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April 25, 2022

Honorable Michelle L. Phillips
Secretary of the Commission
New York State Department of Public Service
Three Empire Plaza
Albany, New York 12233-1350

Sent via Electronic Mail Only
Email: secretary@dps.ny.gov

Re: Case 18-T-0604 - Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles (3.1 Nautical Miles) (138 kilovolt [kV]) of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles (138 kV) of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation, in the Town of East Hampton in Suffolk County.

Dear Secretary Phillips:

Please accept this letter in opposition to South Fork Wind's Change Request No. 4. When South Fork Wind¹ ("SFW") filed its Environmental Management and Construction Plan ("EM&CP") *only* six months ago (in September 2021), it did *not* anticipate the need for which it now seeks approval (in Change Request No. 4) for an additional five (5) acres. What changed?

On April 6, 2022, when SFW filed Change Request No. 4, it also filed with it Change Request No. 3, the latter of which sought approval for the use of 1.2 acres at 40 Tan Bark Trail. At the time, SFW proposed using the site (at 40 Tan Bark Trail) for *inter alia*, stockpiling excavated soil and storing groundwater containing (undisclosed) amounts of hazardous waste; and to establish what could accurately be described as a hazardous waste treatment facility.

The proposed facility was in proximity to the environmentally sensitive wetlands of the Three Mile Harbor Estuary. However, SFW withdrew Change Request No. 3 only yesterday (April 25) in response to public pressure in opposition to South Fork Wind's proposal to establish a facility designed to treat hazardous waste in the Town of East Hampton.

¹ South Fork Wind, LLC (formerly Deepwater Wind South Fork, LLC)

The location of the proposed facility (at 40 Tan Bark Trail) is nearby two other parcels that are incorporated into Change Request No. 4 (at 209 Springs Fireplace Rd). SFW withdrew Change Request No. 3 (for the site at 40 Tan Bark Trail), leaving the two smaller parcels (at 209 Springs Fireplace Rd) isolated and over two miles away from the nearest point of SFW’s construction activities.

The main hub of activity, therefore, will center on the Georgica Pond Site (on Stephens Hand’s Path). These parcels are only a quarter-mile from SFW’s construction corridor and are at least four times larger than the parcels at the Three Mile Harbor Site (at 209 Springs Fireplace Rd).

Although the comments herein are primarily expressed in reference to the tax map parcels at the Georgica Pond Site, they also apply to the parcels at the Three Mile Harbor Site.

I am a party-intervenor in the (above-captioned) proceeding and have standing to oppose the petition of SFW to amend the EM&CP approved by the New York State Public Service Commission (the “Commission” or “NYSPSC”) on November 22, 2021.

For the reasons set forth in this letter, I respectfully request that the Commission deny SFW’s petition for approval of EM&CP Change Request No. 4 for the “laydown areas” herein listed (below) until there has been a thorough environmental review of SFW’s proposed construction corridor and interconnection facility that up until now has been denied the people of New York State; and that such review includes complete testing for PFAS contaminants.

EM&CP Change Request #4

Georgica Pond Site	– 106 Stephen Hands Path	(tax map 193-02-02.0)	2.52 Acres	Potential
Georgica Pond Site	– 106 Stephen Hands Path	(tax map 193-02-03.0)	1.11 Acres	Use
Georgica Pond Site	– 106 Stephen Hands Path	(tax map 193-02-04.0)	<u>8.93 Acres</u>	<u>3.80 Acres</u>
Three Mile Harbor Site	– 209 Springs Fireplace Rd	(tax map 145-04-12.4)	0.99 Acres	
Three Mile Harbor Site	– (56 West Drive)	(tax map 145-04-05.1)	0.14 Acres	1.13 Acres
Total (approx.):			13.69 Acres	4.93 Acres

Note: EM&CP Change Request No. 4 identifies tax map parcels at 106 Stephen Hand’s Path as “193.-2-3 and 193.-2-4) in the Town of East Hampton, Suffolk County, New York” (at p. 2). The tax map parcels contradict the parcels identified in Figure 2 (on page 2) of Attachment A. The “laydown area” indicated in Figure 2 (in red) overlaps parcels 193-02-04 and 193-02-02 (i.e., not 193-02-03). The reader is left guessing and does not know which tax map parcels South Fork Wind is writing about in EM&CP Change Request No. 4 (see Exhibit A attached, also [available online here](#)).

