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**ADDITIONAL COMMENTS 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

The following are additional comments and concerns, which are part of the original Statement.

**RECOMMENDATIONS FOR INCORPORATING ENVIRONMENTAL JUSTICE INTO
THE DEC PERMIT PROCESS**

DEC Website: Permit applicants should be required to submit permit applications and related public documents in electronic form, where appropriate, to DEC for posting on its website. Permit applicants should post as much information as possible related to the applications on their websites.

Position: We concur with this recommendation as long as permit applicants do not have to incur unreasonable expense or employee time. There are some documents, such as maps and plans, that cannot be converted to a format suitable for a website easily or inexpensively. To the extent applications are available on the internet, it should be sufficient to post them on the DEC website. Some companies do not have websites or it would not be appropriate to post such information. For example some companies with multiple facilities have corporate websites that would not post individual facility information.

Use of Alternative Dispute Resolution

Recommendation: When appropriate, DEC should provide permit applicants and the public with ADR procedures and contacts and encourage its use. The decision to engage in ADR should be solely the applicant's. The process should involve at least one representative from the EJ community and one local elected official. ADR agreements should be put in writing and will be binding. All mitigation measures and environmental commitments should be incorporated into the facility or project permit.

The participating parties should incorporate measures outside the scope of a permit in private agreements binding on and enforceable.

Position: We concur with this recommendation to the extent that it is the applicant's option to engage in ADR as a means of resolving issues with the community and is not mandated by DEC and all agreements are voluntary in nature.

RECOMMENDATIONS FOR INCORPORATING ENVIRONMENTAL JUSTICE INTO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT PROCESS

Step 1: DEC Conducts A Preliminary Screen to Determine If A Proposed Project Affects An EJ Community

Recommendation: DEC should do a preliminary screen of a permit application to determine if the EJ permitting policy applies to a proposed action. There should be two steps: identify the boundaries of the community of concern (EJ community) that may be disproportionately and adversely affected by environmental impacts from the proposed project; and determine if the community can be considered low income and/or minority.

The boundaries of the Community of Concern (EJ community) should correspond to the areas and populations that will be affected by the proposed project. DEC should estimate the project's environmental impacts if they are not known. Impacts should include: air and water pollution; traffic; visual effects and secondary displacement (i.e. loss of existing businesses, structures, property or residents or loss of revenue for existing businesses as a result of the proposed project).

Position: We reserve judgment on using the methodology in EPA Region 2's interim policy. In any case, the applicant should have the option to conduct the screen and provide the results to DEC or to have DEC perform the screen. An applicant is more likely to be familiar with the area in which a project will be located, the type and extent of any potential impacts from the proposed action.

We do, however, object to any case-by-case application of these thresholds. It is essential that the policy provide certainty for the regulated community, DEC and the public. Opening the door to potential case-by-case changes in the thresholds would cause confusion and undercut the effective implementation of any policy.

Step 2: DEC Determines If The Project Will Have A Significant Impact On The Environment

Recommendations:

Additional Information: DEC determines if applicants should be required to provide additional information on the long-form EAF, such as a demographic analysis of the area

surrounding the proposed action and information pertaining to the area to be served or affected. DEC should work with the state health department to determine what existing health data about the area could be included in the full EAF to assess risk and impacts before making a determination of environmental significance.

Position: We oppose making the applicant provide any additional information, such as demographics, for the long-form EAF that does not relate to a determination of *environmental* significance, which is the purpose of an EAF. At this point in the process, DEC will already have done an analysis to determine if a community is minority or low income. A determination of environmental significance is race and income blind. A project will or will not have a significant impact on the environment regardless of whether a community is minority or low income.

Additionally, we object to DEC's consideration of health data in an EAF significance analysis because this is a decision about *environmental*, not health, significance. Health impacts and risks must be analyzed and discussed in an EIS if DEC finds that a project will have a significant impact on the environment.

Additional Time for Significance Determination: DEC should expand the time allowed for public comment on a permit application from the current 20 days to a minimum of 30-45 days following the date of first public notice of the project. This will give the public another and an earlier opportunity to raise issues and concerns about a project before DEC determines if the project will have a significant impact on the environment.

Position: This recommendation will have the potential of delaying a project. We believe this requirement may be unnecessary in cases when the applicant will have to prepare an environmental impact statement anyway. Also, it is unclear how it would apply in situations where another agency is the lead agency.

We strongly recommend that DEC evaluate the timeframes that apply to the environmental review of an action. However, this should be through a comprehensive review of all the SEQRA time periods as they relate to the SEQRA permitting process.

Utilize DEC's Environmental Navigator: DEC should employ its website-based environmental navigator as a public information tool for permit applications. The database should include demographic information and facility inspection dates and incorporate EPA Region 2's GIS to identify minority and low-income communities.

