing the patient with our -- our treatment?

MR. ENGLEBRIGHT: Sure. Well, carbon leakage is a basically the tendency of an industrial concern to say, *Oh, I'm*

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being restricted too much locally. I think I'll just go around and -- and buy my energy from a dirty producer that might be in a different State, or certainly farther away, and we have anticipated the need to address that in this measure by not allowing users of electricity to simply bypass or go around and not have to report it and not be held accountable. But carbon leakage is something that is -- to -- it seems to me to be avoided and this bill does address it.

MR. STEC: Would you -- you said previously that this would not impact routine agricultural, you know, operations in our State. Would this be applied to transportation, buses, trucking, personal automotive transportation?

MR. ENGLEBRIGHT: Yes.

MR. STEC: So, we have 19 million --

MR. ENGLEBRIGHT: That's one of the major causes of greenhouse gas emissions is transportation -- transportation-related activities. Absolutely, we do have the ability to do something and I'd like to see us begin by setting a stronger example at the State level. I'd like to see improvements in our mass transit. I'd like to see improvements in the fleet that the State purchases and invests into. I'd like to see us decarbonize our own State fleet and, yes, that -- further to the question you asked a moment ago, do we have the technology or the ability? Absolutely, yes, we do.

MR. STEC: So the long and short of it would be, though, should this bill become law, then by 2050 we would be at zero percent of 1990 emissions which would mean, in effect, there would

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be no combustion engines in New York for transportation.

MR. ENGLEBRIGHT: I think that the -- again, let me be clear. This is not targeting any one sector. It is, however, targeting anthropogenic (sic) emissions, not natural emissions and so there will be a still dynamic part of -- our -- our State's environment in which natural greenhouse gas production will be occurring. But for those things that we can control, that we are directly responsible for, most particularly the carbon-based fuel sources, yes, we should be able to achieve that by 2050.

MR. STEC: If I could jump back just a couple quick more questions before I go on the bill. The projected timeline for reducing our emissions against the 1990 amount, which we haven't done any substantial data collection since 1990. So, in 28 years we don't know today if we're at 100 percent or 150 percent or 200 percent of the 1990 emissions, but, yet, this bill would require us to get to 85 percent of the 1990 emissions by the year 2020. So how in two years would we get to 85 percent of the 1990 emissions when we have no idea where we are today compared to the 1990? I mean, that -- you know -- what if we're at 300 percent of the 1990 emissions? I'm not saying that -- that wouldn't say, well, we've got cause for alarm here, but we're talking about putting this into law and if we put -- so, how do you put something into law where you don't if it's even achievable? You know, that's like saying we're going to mandate that we're going to have a perpetual motion vehicle. That technology, it's impossible to get to.

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MR. ENGLEBRIGHT: We are pretty ingenious creatures. Some of what will propel us forward is still being invented. We can't talk about that hypothetical nearly as well as we can talk about what is already happening. Tesla has become one of the most valuable corporations in America in a very short number of years simply because they have new technology that makes use of batteries, batteries that can potentially, and in some cases already is, powering homes and air conditioning systems and heating systems are drawing from those same batteries that are in the car that's in the garage. We should believe in ourselves and we should understand where we are.

If we do not use our innate abilities of inventiveness, creativity and urgency, then we will be disappointing the next generation. We will be letting down our children and we will be passing on to them headaches that if we do not address climate change may, indeed, become insolvable. The cost implications are profound. The -- the costs to quality of life are profound and it's within our power to begin the journey that will involve a number of steps, many, many steps involved, but we have a chance to reinforce some of the steps that have already been taken at the Executive level, at the agency level and we can move forward knowing that we're giving hope to our children and our grandchildren.

MR. STEC: Thank you, Chairman. On the bill, please.

ACTING SPEAKER AUBRY: On the bill, Mr. Stec.

MR. STEC: Thank you, Mr. Speaker. I certainly

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don't doubt the -- the sponsor's intention here with the bill, nor do I doubt his state of need for urgency. What I -- I do have significant issues with is that we are talking about codifying something where we don't know what our current starting point is, we don't know what the technology will be. We know we don't have all the technology to get to our stated goal, and our stated goal is to have absolute zero carbon footprint which to me means we're not going to have any manufacturing, we're not going to have any use of hydrocarbon in the State and while that might be laudable, I don't think it's achievable. And I think that to pass a law that is not achievable or enforceable because it's not achievable, I think -- I think is a fool's errand for a Legislature.

I'd go the step farther to say that while maybe we should be aggressive, I -- I question the -- the targets that we've set for ourselves because we don't even know if they're achievable. So, perhaps a more tightly-worded piece of legislation would be something easier to get your head around. But as written, what this is calling for is in two years, we're going to get to 85 percent of a 28-year-old number that we have no idea where we are today. We don't have the technology to get to zero in 32 years and, at the same time, every business entity in the State -- strike that, not every business entity in the State, certainly many major business and organizations are pointing to this as a job killer, as a State killer; that this will drive people out.

I touched briefly in my questions about carbon

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leakage. We are 19 million people out of a seven billion person planet. We are not going to move the needle. I'm all for leading by example. I'm all for trying to show what can be done and there's value in that and I don't doubt that we should do that, but we shouldn't kid ourselves to think that we are going to somehow reinvent industry in New York State and we are going to not see everyone that can push a cart over the State line into New Jersey or Connecticut or Massachusetts or Pennsylvania, or certainly China or India, pick up where we are saying we've -- we've given up, we are not interested in this line of work anymore because we passed a State law that says we're only going to use wind and electric energy.

It's well-intentioned. We have great technology available to us already. We should do that. I don't doubt the need to do something, but this is picking a couple of arbitrary numbers and saying we're going to get to zero. And, to me, that's like saying we're going to invent perpetual motion. It's just, you can't -- you can't divide by zero. You can't get to zero without emptying the State of all -- every use of a -- of a combustion engine and, certainly, any industry at all. So for those reasons, I will be voting against this bill, but I look forward to working with the sponsor towards legislation that is more achievable and realistic in the future. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Palmesano.

MR. PALMESANO: Yes, Mr. Speaker, will the sponsor yield for some questions, please?

ACTING SPEAKER AUBRY: Mr. Englebright, will

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you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. PALMESANO: Thank you, Mr. Englebright. I know we've kind of had this song and dance for the past few years and I appreciate it, again, if we could just kind of go through some points for some of the members who might not remember it, because I know it was really riveting for us all. But the first thing I wanted to mention to you and I think hopefully you'll agree with me, obviously when we did talk about policies like this and how much to reduce CO2 emissions or to -- to develop renewable energy, I think we hopefully agree, we all want to see our environment improve. We might have different ways to get there, might have some challenges and questions, but certainly we want to make an effort in the right direction to try to improve our environment and I think this whole Body stands for that; wouldn't you agree?

MR. ENGLEBRIGHT: I would agree. I think that we're in the midst of a debate that is a sign of good mental health on the part of all of us because we're all concerned.

MR. PALMESANO: Thank you. Now, right now within the State, we're in the process of, you know, the whole REV proceedings, Reforming Energy Vision, the clean energy standard that was put in place last year. There's a lot -- a lot of that's still going on. How does that relate to what we're doing there as far as the changes that are being discussed as far as what we have in place and what this

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bill is trying to do?

MR. ENGLEBRIGHT: We're, for the most part in this measure, codifying administrative initiatives.

MR. PALMESANO: But isn't it true that the clean energy standard is looking about 50 by 30 as far as having our generation coming from renewables and then also part of that by the same time 2030, to reduce greenhouse gases by 40 percent. So, it'll have about 40 percent reduction where we were in 1990, correct?

MR. ENGLEBRIGHT: Basically correct, and let me just also point out these are, in my opinion, very achievable if we make it a priority. I would just point out that the State has the ability to help set the example. I'd like to see solar on State buildings. I'd like to see the proposed wind farms offshore actually be built. I'd like to see the distributed power model that would have the solar -- small solar driving relatively small motor to pump ground water with its latent heat out of the ground to help address the needs for heating and cooling in individual homes in a distributed power model. All of these were undreamt of 30 years ago, but the scope and reach of where we can go 30 years forward suggests that these concepts and technologies are very achievable and our goals are very achievable in that same timeframe.

MR. PALMESANO: Within that context, wouldn't you omit -- or agree - not omit, but agree - that the per capita carbon dioxide emissions in New York State are probably one of the least carbon-intensive economies we have in the country as of right now

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because of the policies that have been implemented on the books?

MR. ENGLEBRIGHT: We are doing better, as I stated earlier, than we have done ever before. And we are at about 4 percent - New York State - of the national output of carbon-based greenhouse gases. We -- we are doing better, but we have to do even more and because we are the Empire State, because we are a trendsetter, we have an additional responsibility and opportunity because we can actually set a new expectation that is something that other states will feel validated by New York's example of.

MR. PALMESANO: You made a good point, Mr. Englebright. You said we're about 4 percent of the -- New York contributes about 4 percent of the total CO2 emissions in the country. My statistics around 3.3 percent, but 4 percent, but also percentages of the world, we're about .5 percent; wouldn't you agree with -- those numbers are pretty accurate?

MR. ENGLEBRIGHT: Those numbers are pretty accurate. Again, I don't think those are numbers that we should be apprehensive about. I say "again" because I've indicated in just a part of our debate a few minutes ago that I think that New York can create jobs around this emerging need and this emerging understanding of what it means to be decarbonizing and making better use of renewable energies. I don't think people are going to flee New York to go to Bangladesh on the global stage. We have a fabulous workforce here. We have a fabulous educational infrastructure that is something that is an enormous asset for the industries and businesses in our State that

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have located here because of the quality of our workforce. This bill addresses workforce needs. It addresses, very specifically, communities that, as some of my colleagues have rightly pointed out, have been abused in the past. Environmental injustices that have been imposed are also addressed in this bill. Historical imposition of wrongs are something that we can also simultaneously address as we enter into the new renewable age.

MR. PALMESANO: Sure. And I know you mentioned something about not worrying about people leaving, but would -- obviously you're aware of the statistic that just since 2010, over one million New Yorkers have left the State. You're aware that our property tax burden is 79 percent higher than the national average. You're aware that the business climate in New York is either rated 48th, 49th or 50th in report after report. You're also aware that some of our industries are hurting as -- as a result of that. So, I want to get on to the issue of carbon leakage because we agree that .5 percent of our CO2 emissions is what we face nationally and about 3.3 percent is what our CO2 emissions are across the State. And would you agree with the term -- the terminology with carbon leakage is also -- is a term used to describe the situation that occurs for reasons of costs related to climate policies, businesses were to transfer production to other countries or states that have laxer (sic) constraints on greenhouse gas emissions that leads to an increase in -- in total emissions. And I know you mentioned Bangladesh, but New York State, you know, is a percentage of a -- divided by State population

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and as a per capita basis, New York is about nine metric tons per capita. The State of Wyoming is 110 megatons per capita. The State of Texas is 22. Florida, 15. We know people leave New York for Florida to some of these other states, so obviously, carbon leakage is a part of this equation; wouldn't you agree? It has to be part of the equation.

MR. ENGLEBRIGHT: Carbon leakage is one among many variables. Again, we have addressed that. We're holding those who would go around the minimum rules of the road, so-to-speak, going forward will be held accountable. But, again, I would point out this is not a simple one-to-one comparison. Montana is and/or Florida or any of the other states don't hold a candle to the workforce capability of this State because of what we did just two weeks ago. We invested again into the educational infrastructure of New York. It is peerless in the world and that's what draws people here. That's why Wall Street is here. That's why we are the financial capital of the world and will continue to be so as long as we continue to have a balanced investment not only into our energy future, but into our intellectual future.

MR. PALMESANO: Well, I know you said the bill addresses carbon leakage, but when I looked in the bill I think the part I found was on page 10, and I know the section I mentioned was just "minimize leakage", but no explanation of details on what they might do. And I know that many nations have implemented climate reduction policies, but also have taken affirmative steps to mitigate the

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carbon leakage by adopting -- adopting specific protections for energy intensive sectors like iron and steel, nonferrous metals, refineries, cement, ply and pulp and paper. Even the State of Washington adopted a specific measure to protect their industries from leakage because they determined that moving just 5 percent of Washington's pulp and paper production would increase the annual GHG, the Greenhouse Gas Emissions, from purchased electricity by 34,000 metric tons.

So, that's where the concern is because I don't see other than "minimize leakage" any specific protections, because we're obviously a heavy manufacturing industry. We've lost a lot of manufacturing jobs over the year, but this is the type of bill that would really make a significant impact given the fact that, you know, we are just a small segment of the overall nationwide and global economy, and that's something I know we talked about before. So, I don't see any specific languages other than "minimize leakage". Are (sic) there something specific in the bill that I'm missing?

MR. ENGLEBRIGHT: Well, you -- you read everything very closely, so I'm not going to characterize you as missing anything, but I will say that the main purpose of the bill is to bring about constructive thought, planning, not to establish in itself at this moment standards, but to strive to make use of data that will enable us to make wise policy determinations. We have, for example, a Climate Council that will be set up of 25 members. They, in turn, will study this matter, consult with the labor components of our State

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and together report back to us and give us advice. That's what I mean by thoughtfulness. We are looking for that advice. We're not trying to answer all questions at the outset, but I anticipate that with the good advice of the people who will be appointed that we will be able to answer most or even all of the kinds of questions that you are now posing.

MR. PALMESANO: Thank you, Mr. Englebright, one thing for sure, you're always very thoughtful and considerate with your debate and dialogue and I know your heart's in the right place with this legislation. I know your colleagues are going to be supporting -- or supporting it for the right reasons, but I do have some concerns so I thank you for your time and, Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALMESANO: Yes, Mr. Speaker and my colleagues. I applaud the sponsor of this legislation. We've had this debate and discussion for the past several years. Like I said just a few minutes ago, I know his heart and his intentions are in the right place. I know the members of this Chamber who will be supporting this legislation are supporting it for the right reasons from their prospective, but there are things that we need to point out that we have concerns about. First of all, those opposing this bill - which I will be doing today - are very concerned about the environment, but I think this bill goes a little bit too far. Obviously, if you want to look at it just from the energy side of it. Our taxes, we pay somewhere in the neighborhood of \$1.6- to -- \$1.2- to \$1.6 billion a year in energy taxes

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on a yearly basis. To go from -- to 0 percent CO2 emissions just on our own, I used a very bad analogy on the floor last year. I kind of pointed -- called out the last -- the second -- the last row of this Chamber and talking about losing weight, so I'm not going to do that.

I'm only going to give you a different perspective.

We have 150 members in this Chamber. If we take the numbers we agreed about that represents just point -- 3.3 percent of this Chamber that had to take on whether it was a weight loss type of thing or whatever it may be, we'd be just talking about 4.5 -- 4.9 members; so, five members. So, five members in this Chamber would have to take on all the responsibilities and regulations and the challenges that go with this type of policy. If we just look at it globally, .5 percent. So, .75 members or one member, just myself, that'd have to take on all that work. And I certainly could use it, but that's a whole nother issue.

The fact of the matter is this would devastate many industries across this State. It would devastate our farming community, it would devastate our manufacturing community, for sure, high energy users. This would devastate the trucking industry. This bill would drive up costs across the board. This carbon leakage is a real fact. If a business is burdened by cost - it happens all the time - they move and leave the State. They go to neighboring states, 'cause this bill doesn't affect Pennsylvania, it doesn't affect New Jersey, it doesn't affect Texas or Florida. We know people are leaving the State in droves. Just since 2010, we've lost over a million New Yorkers, ladies and gentlemen, who have lost (sic) this area because of the

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economic climate, whatever it may be. We're not going to make a difference if we're just constraining ourselves just to us. This needs to be a global policy. I understand people are concerned about the Federal level on different policies so they want to try to do it New York going alone, but we can't do it going alone on a policy like this because it will be devastating. Our people will be leaving, our jobs will be leaving; trucking, cars, whatever it may be.

The other thing I want to point out, and a shout-out to my colleague, Mr. Goodell, I believe this policy's unconstitutional. When you're talking about the inner-state commerce, I don't want to step on his grounds, but that's just what happen. If you want to have an economic development, an energy policy in the State, it needs to be balanced. I support clean energy. We support green energy, but that's not the only equation. It needs to be affordable. It needs to be reliable. Our solar and our wind is great, but it still needs backup or intermittent. It needs those conventional, whether it's natural gas, whether it's nuclear, it needs other sources. We can't do it alone. And it has to be reliable, affordable and clean if we're going to have a balanced approach.

For these reasons, be it the cost, the things that I've mentioned, we are supportive, but for those reasons, I will be voting in the negative and I would urge my colleagues to do the same. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Colton.

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MR. COLTON: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. COLTON: I would like to commend the sponsor for introducing this measure because we are right now facing an emergency. Every month continually we see examples of extreme weather, unusual weather. The impacts that it has upon all of us, upon all of our families, and when you are facing an emergency, we have the responsibility of coming up with some measures that will deal with that emergency. This bill simply does not lay out goals that have to be met, but it provides a roadmap as to things that we have to do in government in order to deal and meet those goals. It recommends and it sets up a mechanism to consider the various factors that need to be dealt with in order to be able to reach those goals without adversely impacting upon people.

So, it looks at environmental justice issues. It looks at issues in terms of how do we retrain workers who might be displaced from the fuel economy into an economy of renewable energy. It takes into account different councils where there will be public hearings and there will be transparency as we attempt to develop a policy to deal with an emergency that we all face.

Communities are going to be overrun with flooded waters. Not 50 years from now, not 100 years from now, but maybe within as little as five to 10 years from now. We have a responsibility to our children and our grandchildren to act. And the State will not be

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able to be the determinate factor in changing greenhouse emissions in the world, but it can be a leader and that's what our challenge is to do. We need to be a leader in encouraging countries, cities, states all over to begin to think about this issue and to think about it in an organized, systematic manner so that we can deal with it. We may not agree on all the specific measures that must be taken, but this bill basically sets a goal and provides a road map as to how we can attempt to reach that goal. It provides a road map of the things that we must consider in order to be able to reach that goal.

I think we have to get there even faster than 2050. I think we're running out of time, but this is an important step in getting attention, in getting a mechanism in place to deal with the crisis of climate change. And, therefore, I support this bill and I think it will put the State on the proper perspective in terms of getting to the goal even faster than this bill proposes.

President Kennedy in 1960 made a challenge to Americans that we put a man on the moon. No one thought that could be really reached at that point. It seemed unthinkable. We need to make a challenge to the world that we have to fully deal with the problem of climate change, and this bill moves us in that direction. So, I think that unless we want to be seen by our children and our grandchildren as having failed to act when there is a real crisis, we need to start and this bill is a good start towards achieving that. So, therefore, I support this bill and I look forward to setting up the mechanisms in order to be able to achieve what seems to be

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something that is difficult, but I believe our technology will permit it and our ingenuity will permit it and we need to get started. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. -- excuse me.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MRS. PEOPLES-STOKES: Mr. Englebright, it's been mentioned by yourself and I believe a couple other speakers that the Environmental Justice Work Group has been added to this bill; is that correct?

MR. ENGLEBRIGHT: That is correct.

MRS. PEOPLES-STOKES: How will that group be established? Who will make those appointments and from what areas of the State will they come?

MR. ENGLEBRIGHT: The appointments will be made by the Governor and the Legislature. People will be appointed from all over the State and there will be a series of hearings that will accompany those appointments.

MRS. PEOPLES-STOKES: Okay. I do recall having

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passed the Environmental Justice Group Bill a number of years, even when former Assemblymember Diaz was here and carried the bill, there was always a question about whether or not the Minority would be included, meaning the other side of the aisle. And I want to say that former member Jane Corwin, that was her point that she would always bring up. So at one point, we actually amended my bill to include that. I want to make sure that that's still there in the interest of Ms. Corwin, even though she's not still here.

MR. ENGLEBRIGHT: It is there and we have adopted many of the good ideas of your bill. There's a saying that redundancy is good pedagogy. We are trying to inform our public. Your bill is the model that we have drawn very heavily from and I hope that you understand that is a compliment to the wisdom of your initiative.

MRS. PEOPLES-STOKES: Well, thank you. I want to -- on the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: I want to commend Mr. Englebright and his team for pulling together this legislation that I personally agree is just critical, that we begin to pull the thought leaders together around this State to figure out how we're going to deal with climate change. I know a lot of people like to think that it's not real and that it's all made up, but it's really real and I've been around here long enough to see some differences in weather that's

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almost unnatural and, you know, the work that has to be done is going to require people who both understand the environment, they understand the science of it, they understand its implications on the people who live near water, who don't live near water, people who live near dry country, people who live on farmland, people who live in cities. People who under -- people need to understand all of that and they need to be able to put together a plan that will begin to protect us.

And so, I think it's critical that this bill adds the Environmental Justice piece to it because without doubt, there are numbers of people in this State who already under severe environmental hazards, it's because Environmental Justice has not been considered. And so the fact that it is going to be considered on this, I'm appreciative of. So, I want to thank the sponsor for his work on this legislation and I personally look forward to voting in the affirmative on it.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect January 1st.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

To explain her vote, Ms. Lifton.

MS. LIFTON: Thank you, Mr. Speaker. I want to again applaud the sponsor of this important -- this really critically important legislation. As our Federal government moves backwards in dealing with climate change, it behooves state governments around

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the country to move more quickly forward. We were told in 1989 or '90 that 350 parts per million of carbon in the atmosphere was the limit. It was the maximum for safety over -- over a Century. But we're now at somewhere between 400 and 410 parts per million. Our scientists are telling us that they are increasingly alarmed and ringing every bell at their disposal.

While we all see and often experience the obvious problems that come with climate change: Flooding, drought, severe storms in ever greater numbers, much of the most insidious harm is practically invisible to most of us. Coral reefs that are badly damaged and dying around the world. The Arctic ice thinning and disappearing. But these things are happening and they are indicators of growing and greater problems ahead. Problems, by the way, that our farmers are increasingly aware of. I was talking to a farmer in my district a month or two ago and he said that last year, many farmers had a very hard time getting out in their fields and planting crops. It was either too wet or too cold or too hot or too dry and our farmers are on the alert and, in fact, farmers can play an important role in -- in working with no till farming and working on carbon intensive farming and still do very well. We met some of those farmers last year at a dinner and they're very pleased with the results they're getting in helping to sequester carbon in the earth.

We need very strong action to combat climate change. It is indeed a crisis and this goal -- this bill will help us get there and it will also create tens of thousands of good jobs in the

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process. Thank you, Mr. Speaker. I support this bill and urge my colleagues to do the same.

ACTING SPEAKER AUBRY: Ms. Lifton in the affirmative.

Mr. Lavine.

MR. LAVINE: Thank you, Mr. Speaker. It is all the years I spent in the Federal courts and having judges tell me that I darn well better be sure that anything I tell them factually, but we hear a lot of things on the floor and sometimes we just don't respond. But I do want to say this. In 2010, New York State's population was 19,390,000 people. The United States Census Bureau tells us that in 2017, our population did not shrink. Our population grew to 19,850,000 people. Now, I appreciate that there are parts of the Upstate region where the economy is so hard hit and people are leaving of necessity and sadly those areas. But New York State's population continues to grow and I strongly suspect that it continues to grow because New York remains the state of upward mobility and it remains the state of upward mobility because of protections for our citizens at a time when, as has been mentioned, the Federal government is withdrawing rules and regulations designed to protect the health of our people, designed to protect our environment. New York State and others states are rising to the occasion.

I think it's a good sign that our population rises. I think that with all our problems, and every state's got problems, we obviously must be doing something right in New York State and I am

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very pleased to vote for Mr. Englebright's bill that seeks and strives to protect the lives of our children and our grandchildren and our environment. I will withdraw my request and vote in the affirmative. Thank you very much.

ACTING SPEAKER AUBRY: Mr. Lavine in the affirmative.

Mr. Abinanti.

MR. ABINANTI: Thank you. Thank you, Mr. Speaker. We are again marking Earth Day. We've been marking Earth Day worldwide since 1970. Earth Day was originally devised to raise the consciousness of the world to the need to protect our environment, make environmental protection a political issue. And to some extent, it's worked. Since then we've had the landmark Paris Agreement, which was signed by the United States and China and some 120 countries. And it was estimated that this year over 190 countries hosted demonstrations of support for environmental protection on Earth Day.

But unfortunately not everyone is on board, not everyone understands the importance. On the Federal level, we see the efforts of some to redefine the Environmental Protection Agency from protecting the environment to protecting those who would pillage the environment. And on the State level, we have too many people who talk the talk, but few too -- too few people who would walk the walk. Make no mistake that climate change is the defining issue of the 21st Century. The Wall Street bears and bulls will come

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and go time and again, but watch the Arctic polar bears and the Antarctic penguins dying. They are the canary in the coal mine that the human animal is not far behind.

And we need not choose between sustainable environment and sustainable economy; in fact, green is becoming the gold standard, promising new businesses and new jobs, all local. You don't import locally-grown fresh produce. You don't ship in wind and water and sun power in a tanker from the Gulf. Let us remember, we did not inherit this Earth from our grandparents. We borrowed it from our grandchildren. We are trustees with no right to squander, but we're charged with protecting. This legislation sets clear goals and a process to reach those goals. I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Abinanti in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker, to explain my vote.

ACTING SPEAKER AUBRY: Sir.

MR. GOODELL: This bill, if implemented as written, to eliminate all greenhouse gases in about 30 years, will have incredible effects on all of our constituents. Twenty-eight percent of greenhouses gases nationwide, according to the 2018 Greenhouse Gas Report from the U.S. EPA, comes from transportation. So, if we're looking at zero, that means none of our constituents will be driving any vehicles that produce any emissions. Now, you might say fine.

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We've got the technology. You can buy a Prius or a Telsa (sic) or some other electric vehicle. The only problem with that is all those electric vehicles need electricity. Right now, 28 percent of greenhouse gas production comes from electric generation. This bill calls for 50 percent renewable. That means the other 50 percent is going to have greenhouse gas production. And if you take all the energy needs for our transportation system and put it on the energy grid, you're going to double the amount of energy that we need in the energy grid.

Where are we getting our power now? In my district, we had a coal electric plant and we have a proposal to convert it to natural gas to 98 percent reduction of greenhouse gases, that's great. Half-a-billion dollar investment, 98 percent reduction, wouldn't meet these standards. So, while that plan is shut down, guess where all our greenhouse gas is coming from? And I realize I'm out of time, so I'll make it quickly. It's all coming from out-of-state. So, this has huge ramifications that aren't achievable and will cost a small fortune to each of our residents. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

Mr. Walter.

MR. WALTER: Thank you, Mr. Speaker, for the opportunity to explain my vote. The last two years I voted no on this bill. I think that it's unrealistic. I don't think we can achieve the goals that are set out, but they're goals. It's something we can strive for and

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work towards. I think it does send the right message that we are trying to address climate change. I mean, there's no denying that the weather patterns and the weather are different than they were decades ago.

And there's no denying the greenhouse effect; it's a scientific fact. I don't think we can -- we have to argue that. And I'm a Republican and I'm proud to be a Republican, and we have a long history of strong environmentalists in the Republican party going back to Teddy Roosevelt and George Pataki; *the New York Times* called one of the greatest achievements of his Administration was his environmental record.

So with that in mind and setting the example of this being a goal that we can work towards and sending a message not just to the people of the State, but the people of the nation and the world, I decided that I will vote yes this year on this bill and I thank you for the opportunity to explain my vote.

ACTING SPEAKER AUBRY: Mr. Walter in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A09819, Calendar No. 766, Englebright, Pellegrino, D'Urso, Thiele, Otis, Raia, Sepulveda, Ortiz, Aubry, Glick, Dinowitz, Braunstein, Galef, Jaffee, Santabarbara, Zebrowski, Lavine, Jean-Pierre, Colton, Cahill, Arroyo, Wright, Gottfried, Simon, Pichardo, Rivera, Mosley, Williams, L.