The total estimated area that SFW could potentially use (without site clearing), including all three tax map references, is approximately 3.8 acres. See Exhibit B (attached, also [available online here](#)).

See Three Mile Harbor Site maps at Exhibit C (attached, also [available online here](#)) and Exhibit D (attached, also [available online here](#)).

EM&CP Change Request #4

Georgica Pond Site (106 Stephen Hand's Path)
Three Mile Harbor Site (209 Springs Fireplace Rd)

In reference to the tax map parcels at 106 Stephen Hand's Path (the "Georgica Pond Site") and, to a lesser extent, the parcels at 209 Springs Fireplace Road (the "Three Mile Harbor Site"), the subject EM&CP Change Request #4 reads as follows –

“No soil stockpile or dewatering storage and treatment activities will occur at these laydown areas.”

The phrase is repeated six times, verbatim. There are no variations, even in punctuation.

Notably, the phrase does not rule out using either the Georgica Pond Site or Three Mile Harbor Site for transferring soil (where the soil is *not* placed in a “stockpile”) or transferring groundwater (where there is no “storage and treatment”). For example, groundwater could be transferred from a vacuum truck (carrying 4,000 gallons of groundwater) to a frac tank or other truck for transport, so long as there are no groundwater “storage and treatment” activities.

A careful reading of the narrowly-worded exclusion explains the pattern of “30 trucks per day, on average, operating out of the [Georgica Pond] site. These trips will not occur at the same time but will be spread out over the course of a 10-hour workday (7am to 7pm [*sic*] Monday through Saturday) [...]” Clearly, the trucks are carting excavated material back and forth between the construction site and the Georgica Pond Site.

In addition to the “30 trucks per day” operating out of the Georgica Pond Site, “SFW anticipates” that “30 trucks per day” will be operating out of the Three Mile Harbor Site. That is a total of sixty (60) trucks per day operating out of both facilities carting excavated material.

Georgica Pond Site: Town License to SFW

On April 21, the East Hampton Town Board voted in favor of the Town Supervisor executing a license agreement granting SFW use of “portions” of Town-owned property “at Stephen Hands Path, Wainscott (0300-193-02-004).” See Exhibit J (attached, also online at [Town Board Resolution #2022-551, click here](#)). The Town Board resolution applies only to tax map parcel “0300-193-02-004” and excludes 0300-193-02-002 and 0300-193-02-003.

The Town Board resolution granting the Town Supervisor authority to enter into a license agreement with SFW indicates what activities will be carried out by SFW at the Georgica Pond Site (the site covered by the license agreement).

The Town Board refused to disclose a draft license agreement or the Environmental Assessment Form that had “been prepared for the Town Board” when asked prior to the Town Board vote (on April 21, 2022).

The Town Board resolution states that the Georgica Pond Site will not be used for the “storage of any water or soil removed from the cable route [emphases added.]” However, the resolution does not rule out using the Georgica Pond Site for transferring groundwater or soil. The resolution *only* excludes “storage” in the same way the EM&CP Change Request No. 4 excludes “soil stockpile or dewatering storage and treatment activities” at the site.

Also, the resolution does not rule out using the Georgica Pond Site for the storage of water or soil removed from the interconnection facility. Importantly, once soil or groundwater is transferred on-site, it would be difficult to prove whether it came from the cable route or interconnection facility, making enforcement impossible. Hypothetically, if SFW *was storing* water or soil from the cable route in violation of the license agreement, it could easily claim that the soil/groundwater was from the Interconnection facility. After all, who would know the difference?

The Town Board resolution permits SFW to use the Georgica Pond Site for storing or treating soil or groundwater from the interconnection facility without restriction, and given that SFW may freely transfer soil or groundwater from either the interconnection facility or the cable route, this means that SFW can transfer soil and/or groundwater from anywhere within the construction site to the Georgica Pond Site, and once it is on-site, no one will know whether the soil/groundwater is from the cable route or interconnection facility. According to the Town Board resolution, therefore, SFW could effectively transfer, store and treat groundwater at the Georgica Pond Site. In other words, SFW will be able to operate a facility to treat groundwater containing PFOS or PFOA contamination that in New York State is defined as hazardous waste.

