



**Via Overnight Mail**

January 29, 2015

Hon. Joseph J. Martens  
Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1010

**Re: DEC's Failure to Comply With Environmental Justice Policy, CP-29  
Albany County Sewage District Draft Title V Permit**

Dear Commissioner Martens:

Earthjustice respectfully submits this letter on behalf of the Ezra Prentice Homes Tenants Association and Sierra Club Atlantic Chapter to bring to your attention DEC's failure to comply with the Department's Environmental Justice Policy, Commissioner Policy 29 ("CP-29") concerning the proposed issuance of a Clean Air Act Title V permit to the Albany County Sewage District ("District") for incineration of sewage sludge at the District's plant located at the Port of Albany. Incineration of sewage sludge results in emissions of a variety of air pollutants, some of which are highly toxic, including dioxins, furans, mercury, hydrogen chloride, cadmium, carbon monoxide, nitrogen oxides, particulates, sulfur dioxide, and beryllium. Despite the fact that the District's plant was identified by DEC last year as a source of toxic air contaminants potentially affecting Albany's South End neighborhood, the Department failed to notify the community of the District's permit application as required by CP-29, failed to ensure compliance with the community participation requirements of the Environmental Justice Policy, and determined to exempt the project from any environmental review without first consulting the affected community.<sup>1</sup>

As you know, DEC has identified Albany's South End as an environmental justice community within the meaning of CP-29. The Environmental Justice Policy was issued to address "*the lack of meaningful public participation by minority or low-income communities in the permit process; the unavailability or inaccessibility of certain information to the public early in the permit process; and the failure of the permit process to address disproportionate adverse environmental impacts on minority and low-income communities.*" CP-29 at 1; (emphasis added). In order to address these concerns, CP-29 directs that where a potential environmental

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<sup>1</sup> It appears that DEC has incorrectly classified the Title V permit application for the District's sewage sludge incinerator as a minor project under the Uniform Procedures Act. In fact, it is clearly a major project (and therefore subject to the Department's Environmental Justice Policy) because it is an initial permitting of the facility under the Title V permit program and because the facility is subject to National Emissions Standards for Hazardous Air Pollutants under 40 CFR Part 61. See 6 NYCRR §§ 621.4(g)(2)(i) and (vii).

justice area is identified by the preliminary screen, DEC must provide a permit applicant with relevant information on environmental justice. *Id.* at 8. CP-29 further provides that, “[w]here a potential environmental justice area is identified by the preliminary screen, *the applicant shall submit a written public participation plan as part of its complete application.*” *Id.* at 8; (emphasis added). The policy requires that, at a minimum, the Public Participation Plan identify stakeholders, including nearby residents, local elected officials, community-based organizations, and community residents; provide for distribution and posting of written information on the proposed action and permit review process; provide for public information meetings to keep the public informed about the proposed action and permit review process; and establish easily accessible document repositories in or near the potential environmental justice area to make available pertinent information. *Id.*

In contravention of the clear requirements of CP-29, the Department has not, to our knowledge, provided the District with relevant information concerning compliance with the Environmental Justice Policy, requested that the District submit a written Public Participation Plan, or taken steps to ensure compliance with the community participation requirements of CP-29. This is particularly troubling because this is at least the fourth time in the past three years that DEC has failed to comply with CP-29 when reviewing projects affecting Albany’s South End.<sup>2</sup>

Moreover, the Department has apparently determined that the proposed Title V permit for the District’s sewage sludge incinerator is exempt from review under the State Environmental Quality Review Act (“SEQRA”). The Department made this determination without any input from the affected environmental justice community, in contravention of CP-29. *See id.* at 1 (stating that the Environmental Justice Policy “provides guidance for incorporating environmental justice concerns into the environmental permit review process *and the DEC’s application of the State Environmental Quality Review Act.*” (Emphasis added)).

Last summer, as part of its review of air quality impacts associated with Global’s proposal to expand crude oil operations at its Albany terminal, the Department conducted air quality monitoring at various locations in the South End community. In its report summarizing the results of the monitoring program, DEC specifically identified the District’s Port of Albany plant as a source of toxic air pollution potentially affecting the community. *See N.Y. Dept. of Env’tl. Cons., Albany South End Community Air Quality Screening* (Aug. 14, 2014) at 34. In light of this finding, it is difficult to understand the Department’s decision to now exempt the proposed permit for the sewage sludge incinerator from any environmental review under SEQRA.

Rather than exempting the incinerator permit from SEQRA review, we respectfully suggest that the Department should take advantage of this opportunity to conduct a comprehensive assessment of impacts of toxic air contaminants on the South End community.

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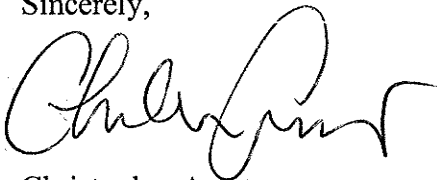
<sup>2</sup> The prior three instances in which DEC failed to comply with CP-29 include the 2012 and 2013 applications by Global Companies, LLC (“Global”) to expand crude oil operations at its Albany terminal, and the 2012 application by Buckeye Partners, LP, to expand crude oil operations at its Port of Albany terminal.

The pending Title V permit applications submitted by Global and the District provide a valuable opportunity for DEC to undertake such an assessment, and to fully evaluate the cumulative toxic air emissions at and near the Port of Albany.

In light of DEC's failure to comply with C-29 and its misclassification of the District's Title V permit application as a minor project, we request that the Department (i) take immediate steps to fully inform the affected environmental justice community of the District's permit application and to ensure compliance with all requirements of the Environmental Justice Policy, including preparation of a Public Participation Plan; (ii) withdraw its determination that the District's Title V permit application is exempt from SEQRA review pending completion of the public participation process mandated by CP-29; (iii) reclassify the District's Title V permit application as a major project, as required by 6 NYCRR §§ 621.4(g)(2)(i) and (vii); and (iv) extend the public comment deadline on the application by a period sufficient to enable full compliance with the notice and public participation requirements of CP-29.

We look forward to the Department's response.

Sincerely,



Christopher Amato  
Staff Attorney

- C: Hon. Andrew M. Cuomo, Governor  
Hon. Neil D. Breslin, Senator, 44th Senate District  
Hon. John T. McDonald, III, Assemblyman, 108<sup>th</sup> Assembly District  
Hon. Patricia Fahy, Assemblywoman, 109<sup>th</sup> Assembly District  
Hon. Kathy M. Sheehan, Mayor, City of Albany  
Hon. Daniel McCoy, Albany County Executive  
Basil Seggos, Deputy Secretary for the Environment  
Ed McTiernan, DEC General Counsel  
Melvin Norris, Director, DEC Office of Environmental Justice