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Rosenthal, Abinanti, Lifton, Fahy, Titone, Weprin, Skoufis, Steck. An act to amend the Environmental Conservation Law, in relation to prohibiting State authorizations related to certain offshore oil and natural gas production.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Pellegrino to explain her vote.

MS. PELLEGRINO: Thank you, Mr. Speaker. On January 4th, the Federal government announced plans for the expansion of natural and oil drilling through the potential lease of acreage in Federal offshore areas across and throughout the U.S., including New York. I'm proud to stand here today with my colleagues, advocacy groups, constituents, in a bipartisan fashion and repeat what they have been saying since this disastrous idea has been announced: Do not drill in New York.

On Wednesday, February 14th, Chairman Englebright, Assemblymember D'Urso and myself hosted a hearing on Long Island to receive public comment for offshore drilling -- for this offshore drilling proposal. The response was overwhelming. Well over 200 people packed into the auditorium for over six hours to hear testimony, and the response was overwhelming. We spent those hours listening to testimonies, to members in the room and to our

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constituents afterwards, and the message was loud and clear. Long Islanders, in fact, all Long Islanders and New Yorkers will not sit idly by while we allow our life to be destroyed.

My district, the 9th Assembly District, encompasses the South Shore of Long Island and we are on the front line of this fight. We are actively working to protect our aquifer against the North Shore Grumman Plume. Our communities were devastated by Hurricane Sandy and five years later, we are still not whole. Are any of us willing to risk our drinking water, our property values, our way of life for some potential oil? I, for one, am not.

Finally, let's take a step back and ask ourselves why the Federal government even proposed this ridiculous plan in the first place. Is the goal of opening our nation's offshore areas to drilling to -- for oil to create lower prices, to create new jobs, to create energy independence? To me the answer to all of these questions seems obvious. Renewable energy. Instead of opening up our shores to offshore drilling, we should be continuing to foster wind energy instead of subsidizing and fostering the fuel industry. We should be incentivizing renewable energy instead of imposing tariffs on solar panels, we should be activizing -- actively incentivizing the solar industry.

ACTING SPEAKER AUBRY: Ms. Pellegrino, how do you vote?

MS. PELLEGRINO: I vote proudly in the affirmative.

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ACTING SPEAKER AUBRY: Ms. Pellegrino in the affirmative.

MS. PELLEGRINO: Thank you.

ACTING SPEAKER AUBRY: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A10274, Calendar No. 773, Englebright, Gottfried, Glick, Lifton, Peoples-Stokes, Jaffee, Titone, Thiele, D'Urso, Cahill, Galef, Lavine, Zebrowski, Steck, Seawright, Mosley, Simon, Rivera, Sepulveda, Santabarbara, Pichardo, Otis, Fahy, Colton, Rozic, Weprin, Abinanti. An act to amend the Environmental Conservation Law, in relation to prohibiting the use of chlorpyrifos.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Englebright.

MR. ENGLEBRIGHT: This is an initiative to remove a dangerous poisonous substance from the environment and from causing harm, additional harm, especially to pregnant women and young children. The chemical in this case is related to a dangerous nerve gas that was invented to kill people in World War II. It acts against the nervous system. It is an organic phosphate-based poison that causes severe developmental problems with young children, including hyperactivity and cognitive and motor and attention deficit problems. The name of the chemical is chlorpyrifos -

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and say that three times fast and you're doing very well - and it is used extensively to control insects in homes and fields. It used to be used in homes, but that was banned some years ago as a beginning of our better understanding now that this is really a chemical that has no place in our society. This measure will ban it from use in New York.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker, will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Englebright?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright yields.

MR. GOODELL: Thank you, Mr. Englebright. As I understand, what we're talking about is a pesticide that's designed to kill insects, primarily on agricultural products; is that correct?

MR. ENGLEBRIGHT: That's correct.

MR. GOODELL: And, of course, like any other pesticide it's -- it's not safe to eat, right?

MR. ENGLEBRIGHT: That's also true.

MR. GOODELL: There's been extensive regulation on this since it was first authorized for use in the United States in 1965, and since then it's been eliminated from most homeowner use as you mentioned, with an exception for ant and roach bait traps and fire and ant mound treatments; correct?

MR. ENGLEBRIGHT: Most of those are set outside

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of the envelope of the home, and your statement is correct.

MR. GOODELL: Now, there's an extensive amount of evaluation that's being done by the EPA. They did a study in 2012. They did a revised human health risk assessment in 2014. Based on that, they've got a number of comments. They came out with a revised methodology which they then published in 2016. They got a lot of comments on that. They then referred it over to the Federal Insecticide, Fungicide and Rodenticide Act Scientific Advisory Panel which came up with a new approach to evaluate health and safety. Is that an accurate summary of the process that's been used so far?

MR. ENGLEBRIGHT: I don't believe that is accurate. What they found was that there is no safe level, although part of what you've said is true, so I don't mean to overstate my objection. The fact is that as you correctly stated, this chemical does frequently occur in the marketplace on fruits and vegetables, particularly strawberries comes to mind, and residues are ingested frequently inadvertently.

MR. GOODELL: Well, I'm actually looking at the EPA's report on the subject. It was published November 3rd, 2016 and, as you know, they report the 2014 revised HHRA - let me see what that is. The 2014 revised Health -- Human Health Risk Assessment incorporated a finding that the "Psychologically-based pharmacokinetic-pharmacodynamic, or the PBOK-PD model for deriving toxicological points of departure based on a 10 percent red blood cell (RBC)," something or rather indicated that it could be used

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safely within certain limits. I'm quoting on page 3 of 41 pages of the report. Then went on to say that in 2016, or '15, they conducted additional health analysis using data on this chemical levels and fetal cord blood utilizing a methodology by the Columbia Center for Children's Environmental Health as a source of a no -- a new PoD for risk assessment and that in 2016, their Scientific Advisory Panel recommended a third approach and based on that analysis by their Scientific Advisory Panel, they did not ban this -- the use of this; is that correct?

MR. ENGLEBRIGHT: They never quite managed to ban it. There are a lot of conflicting studies, many of those offering soothing possibilities for its use, were industry-sponsored and under the Obama Administration, they fell just short of banning this chemical from use.

MR. GOODELL: And so, at this level --

MR. ENGLEBRIGHT: Unfortunately, the EPA under its current leadership has acted rather aggressively to enable its use.

MR. GOODELL: Well, at this point in time, am I correct, the EPA is maintaining its standards in terms of acceptable levels and they are maintaining the current standards in terms of application and things of that nature; correct?

MR. ENGLEBRIGHT: The -- the current Administration has been, in the opinion of many of the environmental watch dogs, has been overtly favorable to the industry that

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manufactures this. And there has not been objectivity. There have been people who have been forced to retire from the Agency because they are interested in caution and actually after reviewing the numerous studies believe that it should -- believed that it should have been banned. So, there's a whole churning taking place inside of the Agency and there are still lawsuits pending. Most recently, a court has denied the new Environmental Protection Agency position that this is okay and that called the Agency, EPA, called for dismissal of the case that was rejected. That was in December.

MR. GOODELL: And are you aware that the Scientific Advisory Panel recommend that the Agency use a time weighted average blood concentration of this chemical and consistent with the Columbia -- sorry, Columbia Center for Children's Environmental Health, based on the PBPK model, looking at the expected concentrations from post-application exposure of this chemical for indoor crack and crevice use. In other words, I'm going to try to translate that into layman's English. It appears that the Columbia Center for Children's Environmental Health and the Scientific Advisory Panel for the EPA believe that the highest risk exposure for this chemical is not based on agricultural use, but it's based on post-application exposure on indoor crack and crevice use scenario. And I'm referring to page 4 of 41 of the EPA's report. If that's the case and there's a concern about exposure to children based on its continued use in households for ant and roach control, shouldn't any restriction be focused on that area and not a complete ban on all

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agricultural use?

MR. ENGLEBRIGHT: Chlorpyrifos has no safe level. Numerous studies have demonstrated that and in 2014, it was demonstrated further that childhood Autism risks from genetics and adverse neurological disorders are clearly something that will follow exposure. A child with Autism is certainly not a desirable outcome for any family, and we have data that suggests that Autism almost triples for women exposed to chlorpyrifos.

MR. GOODELL: Well, you say no studies, but are you familiar with a study by Dr. Drew which is entitled *Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review*, dated in 2014, or the U.S. EPA Literature Review on Neurodevelopmental Effects of this chemical, or the study by Bohaty and Hetrick entitled *Chlorpyrifos Registration Review Drinking Water Assessment* in 2016, or the follow-up paper, *Chlorpyrifos Issue Paper: Evaluation of Biomonitoring Data from Epidemiology Studies*, and I apologize to all my scientifically-savvy friends for my pronunciations, but I think it's pretty clear that the literature is mixed on this. But let me ask you a more specific question.

MR. ENGLEBRIGHT: Well, before you --

MR. GOODELL: Does the DEC, our own DEC believe that there is absolutely no safe limit and, if so, why haven't they moved to ban it?

MR. ENGLEBRIGHT: Let me -- you've asked a number of questions and rattled off a number of studies. Most of

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those studies are industry-sponsored or individuals who have strong financial connection, personal financial connections to the industry. By contrast, let me point out that Dr. Philip Landrigan, the Chair of the Department of Community and Preventive Medicine at Mount Sinai Medical Center has said, and I quote, "Excellent studies conducted by independent scientists have clearly shown that chlorpyrifos, the active ingredient in Dursban, is toxic to the human brain and nervous system, and is especially dangerous to the developing brain of infants," end quote.

MR. GOODELL: Just -- just so we're clear, I would never recommend that anyone drink from the bottle of an insecticide. But all the studies I reported were actually done or sponsored by the Obama Administration. Is it your view that they didn't know what they were talking about either?

MR. ENGLEBRIGHT: I'm not going to characterization any Administration except the present one --

MR. GOODELL: Okay. And --

MR. ENGLEBRIGHT: Which is --

MR. GOODELL: -- then what about the present DEC --

MR. ENGLEBRIGHT: -- which is so completely over the top in favor of the industry, and so completely at odds with the scientific community that it is shocking and alarming.

MR. GOODELL: Well, keep in mind the current Administration is just continuing the standards that were initially set

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by the Obama Administration in 2014 --

MR. ENGLEBRIGHT: That's not true --

MR. GOODELL: -- and continued by the Obama Administration --

MR. ENGLEBRIGHT: That's just -- -

MR. GOODELL: -- of 2016 --

MR. ENGLEBRIGHT: That's just not true. I'm sorry.

MR. GOODELL: Well, the Obama Administration was in there in 2014, weren't they?

ACTING SPEAKER AUBRY: Gentlemen --

MR. ENGLEBRIGHT: The Obama Administration --

ACTING SPEAKER AUBRY: Gentlemen, hi. We will ask and answer, as is our custom. We will not cross conversation, please. Thank you.

MR. GOODELL: Thank you, Mr. Speaker. Last time I checked, the Obama Administration was in charge in 2014 when this was last reviewed and the standards were set and re -- and evaluated by the EPA. But if there's some historic fact that I missed, I would love to go back and relive that time period. But moving on to a question, does our current Administration in the DEC, in New York State, have they banned this? Or are they moving to ban this?

MR. ENGLEBRIGHT: They have not banned it. We certainly hope that they are moving in that direction. Certainly,

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passage of this measure will help.

MR. GOODELL: On the -- thank you, Mr. Englebright.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: This is a pesticide that's been used very effectively for about 60, 70 years now. And during that time period, it has been repeatedly analyzed by both Republican and Democratic national Administrations. Since 1965, you may recall we've had Democrat Presidents, we've had Republican Presidents. This has been repeatedly reviewed and evaluated by both Republican and Democrat Administrations. And during that time period, they have modified and fine-tuned the levels of acceptable utilization. And make no mistake about it, this is an effective insecticide, it kills bugs. Do not use it as a mouthwash.

(Laughter/Applause)

I might point out that Raid that's in every grocery store, you know, just down from the produce aisle, there's Raid, there's Bait. There's all kinds of very poisonous chemicals, none of which should be used for human consumption. That doesn't mean that even though they're all toxic and they have that skull cross-bone on them, in case people don't know what the word "poison" means, it doesn't mean that there isn't a safe and effective level that can be used.

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The EPA's own study maximizes the likelihood of exposure by examining what might occur if this insecticide is used indoors, on crack and crevices. That's what the report states. You all have laptops, you can all look it up. And once you read through two pages of unpronounceable scientific jargon, you'll see this phrase, "Crack and crevice". And by the way, that's what we want the EPA to do, right? We want them to evaluate what the maximum likely exposure is. Based on that, they are not at this time proposing the complete elimination, and nor should we.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Brian Miller.

MR. B. MILLER: Thank you, Mr. Speaker. On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. B. MILLER: I'm a former apple-grower and stone fruit grower. I've also been a licensed pesticide applicator, both in the private and commercial realm. And, yes, these organic phosphates do kill insects. You know, this is an effective insecticide used worldwide on many crops. You know, as with all pesticides, if used in accordance with the precautionary label, they will be safe to use. What the label explains: Personal protective equipment needs to be used; application rates were also specified; worker reentry period is specified; yearly maximum application rates and time required from application to harvest. These regulations are all put out by the EPA

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and the scientific community for proper application, worker protection and the consumers' protection, from time of application to harvest.

And every year, I was tested for exposure for this insecticide. There was a base test taken before we started to apply this insecticide, and there was also a test given again after -- after harvest. If all -- I was never found to have an exposed -- exposed elevation of organophosphate in my bloodstream. I applied the pesticide correctly by the label. These -- these types of insecticides are also immobile in soils, if that's something else we're worried about, and are unlikely to leach into groundwater. So, yes, this is a -- all pesticides are dangerous, but if used in the proper levels and applications, they can be safe.

I believe this is an important insecticide to sustain agriculture in the New York State. I ask that the decisions of the use of these pesticides be left to the review process of the experts in the technical field, not those in the political -- political realm.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker.

You know, and there is a body of information that is what we have accompanying studies on this chemical, and when the only reason it was not banned at the Federal level is because the last Administration didn't have time to complete the next step in the process, in the administrative process, but had already begun that process. And now

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we have a complete reversal, totally influenced by the industry. It sends a signal that the states need to act. The EPA has been compromised, but we need to make sure that our children are not. They do not deserve to be compromised.

This chemical is soluble in water. It's found in groundwater, and it persists in the environment. And it occurs on residues of fruits and vegetables even after washing, and even after peeling. An updated Human Health Risk Assessment compiled by the EPA in November last found that health problems were occurring at lower levels of exposure than had previously been believed. This is a dangerous chemical. Infants and children and young girls and women are -- that are exposed to dangerous levels of chlorpyrifos through diet alone are subjected to serious potential harm to their neurological systems. Especially, this is dangerous for young children.

So, this is a question: Do we act in a precautionary manner, knowing that there are other chemicals that are available that are less problematic, less dangerous? I think the answer is yes. I think we do the responsible thing by voting to take action at the State level when, under Scott Pruitt, the Environmental Protection Agency has been compromised, its integrity has been compromised, and it is trying to tell us that science does not matter any longer. That's the context within which we are proposing to act in defense of the health and well-being of the -- of the people of this State.

And it's within that context that I urge my colleagues to vote in support of this measure, because it will protect against harm

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to the people who have entrusted us with their votes.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: You're welcome.

Mr. Goodell for a second time.

MR. GOODELL: Thank you, sir. Just want to set history straight. In 2011, the EPA completed a comprehensive preliminary Human Health Risk Assessment for all uses of this chemical, and did not ban it. That was during the Obama Administration, 2011. In 2012, during the Obama Administration, the EPA -- EPA adjusted the aerial pesticide application rates and created no-spray zones. That was during the Obama Administration. Continuing in the Obama Administration in 2014, the EPA completed a revised Human Health Risk Assessment for all uses, and continued to allow this product to be used. In 2016, still as part of the Obama Administration, they came up with a new approach which raised some questions about its continued effectiveness.

Now, in 2017, that would be the Trump Administration, the EPA reached out to its Scientific Advisory Panel and they recommended a different methodology than either of the two prior utilization methodologies than had been utilized. And that's where we are today.

So, let's not say that the only reason this isn't banned because the Trump Administration is doing a scientific evaluation consistent with the recommendation of its scientific panel. That's just not accurate. And let's keep in mind that our own DEC is not moving

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to ban it. Now, why is this important? Because this is very effective in our agricultural fields. And so, the banning of this project (sic) has ramifications all across our State of New York. We have very tight restrictions on how and how much, and based on the current data that has come from both Republican and Democrat Administrations, it's non-partisan, it's scientific, the current standards have been determined to be safe. If our own New York State DEC comes to a different evaluation based on an analysis of the scientific data, then they should come and talk to us if they need additional regulatory authority. I don't think they need any additional regulatory authority.

So, what is certain? What is certain is that banning of this pesticide will have major ramifications to our agricultural industry and is opposed by all the agricultural organizations, whether it's the Farm Bureau, or Turf Association or anyone else. That, we know for a fact. And we know for a fact that this chemical has been authorized for use in accordance with the specifications for decades by Republican and Democrat Administrations.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 180th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Abinanti to explain his vote.

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MR. ABINANTI: Thank you, Mr. Speaker. I want to commend the sponsor of this legislation. Clearly, this is not a subject that's easily understood, but the Chair of our Committee has a background and has learned this field quite well, and has explained quite well, that what we're dealing with here today is a poison. The sole purpose of this poison is to act as a pesticide to disrupt the central nervous system of bugs. And the best that I heard is an argument against it was that some Democratic Administration did not ban it. That perhaps there's some confusion over whether it is or isn't really a serious disruptor in the lives of children. Or that if it's used properly, well then, it's not going to poison everybody. That doesn't convince me that we're wrong in fighting for the lives of kids versus fighting for some poison that makes it easier for farmers to kill bugs. I again commend the Chair of the Committee. I believe this is a very important piece of legislation. It's a forward-looking piece of legislation. We can find other ways, natural ways, to disrupt the -- the bugs that might put spots on our apples, but we have yet figured out a way to stop these substances for affecting the lives of our kids. So I urge my colleagues to vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Abinanti in the affirmative.

Ms. Glick.

MS. GLICK: Thank you, Mr. Speaker, to explain my vote. While it may be true that when we had a smaller population using certain kinds of chemicals that were discovered to try to deal

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with pests may have been a good thing in the short run, but the bugs that get killed are the bugs that used to feed our birds and bats, and the entire natural web is slowly being tattered. And, unfortunately, humans have become the most successful species. We have overpopulated the Earth, we're stressing the Earth, and these neonicotinoid type of chemicals are disrupting the natural order and we are poisoning the Earth. And with that, we were seeing the reduction of those animals and insects that are part of the food chain of which we are at the top. And as we continue to destroy that web beneath us, we will be leading to our own ultimate destruction.

These chemicals persist in the environment. So what started 20 years ago, 50 years ago as not a problem, the cumulative effect is to create a poisonous environment which is, in fact, killing not just pests that we don't want, but insects that are healthy for our environment. I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Glick in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. 10276, Calendar No. 774, Englebright, Thiele, Pellegrino, D'Urso, Colton, Weprin, Ramos, L. Rosenthal, Abinanti. An act to amend the Environmental Conservation Law, in relation to the sale or use of nitrogen fertilizer.

ACTING SPEAKER AUBRY: An explanation is

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requested, Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker.

We have a real nitrogen problem on Long Island. Excess nitrogen has been proven to contribute to harmful algal blooms in our freshwater bodies and in our saltwater bodies. And we know that fertilizer is an important part of this problem, contributing between 15 and 20 percent of the total land-based nitrogen that is entering into our tidewaters. And because nitrogen is a soluble substance, it is a -- a -- a substance that really is costing us a lot of money now, as well as a degradation of the environment. People don't like to swim -- and recreation is, by the way, our number one industry; they don't like to swim in algal contaminated waters. It compromises our largest industry, which is tourism, and we have spent, for example, \$5 million last year for the creation of Long Island Nitrogen Action Plan, and the State Budget included \$75 million for -- out of the \$2.5 billion Clean Water Infrastructure Act of 2017, just to address nitrogen.

What this bill does is require limits on the amount of soluble nitrogen in fertilizer that is marketed for the Long Island area.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

MR. ENGLEBRIGHT: I yield.

MR. GOODELL: Thank you, Mr. Englebright. A -- a great day for you, I think you're rounding out the most number of bills that we've seen in a long time. My first question is, doesn't the

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New York State Nutrient Runoff Law, as contained in Article 17 of the Environmental Conservation Law, authorize the DEC to set standards dealing with nutrients, nitrogen and phosphates?

MR. ENGLEBRIGHT: Not in fertilizer, no.

MR. GOODELL: I thought the New York State Nutrient Runoff Law contained specific restrictions on -- certainly on some fertilizers; correct?

MR. ENGLEBRIGHT: Not to my knowledge.

MR. GOODELL: And correct me if I'm wrong, doesn't the Environmental Conservation Law, Section 17-2105 allow local governments to enact more stringent standards for the application of fertilizer as long as they can demonstrate to the DEC that more stringent standards are necessary?

MR. ENGLEBRIGHT: This bill is modeled on what we did for phosphorus in 2010.

MR. GOODELL: And I appreciate that. But doesn't the Environmental Conservation Law Section 17-2105 allow local governments to enact more stringent standards as long they can demonstrate to the DEC that more stringent standards are necessary?

MR. ENGLEBRIGHT: It is unclear at -- at this particular instant as to whether that is something that is allowable. It's certainly debatable. But also, we're dealing with a need to address all of the numerous communities on Long Island. We have something like 80 villages just in Nassau County.

MR. GOODELL: Well, based on the authority

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contained in State law to local governments to enact more stringent standards, isn't it true that both Nassau and Suffolk Counties have enacted local fertilizer laws?

MR. ENGLEBRIGHT: I don't believe so. I am not aware that both counties, or either county, has actually done what you've just suggested.

MR. GOODELL: I see.

MR. ENGLEBRIGHT: For nitrogen.

MR. GOODELL: And is it your belief, then, that the DEC does not have the authority to regulate nitrogen in fertilizers?

MR. ENGLEBRIGHT: We have, in the past, seen the DEC come to the Legislature for authorization that is similar to this.

MR. GOODELL: And is the DEC seeking this authorization?

MR. ENGLEBRIGHT: We have not sought their advice on this at this time. But we have, as I indicated at the top of our conversation, we have a context of environmental degradation with harmful algal blooms and contamination that is related to the degradation of wetlands. The loss of our -- of our tidal wetlands is, in turn, very dangerous to the well-being of our coastal areas during storms, because the root systems have been proven -- of -- of spartina alterniflora have been -- which is saltmarsh cordgrass, have been proven to be weakened by excessive nitrogen in the water. Many of our coastal environments have so much nitrogen that it is

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compromising the reproductive potential of bivalves, clams and oysters, compromising local traditional industries. Fishing has been compromised. Algal blooms have, as I indicated, made bathing and recreation untenable. I am pretty sure that the DEC has noticed all these things, just as we elected officials have. And so, I believe that they are going to welcome some help from the legislative side, because this is an issue that is just overwhelming local communities.

MR. GOODELL: Now, this --

MR. ENGLEBRIGHT: And I don't think it makes sense for us to expect all local communities to come up with their own -- their own approach and expect that the industry is going to formulate a whole series of different chemical formulations based upon each local jurisdiction. It makes a lot of sense to have slow-release nitrogen -- excuse me, slow-release nitrogen levels in fertilizer built in, and an overall limit of 12 percent nitrogen by weight, which is what this measure calls for. Because, if we have those factors built in, we will have continued use of fertilizers, but we will also have a ramping down of the damage to the environment and to our economy.

MR. GOODELL: Thank you very much, Mr. Englebright.

On -- on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I certainly appreciate the -- the

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comments of my colleague. The interesting thing about this bill is that it restricts the percentage of nitrogen in fertilizer in Nassau and Suffolk Counties to 12 percent. But what it does not address is anything about the application rate. That's like somebody who's drinking, you know, 12 proof beer and just has twice as much than -- or liquor, and just has twice as much than having a higher proof.

So, the -- the irony is that what this does is, if anyone in Nassau County thinks they need more nitrogen, they just put twice as much fertilizer on than they would now. And while I certainly appreciate the desire of my colleague to reduce the utilization or the over-utilization of nitrogen, the best way to do it is through an educational program that helps landowners identify whether they even need it and, if so, how much, and, that they properly apply it.

Many of the commentators on this have pointed out that the largest source of nitrogen on Long Island is not fertilizer, it's malfunctioning septic systems, which is why the Farm Bureau opposes this, the Responsible Industry for Sound Environment, the New York State Agribusiness Association, CropLife America, Scotts Miracle-Gro, the New York Alliance for Environmental Concerns, and others, oppose this bill as not being based on science, as not focusing on this real issue, which is application rate and utilization, and not addressing the primary source of overabundance of nitrogen on Long Island, which is poorly functioning septic systems.

I would also point that not only does the DEC have the authority to regulate this, but as my colleague pointed out, they

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haven't asked for this legislation, nor have we consulted with them. So, we have a whole group of experts hired by this Administration with extensive knowledge and ability, and they're not part of their process.

Finally, I would point out that under the Environmental Conservation Law, the two counties, Nassau and Suffolk County, have the authority, should they desire, to regulate fertilizer on their own. And they have, but not in this manner. Which is a reflection -- I think we should have some courtesy and deference to local government and their expertise and their knowledge of what is important and what is the best way to respond to it.

So, while I certainly appreciate my colleague's unquestionable environmental commitment, I don't think this legislation does what we need it to do, nor should we, once again, attempt to preempt both the expertise of the DEC and the authority of our local governments. Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Raia.

MR. RAIA: Thank you, Mr. Speaker. Will the sponsor yield for one quick question?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. RAIA: Thank you, Steve. Is there an exempt --

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exemption for farm -- farms in this legislation?

MR. ENGLEBRIGHT: Farms are not included, they are exempted.

MR. RAIA: Thank you.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect December 31st, 2019.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Murray to explain his vote.

MR. MURRAY: Thank you, Mr. Speaker. I'll be brief. This -- this bill goes to show, like many things, you -- you take a -- a problem that seems like it might be simple, and it is a little more complicated than it seems. But I do commend the sponsor, because, you know, we're living this problem on Long Island. In the 3rd Assembly District, right along the Great South Bay, we are living this problem.

So, you know, many times we -- we maybe bypass the good in search of the great; this is good, and this is a good start. It was mentioned that there are other problems. Yes, we need more sewers on Long Island, because the septic problem is a problem. But that doesn't mean that this shouldn't be passed, too. We do need to limit the nitrogen. We do need to place limits, because it's a dual-edge problem. My colleague behind me had mentioned in a

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conversation that sometimes the mentality and -- and Andy brought it up, sometimes the mentality is if one bag of fertilizer is good, then five must be great. Well, we do need to educate and change that mentality. No, it's not great. It is bad. It's seeping into the -- the soil. It is affecting our aquifers. But it's also a problem when you have storms, the runoff is also a problem. And, again, my colleague mentioned that on the local level there have been efforts in Suffolk County to deal with the runoff with filters and some of the drains and all, we're just not there yet.

So everyone, I think, is working, we are trying to get on the same page, we are working, and this is a real problem. But I really want to commend the sponsor. This is a good step forward and I'm very proud to vote in the affirmative. Thank you, Steve.

ACTING SPEAKER AUBRY: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. Could you please call on Mr. Otis for an announcement?

ACTING SPEAKER AUBRY: Mr. Otis for the purposes of a (sic) announcement.

You might want to turn your mic on.

MR. OTIS: Following the adjournment of Session today, we will have a Democratic Conference in the Speaker's

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Conference Room. Thank you.

ACTING SPEAKER AUBRY: Democratic

Conference, Speaker's Conference Room after Session.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I note that we have housekeeping and resolutions, including a resolution that Mr. Pichardo wishes to be heard on. Could we take that up now, sir?

ACTING SPEAKER AUBRY: Certainly. First, the housekeeping.

On a motion by Mr. Lavine, page 37, Calendar No. 306, Bill No. 4014, amendments are received and adopted.

