Title: Grants private citizens broad authorization to commence civil judicial actions under certain titles of the environmental conservation law.

Purpose: Enacts "private environmental law enforcement act"; authorizes any private citizen who has an interest which is or may be adversely affected to commence civil judicial actions for injunctive or declaratory relief to remedy environmental harms under certain circumstances; provides that such action may be commenced against any person for any violation of an administrative or court order compelling an investigation or remediation of an inactive hazardous waste disposal site.

Statement of Support: With the addition of staffing COVID response centers and accommodating a surge in state park attendance across the state, our state environmental agencies have been asked to do more with less in this time of pandemic response. In the past two years alone, the Department of Environmental Conservation (DEC) has been tasked by the legislature to take on many new responsibilities: administering the Climate Leadership and Community Protection Act, establishing the Office of Renewable Energy Siting, administering the new plastic bag ban, the polystyrene ban, the glyphosate ban on state lands, the trichloroethylene ban, the mandate to recycle food waste and organics, new drilling waste regulations, the phase out of PFAS, 1,4 dioxane, and chlorpyrifos, paint stewardship laws, and more. It’s clear that DEC will require more staffing and need additional funding.

In addition to the added responsibilities, over the past 9 years of New York’s economic recovery from the last recession, the DEC has shouldered disproportionate cuts to staffing and funding when compared with other agencies that saw mere reductions to their rate of growth. We have lost nearly a quarter of the DEC’s workforce since the 1990s, which has meant fewer enforcement actions of polluters, increased spread of invasive species and less review of impending threats to our environment. Simply put - there is little left to cut from this bare-bones agency that is increasingly asked to do more.

In the past few years, as a result of these significant cuts to funding and FTE staffing levels, the DEC has implemented programs 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. These programs relax DEC
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. But we are finding that there is a rash of false reporting and limited capacity for DEC to actually verify compliance.

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 in SEQRA proceedings while an anemic DEC allows polluters to define the terms of their own enforcement. (see: SEQRA Standing A.3510 (O'Donnell)/S.2798 (Kavanagh)

Enactment of A.2261/S.5394 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.2261/S.5394 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.2261/S.5394