The Ralph C. Menapace Fellowship in Urban Land Use Law pays tribute to the late Ralph C. Menapace, Jr., a prominent attorney and community leader until his passing in 1984. This fellowship, supported by the Municipal Art Society, gives recent law school graduates a chance to gain practical experience in legislation, litigation, and advocacy before regulatory bodies in New York as well as the freedom to explore innovative solutions to persistent urban issues.

MENAPACE MEMO

Drafted quarterly by the Menapace Fellow, the Menapace Memo offers timely insights into New York City's evolving urban law landscape. From demystifying complex laws and regulations to interpreting pivotal court decisions, each edition spotlights a key legal issue impacting our urban environment.

This inaugural edition of the Menapace Memo focuses on New York's Cumulative Impacts Law, which took effect on December 30, 2024. Aimed at addressing longstanding inequities, the law modifies the state environmental review and permitting processes to require an evaluation of how projects would impact communities historically and disproportionately burdened by pollution. In the analysis below, the 2024-2026 Menapace Fellow examines the new requirements under the State Environmental Quality Review Act and the Uniform Procedures Act and their potential implications for New York City.

MENAPACE MEMO

TO: New Yorkers
FROM: The Ralph C. Menapace Fellow in Urban Land Use Law, Alex B. Israel, Esq.
DATE: January 15, 2025
RE: The Implications of New York's Cumulative Impacts Law on NYC Communities

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INTRODUCTION

Despite progress in recent decades, environmental injustice remains a harsh reality for many New Yorkers. Communities of color and low-income neighborhoods have long been disproportionately exposed to toxic air, polluted water, and hazardous waste.[1] In New York City, nearly half the population lives in areas designated as "disadvantaged communities" (DACs) under state environmental standards.[2] Residents of these neighborhoods, which are categorized in part by high concentrations of low- and moderate-income households, experience increased rates of asthma, chronic health conditions, and greater vulnerability to climate-related flooding and storm damage.[3]

This legacy of disproportionate environmental burdens reflects decades of discriminatory land use policies, redlining, and zoning practices that have concentrated industrial facilities, highways, waste treatment plants, and contaminated sites in communities least equipped to resist them.[4] These compounding hazards create cumulative impacts that erode public health and quality of life over time.[5]

New York's Cumulative Impacts Law (CIL), which took effect at the end of 2024, aims to reverse this trend by embedding environmental justice into the state's environmental permitting and land use review processes.[6] The law targets the root cause of environmental disparities: the unchecked concentration of polluting facilities in historically marginalized DACs.[7] By requiring state and local agencies to consider cumulative effects of pollution — rather than just the effects of individual projects — the CIL aims to prevent further environmental harm in communities already facing disproportionate burdens.[8]

This memo examines the new requirements under the State Environmental Quality Review Act (SEQRA) and the Uniform Procedures Act (UPA), focusing on how these changes may reshape environmental permitting processes and impact communities across New York City.

REGULATORY BACKGROUND

The CIL builds on two state legal frameworks: the Uniform Procedures Act (UPA) and the State Environmental Quality Review Act (SEQRA). Both laws play a role in ensuring land use projects undergo environmental review at the state level — but until now, neither fully addressed the cumulative pollution burdens that disproportionately harm disadvantaged communities.

Broadly, the UPA standardizes the New York State Department of Environmental Conservation's (DEC's) environmental permit review procedures and imposes deadlines for action on applications.[9] Statewide permits administered by DEC under the UPA include those for waterways, coastlines, and wetlands; wastewater, stormwater, and water withdrawals; air quality; mineral resources; and waste management.[10] SEQRA, meanwhile, requires state agencies to evaluate the environmental impacts of certain proposed projects (referred to as "actions") like rezonings, large-scale developments, or the siting of industrial facilities.[11] Under the UPA, no permit application is considered complete until all SEQRA requirements have been satisfied — linking the two frameworks in virtually every major environmental review.[12]

SEQRA requires state agencies undertaking, funding, or approving certain actions to consider the environmental impacts of those actions.[13] If an agency finds that an action would have the potential for a significant adverse effect on the environment, it must prepare an environmental impact statement (EIS).[14] The EIS evaluates reasonable alternatives to the proposed action and outlines strategies to avoid or minimize negative impacts.[15]

SEQRA allows local governments to enact their own environmental review procedures, provided they meet or exceed the standards set by state law. [16] New York City implements SEQRA through its City Environmental Quality Review (CEQR) process, which applies to projects requiring city agency approval, funding, or direct city involvement.[17] If a project requires only City approval — such as through the City's public land use review process known as the Uniform Land Use Review Procedure (ULURP), which governs rezonings, special permits, and other discretionary land use actions — it undergoes CEQR. If a project requires State approval, funding, or permits in addition to City approval, or if the lead agency is a State arm of government, the project must comply with both CEQR and SEQRA, ensuring that the environmental review process meets all applicable local and State standards.

