



NATURAL RESOURCES DEFENSE COUNCIL

VIA ELECTRONIC AND FIRST CLASS MAIL

February 21, 2002

Monica Abreu Conley, Esq.
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New York State Department of Environmental Conservation
625 Broadway
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RE: Comments on Recommendations for the NYS DEC Environmental Justice Program

Dear Ms. Conley:

Thank you for the opportunity to comment on the *Recommendations for the NYS DEC Environmental Justice Program* (the Report). The Natural Resources Defense Council (NRDC) is a national non-profit advocacy organization with a 31-year history of successfully defending public health and the environment. Over the past decade, environmental justice has become an increasingly important part of our work.

Low-income communities and communities of color continue to bear disproportionate environmental and public health harms. Therefore, it is critical that the DEC design and implement an effective environmental justice program. To that end, the Report provides a foundation, but there remains much work to be done. Throughout the document, there is important, albeit broad, language on issues such as enhancing public participation in the permitting process, encouraging permit applicants to conduct meaningful public participation programs, ensuring effective and equitable enforcement of environmental laws across all communities in New York, and increasing collaboration with Indian Nations. With the assistance of a permanent Environmental Justice Advisory Group, the DEC must put in place concrete mechanisms and provide adequate resources to advance these and other articulated goals. The permanent Advisory Group should regularly review and/or revise the environmental justice policy to ensure that it is achieving the desired results.



There are at least two recommendations that NRDC would like to expressly endorse and elaborate upon. NRDC also urges the DEC to adopt a new recommendation related to electric generating facilities with capacities of 79 megawatts or less.

Evaluate and Address Activities and Agencies exempt from SEQR Review

Under the section entitled "Evaluate and Address Activities and Agencies exempt from SEQR Review," the Advisory Group highlights the fact that certain projects approved and/or implemented by various agencies or public authorities, such as the Metropolitan Transportation Authority (MTA), are exempt from SEQR. In addition, it is noted that particular projects governed by other statutes, such as the siting of power plants of a certain capacity, are also exempt from SEQR review.

To remedy this gap, the Advisory Group recommends that projects exempt from SEQR review, but requiring permits from DEC, be subject to an environmental justice analysis. In line with this recommendation, in a letter to DEC dated December 26, 2001, Arbor Hill Environmental Justice, Justicia Ambiental Latina, New York League of Conservation Voters, Touro Law School, and West Harlem Environmental Action urged that the environmental justice policy should make explicit that applications administered under Articles X and VII of the Public Service Law be subject to environmental justice analysis.

Indeed, the Article X siting process, which governs electric generating facilities with a capacity of 80 megawatts or more, provides for virtually no consideration of environmental justice issues. While the new generation of gas-fired combined cycle power plants emit negligible amounts of some forms of air pollution like mercury and sulfur, there is troubling data that these plants emit greater amounts of PM_{2.5} than existing power plants. This is particularly relevant for power plants proposed in New York City, and perhaps Buffalo and other regions of the state, where background levels of PM_{2.5} are already exceeding, at or close to US EPA's National Ambient Air Quality Standards for PM_{2.5}. Low-income communities of color in these areas already face dangerously high levels of PM_{2.5} from existing sources and are threatened with additional PM_{2.5} emissions from proposed new power plants (the adverse health effects of exposure to fine particulate matter are discussed in greater detail below). Therefore, applications under Article X should be subject to an environmental justice analysis, where the cumulative impacts including noise, effects on community character, PM_{2.5} emissions, etcetera, are considered.

In addition, when an electric generating facility with a capacity of 79 megawatts or less is slated for a low-income community of color, preparation of an Environmental Impact Statement should be required.

Second, as the Advisory Group stated, certain projects by particular agencies or public authorities are given broad exemption from SEQR. For MTA projects and other proposed facilities whose operations would generate significant amounts of diesel exhaust or other air pollutants of concern, environmental justice analysis is critical.

