

**Written Comments of Save the Sound
To The New York State Department of Environmental Conservation**

**Re: Comments on Proposed Amendments to SEQRA Regulations Under the Environmental
Justice Siting Law**

May 7, 2025

Save the Sound is a nonprofit organization representing over 4,400 member households. Our mission is to protect and improve the land, air, and water of New York and the entire Long Island Sound region. We use legal and scientific expertise and bring citizens together to achieve results that benefit our environment for current and future generations.

On behalf of Save the Sound, we appreciate the opportunity to provide input on the Department of Environmental Conservation's proposed amendments to 6 NYCRR Part 617 implementing the Environmental Justice Siting Law (EJSL). Our organization leads various legal, ecological restoration, and water quality projects in state-identified Disadvantaged Communities (DACs) between New York City, Long Island, and Westchester County, and we are keenly aware of the cumulative effects of polluting hazards on residents' health, for example, high levels of sulfur dioxide from industrial facilities and urban heat islands in Mount Vernon and The Bronx. These hazards are further compounded by the impacts of climate change experienced by these communities as well as systemic inequities. We appreciate DEC's efforts to date and offer the following recommendations to ensure the regulations properly address the cumulative impacts of pollution in DACs. Our comments here are supplementary to the letter submitted by New York Lawyers for Public Interest, to which Save the Sound is a signatory.

1. Clarify and Follow the EJSL's Mandate to Reduce the Cumulative Burdens of Disadvantaged Communities.

The New York State Legislature, in enacting the EJSL, recognized that “[a]s a result of the inequitable pattern in the siting of environmental facilities, minority and economically distressed communities bear a greater environmental health burden due to the cumulative pollution exposure from multiple facilities.” The Legislature therefore declared that it is the state’s responsibility to establish requirements for the siting of polluting facilities “to ensure no community bears a disproportionate pollution burden, and to actively reduce any such burden for all communities.” DEC must clearly echo this intent and follow this

mandate to reduce the cumulative burdens of DACs in its proposed amendments to the SEQRA regulations. We recommend the following:

a. Provide examples of how intersecting burdens compound harm in DACs.

DEC must make clear that the intent of the EJSL is to reduce the burdens that disadvantaged communities already disproportionately face. DEC should provide clear examples of how intersecting burdens (e.g., pollution, lack of healthcare, and systemic racism) compound harm in DACs, including when these burdens may appear superficially unconnected. DEC must be clear that the EJSL and its implementing regulations are intended to consider these impacts both as individual factors, and as factors that build upon one another in a feedback loop that has been too long ignored in government decision making. The draft regulations state an intent that environmental, social, and economic factors be incorporated in decision making, but do not clearly recognize the importance of decision makers understanding and considering how their synergistic effects disproportionately burden some communities more than others. This oversight must be corrected in the final regulations.

b. Clarify and strengthen the definition of 'disproportionate burden'

DEC must align with the EJSL's intent by emphasizing that DACs, by definition, already bear disproportionate burdens. Projects in DACs should be presumed likely to exacerbate these burdens unless proven otherwise. The DEC Interim SEQR Guidance improperly narrows the EJSL's scope by defining a "disproportionate pollution burden" as a burden that is "significantly greater" than it would be in a comparable non-disadvantaged community yet there is no meaningful explanation of what this means or how it can be applied.

This definition oversimplifies the many ways in which pollution and other environmental, social, and economic stressors interact to exacerbate a DAC's existing burdens and vulnerabilities. It places too much responsibility in the hands of project applicants to decide when a project has crossed this ambiguous threshold and therefore requires an EIS. Rather, the analysis should begin from the presumption that any additional pollution would be a disproportionate burden on the DAC. For example, last year, DEC released results of their multi-year air monitoring study of air pollution testing in Mount Vernon, New Rochelle, and Yonkers and found tens of thousands of diesel burning trucks were contributing to higher levels of carbon and sulfur dioxide in these communities than in

wealthier municipalities in Westchester County. The pollutants were detected in abundance near schools, hospitals, and childcare facilities. In the southeast corner of Mount Vernon near The Bronx border, high levels of pollutants were detected close to body shops, metalmaking facilities, and two asphalt plants. Residents' proximity to these hazards is important to consider in future decisions regarding the siting of affecting facilities as it should be assumed that these residents are overburdened by pollution.

A "significantly greater" threshold also opens the door too wide to manipulation of analyses and data to artificially portray a pollution burden as perhaps greater, but not "significantly greater." For example, an air quality analysis that uses data from an air monitoring station distant from the affected community and that may be likely to establish a worse baseline than what is currently experienced by the affected community might be used to establish an added burden that does not reach the level of "significantly greater." In reality, this would not be an accurate representation of the proposed action's effect on the community.

