Memorandum of Support

A.1811 (Kavanagh)/ S.3269 (Parker)

Title: An act to amend the environmental conservation law, in relation to granting private citizens the right to initiate civil enforcement actions for violations of such law.

Purpose: To grant private citizens broad authorization to commence civil judicial actions under certain titles of the Environmental Conservation Law (ECL).

Statement of Support: In late February 2017, the Trump administration announced that it would pursue the slow dismantling of the Environmental Protection Agency (EPA), starting with cutting 20% of the workforce and 25% of the agency’s funding. This loss in federal enforcement of environmental laws could have a profound effect upon New York’s air and water. Since 2008, the New York State Department of Environmental Conservation (DEC) has lost nearly 800 staff positions or 22% of its workforce. Funding cuts have also drastically curtailed the ability of the reduced staff to carry out their responsibilities as there is not enough money to finance travel, inspections, emergency response, toxic clean-ups, testing equipment and public outreach. As an example: staffing shortages have led to the unfortunate statistic that 90% of pollution discharge permits in the NYS get rubberstamped for reauthorization every 5 years with no inspection or reassessment - putting our waterways at risk to unexamined bad actors. Simply put, DEC is a bare bones agency that scarcely has the resources to fulfill its EPA delegated authority to uphold basic environmental protection laws. Withdrawal of the EPA under the Trump administration will only widen the gap between growing environmental degradation and flagging enforcement capacity.

As a result of these significant cuts to funding and FTE staffing levels, the DEC has implemented a new program for both public and private generators of pollution to conduct self-audits for environmental safety regulation compliance, presumably as a means to reduce staff obligations. The program put forward by DEC would relax oversight by allowing participating entities to reduce or avoid fines by conducting self-audits and reporting non-compliance violations within 30 days of their discovery and correcting the violation within 60 days of the violations disclosure. Enrolling in the self-audit program allows the company to additionally benefit by being placed as a “low priority” site for inspection.

Meanwhile, regressive court decisions have dramatically limited how much recourse the public has if they want to challenge violations to environmental laws or regulations. Restrictive standing requirements have essentially barred the public from the courthouse doors while anemic regulatory agencies allow polluters to define the terms of their own enforcement. Enactment of A.1811 will provide a level playing field for the public to reasonably enforce clear violations of environmental laws that threaten the health and safety of our communities. If the State budget process cannot find ways to adequately staff the DEC – and enforcement is left to the violators themselves - then the legislature must empower and enable the citizens of New York to fill the void. A.1811 will provide responsible
New Yorkers standing to bring citizens suits against a polluting entity simply by demonstrating an environmental harm has been committed.

**Sierra Club Atlantic Chapter Strongly Urges Your Support Of A.1811 / S.3269**