September 18, 2024

TO:
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Re: Stakeholder Input on Development of Regulations Implementing the Cumulative Impacts and Siting Law

Dear Alanah Keddell-Tuckey and Adriana Espinoza,

The undersigned organizations appreciate this opportunity for early stakeholder input on the Department of Environmental Conservation's ("DEC") development of implementing regulations for New York's Cumulative Impacts Law ("CIL"), 2023 N.Y. Sess. Laws Ch. 840 (S. 1317); 2023 N.Y. Sess. Laws Ch. 49 (A. 1286), which comes into effect on December 31, 2024. The undersigned urge DEC to carefully consider this initial input when developing regulations under the law and welcome the opportunity to comment further on any proposed regulations or in response to additional preliminary requests for input. The Cumulative Impacts Law sets a new paradigm for the agency, making clear that an overarching goal for DEC in considering permits must now be to reduce pollution, particularly in communities that have been subjected to a disproportionate pollution burden. It is being watched carefully by advocates and agencies across the country seeking to address cumulative impacts. To fulfill its promise, the Cumulative

Impacts Law must be more than a box-checking exercise in practice — DEC must meaningfully collaborate with affected disadvantaged communities and prevent projects' exacerbation of burdens on their well-being.

Strong regulations, internal guidance, and oversight from the Office of Environmental Justice ("OEJ") are critical to the success of this law. Commenters recognize the complexity of implementing a new step in the permitting process that will be outcome-determinative for many permits, and which is different in nature from much of the work of DEC's permitting divisions. As set forth more fully below, DEC should:

- Set highly protective definitions for the "de minimis" and "significant" pollution thresholds;
- Ensure all applicants for applicable permits that meet the "de minimis" threshold and might impact DACs prepare a burden report, including applicants for permits that would ordinarily be administratively continued or renewed, with early notice to the community where no burden report will be required and a limited exemption for "essential" facilities;
- Provide clear standards and requirements for the content of the burden report, including a list of credible data sources, requiring evidence to back up claimed benefits of a project, and stringent standards for operational changes to the facility to reduce pollution that could be implemented in the permit itself;
- Give authority to OEJ to make the final determination of whether a burden report is complete, and to make a recommendation to the permitting division on whether the permit should be denied or granted, and with what conditions;
- When analyzing burden reports and making permitting decisions for renewal permits, use a baseline for measuring "significant increase" that assumes the permit expires and isn't renewed;
- Ensure operational changes that are a condition of granting permits are incorporated as permit conditions, monitored and enforced;
- Incorporate the affected community into the decision-making process and ensure transparency at all stages of the process; and
- Align with other mandates including Section 7 of the CLCPA and CP-29.

We urge DEC to be ready to implement the Cumulative Impacts Law as soon as it takes effect on December 30, 2024.

I. DEFINITIONS

The CIL contains several key terms that are not defined in the statute, such as "pollution", "de minimis", and "significantly increase." In summary, the regulations should:

- Specify that the meaning of "pollution" in the general definitions section of the Environmental Conservation Law ("ECL") applies to the CIL;

- For the "de minimis" and "significantly increase" thresholds, define the terms in the most protective way possible, and ensure any thresholds are designed to accommodate inclusion of cumulative impacts.

A. Pollution

The CIL amended parts of the State Environmental Quality Review Act, specifying that "pollution" would have the same meaning in that chapter as in the general definitions section of the ECL. "Pollution" is defined as "the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property." ECL § 1-0303(19). This is a broad definition that encompasses nuisances like noise pollution and odors but remains focused on pollutants and excludes other impacts such as aesthetics or shadows. That same definition should be used for the permitting provisions in §70-0118 as well.

