

Citizens' Environmental Coalition* Sustainable South Bronx

September 17, 2008

Lisa F. Garcia
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NYS DEC
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Dear Ms. Garcia,

We want to express particular appreciation for your efforts and those of Monica Kreshik and Jennifer Kozlowski in assisting the Governor's Environmental Justice Interagency Task Force in this very important effort. We look forward to a successful outcome and want you to know that your efforts have contributed to the progress we have made thus far.

Please feel free to ask us for any clarifications as the many comments provided here are necessarily provided in a very brief.

Sincerely,



Barbara Warren
Executive Director
Citizens Environmental Coalition



Miquela Craytor
Executive Director
Sustainable South Bronx

Cc: Jennifer Kozlowski

Environmental Justice Comments to Interagency Task Force

Overview of the Problem

We very much appreciate the Governor's initiative to involve 14 state agencies in looking closely at environmental justice issues to identify what they can do to reduce inequities and improve conditions for environmental justice communities. As part of this effort we have been organized into five workgroups. There are many issues that have been captured in these workgroups and some that we are concerned may not have been adequately explored. Hopefully our comments will cover all of these, even if only in brief. However, there are overarching issues related to a society that allows some of its people to be disadvantaged, to have fewer opportunities, or to be more vulnerable without government providing a safety net or additional protection for these populations. These populations include the poor, ethnic and racial minority groups, people with disabilities, the sick and uninsured, those that are institutionalized and finally children. While we often refer to EJ communities as low income, people of color communities, the reality is that all of these other vulnerable populations are within EJ communities. The vulnerability of children is unique because they are exposed to environmental toxins before they are born, and their organs and critical body systems develop in the presence of substances that harm healthy adult systems. Our children are the future and the extent to which we fail to protect them today will be the extent to which future adults may be impaired, ill or disabled. Our business in this Task Force is to address EJ Communities and offer critical policy suggestions that will allow agencies to better serve and protect them. Now that we have reviewed the populations involved let us look at some of the issues affecting environmental justice.

Sustainability is a recent concept that has enormous value for public policy decisions. It encompasses three pillars—environment, economy and society. The failure of our society to support people and their needs is reflected in a number of failures in environmental and health protection. What has largely been out of balance with the 3 pillars is our worship of our economy and business. We have regularly directed taxpayer dollars, government and personnel resources to assisting businesses to be profitable. The imbalance created by inordinate resources directed toward private interests while sacrificing society's goals has advanced to a situation where even our entire economy is threatened. Deregulation was operative for the Enron and World Com debacles and for many others, where fraud, corruption and other illegalities cost this country and other public and private entities billions of dollars. Deregulation of the banking industry was advanced, despite the previous debacle with the Savings & Loan industry under George Bush Sr. Following the recent collapse of Bear Stearns and the federal bail out, Fannie Mae and Freddie Mac had to be seized by the government to prevent a collapse of our entire economy. Millions of people have not only lost their homes but their investments in those homes. What is the common thread of all this? We certainly cannot say that too

few resources were provided to the banking industry, or too little assistance from the Federal Reserve. Enormous resources, assistance with lower interest rates and other tax incentives have propped up Wall Street and the stock market. Few regulations stood in the way of fancy investment instruments that had no firm financial value. An excess of resources led to speculation and that speculation went unchecked by any sort of reasonable regulatory environment. It is interesting to see financial commentators now recommending regulation as a solution to these problems. A review and cost assessment of the financial failures over the past ten years and the cost to society might provide a more rationale approach to Regulation and its benefits. What has been out of balance is excessive support from taxpayers going directly to private interests with no societal accountability. The environment and social pillars of sustainability have been woefully neglected and this is most obvious in EJ communities. EJ Communities cannot be protected by this Task Force or any other process without a reasonable respect for REGULATIONS and their role in society in protecting the public interest against abuses.

Inequities and Environmental injustice relate to an imbalance in power and to unsustainable systems. Government must fulfill a critical role in balancing the needs of all the members of society. Government officials to fulfill their essential role in protecting the public interest must be able to recognize where power is out of bounds and where powerlessness is contributing to the problem. There may be different reasons for populations to be powerless or more vulnerable and we should be attuned to it wherever it occurs—in rural areas as well as urban communities.