The Clerk will read the title of the Pichardo resolution.

THE CLERK: Assembly Resolution No. 1046, Mr. Pichardo. Legislation Resolution celebrating the life of Sister Charlotte Terrell Sapp, distinguished citizen, religious leader and devoted member of her community.

ACTING SPEAKER AUBRY: Mr. Pichardo on the resolution.

MR. PICHARDO: Well, first of all, thank you, Mr. Speaker and my colleagues, for indulging me on being heard on this resolution. I just want to shine a light a little bit into the life of this wonderful individual and human being, who left us in early January of this year. So, Ms. Sister Charlotte Terrell Sapp, or as I affectionately called her "Ms. Sapp," was a community leader in the West Bronx.

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She was a member of the Creston Avenue Baptist Church. She was a devoted member in the community. And what she was really known for is helping organize not only youth organizations in the district, but as well as helping women empower themselves in the West Bronx.

But she was a staple in our community. I had the honor of working with her for a few months, and what I can remember mostly about Charlotte is that, one, she helped organize a local block party in conjunction with Creston Avenue Baptist Church every year in August, where the community came out and did something positive not only for our young people, but as well as our seniors, and all the members of the West Bronx community. Also, while I had the opportunity to work with her, she organized a job fair in my district at that church to help that -- to make sure that my neighbors that I have the honor of representing were able to find gainful employment in and around the district.

But also, she was very passionate and compassionate about young people and helping them find a better way. She helped organize a peace march on International Peace Day last year, which I had the opportunity to participate, along with dozens of community leaders, and we spoke about, you know, peace up, violence down, keeping guns off the streets of our communities that have caused so much devastation not only in the communities that I represent, but across this State.

And, again, she passed away suddenly at the tender age of 50. I know she was called home, and I know she is celebrating

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amongst the Heavenly hosts as we take a time and a moment to pause and celebrate her life. And if anything, I would leave you with here today is that when I would -- you know, would go into the office or meet with her at the church, and I would be, you know, ranting and raving about something that she would call either petty or trivial, she'd always tell me, *Victor, remember that God is always in control.*

Regardless of what happens, whether you're a member of the Assembly or not, whether I have a title or not, or whatever happens in this world, remember that God is in control and he has a plan for all of us.

And again, to Ms. Sapp, we miss you in the West Bronx. I miss your friendship. I miss your leadership. I miss your counsel. And to her family back home, to her sister Celeste, her daughter Zané and her extended family, I -- I hope to present this resolution to her -- to her family specifically on that block party in August, just to remember the life of someone who dedicated every waking hour in making our community whole.

So, again, I indulge -- I ask my colleagues to support this resolution and support a life who has made an impact and difference in so many.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

We have numerous other fine resolutions, which we

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will also take up with one vote.

On the resolutions, all those in favor, signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 1039-1045 and No. 1047 were unanimously approved.)

Mr. Morelle.

MR. MORELLE: Thank you, sir. I now move that the Assembly -- that the Assembly stand adjourned until 10:00 a.m., Wednesday. I will note members, colleagues, that if we're here near 10:00, we can get through our required work in a reasonable period of time. So, with that -- and tomorrow, ladies and gentlemen, is a Session day.

ACTING SPEAKER AUBRY: Ten o'clock in the morning, be here, be early. The Assembly stands adjourned.

(Whereupon, at 6:15 p.m., the Assembly stood adjourned until Wednesday, April 25th at 10:00 a.m., Wednesday being a Session day.)

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2:41 P.M.

SPEAKER HEASTIE: The House will come to order.

Reverend Elia will offer a prayer.

REVEREND DONNA ELIA: Let us pray. Eternal God, we come before You, thank You to be felt to be in Your presence. Humble as we seek Your blessing, hopeful as we anticipate the work ahead. In times of joy and of sorrow, You, our God, pour out a generous measure of Your blessing upon all Legislators and staff, working for the well-being of our communities and our State. Empower them, especially when the tasks are challenging. Help them to find the way forward, especially in times of disagreement. Give them clarity in speaking, and help them to have an open mind in listening. Thank You for their willingness once again to take on the

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mantle of public service, and bless their families and all their dear ones. Give healing to any who struggle with illness, and strengthen those who are weary. We are grateful, O God, for the opportunity to celebrate Black History Month. Thank you for the gifts of Black leaders, those whom we can name and those whose names are lost to history but who struggled for justice and an end to oppression. Cure our land and the world of the scourge of racism. Help us all, people of every race and ethnicity, to commit to the work of antiracism. Grant us peace with justice. In Your holy name we pray. Amen.

SPEAKER HEASTIE: Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Speaker Heastie led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Friday, February 5th.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move to dispense with the Journal of Friday, February the 5th, and ask that the same stand approved.

SPEAKER HEASTIE: Without objection, so ordered.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I'm pleased to be back in Chambers today with members who are both here with us and those who are participating remotely. I

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will provide again the schedule for today, but I do want to leave us with a quote. We ended last week with the entire stanza from "Lift Every Voice and Sing" that was designed by the Jeff -- the Johnson Brothers. Today we're just going to go with a stanza of it, Mr. Speaker. It's, *Lift every voice and sing, till Earth and Heaven ring. Ring with the harmonies of liberty. Let our rejoicing rise, high as the listening skies. Let it resound loud as the rolling sea.* Again, Mr. Speaker, that is a verse from "Lift Every Voice and Sing."

The members do have on their desks a -- the main Calendar. It has nine bills on it. These new bills begin on page 4 with Calendar No. 78 and it goes through Calendar No. 86. We will start our work today by taking up a resolution by you, Mr. Speaker, commemorating Black History Month in the State of New York. We will then continue with the consent on the main Calendar where we left off on page 10 with Calendar No. 58. Then we will take up Calendar No. 50 by Mr. Englebright, the Constitutional Amendment on the right to clear air and water and a healthful environment. Following today's Session there will be a need for an immediate Majority Conference and, Mr. Speaker, as always we will consult with our colleagues on the other side to determine what their needs may be.

That is a general outline, Mr. Speaker. Now it would be appropriate if we have any housekeeping and/or resolutions, which you do.

SPEAKER HEASTIE: No housekeeping. But I would like to say good afternoon and in just a moment we will

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continue our longstanding Assembly tradition recognizing February as Black History Month with a Legislative Resolution. For many years, society history books often overlooked or minimized the vital contributions made by people of color. But here in the People's House, I am proud that we celebrate the accomplishments of our ancestors because we know we stand on their shoulders. As the first African-American Speaker of the People's House, I've always said that if I did this job right that -- that detail would be a footnote in history. But instead we recognize our accomplishments and contributions because Black history is American history. Today we celebrate the history made by those that came before us, and we commit to honoring that history by building on it right here in the People's House. And although February is Black History Month, I believe every day and every month is Black History Month.

Thank you.

The Clerk will read the title of the resolution.

THE CLERK: Assembly Resolution No. 45, Mr. Heastie.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim February 2021 as Black History Month in the State of New York.

SPEAKER AUBRY: Mr. Aubry on the resolution.

MR. AUBRY: Thank you, Mr. Speaker, for allowing me to speak on this resolution. I often stood in front of this august Body and talked a bit about my history as an African-American in this

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country and a son of the South, born in New Orleans, Louisiana. And so I think it's appropriate for a minute let me take you places maybe you haven't been and maybe you haven't had the opportunity to consider. In the South where -- when Separate But Unequal was established, there were Black schools. Black colleges, Black high schools, because we couldn't go to school with our White neighbors. It was not allowed. It was against the law. But in that process in a segregated South, the history of African-Americans in this country was taught. It was taught because we were taught for the most part by African-American teachers. And there was both an oral and a written history so that you would understand who you were and where you came from. Now, this might not have been universal, but at least existed within the Southern culture among the, at those times, Negro communities that existed. But that was not everywhere. And nor was it universally understood. So when I was raised and schooled in the north, as my parents brought me up here at a very young age, there was very little history taught about what happened to African-Americans. There was a mild reference to the slavery, but it was not exemplified in any way that you might understand it. For instance, I heard of the 100-Year War [sic] in Europe, the Habsburgs and the struggles that happened between England and France and Spain. That was fully talked about. And the history of Italy, of course, the boot, where that went on. And even what happened in the Urals in Russia. Those things -- and I was a history major when I went to college -- even in college there was no recognition of what

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African-Americans had contributed to this country. And so, same things I'm sure you were taught. So the idea that we were this powerful force in this country, providing all kinds of enhancements, helping the country, building the country, culturally making this country rich, were left out. And so generations would grow up not knowing who they were. And of course from slavery, that was the plan. When you were brought from the shores of Africa here, you were taken to places where they called "breaking in." And in the process of breaking in, to make a good slave you have to remove any of his history and his culture and have him accept the culture of being a slave. It was in my mind of all the things that I could think of that was most horrible about slavery was the denial of your culture, of your humanity, of yourself, because they didn't want that. That made you a very poor slave if you held on to this sense of self and independence. Of course like anybody else, if you are independent with your own resources, with your own mind, with your own feelings, you will rebel. And of course, rebellion was most feared in this country because of the millions of slaves that were brought across to work the cotton fields and work in the houses and all the part of the Triangle Trade that made this country an economic power. So the creation of Black History Month was done to help those who had not gotten that education to get it, because it wasn't going to be brought -- brought to you in schools because teachers coming out of particularly White institutions weren't taught that, right, they didn't know. They weren't taught it. It wasn't a course of study as you might find now today in

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these more modern times, but in those days, not so much. And so we all wandered around in the dark, thinking what we were taught to think and acting what -- the way we were taught to act. So the development of this day -- it was a day, it became a week, we wanted -- it is a month -- all was established in recognition of that missing piece in these human beings' lives that they could not connect. Many of you might be able to say, *My parents were born in Italy in a little small town outside of Rome.* Or in Poland in Warsaw in Rzeszów. In England or in France, somewhere on the River Seine. But African-Americans in the United States, only until very recently, could never point to a place in Africa where they knew their family came from. Knew that they had -- knew that there was a history. Knew that there was a village, a tribe, a city that they belonged to. So the viciousness of slavery and the denial of your humanity and your connection, both cultural and human-wise, was very complete. And so we celebrate today the reconnection of that. And we celebrate with you because it's important for you to understand those people who you live next to, work next to, see on the street, watch on television. Where they came from. Who they were. What they bring as a part of our culture and the many accomplishments, all the lists of inventors that were a part of the United States. All of the great military minds that were a part of this country. It is important for this country to understand what the original sin was, and to help us and to help yourself and to help this country recover.

So I salute you, Mr. Speaker, for bringing this

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resolution. I thank you for the work that you've done. I thank you for your leadership, and I thank the members of this House for enjoying this opportunity to celebrate together. And I'm even more happy because this is the anniversary of my 73rd birthday.

(Applause)

And they're getting to be not so many of us around. So I want to thank you so very much, Mr. Speaker, my members.

(Applause)

SPEAKER HEASTIE: Thank you, Mr. Aubry.

Mr. Barron on the resolution.

MR. BARRON: Thank you very much, Mr. Speaker.

When we speak of Black history, African history, we must not start our history in enslavement. We are an African people, torn us under from our continent. The richest continent known to the world. We are an African people that gave the world mathematics, science, astrology, astronomy. We gave the world the mighty Sphinx, the Pyramids, the Rock-Hewn Churches of Ethiopia. We are an African people that gave the world Imhotep, the real father of medicine. We are an African people. So whenever you start your history in enslavement, you missed the glorious African ancestry. You missed the pre-colonial times in Africa when we were kings, queens, princesses and when Africa was rolling with diamonds and gold and they're shared amongst the masses of African people. So we must not start our history during enslavement here in America. We are an African people.

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Secondly, we must begin to tell our history of resistance, not only the history of repression. We seem to always talk about how bad people did us, and believe me, they did and that must be brought up. But we had a history of resistance. From the shores of Africa, the inland resistance, many Africans were never conquered because they resisted European invaders. During the great so-called "Middle Passage" where millions of us died, the African Holocaust was the worst Holocaust known to humankind. But there were mutinies. Many of the ships never made it to America because Africans rolls up on those ships and they killed the crew that was enslaving them and turned the ships back to Africa, never to be enslaved. Oh, they'll show you the Amistad with Joseph Cinqué because a White man, John Quincy Adams, when they took over their ship, they guided it not back to Africa, they left the crew alive, the Africans did, and they guided it to America, Long Island. And John Quincy Adams, the great White savior, saved them and they went back to Africa. Oh, they won't tell you about the fact that we first came here in 1526, not 1619 when the Spanish -- Spaniards brought 200 Africans to the Pee Dee River in South Carolina, in that area, and colonized us there. We united with the indigenous people. And they won, they rebelled, revolted, tore down the colony, sent the Europeans back to San Domingo, where they came from, and they were able to live freely with the indigenous people, so-called Indians. The Africans, they united. They won't tell you about the rebellion of Cato in 1763 in South Carolina, rose up and went from plantation to

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plantation freeing Africans until they were finally caught. They won't tell you about the 1811 rebellion in Louisiana when we rose up once again, having been inspired by the Haitian revolution, the first liberation of insulated people in the Western Hemisphere. We were motivated by that, and they ran from plantation to plantation on their way to New Orleans to start a new independent African State of New Orleans, saying, *Liberty, liberty at last*. They don't tell you about that story. They don't tell you the story about Madison Washington, who during the Middle Passage and after he came here and he was enslaved, he freed himself in Virginia. And then wanting to go back to get his wife, he went back. They enslaved him again. He took over a ship and took the ship back to Africa and found out that his wife was on that ship. Tell us that story of African liberation.

So when we celebrate African or Black History Month, it's just not dates and personalities. History teaches of what can be done, what is possible. So if it's possible for Harriet Tubman to free over 400 of us, then it's possible for us to do that today. If it's possible for Nat Turner to go from plantation to plantation freeing our people, we can go from Black community to Black community, freeing our people from the economic, racist, parasitic, capital oppression that keeps poverty in our communities. And we should not allow them to front Black leadership, put Black faces in high places and you say that's progress. Until the masses of us are progressing, there is no progress. The struggle continues. We will celebrate Black history, but like the Speaker said, Black history is every day and we

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should honor that every day, not just the coldest and shortest month on the calendar.

ACTING SPEAKER AUBRY: Ms. Bichotte Hermelyn.

You need to -- thank you.

MS. BICHOTTE HERMELYN: Thank you, Mr. Speaker, for allowing me to speak on this resolution proclaiming February of this year as Black History Month in our State. During Black History Month we celebrate and we pay tribute to our culture, history which unfortunately continues to be forgotten in history books and teachings. As you know, a Utah school earlier this month even allowed parents to opt their children out of taking in Black History Month learning. Not understanding that Black history is American history, is world history, is global history. I remember when I was in high school at -- at LaGuardia High School of the Performing Arts where the Black Student Union, which I was part of, did a Black history program where we educated our class where math and science came from. It came from the African people. The teachers -- some of the teachers in the school wanted to ban our program and wanted to withhold educating things like Socrates and Plato, again, students of African people. So I join my colleagues in making sure that as we celebrate Black History Month, we celebrate, we pay tribute, but it's so that we do not forget where we come from. And our history and all the things that made America America because of Black people. The pandemic has also shined a light on the egregious racial disparities

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that have long plagued our State and City, particularly in districts like mine where we have struggled with healthcare, education, housing inequities. During this pandemic, African-Americans, Black people, bore a greater burden from the virus as rates of infection and fatality surged in our communities far beyond that of other communities. African-Americans served as frontline workers, as healthcare professionals, teachers, transportation workers. And despite this, we are seeing disparities in the vaccine distribution as well. How can we solve these inequities? Our State Legislature can take this step by, of course, not only passing this resolution today, but continuously honoring African-American heroes and teaching future generations about our history and our progress. But we cannot stop there. We must continue to demand equity in every aspect of our society. We must build on this foundation for desegregating our inner-city schools, taxing the rich to fund educational programming for our young, and fixing our broken -- our very broken criminal justice system. We must honor Black mothers by passing legislation that helps Black women and babies receive the same standard of care as everyone else, and improve on that standard of care for everyone. Shirley Chisholm, the first Black woman elected to the United States Congress, lived right here in Brooklyn near the district I now represent. In addition to representing the New York's 12th Congressional District for seven years, Chisholm became the first Black candidate to run for President of the United States as well as the first woman to run for her party's presidential nomination.

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Today I proudly present -- represent my district as a Black woman. My county as a Black woman. A Black woman who is of Haitian descent. The kin of the revolutionist, Dessalines. And that spirit in it -- in me keeps me going. That is the resistant spirit. And this year we celebrate an enormous victory with the swearing-in of our first Black female Vice President of the United States, Kamala Harris. Our future is with hope -- is with hope to look bright with the signs of progress. We still got a long way to go.

I acknowledge and thank our Speaker for introducing this, and my colleagues in the Assembly for supporting this Black History Month resolution. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, ma'am.

Ms. Frontus.

MS. FRONTUS: Thank you so much, Mr. Speaker.

Thank you for allowing me to speak on this resolution to recognize the month of February as Black History Month. I wanted to take just a very brief moment to echo the sentiments of my colleagues who spoke before me, and to say how important it is that all of us today realize that Black history is American history, and Black history is not just a month. It's something that we need to celebrate every single day.

I wanted to share a few thoughts about the last 400 years of our history here and the plight of the African-American. I don't know that I can say it better than Assemblymember Aubry who shared some very eloquent words about what African-Americans had to endure over the years. Essentially, as we know, Assemblymember

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Barron mentioned, our history actually doesn't begin in 1619 with slavery. I'd like to say that we were a proud African people who were formally enslaved. We were formally enslaved, but we were great before slavery and we continue to be great today. One of the things that I shared during my inauguration was the reason why I ran for office is when I think about justice and what justice means to me, it means using the halls of government to redress the wrongs of the past. When we look at the institutionalized racism that we've had to endure over the years, when we look at the insidiousness of anti-Blackness which is present in every segment of our society. Blacks have had to endure physical, emotional, mental and psychological violence. Messaging in every single way from our schools, from our entertainment industry, that Blacks are inferior, which has caused great harm to the psychology and the mental health of Black children across the U.S. A lot of people don't realize that our government and our policies literally shaped the two Americas that we see today. It shaped the plight of the African-American and the segregation and all of the ills that we often complain about in our urban communities. They didn't fall from the sky. We had a hand in it. And so one of the things that I want to say today is just as we use our halls of government to create these injustices in the past to oppress the African-Americans which were brought here against their will, we now have an obligation to use these same chambers of government to redress the wrongs of the past and to really echo in a new era of equality and dignity not only for African-Americans, but for all

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minorities who have been treated as second-class citizens.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you so much.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker, and thank you for sharing your remarks earlier. I rise just to say I -- I support this resolution. I think as you mentioned earlier, Black history is American history. And it's something that should not be taught in a single day or a single month, but every day and every month throughout the year. And when we talk about history, we're obviously talking in large part about education and educating our populous and educating young people about our history and what has occurred in the United States over -- over the course of our country and its founding. And it's why I believe so strongly that education is today the civil rights issue of our generation, and every child, regardless of their race, regardless of their zip code or their parents' income deserves access to a quality education. And so as we embrace Black History Month, let us work towards ensuring that every child has opportunity and has access to a quality education in this State and in this country, and so that they are never left in a failing school system or left behind. That is the best way to ensure equality and justice in our State and in our country, and the best way to honor Black History Month.

Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

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Mr. Goodell on the resolution.

MR. GOODELL: Thank you, sir. When we reflect back on Black history, as you yourself so eloquently pointed out, there is such a need to recognize and appreciate the incredible contributions that have been made over history, both pre the formation of the United States, during slavery and afterwards. And just reflecting just for a moment about some of the Blacks that made such a difference in the United States. People like Frederick Douglass or Harriet Truman [sic] or Booker T. Washington. Or in the music field. I mean, think about the incredible contributions we got from Scott Joplin or Duke Ellington, whom I actually saw perform. Maybe that tells you that my age is closer to yours than some of our freshmen. Louis Armstrong, Count Basie. And of course there are so many extraordinary athletes that we don't have time to list them. But Satchel Paige or Jackie Robinson or what about that phenomenal world-changing performance by Jessie Owens in the 1930's. But it's -- it's not just sports or entertainment or -- or music. The highest, highest level of accomplishment for any attorney is sitting on the Supreme Court, like Thurgood Marshall or Clarence Thomas. And on the politics side, we have President Obama and Vice President Harris. In the military we had Colin Powell, who rose to the very top. Or Condoleezza Rice. I mean these are incredible people who are making incredible contributions. And I just wanted to highlight one that may not be on the top of the history books, but an individual named Walter Washington, who came from my district and went on to become the

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first elected mayor in the City of Washington, D.C. We have so much to celebrate and so much to learn. And I'm thankful that we have this resolution as we develop a greater understanding of the incredible contributions on every level of society that are reflected by our Black friends and neighbors, political leaders, performers, sports heroes, legislators, including those in our very Chamber with Speaker Heastie and our Majority Leader Crystal Peoples-Stokes and yourself.

So thank you for moving this resolution forward, and I look forward to supporting it enthusiastically. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. I rise today to, like my colleagues, support this really important resolution that honors Black History Month. Clearly, as it -- as it has been said, a month is not long enough, a day is not long enough. It really does take a lifetime to pay attention to the contributions that have been made by African-Americans in this great country of ours. Today, however, though, I'd like to focus on Dr. Kizzmekia Corbett. She is an African-American scientist that has been lauded for the key science behind COVID-19 vaccines. Dr. Corbett is a research fellow and a scientific lead for the coronavirus and vaccines team. In fact, she was actually meeting at the National Institute of Health with the former president when a lot of these conversations began. Dr. Corbett was appointed to the VRC, Vaccine Research Center, to use her training and expertise to propel the novel

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vaccine development for the pandemic preparedness. Her work focuses on developing this virus, including mRNA 112, 1273, which was designated by her team and deployed by industry to Moderna. In response to this ongoing global pandemic, many of us know Manderma -- Moderna is one of the two most well-known vaccines that are being used. We first learned about Dr. Corbett, Mr. Speaker, in March of '20, again, as I said when she was meeting with this team of scientists and the former president. At the time, the U.S. had not felt the real impact of COVID quite yet because it was March '20. But when asked about her participation, she commented that it was important -- a very important step forward for young scientists and for people of color. She furthermore stated that she felt like it was necessary to be seen and not to be a hidden figure, so-to-speak. She felt it was important to do that because the level of her visibility allows young ladies and young men who look like her to see themselves in that same kind of work. Mr. Speaker, Dr. Corbett's statement is about being -- about it being necessary to be seen and not a hidden figure resonated with me very, very strongly. In fact, I remember being at Public School Number 31 when the entire country was heralding the fact that the astronaut John Glenn had gotten to the moon. Yet, Mr. Speaker, I was well over 50 years old before I ever heard that it was a Black woman mathematician, a Black woman engineer, and a Black woman who supervised the area's computer that they used. No one ever told me that when I was at Public School Number 31. Mr. Speaker, this information was not taught to us then,

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and in many cases it's not taught to us now. If it had not been publicated in a book and then later made into a movie, we would still not know the significance of these women. So back in 2005, a relatively new member in this Chamber, I got a chance to vote for some legislation that was sponsored by our former colleague Keith Wright called the Amistad Commission. And the Amistad Commission was a pretty simple mission. It was passed over to SED, State Education. They were supposed to come up with some strategies to figure out to infuse the complete history of African-Americans in American history. I remember with some excitement that my predecessor brought then-Governor Pataki into Buffalo to the Underground Railroad Church where he sat and signed that legislation into law. And here we are, Mr. Speaker, in 2021. And ask me if SED has implemented Amistad. Or ask anybody. The answer to that is no. That's the problem, Mr. Speaker. And so today as we celebrate Black history - and I thank you for bringing up this resolution and I thank you for the opportunity to do this - we need Amistad to be implemented. And we need State Education to begin working with us to make sure that that act happens. Not just to honor Black history, but to honor our former colleague Keith Wright, and to honor my predecessor, Arthur O. Eve, and quite honestly, to honor Governor Pataki, who signed it into law. That wasn't just a frivolous method of means that they took. They were serious. They wanted to see something happen. It's 2021. Let's make it happen.

Happy Black History Month.

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ACTING SPEAKER AUBRY: Thank you, Majority Leader.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, we're going to go right to page 10 and start with Calendar No. 58 by Mr. Gottfried.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A00190, Calendar No. 58, Gottfried, Paulin, L. Rosenthal, Abinanti, Colton, Sayegh, Galef. An act to amend the Public Health Law, in relation to hospital establishment.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00213, Calendar No. 59, Paulin, Galef, Abinanti, Otis, Jacobson. An act to amend the Not-for-Profit Corporation Law, in relation to voting requirements of the board of certain corporations.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Calendar No. 59, bill A.213. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously

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provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A00254, Calendar No. 60, Perry, Vanel. An act to amend the Public Officers Law, in relation to the unauthorized release of sealed records.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00297, Calendar No. 61, Gottfried, Dinowitz, Colton, Cahill, Weprin, Otis, Gallagher, Sayegh. An act to amend the Uniform City Court Act, the Uniform District Court Act, the Uniform Justice Court Act and the New York City Civil Court Act, in relation to obtaining jurisdiction over certain defendants.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00413, Calendar No. 62, L. Rosenthal, Lupardo, Sayegh. An act to amend the Public Health Law, in relation to adding dysmenorrhea to the list of conditions covered for lawful medical use of marihuana.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00563, Calendar No. 63, Paulin, De La Rosa, Galef, Jean-Pierre, Abinanti, Dinowitz, Englebright, Epstein, Hunter, Gottfried, Pichardo, McDonough, Reilly, Cook, Steck, Griffin, Otis, Vanel, Sayegh. An act to amend

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the Public Service Law, in relation to requiring certain notices to be provided to customers receiving telephone service through fiber optic-based telephone lines.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00744, Calendar No. 64, Wallace, Abinanti, Vanel. An act to amend the General Business Law, in relation to the requirement that certain health clubs shall have at least one automated external defibrillator available upon the premises.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00879, Calendar No. 65, Gottfried, Dinowitz, Galef, Paulin, L. Rosenthal, Colton, Abinanti, Rajkumar. An act to amend the Public Health Law and the Insurance Law, in relation to the definition of clinical peer reviewer.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A00964, Calendar No. 66, Zebrowski. An act to amend the Executive Law, in relation to violations of the Uniform Fire Prevention and Building Code.

ACTING SPEAKER AUBRY: On a motion by Mr. Zebrowski, the Senate bill is before the House. The Senate bill is advanced.

The bill is laid aside.

THE CLERK: Assembly No. A00970, Calendar No. 67, Cymbrowitz. An act to amend the Private Housing Finance Law, in relation to the membership of the New York State Housing Finance

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Agency, the Housing Trust Fund Corporation and the Affordable Housing Corporation.

ACTING SPEAKER AUBRY: On a motion by Mr. Cymbrowitz, the Senate bill is before the House. The Senate bill is advanced.

Read the last section.

THE CLERK: This act shall take effect January 1st.

ACTING SPEAKER AUBRY: The Clerk will record vote on Senate print S.871. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the number previously provided.

(The Clerk recorded the vote.)

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you, sir. This Chapter Amendment changes some of the appointments to the members of the New York State Housing Finance Agency, and the change in the number of appointments is -- is not an issue for me. However, I would like to point out that when we created this group we made sure there was an appointment from the Majority members in this House and in the Senate, but not a single appointment from the Minority. And the Minority Conference represents a substantial portion of New York State. Our perspective is sometimes different, but still valuable. And I think everyone in this Chamber recognizes the importance of listening to minorities including, I hope, the Republican Minority. So I would urge that as we go forward with new commissions and new

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agencies that we look to include a diversity of opinions across the State reflecting both the Majority and the Minority.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, sir.