Position: We would object to posting any information or data that is not now required to be accessed by the public, that is confidential business information or that would compromise facility security.

Additional Information for a Significance Determination: DEC should encourage the project community and local officials to provide as much varied information as possible

early in the process to assist its decisions of environmental significance. Such additional data could include visual impact impressions and any other information related to: the proposed project site, the project developer, the future owner or operator of the site, the neighborhoods surrounding the site, the health of residents proximate to the site, etc.

Position: We have no objection if DEC asks a project community to supply information related to a proposed project. However, this information should relate only to the *environmental* aspects of the project. DEC should not give any credence in its evaluation and analysis to impressions, perceptions, hearsay and other undocumented information or to information that does not relate to *environmental* impacts.

Step 3: DEC Conducts A Disproportionate Adverse Environmental Impact Assessment for a Minority or Low Income Community

Recommendations:

Finding of No Significant Adverse Environmental Impact: If DEC determines that any Type I or Unlisted action will not have a significant adverse environmental impact, no further environmental justice analysis is required.

Position: Concur.

Electronic Documents: Applicants should provide DEC with draft and final EIS's in electronic, read-only format, when practicable. Eventually, DEC should require that all EIS documents be submitted in electronic form.

Position: We concur with this recommendation, when it is practicable for an applicant to comply.

EIS Comment Period: The public comment period for an environmental impact statement should be increased from 30 days to 60 days.

Position: Even though this proposal results in delaying the progress of a project, a longer time period will allow more participation by the public.

We strongly recommend that DEC evaluate the timeframes that apply to the environmental review of an action. However, this should be through a comprehensive review of all the SEQRA time periods as they relate to the SEQRA permitting process.

Public Hearing For Draft EIS: DEC should mandate a public hearing on a draft EIS for a project in a minority or low-income community where a positive significance determination has been made.

Position: We have no objection to this recommendation as long as the comment period does not unreasonably delay the progress of the permitting process. Issues brought up

during the draft EIS phase can be addressed and changes made to the project, if necessary, between the draft and final versions.

We strongly recommend that DEC evaluate the timeframes that apply to the environmental review of an action. However, this should be through a comprehensive review of all the SEQRA time periods as they relate to the SEQRA permitting process.

Traffic Generating Facilities

Recommendation: DEC should lower the threshold for parking lots to be considered Type I actions under SEQR from the current level of 1,000 cars.

Position: The practical effect of this recommendation would be to require an EIS for a new or modified parking lot that would hold fewer than 1,000 cars. DEC would determine the appropriate threshold. Reducing the threshold in densely populated urban areas where the addition of potentially 1,000 more cars may have significant air, traffic, land use and visual impacts may be appropriate. However, we oppose reducing the threshold for non-densely populated or rural areas. Otherwise, a project applicant may have to incur the time and expense to do an EIS for a new parking lot of only several hundred cars in these areas. To the extent any change is made, we recommend distinguishing between parking lots in densely populated urban areas and those in non-densely populated or rural areas.

Permit Renewals and Minor Modifications

Recommendation: DEC should give notice to the public of all permit applications, including permit renewals and minor modifications, to allow the public to inform DEC of any concerns about the proposed action.

Position: We oppose delaying permit renewals and applications for minor modifications by subjecting them to public comment in cases where there is no material change in emissions, operations or the scope of the project.

ADDITIONAL RECOMMENDATIONS FOR A STRATEGIC ENVIRONMENTAL JUSTICE PROGRAM PLAN

Recommendations: DEC should revise its consent order policy, if necessary, to ensure that COs are limited to essential compliance issues.

DEC should compile all new final consent orders in a central repository, post them on its website and maintain an online searchable database. Prior COs would be accessible through the Freedom of Information Law.

Position: Any revisions of consent order policy should be considered in a process separate from these recommendations and subject to public notice and comment.

Recommendation: DEC enforcement staff should provide facility compliance history to other DEC staff for use in environmental decision-making, including for the permit review process.

Position: Any agency action to use facility compliance history in environmental decision-making should be developed as an agency policy, subject to public notice and comment.

Executive Order and Legislation

Recommendations: DEC should support a governor's executive order or legislation that directs state and local agencies to address environmental justice and provide the necessary resources for implementation.

The recommendations in this report should apply to state and local agencies through legislative or regulatory mandate.

Position: We do not support an executive order or legislation that mandates specific actions and activities applicable to all agencies.

Additionally, we object to mandating the recommendations in this report for all state and local agencies. Any amendments to the SEQR regulations to incorporate these regulations will apply to all state and local agencies governed by SEQR. Other recommendations that do not require an amendment to SEQR were developed specifically for DEC's permitting process and should not apply automatically to the activities of all agencies. Each agency should develop its own EJ policy based on its activities and operations.