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STATEMENT BY THE AMERICAN CHEMISTRY COUNCIL

ON BEHALF OF THE NEW YORK

CHEMISTRY INDUSTRY

ON THE

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DRAFT REPORT ON ENVIRONMENTAL JUSTICE

RECOMMENDATIONS

26 Federal Plaza
New York, NY
February 19, 2002

Good afternoon. My name is Stephen Rosario. I am the Northeast Regional Director for the American Chemistry Council, a national trade association representing companies involved in the business of chemistry. I am here on behalf of many of the companies in the business of chemistry in New York. We appreciate the opportunity to present our comments on this very important issue.

ACC and the many chemistry companies in New York support the concept of environmental justice and an evenhanded approach to the enforcement of environmental standards. However, as the old saying goes, the devil is in the details, in terms of how to develop such a program to enhance the principles of environmental justice while not placing a noose around economic development and the creation of jobs for those who live in EJ communities.

By way of background, the companies representing the business of chemistry in New York number 634 facilities employing over 57,000 workers. This makes New York the 7th largest employer of chemistry workers in the United States. Total shipments of sales in New York and globally is $30 billion. For every job in New York's business of chemistry an additional 2.9 jobs are created in the state for an additional 232,6000 jobs among the industry's suppliers, the supplier's suppliers and industries supported by household expenditures from employee's wages. Workers in this industry are among the best paid by the state's manufacturing sector averaging wages of $67,000 plus. Therefore, one must conclude that this is a major business sector in New York.

However, this is not been the case in New York over the past 20 years. The presence of companies involved in the business of chemistry in this state, as with other manufacturing companies, has significantly diminished. At one time, such companies may have been the major or only employer in a community, providing work to hundreds or thousands of people. Companies have closed plants and relocated to states with more reasonable regulatory climates, less expensive operating costs and lower taxes. Industrial globalization has resulted in business decisions that have led to the building of new plants and the shifting of jobs outside the US. The facilities that remain in New York, while not employing the numbers of workers as herald in years past continue to offer attractive employment opportunities as the numbers above demonstrate.

New York's State Environmental Quality Review, or SEQR, requirements are among the most lengthy, complicated, complex and difficult of all such processes among the states. Project developers assume that projects in this state will be more expensive to build and operate than in other parts of the country. Constructing a facility in New York adds to that cost exponentially. It is critical that the State, DEC and local governments recognize how this proposed policy will affect the decisions of developers in all economic sectors to locate projects and facilities in minority and low-income areas. The unintended consequences of this policy may be that projects and facilities that can enhance communities will not be built or that owners of old buildings and infrastructure will choose not to improve them rather than incur the added expense of compliance.

Because of the serious reservations we have with the draft policy and the recommendations contained therein we are compelled to take this opportunity to express those concerns. The supplemental letter submitted by the industry representatives on the EJ Advisory Committee and attached to the report outlines in detail concerns that we concur. There are additional issues that need to be addressed by DEC which, we will submit under separate cover prior to the end of the comment period and which should be included in the public record as part of our testimony. For today's hearing I will limit my testimony to the most salient points of concern

First, the proposed policy would subject any application for a new permit or a major modification of an existing permit to a determination of disproportionate adverse environmental impact on a minority or low-income community. It also would require that DEC provide public notice of all permit applications, including renewals and minor modifications. In the case of new permits and major modifications, such notice would give minority and low income communities the opportunity early in the permitting process to inform DEC of issues related to a proposed project and would allow the project developer to begin to establish a relationship with the community. We are opposed to subjecting permit renewals and minor modifications to the requirements of this policy or extending it to existing permits or minor modifications.

It is unreasonable to subject operating facilities with existing permits or permit renewals not resulting in any changes to their operations to these additional regulatory requirements this policy will impose simply because the demographics of the surrounding community have changed since the time the permits were issued These facilities are not responsible for shifts in demographics and should not be penalized for them. Similarly, there should be no distinction between applications for minor modifications that will not result in material changes to operations or emissions in non-minority or low-income communities and those in areas with those characteristics.

