

## NEW YORK

### **How Does New York Define Environmental Justice and Environmental Justice Communities?**

#### Environmental Justice Definitions:

New York State law defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, religion, national origin or income with respect to the development, implementation and enforcement of laws, regulations and policies affecting the quality of the environment.”<sup>1</sup> Fair treatment is defined as meaning

that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from execution of federal, state and local programs and policies, and further means that no such group of people should suffer from inequitable allocation of public resources or financial assistance for environmental protection and stewardship, including environmental remediation, pollution prevention, open space acquisition and other protection and stewardship activities.<sup>2</sup>

In addition, meaningful involvement is defined as

the provision of opportunities for citizen participation in decision making that are as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and socioeconomic groups; that are provided as early as possible in the decision making process; that provide full, timely and accessible disclosure of public records and sharing of information ... including the provision of technical data and the assumptions upon which any analyses are based; and that allow all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including opportunities for two-way dialogue.<sup>3</sup>

In slight contrast, the New York’s Department of Environmental Conservation (DEC) website defines environmental justice as “the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”<sup>4</sup> In another contract, DEC Commissioner Policy-29 (CP-29) defines fair treatment as meaning that “no

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<sup>1</sup> N.Y. Env’t Conserv. L § 48-0103 (2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> NYDEP, *Environmental Justice*, <https://www.dec.ny.gov/public/333.html> (last visited July 1, 2022).

group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.”<sup>5</sup>

The New York Climate Act “charged the Climate Justice Working Group (CJWG) with the development of criteria to identify disadvantaged communities to ensure that frontline and otherwise underserved communities benefit from the state’s historic transition to cleaner, greener sources of energy, reduced pollution and cleaner air, and economic opportunities.”<sup>6</sup> At the time of writing this memo, there is a working draft identifying and defining disadvantaged communities<sup>7</sup> which were evaluated using “... 45 indicators including: environmental exposures, burdens, and climate change risks; sociodemographic factors such as age, race, and income; pollution characteristics; and health vulnerabilities.”<sup>8</sup>

### Environmental Justice Mapping Tools:

The DEC provides maps of Potential Environmental Justice areas in the state and by county. Potential Environmental Justice areas are defined as U.S. Census block groups of 250 to 500 households each that, in the Census, had populations that met or exceeded at least one of the following statistical thresholds: (1) at least 51.1% of the population in an urban area reported themselves to be members of minority groups; or (2) at least 33.8% of the population in a rural area reported themselves to be members of minority groups; or (3) at least 23.59% of the population in an urban or rural area had household incomes below the federal poverty level.<sup>9</sup> The New York Department of Health assists the OEJ in incorporating “review of human health data into the environmental permit review process.”<sup>10</sup> In doing so, it uses mapping and ZIP-code analysis to identify the presence of environmental justice areas based on incidents of asthma, cancer, and low birth weights.<sup>11</sup> See *infra* p. 11 for more information on where to find New York’s mapping tools.

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<sup>5</sup> Commissioner Policy-29, *Environmental Justice and Permitting*.

<sup>6</sup> N.Y., Climate Act, *Disadvantaged Communities Criteria*, <https://climate.ny.gov/DAC-Criteria> (last visited July 21, 2022).

<sup>7</sup> N.Y., Climate Act, *Disadvantaged Communities Criteria: Draft Disadvantaged Communities Criteria Fact Sheet [PDF]*, <https://climate.ny.gov/DAC-Criteria> (last visited July 21, 2022).

<sup>8</sup> NYDEC, *Environmental Justice*, <https://www.dec.ny.gov/public/333.html> (last visited July 21, 2022).

<sup>9</sup> NYDEC, *Maps and GIS Tools for Env’t Justice*, <https://www.dec.ny.gov/public/911.html> (last visited July 1, 2022).

<sup>10</sup> NYDOH, *Environmental Justice & Permitting*, [https://www.health.ny.gov/environmental/investigations/environmental\\_justice/](https://www.health.ny.gov/environmental/investigations/environmental_justice/) (last visited July 1, 2022).