Whatever happens at the Georgica Pond Site will likely go unnoticed because, as Change Requests No. 4 notes, the “specific location is suitable because it is [...] largely secluded from local residents” (at pp. 5-6), and “views of and from the site are screened by vegetation” (at p. 7).

The Town Board resolution’s definition of “purposes” is sufficiently vague to include SFW’s interconnection facility, comprising mainly of transformers, as “related equipment[.]” It could also be argued that soil and groundwater are included in the definition of “construction materials” if there is the intention of using soil as backfill for trenching, or to use groundwater to clean trucks and equipment. Groundwater could also be contained within vacuum trucks (that are designed to carry 4,000 gallons each) that could fall under the purpose of “storage of vehicles” instead of storage of groundwater.

In the absence of a tightly-worded license agreement, the Town Board resolution is sufficiently vague to leave enough wriggle room for SFW to use the Georgica Pond Site (at 106 Stephen Hands Path) for storage, treatment, and transferal of soil and/or groundwater containing undisclosed concentration levels of PFOS and PFOA contamination.

Finally, the Town Board resolution does not rule out releasing (treated) hazardous waste into Georgica Pond. For an indication of how much the Town Board cares about the health of water bodies in Wainscott, one only needs to look at Wainscott Pond, which is now one of the most toxic ponds on all of Long Island. It would only take one contractor to spill (accidentally) a frac tank of 22,000 gallons of water for that release to cause irreparable harm to Georgica Pond, especially where there is no primary or secondary method of containment.²

South Fork Wind’s petition seeking approval of EM&CP Change Requests No. 4 introduces the potential for possible disposal and/or release of soil or groundwater containing levels of PFAS contamination into sensitive wetlands within eight hundred feet (800 ft.) upstream from Georgica Pond. Effectively, the change requests may open the door to SFW and allow it to operate a facility to treat hazardous waste in an attempt to reduce PFOS and PFOA contamination concentration levels in soil and groundwater that it denied existed during the NYSPSC proceeding.

Hazardous Waste - PFOS and PFOA Contamination

PFOS and PFOA are hazardous substances pursuant to 6 NYCRR § 597.3, thereby making them hazardous wastes pursuant to Environmental Conservation Law § 27-1301. New York State provides standards for the proper handling and storage of hazardous substances to prevent spills and releases to the environment and prohibits the release of hazardous substances

² See Environmental Management and Construction Plan (“EM&CP”), Appendix G - Dewatering Plan (September 2021), Section 3.6 (at p. 9) ([PSC DMM 306 click here](#)).

into the environment.³ Hazardous substances are prohibited from being released into the environment.⁴

Facilities that store hazardous substances must apply to the Department of Environmental Conservation (“NYSDEC”) for a registration certificate to operate.⁵ SFW is *not* a registered facility for storing and/or treating hazardous waste. SFW has no prior experience storing, transporting, transporting, and/or treating hazardous waste.

The US Environmental Protection Agency (“USEPA”) links exposure to high concentration levels of PFOS and PFOA contaminants to cancer (liver, pancreatic, testicular, and mammary gland tumors), kidney damage, reproductive problems, and other adverse health effects.

South Fork Wind seeks to circumvent judicial process and review designed to protect the environment and public health. There has been no environmental review of SFW’s latest petitions, no building plans or site layouts submitted for local approval, no requirements for insurance, no requirements for the payment of a bond or other form of security, no traffic route assessments or management plans, no accounting for sixty (60) trucks per day⁶ of excavated material containing hazardous waste, no site-specific noise or air quality evaluations, no guarantees the site will be “temporary” (setting a dangerous precedent), no site-specific emergency plans for accidental releases of hazardous waste, and no mitigation plans for the identified endangered, threatened, or candidate species which may be present in the sites.

Before - SFW stated that its “Joint Proposal adequately addresses and mitigates the potential impacts of any potential PFAS or other contaminants.”⁷ As recently as September 2021, SFW did *not* anticipate water withdrawals “greater than 100,000 gallons per day” that would be stored in “frac tanks for staging within the Project area” and then “transferred by vacuum truck for off-site disposal at a local Publicly Owned Treatment Works (POTW) facility that it would identify “prior to the start of construction [emphasis added].” That was six months ago.