B. De Minimis

The threshold of "more than a de minimis" amount of pollution indicates a desire by the legislature to allow permitting of projects whose pollution impacts are so small as to be inconsequential. *De minimis* is a Latin term used in the law for a matter "of trifling consequence" or otherwise "so small that the court does not wish to even consider it."[1]

In the context of the CIL, any regulations developed should clarify that ongoing releases of pollution from operation of a facility that could affect the health or quality of life of surrounding communities cannot be deemed "de minimis." Instead, pollution can only be deemed "de minimis" if the amount and/or frequency of the pollution released into the environment is so minimal as to not have any potential consequences for human or environmental health, or "the comfortable enjoyment of life and property." ECL §1-0303(19). In making this determination, the impacted community's existing pollution levels and health indicators should be considered. An applicant seeking to demonstrate that the pollution from its facility will be "de minimis" and thus it should be exempt from producing an existing burden report must show that any pollution associated with the facility has no potential adverse consequences for natural resources or the public. Examples of "de minimis" pollution impacts could include temporary emissions during construction from a facility that will not pollute during regular operations, such as vehicle and construction equipment pollution from construction of a wind farm, or low-level detectable pollutant releases that have no human exposure pathway or potential harm to natural resources.

Should DEC seek to use a quantifiable threshold, it should consider several factors. First, some pollutants such as PFAS have been declared to have no safe level of exposure. Other may have health-based standards and regulatory standards that are set higher – health-based standards

[1] *De Minimis*, Black's Law Dictionary (11th ed. 2019).

are most appropriate for this determination. Second, if it sets thresholds particular to specific pollutants, it must consider all pollutants cumulatively when deciding whether pollution exceeds a de minimis threshold. In other words, multiple pollutants that are each below a numerical threshold for de minimis pollution may, together, produce more than a de minimis amount of pollution. Finally, the purpose of the CIL is to ensure DEC considers the interaction of a facility's pollution with existing health risks in a community. Data on local health outcomes must be incorporated into any quantifiable standard as well.

C. Significantly Increase

As opposed to the threshold allowing "de minimis" pollution impacts, the statute prohibits the issuance of renewal or modified permits that would "significantly increase" the existing disproportionate pollution burden on a DAC. The term "significantly" must be viewed here as a counterpoint to the "de minimis" standard. In other words, where a project would cause a pollution increase that would have consequences for human or environmental health or unreasonably interfere with the comfortable enjoyment of life or property, then the project would "significantly increase" the existing pollution burden.

Whether a project "significantly" increases pollution depends on context, which is why the existing burden report is critical to making this determination. Similarly, regulations implementing New York's State Environmental Quality Review Act, for example, instruct agencies to assess the context in which impacts occur when determining whether they are significant. *See* 6 NYCRR § 617.7(c)(3) (2024) ("[S]ignificance of a likely consequence . . . should be assessed in connection with: (i) its setting (e.g., urban or rural); (ii) its probability of occurrence; (iii) its duration; (iv) its irreversibility; (v) its geographic scope; (vi) its magnitude; and (vii) the number of people affected."). Here, existing burdens including health conditions and pollution from other sources can make any pollution increase more harmful.

The Department should be careful to avoid construing the term "significantly" in a manner that would exacerbate environmental injustice. Historically, environmental burdens have been added to already overburdened communities based on the argument that, *because of* already high pollution levels in those communities, the addition of more pollution would not be significant. In other words, because pollution from a single facility paled in comparison to the high levels of existing pollution in an area, regulators would sometimes deem it insignificant and allow that facility to pollute. The legislature's intent in enacting the Cumulative Impacts and Siting Law was to change that calculation, stating that "the state has a responsibility to establish requirements for the consideration of . . . [siting] decisions . . . to ensure no community bears a disproportionate pollution burden, and to actively reduce any such burden for all communities." CIL § 1, 2023 N.Y. Sess. Laws Ch. 840 (S. 1317).

Again, if DEC is considering a quantifiable threshold for significant increases, it must be sure to consider the factors set forth in the previous section. There are some existing examples of numeric thresholds for determining significant impacts, but DEC should tread carefully as these

often set the bar very high and can be used *instead of* evaluating impacts cumulatively. One example that DEC should avoid is the Significant Impact Level ("SIL") calculation under the Clean Air Act. SILs are arbitrary numbers set out in nonbinding EPA guidance and are not a reliable measure of whether a particular facility's air emissions will contribute to exceedance of health-based air pollution standards or otherwise significantly increase pollution. New York City's City Environmental Quality Review (CEQR) Technical Manual also includes an example of a quantifiable standard for significant adverse PM 2.5 incremental impacts. Any process to determine quantifiable thresholds should be grounded in science, protective of health, and incorporate assessment of cumulative impacts from other sources and pollutants.