<sup>11</sup> N.Y. Env’t Conservation L. § 3-0317; NYDOH, Updated Guidance for Health Data Review and Analysis Relating to NYSDEC Environmental Justice Requirements for CP-29 and 6 NYCRR 487, *available at* [https://www.health.ny.gov/environmental/investigations/environmental\\_justice/docs/new\\_guidance\\_ej\\_rev2017.pdf](https://www.health.ny.gov/environmental/investigations/environmental_justice/docs/new_guidance_ej_rev2017.pdf); NYDOH, *Guidance for Screening the Impact Study Area for Presence of an Environmental Justice Area Based on Health Outcome Data*, *available at* [https://www.health.ny.gov/environmental/investigations/environmental\\_justice/isa/index.htm](https://www.health.ny.gov/environmental/investigations/environmental_justice/isa/index.htm).

## How Does New York Consider Environmental Justice in its Substantive Actions<sup>12</sup>?

### Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

New York environmental justice laws indicate that the policy of the State is “... that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations, or the execution of federal, state, local or tribal programs and policies.”<sup>13</sup> The policy further states that “opportunities for citizen involvement in the development of laws, regulations and policies that affect the quality of the environment be as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and socioeconomic groups.”<sup>14</sup>

### Consideration of Environmental Justice in Permitting:

Article 10 of New York’s Public Service Law requires the consideration of environmental justice in the permitting of Major Electric Generating Facilities, which are defined as facilities of 25 megawatts or more.<sup>15</sup>

DEC regulations implementing Article 10 require environmental and public health impact analyses, studies regarding environmental justice and public safety, and consideration of local laws; applicants to provide funding to be used to help intervenors (affected municipalities and other parties) hire experts to participate in the review of the application and for legal fees (but not for judicial challenges); and a public information coordinator within the Department of Public Service to assist and advise interested parties and members of the public in participating in the siting process.<sup>16</sup> The regulation requires applicants for major electric generating facilities that are likely to result in or contribute to any significant and adverse disproportionate environmental impact in the impact study area during its construction or operation, to identify the specific measures it will take to avoid, offset or minimize each impact for the duration that the certificate is issued to the maximum extent practicable using verifiable measures.<sup>17</sup>

DEC Commissioner Policy 29 (CP-29) applies more broadly to the agency’s environmental permit review process and application of the State Environmental Quality Review Act. CP-29 enhances the consideration of environmental justice concerns in permitting by identifying potential environmental justice areas; providing information on environmental justice to applicants with proposed projects in those communities; enhancing public participation

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<sup>12</sup> Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, [https://www.law.cornell.edu/wex/substantive\\_law](https://www.law.cornell.edu/wex/substantive_law) (last visited July 1, 2022).

<sup>13</sup> N.Y. Env’t Conserv. L. § Ch. 664, art. 48-0101.

<sup>14</sup> *Id.*

<sup>15</sup> N.Y. pub. serv. § 160-173.

<sup>16</sup> 6 CRR-NY IV.H.487.

<sup>17</sup> 6 CRR-NY 487.10(d).

requirements for proposed projects in those communities; establishing requirements for projects in potential environmental justice areas with the potential for at least one significant adverse environmental impact; and providing alternative dispute resolution opportunities to allow communities and project sponsors to resolve issues of concern to the community.<sup>18</sup>

A law passed in New York in the Spring of 2023, modeled after a New Jersey Environmental Justice Law, provides among the most stringent environmental justice protections in the nation. Under the law, New York’s Department of Environmental Conservation must require an existing burden report and “shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community.”<sup>19</sup>

This level of protection extends to permit modifications and renewals. The law directs the department not to issue a permit if it determines the project or issuance of a new permit “would significantly increase the existing disproportionate pollution burden on a disadvantaged community.”