Second, we do not support any requirement that applicants comply with a DEC mandated education and outreach program including submitting lists of concerns and plans for addressing them. Public outreach connected with a facility project is not a one-size-fits-all exercise. The issues and concerns in each project community will be different, requiring specifically tailored outreach. Outreach responses, of necessity, change many times during the permitting process depending on the extent of involvement of the community, who gets involved and what their particular needs and concerns are. An applicant must do outreach in any community in which it wishes to locate or expand. A project developer in a minority or low-income community will be able to use the demographic research required by this policy to craft an outreach program responsive to the needs of the community. DEC's role should be to assist the applicant early in the permitting process to identify community organizations and suggest outreach tools.

Third, the proposed policy calls for a technical assistance grant program. Such a program *must* be funded by the state, not by project applicants. We cannot stress enough the fact that the requirements of this policy will impose significantly increased financial and human resource expense on project applicants without an added mandate to fund TAGs. The biggest risk associated with a business' decision to expand or locate in a minority or low-income community is that the economics of the area will not support it and it will lose its investment. A company that makes such a decision already has committed to the additional expense necessary to help ensure a successful venture, which will provide employment opportunities and contribute to the local economy. We recognize that minority and low-income communities do not have access to the resources that more affluent areas do. However, in the interest of encouraging economic development in these communities, the state should provide TAG assistance.

Fourth, the proposed policy would allow DEC to deny a permit application if the proposed mitigation measures will not alleviate a disparate environmental impact to a minority or low income community. Furthermore, DEC would be able to base such a determination on a consideration of environmental impacts, public health or environmental benefits, legitimate and necessary economic development interests and whether a less discriminatory alternative exists. *This is an issue of utmost seriousness and concern because it is a significant departure from the underlying concept of fairness and balance in Part 617 of the SEQR regulations.*

Part 617 requires that environmental impact statements include a discussion of public need and benefits, including social and economic considerations, in connection with a permit application In making its determination of whether to grant a permit application, DEC must, among other things: consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS; weigh and balance relevant environmental impacts with social, economic and other considerations; and certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

The difference between existing Part 617 and the proposed policy is critical. Part 617 assumes that mitigation measures will not always be able to eradicate environmental impacts. It also assumes that some level of environmental impact is acceptable when a project will have positive public, social and economic benefits and so long as the level of environmental impact does not violate regulatory standards. Part 617 requires DEC to "certify that…from among the reasonable alternatives available, the [mitigation] action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable."

The proposed policy, on the other hand, takes an opposite approach. It assumes that only mitigation measures that completely alleviate disparate impacts are acceptable. Any other level of proposed mitigation will trigger a process by which DEC must justify a decision to allow a project to proceed. Among the required elements for DEC's consideration are "legitimate and necessary economic development interests and whether a less discriminatory alternative exists." DEC should not be placed in the position of having to make the completely subjective decisions this provision of the proposed policy would mandate. How is an environmental agency to decide what constitutes a "legitimate and necessary" economic development "interest" as opposed to ones that are not? How would a "non-discriminatory" alternative be determined? These are decisions that can only be based on opinion and subjective interpretation, since there is no way to construct a defensible standard for either one.

We recommend that this proposed provision be abandoned and that the standards for DEC's decision to approve a permit application be based on the existing Part 617 everywhere in the state.

Finally, although the draft policy itself does not call for amending the ECL enabling the public to bring legal action against permitted facilities for compliance we would be opposed to any effort to include a recommendation seeking such provisions in the ECL. Inclusion of citizen suits clog already crowded courts and creates another layer of expense for companies in New York. DEC, local District Attorneys and the Attorney General already have the ability and obligation to impose an evenhanded enforcement function that should be he hallmark of the state's EJ program.