EJ communities do not need government officials who cater primarily to business interests. EJ communities need justice, fairness and equity. Government should be prepared to step-in and fulfill this role. The existing imbalance in power between business interests and communities is exemplified by the repeated EJ very basic and simple request for access to information. Citizens cannot exercise their rights in a democracy without information. If the Interagency Task Force cannot improve the ability of EJ communities not only to access information, but to participate meaningfully, then this effort will be a failure.

All the government agencies involved in this effort should be prepared to put significant attention into dealing with power abuses and exploitative behavior that impacts people, their health and the environment. EJ communities understand inequities related to power by asking three key questions related to particular projects: Who pays?, who bears the burden? and who receives the benefits? Corporations and businesses in New York State need to be pushed toward sustainability. They need to meet fundamental requirements related to social responsibility and environmental protection. REGULATIONS are beneficial and serve to level the playing field for socially and environmentally responsible businesses, enabling them to compete with corporations that tend toward socially exploitive, polluting or other behaviors harmful to society. REGULATIONS and their oversight and enforcement are even more essential in EJ communities, where multiple environmental burdens, poverty, and inadequate health care magnify the impacts of environmental pollution.

We recommend that as the agencies consider their mission and goals with this Interagency Environmental Justice Task Force that serious consideration be given to advising the Governor that an Environmental Justice Executive Order is needed to formalize this effort.

Unfortunately most of our recommendations are directed at only a few agencies. Some of this is because we are not entirely familiar with all of the existing operations at each agency and the opportunities there may be. We intend however that each agency takes to heart key messages about cumulative impacts, unsustainable practices, abuse of power, vulnerable communities and the absolutely necessary role of government in protecting the public interest through regulations and government intervention. All agencies have an opportunity to advance sustainability, to promote green jobs and to do what they can to advance meaningful participation from EJ community members.

Environmental Justice Issues

Major Areas of Comment

I Health Disparities:

We recommend a Task Force or Committee be assembled to address health disparities, led by the Department of Health to include EJ advocates and DEC representation.

This is a major priority issue that the State Department of Health should take the lead on in conjunction with the DEC and possibly other agencies as appropriate. The statistics for NYS indicate significant health disparities. This needs significant attention from DOH and from those most impacted. Population-wide health interventions are needed. Such public health measures are the most cost-effective. A committee of advocates can work with the agencies to identify those disparities impacted by environmental factors and develop corrective action plans. We learned from Wendy Saunders, Chief of Staff at DOH, on July 9th that DOH has directed Medicaid dollars to Public Health programs-- \$21 million out of \$48 billion. If it is feasible to use Medicaid dollars in this way, we recommend a much more ambitious investment in public health programs. One percent of \$48 billion would amount to \$480 million dollars for public health and that investment would result in substantial savings to Medicaid over the long term. It is important to remember that many of the working poor do not qualify for Medicaid and would significantly benefit from public health programs.

A clean environment protects public health. We have known that environmental conditions have a significant impact on public health since the early 19th century. In fact environmental improvements related to waste, sanitation, water quality and housing are more responsible for the general health of the population than more familiar advances in medical treatment. The lessons of the early 19th century must be brought back to the fore two centuries later. We must clean up the environment in the interest of whole communities to prevent sickness and disease. Health care is not just about care for

individuals but assessments of whole communities and populations; it is known as public health. A great deal of public health is now handled by environmental agencies or shared by multiple agencies. We are failing both to adequately invest in public health and to bring all relevant environment and health professionals together to tackle the public health problems of today in a holistic, comprehensive manner in conjunction with EJ communities that are most impacted.

This section of the Environmental Conservation Law describes the very important public health mission of the state. Pursuant to Section 1-0101 of the Environmental Conservation Law (ECL), “it is the policy of the State of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being....” and “to fulfill it's responsibility as trustee of the environment for the present and future generations.” Lead Poisoning is not only a significant public health problem that impacts EJ communities, but it is a very long-standing one that continues to affect future generations. It leads to failure in school and social difficulties, which include aggressiveness and crime. Preventing lead poisoning is the most cost effective solution to a full range of lost potential and societal costs.

II SEQRA Reform: We recommend major reform related to the implementation of SEQRA at the State Level. We believe many of these important changes can be made through amended guidance from Commissioner Grannis.

Critical environmental areas: The DEC has designated critical environmental areas in the past related to natural settings or ecological features. We note that DEC has recently amended the definition of a critical environmental area to include a feature that is a benefit or threat to human health. We believe this expanded definition can facilitate the identification of communities that need extra protection because of cumulative or multiple impacts.