#### *Consideration of Environmental Justice in Enforcement:*

CP-29 commits DEC to conducting supplemental compliance and enforcement inspections of regulated facilities located in potential environmental justice areas where there is reason to believe that such facilities are not operating in compliance with the Environmental Conservation Law.<sup>20</sup> DEC’s Office of Environmental Justice administers Operation ECO-Quality, which focuses compliance at small to mid-size regulated facilities within environmental justice areas.<sup>21</sup>

#### *Consideration of Environmental Justice in Land Use:*

New York’s brownfield remediation program requires that the program for each site be chosen, in part, through a consideration of environmental justice concerns, “which for purposes of this title, include the extent to which the proposed use may reasonably be expected to cause or increase a disproportionate burden on the community in which the site is located, including low-income minority communities, or to result in a disproportionate concentration of commercial or industrial uses in what has historically been a mixed use or residential community.”<sup>22</sup>

#### *State Environmental Policy Act “Mini-NEPA”:*

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<sup>18</sup> Commissioner Policy-29, *Environmental Justice and Permitting*.

<sup>19</sup> N.Y. Env’t. Conservation L. § 70-0118

<sup>20</sup> *Id.*

<sup>21</sup> NYDEC, *Operation ECO Quality*, <https://www.dec.ny.gov/public/65832.html> (last visited July 1, 2022).

<sup>22</sup> N.Y. Env’t Conservation L. § 27-1415.

New York has a “Mini-NEPA” statute, called the New York State Environmental Quality Review Act (SEQRA).<sup>23</sup>

The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.<sup>24</sup>

SEQRA regulations provide that environmental impact statements must evaluate “reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts.”<sup>25</sup>

*Dedicated Funding to Environmental Justice Communities:*

N/A.

*Other Consideration of Cumulative Impacts:*

N/A.

*Prohibitions on Disparate Impact Discrimination:*

N/A.

*Established Environmental Rights:*

Montana’s Constitution commits the state to “maintain and improve a clean and healthful environment in Montana for present and future generations.”<sup>26</sup> The Montana Supreme Court ruled unanimously in 1999 that this right to a clean and healthful environment was a fundamental

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<sup>23</sup> N.Y. Env’t Conservation L. §§ 8-0101– 8-0117. Implementing regulations can be found at N.Y. Comp. Codes R. & Regs. tit. 6, §§ 617.1 –617.20.

<sup>24</sup> NYDEC, The SEQR Handbook 4th ed. (2020), available at ([https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrhandbook.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf)); Memo, Introducing Federal National Env’t Policy Act Practitioners to the N.Y. State Env’t Quality Review Act, [https://ceq.doe.gov/docs/laws-regulations/state\\_information/NYState\\_NEPA\\_Comparison\\_23Nov2015.pdf](https://ceq.doe.gov/docs/laws-regulations/state_information/NYState_NEPA_Comparison_23Nov2015.pdf). See also Michael B. Gerrard and Edward McTiernan, *Survey of 2019 Cases Under State Environmental Quality Review Act*, New York Law Journal (July 8, 2020, 12:15 PM), <https://www.law.com/newyorklawjournal/2020/07/08/survey-of-2019-cases-under-state-environmental-quality-review-act/?slreturn=20200825075755> (last visited July 1, 2022) (“The courts decided 44 cases under New York’s State Environmental Quality Review Act (SEQRA) in 2019. In only six did the courts overturn governmental decisions based on violations of SEQRA.”).

<sup>25</sup> N.Y. Comp. Codes R. & Regs. tit. 6, §§ 617.9 –617.10.

<sup>26</sup> Mont. Const., art. IX, § 1.

right, and one that is meant to be preventative in nature.<sup>27</sup> The state legislature is required to provide adequate remedies for the protection of “the environmental life support system” from degradation, and the prevent unreasonable depletion of natural resources.<sup>28</sup>

## **How Does New York Address Environmental Justice in its Procedures<sup>29</sup>?**

### *Environmental Justice as Part of Environmental Agency’s Mission:*

The Office of Environmental Justice (OEJ) within the DEC “works to address environmental issues and concerns that affect primarily low income and minority communities through grant opportunities, enforcement of environmental laws and regulations, consultation, guidance, and enhance public participation.”<sup>30</sup>

### *Environmental Justice as Part of Other Agency’s Mission:*

N/A.

### *Processes and Procedures (including Title VI):*

- *Non-Discrimination Policy:*

- The New York State Department of Transportation follows the federal requirements for Title VI. *See* section on “*Grievance Procedures*” for more information.