Now - SFW requests four additional properties over two locations of five (5) acres for, among other purposes, transferring and handling excavated soil and groundwater containing (undisclosed) concentrations of PFAS contamination. The additional parcels outside the Project area are large enough to handle soil and groundwater from sixty trucks per day – “30 trucks per

³ 6 NYCRR §§ 596 – 599

⁴ 6 NYCRR § 597.4 (a)

⁵ 6 NYCRR § 597

⁶ See Change Request No. 4 Narrative ([PSC DMM 338 click here](#)) – SFW projects “30 trucks per day” operating out of [106 Stephen Hand’s Path](#) (at p. 8), and “30 trucks per day” out of [209 Springs Fireplace Rd](#) (at p. 5).

⁷ See South Fork Wind, LLC Response to Petitions for Rehearing, dated May 3, 2021 (at p. 22) ([PSC DMM 285 click here](#))

day” (operating out of the Georgica Pond Site) and another “30 trucks per day” (operating out of the Three Mile Harbor Site).⁸

It is concerning that although construction began in February 2022, SFW has not identified an off-site POTW facility in violation of its NYSPSC-approved Dewatering Plan.

Clearly, the Joint Proposal did *not* adequately address and mitigate the potential impacts of *any potential PFAS contamination* as SFW had claimed on May 3, 2021;⁹ otherwise, there would be no need for five (5) acres for sixty (60) truck-loads per day of excavated material containing hazardous waste.

The only change since **before** SFW filed its petition, and **now**, is that SFW has tested its construction sites for PFAS contamination (in or around January 2022). In a marked break from prior practice, SFW has *neither* filed with the NYSPSC *nor* publicly disclosed the laboratory test results and supporting documentation for the testing carried out in or around January 2022.

Please consider this letter also as a request for SFW to file with the NYSPSC and publicly disclose all laboratory test results, including all supporting documentation.

South Fork Wind filed its Article VII application in September 2018. Since that time, SFW delayed testing its proposed construction sites for PFAS contamination for two years, preferring to wait until *after* the evidentiary record in the NYSPSC hearing had closed (in December 2020). SFW thereby denied the Commission the opportunity to take into account test results for PFAS contamination when deciding whether to issue South Fork Wind a Certificate (of environmental compatibility).

On January 13, 2021, a Motion to Reopen the Record was filed with the NYSPSC ([available at PSC DMM 240 here](#) and [exhibits here](#)) specifically to admit SFW’s test results for PFAS contamination. SFW’s Response to the Motion to Reopen the Record (dated January 21, 2021) reads –

“[...] SFW is unlikely to encounter any PFAS contamination during construction of the SFEC due to the fact that it is not performing any excavation in areas where PFAS has been released, [...], and also because

⁸ See Change Request No. 4 Narrative ([PSC DMM 338 click here](#)) – SFW projects “30 trucks per day” operating out of 106 Stephen Hand’s Path (at p. 8), and “30 trucks per day” out of 209 Springs Fireplace Rd (at p. 5).

⁹ See South Fork Wind, LLC Response to Petitions for Rehearing, dated May 3, 2021 (at p. 22) ([PSC DMM 285 click here](#))

most of the excavation will take place above the water table [emphasis added]” (available at [PSC DMM 254 here](#) at p. 17).

If this were true, SFW would not store water removed during dewatering activities “in treatment tanks utilizing granular activated carbon” with “secondary containment.” Granular activated carbon is primarily used for treating PFOS and PFOA contaminants, and secondary containment is a legal requirement for hazardous waste treatment facilities.¹⁰

The Commission relied on SFW’s (false) representations and denied the Motion to Reopen the Record.

On April 16, 2021, two party-intervenors, myself and Citizens for the Preservation of Wainscott, Inc. (“CPW”), filed two petitions for rehearing, the former of which also requested a stay in proceedings. The petitions for rehearing allege, *inter alia*, that the Commission failed to take a ‘hard look’ into extensive PFAS contamination of soil and groundwater within its onshore cable corridor and interconnection facility.¹¹ The Commission denied the petitions for rehearing.