II. PREPARING A BURDEN REPORT

A. Burden Report Threshold and Exemptions

Whether to prepare a burden report rests on the answer to two questions. First, is it possible that the project will cause or contribute more than a de minimis amount of pollution to a DAC? Second, will the permit "serve an essential environmental, health, or safety need" of the DAC and there's no reasonable alternative? ECL 70-0118(2)(b). If the answer to the first question is yes, then a burden report must be prepared unless the answer to the second question is also yes. It is critical that impacted communities have the opportunity to weigh in on these threshold questions at an early stage, well before a Notice of Complete Application. To ensure consistency and completeness, all facilities seeking applicable renewal permits should complete a timely burden report, even if the practice has been to allow administrative continuance on a short form renewal application, and OEJ should assist permitting divisions to determine burden reports are complete.

1. General Threshold

The first step in the process is determining whether a burden report is required. For both new permit applications and renewals/modifications, the standard is the same: whether the facility "may" cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on a DAC.

Because de minimis is such a low threshold, as set forth above, and DACs already experience disproportionate pollution burdens, nearly all projects in DACs will need to prepare burden reports. For the initial determination of whether a burden report is required, the statute uses the word "may" to modify "cause or contribute" pollution to a DAC. That "may" should be read broadly, particularly given that this is the earliest stage of the inquiry. If this law is meant to truly be protective of DACs, it is far better to err on the side of preparing burden reports than to err on the side of not doing so. To that end, if a project is in a DAC or has even a possibility of contributing to pollution in a DAC, DEC must require the applicant to prepare a burden report.

For projects not located in DACs but with the potential for the pollution they generate to impact a DAC, DEC should require applicants to provide spatial information and modeling that will allow the agency to determine whether pollution from the facility would impact a DAC. The agency can look to the process set forth in DEC Program Policy DEP 24-1, regarding analysis of disproportionate impacts under Section 7(3) of the CLCPA. Section V(3) of that guidance document sets forth a process for determining whether a facility not located in a DAC would cause pollution to increase within a DAC. This process can be incorporated into the regulations for the CIL and streamline the CLCPA analysis and cumulative impacts analysis for projects that fall under both statutes.

With such a low threshold for requiring a burden report, applications for non-essential projects in or affecting DACs should not be allowed to move forward without a burden report unless the applicant affirmatively demonstrates that there is no possibility the project would cause or contribute to a disproportionate pollution burden on a DAC. Applicants can provide air modeling, specific water discharge treatment plans, or other documentation of project plans and technology/facility specifications to meet this burden. If the Department determines no burden report is needed based on this information, it should provide notice to the affected community, an opportunity to review the justification for that decision, and an opportunity for comment so the community can contest the decision and voice concerns about potential pollution impacts.

2. Considerations for Certain Renewals and Modifications

Where the threshold is met, the law does not exempt any kinds of renewals or modifications of applicable permits from the requirement to prepare a burden report. Therefore, permits that ordinarily would be administratively renewed or continued must also prepare a burden report if applicable. The burden report for administrative renewals may be reasonably simple, but they still need to go through the process.

In some cases, DEC issues permit renewals that are effectively continuances of the soon-to-be-expired permit without any technical review or with technical review postponed. That postponement can delay review for many years, with the facility still operating on the prior permit. In these cases, as with all applicable permit renewals, DEC must require the applicant to prepare the burden report when it applies for a permit renewal or modification. If the application is a short form, DEC must modify the form to ensure it requests enough information to determine whether the facility may cause or contribute more than a de minimis amount of pollution to a DAC. When the applicant returns the short form, it must also include a burden report. As part of the regulations implementing the CIL, DEC must require timely review of the burden report and action on the permit renewal, including a grant of the renewal with mitigation measures. Ultimately, the CIL is not compatible with administrative continuances and renewals that don't involve any technical review for many years. Allowing a facility operating under a permit issued prior to the passage of this law to operate for many years under an expired permit without DEC reviewing a burden report would be unacceptable to overburdened communities. It could allow

facilities whose permits should be denied or at least granted with mitigation measures to continue unlawfully polluting in DACs for years.