- *Grievance Procedures:*

The New York State Department of Transportation has specific grievance procedures. The website links to the [complaint form](#) to file a complaint and [Fillable complaint form](#) (PDF). The fillable form is also available in Spanish, “Por favor, complete el [formulario de reclamo](#) para presentar un reclamo.” Finally, the New York State Department of Transportation has an Office of Civil Rights, Title VI Unit may also be contacted at the following email address: [OCR-TitleVI@dot.ny.gov](mailto:OCR-TitleVI@dot.ny.gov).

Investigations of alleged violations of Title VI commence within thirty (30) days of a complaint being filed. The complainant will be duly and timely notified of NYSDOT's determination and resolution by the Title VI Unit.

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<sup>27</sup> *Mont. Env't Info. Ctr. v. Dep't of Env't Quality*, 988 P.2d 1236 (Mont. 1999) (original suit challenged Montana DEQ's allowing the pumping of millions of gallons of arsenic-tainted water into the Landers Fork and Blackfoot Rivers); *See also* Mont. Env't Info. Center, “Montana’s Right to a Clean & Healthful Environment,” <https://meic.org/issues/constitution-of-montana-and-mepa/clean-healthy-environment/#:~:text=In%20a%201999%20landmark%20decision,to%20be%20preventative%20in%20nature> (last visited June 30, 2022).

<sup>28</sup> Mont. Const., art. IX, § 1.

<sup>29</sup> Procedural is defined rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, [https://www.law.cornell.edu/wex/procedural\\_law](https://www.law.cornell.edu/wex/procedural_law) (last visited July 1, 2022).

<sup>30</sup> NYDEC, *Environmental Justice: Office of Environmental Justice*, <https://www.dec.ny.gov/public/333.html> (last visited July 21, 2022).

- Enhanced Public Participation and Information Access:

CP-29 provides for enhanced public participation for major new and modified air, wastewater, and waste permits. Where a potential environmental justice area is identified by the preliminary screen, the applicant must submit a written public participation plan as part of its complete application. At a minimum, the plan must demonstrate that the applicant will:

- Identify stakeholders to the proposed action, including residents adjacent to the proposed action site, local elected officials, community-based organizations and community residents located in a potential environmental justice area;
- Distribute easy-to-read, written information on the proposed action and permit review process. The information shall be translated into languages other than English for comprehension by non-English speaking stakeholders;
- Hold public information meetings throughout the permit review process at locations and times convenient to the stakeholders to the project; and
- Establish easily accessible document repositories on the internet or in or near the potential environmental justice area for pertinent project information, including but not limited to: application material, studies, reports, meeting presentation materials and media releases.

CP-29 also requires that, when a draft EIS includes an evaluation of additional burdens on a potential environmental justice area, the DEC must conduct a public hearing and receive comments on the draft EIS for no fewer than 60 days.<sup>31</sup>

- Language Access:

Executive Order No. 26, “Statewide Language Access Policy,” requires translation and interpretation services for certain executive state agency activities. It also requires each agency to publish a language access plan that will ensure compliance with the EO through employee training, public notification regarding language services, internal monitoring, and the appointment of a language access coordinator.<sup>32</sup> This executive order applies to the DEC, which has created its own Language Access Plan.<sup>33</sup>

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<sup>31</sup> Commissioner Policy-29, *supra* note 10.

<sup>32</sup> § 8.26. Exec. Order No. 26: Statewide Language Access Policy; N.Y. Comp. Codes R. & Regs. tit. 9, § 8.26; N.Y., Div. of Hum. Rights, *Language Access Policy: Language Access for Individuals with Limited English Proficiency*, <https://www.governor.ny.gov/news/no-26-statewide-language-access-policy> (last visited July 1, 2022).

<sup>33</sup> NYDEC, DEC’s Language Access Plan for Limited English Proficient Individuals (Aug. 1, 2021), *available at* <https://dhr.ny.gov/system/files/documents/2022/04/dec-lap-2021.pdf> (last visited July 7, 2022).