In its Order Denying Petitions for Rehearing, the Commission determined that the evidence of PFAS contamination around SFW’s proposed construction corridor and interconnection facility “was not sufficiently convincing to demonstrate that the protections provided in the Joint Proposal were inadequate [...]” The evidence included, *inter alia*, NYSDEC Site Characterization reports that showed, for example, PFOS groundwater contamination (of 1,010 ppt) that exceeds the New York State Maximum Contamination Level by one hundred times (100 x) less than one hundred and fifty feet (150 ft.) downgradient from SFW’s proposed construction corridor, where the source of that contamination is upgradient on the opposite side of the corridor at East Hampton Airport. The source of PFOS contamination (in the soil of 10,000 ppt) is less than five hundred feet (500 ft.), upgradient from the corridor at a firefighting training facility. That source of PFOS contamination exceeds the New York State Guidance Value for unrestricted use by eleven times (11 x) and for the protection of groundwater by nearly three times (3 x).¹² However, despite such high levels of contamination, SFW did *not* admit *any* evidence of PFAS contamination within its proposed construction sites.

The Commission’s ruling denying the petition for rehearing reads (in relevant part): “Petitioners disagree with the Commission’s determination does not make its determination an

¹⁰ See Change Request No. 3 Narrative (at p. 2, second buttet point) ([PSC DMM 337 click here](#))

¹¹ See Petition for Rehearing and Stay of Simon V. Kinsella, Corrected, dated April 16, 2021 ([PSC DMM 278, click here](#)), and Petition for Rehearing of Citizens for the Preservation of Wainscott, Inc., dated April 16, 2021 ([PSC DMM 275, click here](#)).

¹² Testimony Part 1-1 by Simon V. Kinsella, dated September 9, 2020 (at pp. 15-24) ([PSC DMM 133 click here](#))

error of law or fact.”¹³ However, in this regard, the error was *not* so much the determination but more the exclusion by SFW of relevant material evidence of PFAS contamination from the evidentiary record. Thereby, SFW denied the Commission the opportunity to consider *any* PFAS contamination test results from within SFW’s proposed construction corridor and interconnection facility when making its determination.

Now, the facts are re-surfacing, and they pose a risk to public health and the environment.

On March 18, 2021, the Commission issued an Order Adopting Joint Proposal (“Order”) granting SFW a Certificate of Environmental Compatibility and Public Need (“Certificate”). The validity of the Commission’s Order is subject to two legal challenges pursuant to NY CPLR Article 78 that are currently pending.¹⁴

During the NYSPSC hearing, SFW duped the Commission by mischaracterizing the nature and extent of harmful toxic chemicals, known as poly-/perfluoroalkyl substance (“PFAS”) contamination, including PFOS and PFOA.¹⁵

In 2018, SFW denied there were any “hydraulically upgradient or adjacent properties along the study corridor [within 500 feet] that would represent a significant environmental risk to subsurface conditions [...]”¹⁶ In January 2020, SFW (falsely) claimed that NYSDEC and Suffolk County Department of Health Services reports showing extensive PFAS contamination within five hundred feet of its proposed construction corridor were “not based in fact [emphasis added].”

At the time, SFW was asked whether it had –

“Addressed issues related to the process of installing [...] underground cable vaults and approximately 2.4 miles of underground duct banks through the contaminated area that would require excavating somewhere from 8,000 to 12,000 tons of contaminated material?” and

¹³ Order Denying Petitions for Rehearing, issued August 12, 2021 (at p. 4) ([PSC DMM 303 click here](#))

¹⁴ *Simon V. Kinsella (“SVK”) v. New York State Public Service Commission, et al*, index 2021-06572 ([see SVK Verified Petition click here](#)), and *Citizens for the Preservation of Wainscott, Inc. (“CPW”) v. New York State Public Service Commission, et al*, index 2021-06582 ([see CPW Verified Petition click here](#)).

¹⁵ “PFOS and PFOA” is in reference to perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (“CAS”) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3).