(Pause)

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the following Republican Assemblymembers in the negative: Mr. Byrne, Mr. Schmitt and Mr. Walczyk.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A01150, Calendar No. 68, Abinanti, Solages, Taylor, Griffin, Fahy, Hevesi, Dickens, Thiele, Simon, Englebright, Seawright, McDonough, Ashby, Pichardo, Morinello, Paulin, Gottfried, Barron, Sayegh, Rodriguez, M. Miller, Cruz, Lupardo, Fernandez, Dinowitz, Weprin, Stirpe, Bronson. An act to amend the Public Health Law, in relation to adding autism to the list of conditions covered for lawful medical use of marihuana.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A01253, Calendar No. 69, Gottfried, Abinanti, Barron, Colton. An act to amend the Public Health Law, in relation to the confidentiality of contact tracing

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information.

ACTING SPEAKER AUBRY: On a motion by Mr. Gottfried, the Senate bill is before the House. The Senate bill is advanced.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print S.900. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A01523, Calendar No. 70, Pretlow. An act to amend the Public Health Law, in relation to prohibiting approved organizations in the Child Health Insurance Plan from limiting the participation of certain healthcare providers.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A01615, Calendar No. 71, Perry, Barron, Colton, Cook, Taylor, Weprin. An act to amend the Public Health Law, in relation to requiring physicians and hospitals to obtain the name of the school attended by school-aged patients and to include this information in their admission registration forms.

ACTING SPEAKER AUBRY: The bill is laid aside.

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THE CLERK: Assembly No. A01899, Calendar No. 72, Dinowitz, Gottfried, Vanel. An act to amend the Executive Law, in relation to providing for the award of attorney's fees and expert witness fees in appropriate cases.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A01920, Calendar No. 73, Barrett, Buttenschon, Thiele, Stern, Abinanti, Taylor, Gunther, Englebright, Jones, Galef, Nolan, Burdick, Jacobson, Cusick, Morinello, Montesano, Salka, Hawley, Simpson, DeStefano, McDonough, Lemondes. An act to amend the Executive Law, in relation to New York State veterans' cemeteries.

ACTING SPEAKER AUBRY: On a motion by Mrs. Barrett, the Senate bill is before the House. The Senate bill is advanced.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly [sic] print S.866. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Mr. Anderson to explain his vote.

MR. ANDERSON: Good afternoon. Thank you, Mr. Speaker. I'm voicing my support for this bill, as it helps to ensure that

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New York State veterans receive the proper benefits and services that they deserve without certain restrictions. Some of our vets don't or cannot receive State benefits and services as they're not qualified to receive veteran's benefits due to their ineligibility on the Federal level. So this bill being passed allows folks who have served and have -- have given their duty to, you know, to our State and to this nation, the help that they need. It's vitally important. I want to thank Assemblymember Barrett for introducing this bill and my fellow colleagues who have cosponsored this very important bill.

I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Anderson in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A02014, Calendar No. 74, Barrett, Griffin, Lavine, McDonough. An act to amend the Executive Law, in relation to defining certain qualifying conditions for veterans.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A.2014. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously

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provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A02203, Calendar No. 75, Barrett, Wallace, McDonough. An act to amend the Executive Law, in relation to directing the Division of Veterans' Services to provide information to veterans who experience post-traumatic stress disorder and traumatic brain injury.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 60th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A.2203. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Mr. Angelino on the bill. To explain his vote, I'm sorry.

MR. ANGELINO: Thank you, Mr. Speaker. I appreciate this opportunity to explain my vote. I want to thank the Veterans Committee for unanimously passing this and bringing this forward. I rise today to ask members and anybody who hears my

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voice that as we discuss veterans issues, sometimes we send young men and women far from home into harm's way to do the business that we ask them to do, and in so doing they sometimes have to do unthinkable things on our behalf. If we really want a distraught veteran to take advantage of all of these programs of which we're offering, I would ask that we drop the letter D from PTS. This should not be considered a disorder that brings with it a negative connotation. What we ask these young people to do shouldn't be considered a disorder, it should be considered expected when we -- when we welcome them back home. In the future, when we can - I know the Federal government calls it PTS with the D - I would like that D dropped and just be considered post-traumatic stress.

With that said, I will support this and I'll be voting in the affirmative.

ACTING SPEAKER AUBRY: Thank you, sir. Mr. Angelino in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A02679, Calendar No. 76, Cymbrowitz. An act to amend the Public Housing Law, in relation to directing the Commissioner of Housing and Community Renewal to promulgate rules and regulations regarding the use of electronic records and signatures for certain residential leases.

ACTING SPEAKER AUBRY: Read the last section.

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THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A.2679. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could now go back to page 9, we're going to take up Calendar No. 50 on debate by Mr. Englebright. This is regarding the second passage of the Constitutional Amendment.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Senate No. S00528, Calendar No. 50, Senator Jackson (A01368, Englebright, Griffin, Colton, Gottfried, Santabarbara, Dinowitz, Glick, Fahy, Abinanti, Otis, Jean-Pierre, Lavine, Simon, Galef, Cook, Hunter, Steck, Bichotte Hermelyn, Ramos, Weprin, Hyndman, Seawright, Lupardo, L. Rosenthal, Walker, Carroll, De La Rosa, Thiele, Gunther, Davila, Aubry, Cruz, Bronson, Barrett, Kelles, Burdick, Zinerman, Nolan, Lunsford, Epstein, Williams, Dickens, Rozic, Sayegh, Magnarelli, González-Rojas, Jackson, Rajkumar, Benedetto). Concurrent

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Resolution of the Senate and Assembly proposing an amendment to Article I of the Constitution, in relation to the right to clean air and water and a healthful environment.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: An explanation, please.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Englebright.

MR. ENGLEBRIGHT: Yes, Mr. Speaker. Can you hear me?

ACTING SPEAKER AUBRY: Absolutely, sir.

MR. ENGLEBRIGHT: Thank you very much. This is a proposed Constitutional Amendment to enable something that everyone believes in many cases is already a right but has never previously been formalized. And that right is to a clean environment, clean air, clean water, and a healthful environment. It's in the largest sense a proposed Constitutional Amendment that is an expression of optimism. It is intended to assure our citizens that they will not be betrayed circumstantially by environmental degradation, and that the health and well-being of they and their families will not be compromised due to governmental inaction or negligence that may otherwise damage our air, land or water.

ACTING SPEAKER AUBRY: Mr. Smullen.

MR. SMULLEN: Thank you, Mr. Speaker. Would the sponsor kindly yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Englebright, will

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you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. SMULLEN: Thank you, Member Englebright.

I really appreciate the opportunity to have a dialogue here in public today about this most important Constitutional Amendment. I think it's very important that we get the terms and the conditions of this Constitutional Amendment that are clear and public. We passed it once before, and I believe this is a -- the second passage prior to when it has to go before the voters this November; is that correct?

MR. ENGLEBRIGHT: That is correct.

MR. SMULLEN: And will this be the second amendment before the voters this fall, in addition to the election redistricting commission?

MR. ENGLEBRIGHT: I haven't been trying to keep track of that full calendar, so I'll take your word for it. I -- I am only focused on this one because it comes through my committee and I'm the sponsor.

MR. SMULLEN: Sure, and I really appreciate that. Because I think Constitutional Amendments, whether at the Federal level or at the State level, are extremely important. So I wanted to ask you, I looked through our Constitution in preparation for this discussion, and I noticed that a lot of the Article I rights in the New York State Constitution are, in fact, political rights. Would you agree?

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MR. ENGLEBRIGHT: I don't have any reason to disagree.

MR. SMULLEN: Well, I'm -- just for instance, there's the right to free speech, to assembly, to the various procedural mechanisms that allow people to address their grievances and in which -- from which further laws are made. Is that fair in how the Constitution is supposed to work? Is it -- it's a foundational document from which further laws flow?

MR. ENGLEBRIGHT: It can work that way. As I understand it, the Bill of Rights in our Constitution is not just for political purposes or procedural purposes. That can flow from it, I suppose. But that it is intended to be primarily a definition of the rights of being a citizen of the State.

MR. SMULLEN: Certainly. And I -- I would hardly agree with that as the interpretation of it. So I have to ask you, in this context, what does "clean" -- the word "clean" mean in this proposed amendment?

MR. ENGLEBRIGHT: Well, clean basically means that the environment should not be allowed to compromise the health or well-being of any citizen, and that there should be no harm, no sickness, no disease, no convulsion, no injury from simply being a citizen living in this State.

MR. SMULLEN: Well, absolutely. I think that's something that we should certainly all aspire to. But obviously, words have meaning in a legal context. What does the word "healthful"

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mean in this legislation before us today?

MR. ENGLEBRIGHT: Healthful means there will be no biological sickness or harm.

MR. SMULLEN: Okay. And I'll -- I'll take that to include some of the things that are covered by the Clean Air Act, the Federal Clean Air Act of 1970 and the Federal Clean Water Act of 1972, almost 50 years ago, which have been wonders in making sure that our -- our country and our State remains clean. Does this -- in any way does this affect any of the laws of New York State in the environmental area which you -- which you look after? What does it do to those laws that are in effect today?

MR. ENGLEBRIGHT: It doesn't change any other law, but what rather it does is it offers context, guidance and instruction to the various organs of State government. I'd like to think of it as -- that this Constitutional Amendment is the frame for a collage of State agencies and institutions that are all supposed to be working in the same direction to protect the health and well-being of our citizens. So I see this, basically, as the frame of context that will give a greater sense of expectation, a sharper rendering of the expectation of being a -- a member of our society in New York, vis-à-vis what will it mean to you and your loved ones' health.

MR. SMULLEN: Well, thank you for that, because I -- I have some concerns. Would you agree that New York is one of the most litigious states in these United States of America?

MR. ENGLEBRIGHT: It has that reputation.

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MR. SMULLEN: I -- I know it has that reputation. In -- in fact, it's one of the most litigious states. So one of the concerns about this amendment which is already covered by Federal law and by State Law, is that this amendment will actually provide legal standing for civil actions. Would you say in your framework that you've described, would that be the case?

MR. ENGLEBRIGHT: I would not be able to predict how that would translate. I would point out that the amount of litigious activity is also a reflection of the density of population of any given state, as well as the -- the level of sophistication of its citizens. That we have a -- an act before us or to place this before the people of the State does not change, however, any of the existing laws of the State.

MR. SMULLEN: And so the Department of Environmental Conservation, which is, would you agree, is the primary regulator of environmental law in New York?

MR. ENGLEBRIGHT: I would agree.

MR. SMULLEN: So is the -- as the primary environmental regulator, is that now going to be the Attorney General as the primary protector of rights in terms of the legal process here in New York? Will the Attorney General take over that role in our -- in our system?

MR. ENGLEBRIGHT: Certainly not. Nothing changes except perception. You're asking whether or not this is an initiative that would completely reform and redirect the energy of

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environmental protection. It does not do that.

MR. SMULLEN: I thank you very much for your time and answering --

MR. ENGLEBRIGHT: (Inaudible/cross-talk)

MR. SMULLEN: -- your questions.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SMULLEN: I think Mr. Englebright had something he wanted to say. I didn't want to cut him off. I didn't mean to inadvertently, sir.

ACTING SPEAKER AUBRY: Mr. Englebright.

MR. ENGLEBRIGHT: If I could just finish my thought. Thank you very much. I appreciate your courtesy. I was just going to say try not to read too much into this in terms of intent, other than to enable our citizens to empower themselves and to have a -- a crisper understanding that they have a right to clean air and water and a healthful time while living and being a part of our State.

Thank you for your courtesy.

MR. SMULLEN: Thank you. On the bill.

And I appreciate the aspirational nature of this bill, but therein lies the concern, in my mind. This bill is going to provide legal standing for people that do not like an outcome that may be present in -- in our process of governance, whether it's having to do with local governments, with industry. It's going to provide them legal standing in which to litigate. And they can use that litigation as

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-- basically as a cudgel to beat whomever they want to into submission on a variety of -- of things. And the reason is that this bill and this amendment is not specific enough. It sounds good, it feels good, but the reality is is that it has to be adjudicated in court. And there'll be lots of -- I suspect -- I suspect that there'll be lots of actions in court related to this legislation, particularly with regards to property. There's a term of art called NIMBY, which is "Not in My Backyard." When someone doesn't want something to happen, then they -- they file suit. And here's -- here's a prime lever in which I believe that citizens will now have the ability to -- to file civil actions against their fellow citizens. Contrary to 50 years -- it's been 50 years since the Clean Air Act and the Clean Water Act have been established. New York has a robust environmental regulatory structure. I'm not really sure what this bill and what this amendment is going to do to our Constitution than what's already been done before.

For those and for a host of many other reasons, I will be voting against this bill today, as I did in the past, but I will also encourage voters to look very carefully at this to make sure that they -- they see what is present and what the words actually mean and what will happen going forward when they consider this at the ballot box in -- in November.

Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Palmesano.

MR. PALMESANO: Yes, thank you, Mr. Speaker.

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Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

MR. PALMESANO: Thank you, Steve. I appreciate your time, good to see you.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. PALMESANO: I have a few questions I wanted to address on this issue, particularly around the energy side of things. First of all, I think -- I know you'll will probably agree that all of us want to support and provide clean water and clean air for our residents; wouldn't you agree with that absolutely?

MR. ENGLEBRIGHT: I would hope that that would be the case --

MR. PALMESANO: Me, too.

MR. ENGLEBRIGHT: -- but if some people end up finding a way to vote no, which I'm puzzled by --

MR. PALMESANO: I understand that.

MR. ENGLEBRIGHT: -- but maybe that'll change today and we'll have a unanimous consent at the end of this.

MR. PALMESANO: Maybe not, though.

(Laughter)

Steve, right now, under the law right now we have Federal and State regulations. We address a lot of these issues through State legislation, through DEC regulation and review, we pass

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bond acts, environmental bond acts. We do things like that right now to help protect our environment, don't we?

MR. ENGLEBRIGHT: We do.

MR. PALMESANO: And I guess -- I think where I'm trying to get at with this amendment, this Constitutional Amendment, this would create an individual's right of private action under Constitutional purposes, correct?

MR. ENGLEBRIGHT: Not correct. This does not create anything new in terms of rights of action. Anyone who wants to use the legal system to bring an action now can do that. No, that's not the purpose.

MR. PALMESANO: Okay --

MR. ENGLEBRIGHT: The purpose is to frame the expectations of the State government and to enable our citizens to put people who look a lot like you and me, legislators, more -- more precisely into the pathway of expectation to protect the citizens' health and well-being.

MR. PALMESANO: Yeah, Steve, I understand you're saying it doesn't create a right of private action and that's not the intent behind it, but it certainly, with any piece of legislation, there are consequences to it and certainly if an individual wants to file an action that their Constitutional right is being violated if this becomes part of the Constitution, they'll have the right to do that, and that can also apply to -- and where I'm concerned on that front of it, on the energy side of things, our ability in New York State to, you know, to

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produce energy, our energy sector, the ability to generate electricity. Now, certainly, that could apply to, let's say a natural gas plant. I know a lot of people don't like natural gas, and I get that, but if someone wants to bring suit because they feel even though we have the regulatory process with the DEC and others, if someone feels under this legislation, this Constitutional Amendment, if their Constitutional rights are being violated, they would have the right to bring suit as an individual, correct?

MR. ENGLEBRIGHT: Just like I am a geologist not a lawyer, I will leave that to the lawyers to determine. I can tell you this: There is no -- there's very short language in the proposed amendment and it does not address rights of legal action; it doesn't even speak to that issue. What I believe the primary consequence of its passage will be is to enable our citizens to hold Legislature activities, such as the list that you mentioned, to a higher standard and to have a higher expectation of performance from us.

MR. PALMESANO: Right, and I guess, Steve, where I get also concerned is maybe not just on the, say not on natural gas and I see it's not intended to do that, but again, this can also have an impact on our renewable projects that are going on in place, as well, if say we go through the regulatory process, again, an individual would have the right under the Constitution if they feel for whatever reason these projects, whether it's renewable, whether it's natural gas, have a violation of their Constitutional right, they would have that opportunity to do that. So, I know you keep saying that you don't have

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lawsuits and I understand that, so I don't want to belabor that point with you, so I appreciate -- I appreciate the intent of what you're trying to do with the bill, so I'll just go on the bill, then, Steve.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALMESANO: Thank you, Mr. Speaker, my colleagues. And I understand the intention behind this legislation. I -- I -- knowing the sponsor, his intentions are well conceived, well-meaning as always is when he puts legislation forward. I think my concern is the unintended consequences of what this legislation will do. This will certainly create a right of private action for individuals to bring -- file for lawsuits as an individual person from a Constitutional perspective. And I think where I have concern on this, certainly is what I was talking about as far as our energy generation side of things, because right now we already have in place a regulatory process with the DEC, we passed legislation, we have bond acts and I think -- I guess I get concerned that, you know, we're also going to be shifting more from the governmental side, you know, where powers are bestowed on the Legislature and the Executive to handle some of those regulatory processes, you're going to create -- shift more of that to the Judiciary which is going to allow the courts to have more say because they're going to have to have say because you're going to open up this system to more litigation, more private actions across the board on a Constitutional basis versus, you know, the regulatory process that we handle these projects. And this is going to -- and I

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mentioned nuclear -- natural gas plants. I know, again, some people think that natural gas, anything we can do to stop natural gas, that's a good thing. I disagree with that. I think natural gas should be a part of -- of our portfolio, our energy portfolio. But with this process, we're not just talking about natural gas, we're opening this right of action, private action on renewable projects as well, because I think it's going to cause some Constitutional problems. I mean, you can have private right of actions and lawsuits against wind farms that are being developed. You know, there's been issues brought up about wind farms. There's not a lot of support in the public, in certain areas, for wind farms and solar farms. The flicker, that shadow when the sun is low in the sky and it's just behind the turbine, the rotating turbine, which has produced problems for people with photo sensitivity to -- with epilepsy and seizure disorders because of these triggers. The other issues with wind farms, the noise and what's going to happen to the blades. I mean, those are issues that could be brought forward. You're going to have more suits on that relative than just dealing with the process that we have, whether it's Article 10 or the Office of Renewable Energy -- you know, where they are siting these projects now whether it's wind farms or solar farms, without any local public input, without any feedback or participation from the local government because the State just says where it's going to go, so...

You also have this situation on the solar farms, you know, there's material in the solar panels, lead and cadmium, what's going to happen with the disposal when there's -- when there's

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washout and how this can transpose -- you know, when there's rainwater and what that -- affects that getting into the ground water, into the ground and rainwater. That's -- that's going to be impactful. That's going to open up this action for civil rights of action by individuals, as well, which is certainly going to have a challenge to, you know, a possible slowing down the goals a lot of people have in support of the CLCPA, which I have voiced my concerns about as a whole, but you also have the issue about the -- what are we going to do about the underwater hydroelectric electric lines that are going to be coming from Canada down to New York City. I mean, they go through an extensive review process and approval process, but now you're going to add on top of that more from private right of action that can happen and will happen because you're opening up this for further litigation. I mean, I know when there's litigation that happens up when there's regulatory process, it goes through an Article 78, but this is talking about a Constitutional right and then when people falling on our Constitutional purposes, I think that can be very problematic.

What about someone, you know, who has a wood stove? Is that going to allow a neighbor to file a lawsuit against someone if they have a wood stove? That's going to be infringing upon their Constitutional right, or a natural gas boiler? I mean, from that process -- I mean, we have a process right now in place that we use with open legislative oversight, and I think a Constitutional Amendment opens up that windfall of lawsuits that is just going to

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cost more, it's going to provide a great deal of uncertainty to our energy markets, as well. You know, the goals, as I mentioned, of the CLCPA, believe it or not, people can find ways to file lawsuits on these things, and they will if you're creating that type of Constitutional Amendment.

Again, we all want clean water, clean air, but I think by doing this, I think we're just going to open this up more, again, for uncertainty and challenges with the energy markets, with the business community. You know, obviously the goal of having affordable and reliable energy supply for our families, our farmers, our businesses, and our manufacturers, I think that's going to cause a problem for them, as well, because of the lawsuits and how this is going to continue to fester and carry on. I just think it's going to lead to costly and expensive litigation, it's going to be duplicative issues that right now can be handled through the regulatory process with the DEC, with the Federal government through the legislative process and the laws that we pass and create in the regulations we have. I just -- I just think we're -- what this action is going to cause is not the way we need to be.

We're all for clean water and clean air. I just think this Constitutional Amendment is just going to take us down the wrong path. It's going to, again, create costly litigation, it's going to have an impact on our energy markets and our energy portfolio. It's going to be -- it could cause problems for the CLCPA. I know many people support the CLCPA. I think that's something that could be

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problematic, as well, because you are going to have people that can challenge wind farms, you're going to have people that can challenge solar farms because of the environmental impacts that can create, too, whether immediately or down the road. So I just think that's something to keep in mind as we move forward with this. So, for those reasons, Mr. Speaker, I'll be voting in the negative on this and I'm going to encourage my colleagues to do the same. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker.

Would the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield, yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MANKTELOW: Thank you, Chairman. Thank you, Speaker; thank you, Chairman. Just a few questions. I know we -- we went through this bill a few years ago on the floor and one of the questions I had asked then was why -- or is there an exemption for Ag in this bill this year?

MR. ENGLEBRIGHT: There's no exemptions. There's no reason to have exemptions because there is no direct reference to Ag. There is no anticipated negative impact or positive impact either way toward agriculture. It speaks to the general premise that living in New York should be something that you can do without

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apprehension that it's going to compromise your health, and that shouldn't be -- that shouldn't be interpreted through the lens of transportation or agriculture, recreation or any of the other activities of -- of our complex State.

MR. MANKTELOW: Thank you. Thank you, Steve, for that. One of my concerns is with the shift of population, we see many individuals moving out of the city areas out to the suburbs and the rural areas, and I know as a farmer for many years, and I think we've talked about this, Steve, that when we harvest soybeans and we harvest grain and we harvest wheat, there's a lot of dust that's involved in that and it has to be that way, otherwise you can't harvest the -- the product. And one of the concerns I have is if we have a neighbor move in from the city that's not used to this and I'm out -- I'm out harvesting wheat and all of a sudden this person has an asthma attack because of the dust, you know, what happens at that point?

MR. ENGLEBRIGHT: That is not something that we would, from reading or enacting this, have any way of predicting. If there is a way to correct that, I would hope that it would be corrected locally through the action of local government. You know, I live in a county that was and still is the number one agricultural county in the State, and as growth and development has taken place in my community and others, we have had subdivisions built right next to farms and the -- the conflicts of that -- of land use activities have sometimes manifested themselves. Those are the types of problems that really need to be addressed with land use setbacks for new

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subdivisions. That's something that should be part of the planning process at local government. It is not something, though, that's directly within the scope of this particular resolution.

MR. MANKTELOW: All right. Steve, so if it goes back to the local government, is there -- I saw in the sponsor's memo that there would be no financial implications for State or local municipalities. So if this happens, there will definitely be expenses to the local municipalities if they're going to have to deal with this locally, and I've got grave concern as people move into these areas and the dust is flying, whether it's, you know, harvesting or in the spring when we have a dry spell and the dust will fly and go for a long ways. If an individual puts a stop to a farming operation or decides to bring a lawsuit against Manktelow Farms, for instance, what happens to -- what happens to me? Do I have to stop? Do I have to wait for an answer from the local government? How is that going to be addressed?

MR. ENGLEBRIGHT: It would be addressed in the same way that it's addressed now. Nothing in this particular measure changes or addresses the type of circumstance that -- that you point toward. Again -- and these are important considerations, but there are mechanisms and precedents and recommended activities such as having setbacks and rows of tree plantings and other activities to take care of dust. This is not, again, within the scope of a precise expectation of this measure.

MR. MANKTELOW: Steve, I think with all due

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respect -- and I agree with some of your points on this. I think that without those specifics being in here that we're really opening up a can of worms for a lot of local lawsuits. I just don't see how that will not happen, whether it's spring or fall, you know, whether it's smell. You know, we have fertilizers and I know our farmers are doing a great job with the new fertilizers that we have, keeping our water systems clean. You know, we want clean water, we want clean air just as well. Is smell going to be part of clean air? If there's a hog operation or a chicken operation or a cow operation, how do we deal with that with trees and buffers, because that's not going to change. That smell is going to go through those trees. Is that going to be part of this? Will the citizen have the right to stop that operation at that point?

MR. ENGLEBRIGHT: This does not empower any particular lawsuit or any particular fine grained actions such as what you described. I will say it sets the expectation that those who are elected, those are who in elected office have a sharpened responsibility and expectation to anticipate and to act wisely to help prevent the kinds of conflicts you've given a couple of examples; we can go on for many hours listing potential such conflicts. That doesn't mean that we should abandon the general premise of making it possible for people to live in a community and know that they will not have their health compromised, that their lungs will not be diseased, that they will not suffer from environmental poisoning, that they should not have to just say, *Oh well*, when there is a contamination

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event such as the Grumman Bethpage plume, or the kinds of poisonings that have occurred in some Upstate communities that the citizens have been victimized by. Those who are in elected office need to do better and to make sure that the citizens have a right to that expectation we have put forward this measure.

MR. MANKTELOW: So, you know, going back to the local -- local elected officials. So in a situation here, are we going to put the onus back to the local elected officials to, again, fix a problem that we're going to create at the State level?

MR. ENGLEBRIGHT: This speaks primarily to the State to the extent that all of the other units of government, the county, town, village, et cetera, are subsets that have been authorized by the State Legislature is reasonable, but really it puts the onus really on us at the State level.

MR. MANKTELOW: Okay, and I think that's why we're, again, addressing some of these questions. I think in the situation where we have Ag, Ag is predominantly the business of New York State, especially in the Upstate areas. I think there needs to be language in this bill that does allow Ag exemptions. I was hoping to see that with the second time around. We passed it two years ago, of course in April, of '19 and I was hoping to see that, but we didn't.

But another big issue that I'm hearing in my district is smell, okay. We have two very large landfills in my district, several around the district, and I know in New York State the Governor is pushing for a better, cleaner, green New York State. So the situation

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with a lot of the landfill material coming out of New York City/Long Island area, going to our landfills here a few miles from where I live, the smell is atrocious, it's absolutely disgusting. So if we get a bunch of people together, and it's going to happen, and they bring a lawsuit, what happens if that landfill gets shut down? Where does the -- where does the material from New York City and Long Island go?

MR. ENGLEBRIGHT: The question you pose is one that has an infinite number of possible answers, but I can tell you this: The -- when you have a circumstance in which odor from a landfill or from any activity that is authorized by -- by government, really causing great discomfort, that's a warning sign. That's why we have olfactory capability, to warn us when we are in harm's way from having biological harm to the tissues and functions of our organs. So it's a serious matter you rightly raise, and all I can say is that isn't changed by this measure, but in terms of the expectation to the extent that State agencies may help oversee these landfills or -- or dumps, there -- they would be put on a higher level, I would hope, a higher level of performance expectation.

MR. MANKTELOW: Well, you know, I've been to these landfills, I've been to their -- their operations and I see that they're doing everything basically they possibly can. One of the issues is bringing all the material up and the cost that it costs to get here, how much fuel are we using, whether it's diesel fuel, diesel fuel through a train. Again, we're opening -- opening up something that I think needs to be addressed in this bill before we go ahead and put it

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on the ballot because we really need to know those answers before all of a sudden someone comes up and says, *Well, I don't want to smell this anymore.* And in my district, every day we get calls about the smell from these landfills and I've got concern that we need to have a game plan of what we're going to do if -- if someone does bring suit to this because it's going to happen, just like some of the other colleagues have spoke already. Things are going to happen because we're giving the people the right to do so. And we do a good job with dealing with it now, but it's going to get worse and I just want to know why we don't have an answer for that in this, or what is your answer, I guess, how are we going to deal with this?

MR. ENGLEBRIGHT: Make your question a little more specific.

MR. MANKTELOW: Sure, okay. So, Steve, as we we're talking about the landfills, right. There's going to be people that are going to ban together and they're going to ask for these landfills to be shut down because they're sick and tired of the smell, especially when all the landfill material are coming from Downstate. People are not happy about it, doesn't matter what letter they have behind their name. When they -- when they do this, what are we going to do as a State when some of these landfills get held up by the courts and say, *We've got to stop this until we figure this out.* What are we going to do? Who's going to figure it out and what are we going to do?

