

# NOW & NEXT

## Environmental Alert

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### New law requires companies to evaluate and reduce pollution impacts on disadvantaged communities when applying for environmental permits

By Sami Groff, Alison Torbitt, Dana Stanton, and Kelly Sprague

Companies will need to submit an analysis on the pollution burden to disadvantaged communities in connection with applications for new, modified, or renewed environmental-related permits.



#### What's the Impact

- / New law requires companies to analyze and mitigate pollution impacts to disadvantaged communities when applying for environmental permits.
- / The law goes into effect on December 30, 2024.
- / Experienced counsel can help develop compliance strategies.

New York State enacted recent legislation with a significant impact on how environmental-related permits are issued. The new legislation aims to protect disadvantaged communities and applies to permits issued by the New York State Department of Environmental Conservation (NYSDEC), including air, stormwater, solid waste, and hazardous waste permits. The new requirements will apply not only to the review process for new permits, but also in connection with permit renewals and modifications.

The new law builds upon the requirements of New York State's Climate Leadership and Community Protection Act (CLCPA) enacted in 2019. The CLCPA requires all State agencies, offices, authorities, and divisions to prioritize reductions of greenhouse gas emissions in disadvantaged communities and precludes all State agencies, offices, authorities, and divisions from disproportionately burdening disadvantaged communities when considering and issuing administrative approvals and decisions.

Disadvantaged communities are defined as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high concentrations of low- and moderate-income households." The Climate Justice Working Group, established by the CLCPA, was charged with developing criteria for designating communities as disadvantaged communities. The criteria for identifying disadvantaged communities have not yet been finalized. However, the Climate Justice Working Group issued a draft list of disadvantaged communities, organized by census tract, which is available [here](#). The public comment period for the draft criteria closed on August 5, 2022.

Under the new law, applicants must prepare a report, known as an existing burden report, that evaluates existing environmental and public health stressors, the projected impact of the project, and the potential benefits of the project. NYSDEC will be foreclosed from issuing the permit if the NYSDEC determines that the project would significantly increase pollution in a disadvantaged community. This may present a potentially significant impediment for some projects proposed in or near disadvantaged communities.

For renewal and modification applications, the existing burden report may be waived if the permit would "serve an essential environmental, health or safety need" of the disadvantaged community.

For any permit application, the new law authorizes NYSDEC to impose operational changes to the project aimed at reducing the pollution burden within a disadvantaged community. Since the burden report prepared by the applicant is required to assess operational changes to the project that would reduce the pollution burden, the applicant is given the first chance to identify possible changes to get ahead of the issue. Experienced counsel can help develop compliance strategies.

NYSDEC is required to promulgate regulations and issue guidance for preparing existing burden reports. The regulations and guidance will provide additional clarity and definitions.

The requirement to prepare an existing burden report will not take effect until December 30, 2024.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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