Likewise, all permit modifications, including those modified under 6 NYCRR § 621.11 must be subject to the CIL and answer the threshold question at the modification application stage of whether a burden report is required. To that end, 6 NYCRR 621.11(a) should be modified to read:

> Applications [to renew or modify permits] must provide information supporting the action sought, **including, for applicable permits as listed in ECL 70-0118(1)(b), a determination whether or not an existing burden report under ECL 70-0118(2)(b) is required and either the burden report or a justification as to why no burden report is required,** and, if for a modification, must include a statement of necessity or reasons for modification.

6 NYCRR 621.11(a) (recommended additional text in bold).

While many delegated permit programs such as SPDES and Title V will go through a full technical review and/or go through public notice and comment, other permits will not. Applicants for **all** permit renewals and modifications must consider whether a burden report is required and either justify to DEC why it is not required or prepare the burden report. DEC must also have sufficient time to review the application and either consider the burden report in its decision or, if a burden report is not prepared, evaluate whether the applicant must prepare one (and deem the application insufficient if a burden report was required but not prepared). This means that the fifteen-day review deadline in 6 NYCRR 621.11(f) will likely not allow sufficient time for DEC's review if a burden report was prepared, and DEC must thoroughly review it before making a decision. We recommend that DEC either modify 6 NYCRR 621.11 such that section (f) does not apply to permit renewals and modifications where a burden report is prepared or ensure that permit renewals and modifications where a burden report is prepared are treated as new applications for permits under 6 NYCRR 621.11(h).

3. "Essential" Facility Exemption

Permit renewals or modifications for facilities that "serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative" may, in DEC's discretion, be exempted from the requirement to produce a burden report and from review under the law. ECL 70-0118(2)(b). This exception is discretionary, so DEC can still require a burden report to be prepared for these permits, and in general, should do so. A burden report can help in determining mitigation measures or narrowing the scope of the modification, even if the essential nature of the permit means an outright denial is unlikely. In instances where DEC chooses not to require a burden report, it should use this exception sparingly and keep it as narrow as possible. To ensure that the permit is essential to the DAC, communities must be able to self-determine what is necessary, meaning that DEC needs to get community input to assess necessity. This should take the form of a comment period and a public

meeting, and DEC should be required to take the community's input into account when making the decision whether or not to require the burden report. If DEC chooses not to require a burden report and the community advocated for one, particularly if the community's opinion was the project is not essential, DEC must explain in writing and make public its justification to not require the report and why it disagrees with the community on the project's necessity.

Communities must also be involved in determining whether a reasonable alternative to the permit is possible. DEC should start by making an inventory of standards and alternatives for related projects. For example, renewable energy and/or energy storage can be an alternative to a peaker plant. This inventory should be publicly available so that communities are aware of some of the potential alternatives, regardless of whether they are the right ones for this particular project. DEC should then publicly present any alternatives to the affected community (even if "unreasonable") and why DEC believes they are or are not reasonable alternatives to the permitted facility. Alternatives should be assessed based on broad project goals, not a specific statement of project purpose and need made by the permit applicant—for example, the goal of a wastewater treatment plant should be sewage treatment, rather than treatment of X tons of sewage using Y methods.

B. Content of the Burden Report

The statute sets forth a list of what must be included in the existing burden report. It also requires DEC to consult with the DOH and seek public comment on the "scope" of the report. Commenters look forward to submitting more detailed comments on a proposed scope and offer some initial suggestions here.

First, even for renewals and modifications, the report should distinguish between the contributions of the project seeking a permit and the existing burdens and stressors, which should not include the project. Contributions of the project to pollution in the surrounding community – even if there is no projected change in pollution levels from a project seeking a renewal permit – should be set forth in a separate section of the report.

