



**LEILANI CRAFTS ULRICH**  
Chairwoman

**TERRY MARTINO**  
Executive Director

**Legal Affairs Committee  
May 14, 2015**

The Legal Affairs Committee convened at 10:30 am.

**Legal Affairs Committee Members Present:**

Karen Feldman, Chair, Arthur Lussi, Sherman Craig, Richard Booth and Bradley Austin (DED)

**Other Members and Designees Present:**

Leilani Ulrich, Chairwoman, William Thomas, Dan Wilt, Robert Stegemann (DEC) and Dierdre Scozzafava (DOS)

**Local Government Review Board:**

Frederick Monroe, Executive Director

**Agency Staff Present:**

Terry Martino, Executive Director, James Townsend, Counsel, Paul Van Cott, Associate Attorney, Jennifer Hubbard, Senior Attorney and Mary Palmer.

**Counsel's Report:** James Townsend, Counsel noted the report on Jurisdictional Inquiries and FOIL requests for the month of April.

**Proposed Emergency Project Review Regulation**

Jennifer Hubbard, Senior Attorney, gave a brief update on the proposed emergency project rule making. Ms. Hubbard added that Agency staff recommend approval of the draft resolution adopting the proposed rule.

Ms. Hubbard stated that two public hearings were held in March, one at Agency headquarters and the second in Albany, and the public comment period ended on March 21<sup>st</sup>. She noted that two municipal leaders expressed concerns on how the proposed rule would be implemented, and if the emergency certification would be required before acting in an emergency. She added that staff did correct the misconception in its written response and stated that no advance permission is required. Mr. Townsend noted that the town supervisors understood and were supportive of the way the regulation is proposed.

Richard Booth stated that the rule should include emergency declarations by local officials and not be limited to federal and state declarations. Mr. Monroe agreed that it should include local officials. Ms. Hubbard stated that staff did take that under consideration, adding that when a municipality experiences emergencies that do not rise to state or federal levels it would fall under it being an immediate threat to life or property and would be covered under the proposed rule.

Mr. Booth commented on the definition of an emergency stating that besides storms and natural calamities there are other types of emergencies that could lead to major changes in environmental conditions. Chairwoman Ulrich asked if those emergencies would be covered as they occur without having to wait for state or federal action. Ms. Hubbard stated that those would fall under the definition of an immediate threat to life or property.

Mr. Townsend stated that the proposed rule excepts emergencies which means the agency would not review emergency actions in wetlands or with shoreline structures; these two are the primary places where these proposed rules would come into effect. Mr. Booth noted that he was still not comfortable with the definition using only natural calamities.

Paul Van Cott added that one of the main reasons for this rule is to line the agency up with how it deals with emergency projects with state and federal agencies. He added that it is a different context with local governments and the agency will respect their declarations to an emergency.

Karen Feldman commented that everyone is looking for comfort that local governments will be covered so they can do what they need to do. Mr. Monroe noted that it is important to give local government protection against the risk that agency staff or Board would say after-the-fact that it did not fall under the emergency definition.

Mr. Townsend stated that staff have worked with different agencies to get the proposed rule in line with those agencies. He added if the Board feels they want to add the local government category to the regulation then adoption would have to be put on hold and staff would have to go back and review it with the DEC.

Chairwoman Ulrich asked if there was an option of moving ahead with the proposed rule and if there is additional information could it be amended in the future. Mr. Townsend said that it is an option.

Sherman Craig asked how long the process would be delayed if the Board decided to include local government in the definition. Mr. Townsend stated that after consulting with the DEC and if it is a significant enough change, it would have to be re-noticed, and could result in a delay of a few months.

Ms. Feldman asked the Committee for a motion to approve the Notice of Proposed Rule Making proposed to the full Board for adoption.

By motion of Mr. Craig, seconded by Mr. Lussi, the Proposed Rule Making was approved to go to the full Agency for adoption.

Mr. Craig and Mr. Austin were in favor, with Mr. Booth opposed.

Chairwoman Ulrich stated that staff will bring back information on the number of changes and possible length of delay, then it will be taken up at the full agency on Friday.

Mr. Booth asked if the proposed regulation was discussed with the County Health Department. Mr. Van Cott stated that there were provisions under the freshwater wetlands act for orders by the health department to provide exemption from that law.

**Old Business**

None

**New Business**

None

Karen Feldman, Committee Chair adjourned the meeting at approximately 11:00 am.