

## OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation  
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MAR 28 2024

Honorable Thomas P. DiNapoli  
Comptroller  
Office of the State Comptroller  
110 State Street, 15th Floor  
Albany, NY 12236

Dear Comptroller DiNapoli:

In accordance with the provisions of Section 170 of the Executive Law, the Department of Environmental Conservation (DEC) has taken the following steps to implement the recommendations contained in the Office of the State Comptroller's audit report 2021-S-41, *Monitoring of Air Quality (Facility Permits and Registrations)*. Please contact Andrew Fischler, Director of Internal Audit, at (518) 402-9761 if you, or your staff, have any questions.

### Recommendations:

- 1. Improve monitoring and enforcement of Environmental Justice (EJ) requirements, which may include, but are not limited to:**
  - **Updating the policy to improve the coverage of facilities required to comply with EJ requirements;**
  - **Ensuring permitted facilities located in the EJ areas meet EJ permitting requirements; and**
  - **Periodically reviewing and updating the policy to best meet EJ needs.**

DEC is working on policy revisions and exploring the implementation of a tracking system for permits subject to environmental justice analyses performed in accordance with the Policy and Sections 7(2) and 7(3) of the Climate Leadership and Community Protection Act. DEC also released draft policy DEP-23-1, Permitting and Disadvantaged Communities under the Climate Leadership and Community Protection Act, which provides guidance on reviewing permit applications for facilities likely to emit greenhouse gases or co-pollutant emissions (regulated under Article 75 of the Environmental Conservation Law) affecting disadvantaged communities. The policy requires DEC to perform additional analyses during the application review process for applicants within disadvantaged communities and certain permit applicants located within those areas to prepare public participation plans. Additionally, DEC is undertaking a rulemaking to incorporate EJ considerations in disadvantaged communities into DEC regulatory programs, including amendments to the State Environmental Quality Review Act and Uniform Procedures Act, and a new rule for disproportionate burden reports.



- 2. Enhance oversight of the general program compliance, which may include, but not be limited to:**
- **Developing a course of action to address the upcoming influx of expired permits and registrations;**
  - **Reducing the population of facilities operating under permits or registrations with no expiration date; and**
  - **Addressing long delays in processing State Administrative Procedure Act (SAPA) extended permits to reduce the number of facilities operating with outdated permits.**

DEC's Division of Air Resources (DAR) is prioritizing the processing of application submissions and updating regional offices on upcoming permits and registrations set to expire; created a reminder letter for dissemination to facilities whose permits are about to expire; and developed staff training focused on the Air Facility System and increasing efficiencies in processing applications for permits and registrations. DAR has also assembled a technical work group to help regions address registrations with no expiration date and prioritize workloads to address new applications and SAPA-extended permits. Furthermore, DAR has made progress towards reducing the population of facilities operating under permits and registrations with no expiration date and will continue to do so in the context of all other workload demands.

- 3. Focus efforts on monitoring and enforcement of Air Facility Registrations' (AFRs) compliance with program requirements, which may include, but not be limited to:**
- **Performing additional risk-based inspections of AFRs;**
  - **Improving follow-up with inspection deficiencies to ensure violations are corrected; and**
  - **Issuing additional guidance on eligibility for cap-by-rule classifications.**

The Enforcement Section Chief within DAR's Bureau of Stationary Sources has focused a portion of their time on assisting DEC regional offices with compliance and enforcement activities. In addition, DEC developed training for staff performing those activities and a field inspections toolkit to streamline facility inspections and reduce the amount of post inspection data entry necessary to document inspection results within the Air Facility System. DAR staff will also receive training from the United States Environmental Protection Agency, emphasizing the need to follow up on inspection deficiencies to ensure violations are corrected.

3.

4. **As soon as practicable, update or replace the system to better meet the needs of the program.**

DEC, in coordination with the New York State Office of Information Technology Services, secured funding to replace the Air Facility System in order to better meet its programmatic needs and issued a Request for Information in the New York State Contract Reporter to gather information on available technology options.

Sincerely,

A handwritten signature in black ink, appearing to read "Basil Seggos", with a stylized flourish at the end.

Basil Seggos  
Commissioner