

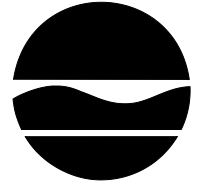
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RESPONSIVENESS SUMMARY

Environmental Justice Work Group Reports on Disproportionate Adverse Environmental Impacts and Health Outcome Data

Release Date: May 24, 2006

On March 19, 2003, the New York State Department of Environmental Conservation (DEC) released Commissioner Policy 29 on Environmental Justice and Permitting (CP-29) to provide guidance on incorporating environmental justice concerns into the permit review process and various aspects of enforcement, grant programs and public participation programs. Upon the effective date of CP-29, April 18, 2003, the DEC established two work groups to develop and incorporate critical environmental justice information into the DEC environmental permit review process. These work groups were the “Disproportionate Adverse Environmental Impact Work Group,” which released its final report in August, 2004, and the “Health Outcome Data Work Group,” which released its final report in November, 2004. These reports are available from the DEC Office of Environmental Justice website at <http://www.dec.state.ny.us/website/ej/workgroupreports.html>.

The Disproportionate Adverse Environmental Impact Assessment Work Group (DAEIA Work Group), chaired by Michelle Moore, DEC Region 2 Permit Analyst, was asked to develop recommendations for conducting a disproportionate adverse environmental impact analysis as a component of the environmental impact statement. The DAEIA Work Group Report summarizes six methodologies that were discussed during the work group's deliberation, makes recommendations for a permit specific analysis, and lists the additional tools and resources that will further the development of a disproportionate adverse environmental impact analysis.

The Health Outcome Data Work Group (HOD Work Group) was asked to identify reliable sources of existing human health outcome data and recommend means to incorporate such data into the environmental permit review process. The HOD Work Group was chaired by Nancy Kim, Ph.D., Director, Division of Environmental Health Assessment, New York State Department of Health. Health outcome data are counts and rates of health-related events in a population, such as cases of disease or deaths. The data do not indicate what is causing a particular disease; however, a population with a lower health status may be more vulnerable to the effects of environmental

exposures. The HOD Work Group Report includes protocols for gathering health outcome data and displaying such data within the context of the DEC permit review process.

The DEC received written comments on the DAEIA and HOD Work Group Reports for a 90 day period ending March 15, 2005. The reports and the public comments generated in response to the reports will form the basis for enhancements to DEC policy on environmental justice. Following is a summary of the principal written public comments submitted to the DEC Office of Environmental Justice with DEC's responses to those comments. The written comments are available at <http://dec.state.ny.us/website/ej/responsesum.html>.

Written comments were submitted by the following persons and organizations:

Vincent Agnello, Residents for Responsible Government, Inc. (RRG)
Tarki L. Heath, Partnership for Onondaga Creek (POC)
NYS Senator George D. Maziarz, 62nd District (Maziarz)
Roberta Chase, Citizens Environmental Coalition (CEC)
Judith Anderson, Toxic Waste Lupus Coalition (TWLC)
Norris McDonald, African American Environmentalist Association (AAEA)
Alma L. Lowry, Syracuse University Public Interest Law Firm (SUPILF)
Gavin Kearny, New York Lawyers for the Public Interest Inc. (NYLPI)

A. DISPROPORTIONATE ADVERSE ENVIRONMENTAL IMPACT ANALYSIS

Comment:

The Disproportionate Adverse Environmental Impact (DAEIA) Work Group was unable to reach a consensus on a specific disproportionate impact analysis. The group should reconvene until a consensus can be reached or the DEC should develop one methodology for considering environmental justice in the permitting process and provide an opportunity for work group members and the public to comment before finalizing the guidance pursuant to CP-29 (AAEA).

Response:

The DAEIA Work Group report (report) reflects the work group's best effort toward achieving a consensus on a disproportionate impact analysis method. Although the work group was unable to reach a consensus, their report identifies various tools and methodologies that can be used to assess potential environmental and human health impact of a proposed action. DEC will review the tools and methodologies presented in the report and, if feasible, develop protocol for assessing potential environmental and human health impact of a proposed action. Please note, protocol for assessing potential environmental and human health impact of a proposed action has not been developed nationally given the difficulty in quantifying potential environmental and human health impact in a single protocol.

Comment:

If overburdened communities are to be truly protected, as presumed by the goals of an environmental justice policy, then a sound DAEIA method must analyze current burdens

with the impact of added burdens on those communities' futures; All of the methods except for F, fail to consider the cumulative impacts and the particular vulnerabilities of the host community (POC, NYLPI, CEC, TWLC, AAEA, SUPILF).

Response:

The report highlights measures to ensure a complete description of the existing environmental setting as a component of any disproportionate environmental impact assessment. However, some of the methodologies presented in the report do not include an analysis of current burdens with the impact of added burdens or assessment of cumulative impacts. These comments are noted and will be considered by DEC.