The purpose and intent of the EJSL would be better served by requiring that an analysis of a proposed action's significance begin from a presumption that DACs have disproportionate pollution burdens compared to the rest of the state.

c. Presume that pollution-causing projects affecting any and all disadvantaged communities will more likely require preparation of an Environmental Impact Statement (EIS)

All DACs deserve protection. DACs have existing burdens and are disproportionately vulnerable to new, increased, or continued pollution burdens.

DEC's regulations and guidance to lead agencies should presume that projects that cause or contribute to pollution in a disadvantaged community require preparation of an Environmental Impact Statement (EIS). Rather than relying on the tiered Disadvantaged Community Assessment Tool (DACAT) DEC proposed, lead agencies should affirmatively demonstrate that the specific impacts of a proposed project will not increase the cumulative pollution burden on the relevant DAC if they are to avoid preparing an EIS.

To elaborate, Save the Sound and fellow environmental justice advocates have significant concerns about the DACAT's approach of categorizing DACs into "more comparatively burdened" (orange) and "less comparatively burdened" (blue) tiers. Our worry is that the

DACAT's approach creates several problematic incentives and could undermine the EJ Siting Law's intent for the following reasons:

- DACs are 35% of the State's most burdened census tracts based on 45 carefully selected indicators such as Environmental Burdens and Climate Change Risks and Population Characteristics and Health Vulnerabilities. The DACAT's creating of subdivisions within these communities complicates the analysis of the inequities the EJ Siting Law seeks to address, downplaying their impacts in "blue tier" DACs.
- Second, the DACAT does not account for how pollution crosses census tract boundaries, particularly in dense urban areas.
- Third, the DACAT may create perverse incentives for project siting. By signaling that "blue" DACs warrant less scrutiny, the DACAT may encourage concentrated development in these communities that could harm human health. This would replicate the historical pattern of targeting slightly less burdened communities within environmental justice areas when resistance grows in the most impacted neighborhoods.

We concur with fellow environmental justice advocates in recommending DEC not include the DACAT in the final regulatory package and instead clarify that all DACs are presumed to have disproportionate pollution burdens under the EJ Siting Law.

2. Prioritize Avoidance and Minimization of Impacts in Mitigation Measures

Lead agencies must prioritize avoiding new burdens in DACs to better protect residents from health impacts such as asthma, lung and heart disease, increased birth defects, and learning impairments. Lead agencies should:

- As a first line of defense, avoid harm to DACs by denying permits for facilities that would increase environmental harms in DACs that are already host to one or more highly polluting facilities.
- If this is not possible, mitigation measures should minimize impacts, including by requiring project applicants to negotiate Community Environmental Benefit Agreements for any new permit, permit expansion, or permit renewal with the affected DAC(s). Avoidance and minimization of harms should also be the first and second priorities for DACs that do not necessarily already have a highly polluting facility within them.
- Only if these first two priorities cannot be satisfied should net environmental benefits of the proposed action be considered.

DEC should also include consideration of alternative siting outside of DACs or in less-sensitive areas away from schools and residences.

3. Ensure Meaningful Public Participation

Accessibility: DEC's website must explicitly label Environmental Justice Siting Law legislative and regulatory amendments and provide summaries in plain language and multiple languages.

Community Engagement: Require hybrid mandatory public hearings for disadvantaged communities during the scoping phase, for evaluating mitigation measures and alternatives, and for the draft EIS stage. Lead agencies should also maximize access to translators at public hearings. Community members are often required to request translation services ten days prior to a public hearing, often leaving little time between receiving notice of the hearing and the translation service request deadline for the community member to educate themselves on the proposed action and decide whether they would like to comment. While we understand resource constraints may make acting on shorter notice difficult, lead agencies should take all steps practicable to accept such requests closer to the hearing.

Transparency: For projects in or potentially affecting disadvantaged communities, create a public database of project documents, meeting recordings, translated materials and a user-friendly newsletter via listserv highlighting ways for the public to engage with projects in or potentially impacting disadvantaged communities. Notices should be disseminated via mail, email, and local media.

4. Multifamily Residential Construction Projects Should Only Be Added to the Type II List if DEC Demonstrates They Will Have No Significant Environmental Impact.

Type II actions are not subject to SEQRA review because they have been determined not to have a significant impact on the environment or are otherwise precluded under SEQRA. The list generally consists of minor or routine actions, such as maintenance or repair of existing structures or facilities, repaving existing highways, and installation of traffic control devices.

The proposed regulations add to this list residential construction projects involving:

- (1) a multifamily dwelling consisting of a three-family residence;
- (2) construction of a building with four or more dwelling units, so long as:
 - (a) the gross floor area of the building does not exceed 10,000 square feet;
 - (b) the building is constructed on an approved lot;

(c) the building will be connected to existing public water and sewerage systems; and

(d) the use is a permitted use under the applicable zoning law or ordinance.