MAPPING THE CUMULATIVE IMPACT LAW'S CHANGES TO STATE ENVIRONMENTAL CONSERVATION LAW

Before the CIL took effect, state and local governments were not required to consider whether the projects they reviewed or approved could increase environmental burdens in already over polluted communities. While SEQRA calls for consideration of the impacts of a proposed project on "community or neighborhood character" within an EIS, that phrase is undefined,[18] allowing developers and agencies to narrowly interpret it and sidestep evaluations that seriously consider community experiences.[19]

The CIL explicitly corrects this oversight by requiring agencies to evaluate whether projects disproportionately affect disadvantaged communities as part of both SEQRA and the UPA — a long-overdue expansion of environmental review standards found within New York's Environmental Conservation Law (ECL).[20]

STATE ENVIRONMENTAL QUALITY REVIEW ACT

For the first time, SEQRA now explicitly requires the preparer of an EIS to consider and address the effects of their proposed action on disadvantaged communities, including whether the action "may cause or increase a disproportionate pollution burden" on such a community.[21] This change ensures that environmental justice considerations are central to the environmental review process, not optional. While SEQRA has long required an EIS to assess significant environmental impacts, outline ways to minimize adverse effects, and propose alternatives, the CIL builds on this existing framework by ensuring that these mitigation requirements are now applied specifically to addressing pollution burdens on DACs.

The law also adopts a definition of "pollution" that goes beyond emissions like greenhouse gases. Under the CIL, pollution includes any "conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property," or which "unreasonably interfere with the comfortable enjoyment of life and property."[22] As such, in evaluating pollution burdens in an EIS, agencies must now consider a broad range of

environmental harms, from toxic waste to industrial runoff, ensuring a more comprehensive assessment of environmental risks.

The CIL also requires upfront consideration of disadvantaged communities when deciding whether a proposed project warrants an EIS at all. Specifically, agencies must evaluate "whether such action may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action."[23] This means that in determining whether an EIS is required, agencies must assess not only direct emissions from a facility but also indirect pollution impacts, such as increased truck traffic or downstream water contamination. The change forces agencies to take a more holistic view of how projects affect vulnerable populations earlier on in the process.

To align agency procedures with these new standards, DEC has been directed to update SEQRA regulations,[24] ensuring that projects likely to worsen pollution burdens in DACs are automatically flagged for detailed environmental review and sufficient mitigation opportunities defined.

UNIFORM PROCEDURES ACT

The CIL also amended the UPA, imposing stricter requirements on DEC's permit review process. Under the CIL, DEC is now required to prepare or oversee an "existing burden report" (EBR) for new permit proposals that may "cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community."[25] For permit renewals and modifications, however, if the action would "serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative," the reporting requirement may be waived.[26]

DEC has been directed to establish regulations for the preparation of these EBRs, which must include baseline data and analysis of factors such as air and water quality, proximity to hazardous facilities, traffic volumes, noise levels, and cumulative health impacts, as well as projections of how proposed actions may add to existing burdens.[27]

If, after reviewing the EBR and comments received from members of a disadvantaged community, DEC finds that a project would contribute more than a de minimis level of pollution to members of that community, it must deny the permit.[28] It must also do so if the issuance of a permit modification would "significantly increase" the existing disproportionate pollution burden on the disadvantaged community."[29] For permit renewals, the standard for denial is if the *project* would significantly increase the existing disproportionate pollution burden on the disadvantaged community.[30]

IMPACT ON NEW YORK CITY COMMUNITIES

New York's history of environmental injustice via inequitable land use, redlining, and zoning decisions has left low-income communities and communities of color disproportionately burdened by pollution. Today, 44 percent of the City's census tracts are designated as disadvantaged communities, accounting for 55 percent of all DACs in the state.[31] Residents in these tracts are overwhelmingly communities of color — 43 percent Hispanic or Latino and 27 percent Black — with nearly a quarter living below the federal poverty line.[32]

