



New York City Environmental Justice Alliance

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NYSDEC

Office of Environmental Justice
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To Whom It May Concern:

Please accept these comments regarding the DEC Environmental Justice Advisory Group Recommendations. The comments are submitted on behalf of the New York City Environmental Justice Alliance.

- The advisory nature of this document, and the corresponding recommendations create a scenario whereby the suggestions have no legal force and can be ignored at will. It is unrealistic to think that the changes suggested will be made voluntarily, or readily accepted. A similar Environmental Justice proposal circulating in New Jersey is in marked contrast to the New York document. The New Jersey policy recommendations are premised on numerous changes in, and additions to, state regulatory provisions so as to make the Environmental Justice mandates legally enforceable requirements.
- The general recommendations in this document are far too vague. The document is full of policies and concepts that DEC should "encourage," or "consider," and suffers from a lack of specificity. For instance, it notes on page eight that DEC should "encourage" applicants to reach out to the public and work to foster dialogue with community representatives. Even if DEC did take steps to encourage this outreach, there is no sanction if applicants fail to do such. In addition, the language of the recommendation, like many others throughout, is so unclear ("encourage") that it really does not do anything. The language used in the recommendations needs to be tightened up and any final recommendations or policies must be precisely crafted to ensure that there is no ambiguity or confusion as to what is being proposed.
- The recommendations for improving public meetings do not address the common problems that Environmental Justice communities have been facing at recent public meetings: e.g., lack of notice or error-ridden notices, overlapping meetings, overt racist treatment in terms of speaker preference, etc. This section must expressly call for changes to ensure actual notice to low-income communities and communities of color that enables broad participation. It must also directly address and condemn

the practices listed above that tend to eliminate from any dialogue the views of those residing in Environmental Justice communities.

- The open space analysis in this document is insufficient and oversimplified. The document only addresses open space in two brief paragraphs. It merely states that funds from state environmental grant/loan programs should be distributed equitably, and that DEC should analyze where the money is being spent and make revisions if disparity is evident. Again, there is no teeth in the document's language. Inequity in the distribution of open space in New York State must be examined further in any final recommendations or policies.
- There is nothing in this document addressing some of the most pressing substantive issues in the Environmental Justice field: Solid waste, energy, transportation policy, air pollution, and brownfields redevelopment. The document would be much more helpful and practical if it took a closer look at Environmental Justice issues as they relate to substantive environmental fields, and recommended specific changes particular to each field.
- Any positive result that may occur due to the suggested SEQRA changes is limited by the fact that they would only apply in situations where DEC is the lead agency in a SEQRA review. These recommendations should apply to all environmental reviews undertaken pursuant to SEQRA, regardless of what entity serves as the lead agency, and such a mandate should be reflected in the SEQRA regulations.
- Although the document recommends that mitigation measures considered during the SEQRA process focus on alleviating disparate impact on low-income communities and communities of color, mitigation is an amorphous concept under the SEQRA statute. Mitigation measures only have to be implemented "to the maximum extent practicable," and the lead agency for SEQRA review purposes can decide what, if any, measures will be imposed. In this regulatory setting, specific mitigation measures cannot be mandated and are not backed up by any legal force. Thus, the recommended incorporation of Environmental Justice issues into mitigation discussions, will likely have little real world impact. A more fruitful recommendation would be to amend the SEQRA regulations to make mitigation a more mandatory and enforceable concept, and, include within any such regulatory change a provision mandating the consideration of Environmental Justice issues during the mitigation process.
- The Advisory Group's focus on internet publication and manipulation as a means of providing communities with information does not take into account that access to this technology is less common in low-income communities and communities of color. The proposal should recognize this inequity and propose creative solutions aimed at reaching out to communities that may not have easy access to the internet.
- The document's treatment of cumulative impact analysis in the SEQRA process is very vague and defers further "in-depth deliberation of such a complex issue" for another time. Considering that cumulative impact analysis has been historically deficient in the SEQRA context, this is highly

unsatisfactory. Cumulative impact analysis is one of the most important concepts—if not *the* most important concept—for uncovering and addressing environmental inequity. There is absolutely no justifiable rationale for the failure to effectively utilize cumulative impact analysis in the SEQRA context to remedy environmental injustice. Continuing to delay discussions regarding the implementation of a working cumulative impact framework for SEQRA merely ensures that low-income communities and communities of color will continue to feel a disproportionate burden with respect to environmental harms. Any viable Environmental Justice Program in this state will focus a great deal more energy on the issue of cumulative impact and begin the process of codifying comprehensive cumulative impact regulations.

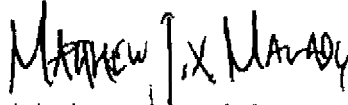
- The document does not make the connection between effective public participation and Freedom of Information Law (“FOIL”) compliance. When agencies drag their feet with FOIL requests, information is often received by community members too late, and the result is less-informed public comments and hearing testimony. This connection must be made more clear in any final recommendations or policies.
- New Jersey’s Environmental Justice Plan (referred to as “Environmental Equity,” or “EE,” rather than “Environmental Justice”) is much more comprehensive from a public participation standpoint than the one being proposed by DEC. It applies to all applications submitted to the New Jersey Department of Environmental Protection (“NJDEP”) for “new permits, permit renewals, and major modifications to existing permits for major facilities,” and consists of no less than 10 steps:

- 1) Every permit applicant must participate in a pre-application meeting with NJDEP to learn about the new EE outreach process;
- 2) NJDEP partakes in a mandatory EJ screening when the permit application is submitted;
- 3) If screening shows that the project will have an impact on an EJ community, the applicant is required to participate in the “Expanded Community Participation Process for Environmental Equity” (the “EE Process”). If NJDEP or an applicant fails to initiate the EE Process, citizens can petition the agency and request that an applicant be forced to participate;
- 4) Applicants participating in the EE Process must plan and execute an extensive community outreach program;
- 5) This plan must be submitted to NJDEP and community members for review;
- 6) A mandatory meeting on the project must be held in the affected community. This meeting is to be convened by the applicant, with NJDEP serving as moderator;
- 7) After this meeting the applicant is required to revise the outreach plan in light of the comments received, and must also detail additional outreach activities;
- 8) At the conclusion of this process, NJDEP is to determine whether the applicant made a good faith effort to comply with the process. Results of the public participation and outreach are to be considered in drafting the relevant permit;
- 9) If NJDEP determines that there was no good faith effort, it will not issue the permit;
- 10) Alternative Dispute Resolution is offered if there are remaining issues of disagreement between the applicant and the community.

Those involved with finalizing the New York State program should closely examine the proposals put forth in New Jersey for increasing public participation by those living in Environmental Justice communities, and provide for a similar, if not better, public participation program. Any such program should go beyond being "advisory" and should be written directly into DEC's regulations.

Thank you for your attention.

Sincerely,



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