MR. ENGLEBRIGHT: Part of the answer, of course, is the State agencies, most particularly the Department of

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Environmental Conservation will have to make recommended new law which we will pass, or we will hold hearings and ask all of the stakeholders to share their information and insights, and we will push for a new policy that is appropriate to meet the challenge of the moment.

MR. MANKTELOW: I think you may be --

MR. ENGLEBRIGHT: You can't have - let me just finish my thought if I could - you can't have a Constitutional Amendment anticipate every specific concern in every particular area and expect to spell that out; in fact, what we are trying to do here is just frame the expectation for every citizen that if they live in New York, that they know that they can raise their family here and their loved ones and be in an environment that is safe to do that.

MR. MANKTELOW: I totally agree with you, and I think that should be framed through our agencies of New York State, not through a Constitutional Amendment because there's so much vagueness in this it can go in any direction. If we put the onus back on our -- on our departments of New York State to come up with the things that we want to see done, we could do it at a much better -- cheaper cost and a much better solution. This -- this just leaves us wide open and I have grave concern for our Ag communities, I really do, and for -- for everyone because, you know, you might be barbecuing next door and I don't like the smell of your barbecue sauce. Is that going to be an issue? I hope not --

MR. ENGLEBRIGHT: You mention smell. You

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know, smell sometimes is a warning of harm. In other cases, some people don't like the smell of onions, but they like the taste of them. So, smell by itself is -- is very difficult to quantify and to write in, which is why you don't see it in our existing environmental laws very much, but there are other biological indicators that are more accurate that are more frequently addressed.

MR. MANKTELOW: Well thank you, I'm glad you said that because I thought smell shouldn't be in there but hearing it from the Chairman of the Committee, it just reassures me that you're on the same page with me about the smell. The smell should not be an issue with this bill -- with this piece of -- this Constitutional Amendment. So, again, Mr. Chairman, I thank you for your time, I thank you for your patience in answering my questions.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the -- well, I'm afraid you exhausted your time.

MR. MANKTELOW: I'm sorry?

ACTING SPEAKER AUBRY: I'm afraid your time is up.

MR. MANKTELOW: On the bill.

ACTING SPEAKER AUBRY: Yes. Your time has been expended with the question and answer even if you wanted to go on the bill.

MR. MANKTELOW: Okay. I'll go -- I'll go on my vote then. Thank you, sir. Thank you, Mr. Speaker.

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ACTING SPEAKER AUBRY: Thank you.

Ms. Giglio.

Mr. Brown.

MR. BROWN: Thank you, Mr. Speaker. Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I will yield, Mr. Speaker.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. BROWN: First off, Mr. Englebright, it is my distinct honor and pleasure to be speaking to you about this bill. Your reputation as an environmental protective stalwart for the State of New York and on Long Island is unsurpassed and I, for one, have watched your career for quite some time, so it is a pleasure. But I rise today to talk about this proposed Constitutional Amendment because I'm in favor, but I have some severe concerns. I'm somewhat conflicted because as much as I think it's a laudable goal and aspirational, I -- I firmly believe that when it comes to protecting the environment, it's one of those rare instances where we have legislation that cuts across both aisles of this Body. I think, though, that this Constitutional Amendment raises more issues than it answers. And my first question, Mr. Englebright, is I'm sure you're familiar with the New York State Conservation Law and when they were passed; they were passed back in the 1970s by Governor Carey and the then Legislature, correct?

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MR. ENGLEBRIGHT: Many of them were. We have some environmental laws that go back to the 19th Century, but there was a, as you rightly point out, a -- a point in time centered in the '70s which is called the Environmental Revolution.

MR. BROWN: Right, and there was a big push at that time to pass several pieces of legislation for -- for the Clean Air Act, the Clean Water Act, the New York State Navigation Law, et cetera, correct?

MR. ENGLEBRIGHT: That's correct.

MR. BROWN: And during this time, the Legislature and the Governor saw fit to pass this legislation in order to protect the environment but yet, at that time, they did not choose to pass a Constitutional Amendment; is that correct?

MR. ENGLEBRIGHT: I don't believe the Constitutional Amendment was even considered.

MR. BROWN: Right. So do we know what the impact of the proposed Constitutional Amendment will be on, say, businesses or industry, or perhaps even local government or State agencies, for that matter?

MR. ENGLEBRIGHT: I believe it will be positive to the extent that we can have a heightened awareness in our citizens of powers that we, as legislators, have and expect for us to do our job to prevent the kind of conflict and negativity that theoretically might -- might be in the future is something that empowers our citizens and should help empower also all of the activities of our society, including

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our enterprising activities.

MR. BROWN: So on that note, do you think this proposed Constitutional Amendment will give a rise to citizen suits against the State, the county or local governments that are not provided -- if they do not provide a clean environment?

MR. ENGLEBRIGHT: No, I don't believe that that's the case, and I say that because we have examined the -- the issue that you raise. We called the National Conference of State Legislatures. As you may know, there are six other states that have already passed similar Constitutional provisions and have a little bit of time to see if there was any negative consequence in terms of litigation. We have been following this and to date, we have not seen any increase in citizen lawsuits.

MR. BROWN: So let me cut to the chase. I apologize, but I only have a short period of time. Using the most extreme example, do you think this Constitutional Amendment could give a rise to a citizen lawsuit challenging that the State government has not provided a COVID-free environment?

MR. ENGLEBRIGHT: Listen, anyone can bring a lawsuit for any time that -- that they talk to a lawyer.

MR. BROWN: Well, that's true. Well, that's true. We are creating, by virtue of this Constitutional right, a right which also corresponds with expectations, does it not?

MR. ENGLEBRIGHT: If -- if you're trying to suggest that placing this before the voters of the State is in some way

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going to predictably cause mayhem, I would respectfully disagree with that. I don't see that --

MR. BROWN: I can feel my time ticking away so I'm going to get to some more questions.

ACTING SPEAKER AUBRY: Mr. Brown.

MR. BROWN: Yes, sir.

ACTING SPEAKER AUBRY: Slow down.

MR. BROWN: I'm sorry.

ACTING SPEAKER AUBRY: Let the man answer -- the member to answer your questions. You still have a significant amount of time.

MR. BROWN: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: You're welcome.

MR. BROWN: So with respect to many of the expectations that you cited to before, you stated that many of these things we already have the right for under State law and Federal law, do we not?

MR. ENGLEBRIGHT: Can you repeat the question? I'm sorry.

MR. BROWN: I said we already have many of these rights under State law that we're talking about, clean air, clean water, right, protecting our environment. We have many of these rights already under State law and Federal law currently on the books.

MR. ENGLEBRIGHT: We do not have these framed and given context in a manner that this will provide, and we have not

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gone to the voters themselves to involve them in -- in the process of making such a determination in conjunction with our legislative activities, that's new; however, as you rightly point out, on specific subject matters, we do have a lot of environmental law already in place.

MR. BROWN: Okay, and I appreciate that and I fully respect that, Assemblyman Englebright. I just want to -- on the bill, I guess.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. BROWN: So, Mr. Speaker, I appreciate Assemblyman Englebright's answers to the questions, but I just want to point out for the fellow members of the Assembly just some context. The current New York State Environmental Conservation Law Section 1-0101, Declaration of Policy states and I quote, "The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared the policy of the State of New York to conserve, improve, and protect its natural resources and environment to prevent and abate and control water, land, and air pollution in order to enhance," and this is the important part, "enhance the health, safety, and welfare of the people of the State and their overall economic and social well-being." Furthermore, Section 47-0103 has a similar Declaration of Policy where it states, "Local, county, and regional understanding of the importance of all aspects of the environment is necessary for the most balanced use of natural resources."

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The point being, Mr. Speaker, and to the Chairman of the Environmental Conservation Committee and the sponsor of this bill, is that we, as a State, already have the process in place for balance in our law, a balance between protecting the environment and also creating an economic opportunity for people to thrive in this State while protecting the environment. And as much as I -- I appreciate and applaud this Constitutional Amendment, I feel it's -- it's just a "feel good" bill. It -- it doesn't, however, strike the proper balance. It is too vague and it's unclear as to enforcement, and it's too open-ended. And I don't believe it's necessary given the current Federal, State and environmental laws. I feel like it's going to bog down the already overwhelmed State court system with additional -- additional lawsuits and as much as I appreciate the endeavor, I am going to vote in favor of it to give the people the opportunity to vote on the amendment. So, thank you very much for your time.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Burdick.

MR. BURDICK: Thank you, Mr. Speaker. I strongly support the Constitutional Amendment in placing this on the ballot. As the Chair had indicated, you know, we can come up with scores and scores of theoretical and remote concerns. It's always easy to say no on a measure such as this. It would take weeks, as the Chair indicated, to attempt to address each one of them. There's nothing insidious or menacing here. Other states have adopted this form of Constitutional Amendment and the sky did not fall; in fact, 43 states

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have some form of expression of environmental values in their Constitutions. Our neighbors in Pennsylvania are among them. Article 1, Section 27 of the Pennsylvania Constitution actually goes further: Not only clean air and pure water, but also the "Preservation of the natural, scenic, historic, and esthetic values of the environment," end quote.

Rather than the mayhem that is feared, this actually will be the contrary. It will provide a tremendous boost to the objectives of the CLCPA and, yes, it will put an onus on the Legislature to deliver to the residents of this State. The Chair stated it would sharpen our responsibility, and that's right. We should be held accountable. We should be accountable to everyone in the State for providing this basic human right, and I respectfully disagree with the Minority that it would take us down the wrong path. I think it will take us down the right path. I will vote in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Kelles.

MS. KELLES: Yes, I just wanted to thank the Chairman Englebright for bringing this forward. I think this is an incredibly positive move to give the right to clean air and water to the citizens of this State. I did want to make one clarification as I see this. This -- this gives the State and elected officials a mandate to ensure clean air and water. This is a mandate not only to ensure clean air and water, but to use the existing science that would dictate when we are or are not leading in a direction of contaminating air and water, and I

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think that this is a -- this is a win for science in that right.

One thing that I wanted to just add here that I'm finding a bit concerning is the discussion of a right of private action, specifically as it pertains to actions of one private citizen to the other. This is a mandate to our government to clean air and water. This is not a stipulation specific to actions between private citizens. And so, I just wanted to make that clarification because it's a bit concerning, I think, that it can be misleading to the public, and I think that this is really important because it is telling us, it is a guidance for us and our regulations to ensure that we are moving in the direction of clean air and water.

I also want to point out that we have talked about history and actions that were taken historically with respect to whether or not this was added or not added to the Constitution, and I would hope that we would be allowed to grow as humans with new knowledge, and right now we are in a time of profound climate change. We are not looking at something in the future, we are looking at something that is passing us by, that we are in right now. So establishing this in the middle of the profound climate crisis that we're in is the right move not only for our current generation, but future generations of all citizens, whether they be farmers, not farmers, living in rural areas, living in urban areas. This is a move because of the science that we have seen in climate change. So I just wanted to point out that distinction, legally speaking. This is a mandate to states not interfering between private individuals. So thank you so much for

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bringing this forward and I am absolutely in support. Thank you so much, Chairman Englebright.

ACTING SPEAKER AUBRY: Thank you so much.

Ms. Gallagher.

MS. GALLAGHER: Thank you so much. I am also speaking on the bill.

ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. GALLAGHER: Thank you. I live in Greenpoint, Brooklyn, and my apartment is just a few blocks from Newtown Creek which during the Gilded Age was nicknamed "The Little Mississippi of the North," which was home to many practices that have since been made illegal, but we are still cleaning up those industries' mess. Our water is still not swimmable, our sewage overflow concerns make this a never-ending commitment for cleanup. The long history of environmental degradation at the hands of industry in this community has lasted for over 100 years, and my district has suffered from one of the largest oil spills in the country's history. Both in the air and under the ground, we suffer from extra pollution. From above, we have trucks and cars spewing lead and other chemicals into our lungs from the Williamsburg Bridge and from the Brooklyn/Queens Expressway. From underground, we have lead in the soil and a multitude of plumes that include autoimmune disruptors, cancer-causing agents, and heavy metals.

For generations, my community has fought big industry. We did not need this bill to do it. We fought with lawsuits.

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And we've also fought with action and with our own elbow grease. Sometimes we win, but the struggle is so much bigger and so much more -- feeling insurmountable at times. The DEC is underfunded, our water quality standards are well behind modern standards in the rest of the country, and we are in climate crisis. It takes a great deal of willpower to stand up for your right to live healthfully, especially if you are struggling with poverty and structural racism on top of all else. This amendment will grant that bit of courage that we all need to say that this land is our land and this land is your land, that we and our families have a right to survive with the basic necessities offered by a clean environment.

I am in full support of this bill and I would like to thank Chairman Englebright for bringing it to the floor. My community needs this bill and we need the support of the Constitution. Thank you. I will be voting in the affirmative.

ACTING SPEAKER AUBRY: Thank you.

Mr. Gottfried.

MR. GOTTFRIED: Thank you, Mr. Speaker. You know, in 1776 the first draft of the Declaration of Independence said that we are endowed with the right to life, liberty, and property. Fortunately, Thomas Jefferson had the good sense to change that to life, liberty, and the pursuit of happiness. Our rights are more than -- than the right to property, and this amendment recognizes some rights that might have been expressed in some of our statutes, but I think the right to a clean environment is something that is important enough

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that it ought to be recognized in our Constitution. And that's what this does.

Now, what is a right? You know, if you can't enforce something, you really can't call it a "right." You know, I might think I have the right to vanilla ice cream, but there's really no way for me to enforce that right. So it isn't really a "right." And our rights should not, in America, should not be seen as something that is graciously enforced on our behalf by the Legislature. Yes, the Legislature should be protecting our -- our rights, but we shouldn't be totally beholden to the Legislature to be protecting our rights.

You know, we've had a lot of talk here today about whether, oh my goodness, can we -- does this give us a right not to have bad smells coming over from our neighborhood -- our neighbor's property. Well, I don't think anyone really doubts whether if your neighborhood -- if your neighbor is producing polluted water that migrates to your property that that polluted water is a violation of your rights for which you might be able to have legal recourse. Why should it be different if your neighbor is sending air as opposed to water onto your property that can sicken you?

Now, a bad smell is not necessarily unclean or unhealthy, and in many cases it wouldn't be recognized as any kind of right to be free of a -- of a smell you don't like. But a bad smell might be indicative of something really serious. And a bad smell coming from your neighbor's property might be something that is so severe that it is essentially depriving you of the use of your property, in

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which case one of the reasons why we've had courts for the last, I don't know, thousand or so years of Anglo-Saxon American history is to protect us in circumstances like that. That's among the reasons why we have courts to protect our rights, and it's also why occasionally we need to take action to add to the bundle of rights that we, as New Yorkers, are entitled to. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Ms. Forrest.

MS. SOUFFRANT FORREST: Thank you. Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. SOUFFRANT FORREST: Thank you, Mr. Speaker and thank you, Chairman Englebright. I absolutely love this bill. This bill sets the expectation for all citizens, corporations, government agencies, that the environment should be safe. Every New Yorker should expect and trust that the water that they're drinking is clean and safe from toxin. The expectation and trust that everyone is held accountable, that the air is safe and clean, and that you should expect that the air that you're breathing will not trigger asthma, COPD or anything else.

This bill says that New York State, that its value -- that it values its environment and believe that it's a resource that should be available to all regardless of where you live, the color of your skin, or your socioeconomic status. Voters should understand and be educated through this Constitutional change that their -- that

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their -- that their State values their health and access to quality of life. New Yorkers should have the right to fight and defend what -- those values. We fight for speech, we fight for guns; this bill says that you have the right to fight for clean space, period. As a legislator, I don't concern myself too much about potential courts -- excuse me, potential torts or legal cases. I, as a legislator, my job is to defend rights for people. I -- I vote firmly and proudly in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Ms. Glick.

MS. GLICK: Thank you, Mr. Speaker. I was not going to speak on this bill, but listening to the debate caused me to feel like I wanted to weigh in just a little bit. Currently, under current law, people can, in fact, bring suits. The A -- the Attorney General can intervene in certain circumstances under current law. This does not change the law. What it does is that it creates a Constitutional marker that ensures that while laws can change, the basic underpinning of the Constitution does not.

One of our colleagues referenced the fact that many people move from the City to suburban or -- or rural areas, and I would simply say as someone who has done that for weekends and summer, the sweet smell of manure is a marker of a certain time of the year, and it really is incumbent upon real estate agents to point out to people, as did our real -- realtor that we were moving into an agricultural community; that there would be noises at some time that

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would involve maybe quarrying, which is just down the road; that there might be smells that we were unaccustomed to; there is a slurry down the -- just down the road and there are times when the field is fertilized that there is a -- an odor carried on the breeze, but it dissipates. This is, you know, living in the country is not something that people from the City are anxious to do in order to disrupt the lives of people who have been living for generations providing food to other New Yorkers. So I think some of this is a bit overblown, and I understand there's anxiety, but it's, I think, not something that is likely, by passing this, to create greater confusion or greater sense of disruption to the lives of people who have been living in rural communities.

I would also just like to point out, Mr. Speaker, that since we are not in the Chamber and we are operating remotely, it is a little more difficult for the debate to occur, and perhaps at some point we should remind members, especially new members, that this is not a court of law, but rather an opportunity for us to have an exchange of ideas between colleagues, and that we give each other a chance to answer and that we are not defendants on -- in a court, or witnesses at -- in a courtroom.

So with that, Mr. Speaker, I want to just thank Mr. Englebright for his constancy in trying to protect New York's environment, and that this Constitutional Amendment which will go before the public will be something that will create a framework in the Constitution and that the vagaries of lawmaking will not undermine.

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And with that, I lend my support to the measure.

ACTING SPEAKER AUBRY: Thank you.

Ms. Lunsford.

MS. LUNSFORD: Thank you. Like my colleague, I -- I had also not planned to speak on this bill, but I've been inspired. There's nothing in this amendment that creates a private right of action. I know several of us have said that, but I feel it bears repeating: A private right of action must be affirmatively conveyed. It cannot be read backwards into a law. There is nothing that gives a citizen an explicit right to sue another private citizen or private corporation, a landfill, a farm, a wind turbine manufacturer, under this law. If Twitter bans someone for violating their community standards, the banned person does not sue the government because Twitter violated their right to free speech. It's not how these laws work. And I think that there has been a lot of discussion around the many scenarios that litigation can arise in without contemplating, as several of my other colleagues have pointed out, that other areas of litigation are already open and exist for attending to these issues.

I, too, have a landfill in my district. There are currently two lawsuits pending surrounding the smell and other attendant issues of this landfill. Public nuisance, land use laws, negligence, we have any number of avenues for people to bring suit for exactly the kind of problems contemplated by my colleagues today. This amendment does not convey upon the citizenry any additional rights of action against other businesses, against other

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people, against their neighbors. What it does do is expressly vest in the people an affirmative right. It takes from us, as a government, the power to harm our people without repercussion. It allows the people to hold to account not just this legislative Body, but all future legislative Bodies, if we attempt to roll back the good environmental progress that we have made. It holds us accountable by giving the power back to the people. And that's what this amendment is about.

This isn't a gesture. This amendment ensures that our planet, our health, and our children's futures will not be subject to the whim of politics or the fashion of the day. It reaffirms our commitment to making New York a climate action leader throughout the country and the world. I vote in the affirmative, and thank you very much to the Chair and to all the advocates who have fought for this bill.

ACTING SPEAKER AUBRY: Thank you.

Ms. Septimo.

MS. SEPTIMO: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. SEPTIMO: So right now we're debating a Constitutional Amendment to guarantee the right to clean air and clean water to every New Yorker. And some colleagues have mentioned that they believe the Federal regulations go far enough to guarantee this. Well, I wanted to point out first that the first Federal clean water regulations began in 1948, but in year 2000, a rusted car

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was pulled out of the Bronx River. And Federal clean air regulations began in 1950, but today, in 2021, children where I grew up in the neighborhood of Hunts Point in the Bronx still have asthma attacks as the number one reason they miss school each year. The South Bronx has more than 30,000 tractor trailer trucks drive through the area each day, and thousands more cars. And the effect of this is that the South Bronx has the highest asthma rate in the entire nation - the highest asthma rate in the entire nation - and, yet, we are here debating whether or not to guarantee the right to clean air and clear water to every New Yorker.

I hear colleagues discussing some of the uncertainty they think will arise with the passage of this amendment because they are concerned about litigation and heightened responsibility, and have even gone as far as suggesting exemptions. And I want to center what we're really talking about: Exemptions about a guaranteed right to clean and clean water. That would be a list of times or situations where we believe people are not entitled to live with clean air and clean water.

This measure will simply make it so that companies, developers, governments, and everyone in between must be thoughtful about environmental impact and how that impact relates to real living, breathing people. There's a -- actually, a common phrase to discuss the South Bronx's history that you may have heard that says, *The Bronx is burning*, but thanks to the work of organizations like the Point CDC, Youth Ministries for Peace and Justice, Mothers on the

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Move, the New York City Environmental Justice Alliance, Rocking the Vote, the Bronx River Alliance, and so many others, that phrase has become that, *The Bronx is breathing*. Today we have beavers and schools of fish regularly in the Bronx River, and organizations who use river work as a tool for development for young people. And while this speaks to remarkable development, as long as people are unhealthier due to the air they breathe, as long as polluting industries are allowed to thrive at the expense of individuals, and as long as asthma could ever be the number one reason children miss school, we have a lot of work to do.

I'm so proud to support this legislation that finally guarantees what we, in the Bronx, know to be true, which is that clean air and clean water are rights that should be fiercely protected, defended, and expanded. And I look forward to continuing to set high standards for air quality and continue -- continuing to expand waterfront access for communities throughout New York. But for now, I strongly support this measure for providing the space for all of us to breathe a bit more freely. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Epstein.

MR. EPSTEIN: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. EPSTEIN: I want to thank the sponsor for bringing this Constitutional Amendment forward, and I'm proud to be

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a cosponsor of this. First, we need to think about people over profits. This bill centers around the needs of normal human beings, normal New Yorkers. The impact it will have to provide clean air and clean water is immeasurable. We've seen time and time again incidents of people denied access to clean water, the risk of exposure, the risk of lead paint, the risk of healthy air. Whether it's asthma that we've seen with my children in the Lower East Side, or we've heard children in the Bronx, the risk is too high. The risk of water pollution throughout the State, where my mother lives on Long Island, where other citizens Upstate we've heard time and time again, the risk is high.

The question before you and before us all is: When is it too late for New York to act? Today is a day for New York to act. We must stand together, stand for the environment, stand for our children, stand for the New Yorkers to come and say we, as a Legislature, believe you have a right, a Constitutional right to air and water, and we're going to fight for that for you for generations to come. I'm deeply concerned about this. I applaud the sponsor and encourage us to do as much as we can to get this passed, get it out of the Legislature, and get it passed on the ballot in November. Thank you, Mr. Speaker. I'm glad to cosponsor and support this bill.

ACTING SPEAKER AUBRY: Certainly.

Ms. Giglio.

MS. GIGLIO: Good afternoon, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Englebright, will

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you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. GIGLIO: Good afternoon, Mr. Englebright.

MR. ENGLEBRIGHT: Good afternoon.

MS. GIGLIO: I just have a couple of questions. I wanted to know if there was any funding for any of the plumes that have come out of the Grumman facilities.

MR. ENGLEBRIGHT: The funding is something that is contemplated for -- within our current budget as proposed by the Executive. What we have done there is advance approximately \$26 million of State funds. We're looking to have a settlement with Northrop Grumman and the U.S. Navy that would return that money to us. We're presently using the funds -- or anticipating if we pass the budget with this as proposed, using environmental damages account funds. As you know, environmental damages account, it has a sole trustee, it's the Commissioner of the DEC. So the answer is yes, we are planning to use some State money, we're hoping to be reimbursed.

MS. GIGLIO: Well, that's wonderful news. And my second question is: Do you think that it is healthy or healthful to sell recreational marihuana within 500 feet of a school district when school districts often leave their windows open and in the spring and in the summer, and the potential for the smoking of marihuana in close proximity to the schools could have a health risk to those students?

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MR. ENGLEBRIGHT: That -- my own particular opinion is that that's not relevant necessarily to the measure before us, but I don't -- I would not favor that personally.

MS. GIGLIO: Okay. Thank you to the sponsor.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. GIGLIO: I think everyone in the Chamber and all the Assembly and Senate and all of our elected leaders agree that everybody should have a right to clean water and a healthful environment. The Grumman facility in my district does have a plume that has affected several drinking water wells within the vicinity. The State lowered the standards of the parts per trillion from 70 parts per trillion to 10 parts per trillion, and the Navy is not acknowledging that. So, a small municipality like the Town of Riverhead with their own water district could be responsible for paying nearly \$5 million in connecting these people to public water. So, I hope that the funding does get passed and the Riverhead municipality does get the money to extend public water to those people whose wells have been tested and have contaminants in them, number one.

Number two, the -- the farmers and the dust in a very heavy agricultural district and seeing the opposition letters from all of the Farm Bureaus in the -- in Upstate, it's a concern that farmers would have to, if there was an action brought against them because it is a right to clean air under the New York State Constitution, if this should pass, to sell their properties and create residential dwellings on

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those farms, which would heavily impact the school district.

I come from the North Fork of Long Island, which is a -- a tourism district. People come out for the farms. People come out to go out on the ferry, to go to Greenport, to enjoy the waterfront community, so clean water is of utmost importance. When it comes to job creation and manufacturing and trucks carrying finished goods to other destinations either in the State or outside of the State, I -- I -- I'm concerned that somebody could say there's too many trucks coming out of that facility that's creating thousands of jobs for the neighboring residents. So there are a lot of things that concern me with this. I -- I said I agree, we all believe in clean air, water, and a healthy environment. And I will leave it up to the voters in my district to decide on the ballot and referendum as to what the costs are associated with this and the rights under the new New York State Constitution as amended. So, I will be voting in the affirmative, but I will be talking to my constituents about all of my concerns, and I will be listening to theirs. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mr. Phillip Steck.

MR. STECK: Very briefly on the bill, Mr. Chairman -- Mr. Speaker, I mean. Of course everyone is for clean air and clean water, but for some, laws are only symbolic of our aspirations. I disagree. I favor enforcement of the law. Laws are meant to be real and really accomplish things, not just to be avoided every time someone conjures up a doomsday scenario. Step two is to actually

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provide funding so we can have clean air and clean water. This Constitutional Amendment is a critical step in that process, therefore, I will be voting in the affirmative.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Anderson.

MR. ANDERSON: Thank you, Mr. Speaker, and thank you to my colleagues who are joining me today in support of this critically, critically important amendment to our State's Constitution. Our residents here in the State of New York have the right to clean air and water and a healthy environment. And today we're affirming that right, Mr. Speaker, by passing this very, very critical Constitutional Amendment. And we are making sure that in this moment, instances where communities of color who are predominantly impacted by air pollution and water pollution are prioritized and remembered in this right that all of our residents here in the State of New York have, here in -- or will have.

Here in Southeast Queens and parts of the district that I represent, there has been a history of chemicals being used, the same chemicals that are used in dry cleaning -- dry cleaners and auto repair shops detected in our water supply just ten to 15 short years ago. We have consistent airplane flyovers as JFK Airport is in the heart of my Assembly District. And so, this moment by passing this amendment, we are saying to those people, to those residents, to those families, to those communities that basic human rights of clean air and clean water are a priority for the State, and I look forward to voting in the

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affirmative on this bill, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Ms. Bichotte Hermelyn.

MS. BICHOTTE HERMELYN: Thank you, Mr.