The Mayor's Office of Climate & Environmental Justice (MOCEJ) has developed a mapping tool that highlights these inequities, using the same DAC criteria as the CIL.[33] Based on 45 sociodemographic and environmental indicators, the tool underscores how environmental

hazards like air pollution, toxic waste sites, and stormwater flooding are concentrated in historically marginalized neighborhoods.[34] For example, more than 75 percent of the City's solid waste stream is processed in a handful of DACs including North Brooklyn, the South Bronx, Sunset Park, and Southeast Queens, exposing residents to higher traffic and harmful emissions from waste-hauling trucks.[35] Additionally, 10 of the City's 14 wastewater treatment plants are situated within or less than 0.1 miles of a DAC, subjecting residents to noxious odors and other environmental harms.[36] These examples are just two of many that reveal the systemic environmental burdens faced by DACs.

While the CIL is a state law, its environmental review requirements will directly impact New York City DACs in two key ways: first, by shaping how city projects subject to state review are assessed, and second, by influencing how local agencies implement CEQR.

Under the UPA, DEC serves as the lead agency for reviewing environmental permits for facilities likely to pollute statewide, including those involving air pollution, water discharges, solid and hazardous waste management, and wetlands protection.[37] Communities of color and low-income communities experience disproportionately higher rates of adverse health effects from pollution generated by these facilities compared to other neighborhoods.[38] In 2024, DEC received more than 500 environmental permit applications in New York City, ranging from facility upgrades and expansions to new industrial sites.[39]

In particular, the CIL's mandate for DEC to consider cumulative pollution burdens as part of permit reviews could alter how long-standing pollution sources are managed. Come time for renewals and modifications, these facilities, which typically serve essential public functions but are situated near DACs, could face more stringent permit conditions aimed at mitigating environmental harms already endured by neighboring residents, especially if these residents continue to make their voices heard.[40]

New York City will also experience the effects of the CIL through CEQR. Although CEQR is technically a city-level process, it cannot be less stringent than SEQRA,[41] meaning that it will likely need to be updated to integrate the CIL's requirements for assessing cumulative environmental impacts on DACs. Some examples of recent projects that underwent or are currently undergoing CEQR include Western Rail Yard Modifications, the Atlantic Avenue Mixed-Use Plan, the Bronx Metro-North Station Study, the Bronx River Combine Sewer Overflow (CSO) Project, and the Brooklyn Empire Wind Projects.[42] Assuming the CIL's strengthened SEQRA standards also apply to CEQR, future environmental reviews for discretionary land use projects at the city level will need to factor in both immediate impacts and the long-term cumulative pollution burdens on surrounding neighborhoods. While this improves environmental oversight, it could also unintentionally delay projects that are essential for advancing clean energy goals.

Ultimately, while the CIL was passed at the state level, its legal and regulatory impacts will reverberate across New York City, reshaping how polluting facilities are sited, reviewed, and held accountable.

CHALLENGES AND OPPORTUNITIES

With the CIL now in effect, its success will depend on how well its provisions are interpreted, enforced, and defended against inevitable legal challenges. While the law offers a groundbreaking opportunity to advance environmental justice, its complex requirements and undefined legal terms introduce uncertainty that will need to be addressed through future rulemaking and court decisions.

From the outset, several critical terms remain undefined, setting the stage for interpretive disputes. For example, "disproportionate pollution burden" lacks a clear, enforceable standard. Will burden assessments be based on existing pollution levels, a community's demographic profile, or cumulative environmental hazards? Similarly, the threshold for what qualifies as a "de minimis amount of pollution" is left undefined, raising questions about how impacts will be measured — whether by emissions thresholds, health-based risk factors, or other metrics. Developers seeking to avoid permit denials are likely to push for narrow interpretations, forcing regulators to defend their findings in court.

The CIL's implementation process also presents logistical and administrative challenges. One of its central requirements is the EBR, which DEC must prepare or approve for potentially harmful projects. These reports must analyze complex environmental data, including air and water quality, hazardous facility proximity, and cumulative health impacts — data that can be difficult to collect, interpret, and verify. This added layer of review risks overburdening DEC, causing delays and inviting disputes over the accuracy of findings.

Early agency determinations made pursuant to the CIL are almost certain to face legal challenges through Article 78 proceedings.[43] Developers may argue that the law's ambiguous terms and rigorous permitting standards amount to regulatory overreach or impose arbitrary burdens.[44] If courts side with developers, parts of the law could be weakened or delayed. But the same legal framework provides a powerful opportunity for disadvantaged communities. If DEC fails to enforce the law or improperly issues permits without adequately considering DACs, residents and advocacy groups could sue to compel compliance.[45] In that way, the CIL has effectively codified environmental protection as a legally enforceable right.