¹⁶ See South Fork Wind Article VII application, Appendix F, Part 2, Hazardous Materials Desktop Analysis, filed September 14, 2018 (at pp. 122-191) ([PSC DMM 001 \(screen page 33 of 34\), click here](#))

“Considered the possibility of significant adverse impacts to public health, given that the Beach Lane Route A cable corridor runs through a residential neighbourhood and groundwater protection district?”

SFW, again, objected “on the grounds that the information [from NYSDEC and Suffolk County Department of Health Services][...] is not based in fact [emphasis added].”

Today, SFW still conceals from the NYSPSC and from public scrutiny its latest set of PFAS contamination test results (sampled in or around January 2022). In a marked change from prior practice where such reports (signed by authorized laboratories and engineers) were filed with the Department of Public Service and publicly available, no laboratory results or supporting documentation have been filed with the NYSPSC.

South Fork Wind has *not* submitted *any* PFAS test results from its construction sites to *any* regulatory authority for environmental review. Thereby, SFW has evaded examination and cross-examination of *any* of its testing plans, testing methods, or test results in violation of due process of law. Up-to-date, South Fork Wind has been permitted to operate outside the law.

In December 2020 and January 2021, South Fork Wind tested its construction corridor, but it largely avoided areas and depths where PFAS contamination was likely to be detected. See Exhibit I – Wainscott Citizens’ Advisory Committee presentation (slides) of April 2, 2022, also [available online here](#).¹⁷

South Fork Wind continues to conceal relevant material information on contamination of a public health concern.

Disposal of Hazardous Waste

Question: Where does South Fork Wind plan to dispose of soil and wastewater containing PFAS contamination at undisclosed concentration levels, and to what degree will that contaminated material be treated before disposal, potentially into Georgica Pond?

A recent news article (published on April 4, 2022)¹⁸ reported that more residents in Wainscott were ingesting water with high concentration levels of PFOS/PFOA contaminants than anywhere else in Suffolk County (including Gabreski Airport). Wainscott had five times

¹⁷ See <https://oswsouthfork.info/wcac-april-2022>

¹⁸ See 'Forever chemicals' found in Suffolk's private water wells since 2016, data shows, by Vera Chinese, published in Newday, April 4, 2022 (www.newsday.com/long-island/environment/private-wells-testing-contaminants-drinking-water-pfas-v49xdvtl)

the number of contaminated drinking water wells containing harmful chemicals than the area near the Gabreski Airport. Of the total number of wells in Suffolk County found to have dangerous levels of ‘forever chemicals,’ thirty-two percent (32%) were in Wainscott. The contaminated groundwater downgradient from the East Hampton Airport is precisely the same area where South Fork Wind proposes burying its high-voltage cable infrastructure. The highest concentration level recorded in Wainscott (791 ppt) is eleven times the EPA Health Advisory Level and seventy-four times the NYS drinking water standard.¹⁹

SFW’s cable route runs through the middle of the most extensive plume of PFOS/PFOA contamination in Suffolk County (see Exhibit E – Newsday article, attached, also [available online here](#)).

SFW estimates that it will use 60 trucks loaded with excavated material containing hazardous waste per day at (undisclosed) concentration levels. SFW does *not* say from where it will excavate the material. It could be from locations along the cable route, drilling activities extending underneath the beach at Beach Lane (for half a mile), or from the interconnection facility. Who knows? See Exhibit F - SFW’s transition vault filled with groundwater (photo taken April 18, 2022, attached, also [available online here](#)).

If all sixty trucks are vacuum trucks used for carting groundwater, SFW plans to draw 240,000 gallons per day of groundwater from its excavation sites.²⁰ Such volume of water withdrawal (greater than 100,000 gallons per day) requires a permit pursuant to 6 NYCRR § 601. SFW does *not* have a water withdrawal permit.

In September 2021, SFW said that it “does not anticipate that temporary water withdrawals [...] will average equal to or greater than 100,000 gallons per day and that “dewatered fluids [will be transferred] to frac tanks for staging within the Project area [emphasis added.]” It also said that “the water will be transferred by vacuum truck for off-site disposal at a local Publicly Owned Treatment Works (POTW) facility [and that it will] [...] inform New York State Department of Public Service (DPS) Staff of the selected POTW that will be used prior to the start of construction [emphasis added].”²¹

¹⁹ PFOS Contamination (740 ppt) and PFOA (51 ppt) had a combined level of 791 ppt.

