

DEP 24-1 / Permitting and Disadvantaged Communities

New York State Department of Environmental Conservation

DEC Program Policy

Issuing Authority: Daniel Whitehead, Director
Environmental Permits

Title: Permitting and Disadvantaged Communities
under the Climate Leadership and Community
Protection Act

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I. Summary:

This policy document, issued by the New York State Department of Environmental Conservation (DEC) Division of Environmental Permits (Environmental Permits), outlines the requirements for analyses developed pursuant to Section 7(3) of the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106). This policy applies to permit applications subject to the Uniform Procedures Act (UPA), Article 70 of the Environmental Conservation Law (ECL).¹

II. Policy:

This policy is written to provide guidance for DEC staff when reviewing permit applications associated with sources and activities, in or likely to affect a disadvantaged community, that result in greenhouse gas (GHG), or co-pollutant emissions regulated pursuant to Article 75 of the Environmental Conservation Law (ECL). This policy does not apply to permit applications that are not located in or likely to affect a disadvantaged community.

III. Purpose and Background

The CLCPA went into effect January 1, 2020, and includes economy-wide requirements to reduce GHG emissions in New York State by 40% below 1990 levels by 2030, and 85% below 1990 levels by 2050. Section 7(3) of CLCPA requires the following of all state agencies:

In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, pursuant to article 75 of the environmental conservation law, all state agencies,

¹ On December 31, 2022, New York Governor Kathy Hochul signed a cumulative impacts bill into law, amending the State Environmental Quality Review Act (SEQR) and the Uniform Procedures Act (UPA) to require consideration of the effects of disproportionate pollution impacts on a disadvantaged community (DAC). The law takes effect on December 30, 2024, and will cover impacts beyond GHG and co-pollutants, to include all forms of pollution as defined in ECL 1-0303. Environmental Permits staff expect to modify this policy to take into consideration the new law plus any regulations DEC implements pursuant to that law.

offices, authorities, and divisions shall not disproportionately burden disadvantaged communities as identified pursuant to subdivision 5 of section 75-0101 of the environmental conservation law. All state agencies, offices, authorities, and divisions shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to such subdivision 5 of section 75-0101 of the environmental conservation law.

The CLCPA also created a Climate Justice Working Group (CJWG) comprised of representatives from environmental justice communities and organizations, DEC, the Department of Health (DOH), the New York State Energy and Research Development Authority (NYSERDA), and the Department of Labor (DOL).

The CJWG established criteria to identify disadvantaged communities for the purposes of co-pollutant reductions, greenhouse gas emissions reductions, regulatory impact statements, and the allocation of investments.²

IV. Responsibility

Environmental Permits is responsible for implementing the review and permitting procedures described in this policy, in consultation with the Office of Environmental Justice, Office of the General Counsel, and applicable DEC permit program areas. Environmental Permits is also responsible for updating this program policy.

V. Procedure

1. Applicability.

The permit application review process described in this policy applies to permit applications identified below that involve sources and activities that result in direct or indirect GHG or co-pollutant emissions pursuant to Article 75 of the ECL:

- a. All major permit applications made pursuant to the following sections of the ECL received by DEC, after the issuance date of this policy, and all pending incomplete permit applications, including incomplete modifications or renewals to existing permits:
 - Article 15, Title 15, and Article 17 for facilities withdrawing and using over 20 MGD of water for cooling purposes
 - Article 19, Air Pollution Control
 - Article 23, Title 17, Liquefied Natural Gas and Petroleum Gas
 - Article 27, Title 7, Solid Waste Management
 - Article 27, Title 9, Industrial Hazardous Waste Management
- b. In addition to the permit applications listed above under V.1.a, these procedures apply to any permit administered under the Uniform Procedures Act (UPA) for:

² On March 27, 2023, the Climate Justice Working Group identified criteria for disadvantaged communities pursuant to ECL 75-0111(see the internet link in footnote 3).

- projects involving construction of energy production, generation, transmission, or storage facilities; and
- projects with sources and activities that may result in GHG emissions or co-pollutants, directly or indirectly, including those from mobile emissions.

2. Determining Scope of Covered Projects

DEC staff may require an applicant to ensure the requirements of Section 7(3) are met and prioritize emission reductions in the impacted disadvantaged communities, as required by CLCPA Section 7(3). Projects subject to this policy include sources and activities of a continuing nature associated with any new emission sources, permit renewals, or permit modifications that would result in actual increases of GHG and co-pollutants. This includes emissions from stationary and mobile sources directly related to and essential to the proposed action, and those from existing equipment or facilities. Essential operating functions are those functions critical to the operation of a facility or project without which the facility could not operate.