The DEC and DOH should investigate and designate any critical environmental areas in order to protect the environment and human health and prioritize actions necessary in critical environmental areas. Such designations could include air, soil and water pollution that threatens human health or the ecosystem directly or indirectly. Multiple environmental burdens could be used to designate an EJ community as a critical environmental area. This could facilitate consideration of cumulative and multimedia impacts as well as bringing resources to bear on the remediation of existing environmental degradation.

Critical thresholds: **We recommend that DEC and the Department of Health (DOH) pull together existing information related to contaminants, pollutants and environmental media in order to establish critical thresholds for the protection of the people of this state and the environment.** As part of this effort, health-based and

other types of standards and guidance values shall be considered along with multi-media, total and cumulative human exposures, including impacts on sensitive populations.

Pursuant to Section 8-0103 of the ECL, "The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached;" and

Air Quality Example: The federal government has done extensive work in relation to setting health based standards for air quality (although there have certainly been lapses in judgment). However we do have health- based standards for criteria pollutants. In that regard over 40% of the population in the State is breathing air that does not meet these standards – in other words they are breathing unhealthy air. This has enormous implications for illness, disease and premature death as well as for health care costs. We are suggesting that areas of the state in non-attainment for the federal health based standards – be considered to have exceeded critical thresholds. The relevant paragraph in the ECL is loaded with meaning—the capacity of the environment is limited, the govt. should take immediate steps and all coordinated actions necessary, etc.

Critical thresholds could also apply to water quality contaminants, and most importantly should be applied to levels of PBTs, persistent bioaccumulative toxins in former industrial areas, etc.

Consideration of alternatives: Section 8-0109 of the ECL specifies that “Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, and to the maximum extent practicable, minimize or avoid adverse environmental effects...” The DEC can require all permit applicants to explore the environmentally-preferable alternatives to the proposed action including alternate sites, alternate technologies and equipment, alternate methods and chemicals, and best practices in the industry including pollution prevention techniques and programs.

The DEC should clarify and enhance important requirements in the State Environmental Quality Review Act (SEQRA) to ensure that the full intent of the law to facilitate full democratic participation in environmental decisions is realized in practice. This will include, but not be limited to the following provisions.

A) *Full and comprehensive information:* All applicants for permits to DEC must submit full and comprehensive information about their proposed project and the environmental and community setting in which the project is to be undertaken. DEC cannot fulfill its obligations related to the laws of this state and make responsible judgments where the applicant supplies minimal and inadequate information to understand the project and its potential for impacts. Failure to supply accurate and sufficient information is grounds for denial of the permit. Applicant’s statements about the absence of environmental impacts will be used to establish enforceable permit conditions. The decision that an action is

Type II should be based on full and comprehensive information about the project. A full Environmental Assessment Form should be required for all projects, since it is not an onerous requirement and supplies important information. The full environmental assessment form should contain the final assessment or determination by the agency and a signature of the reviewer. The public notice for the project should reflect the final determination and no agency public notice should be issued until it is complete. No negative declarations or conditioned negative declarations should be issued where only minimal project descriptions have been provided. NDs and CNDs will be used only where there is NO POTENTIAL for adverse impacts to the environment.

A review of all Negative Declarations over the past year should be done to identify problems associated with failure to appropriately identify the threshold for more in depth environmental review. That threshold as clearly stated in the Environmental Assessment Form is only the POTENTIAL for adverse impacts.

B) Environmental setting/ Existing conditions: All new projects are proposed to be placed somewhere in the state where the environmental setting and all existing conditions must be fully described. No project shall proceed where the description of existing conditions is inadequate for the average prudent person to make an informed decision. Environment is defined under SEQR law to include “existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.” This definition enables environmental justice considerations to be part of the description of the environmental setting and existing conditions.

C) Public participation and access to information: When an applicant files a project description and an EAF with DEC, the applicant will be required to notify the public. If the action is clearly a Type II Action, the applicant will print a public notice in local newspapers and provide evidence of outreach to affected members of the public. If the action is Unlisted or a Type I action, the applicant will print a public notice, conduct a public information meeting, with notice to DEC, and distribute written materials on the project. The requirement for a public informational meeting should be met by the applicant prior to finalization of DEC’s review of the project. The applicant should be required to indicate what they have done to outreach to the community. Once an application is received by DEC, the agency will ensure that the public has access to information about the project. Each DEC office will maintain a public access room for review of documents and a public access officer in each region will arrange for access to the relevant documents. It will not be necessary to file a Freedom of Information Letter during any publicly noticed review period. Upon request, members of the public will receive a printed list of documents related to the project under review, including the application, Environmental Assessment Form, supporting materials and draft permits.