Comment:

The methods presented in the DAEIA report are overly vague about critical concepts and analytical steps. This creates the risk that applicants will be able to skew their assessments in a way that undermines environmental justice and ignores the SEQR requirement that all reasonable alternatives be considered (Maziarz, NYLPI, AAEA).

Response:

The methods presented in the report are written in outline form and would require additional detailed protocol prior to any implementation. A DAEIA is intended to determine whether potentially significant adverse environmental impacts as determined under SEQR disproportionately affect low-income and minority populations. Therefore, implementation of any such protocol must be consistent with SEQR requirements.

Comment:

Environmental Justice policy should be corrected to include all burdened communities and not be limited to low-income and minority communities (Maziarz, RRG).

Response:

Comment noted.

Comment:

The DAEIA Work Group recommended that any required adverse environmental impact review rely on "readily available data." The concern is that potentially significant impacts will be ignored because there is no readily available data to review (NYLPI, CEC, TWLC, SUPILF).

Response:

Scoping is the process by which the issues to be addressed in the draft EIS are identified. During the scoping process the extent and quality of information needed is identified. The use of "readily available data" that is timely, complete, accurate and consistent is necessary for reliable results. However, DEC also recognizes the need for new data sources that fit the above criteria.

B. HEALTH OUTCOME DATA WORK GROUP REPORT

Comment:

The Health Outcome Data (HOD) Work Group says the applicant has the option of including a comparison area that is similar to the Community of Concern (COC) in socioeconomic status (SES), which is generally measured by income or educational level. However, later in the section it states that, “none of the comparison areas may be of SES similar to the COC.” This contradiction should be clarified. We believe that it does not matter whether the comparison area is socioeconomically compatible to the COC. In spite of the contradiction, the pro and con section of using SES as a comparison area for a COC is very good (AAEA).

Response:

The HOD Work Group Report (report) recommends the use of multiple comparison areas and describes a process for selecting these areas. The statement “none of the comparison areas may be of SES similar to the COC” is not intended to mean that a comparison area similar to the COC in SES should not be included. The statement refers to the fact that following the process described in the report may result in one (or more) of the comparison areas being similar in SES to the COC, or may result in none of the comparison areas selected by the method being similar in SES to the COC. In the latter case, the applicant has the option of including a comparison area similar in SES to the COC. Use of such a comparison area is not excluded, and the pros and cons of selecting such a comparison area are discussed.

Comment:

A recommendation made in the Report of the HOD Work Group stated, “The health outcome data should be used along with other consideration in making a permitting decision and should not necessarily be the determining factor in any decision.” This statement can be interpreted to mean that the policy is so flexible as to be ineffective (POC).

Response:

In recommending that health outcome data be considered along with other factors to reach the final outcome of a permit decision, the intent was not to decrease the effectiveness of the policy. In any risk management decision, multiple factors are considered. Other factors that may be considered along with the health outcome data include data collection, regulatory standards, costs, environmental impacts, mitigation, benefits and needs. The information on the health status of the community provides a more complete picture of the area under study and may suggest additional options for permitting conditions.

Comment:

The HOD Report does not provide a comprehensive list of environmental pollution sources (CEC, TWLC).

Response:

The HOD Work Group scope of work included the identification of available health data, development of a protocol to present health outcomes and providing recommendations to the DEC. A comprehensive list of environmental pollution sources was not part of the scope of work.

Comment:

How should the health data be used after it is collected? And how will the data affect the permitting or SEQR process? (SUPILF, NYLPI)

Response:

The health outcome data displays and analyses for the community of concern will be used to develop a health report card for the potentially affected community. The DEC will use this information as a resource for making effective permitting decisions. Where the analyses show that the health status of a documented adversely impacted community is lower than that of the comparison areas, consideration of different options for the permitting, special conditions, and mitigation will be developed and considered.

C. GENERAL COMMENTS

Comment:

How will the DEC proceed with implementation of the recommendations in the report?

Response:

Disproportionate Adverse Environmental Impact Analysis Work Group Report - In the absence of a disproportionate adverse environmental impact analysis methodology at a national level, DEC intends to continue work in this area. The DEC will continue reviewing the methodologies presented in the report, develop tools that will enable the DEC to obtain a comprehensive description of the environmental setting and identify environmental burdens, including enhancements to the DEC's geographic information systems and the identification of databases, participate in national forums related to this issue, and explore related topics such as cumulative impacts in order to address disproportionate environmental impacts.

Health Outcome Data Work Group Report - DEC intends to incorporate the health outcome data displays and analysis methodology into the SEQR process. Specifically, DEC intends to require the data displays and methodology as a component of the environmental impact statement where issues of environmental justice have been identified by the DEC. The DEC will work with the Department of Health to develop guidance and train staff on the data displays and the analysis methodology, and develop guidance for the public. DEC intends to pilot the new requirements prior to making them mandatory. A time frame for implementation has not yet been determined.