- Consultation with Indigenous Communities and Tribal Nations:

DEC Commissioner Policy-42, *Contact, Cooperation, and Consultation with Indian Nations*, provides guidance to DEC staff regarding cooperation and consultation with Indian Nations on issues relating to protection of environmental and cultural resources. The policy (i) formally recognizes that relations between the Department and Indian Nations will be conducted on a government-to-government basis; (ii) identifies the protocols to be followed by Department staff in working with Indian Nations; and (iii) endorses the development of cooperative agreements between the Department and Indian Nations to address environmental and cultural resource issues of mutual concern.<sup>34</sup>

In addition, a few other regulations specifically consider Indian Nations in environmental decision-making. N.Y. CCR §383-3.4 requires that permits for the construction of land disposal facilities include a “description of the proximity of the site to lands or reservations of Indian tribes or nations.”, N.Y. CCR § 382.21, regarding siting criteria for low-level radioactive waste disposal sites requires that “the site must not be located on any lands or reservations of Indian tribes or nations or on lands that are not subject to the laws and regulations of the State of New York, including but not limited to lands owned by the Federal government.”

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- Environmental Justice Coordinating Agency:

N/A.

- Environmental Justice Coordinator:

N/A.

- Environmental Justice Advisory Board:

DEC created an Environmental Justice Advisory Group in 1999. In late 2019, the state passed N.Y. Env'tl. Conserv. Law § 48-0101, which calls for the creation of a permanent environmental justice advisory group (consisting of members from environmental justice groups and business representatives) to set model environmental justice policy, make recommendations to the governor, provide comments on proposed rules, and conduct public hearings.<sup>35</sup> The law also creates an Environmental Justice Interagency Coordinating Council, which will coordinate the activities of agencies

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<sup>34</sup> NYDEC, CP-42 Contact, Cooperation, and Consultation with Indian Nations (Mar. 27, 2009), [https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cp42.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cp42.pdf) (last visited July 1, 2022); NYDEC, *Indian Nation Consultation*, <https://www.dec.ny.gov/public/974.html> (last visited July 1, 2022).

<sup>35</sup> N.Y. Env't. Conservation L. §§ 48-0107–48-0107.

required to adopt an environmental justice policy and inform the public about the agencies' actions with respect to environmental justice.

- *Funding for Environmental Justice:*

The state's Environmental Protection Act contains two environmental justice-related provisions. Its local waterfront revitalization programs provision allocates a specific level of resources to environmental justice communities.<sup>36</sup> Its climate adaptation and mitigation projects provision calls for an "equitable regional distribution" of such projects, "taking into account regional differences in climate change risks, socioeconomic conditions and ecological resources."<sup>37</sup>

The "Restore Mother Nature" Bond Act of 2020 also has a variety of environmental justice provisions. The act funds various climate change mitigation projects, including "costs associated with projects to reduce or eliminate air pollution from stationary or mobile sources of air pollution affecting an environmental justice community; and . . . costs associated with projects which would reduce or eliminate water pollution, whether from point or nonpoint discharges, affecting an environmental justice community."<sup>38</sup> It also encourages the DEC to "make every effort practicable to ensure that thirty-five percent of the funds pursuant to this article benefit environmental justice communities."<sup>39</sup>

Additionally, the following grants have environmental justice implications<sup>40</sup>:

- Community Impact Grants: These grants "provide community-based organizations with funding for projects that address various environmental and public health concerns that disproportionately affect low-income and minority communities. Those environmental problems include a large number of regulated facilities; contaminated sites; noise, air and water pollution; health problems and lack of green space and waterfront access."<sup>41</sup>
- Community Air Monitoring Capacity Building Grants: used to develop or strengthen programs focused on reducing exposure and

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<sup>36</sup> N.Y. Env't Conservation L. § 54-1101; N.Y. Exec. Law § 918.

<sup>37</sup> N.Y. Env't Conservation L. § 54-1523.

<sup>38</sup> N.Y. Env't Conservation L. § 58-0703.

<sup>39</sup> N.Y. Env't Conservation L. § 58-1101.

<sup>40</sup> Information about additional environmental grants can be found online. See NYDEC, *Grant Applications*, <https://www.dec.ny.gov/pubs/grants.html> (last visited July 1, 2022); NYDEC, *Green Infrastructure Funding*, <https://www.dec.ny.gov/chemical/108961.html> (last visited July 1, 2022).

