

NYDEC Announces New Environmental Justice Requirements under SEQRA and UPA

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Continuing its growing initiatives to protect environmental justice communities, the New York Department of Environmental Conservation (“NYDEC”) recently announced the release of proposed amendments to its State Environmental Quality Review Act (SEQRA) and Uniform Procedures Act (UPA) rules to incorporate provisions of the Environmental Justice Siting Law, which was signed by Governor Kathy Hochul in 2022. The draft regulations, which would impact various permits for projects across the state, seek to require consideration of potential existing burdens in “disadvantaged communities” (“DACs”) that already bear higher levels of pollution, effects of climate change and socioeconomic vulnerabilities.

State Environmental Quality Review Act (SEQRA)

The proposed rules would require all state agencies in New York to determine if any agency action “may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action” (6 NYCRR § 617.7(c)(1)(xiii)). Such agency actions include reviewing applications for permits, licenses, zoning changes, site plans, subdivisions, and funding grants by any local or state agency in New York..

Under the existing regulatory framework, government actions resulting in at least one significant adverse environmental impact warrant a determination of significance, triggering the preparation of an Environmental Impact Statement (EIS) on the proposed action. The proposed rules would now require state agencies to evaluate whether an agency action would result in an increased burden on DACs by considering “reasonably related long-term, short-term, direct, indirect, and cumulative impacts” (6 NYCRR § 617.7(c)(2)).

To facilitate the implementation of cumulative impact assessments, DEC has introduced the Disadvantaged Community Assessment Tool (DACAT), intended to help permit applicants to identify areas that fall within the criteria of disadvantaged communities.

The proposed rules also update DEC’s Environmental Assessment Forms (EAFs) to require permit applicants to analyze and disclose potential disproportionate pollution burdens on DACs (6 NYCRR § 617.2(l)). Thus, the question of what constitutes a “disproportionate burden” becomes a significant consideration for applicants seeking government funding or approvals subject to SEQRA. However, this rulemaking also amends actions that do not require further review under SEQRA to include certain multi-family housing with not more than 10,000 square feet of gross floor area.

Uniform Procedures Act (UPA)

The proposed rules would also amend DEC’s rules under the Uniform Procedures Act (UPA), which governs how DEC processes permit applications, to further incorporate environmental justice considerations into permitting reviews, including review of applications for projects affecting wetlands, wastewater discharge, solid waste and air facility permits.

In effectuating the requirements of the EJ Siting Law, new permit applicants will be required to prepare an Existing Burden Report where the activity “may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community.” Permit renewal and modification applications are also required to prepare Existing Burden Reports. Yet NYDEC may provide exemptions if it determines that “the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative.”

NYDEC’s proposal would require project developers to create plans for meaningful community participation, ensuring that applicants demonstrate how they will engage with and involve affected communities. Should the proposed rules go into effect, applicants would now need to “provide opportunities for meaningful community engagement” and incorporate public feedback into project designs.

Permit Application Strategy

Considering NYDEC’s proposed amendments, permit applicants will likely face uncertainty regarding how the new requirements will impact the permitting process and their projects. To ensure a smooth and cost-effective permitting strategy, it is important that applicants consult with experienced professionals and legal counsel early in the process, as failure to meet these standards could result in permit denials and/or the assessment of penalties.

The deadline to submit comments on the proposed SEQRA changes under the EJ Siting Law is May 7, 2025. To read more about the proposed changes to SEQRA under the EJ Siting Law or to comment on the proposal, you can visit NYDEC’s [rulemaking page](#).