



Memorandum of Support

S.3211 (Ramos)

Purpose: To prohibit the Department of Environmental Conservation (DEC) from accepting as complete a draft environmental impact statement and from issuing a permit or approval for a proposed project subject to Commissioner's Policy 29 unless the applicant has prepared an enhanced public participation plan, the plan has been approved by the department, and the applicant has implemented the approved plan.

Statement of Support: Environmental Justice is the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. But in New York State there has been a chasm between policy and practice in how this injustice is addressed. In the 50 years since the first Earth Day, numerous projects, like power plants, factories, waste treatment facilities, incinerators, dumps, transit depots and other concentrated sources of pollution have been sited in communities which did not have resources to oppose such projects and who already bear the burden of disproportionate environmental degradation. And while we await the legislative infusion of environmental justice considerations into the core of the State Environmental Quality Review Act [S1031-B (Stewart-Cousins)], we must rely on current state policies to protect these communities.

Department of Environmental Conservation (DEC) Commissioner's Policy 29 (CP-29) requires that any permit for any action before the department must prepare and submit an enhanced Public Participation Plan if the proposal is to be sited in an environmental justice community. This is to give low income, immigrant and working people a better chance to learn about and comment upon a proposal that may bring more pollution or other harmful impacts into their already overburdened communities. CP-29 also requires the applicant to identify community stakeholders, actively seek public comment throughout the entire permit review process, and make relevant documents available in neighborhood document repositories.

But in practice, DEC has been inconsistent with their application of CP-29 and the department has had a tendency to lose interest in the enhanced public participation aspects of a proposal early in the environmental impact assessment phase. Citizens have equally found CP-29 difficult to enforce as it is not grounded in law or regulation.

S.3211 will not only Codify CP-29 and make it more enforceable – but will also require that when an EJ community could be impacted, a project only moves forward if the applicant has prepared an enhanced public participation plan, the plan has been approved by the department, and the applicant has implemented the approved plan. **The Sierra Club strongly urges your support of this important legislation.**

As a side note: There is no state agency that has the power to enforce SEQRA, including CP-29. The responsibility of enforcing SEQRA falls squarely on citizens under Article 78 of the New York State Civil Practice Law and Rules. Unfortunately, through regressive court rulings, restrictive standing requirements have stifled the public's ability to uphold the integrity of SEQRA as reasonable

complaints are thrown out on standing technicalities before the merits of the case can be heard. Enacting S3211 is an important step in reversing decades of environmental racism but if these new provisions cannot be enforced then we ultimately cannot achieve true justice. **We suggest enacting A.3510 /S.2798 as a companion to this legislation so that the important principles of environmental justice can be enforced.**