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To: Maglienti, Jennifer; Russo, Steven
CC: Hennessey, Yvonne
Date: 7/21/2011 10:43:31 AM
Subject: FW: See Attached re SEQRA and Zoning

FYI.

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From: Thomas F. Puchner
Sent: Wednesday, July 20, 2011 12:51 PM
To: Thomas West; Yvonne Hennessey
Subject: See Attached re SEQRA and Zoning

See attached excerpt from Ruzow's treatise. This line of cases (both NYSDEC and Court decisions) state that NYSDEC is not empowered to consider local zoning compliance in the context of permitting or SEQRA. This was borne mostly from the mining cases, but is based on SEQRA itself so that should be applicable. I am reviewing the cases now. *Flacke* looks solid.

Ruzow, Section 8.16, p. 8-74

SEQRA states that its "provisions . . . do not change the jurisdiction between or among state agencies and public corporations." While this language does not mention local governments, DEC has interpreted it to include them and has held, on this wording, that its jurisdiction under SEQRA "does not include authority to adjudicate legal issues concerning compliance with local government zoning." Thus, a town's assertion that a proposed landfill would violate local zoning laws *could not serve as a basis for DEC to deny the landfill a permit either under the landfill licensing provisions of the Environmental Conservation Law or under SEQRA.*

I like this quote from *Flacke*:

"On the question of jurisdiction, if the commissioner attempted to arrogate unauthorized power to himself by deciding the zoning question, it would be akin to a workers' compensation referee reaching a determination not only on the issue before him, but also ruling on the merits of any third-party action the compensation claimant might assert."



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Attachments: 20110720 Ruzow Treatise Excerpt Re_Local ZoningO & G Industry_SGEIS.PDF, 19811228 Matter of Town ofPoughkeepsie v FlackeO & G Industry_SGEIS.doc