D) Health Impact Statement for Proposed Facilities

DEC working with DOH should establish requirements for Health Impact Statements (HIS) for all new projects that could pose an increased public health risk. The HIS would be a new supplement to the EIS to comprehensively assess health risks, especially for

overburdened communities, and actions that can be taken to avoid, eliminate or mitigate such risks. This could be done through regulation and guidance.

E) Enforcement proceedings: Enforcement proceedings can be utilized as an immediate, short term mechanism to bring permit violators into compliance and to ensure that corrective action is undertaken expeditiously. Enforcement actions should not be used to limit the legitimate need for public input on a major environmental problem and its long term remediation, where the DEC has considerable discretionary authority to choose among a variety of remedies. The DEC will avoid placing associated discretionary projects and actions (consistent with Type I Actions) in an enforcement proceeding such that the affected public is unable to be involved in appropriate environmental review.

F) Permit Renewals: DEC should ensure that all permit holders comply with environmental laws and regulations. Renewals of permits will require a review of any past history of non-compliance by the facility and development of a plan to permanently remedy the noncompliance. Renewal periods can be shortened when the DEC determines it is necessary to more effectively monitor a facility's compliance.

G) As of Right Zoning: We believe that incorrect and inadequate information is given out by local officials to project developers related to as-of-right zoning. Educational materials on this topic prepared by the state should be made available to all county and local governments in the state, so that they can properly convey the requirements for SEQRA and permit reviews.

III Fair Allocation of Benefits

Environmental inequities involve hazards, pollution, undesirable land uses, lack of oversight and compliance efforts, inadequate public involvement, etc. However, there is a whole other universe of issues associated with the fair allocation of benefits. These include:

Open Space, Parks, and Recreational opportunities—most of the state parks are out of reach for urban residents. Programs need to be brought to inner cities as well as programs for youth to have opportunities to utilize state parks and their programs.

Transportation systems—must enable communities to access employment that is not in the business core of an urban area.

Job Programs and training— Unemployment is known to be a major factor in health status. We must tackle the high unemployment statistics and create pathways out of poverty.

Environmental Protection Fund Grants—EJ groups need to receive a fair allocation of these funds. They may have difficulty competing with other major organizations for funding. Correcting current inequities will require a larger proportion of EPF funding.

Other grant programs- The same is true of all other grant funding. We know the inequities that exist, fixing them requires additional resources.

IV Special Category: Economic Development Grants

Economic Development Grants and incentives are particularly problematic in relation to the fair allocation of benefits; they represent a double-edged sword. EJ communities have often received more than their fair share of ESD benefits and it has led to the environmental degradation of EJ communities. Empire State Development has enormous resources it conveys for economic development. ESD in general is part of the power structure that is at the root of major inequities and which throws money at almost any kind of economic development. Benefits don't go to communities but to developers or companies. There are few criteria related to environment and social benefits and even in relation to the promised job benefits; there are no strings attached to the monies, tax breaks and other incentives. As a result after receiving state money a facility can decide to move to Mexico or elsewhere, or the promised number of jobs was overestimated and is never realized. Economic development money can go to really Bad actors, who injure workers or pollute the environment. Low income communities are often targeted by state and other agencies for economic development. While some of this may be appropriate, we have seen terrible uses of economic development monies. In NYC, these monies were used to encourage waste transfer stations to locate in communities already overburdened with waste facilities. Another stark example of gross inequities is the huge Hunt's Point Market in the South Bronx where thousands of trucks converge on this food distribution center for the metro area. How is it that the community in the South Bronx doesn't ever see a green leafy anything from this \$8 billion dollar operation. Given the magnitude of this operation couldn't someone have ensured that the community receives some benefits, rather than just extraordinary air pollution – maybe a market offering fresh food at lower prices should have been part of the deal. The fish market also moved there recently and I don't know that anyone has seen a single fish either.

Given the amount of economic development resources, reform at ESD could do extraordinary things for New York State and EJ communities particularly. In contrast the larger agency, the Environmental Services unit has been doing very constructive work by promoting more sustainable projects in the state. Their unit could be expanded and their expertise could help lead the agency toward more sustainability. Instead the recent pattern has been to shrink this unit, despite the allocation of funding for 4 new positions under the Pollution Prevention Act. So while this small unit brings us to the forefront of sustainable economic development, it is terribly underfunded.