With respect to diesel, there is extensive scientific evidence associating diesel exhaust and a range of human health problems. Diesel exhaust contains hundreds of constituent chemicals, dozens of which are recognized as human toxicants, carcinogens, reproductive hazards, or endocrine disruptors.¹ The National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, US EPA, and the National Toxicology Program have all found that there is a relationship between diesel exhaust exposure and lung cancer.² The California Air Resources Board estimates that 71 percent of the airborne cancer risk in California is attributable to diesel emissions, even though diesel fuels only 2 percent of the vehicles. Shockingly, DEC's 1993 data suggest that New Yorkers were breathing more than thirteen times as much diesel exhaust as Californians at that time, yielding a lifetime cancer risk that was several orders of magnitude higher than EPA's cancer risk threshold.³

While data gaps exist, it is logical to assume that diesel emissions are the source of much PM_{2.5} in New York, especially in urban areas. 1993 DEC data suggest that more than half of the PM₁₀ measured in midtown Manhattan comes from diesel vehicles.⁴ Given that most diesel PM is less than one micron in diameter,

¹ For a complete list, see Krieger, et al., "Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part A: Exposure Assessment," Technical Support Document, as approved by the Scientific Review Panel on April 22, 1998, Appendix A.

² Dawson, et al. "Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part B: Health Risk Assessment for Diesel Exhaust," Public and Scientific Review Panel Review Draft, February 1998.

³ The California MATES study concluded that people in Los Angeles faced a cancer risk of 300 cancers per million people, based on an average ambient exposure of 1.8 ug/m³. This is 300 times EPA's cancer risk threshold of 1 cancer/million people. In 1993, New Yorkers in midtown Manhattan breathed an annual average of 25.2 ug/m³ of diesel PM—more than 13 times as much diesel PM as found in the California cancer risk study. NYS DEC, New York State Implementation Plan for Inhalable Particulate (PM₁₀), September 1995, pp. 10-11.

⁴ *Id.* This remains the only study that attributed ambient PM levels to their source. DEC found that 52.8 percent of PM₁₀ emissions at the Madison Avenue site were attributable to diesel vehicles, 21.8 percent of the Madison Avenue emissions were due to long-range transport, and only 5.9 percent came from gasoline-powered vehicles.

it is likely that diesel's relative contribution to ambient PM_{2.5} levels is even higher. The fine particulate matter in diesel exhaust is linked to a whole host of adverse health impacts. Such fine particles are particularly hazardous because they can bypass respiratory defense mechanisms and lodge deep in the lungs.⁵ Specifically, numerous studies have found that fine particulates impair lung function, aggravate respiratory illnesses (such as bronchitis and emphysema), and are associated with premature deaths.⁶ Dozens of studies link fine particle concentrations to increased hospital admissions for heart disease, pneumonia, and chronic obstructive lung disease.⁷

As stated above, low-income communities of color in parts of New York already face dangerously high levels of PM_{2.5} from existing sources and are threatened with additional PM_{2.5} emissions and other air pollutants from new sources of diesel exhaust. Therefore, it is imperative that an environmental justice analysis is conducted for proposed facilities, like certain MTA projects, that would generate significant amounts of diesel exhaust and other air pollutants of concern.

Conclusion

NRDC recognizes that over the past 5 years, New York has taken steps to reduce the larger particles in diesel PM emissions. Those efforts should serve as part of the foundation for New York's ongoing work to address PM_{2.5} emissions from existing and new sources, both vehicular and stationary.

These comments are by no means an exhaustive discussion of the pressing environmental justice problems in New York. Rather, these comments are intended to elaborate on at least two important issue areas, flagged by the Advisory Group and environmental justice advocates, in which NRDC has extensive expertise. NRDC urges DEC to work more closely with environmental justice advocates to further identify current and evolving areas of concern.

⁵ M. Lippmann, "Environmental Toxicants: Human Exposures and Their Health Effects," Van Nostrand Reinhold, 1992.

⁶ Dockery, D.W. et al., "An Association Between Air Pollution and Mortality in Six U.S. Cities," *New England Journal of Medicine*, 329, 1993:1753-59; Pope, C.A., et al., "Particulate Air Pollution as a Predictor of Mortality in a Prospective Study of U.S. Adults," *Am. J. Resp. Crit. Care Med.*, 151, 1995: 669-674; Sphrentz, D., "Breathtaking: Premature Mortality Due to Particulate Air Pollution in 239 American Cities," New York, NRDC, May 1996, p.13-32.

⁷ Id.

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Nor do these comments provide a comprehensive view of NRDC's environmental justice related work. NRDC and our community-based partners have worked on issues ranging from creating urban parks in park-poor neighborhoods, reducing diesel exhaust near commercial distribution centers situated near residential areas, addressing poorly run hazardous waste facilities, holding polluters accountable for lead contamination in soil, and advocating on behalf of farm worker families exposed to pesticides.

We would welcome the opportunity to discuss with the DEC any part of our comments, other aspects of the Report, and our environmental justice efforts.

Sincerely,



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Environmental Justice Initiative

Cc:

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