The data that forms the basis for DAC designations should be the starting point for all existing burden reports. This should a) reduce the burden on applicants, who will not have to start from scratch when preparing burden reports, and b) ensure consistency of reports across different types of permits and applicants. The burden report should include additional information about existing burdens to the extent it is available. DEC and DOH should issue guidance for permitting divisions and applicants that lists reliable data sources applicants can look to for information on additional pollution burdens and health statistics for the community such as EPA's EJScreen, NYC Environment and Health Data Portal, EJNYC Full Data Explorer, local air quality monitoring data, community health surveys, lead pipe inventories, and drinking water testing for PFAS and other emerging contaminants. Unless there are compelling reasons to use another data source for information on existing burdens and environmental and health stressors, the Department should instruct applicants to use DEC/DOH-approved data sources.

Pollution data should be as specific to the DAC as possible and should not, for example, rely on air monitors many miles away to quantify pollution in the DAC.

In addition to data on local ambient pollution levels and community health, the report should include a comprehensive list of all other sources of pollution affecting the DAC with amounts and types of pollution from these sources to the extent that information is publicly available, including water pollution sources, waste facilities, legacy pollution sites like brownfields, and mobile sources like traffic and trucks.

DEC should also issue guidance on what can qualify as a "benefit" of the project and how to measure such benefits to community health and wellbeing, as applicants will have an incentive to downplay burdens but exaggerate potential benefits. This guidance should be based on input from community members and be subject to public notice and comment. All project benefits listed in a burden report should be documented with evidence. Any claimed alleviation of existing pollution burdens from the project should come directly from the project itself or be otherwise documented with evidence. The applicant should not be able to claim speculative events out of its control as benefits, such as the possibility that opening the new facility could cause other facilities to close or operate less frequently, unless there is evidence or documentation supporting the likelihood of those events.

Finally, the inclusion in the burden report of "operational changes to the project that would reduce the pollution burden on the disadvantaged community" is a critical piece of the burden report that, when properly done, could allow DEC to issue permits to projects that otherwise would have to be denied. However, the operational changes to the project cannot be hypothetical or speculative — the proposed changes in the burden report must be viable changes the applicant is willing, legally, and financially able to implement as a permit condition within a reasonable timeframe from the beginning of the project. Moreover, under the plain language of the statute, these cannot be offsets implemented elsewhere in the community — they must be changes to the project itself.

As a procedural matter, because the content of a burden report is very different in nature from standard permit applications submitted to different permit divisions, OEJ should be required to review and sign off on all burden reports before they are accepted as final. As the office tasked with implementing the CIL, and with a better understanding of cumulative impacts, DACs, and health burdens, OEJ is well positioned to ensure consistency and high standards for burden reports across the Department.

III. ANALYSIS OF BURDEN REPORT AND PERMIT DECISION

A. Considering the Burden Report and Comments from the Affected Community

After the burden report is final and the public has had a chance to comment on the report and project, DEC must consider the report and the administrative record to make a decision on

the permit application. ECL 70-0118(3)(a). In doing so, for both new permits and renewals or modifications, pursuant to the statute DEC must focus only on pollution, whether there is a disproportionate pollution burden on the DAC, and how pollution from the project will impact existing cumulative burdens.

By contrast, whether the project benefits the community in some way other than reducing pollution does not bear directly on the permitting decision. The burden report requires a description of the benefits of the project, and DEC can consider those benefits. If a project has substantial benefits for the DAC, and those benefits are documented by evidence in the burden report and supported by a majority of members of the public who reside in the DAC, the Department can certainly consider the importance of those benefits and work with the applicant to incorporate operational changes or mitigation measures to reduce the pollution burden on the DAC so that pollution from the project will be below the statutory threshold for permit denial. But the statutory language does not allow DEC to weigh the benefits against the pollution burden in its final decision.