3. Preliminary Screening.

- a. Upon receipt of a permit application subject to this policy, Environmental Permits staff will conduct a preliminary screen to identify whether the proposed action is a covered project and is in, or likely to affect, a disadvantaged community (e.g., where the permit involves a facility that is not located in the disadvantaged community but involves off-site GHG or co-pollutant impacts within a disadvantaged community in close proximity to the proposed action). DEP may request that the applicant provide additional information to indicate whether the project is in, or likely to affect, a disadvantaged community.
- b. Spatial data³ will be used to determine whether the proposed action is in, or likely to affect, a disadvantaged community.
- c. A project is likely to affect a disadvantaged community if there would be an increase in GHGs or co-pollutants within a disadvantaged community, even if the source of the GHGs or co-pollutants is located outside the disadvantaged community. At a minimum, the impact study area should be the area within a one-half mile of the facility.⁴
- d. The affected area of the proposed action includes the facility itself and areas reasonably expected to experience off-site impacts from GHGs, and co-pollutants associated with operation of the facility. Off-site impacts are those that a proposed action may have at a distance from the site based upon modeling. For example, a natural gas fired power plant may impact the air quality of an adjacent or nearby disadvantaged community.
- e. If no disadvantaged community is identified within the affected area, the proposed action is not likely to affect a disadvantaged community and the permit review process may continue independent of this policy.

³ A map of identified disadvantaged communities is available on the Climate.ny.gov website: Disadvantaged Communities Map (<https://climate.ny.gov/en/Resources/Disadvantaged-Communities-Criteria>)

⁴ Distances beyond ½ mile may be appropriate where modeling of air impacts indicates a wider impact from the facility.

- f. If a disadvantaged community is identified and is located within the affected area as determined above, the proposed action is considered likely to affect the disadvantaged community and the remainder of these procedures will be incorporated into the review process.

4. Analysis of Disproportionate Burden and Project Design Measures

CLCPA Section 7(3) states that agencies' permit decisions "shall not disproportionately burden disadvantaged communities." Increases in GHG emissions or co-pollutants resulting from a project associated with any new, modified, or renewed emission sources, including those from stationary or mobile sources directly related to and essential to the proposed action, will require the preparation of a disproportionate burden analysis to meet the completeness requirements of 6 NYCRR 621.3(a)(13).

The disproportionate burden analysis must identify and address disproportionate burdens on the disadvantaged community. As part of a disproportionate burden analysis, an applicant may propose conditions on the project that would serve to address any disproportionate burden by prioritizing reduction of emissions in that community. Likewise, DEC may impose conditions on the project or other measures that would serve to address any disproportionate burden in that community, including through DEC's obligation in Section 7(3) to prioritize reductions in GHGs and co-pollutants in disadvantaged communities. Any such project conditions or other measures proposed by an applicant or imposed by DEC, along with any input from members of the community regarding the proposed project, may be considered in the ultimate determination of whether the project imposes a disproportionate burden on disadvantaged communities.

5. Enhanced Public Participation

Permit applications subject to this policy require enhanced public participation pursuant to 6 NYCRR 621.3(a)(13), following the procedural guidance for an enhanced public participation plan under CP-29. As part of the enhanced public participation plan, the applicant must solicit input from members of the disadvantaged community regarding the proposed project design considerations.

6. Guidance to Permit Applicants

Where an action likely to affect a disadvantaged community is identified by the preliminary screen, Environmental Permits staff will provide notice to the applicant of the information required to satisfy the requirements of Section 7(3). This may include notice that the applicant's project falls within or is likely to affect a disadvantaged community, guidance to comply with CP-29, and any other information relevant to the proposed action in preparing a disproportionate burden analysis.

- a. Disproportionate Burden Analysis

The applicant shall submit a written analysis to DEC pursuant to 6 NYCRR 621.3 (a) (13) (ii) before an application is determined to be complete. The analysis shall include the following:

- an identification of GHG and co-pollutant emissions from the project affecting the disadvantaged community;
- identification of relevant baseline data on existing burdens, including the DAC Indicators used to designate the disadvantaged community that are related to air quality and air-related health effects⁵;
- an evaluation of how project GHG and co-pollutant emissions would impact the disadvantaged community. The evaluation should qualitatively, and to the extent possible quantitatively, explain whether the project's GHG and co-pollutant emissions could positively or negatively impact air quality and air-related health effects, or other relevant DAC Indicators, resulting from an increase in GHG or co-pollutants from the proposed action;
- where an increase to the existing burden to the disadvantaged community is identified, proposed project design considerations including a description of actions to be taken to reduce or eliminate disproportionate burdens associated with GHG or co-pollutant emissions, including any proposed permit conditions (see below); and
- confirmation that an enhanced public participation plan has been completed, including any proposed changes to the project resulting from community outreach and participation.

b. Project Design Considerations

Where a proposed project results in a determination of disproportionate burden on a disadvantaged community, the disproportionate burden analysis must include project design measures that ensure that the project will not disproportionately burden the disadvantaged community. The availability of the disproportionate burden analysis will be an element of completeness under UPA.

Any project design measures that are used to support a final determination regarding disproportionate burden should result in measurable GHG emissions reduction, co-pollutant emission reduction that is in addition to actions already required by law or regulation and that lessen the burden on the community that has been initially identified to be disproportionately burdened. Further, project design measures must be real, quantifiable, permanent, verifiable, and enforceable. Project design considerations should result in a reduction in GHG and co-pollutant emissions that is at least equivalent to the increases from the project. Accordingly, it may be necessary for the applicant to consider implementation of more than one design consideration.