<sup>41</sup> *Id.*

improving public health in communities most impacted by air pollution.<sup>42</sup>

- Urban Forestry Grants.<sup>43</sup>

### **Additional New York Environmental Justice Provisions?**

*Transportation:* N.Y. Legis. Law § 83-a requires that the legislative commission on critical transportation choices “evaluate the transportation system in light of the current social, economic and environmental regulatory climate including but not limited to energy efficiency, air quality, quality communities or smart growth objectives, environmental justice, sustainability and costs per household.”<sup>44</sup>

*Energy:* The law creating the state energy planning board, which must adopt a state energy plan, requires that the plan contain an environmental justice analysis.<sup>45</sup>

The law creating the Clean Energy Resources Development and Incentives Program requires a consideration of adverse and beneficial effects on environmental justice communities in renewable energy siting decisions.<sup>46</sup>

The New York Power Authority has an Environmental Justice Program, which provides 1) supplemental STEM education to K-12 students in environmental justice communities; 2) community energy education and weatherization workshops; 3) community engagement programs; and 4) energy services projects.<sup>47</sup>

*Tankers:* The law creating tanker-avoidance zones in the Hudson river requires that the sites of these zones be chosen, in part, based on a consideration of “disproportionate impacts on communities . . . federally or state identified environmental remediation sites . . . and . . . an affected community’s waterfront revitalization plan or comprehensive plan and the environmental justice community’s impacts.”<sup>48</sup>

### **New York Environmental Justice Contacts?**

NYDEC

Basil Seggos, DEC Commissioner: 518-402-8545

Sean Mahar, Chief of Staff (Environmental Justice): 518-402-8549

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<sup>42</sup> NYDEC, *Environmental Justice Grant Programs*, <https://www.dec.ny.gov/public/31226.html> (last visited July 21, 2022).

<sup>43</sup> NYDEC, *Urban and Community Forestry Grants*, <https://www.dec.ny.gov/lands/5285.html> (last visited July 1, 2022).

<sup>44</sup> N.Y. Leg. L. § 83-a.

<sup>45</sup> N.Y. Energy L. § 6-104.

<sup>46</sup> N.Y. Pub. Auth. L. § 1902.

<sup>47</sup> NYPA, *Environmental Justice*, <https://www.nypa.gov/communities/nypa-engagement/environmental-justice> (last visited July 1, 2022).

<sup>48</sup> N.Y. Nav. L. § 70-a.

DEC complaint information - <https://www.dec.ny.gov/about/118310.html>

NYSDEC, Office of Environmental Justice: 518-402-8556  
Rosa Mendez, Director: 518- 402-8556; [justice@dec.ny.gov](mailto:justice@dec.ny.gov)  
Sarah Bernard, Office Assistant  
Rodney Rivera, Special Assistant  
Alanah Keddell-Tuckey, Public Affairs Specialist  
David Witt, Indian Nations Affairs Coordinator  
Adanna Roberts, Citizen Participation Specialist  
Dana McClure, Environmental Program Specialist

Environmental Justice Hotline: 1-866-229-0497

New York State Department of Motor Vehicles  
Ashley Condit, Title VI Coordinator, [ashley.condit@dmv.ny.gov](mailto:ashley.condit@dmv.ny.gov)

## **Where to Find New York Environmental Justice Laws, Policies, and Tools?**

### Constitutional Provisions:

- N.Y. Const. art. 1, § 19.

### Executive Orders:

N/A.

### Legislation and Statutes:

- New York State Senate Bill S2385/Assembly Bill A1564: This legislation creates a permanent Environmental Justice Advisory Board within the DEC and Interagency Coordinating Council.<sup>49</sup> The legislation requires state agencies to adopt and abide by effective environmental justice policies. The Advisory Board is in charge of creating a “model environmental justice policy that ensures that New Yorkers, regardless of race, income, gender, and national origin, have a right to fair treatment and meaningful involvement in the development of regulations and policies that affect the quality of their environment.”<sup>50</sup> The Interagency Coordinating Council is to provide guidance regarding the implementation of environmental justice policies to each state agency. Members of the Advisory Board are appointed by the Governor and legislative leaders, and consist of representatives from community organizations, the business community, and state and national organizations who promote environmental conservation and research. Members

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<sup>49</sup> S.B. S2358, 2019-2020 Leg. Sess. (N.Y. 2019), available at <https://www.nysenate.gov/legislation/bills/2019/s2385>.