(3) construction or rehabilitation of appurtenant structures in connection with (2), including sidewalks, parking areas, playgrounds, and landscaping.

DEC does not adequately explain how it determined that the listed construction projects would not have a significant impact on the environment and are therefore appropriate for inclusion on the list of Type II actions. Save the Sound is very sympathetic to the inadequate supply of affordable housing in New York, but that does not make inclusion on the list of Type II actions exempt from SEQRA the appropriate vehicle with which to attempt to resolve the problem. SEQRA is not a housing development law; its purpose is to incorporate environmental factors into government decision making. Housing, especially multifamily housing, is certainly a beneficial endeavor, but that does not mean it inherently does not warrant evaluation under SEQRA.

In the Regulatory Impact Statement, DEC explains that it searched the Environmental Notice Bulletin (ENB) for the years 2023-2024 and found no positive declarations for a 5,720 square foot three-story, six-unit multi-family residence. But as DEC acknowledges, this is a small sample size on which to then conclude that housing developments like the ones proposed for the Type II list categorically do not significantly impact the environment. Further, DEC notes that it did identify two positive declarations, but “for much larger developments.” DEC does not elaborate on their size, despite that the threshold it sets in its proposed Type II exemption here would cover developments up to 10,000 square feet.

As to the 10,000 square feet threshold, DEC explains that area “equates to 6 to 8 apartments” in a multi-family building, and “[f]or that size development, DEC could not identify any that have required preparation of an EIS.” But DEC does not explain its methodology here or why this search was done separately from the one described above. It is also not clear if DEC’s conclusion relates to residential buildings of any square footage, but housing “6 to 8 apartments,” or if it relates to buildings up to 10,000 square feet, regardless of the number of apartments it holds. These analyses do not support a conclusion that the proposed Type II actions do not significantly adversely impact the environment.

Save the Sound is also very wary of DEC’s implication that appurtenant structures in connection with residential construction of four or more dwelling units necessarily have no

significant environmental impact. The proposed regulations place no size or design restrictions on these appurtenant structures, allowing construction with known adverse environmental impacts to proceed without SEQRA review. For example, the proposed amendment would exclude from SEQRA review large parking lots which would add polluted stormwater runoff to our waterways and increase neighborhood flooding, as well as contribute to urban heat island effects, and landscaping that could remove or harm native plants and wildlife and introduces pesticides to our communities and waterways.

Further, because the overall context of the rulemaking is to add “significance factors” lead agencies must consider in their SEQRA evaluations, a historic lack of positive declarations for residential housing developments does not necessarily mean that such developments should be categorized as necessarily having no significant environmental impact. Developments of the type and size DEC would here exempt could potentially impose disproportionate burdens on DACs, and may therefore receive positive declarations where similar developments would not have previously. This is particularly so with the inclusion of construction of appurtenant structures such as parking areas and landscaping, on which the proposed Type II listing places no size or design restrictions. These structures could introduce additional burdens to DACs such as increased stormwater runoff and use of pesticides absent adequate mitigation measures. Site plan review would not necessarily include such considerations.

The Regulatory Impact Statement also notes that typical impacts of multifamily residential developments like the ones it is proposing for the Type II list “are not unlike typical impacts for one, two, and three family housing.” But given the extreme variation in the size and nature of any of these sorts of developments and the lack of size restrictions in the current regulations, this comparison is not helpful. Rather than suggest this means multifamily housing subject to the included restrictions should not be subject to SEQRA, this comparison should prompt DEC to question whether it has placed adequate conditions on what single, two, and three family residential developments should be exempt from SEQRA. A single family home with comparable impacts to an 8 family home, for example, should perhaps receive more oversight than a site plan review.

In sum, DEC can only add multifamily residential housing developments and appurtenant structures to the Type II list if it can demonstrate these actions would have no significant environmental impact. This decision must be based on the actual impacts of the proposed

action, even for projects that serve a general public good, like housing. If DEC cannot make this demonstration, then it cannot make this addition to the Type II list.¹

Conclusion

The Environmental Justice Siting Law's success hinges on centering disadvantaged community voices, rejecting tiered classifications, enforcing clear standards, and generally following the law's mandate to actively reduce the disproportionate pollution burdens of disadvantaged communities. DEC must act diligently to incorporate these recommendations to fulfill the law's promise of environmental justice.

Thank you for your consideration.

Respectfully submitted,

/s/ Alex Rodriguez

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¹ Save the Sound also requests that DEC explain in the Summary of Express Terms and/or Regulatory Impact Statement the significance and practical effect of the change in the language of 6 NYCRR 617.5(c)(11)(i) from "or a three-family residence" to "or multifamily dwelling consisting of a three-family residence."