Communities should be consulted and active participants regarding appropriate economic development. Businesses that follow the rules, work with communities, offer community benefits and demonstrate environmental responsibility could receive more attention from the state. And we could attract those kinds of businesses by offering incentives, with strings attached. We could promote sustainable business practices and the hiring of more minority workers. We could attract new businesses or expand old ones where we see market niches or opportunities to fill the demand for more green products. For example

consumers are very leery about toys from China. We could ensure safe children's toys that are made in NY.

In general ESD needs to adopt sustainability goals and criteria for measurement of success beyond dollars put into economic development. The eventual success of a particular business or CEO should not be at the expense of the community and the environment where the company resides, or of workers and their well being. We recommend that the Department of State play a role here since they maintain a database of corporations. For our purposes we need to differentiate those businesses and corporations that operate sustainably and provide social, environmental benefits in addition to economic ones. A database of important information regarding state assistance received and compliance with state laws would be very useful to state agencies and the public.

Creating Jobs: Equity in Allocation of Economic Development Dollars

Millions of dollars in benefits and incentives are provided to single projects in the state – as much as \$500 million. We want to raise the question: what if a percentage of these funds was instead dedicated to creating a Green Jobs Corp in NY? What if 5% of the entire pot of economic dollars was devoted to those at the very bottom of the economic ladder, providing training, beginning job skills and creating entry level jobs and pathways out of poverty? What if we dedicated those jobs to environmental projects we desperately need – energy efficiency, retrofitting homes for energy efficiency, building deconstruction, recycling, reuse and composting? What if we collect food scraps and compost at more community gardens, create greenhouses in urban communities to grow some fresh vegetables year round and eliminate food deserts? What if we dedicated a portion of those jobs to public health and prevention?—we might make significant progress on eliminating health disparities and keeping people healthy. What if DEC worked directly with a Green Corps to conduct environmental monitoring, observations and reporting and to plan community improvements?

What would be the result? We would not only help those directly trained or employed, but entire communities experiencing the most limited economic resources. We would be stimulating the economy from the bottom up, where we know it does the most good. We know that Trickle down is a complete failure; it's time to try Trickle up.

V Sustainability & Solid Waste

The examples above speak to sustainability. We recommend that limited state dollars be invested in sustainability, in solutions that are sustainable in three spheres—economics, environment and society. If we tackle existing environment problems with cost-effective solutions that provide social benefits and share them equitably, we will get more value for our investment and actually help the economy of the state. An example of this is in the arena of solid waste. We have a choice to invest in more landfills or incinerators to dispose of waste, but both of these solutions have bad outcomes—toxic leachate and air emissions, negative impacts on communities, and high costs. Negative land uses are often

sited in communities least able to fight them, EJ communities. In contrast we can invest in zero waste strategies—prevent or reduce waste, reuse valuable goods by transferring them to those with low incomes, recycle and remanufacture the materials we recover, and compost green organic waste, benefiting the soil and food production. Zero Waste strategies not only are the least expensive, but they provide multiple benefits for communities—green jobs and economic development, reusable goods, organic material for raising food. The environment wins because the recovered materials and energy (that went into the original virgin product) provide significant greenhouse gas emission reductions.

The state has important decisions to make in relation to solid waste management. A new State Plan is now being prepared that will guide state and local decisions into the future. As discussed above, this plan is the State's opportunity to choose a sustainable plan or one that is costly for the environment and global warming, for communities and for taxpayers. Given such clear choices, it would seem obvious what ours should be. Unfortunately all too often private interests intervene and seek to divert public resources for their own personal gain. In such cases public dollars can be spent unsustainably—at high monetary costs, harming the environment, and providing social benefits to a limited few. A plan for the state to systematically avoid unsustainable policies and investments and to promote sustainable ones would do a great deal to balance the budget, economically, environmentally and socially.

VI Toxics

The Toxics Workgroup was established late and there are many issues to address here. In general we need to:

- 1) Prevent further degradation of low income minority communities by preventing additional toxic contamination from new polluting projects.
- 2) Study existing levels of contamination in whole communities
- 3) Identify high hazard toxic facilities and plan for closure, mitigation and cleanup.
- 4) Conduct health assessments related to toxic exposures
- 5) Provide recommendations and actions that will reduce existing contamination and exposures.
- 6) Recommend programs to evaluate whole communities and make recommendations for how to reduce toxics exposures and thus prevent illnesses and disease.
- 7) Ensure that the state establishes a comprehensive occupational health and safety program that emphasizes prevention activities to prevent unsafe and unhealthy workplace conditions. Minority workers are more likely to be exposed to unsafe conditions because of the kinds of jobs open to them. Prevention includes education and outreach programs.