The CIL also encourages public engagement. By requiring DEC to review public testimony alongside environmental burden reports before deciding on new permits, the law ensures that communities affected by proposed projects have a formal voice in decisions that directly impact their health and environment. Although the law grants less direct power to disadvantaged communities during permit renewals and modifications, they can still influence outcomes by highlighting feasible alternatives and emphasizing the severity of existing environmental burdens. While developers may resist the law, these communities now have unprecedented legal standing to push for cleaner air, safer water, and more equitable environmental outcomes.

CONCLUSION

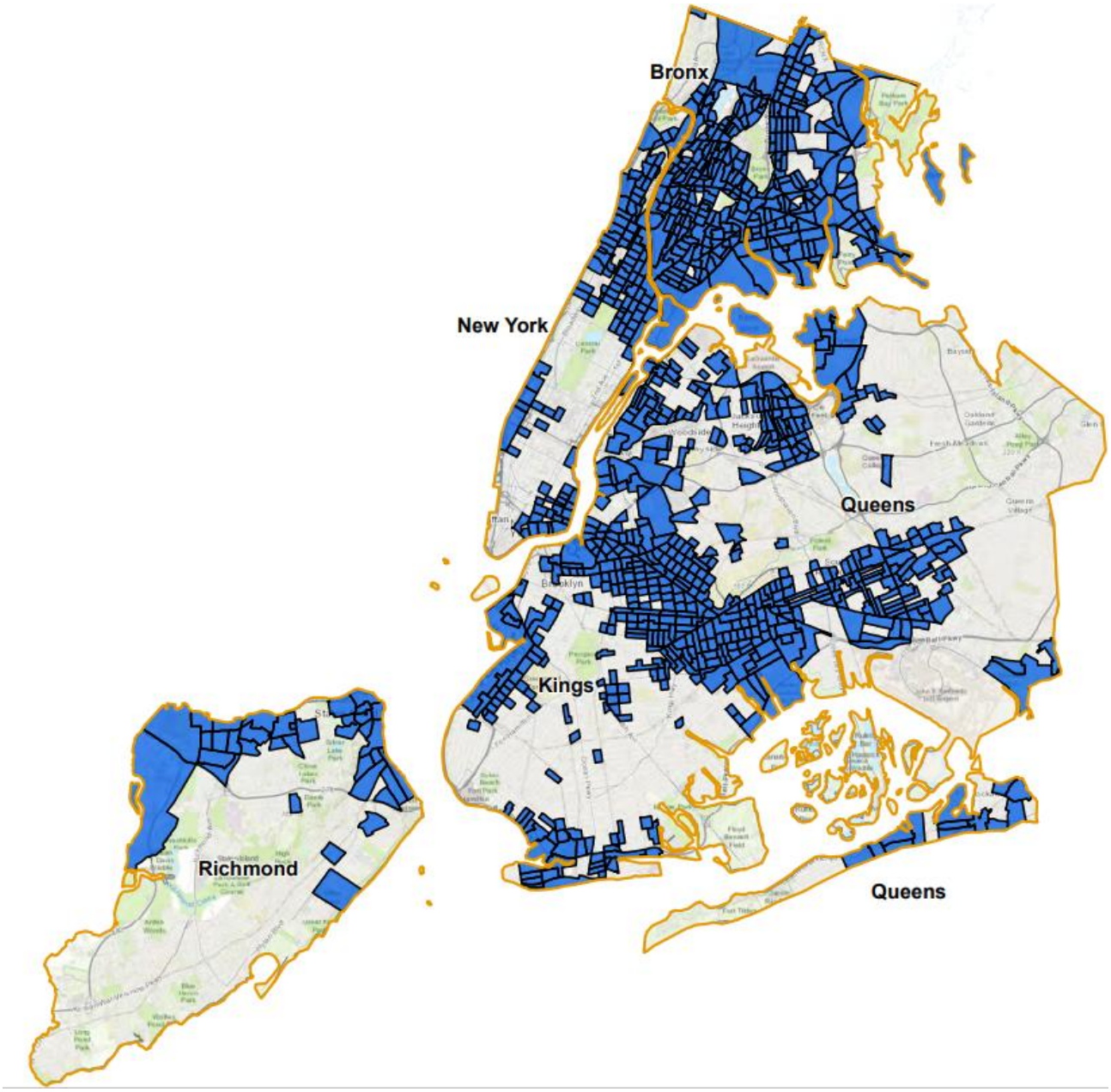
New York's Cumulative Impacts Law takes a transformative step toward environmental justice by requiring agencies to consider cumulative pollution burdens in environmental reviews and permitting decisions. By redefining what an environmental impact statement must include, the CIL promises to shift the balance of power — forcing polluters to account for the true cost of their projects on vulnerable communities. And by extending its reach beyond new projects to include permit renewals and modifications, the CIL establishes one of the most comprehensive permit review frameworks in the country.[46] Its provisions raise the bar for environmental oversight in New York City, reinforcing long-standing calls from MAS to strengthen the CEQR process and better protect vulnerable communities from unchecked development.