⁵ Tables 2 and 3 of the New York State Climate Justice Working Group Draft Disadvantaged Communities Criteria and List Technical Documentation (March 9, 2022) identify various potential pollution exposures, land use and facilities associated with historical discrimination or disinvestment, and health outcomes & sensitivities that relate to air quality or air-related health effects.

Some projects subject to Section 7(3) of the CLCPA will also be subject to Section 7(2). Information provided as part of the Section 7(2) analysis can be similarly used to identify project design measures, that also address Section 7(3), as part of the disproportionate burden analysis.

In no specific order, examples of potential project design measures include, but are not limited to:

- Use of electric powered equipment instead of fossil fuel powered equipment, including electric vehicles;
- Use of lower emission technologies;
- Use of alternative process technologies that would reduce or eliminate GHG emissions or co-pollutants;
- Financial mitigation, such as providing funds for GHG or co-pollutant emissions reduction projects in the local disadvantaged community;
- Operational mitigation, such as limitations on the amount of fossil fuel combusted at the project or the allowable hours of operation for the project;
- Designing truck travel routes that avoid, or minimize impact to, disadvantaged communities;
- Adding electric vehicle charging stations at the facility or in the local disadvantaged community; and
- Physical mitigation, such as the planting and upkeep of trees, green infrastructure, or other means of carbon sequestration.

c. Public Review and Comment

In addition to the permit application materials, the disproportionate burden analysis, and any additional materials provided by the applicant to satisfy the requirements of Section 7(3) of the CLCPA, will be made available for public review and comment as per 6 NYCRR Part 621.7 of UPA. Relevant public comments, the permit application, supporting materials, including information provided to satisfy the requirements of Section 7(3) of the CLCPA, must be considered when making a final decision on a permit application.

VI. Definitions⁶

Baseline: existing data against which change is measured

Burden: something that affects health or quality of life. An overburdened community is one with multiple stressors including both environmental and socioeconomic. A community burden affects quality of life, and a pollution burden has the potential to affect health.

Co-pollutants are hazardous air pollutants produced by greenhouse gas emissions sources, including those contaminants defined as regulated air pollutants in 6 NYCRR 200.1(bu) and other air pollutants as identified by the Department on a case-by-case basis that are known to produce adverse human health effects.

DAC Indicator: the 45 variables created from raw data to represent the presence, direction, or magnitude of a characteristic or circumstance of interest. Indicators are designed to adjust for the size of the census tract (area or population) to enable relative scoring (comparisons) of census tracts. The 45 Indicators are grouped into seven sets, referred to as Factors.

Direct Emissions: include the applicable portions of the project owned or controlled by the project sponsor that include any new or modified emission sources that have the potential to emit GHG and co-pollutants, including increases and decreases in emissions of GHG and co-pollutants from existing equipment.

Disproportionate Burden: a burden within an affected disadvantaged community that is, or would be, significantly greater than that same burden in comparable non-disadvantaged communities, as a result of the proposed action.

Indirect Emissions: are reasonably foreseeable emissions that are a consequence of the activities of the proposed facility not owned or controlled by the project sponsor. For example, a project that will increase truck traffic associated with the facility would have indirect GHG and co-pollutant emissions associated with that increase. Indirect emissions are generally emitted from sources owned or controlled by other entities, not the facility itself, for example waste haulers utilizing a transfer station.

Mobile Emissions: pollutants released by vehicles, non-stationary engines, or other non-stationary equipment.

⁶ Definitions are for the purpose of this policy only.

VII. Related References

[Climate Leadership and Community Protection Act \(Chapter 106 of the Laws of 2019\)](#)

[Disadvantaged Communities - NYSERDA](#)

[Commissioner Policy 49, Climate Change and DEC Action](#)

[DEC Program Policy DAR-21, Climate Leadership and Community Protection Act and Air Permit Applications](#)

[Commissioner Policy 29, Environmental Justice and Permitting](#)

Environmental Conservation Law [Article 75, Climate Change](#)

Environmental Conservation Law [Article 15, Water Resources, Title 15](#) and [Article 17, Water Pollution Control](#) for facilities withdrawing and using over 20 MGD of water for cooling purposes

Environmental Conservation Law [Article 19, Air Pollution Control](#)

Environmental Conservation Law [Article 23, Title 17, Liquefied Natural Gas and Petroleum Gas](#)

Environmental Conservation Law [Article 27, Title 7, Solid Waste Management](#)

Environmental Conservation Law [Article 27, Title 9, Industrial Hazardous Waste Management](#)

Environmental Conservation Law [Article 70, Uniform Procedures](#)

[Environmental Assessment Form Workbooks \(EAF\)](#)

[SEQR Handbook](#)

[Cumulative Impact Bill](#)

[Potential Environmental Justice Areas \(PEJA\)](#)

[New York State Climate Justice Working Group Draft Disadvantaged Communities Criteria and List Technical Documentation \(March 9, 2022\)](#)