Is Equity Enough? Fundamental Human Rights.

We thought it best to put this fundamental question about equity in the Section related to Toxics. What has been happening for far too long is that some businesses have been transferring a major share of the cost of production onto the public sector. The price of their products does not incorporate the full costs of properly managing toxic emissions and hazardous waste. The public sector and taxpayers are left to pay the bill to obtain clean water supplies or clean up hazardous waste. The evidence of the problems this has created is everywhere around in the toxic substances in our soil, air and water and even hundreds of toxins found in our bodies. None of the substances we are talking about here are innocuous, they are all known to be toxic to various body organs and systems with many of them causing very severe health impacts like cancer, birth defects or permanent neurological impairment. In the context of addressing environmental justice would it be adequate for us to say—it's OK for us to continue to allow the continued contamination of New York state and its people, as long as we ensure that everyone in the state receives their fair share of the burden of toxic contamination?. Is it alright as long as everyone gets the same dose of poisons?. The answer of course is obvious; achieving equity in toxic contamination is not enough, because it violates fundamental human rights and is morally wrong to harm another human being. What must be done is to stop any practice that is morally wrong and to find appropriate solutions, that do not treat people as disposable.

The agencies involved in the Interagency Task Force must recognize what are fundamental wrongs, give appropriate value to basic human rights and then address inequities related to both environmental protection and environmental benefits.

Hazardous Waste Facilities

Hazardous waste facilities don't belong in anyone's backyard. They represent a failure of public policy, government and society. Our state has articulated a policy calling for greater attention to pollution prevention and closed loop recycling of hazardous materials in-house at businesses that generate this material. These are solutions that do not violate the rights of others and push businesses toward taking responsibility for their entire production cycle. No level of citizen participation could ever make the siting of hazardous waste facilities acceptable for any community. The flow of hazardous waste must be stopped and pollution prevention policies strengthened.

Lead Poisoning of Kids

We really cannot talk about Environmental justice without talking about a legacy of lead poisoning that forever compromises the health and potential of children. It is truly unconscionable for our great state to not come up with a plan to immediately tackle this problem and make sure that no new infant goes home to a lead contaminated apartment. Even excluding human suffering, the eventual health and societal costs are too great when you consider the costs in the education system, the delinquency, prison and court systems, and the health care system. Adults can suffer hypertension and strokes from lead poisoning. Building on the successes in Rochester, we can tackle this problem and win.

Our focus must be spent on preventing lead poisoning in the first place. We have an opportunity here to combine the efforts and funding for retrofitting homes to increase energy efficiency with efforts to address lead in buildings.

Brownfield and Superfund Sites

- Create Database of Past industrial activity and likely contamination and make available to the public. DEC and DOH should provide more detailed information on suspected and known Brownfield and Superfund site contamination and history on their websites.
- Set more comprehensive procedures for conducting adequate testing at suspected toxic sites. These procedures should be shared with other government entities so that local, state and federal governments conduct proper site assessments. The problem in Niagara Falls where HUD was building housing on a very contaminated site should not have occurred. Workers were sickened by work at this site.
- Review and upgrade Cleanup standards so they reflect health-based standards and protect public health.
- DEC should increase monitoring and enforcement at brownfield and Superfund sites to address vapor intrusion, toxic leachate migration off-site, off-site cleanup and other problems.
- The new Citizen Participation manual which guides the participation of community members in decisions regarding superfund, brownfields, landfills and other sites, requires the substantive participation of those most impacted. Too many EJ and environmental groups are contributing significant time to this process to focus on this manual. We are asking for additional time to develop comments on this important manual. February would be an appropriate deadline for Comments.

School Siting at toxic sites and locations

The state needs a health protective policy for our children. Schools, day care and other facilities for children should not be sited on contaminated land or adjacent to toxic facilities, like pesticide factories. Children are more vulnerable to toxins as their systems are not fully formed and are still developing. DEC and DOH and Dept. of Education should establish a safe school siting policy to ensure that local and state government and school administrations have policies and procedures to require adequate testing of potential school sites and protective cleanups, if contamination is found.