For all types of permits, the burden report should provide enough information to allow DEC to make a final decision regarding the existence of a disproportionate pollution burden. Again, this will be present in most DACs due to the criteria and designation of DACs as census tracts that have the highest combined "Environmental Burdens and Climate Change Risks" as well as "Population Characteristics and Health Vulnerabilities" relative to other census tracts in the state. These tracts — the highest 35% combined burden/vulnerability scores, meaning that they bear more risks/vulnerabilities than 65% of the state — are very likely to have disproportionate pollution burdens.[2] The burden report will allow DEC to confirm the existence of a disproportionate pollution burden, by describing the ranking of the census district for all pollution-related criteria, providing a further description of pollution sources affecting the DAC, and taking into account the health and socioeconomic vulnerabilities, like chronic illness rates, that could make pollution disproportionately harmful to people. While only in a rare case might a DAC not have a disproportionate pollution burden, it is still important for DEC to consider the information and data in the burden report, along with comments from people in the affected community, to confirm.

Should DEC wish to utilize additional methodologies to quantify disproportionate pollution burden, the undersigned welcome the opportunity to comment further on any proposed framework. It is critical that analysis of disproportionate pollution burdens incorporate all existing pollution burdens and their interaction with health and socioeconomic conditions. However, given the complexity of cumulative impacts and both health and justice mandates in the CIL that seek to eliminate disproportionate pollution burdens in the state, quantifying cumulative and disproportionate burdens need not rest on specific, quantifiable health risks from specific pollutants or the combination of pollutants.

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[2] NYS DEC, *New York State's Disadvantaged Communities Criteria* (Mar. 27, 2023), https://climate.ny.gov/-/media/Project/Climate/Files/Disadvantaged-Communities-Criteria/LMI-daccriteria-fs-1-v2_acc.pdf/.

B. New Permits

The next step in the analysis for new permits is straightforward: Will the project cause or contribute more than a de minimis amount of pollution to the disproportionate pollution burden on the DAC? As described above, de minimis is a low threshold. The burden report and permit application materials should describe all pollution anticipated to be released by the project. If this is more than a de minimis amount, DEC must deny the permit.

Here, the section of the burden report on operational changes that would reduce the facility's pollution could be critical to DEC's analysis. If the applicant has proposed operational changes that would reduce pollution below de minimis, DEC can incorporate that into the permit and grant the permit. Similarly, if the facility can demonstrate it would definitely cause another source of pollution affecting the DAC to cease operation and would produce less pollution, DEC could grant the permit.

C. Renewals and Modifications

For permit renewals and modifications, DEC shall not issue the permit if "it determines that the project would significantly increase the existing disproportionate pollution burden on the disadvantaged community." ECL 70-0118(3)(d). When evaluating permit renewal applications, DEC should consider the existing disproportionate pollution burden to be the pollution burden if the permit were to expire and not be renewed. Otherwise, for permit renewals this standard would in many cases be inapplicable, as a straight renewal would likely have the same pollution levels as the prior permit. In the past when reviewing permit renewals, DEC has often determined that the renewal would have no significant environmental impact because the renewal merely continued the status quo. This is the wrong way to look at the impacts of a permit renewal under the new CIL framework, which makes clear that the agency must seek "to actively reduce any such [disproportionate pollution] burden for all communities." CIL § 1, 2023 N.Y. Sess. Laws Ch. 840 (S. 1317).

Looking at the legislative history of the CIL, the legislature recognized that historical siting decisions often disfavored low-wealth communities and communities of color. These decisions had a snowball effect — once one polluting facility was sited in a DAC, more tended to follow because it was now an industrial area and had amenities industry needed. Fast-forward to today, and the CIL is necessary precisely because of the historical siting of multiple polluting facilities in DACs. During the legislative process and continuing into DEC's stakeholder sessions on these regulations, communities are standing up for themselves and not only saying no more but also that the status quo is not good enough. It is precisely because of all the polluting facilities in a DAC — which may have been there for decades with many permit renewals in that time — that the DAC is overburdened now.

Additionally, even if the "existing pollution burden" includes the facility seeking a renewal or modification, in some cases there could be a significant increase of pollution simply from the continued operation of the facility. This is because some pollutants accumulate in the

environment and do not dissipate. Adding more of these pollutants from a facility's continued operation could significantly increase pollution in the community.