<sup>50</sup> *Id.*

of the Interagency Coordinating Council will consist of Commissioners from various agencies.

- New York State Senate Legislative Package to Increase Protections from the Climate Leadership and Community Protect Act: This legislation package is aimed at protecting low-income communities and communities of color from “bearing unfair and unsafe pollution burdens.”<sup>51</sup> The bills in the legislative package require the following: This legislative package requires environmental impact statements for projects that may impact minority or economically distressed communities and prohibits approval of projects that may cause disproportionate pollution impacts to those communities; reduces emissions of toxic air pollutants from petroleum storage tanks; requires DEC to establish new standards for toxic air pollutants and for lead; requires that energy efficiency projects and investments benefit environmental justice communities; requires permit applicants for projects that may impact an environmental justice community to prepare and implement a public participation plan; requires fossil-fuel burning peaker power plants in environmental justice communities to submit a plan to DEC for converting to renewable power generation, and requires phased-in use of bio heating fuel oil in buildings to reduce air pollution.
- Environmental Laws That Mention Cumulative Impacts:
  - N.Y. Evtl. Conserv. Law § 19-0321 (Some permits to construct and operate municipally sponsored major facilities—i.e., air contamination sources— require “an environmental impact statement which shall include an analysis of the cumulative air impacts of such action in conjunction with other actions involving facilities that have been constructed or are planned within such three-mile radius.”).
  - N.Y. Evtl. Conserv. Law § 3-0301 (DEC must “[p]romote and coordinate management of water, land, fish, wildlife and air resources to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of the state and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion . . .”).
  - N.Y. Evtl. Conserv. Law § 15-1503 (In deciding whether to grant water supply permits, the DEC should consider “cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources.”).

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<sup>51</sup> Press Release, N.Y. State S., *Senate Passes New Legislation to Improve Environmental Justice* (Mar. 3, 2021), <https://www.nysenate.gov/newsroom/press-releases/senate-passes-new-legislation-improve-environmental-justice> (last visited July 1, 2022).

- Environmental Laws That Require Mapping:
  - N.Y. Env'tl. Conserv. Law § 3-0317 (Department of Health to develop and maintain cancer incidence and environmental facility maps pursuant to N.Y. Pub. Health Law § 2401-b).
  - NY NAVIG § 186 (Money from oil spill compensation fund goes toward mapping of “populations, environmentally sensitive areas, and resources at risk from spills of petroleum and related impacts.”).
  - N.Y. Env'tl. Conserv. Law § 3-0315 (“The department in conjunction with the commissioner of health shall create and maintain a geographic information system . . . for purposes of collecting, streamlining, and visualizing integrated data, permits, and relevant sites about drinking water quality.”).
  - N.Y. Env'tl. Conserv. Law § 24-0301 (requiring freshwater wetland mapping).
  - N.Y. Env'tl. Conserv. Law § 24-0703 (requiring mapping for permitting on freshwater wetlands).
  
- Environmental Laws That Mention Public Participation:
  - N.Y. Comp. Codes R. & Regs. tit. 6, §§ 621.7–621.8 (public notice, comment, and hearing provisions of DEC uniform procedures for permit applications).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 240-2.10 (public participation procedures in transportation provisions).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 375-1.10 (citizen participation requirements of Environmental Remediation Programs).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 613-6.8 (public participation provision of petroleum bulk storage release response and corrective action regulations).
  - N.Y. Comp. Codes R. & Regs. tit. 9, § 430.4 (public participation provision of Clean Water/Clean Air Bond Act).
  - N.Y. Comp. Codes R. & Regs. tit. 9, § 435.8 (public participation provision of Environmental Quality Bond Act of 1986).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 375-4.10 (citizen participation provision of Environmental Restoration Program).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 375-2.10 (citizen participation provision of Inactive Hazardous Waste Disposal Site Remedial Program).

- N.Y. Comp. Codes R. & Regs. tit. 9, § 1806.1(b) (7) (citizen participation provision of Urban Renewal Assistance Program).