More than a policy reform, this law represents a long-overdue acknowledgment that where people live should never determine whether they can breathe clean air, drink safe water, or live free from toxic exposure.

[1] See OFFICE OF CLIMATE & ENVTL. JUSTICE, N.Y.C. MAYOR, EJNYC: A STUDY OF ENVIRONMENTAL JUSTICE ISSUES IN NEW YORK CITY 25–37 (2024), https://climate.cityofnewyork.us/wp-content/uploads/2024/04/EJNYC_Report_FIN_20240424.pdf [hereinafter EJNYC STUDY].
[2] See Appendix; EJNYC STUDY, *supra* note 1, at 5–7. The criteria establishing DACs consist of 45 indicators that describe various sociodemographic and environmental conditions across New York State's census tracts.
[3] EJNYC STUDY, *supra* note 1, at 7–9.
[4] EJNYC STUDY, *supra* note 1, at 7–9, 21.
[5] EJNYC STUDY, *supra* note 1, at 21.
[6] See Press Release, WE ACT for Environmental Justice, Governor Hochul Signs Landmark Environmental Justice Legislation Reducing the Cumulative Impacts of Pollution on Disadvantaged Communities (Dec. 31, 2022), https://www.weact.org/2022/12/governor-hochul-signs-landmark-environmental-justice-legislation-reducing-the-cumulative-impacts-of-pollution-on-disadvantaged-communities/. The term "cumulative impacts" in the context of environmental justice refers to the combined effects of pollutants and stressors from multiple sources in the built, natural, and social environments, which accumulate over time. *See Cumulative Impacts Research*, U.S. ENVTL. PROT. AGENCY, https://www.epa.gov/healthresearch/cumulative-impacts-research (last updated May 23, 2024).
[7] See S.B. S8830, 2021-2022 Legis. Sess. (N.Y. 2022) (acknowledging that "there has been an inequitable pattern in the siting of environmental facilities in minority and economically distressed communities, which have borne a disproportionate and inequitable share of such facilities" and asserting the State's "responsibility to establish requirements for the consideration of such decisions by state and local governments in order to insure equality of treatment for all communities").
[8] *Id.*
[9] See ECL 70-0101 *et seq.*; 6 NYCRR 621 *et. seq.*
[10] ECL 70-0107 [3]. *See also Environmental Permits Administered Under the Uniform Procedures Act (UPA)*, N.Y. STATE DEP'T OF ENVTL. CONSERVATION, https://dec.ny.gov/regulatory/permits-licenses/environmental-permits (last visited Dec. 21, 2024).
[11] See ECL 8-0101 *et seq.*; 6 NYCRR 617 *et. seq*. For a list of actions subject to enhanced requirements under SEQRA, see 6 NYCRR 617.4.
[12] 6 NYCRR 621.3 [a] [7].
[13] ECL 8-0109; 6 NYCRR 617.1 [c].
[14] ECL 8-0109 [2].
[15] ECL 8-0109 [2]; 6 NYCRR 617.9 [b] [5].
[16] 6 NYCRR 617.14 [b] ("Individual agency procedures to implement SEQRA must be no less protective of environmental values, public participation and agency and judicial review than the procedures contained in this Part."); 62 RCNY 5-01 *et seq*.
[17] 62 RCNY 5-01 *et seq*.
[18] See ECL 8-0105; N.Y. STATE DEP'T OF ENVTL. CONSERVATION, THE SEQR HANDBOOK 84 (2020), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf ("In the absence of a current, adopted comprehensive plan, a lead agency has little formal basis for determining whether a significant impact upon community character may occur.").
[19] Michael V. Caruso & Lauren M. Lynam, *Navigating NY's Pioneering Environmental Justice Law: Implications and Predictions*, N.Y. LAW JOURNAL (Aug. 19, 2024), https://www.law.com/newyorklawjournal/2024/08/19/navigating-nys-pioneering-environmental-justice-law-implications-and-predictions/ ("Because [pre-CIL] SEQR requires an EIS when there may be adverse environmental impacts, developers and agencies are incentivized to give 'community or neighborhood character' the narrowest definition possible, as to not consider environmental justice impacts a category for negative impacts.").
[20] See ECL 8-0105 [9], 70-0118 [1] [a] (adopting in SEQRA and the UPA, respectively, the definition of "disadvantaged communities" set out in ECL 75-0101 [5], which are "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" as further defined by the state's Climate Justice Working Group).
[21] ECL 8-0109 [2] [k].
[22] ECL 8-0105 [10] (adopting the definition of pollution set out in ECL 1-0303 [19]).
[23] ECL 8-0109 [4].
[24] ECL 8-0113 [2] [b].