Speaker, for allowing me to speak on this bill. I first want to thank the sponsor for this bill, which is a great bill that relates to the Constitutional right to clean air and water and a health -- healthy environment. This bill will guarantee our legal and Constitutional right to clean air and water and a healthy environment. A few years ago, we witnessed the Flint water crisis. Between 6,000 and 12,000 children were exposed to drinking water with high levels of lead. This is unacceptable for any state in our nation. Unfortunately, New Yorkers are frequently left questioning what is in our water. In my apartment in Brooklyn, my own tap water is frequently brown and murky. My constituents are also often concerned by the quality and color of their water.

With many homes so close to highways and major expressways in Brooklyn, asthma is a concern for many residents of our borough. Healthy air quality is more important now than ever. With health care disparities exposed, our central Brooklyn neighbors must be protected from the endless pollutants in our City's air and water. I vote in the affirmative. Clean air and clean water rights must be protected. We deserve the right to protect our health. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

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Mr. Simpson.

MR. SIMPSON: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SIMPSON: Mr. Speaker, I represent probably one of the most resource-rich districts in New York State. And, you know, it's our environmental protections in the Adirondacks that has provided for much needed revenue to all of our communities. And our environment is one of our highest priorities. We've seen where current regulations have failed. The Hudson River, which is a mighty river that runs through our district, is forever polluted. We cannot eat more than a certain amount of fish out of that river. Now, that may be minor, but that's hundreds of years of trying to rectify that in the future before that can be corrected.

And I just want to ask everyone a simple question: If not when -- if not now, when are we going to address these issues in the environment and protect this for the future generations? I will be voting affirmative on this bill, and thank you very much.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell to close.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: Yes, I yield.

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ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Englebright.

Every year, we have a number of environmental regulations and statutes that go through our Environmental Committee, of which you're the Chair - I think you've done a -- a great job for many years - has it ever been brought into question our authority to enact environmental legislation?

MR. ENGLEBRIGHT: Not that I'm aware of.

MR. GOODELL: As you know, this year, for example, we've had a number of Chapter Amendments. Some of those Chapter Amendments related to environmental legislation that we passed earlier and the Governor signed the original legislation but pointed out there were countervailing considerations. And so, we passed legislation in one instance to move the effective date of -- of one bill out a year. We passed another Chapter Amendment that said that you could use certain chemicals under certain circumstances or herbicides when the alternatives were not as good. It seems to me that the Legislature is going through that constant balancing act. Is there any reflection of that type of balancing act in this proposed amendment?

MR. ENGLEBRIGHT: No, not specifically. This amendment is not intended to speak to any particular measure, rather it is intended to provide context, and the metaphor I've used is to provide a frame around all of the many units of government, including us, that are supposed to be acting in concert with one another to

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protect the air and water and environment of the State.

MR. GOODELL: And I appreciate that. I look at the Pennsylvania amendment which is worded differently but has the same general context, and one of our colleagues brought that up. In Pennsylvania, even though the Constitutional language was similar to ours, the Pennsylvania courts enacted a three-part standard in reviewing any litigation brought under it. And the first one was whether or not there was compliance with applicable rules and regulations. The second is whether there's a reasonable effort to reduce the environmental incursion, and the third was a balancing act, balancing the environmental damage with the benefit that's being claimed by the proposed action. Would you envision that the New York State courts would likewise -- likewise enact such a balancing act?

MR. ENGLEBRIGHT: I don't see these as directly analogous and so, I don't see that as a likelihood. In the Pennsylvania case, you know, much of the litigation was independent of the Constitution and involved a fracking issue specifically. And as we've seen in *Gasland*, the movie, and testimony that we've received over the years, our neighboring state, in the opinion of many, has been reckless in the way that they've gone about tapping their gas reserves. So, I'm not sure that one can derive from that a predictive model for New York at all.

MR. GOODELL: Well, would you envision that the New York courts in evaluating the meaning and intent of this

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legislation would look at whether or not the action was consistent with our environmental laws and regulations, our land use requirements, for example, and all the other existing statutory and regulatory provisions, is that a factor you think the New York courts should look at in evaluating the meaning and the intent of this statute -- or this Constitutional Amendment?

MR. ENGLEBRIGHT: We're different from Pennsylvania and the courts in our State, as well as in Pennsylvania, are separate from the Legislature. Again, I don't see any way to draw highly predictive modeling from what has occurred there --

MR. GOODELL: Okay.

MR. ENGLEBRIGHT: -- to apply it to New York.

MR. GOODELL: Of course as you know, our current Constitution, Article XIV, particularly Section 4 and 5, already have specific provisions relating to the environment, the provisions that have been in place I think since at least 1969, some of it goes back to as early as 1938. And looking at that section of the Constitution, it says, *The policy of the State shall be to conserve and protect the -- the natural resources and scenic beauty, and encourage the development and improvement of agricultural lands for the production of food and other agricultural products.* Would it be your understanding that if the proposed Constitutional Amendment is enacted that both sections would be read harmoniously so that they both have meaning, or is it your intent that this Constitutional Amendment would in some way repeal or replace the current Constitutional language that's in Article

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XIV?

MR. ENGLEBRIGHT: Just a second, I'm getting a phone call that I don't want to have -- interrupt our colloquy here.

MR. GOODELL: Oh, you can go ahead and take it if you wish.

MR. ENGLEBRIGHT: No, no, I don't -- I don't want to take it, I just had to turn it off. Those provisions aren't contradictory. I anticipate that the voters will be favorable to this if we place this before them, and that they would expect that the various parts of our Constitution will, in fact, harmonize with one another.

MR. GOODELL: So you would envision --

MR. ENGLEBRIGHT: I should also point --

MR. GOODELL: -- I'm sorry. You would envision it then as supplementing rather than replacing the current Constitution?

MR. ENGLEBRIGHT: Well, it being rather than supplanting and complementing -- I should also -- let me just, if I could, make two other observations. Number one, the Article XIV, Section 4 that you refer to is attempting to directly relate to the Forever Wild provisions of the Adirondacks specifically, but in the larger sense it speaks to conservation resources, whereas our initiative, the one -- the matter before us this instant moment, really speaks to the rights of people. And they're different, but they compliment and they're not mutually exclusive if they're both passed.

MR. GOODELL: Thank you, Mr. Englebright. I would point out that Article XIV, Section 4 goes on to say that, *The*

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Legislature, in implementing this policy, shall include adequate provisions for the abatement of air and water pollution, and of excessive and unnecessary noise and the protection of agricultural lands, and the development and regulation of water resources. What struck me about the current language in the Constitution is that it's clear that it's the Legislature that has the responsibility. In your proposed Constitutional Amendment, it doesn't put the responsibility on the Legislature, right? It says, each person shall have the right to clean air and water and a healthful environment. So it -- it drops the role of the Legislature; is that correct?

MR. ENGLEBRIGHT: That is not correct.

MR. GOODELL: Okay.

MR. ENGLEBRIGHT: The Legislature's role is continuing and important, and the responsibility is something that is maintained and necessary. What it does, however, is frame the expectations of the actions of the Legislature and the other units of government so that they are all acting in concert with one another toward the goal of protecting the air and water and land and environmental resources of the state for the people --

MR. GOODELL: And I very much appreciate that answer and -- and I appreciate your comments. There's been some discussion whether or not this proposed amendment would create a private right of action or whether it is instead intended to help guide and direct the Legislature. Would -- is it your intent that this legislation would create a private right of action, or do you envision

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that the Legislature would still maintain a predominant role?

MR. ENGLEBRIGHT: I see the Legislature as the voice of the people. We are duly-elected to represent their thoughts and this initiative is, again, to ensure that people have the right to clean air and water and a healthful environment. That is its primary purpose. It should put us in more of a self-conscious position, though, each time that we touch upon issues going forward after this passes. We should be much more self-conscious about the outcome of our debates, and we should measure our effectiveness against the expectations of our public.

MR. GOODELL: And if an individual or group of individuals feel that we have not met that expectation, is it your understanding that this would create a private right of action?

MR. ENGLEBRIGHT: I'm, again, a geologist, not a lawyer. I would leave that to the lawyers to decide. That is certainly not a intent because we have not spoken to it and we have not attempted in the language of the measure to create a -- a right of action. But I would -- it's my understanding, I would point out, that anyone can sue anybody for anything. So, it doesn't prevent that, but it doesn't create anything new either.

MR. GOODELL: Thank you very much, Mr. Englebright.

On the bill.

ACTING SPEAKER HUNTER: On the bill.

MR. GOODELL: Thank you, Madam Speaker. As

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all of our colleagues have said on both sides of the aisle, we all support clean air and clean water and a healthy environment. But as often is said, the devil is in the details, and in the past, prior to this proposed amendment, those details were hammered out in the legislative process. And so in the past, we haven't said that you're entitled to distilled water through your public municipal system, we're -- we said you're entitled to safe water. And the word "clean" and the word "safe" are different. And so, of course, our local municipalities often add chlorine to make sure there's no bacterial infection. Sometimes they add fluoride. They certainly don't -- they surely don't have distilled water. And New York City, by the way, its water supply comes from Upstate in open reservoirs. Don't want to break it to my New York City colleagues too much, but there's a lot of stuff that flows into those reservoirs from animals and fish, and we don't need to go into all the gory details because it's all too much to know. But while the New York City water supply is safe, it most assuredly is not pure. And, likewise, when it comes to air, we want to make sure the air we breathe is safe, but "safe" and "clean" are two different things. We don't filter the air that we breathe here in the Chambers, maybe we should, but we don't.

And so, we're asked to vote on language that nobody really knows what it means. We do know, though, that if a private right of action is available, and some people have expressed concerns about it, then our municipalities may see extraordinarily expensive litigation where people who are claiming the water is not clean, or the

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air is not clean, or clean enough. So, when we change the Constitution, which already gives this Legislature an express directive to protect and preserve the environment, that's already in there, and when we change the Constitution to say that every person has a personal right, we transfer power and responsibility for that legislative balancing act from the Legislature and from the experts at the DEC and elsewhere to the courts, and we give no guidance to the courts on what this Constitutional Amendment means.

So instead of us debating whether or not we should restrict glyphosate, for example, or -- or whether or not we should put other restrictions in, or what the terms and conditions are, rather than us doing it, rather than your local Legislature doing it, whether your local town board deciding on what the right setbacks are and what the right restrictions are, we delegate it to the courts. And, unfortunately, I think that's a mistake because when we look at economic development throughout our State, we recognize the importance of being able to provide guidance to those who are coming to the State and investing millions and millions of dollars, and they need to know if they meet every environmental standard and every environmental law can they move forward, and the answer with this amendment is maybe not.

So, I appreciate very much the desire to have clean air and water and a healthy environment, a desire that I fully support, but I think we need to define this and maintain that checks and balances that are so important, and for us to retain the role that we

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have representing our constituents in making those -- those difficult decisions. Thank you again very much, Mr. Speaker, for allowing me to speak.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print S.528. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. This will be a Party vote. The Republican Caucus will be generally in the negative, although I anticipate some support within our Caucus, as well. So, those who wish to vote for this amendment, please call the Minority Leader's office and advise them. Thank you, sir.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority Conference will be voting in the affirmative on this measure. Members deciding to go -- have an exception to that, they can please feel free to contact my office, we'll be happy to record your vote. Thank you, Mr. Speaker.

(The Clerk recorded the vote.)

To explain my vote.

ACTING SPEAKER AUBRY: To explain your vote,

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Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I want to commend the Chair of this Committee, Mr. Englebright for -- for the second year of, you know, going through a -- a debate on an ideal that can not only bring us to an opportunity where we're literally living in a cleaner, fresher society, both air and the water, but it also brings us to the opportunity to say to the people who elected us, we need your opinion here. It brings us an opportunity to take to the electorate -- I'll wait until these gentlemen are finished.

ACTING SPEAKER AUBRY: Okay.

Gentlemen, you will -- thank you, You...

MRS. PEOPLES-STOKES: Thank you, gentlemen.

Mr. Speaker, I want to reiterate how valuable I think it is for us to, one, be paying attention to the environment in the manner that we are; but two, be paying attention to the fact that sometimes we should let the voters speak other than just electing us here. And so I'm grateful for this as an opportunity to move this measure forward. And I do want to thank Mr. Englebright for his work on this issue, for his diligence in the debate, and for all of my colleagues who can agree that this is the right thing to do and it's the right time to get it done. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Ms. Niou.

MS. NIOU: Thank you, Mr. Speaker, for allowing me to speak about my vote and explaining it. I just wanted to thank the sponsor for his diligent fight for our environment. He is an

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incredible Chair and one that has fought for all of our rights for a very long time.

I wanted to also note that, you know, New York is a State that has broken treaty after treaty with our native -- with our native tribes and I just wanted to say that, you know, just because some of these treaties are old, it doesn't mean that they are not more important and hold even more sway than our own Constitution and even the Constitution of the United States. These are rights that we have granted are -- the -- the tribes that we have stolen our land from, and I just want to remind folks that, you know, even with this -- even with this law in place, we will still be far from the rights that we -- and -- and the protections that we owe them. So, I just wanted to note that, and I think that this is a step in the right direction in making sure that we can protect and honor those treaties.

And I just wanted to say a couple of things from, you know, from some of our different tribes around the nation: *When all the trees have been cut down, when all the animals have been hunted, when all the waters are polluted, when all the air is unsafe to breathe, only then will you discover you cannot eat money.* And that is a Cree prophecy that -- you know, the Cree people were here. So just wanted to note that. And the other one is a Native American proverb which is, *The frog does not drink up the pond in which he lives.* And I want us all to remember that as well. And then the last one is my own -- my own -- Chief Seattle, back in Seattle, *We do not own the freshness of the air or the sparkle of the water. How can you buy them from us.*

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So, I just wanted to have folks remember those beautiful words and to remember them every step of the way when we are trying to protect our environment. Thank you, again, to the sponsor of this --

ACTING SPEAKER AUBRY: Thank you.

MS. NIOU: -- incredible bill and for helping us --

ACTING SPEAKER AUBRY: Right. Thank you, Ms. Niou.

Ms. Simon.

MS. SIMON: Thank you. To explain my vote. Today we vote on a simple but powerful amendment to our State Constitution. The amendment very simply says that each person shall have a right to clean air and water and a healthy environment, a healthful environment. Quite simply, there can be no more fundamental right than the right to breathe free of environmental pollutants and to drink, cook with, bathe and/or swim in clean water. Whatever could be the objection to clean air and water. We've heard several, including an assumption of a private right of action for environmental damage. I can assure my colleagues that this Constitutional Amendment does not do that. I know because I have carried a bill to provide for a private right of action for environmental damage for several years.

We all know that air and water are the means by which toxins find their way into our bodies. Like my colleague from Greenpoint, I, too, represent a Superfund site, the Gowanus Canal and

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its uplands, which were heavily polluted from colonial times until just recently with an enormous array of chemicals and metals and noxious combinations thereof. My district, as well as others, are also home to Interstate I-278, a/k/a, the Brooklyn Queens Expressway or BQE, which carries 175,000 cars and trucks a day, ravaging the health and safety of a million residents in its orbit with extremely high rates of asthma and pulmonary disorders.

So I am very pleased that we are voting on this bill today. I want to commend the sponsor for his leadership and his clarity and constancy of purpose, and I will be voting in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you. Ms. Simon in the affirmative.

Mr. Manktelow.

(Pause)

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker. To explain my vote. As I talked about earlier today on this bill in regards to agriculture, we as farmers, we as agricultural producers do everything we possibly can to do what's best for our environment. We have now put in grass filter strips to make sure no chemicals, fertilizer or anything else that's on the ground gets into our water systems. We -- we are using technology beyond belief: GPS, global positioning services that allows us to spray and spread our fertilizers within just a few inches of the last pass, things that we are doing to improve our

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environment. We, of all people, are stewards of this great land, of the land that we produce our crops on, whether it's feed for our animals, whether it's crops, whether it's fruit for our -- for our producers, we do everything we possibly can.

I truly want to support this bill, but there needs to be some carve-outs because what I'm afraid of is with our agricultural production here in New York State, everything that go -- that we're up against, we're going to, again, stall agriculture production. Let us do what we do well, let the farmers do this. We don't always need government to fix things. Sometimes we fix our own things, and we can do a really good job at it. So, please, allow our farmers to do this, allow them to grow, and we can make a better New York. And, again, I -- I'm sorry I cannot support this bill tonight. If we had some carve-outs, I could absolutely do that, but until we do that, I'm going to be in the negative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Santabarbara.

MR. SANTABARBARA: Thank you, Mr. Speaker.

I, first of all, want to thank Chairman Englebright for his work on this -- on this bill. As a civil engineer, Chairman Englebright and I have talked about a number of projects I've been able to work on in the past, environmental protection projects, and they've all been important to the communities I represent and communities throughout New York State, just as this bill will be important to the State of New York. It's great to see this re -- such a renewed interest in protecting our

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environment, and I think it's because more and more communities have seen just how damage caused to the environment puts our natural resources at risk, things like clean air, clean water, renewable energy. If we're serious about safeguarding public health, we simply cannot compromise on these important issues.

I'm supporting this bill here today because it makes a commitment to protecting our environment and the precious natural resources that we all depend on. There is nothing more important than the health of our families and I'm proud to be a cosponsor on this bill and I'll be voting in the affirmative.

ACTING SPEAKER AUBRY: Mr. Santabarbara in the affirmative.

Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This simple language proposed Constitutional Amendment is about empowering people. It's also about formalizing citizenship expectations for the people of New York. And it's also true that every referendum is a teachable moment and an opportunity for an object lesson in participatory Democracy. And within this context for New Yorkers, this is an opportunity for them, through their vote in this proposed referendum, to formalize the presumption that environmental health and human health in New York are inextricably linked, that they are linked such that every citizen has a right to clean air, water, and a healthful environment, and that this understanding shall henceforth be Constitutionally-recognized as being part of the

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right of citizenship in our great State.

I want to take this moment to say thank you to Speaker Carl Heastie for his vision, his support, and guidance in this important initiative and I'm pleased to vote yes. Thank you.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the following Republicans voting in favor of this proposed amendment: Mr. Ashby, Mr. Brown, Mr. DeStefano, Mr. Durso, Mr. Gandolfo, Mr. Mikulin, Mr. Miller, Ms. Miller, Mr. Ra, Mr. Reilly, Mr. Smith, Mr. Tannousis, and Mr. Walczyk. I apologize, Mr. Miller has been excused today so he didn't vote either way yet. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, do we have any further housekeepings and/or resolutions?

ACTING SPEAKER AUBRY: No resolutions, but a piece of housekeeping.

On a motion by Mr. Bronson, page 5, Calendar No. 85, Bill No. A01052-A, amendments are received and adopted.

Mrs. Peoples-Stokes.

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MRS. PEOPLES-STOKES: Thank you. Could you please call on Ms. Hunter for the purposes of an announcement?

ACTING SPEAKER AUBRY: Ms. Hunter for the purpose of an announcement.

MS. HUNTER: Yes, Mr. Speaker. There will be a need for a Majority Conference at the conclusion of our Session.

ACTING SPEAKER AUBRY: Immediate Majority Conference at the conclusion of Session.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I now move that the Assembly stand adjourned until 12:30 p.m., Tuesday, January [sic] the 9th, tomorrow being a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 5:37 p.m., the Assembly stood adjourned until Tuesday, February 9th at 12:30 p.m., Tuesday being a Session day.)



January 27, 2023

Submitted via email to SenecaMeadowsValley.Infill@dec.ny.gov

Kimberly A. Merchant
NYSDEC - Region 8 Office
Division of Environmental Permits
6274 East Avon-Lima Road
Avon, NY 14414

Dear Ms. Merchant:

Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter submit these comments on the Draft Scoping Document (“Draft Scope”) for the Draft Environmental Impact Statement (“DEIS”) for the Seneca Meadows Inc. (“SMI”) Valley Infill Project (“the Project”). The Project would extend the life of the facility for an additional 15 years by adding 47 acres of new landfill liner and 144 acres of overfilling operations and increasing the height of the landfill nearly 70 feet. The expanded garbage mountain would loom approximately 850 feet above sea level. The proposed expansion includes disruption of the Tantalio Hazardous Waste Site and its conversion to additional landfill capacity. The No Action Alternative for this facility is its closure, as scheduled, in 2025. Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter reserve the right to rely on comments submitted by others, including comments submitted by Waterloo Container.

I. OVERVIEW

DEC must recognize that the expansion of the Seneca Meadows Landfill is not a ‘done deal.’ Instead, the DEIS is an important tool to help DEC “choose alternatives which, consistent with social, economic, and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects.”¹

To enable DEC to evaluate whether it should grant or deny SMI’s request to expand the Seneca Meadows Landfill, the DEIS must identify potentially significant adverse environmental impacts, including those identified by the public. State law mandates that the DEIS identify alternatives to the proposed action, the short- and long-term environmental impacts of the proposed action—including public health impacts—mitigation measures to minimize the environmental impact, adverse environmental effects which cannot be avoided if the proposed action is implemented, and the effects of the proposed action on solid waste management.² The Final Scope must address the “extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information.”³

¹ ECL § 8-0109(1).

² *Id.* § 8-0109(2).

³ 6 NYCRR § 617.8.

New York's legislature recently passed legislation mandating that a DEIS must also examine the effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate and/or inequitable pollution burden on a disadvantaged community.⁴ Accordingly, this DEIS must determine the extent to which the expanded landfill will increase the inequitable burden on the disadvantaged community near the landfill.

Given the myriad environmental threats the Project poses to the community and the environment, it is critical that the DEIS is rigorous and includes all relevant information and assessments. The Final Scope must provide a clear and detailed plan to meet that obligation. The Draft Scope does not do so. Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter offer the following comments on the Draft Scope and urges DEC to adopt a Final Scope that reflects these significant concerns.

II. DEC MUST ENSURE ROBUST PUBLIC PARTICIPATION BY REQUIRING AN ENHANCED PUBLIC PARTICIPATION PLAN, SUPPORTING SENECA LAKE GUARDIAN'S ACTIVE PARTICIPATION, AND EXTENDING THE COMMENT PERIOD UNTIL A REASONABLE TIME AFTER ALL RELEVANT DOCUMENTS ARE PROVIDED TO THE PUBLIC.

A. This Project Requires Enhanced Public Participation Pursuant to New York's Environmental Justice Policy.

To “ensure meaningful and effective public participation,” New York's environmental justice policy “requires applicants for permits covered by this policy to actively seek public participation throughout the permit review process.”⁵ The policy applies to solid waste management permits, “including minor modifications involving any tonnage increases beyond the approved design capacity.”⁶ The policy directs DEC to “conduct a preliminary screen to identify whether the proposed action is in or near a potential environmental justice area(s) and determine whether potential adverse environmental impacts related to the proposed action are likely to affect a potential environmental justice area(s).”⁷ The policy defines a potential environmental justice area to include a minority or low-income community and defines “low income” to mean a census block or group “having a low income population equal to or greater than 23.59% of the total population.”⁸

Information gathered from EJSCREEN shows two low-income areas, in the 80-90th national percentile, near the proposed landfill expansion. Likewise, DEC's “Potential

⁴ 2022 N.Y. Sess. Laws Ch. 840 (S.8830).

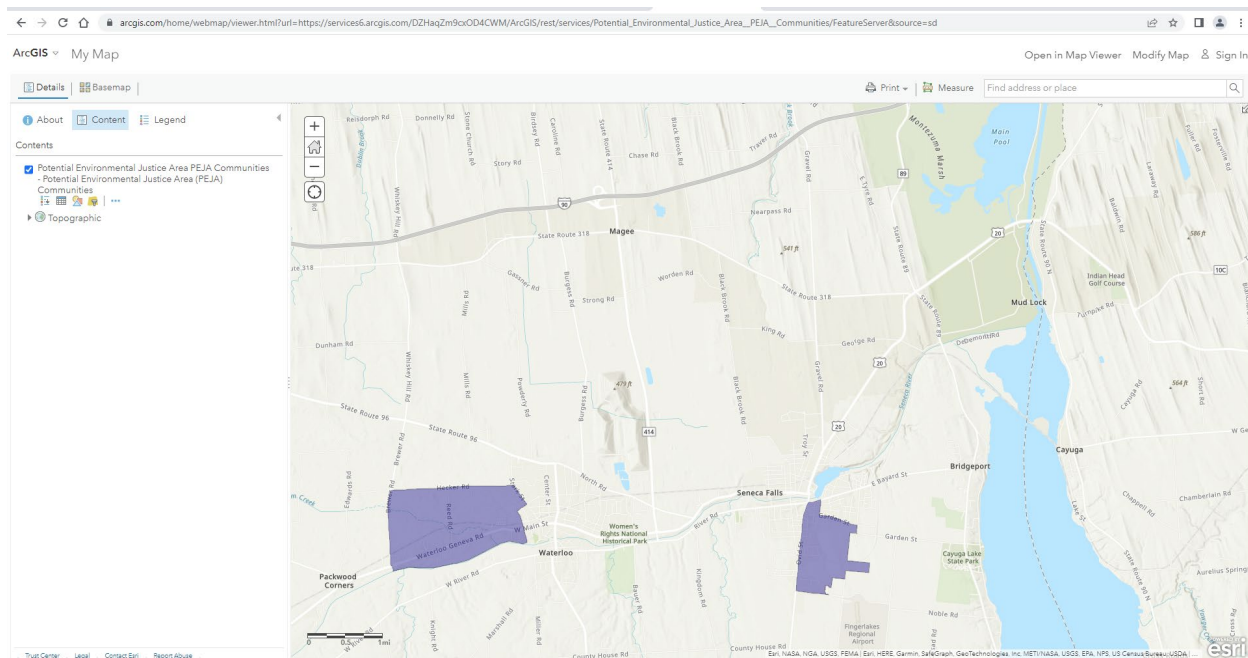
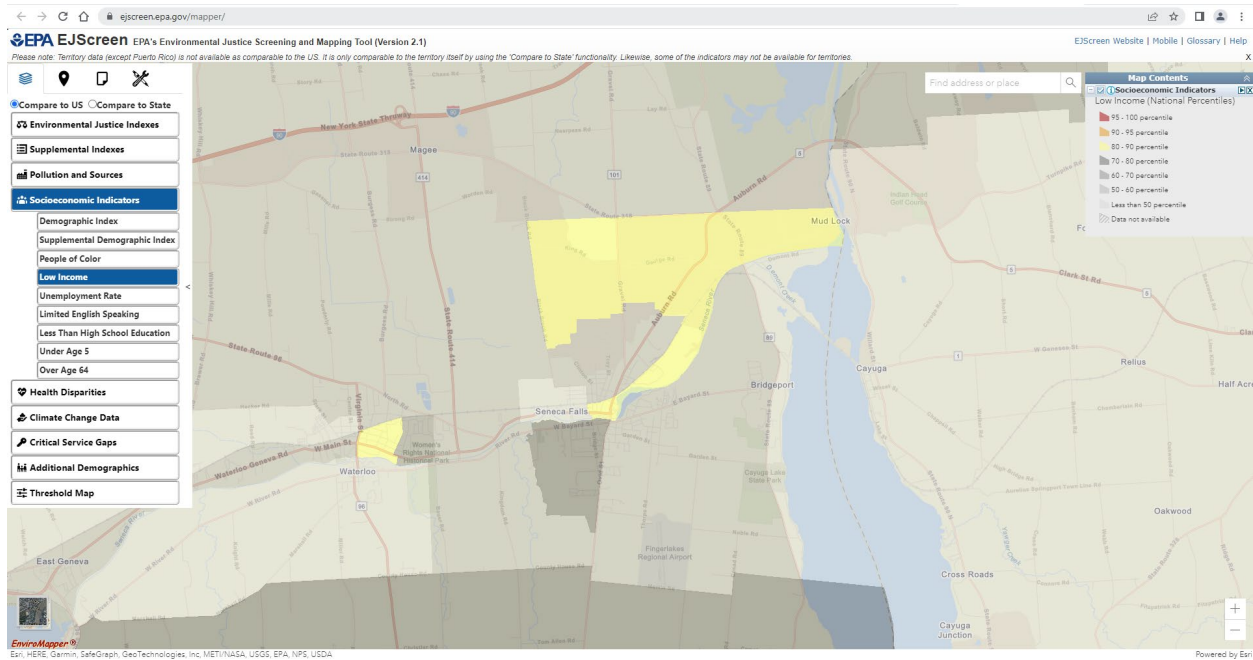
⁵ DEC Commissioner Policy 29, Environmental Justice and Permitting (2003) (“EJ Policy”). *See also* ECL § 48-0101(1) (declaring state policy that “all people, regardless of race, color, religion, national origin or income, have a right to fair treatment and meaningful involvement in the development, implementation and enforcement of laws, regulations and policies that affect the quality of the environment”).