Persistent, Bioaccumulative Toxins pose a substantial health threat.

The state really needs a comprehensive PBT policy to protect ecosystems, fish and wildlife and humans. Too many PBTs remain in our environment that were banned decades ago; they simply do not degrade easily. This means that as more PBTs are sold and used in commerce, additional PBT contamination is occurring. Environmental justice communities have a legacy of this PBT contamination in former industrial areas. Many sites have not been assessed, much less cleaned up. New projects are easily permitted under the guise of bringing economic development without considering the total cumulative burden that the people in this community experience. We often talk about cumulative impacts from multiple polluting facilities but nowhere does this have more meaning than when we are talking about toxic chemicals that have persistent and bioaccumulative properties. Health researchers have documented the connection of PBTs to chronic diseases including diabetes, cardiovascular diseases and obesity.

VII Energy

New York State has the highest electric energy costs in the nation and our efforts toward deregulation have only worsened the situation. Deregulation's promise touted by private interests was low costs for consumers. However, it was not surprising that we were instead met by higher costs. The state advanced a system that would benefit private interests over the public interest. Reregulation should be a top priority for New York State. High costs are just one of the adverse impacts on low income communities. The other is allowing the market to determine where and what kind of power supplies will be provided. Building more power plants is not the answer. Energy efficiency and renewable energy systems are. A large driver of our high energy costs is peak power demand and the high costs consumers pay on peak power days. Older peak power plants also generate pollution. The combination of higher costs and pollution mean that peak power plants should come off line and be replaced by energy efficiency and solar power. Solar installations are ideal for addressing peak power and since they provide energy all the time when the sun is shining, they do not demand top prices for their energy on peak days. NYPA should be investing in solar installations in NYC for high rise buildings. Such solar power would help with peak power needs and provide emergency lighting and some limited elevator service at times of electric outages—a critical need in cities like NYC.

We need to see more equity in our system of energy. There are several ways to do this:

- 1) Do not address peak power needs with emergency diesel generators, which harm air quality
- 2) Begin to close polluting peak generators; fund and incentivize solar installations in these communities. (Do not use a health study as an excuse to delay these actions.)
- 3) Engage EJ communities in energy efficiency education and outreach to homeowners and small businesses.
- 4) Provide training and entry level jobs in energy efficiency and renewable energy programs, while making sure these jobs work to correct the inequities in minority employment.

- 5) Address the rate structure for low income and small businesses, so that a basic block of electricity can be purchased at a low rate, thus encouraging energy efficiency. (If we can provide very cheap electricity to major users, we can do this for those with low incomes.)
- 6) Ensure that resources from the RGGI auction are prioritized for addressing needs of EJ communities.

Nuclear Power

With global warming much in the news we hear a great deal about the disadvantages of fossil fuels, particularly coal because of greenhouse gases, and oil because of our dependence on imports. Nuclear energy is now being advanced as a solution to these woes. Nuclear power is an inherently dangerous technology which produces large quantities of extremely long-lived, highly radioactive waste and unacceptable risks for accidents, spills and very long term contamination. Radioactive waste has taken a toll on New York state communities and workers. The state must take an active role in ensuring that all legislators at the federal and state level are united in pushing the federal government to conduct a long overdue cleanup of the leaking West Valley nuclear waste site, which threatens the Great Lakes, a drinking water resource for millions of New Yorkers in the vicinity of Buffalo. If the government cannot cleanup the radioactive messes that were caused by a careless approach to highly radioactive materials, then logic tells us that government should not proceed with more nuclear power proposals. Nuclear energy is a key example of a most unsustainable solution in 3 spheres- economics, environment and society. The high costs of nuclear plants increase electric rates and have the highest impact on low income communities. DEC, NYSERDA, ESD and other agencies should establish a nuclear-free energy policy to ensure the state does not permit any new proposed nuclear reactors (such as the reactor proposed for Oswego County) and to investigate phasing out the existing reactors in the state (such as Indian Point).

VIII Air Quality

SIP – State Implementation Planning

SIPs must prioritize bringing areas of the state into attainment with air quality standards as rapidly as possible, because of the large public health impacts from air that violates these standards. To that end SIPs should go far beyond what is minimally necessary to pass muster with EPA. Additional measures should be adopted. Please refer to our earlier discussion of using the concept of critical thresholds to implement more aggressive SIPs related to criteria pollutants.