[25] ECL 70-0118 [2] [a].
[26] ECL 70-0118 [2] [b].
[27] ECL 70-0118 [5].
[28] ECL 70-0118 [3] [a], [b].
[29] ECL 70-0118 [3] [c].
[30] ECL 70-0118 [3] [d].
[31] EJNYC STUDY, *supra* note 1, at 40.
[32] EJNYC STUDY, *supra* note 1, at 40.
[33] EJNYC STUDY, *supra* note 1, at 40.
[34] EJNYC STUDY, *supra* note 1, at 21, 40.
[35] EJNYC STUDY, *supra* note 1, at 89.
[36] EJNYC STUDY, *supra* note 1, at 83.
[37] ECL 70-0107 [2], [3].
[38] EJNYC STUDY, *supra* note 1, at 74, 96, 132.
[39] *See DEC Permit Applications - Search Wizard*, N.Y. STATE DEP'T OF ENVTL. CONSERVATION, https://extapps.dec.ny.gov/cfmx/extapps/envapps/index.cfm?view=wizard (last visited Nov. 15, 2024).
[40] Neighborhood advocacy groups like South Bronx Unite, THE POINT CDC, and UPROSE were formed specifically to combat these facilities and have spent decades documenting and speaking out about their harmful impacts on local communities. *See, e.g.*, *Map of Polluting Facilities Located Along the South Bronx Waterfront*, SOUTH BRONX UNITE, https://www.southbronxunite.org/map-of-south-bronx-waterfront-polluting-facilities (last visited Dec. 2, 2024); Rachel Spector, Elizabeth Yeampierre & Dariella Rodriguez, *Peaker Plants Harm Communities of Color; It's Time for New York City to Replace Them*, GOTHAM GAZETTE (June 18, 2020), https://www.gothamgazette.com/130-opinion/9511-peaker-plants-harm-communities-of-color-it-s-time-for-new-york-city-to-replace-them.
[41] 6 NYCRR 617.14 [b]; 62 RCNY 5-02.
[42] For a list of projects in New York City requiring an Environmental Impact Statement (EIS) under CEQR since 2006, see *EIS Documents*, N.Y.C. DEP'T OF CITY PLANNING, https://www.nyc.gov/site/planning/applicants/eis-documents.page (last visited Dec. 4, 2024).
[43] An Article 78 proceeding is a legal action used to challenge determinations or failures to act by New York's state and local government agencies. *See* CPLR 7801, 7803.
[44] *See, e.g.*, CPLR 7803 (3) (providing the grounds to challenge whether an agency made a determination that "was arbitrary and capricious or an abuse of discretion" under Article 78). *See also Matter of Chinese Staff & Workers' Assn. v Burden*, 19 NY3d 922, 924 (2012).
[45] *See, e.g.*, CPLR 7803 (1) (providing the grounds to challenge whether an agency "failed to perform a duty enjoined upon it by law" under Article 78); CPLR 7806 (providing courts with the authority to direct or prohibit agency actions challenged in an Article 78 proceeding).
[46] *See These Three States Have Already Passed Laws to Reduce Cumulative Impacts*, COMING CLEAN (Oct. 16, 2024), https://comingcleaninc.org/latest-news/in-the-news/these-three-states-have-already-passed-laws-to-reduce-cumulative-impacts.

APPENDIX:
MAP OF NEW YORK CITY'S DISADVANTAGED COMMUNITIES



Source: New York State Department of Environmental Conservation, Disadvantaged Community Maps, 2023, available at https://climate.ny.gov/-/media/Project/Climate/Files/Disadvantaged-Communities-Criteria/2023-DAC-Maps-Version-1.pdf.