⁶ EJ Policy § V(A)(3).

⁷ *Id.* § V(B).

⁸ *Id.* § III(A).

Environmental Justice Areas” map shows potential environmental justice areas near the proposed landfill expansion. The environmental justice policy therefore applies to this Project.



The Environmental Justice policy directs that “[w]here a potential environmental justice area is identified by the preliminary screen, the applicant shall submit a written public participation plan as part of its complete application.”⁹ The policy specifies:

At a minimum, the plan must demonstrate that the applicant will:

1. Identify stakeholders to the proposed action, including residents adjacent to the proposed action site, local elected officials, community-based organizations and community residents located in a potential environmental justice area;
2. Distribute and post written information on the proposed action and permit review process. Information shall be presented in an easy-to-read, understandable format, using plain language and, when appropriate, public notice materials shall be translated into languages other than English for comprehension by non-English speaking stakeholders;
3. Hold public information meetings to keep the public informed about the proposed action and permit review status. Meetings should be held throughout the permit review process at locations and times convenient to the stakeholders to the project;
4. Establish easily accessible document repositories in or near the potential environmental justice area to make available pertinent project information, including but not limited to: application material, studies, reports, meeting presentation materials and media releases. The applicant may also establish a repository on the internet.¹⁰

Thus far, SMI has failed to submit such a plan. DEC must ensure that SMI does so and insist on SMI’s compliance with the EJ Policy’s requirements.

B. DEC Must Direct SMI to Cease Its Threats and Intimidation Tactics Meant to Dissuade Seneca Lake Guardian from Participating in the Public Process.

As DEC is well aware, public participation is a key SEQRA requirement. Seneca Lake Guardian is entitled to and intends to participate fully in this process, and it will not be intimidated by SMI’s threats and cease and desist demands. On November 18, 2022, counsel for SMI accused Seneca Lake Guardian of making false and defamatory statements about the landfill and demanded Seneca Lake Guardian stop “further defamatory conduct.”¹¹ DEC should not tolerate this or any other effort to deny Seneca Lake Guardian or any other member of the public to participate meaningfully in a SEQRA process.

⁹ *Id.* at V.C.

¹⁰ *Id.* at V.D.1.

¹¹ See David L. Shaw, *Seneca Meadows Sends Cease and Desist Letter to Seneca Lake Guardian*, Finger Lakes Times (Dec. 21, 2022), https://auburnpub.com/seneca-meadows-sends-cease-and-desist-order-to-seneca-lake-guardian/article_8f1582d4-7b3c-58ed-9041-997a3a13dc74.html.

C. DEC Must Provide Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club, Atlantic Chapter an Opportunity to Supplement Its Scoping Comments Once DEC Provides Earlier Environmental Impact Statements.

The Draft Scope refers to several earlier environmental impact statements for the Seneca Meadows Landfill and indicates that the Draft EIS for the Infill Project will rely on those studies.¹² Attorneys for Seneca Lake Guardian requested those earlier studies through a Freedom of Information request and were told that the documents would be made available by February 2, 2023 – after the close of the public comment period on the Draft Scope. Clearly, interested members of the public cannot adequately comment if critical documents are withheld.

Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter hereby request at least 30 days after receipt of the earlier EIS documents from DEC to supplement these scoping comments.

III. THE DEIS MUST EVALUATE MEANINGFUL ALTERNATIVES TO THE PROPOSED EXPANSION.

New York State law requires a DEIS to evaluate meaningful alternatives to the proposed action.

A. The No Action Alternative Must Evaluate the Environmental Impacts and Benefits of the Landfill Closing in 2025.

The No Action Alternative must evaluate the environmental impacts of the landfill's closure in 2025 and the reductions in operations that precede it. This means the No Action alternative must evaluate the environmental benefits of reduced truck traffic, odors, noise, stormwater runoff, and other negative impacts to the environment and the surrounding community. Specifically, the DEIS may not merely conclude that there is no significant difference between the Project and the No Action Alternative because SMI concludes the Project's environmental impacts are not significant. Instead, the DEIS must identify and evaluate all the environmental and community benefits from the landfill's closing and compare them to the ongoing harm to the community and the environment caused by the landfill's expansion and continued operations.

The DEIS also must address the legal prohibition on SMI's operation beyond 2025. Seneca Falls Local Law #3 of 2016 requires that all waste disposal facilities in Seneca Falls close by 2025 and reduce operations in anticipation of that closure. Local Law #3 was adopted by a majority of Seneca Falls' Town Board and reflects the community's well-founded concerns about the continued operation of the landfill. Moreover, the law itself recites the adverse environmental impacts of the landfill's continuing operation, including odors and truck traffic

¹² Draft Scope at 3.

impacts. The community has the authority and self-determination to require a date certain by which it no longer must tolerate the facility's impacts. Unless and until that law changes, DEC should not even consider an application for a Project local law prohibits.¹³

B. The DEIS Must Identify a Purpose and Need that Does Not Preclude Reasonable Alternatives.

Because a proposed project's purpose and need often drives the range of additional feasible alternatives, DEC must ensure that the Project's purpose is not so narrowly described as to preclude the meaningful consideration of reasonable alternatives or to presuppose there is an actual need for the Project before demonstrating the need.

For example, the Draft Scoping document states, "The project purpose is to extend landfill capacity at the SMI Landfill in the Town of Seneca Falls in a timely fashion to provide critically needed solid waste disposal services locally and for the State."¹⁴ This project purpose is problematic in multiple ways. First, the Project's purpose erroneously assumes it is needed before showing need. The subjective descriptor of solid waste disposal services as being "critically needed" is not supported by evidence in the record or any analysis of solid waste disposal services available statewide and in other states. Second, the project purpose suggests that it is only providing services locally and for the State, but this privately-owned landfill has been providing disposal services for other states and Canada, importing waste into New York. Third, the timing of an approval to expand the landfill—reflected by that phrase "in a timely fashion"—is not an appropriate phrase for a statement of purpose for a project.

A more appropriate purpose for the project is "to meet solid waste disposal needs locally and for the State."

C. The DEIS Must Evaluate the Need for More Landfill Space at Seneca Meadows by Identifying Options to Reduce the Need for Landfill Capacity Altogether, Quantifying Existing Landfill Capacity Across the State, and Accounting for Out-of-State Garbage Imported to Seneca Meadows.

In order to identify alternatives that meet this need, the DEIS must first identify what the actual need is for solid waste disposal locally and state-wide. The DEIS must identify and evaluate options to reduce the need for solid waste disposal locally and state-wide, including increasing recycling, composting, and extended producer responsibility laws.

1. The DEIS must acknowledge and evaluate existing plans to reduce solid waste in New York.

The DEIS must acknowledge and evaluate Governor Hochul's proposals to "prevent more waste from ending up in landfills" by "shift[ing] the responsibility of reducing

¹³ See ECL § 27-0711 ("[N]othing in this title ... shall preclude the right of any governing body of a county, city, town or village to adopt local laws ... which are not inconsistent with this title").

¹⁴ Draft Scope at 7.

environmental impact and managing product recycling from the consumer to the brands that create the waste.”¹⁵ The Governor’s Waste Reduction and Recycling Infrastructure Act will require producers to “move away from disposal and instead consider the total life cycle of a product” so that they will “innovate products to reduce waste” and, in turn, reduce the need for landfill space.¹⁶ New York will also “develop a new, more efficient recycling strategy that will increase recycling rates” and further reduce the need for landfill space.¹⁷

The DEIS should also examine the possibility of instituting composting programs locally and statewide to divert household kitchen waste from landfills. Mayor Eric Adams announced that composting programs will be expanded to all five boroughs in New York City over the next 20 months.¹⁸ New York lawmakers have noted that the composting effort in New York City is key to reducing the waste burden on the communities affected by Seneca Meadows.¹⁹ Further, the DEIS must take into account the state’s longstanding policy goal to “reduce waste disposal to 0.6 pounds per person per day by 2030.”²⁰

2. The DEIS must quantify existing landfill capacity in New York.

The state’s most recent solid waste planning document does not support SMI’s insistence that the Seneca Meadows Landfill expansion is “critically needed.” The state’s 2010 *Beyond Waste* report summarizes the state’s long-term landfill capacity as follows:

12 [landfills] representing almost half of the remaining permitted capacity in the state have 10 to 30 years remaining. Another quarter, representing about 45 percent of the remaining permitted capacity, have more than 30 years left to fill. Therefore, two-thirds of the MSW landfill operators or the planning units in which they are located — representing almost 95 percent of the permitted landfill capacity in the state — have ample time to attempt to reduce waste and increase recovery or plan for future expansion.²¹

¹⁵ Gov. Kathy Hochul, *Achieving the New York Dream: 2023 State of the State* 139, <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Dana Rubinstein & Emma G. Fitzsimmons, *New York to Expand Composting Citywide, Targeting Trash and Rats*, N.Y. Times (Jan. 25, 2023), <https://www.nytimes.com/2023/01/25/nyregion/composting-garbage-nyc.html>.

¹⁹ Sandy Nurse & Anna Kelles, *Reducing the City’s Waste Output is Good for New York State*, City Limits (Jan. 26, 2023), <https://citylimits.org/2023/01/26/opinion-reducing-the-citys-waste-output-is-good-for-new-york-state/>.

²⁰ DEC, *Solid Waste Management Planning*, <https://www.dec.ny.gov/chemical/47861.html> (last visited Jan. 26, 2023).

²¹ DEC, *Beyond Waste: A Sustainable Materials Management Strategy for New York State* 216–217 (2010), https://www.dec.ny.gov/docs/materials_minerals_pdf/frptbeyondwaste.pdf.

Below is the state's estimate of landfill capacity at the time of the report:

MSW Landfill	Site Life beyond 2008 (Years)	Existing & Entitled Capacity (Tons)	Percent of Total Landfill Capacity
0 - 10 Years			
Albany	1	478,000	6
Sullivan	1	140,000	
Chautauqua	2	2,240,000	
Allegany	4	250,000	
Franklin	7	575,000	
Ontario	7	7,350,000	
Auburn	8	761,000	
Chemung	8	1,240,000	
11 - 30 Years			
Mill Seat	11	6,890,000	49
DANC	12	3,500,000	
Allied Niagara	13	9,240,000	
Colonie	15	4,000,000	
Steuben	15	2,420,000	
Chaffee	17	6,080,000	
Hyland	17	7,710,000	
SMI	17	37,600,000	
Clinton	20	7,640,000	
Delaware	20	508,000	
Modern	24	22,100,000	
Cortland	28	710,000	
31 - 50 Years			
High Acres	41	44,400,000	26
Chenango	42	1,100,000	
Broome	50	10,600,000	
51 - 100 Years			
Bristol Hill	60	3,350,000	16
Fulton	63	9,450,000	
OHSWA	67	21,400,000	
100 + Years			
Madison	106	7,770,000	4

A review of DEC Info Locator revealed that most of the landfills slated for closure before 2025 according to the above table have received approval to expand and will be operating for

many more years, expanding the state's landfilling capacity. In fact, Casella has justified its application to expand the Hyland landfill in part on SMI's closure.²²

Landfill Name	Site Life beyond 2008 (as of 2010)	Permit Expiration (from DECInfo)	Estimated Date When Capacity Reached	Notes
Albany	1 (2009)	June 2019	2026	Projected closure in 2026 ²³
Chautauqua	2 (2010)	Oct. 2025	2040	2020 annual report notes site life of 20 years (authorized capacity remaining but not yet constructed).
Franklin	7 (2015)	Jan. 2024	2042	2020 annual report notes site life of 22 years (authorized capacity remaining but not yet constructed).
Ontario	7 (2015)	Jan. 2025	2026	2020 annual report notes site life of 6.5 years (authorized capacity remaining but not yet constructed).
Chemung	8 (2016)	May 2026	2028	2020 annual report notes site life of 8 years (authorized capacity remaining but not yet constructed).
Mill Seat	11 (2019)	July 2021	2055	
DANC	12 (2020)	Jan. 2023		Expansion permits granted in 2018.
Allied Niagara	13 (2021)	Nov. 2015	2025	2020 annual report notes site life of 5 years (authorized capacity remaining but not yet constructed).
Colonie	15 (2023)	Apr. 2028	2038	
Steuben	15 (2023)	Feb. 2024	2024	
Chaffee	17 (2025)	Aug. 2027	Renewal & expansion in progress – site life given as add'l 7 years	DSEIS for renewal + expansion permits published April 2022
Hyland	17 (2025)	Apr. 2025	Renewal & expansion in progress	Expansion application submitted to DEC in Feb. 2021. Final Scope for EIS issued July 2022.

²² Haley Rischar, *Allegany County, New York, Approves Plan to Expand Casella's Hyland Landfill*, Waste Today (Nov. 10, 2020), <https://www.wastetodaymagazine.com/news/allegany-county-new-york-approves-plan-to-expand-casella-hyland-landfill>.

²³ Amanda Fries, *Albany Now Projects Landfill to Close in 2026*, Albany Times-Union (Aug. 16, 2018), <https://www.timesunion.com/news/article/Albany-now-projects-landfill-to-close-in-2026-13161212.php>.

3. The DEIS must quantify out-of-state garbage Seneca Meadows has taken and the ability of New York to export waste.

The DEIS must acknowledge that Seneca Meadows has not limited its landfill capacity to serving only local and state-wide needs. Indeed, Seneca Meadows has imported nearly 12% of its annual waste from out of state and internationally. SMI's 2021 Report for Seneca Meadows shows SMI imported nearly 270,000 tons of waste from out of state, including from Connecticut, New Hampshire, Vermont, Pennsylvania, Rhode Island, and Massachusetts.²⁴ SMI also imported 70 tons of asbestos waste from Canada.²⁵ SMI's assertion that the landfill must be expanded to meet local and state waste disposal needs is disingenuous.

IV. THE DEIS MUST RIGOROUSLY EVALUATE ANY RISKS OR IMPACTS FROM THE EXPANSION ASSOCIATED WITH THE TANTALO HAZARDOUS WASTE SITE.

A. The DEIS Must Address the Potential for Adverse Impacts from the Disruption, Construction, and Compression of the Tantalo Site.

When examining the environmental impacts of the proposed landfill expansion, the DEIS must evaluate robustly the potential harms caused by the Project related to the Tantalo Inactive Hazardous Waste Site. The DEIS must look at the harms involved with disturbing the hazardous waste landfill as well as the potential harm from landfilling on top of the Tantalo site. The DEIS must examine the impact of the weight of waste compacting on top of the Tantalo site and how it impacts the migration of pollutants from the site.

Water testing from 2018 has shown ongoing PFAS contamination from the Tantalo site. SMI's 2021 Groundwater Report noted that several wells and some porewater samples detected "VOCs known to originate at the Tantalo Waste Site."²⁶ These contaminants include "trichloroethene and its degradation products chloroethane, 1,1-dichloroethene, cis- and trans-1,2-dichloroethene, and vinyl chloride."²⁷ The 2021 testing also detected "elevated levels of inorganic parameters [including] chloride, bromide, and sodium."²⁸ The DEIS must examine the potential impacts of disturbing the site and placing tons of waste on top of it. The DEIS may not make unsupported assumptions of no ongoing or additional environmental harm. Instead, the proposed activities onsite need to be studied rigorously to ensure that there are no impacts to soils, groundwater or surface water. Importantly, the analysis should include any potential impacts from the compression of the remediation site beneath the proposed weighty column of waste.

²⁴ Seneca Meadows Landfill 2021 Annual Report at tbl.2.

²⁵ *Id.*

²⁶ Seneca Meadows Landfill 2021 Groundwater Monitoring Report at 9.

²⁷ *Id.*

²⁸ *Id.*

B. The DEIS Must Demonstrate the Ability to Differentiate Any Groundwater Impacts from the Tantalo Site Compared to the Landfill Expansion.

New York's waste regulations mandate that "[t]he operational water quality monitoring must be designed to distinguish facility-derived contamination from the existing water quality at the site"²⁹ The DEIS must evaluate whether, and how, SMI can guarantee that it can differentiate between groundwater contamination coming from the Tantalo Site and contamination coming from the expanded landfill. This ability to independently monitor the efficacy of the expanded landfill cells' impact on groundwater, separate and distinct from effects caused by adjacent and existing waste disposal areas must be demonstrated before DEC can grant SMI an expanded landfill permit. Specifically, SMI must demonstrate in its facility manual and engineering reports where it will locate its groundwater wells and how it intends to differentiate between contamination from the Tantalo Site and the new landfill cells to determine if the landfill is performing adequately.

V. THE DEIS MUST EVALUATE THE INCREASE IN TRUCK TRAFFIC OVER THE NO ACTION ALTERNATIVE.

Under the No-Action alternative, Seneca Meadows Landfill will close in 2025 and stop receiving waste. When the facility stops receiving waste, the truck traffic hauling that 6,000 tons per day of waste would also cease. Therefore, the DEIS must compare the environmental impacts of zero trucks per day hauling waste to the facility beginning in 2025 to the proposal of trucks hauling 6,000 tons per day of waste for an additional 15 years – not to the current operation. To accurately account for the number of daily and annual truck trips, the DEIS should conduct a truck count instead of relying on the 2006 DEIS and assuming the same number of truck trips.³⁰ The 2006 DEIS, which used intersection traffic counts to estimate that "peak annual truck trips were over 134,000," is too old to be a reliable indicator of current truck traffic. Furthermore, truck traffic to and from the landfill is not limited to waste-hauling trucks. The landfill sees traffic from other types of trucks as well, including trucks hauling leachate. To fully evaluate the environmental impact of the Project, SMI must look at the noise, traffic, and air impacts of zero trucks compared to the current number of truck trips for an additional 15 years.

²⁹ 6 NYCRR § 363-4.6(f)(9)(ii).

³⁰ See SMI Proposed DEIS § 3.8.2.2.

VI. THE DEIS MUST THOROUGHLY EVALUATE ISSUES RELATED TO WATER POLLUTION.

A. The DEIS Must Specifically Assess the Transport and Disposal of the Facility's Leachate Which Contains PFAS and Other Pollutants.

Per- and polyfluoroalkyl substances (PFAS) represent a large class of chemicals known to be hazardous to human health.³¹ PFAS is prevalent in the leachate of facilities like SMI that handle municipal solid waste and construction and demolition debris.³² Because PFAS can contaminate surface waters and drinking water and PFAS is found regularly in leachate from landfills,³³ DEC must ensure that the DEIS includes a detailed analysis of the leachate collection and transfer systems proposed for the project. The DEIS must identify how leachate will be monitored and tested to ensure that it does not pose a health risk.

Seneca Meadows Landfill's leachate is already known to be contaminated with PFAS and 1,4-dioxane. In 2018, DEC required Seneca Meadows to test its leachate for PFAS and 1,4-dioxane. Seneca Meadows Landfill reported high levels of a PFAS and 1,4-dioxane in raw leachate, permeate, concentrate and other samples.³⁴ Despite that information, no new measures have been taken to address the contamination.

SMI treats only a fraction of its leachate using a high-pressure membrane technique called Reverse Osmosis. Reverse Osmosis results in two types of output – permeate, which SMI represents as “clean,” and a high-strength concentrate full of the pollutants removed from the permeate during the process. Seneca Meadows sends this purportedly “clean” permeate to Seneca Falls POTW through sewer pipes and ships the untreated leachate, any remaining permeate, and the concentrate to a number of other tristate area POTWs. These POTWs then process it through their facilities without removal or treatment, resulting in wastewater discharge and biosolids contaminated with PFAS in violation of the Clean Water Act.³⁵

³¹ PFAS is linked to a variety of adverse health effects, including cancer, elevated cholesterol, obesity, immune suppression, pre-eclampsia, impaired liver and kidney function, and endocrine disruption. Agency for Toxic Substances & Disease Registry, U.S. Dep't Health & Hum. Servs., *Toxicological Profile for Perfluoroalkyls: Draft for Public Comment* (June 2018), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

³² See Helena M. Solo-Gabriele et al., *Waste Type, Incineration, and Aeration Are Associated with Per- and Polyfluoroalkyl Levels in Landfill Leachates*, 107 Waste Mgt. 191 (2020), <https://doi.org/10.1016/j.wasman.2020.03.034>.

³³ See, e.g., Harry Behzadi, RJ Lee Grp., *PFAS in Waste: The Final Destination of Forever Chemicals?*, Presentation at the Northeast Residuals & Biosolids Conference (Oct. 18, 2019), <https://www.nebiosolids.org/s/Behzadi-PFASInWaste-Destination-NEResidualsBiosolidsConference-18Oct2019.pdf>; Cheryl Hogue, *U.S. EPA Recommends Testing Wastewater for PFAS*, Chem. & Eng'g News (Dec. 1, 2020), <https://cen.acs.org/environment/persistent-pollutants/US-EPA-recommends-testing-wastewater/98/i47>.

³⁴ See TestAmerica, Analytical Report for DEC re: Seneca Meadows Landfill (Mar. 29, 2018).

³⁵ See Am. Water Works Ass'n, *Per- and Polyfluoroalkyl Substances (PFAS) Treatment 1* (Sept. 2020), [https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Per-%20and%20Polyfluoroalkyl%20Substances%20\(PFAS\)%20-%20Treatment.pdf?ver=2020-09-22-072333-547](https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Per-%20and%20Polyfluoroalkyl%20Substances%20(PFAS)%20-%20Treatment.pdf?ver=2020-09-22-072333-547); see also 40 C.F.R. § 403.5(a)(1) (“A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference.”).

In its application, SMI indicates that “[l]eachate not treated on site will be transported off site using 8,000-gallon tank transfer trailers.”³⁶ The manual does not identify where the leachate will be transported. Instead, it says: “Seneca Meadows currently holds agreements with the Village of Seneca Falls Wastewater Treatment Plant (sewer connection) and several other POTWs to accept leachate from the facility.” This vague reference to facilities does not satisfy 6 NYCRR § 360.16(c)(4)(ii)(e)’s requirement to identify the “method and location used for disposal of the leachate.” Nor does it satisfy which requires SMI to identify “authorized locations where wastes, including residues, are transported when they leave the facility and what arrangements exist or will exist (contracts, etc.) that verify receiving entities will accept the waste.”³⁷

New York law requires that the owner or operator of any facility must “operate the facility in a manner that ... does not allow any leachate to enter surface waters or groundwater except under authority of a State Pollutant Discharge Elimination System permit.”³⁸ State Pollutant Discharge Elimination System permits identify limits on the type and quantity of pollutants that may be discharged from a facility,³⁹ and prohibit “the discharge of any pollutant not identified and authorized by such permit.”⁴⁰ Moreover, an industrial facility like SMI is prohibited from sending wastewater to a wastewater treatment facility if the wastewater contains pollutants that will “pass through” the wastewater treatment facility.⁴¹ Further, 40 C.F.R. § 445.3 applies this prohibition specifically to landfills: “Any source subject to this part that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.”

B. The DEIS Must Evaluate Water Impacts by Providing Leachate Testing Data for Expanded Organic Parameters.

The DEIS must include a thorough characterization of the facility’s leachate. The DEIS must examine the landfill’s water quality impacts by testing the landfill’s leachate for the expanded organic parameters. New York regulations require that landfills analyze their leachate on a semi-annual basis for the expanded organic parameters, which include PFAS and 1,4-dioxane.⁴² The DEIS should include evaluation of all measurable PFAS, including the 40 PFAS the are measurable using draft method 1633.

Once the DEIS characterizes the leachate, it must then carefully and specifically assess whether SMI has identified facilities to accept leachate and whether those facilities can accept the leachate without violating the pass-through provision.⁴³ The DEIS should test all types of leachate—untreated, treated permeate, and the concentrate by-product—for PFAS prior to sending it off-site.

³⁶ Seneca Meadows Facility Manual.

³⁷ 6 NYCRR § 360.16(c)(4)(i)(c)

³⁸ 6 NYCRR § 360.19(b)(2).

³⁹ *Id.* § 750-1.11.

⁴⁰ ECL § 17-0815(3).

⁴¹ 40 C.F.R. § 403.5.

⁴² *See* 6 NYCRR § 363-4.6(h).

⁴³ *See* 40 C.F.R. §§ 403.5, 445.3.

C. The DEIS Must Address Stormwater Impacts.

The DEIS must examine the environmental impacts of stormwater runoff from an expanded landfill to Black Brook. Specifically, the DEIS must examine whether, and to what extent, the landfill is currently contributing to pollution, including PFAS pollution, in Black Brook, including PFAS. SMI's 2021 Black Brook sampling report shows several exceedances of various pollutants downstream of the landfill. Further, Seneca Lake Guardian's water quality sampling at Black Brook shows elevated levels of PFAS downstream of the landfill compared to upstream of the landfill. SMI cannot conclude that it is not negatively impacting Black Brook based on the data that it has collected. If Seneca Meadow's stormwater runoff causes or contributes to violations of in-stream standards, DEC cannot authorize the Project. Tellingly, the 2021 Black Brook report does not contain actual sampling results for upstream and downstream monitoring sites. Instead, it merely indicates where upstream and downstream sites were exceeding water quality standards. However, this does not allow the reader to ascertain whether, where an exceedance is occurring upstream, runoff from the landfill is making that exceedance worse. The DEIS must require an in-depth analysis of stormwater impacts to Black Brook and must disclose all sampling results.

The DEIS also must examine whether SMI has complied with enforceable effluent limitation guidelines applicable to landfills, found in 40 C.F.R. § 445.21. Because these limits are in maximum daily and maximum monthly average, SMI must demonstrate it has sampled on a daily basis to demonstrate compliance with the daily limit.

Regulated parameter	Maximum daily (mg/L or ppm)	Maximum monthly avg. (mg/L or ppm)
BOD	140	37
TSS	88	27
Ammonia (as N)	10	4.9
α -Terpineol	0.033	0.016
Benzoic acid	0.12	0.071
p-Cresol	0.025	0.014
Phenol	0.026	0.015
Zinc	0.20	0.11
pH	Within range 6 to 9	Within range 6 to 9

The DEIS must also evaluate the landfill's ability to comply with the forthcoming Effluent Limitation Guidelines that EPA is developing for PFAS in landfills.⁴⁴

The DEIS must evaluate the threat that the daily cover used at the landfill poses to stormwater running off the landfill. SMI states that tire chips, along with "industrial ash, foundry sand, non-hazardous contaminated soils, paper mill sludges, and processed are typically used (as approved) Construction & Demolition Debris (C&D)" cover. These materials may contain PFAS, which, when exposed to precipitation, can run off the landfill into Black Brook and/or enter the leachate stream.

VII. THE DEIS MUST EVALUATE ODOR IMPACTS OF THE LANDFILL'S ONGOING OPERATION COMPARED TO ITS CLOSURE.

Community members have shared concerns about odors from Seneca Meadow landfill for decades.⁴⁵ Despite a 1997 odor study and a 2016 odor study that SMI contends led to "mitigation" measures, local residents and businesses have made hundreds of complaints about odor from the facility.⁴⁶ Seneca Lake Guardian, Committee to Preserve the Finger Lakes, and Sierra Club—Atlantic Chapter join and incorporate by reference the comments about odors submitted by Doug Zamelis.