While we appreciate the contribution of pollution from the out- of- state airshed, we must more carefully conduct oversight and compliance activities at a multitude of minor air pollution sources in the NY metropolitan area. The design of the DEC's air program since 1990 has systematically discounted smaller sources and their impacts. Funding from major sources is inadequate for the state program and smaller sources have been given almost no attention. Per ton permit fees should be increased and a base fee established for small sources to fund routine compliance activities. Once capped out as a major source little review and oversight is focused on these minor sources.

Permitting

In nonattainment areas there should never be a waiver of air monitoring prior to the permitting of a new facility. Such monitoring can help keep track of ambient air quality over the course of time and in the immediate vicinity of a new project. Major new sources that are the first of its kind in the state, because of size or technology used, should only be permitted on the basis of a comprehensive, site-specific EIS. Permit limits should not be relaxed during permit renewals without extensive public notice and comment.

Air Monitoring

A recent court decision seems to have opened the way for New York State to plan for more comprehensive air monitoring than EPA had supported. NYS DEC should take advantage of this opportunity to design a rigorous program.

Air Toxics

The DEC's Air Toxic Program needs to be restored. The Clean Air Act Amendments have hurt the DEC's previously very good air toxics program, reducing health-based regulation of all air toxics from all facilities. We need to conduct more enforcement and more air monitoring to identify air toxic hotspots and plan for remediation.

Transportation

New Transportation projects—expanded highways, bridges, etc. – should only be done as part of a comprehensive plan in nonattainment areas. The failure to comprehensively plan for freight and commuter transportation has resulted in a hodge-podge of individual projects that exacerbate air quality problems. All major traffic generating projects should undergo an EIS that specifically evaluates the air impacts of mobile source pollution generated by the project.

DEC should evaluate whether it can adopt additional measures for motor vehicles such as requiring that diesel trucks get updated pollution controls when their engines are rebuilt.

Implementing Fair Share Policy

We recommend the state of New York consider supporting the development of an “equity atlas for each NYS EJ community, as is currently underway in the city of Portland Oregon <http://www.equityatlas.org/> . We ask that permitting agencies and policy makers use this tool to take a more progressive and holistic approach to evaluating the cumulative impacts of new and renewal permits as well as craft policy which stresses the “fair share” approach. For example the number of waste transfer stations (14) located in the South Bronx, which handles 40% of the City's waste, contrasted against the number of waste transfer stations in Manhattan, which handles none of its waste. This information could then be a policy tool for siting future waste transfer stations. In addition, mapping all polluting facilities (and their emissions) will visually document the disproportionate burden placed on EJ communities. This data overlaid with health

issues in EJ communities will elucidate the overall cumulative air quality impacts. The current method of reviewing and granting permits does not look holistically at the air quality in communities rather it looks at each permit independently. We recommend this holistic approach to permitting, so that if a community is shown (through poor air quality and negative public health impacts) to be environmentally overburdened, no new facility or burden be placed upon them.

IX Water Quality Issues

Require the implementation of green infrastructure to meet Consent Order mandates for Water Quality as part of the Long Term Control Plan process (including in New York City)

Some resources: http://swimmablenyc.info/wp-content/uploads/2008/02/epa-green-infrastructure_action_strategy.pdf

<http://swimmablenyc.info/wp-content/uploads/2008/02/epa-memo-re-green-infrastructure-in-permits-and-ltcps.pdf>

X Citizen Participation

It has been quite extraordinary to hear the volume and extent of comments related to process issues in every workgroup of the Interagency Task Force. We believe it is almost impossible to do justice to these comments and many of them have been recorded by agency staff. The first step for meaningful participation of citizens in government is to be provided with adequate public notice and access to information. Subsequently respectful, ongoing participation is critically important. However, there are fundamental principles associated with meaningful participation.

Permitting activities have created an extraordinary discrepancy in the time and resources devoted to applicants or developers vs. the time and resources devoted to the public interest. State agencies need to carefully consider how to balance their efforts and provide more attention to the public interest.

People are participating not to echo an already prevailing point of view or to support a hidden agenda.

It is often the solitary or quiet voice that provides the most insightful or profound comment.

It is not acceptable to take up the valuable time of EJ activists with activities that do not lead to meaningful change. Since their time is limited it is important to ensure that they are encouraged to participate in those activities which have the most potential to be meaningful for their communities and their interests. Ensuring that participation efforts are connected to measurable outcomes would be useful.