IV. ENFORCEMENT

DEC must effectively enforce all permitting conditions. DEC should act on its discretion to require additional pollution reduction and mitigation measures for projects with potential impacts on DACs. These mitigation measures must be reviewed by the community as discussed below. Mitigation measures must have verifiable, proven, permanent, and measurable impact in lowering pollution below current levels. Such measures must be additional to other planned pollution mitigation measures in the area. DEC must provide transparent and accurate monitoring of the pollutants and mitigation measures, with effective consequences for failure to implement the measures adequately.

High standards and examples of best practices of similar facilities should be shown to communities so that the community can properly evaluate the project's pollution mitigation measures. DEC should provide an easily accessible menu of the best available alternatives so that communities can effectively assess their options and the project at hand.

V. TRANSPARENCY, COMMUNITY OUTREACH, AND MEANINGFUL PUBLIC INVOLVEMENT IN DECISION-MAKING

Public participation must afford potentially affected stakeholders' meaningful opportunities to influence decisions regarding whether a project is sited and how it will operate. Stakeholders must be fully informed about their options and DEC must respect their right to withhold or condition their consent to projects. Effective public participation will also help foster public trust in the project and the involved agencies.

Project applicants must provide easily accessible summaries of the projects and their impacts, vetted by DEC for clarity and accuracy. Applicants should provide thorough, clear, and easily accessible information about the project online, covering the project purpose, all potential impacts, all relevant documents, studies and reports on the issues involved, proposed mitigation measures, and comments received to date. Applicants should have a public liaison available to respond to and track questions and concerns from the public in a timely manner.

Applicants should develop email contact lists of interested stakeholders to keep them informed, and expand the list with help from local government, organizations, civic and religious groups, businesses, and any stakeholder expressing interest in the project. This email list should include not just organizations that are based in the local community or communities impacted by a project, but local environmental, environmental justice, and social justice organizations. DEC

should provide guidance to project applicants such as the contact information for these organizations.

In addition to the public participation requirements already promulgated in DEP 24-1 and as required by 6 NYCRR 621.3(a) (following the procedural guidance for an enhanced public participation plan under CP-29), DEC should require the following for siting involving DACs:

- The applicant must hold public hearings to ensure that the public can comment on three key aspects of the process: the preliminary screen for whether the project impacts a DAC, the disproportionate burden report (including the data relied upon in the report), and design measures meant to avoid or redress any disproportionate burdens;
- At least 3 public sessions must be held, if in person, in the DAC, of mixed attendance formats (in person, hybrid and/or remote), and sessions must take place on varied days of the week and times during the day, including at least an hour after regular business hours to increase attendance by residents;
- All meetings should be recorded and made available for public viewing;
- Public notices must be written in, and public sessions must be held in the top five languages spoken in the affected communities in the region. Appropriate outreach efforts must be made, and demonstrated, to each of the distinctive or diverse communities within or surrounding the DACs;
- The agency or applicant must publicly disseminate a complete description of the application and the timeline and manner of public participation, understandable at the 8th grade proficiency level. This must be made available via email, mailers, local papers, and posting in frequently accessed public spaces, at least one week in advance of any public session as well as at the public session;
- The applicant/project proponent or agency must respond to public comments within five business days and offer detailed explanations on why they are or are not changing their proposal based on the public comments, articulating and setting forth the basis for discretion, if any;
- OEJ must determine if the public comment session(s) were adequate and if the response to public comments was adequate, and if not, require the applicant to extend the public comment process for meaningful engagement with the communities likely to be affected by the project; and,
- The public participation process must allow members of the potentially affected DAC the opportunity to provide meaningful input on potential project design measures and/or alternatives.

We appreciate the opportunity to give input on DEC's development of its cumulative impacts regulations and look forward to seeing the proposed regulations soon. We welcome continued opportunity to provide input as the regulatory development process continues, and

again urge DEC to stand ready to implement the Cumulative Impacts Law when it goes into effect at the end of the year.

Sincerely,

Bobbi Wilding
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