²⁰ Sixty (60) trucks, multiplied by 4,000 gallons of groundwater for a “large vacuum truck” as defined in EM&CP, Appendix G – Dewatering Plan, September 2021 (at p. 9) ([PSC DMM 306 click here](#)) is equal to 240,000 gallons of waster per day.

²¹ See Environmental Management and Construction Plan (“EM&CP”), Appendix G - Dewatering Plan (September 2021), Section 1.0 “Introduction” (at p. 2, first paragraph) ([PSC DMM 306 click here](#)).

The subject petition seeking approval for Change Requests #4 varies significantly from the terms of the Joint Proposal. SFW blandly calls “laydown areas” are sites outside the Project area designed to receive water from dewatering activities of up to 240,000 gallons per day.

“[I]f the required pump rate exceeds the capacity of the vacuum truck-frac tank operation and/or the volume exceeds the approved disposal volume at the selected POTW, different means and methods for dewatering may be utilized [emphasis added].”²²

The volume of water from dewatering activities clearly exceeds SFW’s anticipated volume of water withdrawals such that it *cannot* be stored and/or treated within the Project area and, therefore, has to be carted to one of SFW’s newly proposed sites. If SFW plans to transport excavated material to an off-site facility, it would have named a POTW in February 2022 (when it commenced construction), but SFW has not named a POTW facility.

The facts lead to the unavoidable and uncomfortable conclusion that the “different means and methods for dewatering” may involve SFW storing and treating groundwater containing levels of PFAS contamination that it then plans to release into environmentally sensitive wetlands.

Suppose the NYSPSC grants SFW’s petition for Change Request No. 4. In that case, SFW could treat soil and/or groundwater containing PFOS and PFOA contamination outside regulatory standards that provide for the proper handling and storage of hazardous substances to prevent spills and releases into the environment.²³

Traffic: No Lane Closures (closing of Montauk Highway)

On the nights of April 12 and 13, SFW closed Montauk Highway to traffic in both directions without approval from NYSDOT and without authority.

On April 13, I received an email signed by “The South Fork Wind Team” (from Megan A. Aconfora). It reads: “[...] the Highway Work Plan included in the EM&CP approved by the NYSPSC states that a detour scheme was developed with plans for a full night closure on Montauk Highway to expedite construction times, but for this to happen, the developer needs to coordinate and gain approval of the NYSDOT. We received that approval [emphasis added].”

²² *Id.* Section 3.7.3 “Unanticipated Conditions” (at p. 10, first paragraph) ([available here](#)).

²³ Environmental Conservation Law (“ECL”) § 27-1301.1 defines Part 597 hazardous substances as hazardous wastes. NYSDEC regulations regarding the remediation of sites contaminated with hazardous wastes (Part 597 hazardous substances and hazardous waste as defined in 6 NYCRR Part 371) are included in 6 NYCRR Part 375.

As it turned out, SFW did *not* have approval from NYSDOT (see the [narrowly-limited permit, click here](#)). Regardless, SFW shut down Montauk highway for two nights to save money and construction time in violation of its Certificate conditions, New York Highway Law § 52, and New York Vehicle and Traffic Law § 1220-c. It also got away with it—no penalties, no fines, and not so much as a slap on the wrist, nothing.

Here, SFW shows a disturbing willingness to violate New York State Law when it finds that law inconvenient, and it proceeded, illegally, in the open for anyone who drove passed to see. Therefore, it would be foolish to assume that SFW would not do the same where no one can see what it is doing on the inaccessible property and out of view of the public eye, such as at the Georgica Pond Site (at 106 Stephen Hand’s Path). SFW has provided no guarantees, no requirements for it to test soil or groundwater (and disclose the results), no mandated inspections, no oversight, no bond or security, etc.

Hundreds of residents living downstream from SFW’s proposed “laydown areas” would be left to trust the word of a company with a questionable track record.