Indeed, SMI has already determined that "[No] significant adverse odor impacts [are] expected to occur."⁴⁷ SMI has already concluded that "[w]hile odors may occasionally be detected, all reasonable measures will be employed to minimize off-site impacts."⁴⁸ SMI points to its process of using daily cover as an odor mitigation measure. However, daily cover is only placed "at the conclusion of daily disposal activities" and therefore does not reduce odors during daily operations at the landfill.⁴⁹

Despite implementing a laundry list of odor mitigation measures, such as "the use of deodorant-filled wind socks, and multiple mobile mister units, which release neutralization deodorizing chemicals into the air,"⁵⁰ the landfill is still producing odors that are causing a nuisance in the surrounding community. According to SMI's Summary of Odor Complaints from February 2021 to January 2022, the landfill generated at least 370 odor complaints. That's at least one complaint daily for a year. This volume and consistency of complaints is not

⁴⁴ See EPA, *Current Effluent Guidelines Program Plan*, <https://www.epa.gov/eg/current-effluent-guidelines-program-plan> (last updated Jan. 20, 2023).

⁴⁵ See *In re: Seneca Meadows* (Feb. 12, 1999) (noting that local residents opposed landfill expansion based on odor concerns), <https://www.dec.ny.gov/hearings/11809.html>.

⁴⁶ See Draft Scope at 20.

⁴⁷ SMI Proposed DEIS § 1-6.

⁴⁸ *Id.*

⁴⁹ See SMI Facility Manual at 3-1.

⁵⁰ Expert Report of Kenneth Gallagher & Thomas P. Hasek, Jr. at *7, *Seneca Meadows v. ECI Liquidating*, 2004 WL 3951582 (W.D.N.Y. Jan. 30, 2004).

“occasional” odor—it is persistent and a nuisance. Whatever mitigation measures SMI is taking are clearly not enough to reduce landfill odors so that they are not a nuisance.

Indeed, New York regulations require SMI to submit as part of its application, “a description of how the landfill gas management system will effectively control landfill decomposition gas-related odors.”⁵¹ Yet, without an analysis of the odor complaints to determine whether they are from decomposition or another source, SMI cannot demonstrate that its landfill gas management system is properly reducing odors.

The Draft Scope’s plan to rely on odor studies from 1997, 2016, and 2020 is insufficient to evaluate the current odor issues. The DEIS must evaluate the current odor impacts the landfill is having on the community, the ongoing impact it will continue to have if the proposed project is approved, and the improvement the community will experience if the No Action alternative is selected and the landfill closes.

Further, the disconnect between the community’s constant odor complaints and SMI’s perception of no odor issues means that SMI’s odor control plan and specifically its ability to evaluate odor issues independently and objectively is insufficient. The DEIS must examine options to objectively evaluate odor issues, such as by using technology like the Nasal Ranger, Barneby box, or mask scentometer, or by having a DEC or third-party odor inspector respond to complaints.⁵² The DEIS should also consider field and lab olfactometry, electronic noses with chemical sensors, atmospheric dispersion modeling, and gas chromatography/mass spectrometry to identify odor sources and intensity.⁵³

The DEIS must describe an odor monitoring plan that will identify when odors from the landfill will be considered a nuisance affecting the community. Because the odor standard is vague, community members have no ability to independently evaluate whether the landfill odors have reached the point of being considered a nuisance by DEC. Since DEC has never explained when odors are a nuisance and when they are not, residents have developed “complaint fatigue” and have reduced the frequency of their complaints, despite experiencing odors, because DEC has never taken action on the complaints. The local community deserves the clarity to know at what point DEC will determine landfill odor is a nuisance. Having a standard that DEC, SMI, and the community all understand and agree on is a critical mitigation measure to fairly and objectively deal with the odor issues from Seneca Meadows.

⁵¹ 6 NYCRR § 363-4.3(a)(5)(vi).

⁵² See Daniel Meerooff & Sharmily Rahman, *Odor Management at Landfills: Part 1 - The Current State of the Art*, Waste 360 (Nov. 10, 2021), <https://www.waste360.com/landfill-operations/odor-management-landfills-part-1-current-state-art>.

⁵³ *Id.*

VIII. THE DEIS MUST ANALYZE GREENHOUSE GAS EMISSIONS AND IMPACTS TO DISADVANTAGED COMMUNITIES PURSUANT TO THE CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

Recognizing that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York,” in 2019 the State Legislature enacted the Climate Leadership and Community Protection Act (“CLCPA”) to codify New York’s statewide mandates for emissions reductions.⁵⁴ The CLCPA requires state agencies to consider the greenhouse gas (“GHG”) consequences of their decisions and forbids any agency action that would disproportionately burden a disadvantaged community.⁵⁵

A. The DEIS Must Assess the Landfill Expansion’s Greenhouse Gas Emissions and Identify Alternatives and Mitigation Measures

Across all sectors of the economy, the CLCPA requires that by 2030 greenhouse gas emissions be reduced 40% from the level they were at in 1990, and that by 2050 emissions be reduced 85% from the 1990 level.⁵⁶ To achieve these requirements, the Legislature ordered all state agencies to consider whether their permitting decisions will be inconsistent with or interfere with these greenhouse gas limits, and, if so, to identify a justification as well as mitigation options or alternatives. Specifically, CLCPA Section 7(2) directs that:

In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.⁵⁷

Any permit that would be inconsistent with or interfere with the CLCPA greenhouse gas limits cannot be issued without “a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.”⁵⁸ In December 2022, DEC issued two guidance documents on Section 7(2) that apply to the Project: Commissioner Policy 49 (“CP-49”), which applies to a wide range of permitting decisions, including any decision on a potential GHG source; and DAR-21, which is specific to air permits.⁵⁹

⁵⁴ 2019 Sess. Laws of N.Y. Ch. 106 (S. 6599) § 1.

⁵⁵ CLCPA §§ 7(2), 7(3).

⁵⁶ ECL §§ 75-0107(1)(a)–(b), 75-0109(4)(a)–(b), (f).

⁵⁷ CLCPA § 7(2).

⁵⁸ *Id.*

⁵⁹ See DEC, CP-49: Climate Change and DEC Action (Dec. 14, 2022), https://www.dec.ny.gov/docs/administration_pdf/cp492022.pdf (hereinafter “CP-49”); DEC, DAR-21: The Climate Leadership and Community Protection Act and Air Permit Applications (Dec. 14, 2022), https://www.dec.ny.gov/docs/air_pdf/dar21.pdf (hereinafter “DAR-21”).

SMI has not provided a sufficient outline of its Section 7(2) analysis in either the Draft Scope published in December 2022 or the CLCPA assessment outline that SMI sent to DEC in April 2021. The Final Scope must include the following analysis required by Section 7(2).

1. SMI's proposed consistency analysis is improper and incomplete.

Section 7(2) first requires an analysis to determine whether a proposed project would be inconsistent with or interfere with the CLCPA's GHG reduction requirements. The scoping document simply lists "Greenhouse Gas Impacts (CLCPA Section 7(2))" without any indication of what the analysis will entail.⁶⁰ SMI's CLCPA assessment outline indicates that the DEIS' analysis of GHGs will rely on calculations of GHG emissions from its Title V permit modification application.⁶¹ This is improper for at least two reasons. First, SMI's Title V Permit modification application uses a 100-year global warming potential of 25 when converting methane to carbon dioxide equivalents,⁶² whereas New York law requires that agencies use the 20-year global warming potential of 84 for methane.⁶³ Second, SMI's Title V Permit modification application only provides the landfill expansion's potential to emit for the estimated peak year of 2039.⁶⁴ However, because the CLCPA sets GHG limits for 2030 and 2050, a Section 7(2) analysis for a Title V permit requires "[p]rojected future GHG and [carbon dioxide equivalent] emissions for the years 2030, . . . and 2050, including any proposed future emissions reduction strategies."⁶⁵ The scoping document must therefore be revised to state that GHG emissions calculations will use 20-year global warming potentials, not rely on SMI's Title V GHG calculations, and provide GHG estimates for 2030 in compliance with the CLCPA.

Additionally, in April 2021, DEC told SMI that its quantification of fugitive emissions was incorrect.⁶⁶ It does not appear that those errors have been corrected. The DEIS must rely on accurate data to ensure the requirements and purposes of SEQRA and the CLCPA are satisfied. Moreover, as noted in questions that DEC posed to SMI in April 2021, SMI is considering three different flare scenarios which would result in different emission levels.⁶⁷ The DEIS must specify the procedures that will be used and provide accurate GHG projections.

Finally, SMI has improperly narrowed the project scope for purposes of determining potential GHGs. The Section 7(2) consistency analysis omits at least two direct GHG sources from both the scoping document and SMI's April 2021 CLCPA assessment outline. The onsite storage tank and heating equipment emissions, both of which emit GHGs, must be included.⁶⁸ The consistency analysis must also include downstream emissions resulting from combustion of landfill gas produced at the SMI Landfill, including by Seneca Energy.⁶⁹

⁶⁰ Draft Scope at 30.

⁶¹ SMI CLCPA/GHG Assessment Outline (Apr. 2021)

⁶² Title V Permit Modification Application at tbl.6A.

⁶³ See ECL § 75-0101(2); 6 NYCRR § 496.5.

⁶⁴ Title V Permit Modification Application at 3.

⁶⁵ DAR-21 at 4.

⁶⁶ See SMI Response to DEC Comments 2 (Apr. 16, 2021).

⁶⁷ *Id.* at 3.

⁶⁸ See SMI Proposed DEIS § 3-16.

⁶⁹ See DAR-21 at 2 (discussing requirement to include downstream emissions in consistency analysis).

2. The Final Scope must include a proposed justification, mitigation measures, and alternatives.

In determining whether the Project would be inconsistent with or interfere with attainment of New York's GHG limits, DEC should consider whether the proposed landfill expansion will reasonably be expected to increase GHGs above what would occur without the permit.⁷⁰ In the absence of authority to expand, the SMI landfill must close in 2025. As a result, the permit will be inconsistent with or interfere with attainment of the CLCPA's GHG reduction requirements. Under the CLCPA, therefore, the Project cannot proceed without a justification.⁷¹

However, neither SMI's scoping document nor its CLCPA outline propose justifications for the Project. According to DEC guidance, the justification must, among other things, include a "description of the environmental, economic, and/or social harm associated with the absence of the project and any benefits to the citizens of the state resulting from the project."⁷² If there is not a sufficient justification, then the Section 7(2) analysis ends there and no permit can issue.⁷³

If there is a justification, then SMI must identify alternatives and mitigation measures at the project site.⁷⁴ Alternatives must include the No Action Alternative, i.e. no expansion of the landfill. For each potential alternative, SMI must discuss any technical or economic barriers to implementation.⁷⁵ Mitigation options must "result in measurable GHG emission reduction" that is additional to any mitigation that would already take place.⁷⁶ Additionally, because mitigation must occur on-site, SMI cannot propose offsets as a mitigation measure.⁷⁷ Rather, mitigation options should include those recommended for landfills in the Climate Action Council's Scoping Plan. For example, the Climate Action Council found that "[t]o reduce emissions to achieve the required 2030 GHG emission reductions, significant increased diversion from landfills as well as emissions monitoring and leak reduction will be needed. A circular economy approach to materials management is understood and employed," and "[i]dentifying and reducing fugitive emissions of methane from landfills and anaerobic digesters through baseline measurement, increased monitoring, and engineering and regulatory programs can reduce leaks and provide facilities with comprehensive data on their operations."⁷⁸ Additionally, as discussed above, alternatives must take into account New York's current landfill capacity and plans to decrease waste.

As currently drafted, the Scope for the DEIS fails to address these requirements of CLCPA Section 7(2). The Final Scope must require a proper consistency analysis as well as any justification, mitigation measures, and alternatives.

⁷⁰ CP-49 at 6.

⁷¹ See CLCPA § 7(2).

⁷² DAR-21 at 5–6.

⁷³ CP-49 at 7.

⁷⁴ *Id.* at 8.

⁷⁵ DAR-21 at 6.

⁷⁶ CP-49 at 8.

⁷⁷ See PwC, *PwC's Carbon Offset Projects – Seneca Meadows*, <https://www.pwc.com/gx/en/about/corporate-sustainability/our-stories/carbon-offset-project-seneca-meadows.html>.

⁷⁸ N.Y.S. Climate Action Council Scoping Plan (Dec. 2022) at 319, 332.

B. The DEIS Must Assess Whether the Proposed Expansion Would Disproportionately Burden a Disadvantaged Community.

In addition to the analysis required by Section 7(2), agencies must also analyze the effects of decisions subject to the CLCPA to ensure that their decisions “shall not disproportionately burden disadvantaged communities.”⁷⁹ Agencies must affirmatively “prioritize reductions of greenhouse gas emissions and co-pollutants” in such communities.⁸⁰ “Co-pollutants” are non-greenhouse gas air pollutants that are also produced by greenhouse gas emission sources.⁸¹ The CLCPA defines disadvantaged communities as “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households”⁸² and tasks a new entity called the Climate Justice Working Group with developing criteria to identify such communities.

In March 2022, the Climate Justice Working Group issued draft criteria for disadvantaged communities and identified such communities on a draft basis until the criteria are finalized.⁸³ DEC has explained that “[u]ntil the criteria and maps are finalized, the draft Disadvantaged Communities map published by the [Climate Justice Working Group] may be utilized at this time for purposes of addressing the requirements of Section 7(3),” and has determined that a permit applicant must address a proposed facility’s location in a draft disadvantaged community.⁸⁴ Additionally, before these draft disadvantaged communities were identified, the State had provided interim disadvantaged communities to be used before the Climate Justice Working Group finalizes the disadvantaged communities criteria.⁸⁵

Under either framework, it is clear that the landfill expansion has the potential to cause or contribute to a disproportionate burden on a disadvantaged community. There is an interim disadvantaged community within one mile of the SMI landfill⁸⁶ and Seneca County contains five census tracts—including one in Waterloo—that have been identified as disadvantaged communities based on the draft criteria.⁸⁷ Research indicates that residents living within five kilometers (approximately three miles) of a landfill are at increased risk of mortality from lung cancer and respiratory illness due to airborne contamination.⁸⁸

⁷⁹ CLCPA § 7(3).

⁸⁰ *Id.*

⁸¹ ECL § 75-0101(3).

⁸² *Id.* § 75-0101(5).

⁸³ DEC, Notice of Release for Public Comment the Draft Disadvantaged Communities Criteria and Draft List of Disadvantaged Communities (Mar. 16, 2022), https://www.dec.ny.gov/enb/20220316_not0.html

⁸⁴ Notice of Denial of Title V Air Permit, Greenidge Generation LLC – Greenidge Generating Station 19 (June 30, 2022), https://www.dec.ny.gov/docs/administration_pdf/greenidgefinal630.pdf.

⁸⁵ NYSERDA, *Disadvantaged Communities*, <https://www.nyserdanyny.gov/ny/disadvantaged-communities> (last visited Jan. 18, 2023).

⁸⁶ *See id.*

⁸⁷ *See* Climate Justice Working Grp., Draft List of Disadvantaged Communities 38, <https://climate.ny.gov/-/media/project/climate/files/Draft-List-of-Disadvantaged-Communities.pdf>.

⁸⁸ Francesca Mataloni et al., *Morbidity and Mortality of People Who Live Close to Municipal Waste Landfills: A Multisite Cohort Study*, 45 Int’l J. Epidemiology 806 (June 2016), <https://doi.org/10.1093/ije/dyw052>

The Project will result in precisely the types of co-pollutants against which the CLCPA requires that disadvantaged communities be protected, including precursors to ozone, particulate matter, and Hazardous Air Pollutants.⁸⁹ Additionally, recent research indicates that PFAS can volatilize from landfills, representing another airborne harm to neighboring communities.⁹⁰ SMI must conduct a comprehensive analysis of these threats to nearby disadvantaged communities, including pollutants emitted directly from the landfill as well as from flaring and mobile sources servicing the landfill. If the expansion would result in a disproportionate burden on a disadvantaged community, Section 7(3) prohibits its authorization.

IX. THE DEIS MUST PROVIDE A FULL ANALYSIS OF AIR QUALITY IMPACTS AS REQUIRED BY SEQRA BEFORE DEC CAN ISSUE A TITLE V PERMIT.

The Draft Scope states that the DEIS will review potential air quality impacts against relevant state and federal air regulations.⁹¹ However, SEQRA requires that the DEIS “analyze the significant adverse impacts” of the landfill expansion—not just determine whether a project will result in an air standard violation.⁹² SEQRA regulations set forth a list of factors that agencies should consider when determining whether an adverse impact has the potential to be significant, including whether the proposed action could result in “a substantial adverse change in existing air quality,” “the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources,” and “the creation of a hazard to human health.”⁹³

Landfills and the flaring of landfill gas emit harmful pollutants including methane, carbon dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hydrogen sulfide, sulfur dioxide, particulate matter, and Hazardous Air Pollutants.⁹⁴ Nitrogen oxides and volatile organic compounds can create ozone, which can cause lung inflammation, damage to the airways, and more severe and frequent asthma attacks.⁹⁵ Exposure to particulate matter can lead to heart attacks, aggravated asthma, decreased lung function, and premature death.⁹⁶ Sulfur dioxide can exacerbate asthma and respiratory symptoms, and reduce lung function.⁹⁷ Hazardous Air Pollutants are those that are known to cause cancer and other serious health impacts, and can

⁸⁹ See generally Title V Permit Modification Application.

⁹⁰ Tasha Stoiber, et al., *Disposal of Products and Materials Containing Per- and Polyfluoroalkyl Substances (PFAS): A Cyclical Problem*, 260 *Chemosphere* 127659 (2020); Huiju Lin et al., *Per- and Polyfluoroalkyl Substances in the Atmosphere of Waste Management Infrastructures: Uncovering Secondary Fluorotelomer Alcohols, Particle Size Distribution, and Human Inhalation Exposure*, 167 *Env’t Int’l* 107434 (2022), <https://doi.org/10.1016/j.envint.2022.107434>.

⁹¹ Draft Scope at 28.

⁹² 6 NYCRR § 617.9(b)(1).

⁹³ 6 NYCRR § 617.7(c)(1)(i), (v), (vii).

⁹⁴ See generally Title V Permit Modification Application.

⁹⁵ See *Health Effects of Ozone Pollution*, U.S. Env’t Prot. Agency, <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last visited Jan. 18, 2023); *Ozone*, American Lung Ass’n, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (last visited Jan. 18, 2023).

⁹⁶ See *Health and Environmental Effects of Particulate Matter (PM)*, EPA., <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last visited Jan. 12, 2023).

⁹⁷ *What is sulfur dioxide?*, American Lung Ass’n, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/sulfur-dioxide> last visited Jan. 12, 2023).

persist and accumulate in body tissues.⁹⁸ Additionally, as discussed, PFAS in landfills can volatilize and become airborne. The DEIS must include an analysis of the landfill expansion's potential to emit these pollutants and the resulting health and environmental impacts, and not simply look at whether the landfill expansion might result in the violation of a state or federal air quality standard.⁹⁹ The DEIS should also examine the potential for the leachate evaporator to contribute PFAS to the air and should rigorously monitor and test all emissions at the site for PFAS and other organics.

The DEIS's analysis of potential greenhouse gases must be equally complete. SMI must cure the deficiencies discussed above with respect to the CLCPA so that DEC can accurately assess the proposed expansion's potential to emit landfill gas and the greenhouse gases that will result from flaring. Specifically, the DEIS must reflect the actual landfill gas emissions produced by the landfill, including fugitive emissions. Additionally, the DEIS should use up-to-date and scientifically sound global warming potentials, including a 20-year global warming potential for methane. In April 2021 SMI told DEC that "for the purposes of an Emissions Inventory for a Title V Permit Application, 100-year [global warming potential] has historically been used and is recommended by the [U.S. Environmental Protection Agency]."¹⁰⁰ However, New York law recognizes that a 20-year global warming potential is more appropriate.¹⁰¹ This is especially true for methane, which only remains in the atmosphere for approximately twelve years.¹⁰² For this reason, at least one federal court has concluded that an "unexplained decision to use the 100-year time horizon," even a decision based on EPA's use of that timeframe, "when other more appropriate time horizons remained available, qualifies as arbitrary and capricious."¹⁰³ Indeed, EPA itself recognizes that methane has a short lifetime, and "the 20-year [global warming potential] is sometimes used as an alternative."¹⁰⁴

X. THE DEIS MUST INCLUDE A FULL ANALYSIS OF IMPACTS ON COMMUNITY RESOURCES AND COMMUNITY CHARACTER.

The DEIS must thoroughly consider the social and economic costs of the landfill's continuing operation and expansion, not only the benefits mentioned in the Draft Scope. These costs and benefits also must be carefully compared to the costs and benefits of alternatives –

⁹⁸ *Hazardous Air Pollutants*, EPA, <https://www.epa.gov/haps> (last visited Jan. 12, 2023); *Hazardous Air Pollutants: Sources and Exposure*, EPA, <https://www.epa.gov/haps/hazardous-air-pollutants-sources-and-exposure> (last visited Jan 12, 2023).

⁹⁹ The DEIS must also provide sufficient information for DEC to analyze the proposed expansion's potential odor impacts.

¹⁰⁰ See Apr. 2021 SMI Response to DEC.

¹⁰¹ See ECL § 75-0101(2).

¹⁰² IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change at 1071 [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2391 pp. doi:10.1017/9781009157896.

¹⁰³ *W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt.*, CV-16-21-GF-BMM, 2018 WL 1475470, at *15 (D. Mont. Mar. 26, 2018).

¹⁰⁴ U.S. EPA, *Understanding Global Warming Potentials*, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials#Learn%20why> (last visited Jan. 20, 2023).

including the No Action Alternative which would result in the landfill's closure. The community clearly favors the No Action Alternative.

For example, the Draft Scope asserts that "there should be no increase in truck traffic associated with the waste disposal operations of the Landfill beyond existing levels of traffic,"¹⁰⁵ and elsewhere, that "sound levels associated with the construction and development of the Project will be thoroughly described as to how they will be consistent with existing sources of Facility operations."¹⁰⁶ But it would be an insufficient analysis of transportation, noise, viewshed, and other impacts to consider only *additional* impacts due to the proposed expansion. Rather, the DEIS must compare these impacts to the landfill's closure by 2025.

The Draft Scope notes that the DEIS will discuss the consistency of the proposed expansion with local land use plans and ordinances. Under SEQRA, "the creation of a material conflict with a community's current plans or goals as officially approved or adopted" is an indicator of significant adverse impacts on the environment.¹⁰⁷ Seneca Falls, Waterloo, and the surrounding communities have already borne the burdens of hosting one of the state's largest active landfills for decades. The local law mandating closure of the landfill is a strong indicator of the community's opposition to its continued presence and the adverse impact that its expansion would have.¹⁰⁸

The Finger Lakes region "is a natural resource of significant importance to our State, and the region's present and future economic drivers are closely aligned with the tourism, winery, and agricultural economies. Furthermore, environmental considerations such as views and vistas, noise and water resources are components of the character of the community and need to be considered in [an environmental impact statement]."¹⁰⁹ The odors, noise, truck traffic, and imposing height of the landfill harm property values and the bottom line of the region's tourism industry. No one wants to come play slots at a casino where you can smell a landfill or go wine tasting where you can see a landfill looming over the community. Similarly, businesses in the area are having trouble recruiting and retaining new hires due to the proximity of the landfill and the fact that people do not want to raise families near the landfill. The DEIS must also examine negative impacts on the Seneca Falls Women's Rights National Historical Park and the Montezuma National Wildlife Refuge.

Important physical aspects of community character in the Finger Lakes region include: scenic views and aesthetic resources; historic sites and districts; scenic roads and transportation corridors; parks, open space, and land trusts; and American viticultural areas. The DEIS must carefully review the impacts of SMI's continuing operation and expansion on these elements of community character, given that an expanded SMI would dominate the local landscape as the tallest manmade structure in the area. If the DEIS is going to evaluate the benefits to SMI of

¹⁰⁵ Draft Scope at 2,

¹⁰⁶ *Id.* at 29.

¹⁰⁷ 6 NYCRR § 617.7(c)(1)(iv).

¹⁰⁸ See Seneca Falls Local Law 3 of 2016.

¹⁰⁹ *Decision of the Commissioner, FSEIS, and SEQRA Findings Statement* at 11, Matter of Finger Lakes LPG Storage, LLC (July 12, 2018).

continuing to operate a private landfill for corporate profit, it must also evaluate all the economic, cultural, and social harm to the surrounding community, including lost business and lost property value if the Project is approved and the landfill expands.

XI. THE DEIS MUST CONSIDER THE PROXIMITY OF HOMES AND SCHOOLS.

To effectively evaluate the impact the Project will have on the community, the DEIS must look specifically at the impact the landfill has had, and will continue to have on nearby and sensitive populations and must compare those impacts to the environmental benefits the landfill closure would have on nearby and sensitive populations.

For example, the landfill is within three miles of every school in Seneca Falls and Waterloo. During the COVID pandemic, when schools were encouraged to open windows for ventilation, many teachers did not, because of landfill odors. Kids don't go outside for recess when the odors are too strong. The DEIS must research and document these issues, which will be ongoing if the landfill is allowed to expand and keep operating, and which would be alleviated under the No Action Alternative. Additionally, the DEIS should examine the potential health impacts of the landfill on children at nearby schools.

In addition, the DEIS must identify homes located within 1,000 feet of the landfill property and evaluate specific impacts to those residents. DEC's proposed changes to the solid waste regulations prohibit landfill expansions within 1,000 feet of a school or a legal place of residence. The DEIS must identify any schools and all legal residences within 1,000 of the landfill facility.

XII. THE DEIS MUST CONSIDER NEW YORKERS' RIGHT TO CLEAN WATER, CLEAN AIR, AND A HEALTHFUL ENVIRONMENT.

New York's Constitution guarantees that "[e]ach person shall have a right to clean air and water, and a healthful environment."¹¹⁰ In 2019, New York state legislators passed this Environmental Rights Amendment ("ERA") in response to "[r]ecent water contamination and ongoing concerns about air quality" that "highlighted the importance of clean drinking water and air as well as the need for additional protections."¹¹¹ Recognizing that existing environmental laws had failed to fully protect this fundamental right, legislators drafted the ERA to "put in place safeguards to require the government to consider the environment and our relationship to the Earth in decision making."¹¹² Voters passed a proposition on November 2, 2021 to add these rights to our state's Bill of Rights, thereby giving our environmental rights the highest constitutional standing and protection.

In light of Article I, Section 19 of the New York Constitution, DEC has an enhanced obligation to ensure that the environmental rights of the landfill's neighbors are protected. This constitutional obligation requires the agency to affirmatively protect the constitutional right to clean air, clean water and a healthful environment, to fully consider whether its actions might

¹¹⁰ NY Const. Art. 1, § 19.

¹¹¹ NYS State Assembly Memorandum in Support of A1368.

¹¹² *Id.*

impair these rights, and to prevent impairment of these rights to the maximum extent possible. This obligation may, at times, require the DEC to go beyond environmental statutes and regulations. Indeed, members of the New York Assembly specifically noted odors from landfills as the type of harm that the ERA could redress.¹¹³ The landfill expansion is likely to result in environmental impacts including noxious odors, airborne PFAS, PFAS in leachate, and air emissions—whether or not they rise to the level of an air quality violation. DEC must consider if such impacts would violate New Yorkers’ right to clean air, clean water, and a healthful environment, and if so, deny the permit consistent with its constitutional obligations.¹¹⁴

XIII. CONCLUSION

The DEIS for the proposed expansion of Seneca Meadows landfill must thoroughly evaluate all the environmental impacts of the proposal and compare them to alternatives, including the No Action Alternative.

Respectfully Submitted,

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¹¹³ See *Fresh Air for the Eastside, Inc. v. NYS DEC*, Index. No. E2022000699, 16 n.11. (Sup. Ct. Monroe Cty. Dec. 7, 2022) (citing Apr. 30, 2019 State Assembly Transcripts of debate on ERA at 40-41).

¹¹⁴ See, e.g., *id.* at 12 (“[T]he Landfill is still causing Odors and Fugitive Emissions which plague the community. Therefore, more needs to be done to protect [plaintiff’s] members’ constitutional rights to clean air and a healthful environment.”).