Regulations:

- 6 NYCRR 487 – Analyzing Environmental Justice Issues in Siting of Major Electric Generating Facilities Pursuant to Public Service Law. This regulation creates a regulatory agenda to start analyzing environmental justice issues related to the siting of a major electric generating facility in New York State, in accordance with Article 10 of the Public Service Law. The purpose of the regulation is two-fold: enhance public participation and the review of environmental impacts from proposed major electric generating facilities in environmental justice communities and; reduce disproportionate environmental impacts in overburdened communities.<sup>52</sup>
- 6 NYCRR Part 617, State Environmental Quality Review - This regulation requires an environmental impact assessment by a state agency for a proposed project. SEQR requires that the agency identify and mitigate the significant environmental impacts of the activity it is proposing or permitting.<sup>53</sup>
- Environmental Regulations That Mention Cumulative Impacts:
  - N.Y. Comp. Codes R. & Regs. tit. 6, §§ 617.9 –617.10 (In the DEC’s “little NEPA” regulations, environmental impact statements must evaluate “reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts.”).
  - N.Y. Comp. Codes R. & Regs. tit. 21, § 461.10 (In the New York Power Authority’s “little NEPA” regulations, environmental impact statements may assess “the cumulative effects on the environmental and existing natural resource base of subsequent phases of a large project or series of projects that may be developed in the future, and that are under the ownership or control of the same project sponsor.”).
  - N.Y. Comp. Codes R. & Regs. tit. 6, § 219-2.2 (Requiring cumulative impact assessments for solid waste incineration facilities in nonattainment areas for ozone).
  - N.Y. Comp. Codes R. & Regs. tit. 19, § 600.6 (Long Island Sound coastal policies require the limiting of “impacts of individual development projects to prevent

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<sup>52</sup> NYDEC, *EJ Related Policy and Regulations*, <https://www.dec.ny.gov/public/36929.html> (last visited July 1, 2022).

<sup>53</sup> NYDEC, *SEQR*, <https://www.dec.ny.gov/permits/357.html> (last visited July 1, 2022).

cumulative water quality impacts upon the watershed which would result in a failure to meet water quality standards.”).

- N.Y. Comp. Codes R. & Regs. tit. 6, § 212-1.3 (The DEC will determine an environmental rating for each air contaminant based on a variety of factors, including “the projected maximum cumulative impact of an air contaminant taking into account emissions from all process emission sources at the facility under review and the pre-existing ambient concentration of the air contaminant under review.”).
- N.Y. Comp. Codes R. & Regs. tit. 6, § 601.10 (Water withdrawal permitting based in part “on whether the proposed withdrawal will result in no significant individual or cumulative adverse environmental impacts.”).

#### Policies/Guidance:

- Commissioner Policy 29, Environmental Justice and Permitting. This policy provides guidance on how to incorporate environmental justice concerns into the DEC environmental permit review process and the DEC application of the State Environmental Quality Review Act. Additionally, this policy provides guidance on some aspects of DEC’s enforcement program and public participation provisions. The policy amends DEC environmental permit process by doing the following: identifying potential environmental justice areas; providing information on environmental justice to applicants with proposed projects in those communities; enhancing public participation requirements for proposed projects in those communities; establishing requirements for projects in potential environmental justice areas with the potential for at least one significant adverse environmental impact; providing alternative dispute resolution opportunities to allow communities and project sponsors to resolve issues of concern to the community.<sup>54</sup>

#### Mapping Tools:

- The DEC provides maps of Potential Environmental Justice areas: <https://www.dec.ny.gov/public/911.html>.
- Other Natural Resources and Environmental Protection Maps can be found here: <https://www.dec.ny.gov/pubs/103459.html>
- The Health Dept. also has maps used in environmental justice analyses: [https://www.health.ny.gov/environmental/investigations/environmental\\_justice/isa/index.htm](https://www.health.ny.gov/environmental/investigations/environmental_justice/isa/index.htm).

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<sup>54</sup> NYDEC, *Commissioner Policy 29, Environmental Justice and Permitting* <https://www.dec.ny.gov/regulations/36951.html> (last visited July 1, 2022).

Other:

N/A.