Environmentally Sensitive Areas

The Georgica Pond Site and Three Mile Harbor Site are in Groundwater Management Zone V. “Commercial/Industrial properties located in GWMZ III, V, and VI are limited to a total discharge of 300 gallons per day (gpd) per acre [...]”²⁴

The Georgica Pond Site is only eight hundred feet upstream from Georgica Pond, a “252.44 acre Estuarine and Marine Deepwater habitat” (classified E1UBL).²⁵

Change Request No. 4 states that “NYSDEC-mapped wetland EH-27 is approximately 450 feet southwest of the site.” According to the NYSDEC (GIS Viewer), the NYSDEC-mapped wetland with ID EH-27 is only 150 feet southwest of SFW’s proposed area and overlaps all three tax map parcels. The USEPA classifies the same wetland as a “3.78 acre Freshwater Forested/Shrub Wetland habitat” (classified PFO4E).²⁶ See Exhibit G (attached, also [available online here](#)).

The NYSDEC-mapped wetland with ID EH-28 appears to be more accurate and “is located approximately 75 feet east of the site, on the east side of Stephen Hands Path [...]”

²⁴ See Suffolk County Comprehensive Water Resources Management Plan, March 2015 (at p. 8-7)

²⁵ According to the US Fish and Wildlife Service, National Wetlands Inventory.

²⁶ *Ibid.*

The nearest Freshwater Wetland (ID EH-1, NYSDEC Class I) that forms part of the Three Mile Harbor Estuary of Tanbark Creek is only 0.4 miles away from the proposed Three Mile Harbor Site. See Exhibit H (attached, also [available online here](#)).

Noise Evaluation

Change Request No. 4 (at p. 4) states that “SFW evaluated existing noise conditions along the SFEC-Onshore corridor within Exhibit 4, Section 4.8 of the EM&CP.” That may be true. However, SFW erroneously concludes that “the laydown area during construction is not anticipated to increase the potential impacts to noise resources beyond those previously assessed in the approved EM&CP [emphasis added].” The proposed Three Mile Harbor Site is more than two miles away from the nearest point of SFW’s SFEC-Onshore corridor, which means that SFW has *not* previously assessed noise levels anywhere near the site. SFW cannot possibly assess potential increases in noise levels without knowing the existing ambient noise level. SFW has *not* evaluated noise conditions at the Three Mile Harbor Site.

The same is true for the Georgica Pond Site. The change request states (at p. 8) that “SFW evaluated existing noise conditions along the SFEC-Onshore corridor within Exhibit 4, Section 4.8 of the EM&CP.” Again, SFW erroneously concludes that “the laydown area during construction is not anticipated to increase the potential impacts to noise resources beyond those previously assessed in the approved EM&CP [emphasis added].” The proposed Georgica Pond Site is a quarter-mile from the nearest point of SFW’s SFEC-Onshore corridor, which means that SFW has *not* previously assessed noise levels near its “previously assessed” construction site. SFW cannot assess potential increases in noise levels without knowing the existing ambient noise level. SFW has *not* evaluated noise conditions at the Georgica Pond Site.

It is difficult to see how “30 trucks per day” operating out of each site could silently glide in and out of the driveways without noise.

Air Quality

SFW has assessed air quality *only* along its proposed construction corridor and has *not* assessed air quality near or at its proposed Georgica Pond Site or Three Mile Harbor Site. SFW erroneously concludes that the use of the “laydown” areas “will not result in any incremental impacts to air quality resources beyond those previously identified[.]” SFW cannot assess potential impacts on air quality without having assessed existing air quality. SFW has *not* assessed existing air quality at either the Georgica Pond Site or Three Mile Harbor Site.

It is hard to imagine how “30 trucks per day” operating out of each site loaded with excavated material will *not* adversely impact air quality. Dust, debris, and dirt will be transported on the truck’s tires and carried on-site with the trucks.

For the reasons set forth in this letter, I respectfully request that the Commission –

- (1) Deny South Fork Wind’s petition for approval of EM&CP Change Request No. 4 in full; and
- (2) Order a thorough environmental review of SFW’s proposed construction corridor and interconnection facility, including testing for PFAS contaminants and public disclosure of the laboratory reports and supporting documentation.

Thank you for your consideration.

Sincerely yours,



Simon Kinsella

C/c: All Parties in Case 18-T-0604 (via Email, w/enc.)
ALJ Anthony Belsito (via E-Mail, w/enc.)