

A.1622 (Simon)

Title: An act to amend the environmental conservation law, in relation to granting private citizens the right to initiate civil enforcement actions for violations of such law.

Purpose: To grant private citizens broad authorization to commence civil judicial actions under certain titles of the Environmental Conservation Law (ECL).

Statement of Support: Almost nothing is more central to the successful implementation of our climate goals than the dedicated staff within our environmental agencies charged with the crafting of regulation, monitoring of our natural resources and *the enforcement of rules*. And with converging global crises, our state environmental agencies have been asked to do more with less in this time of pandemic response and climate emergency. In the past three 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, coal tar, neonicotinoids and chlorpyrifos, clean vehicle standards, paint stewardship laws, expanded wetlands protections, new Environmental Justice standards in SEQRA- all on top of our baseline programs to protect air and water.

Since 2008, the New York State Department of Environmental Conservation (DEC) has lost nearly 800 staff positions or 22% of its work force. Funding cuts have also drastically curtailed the ability of the reduced staff to carry out their responsibilities as there is not enough money to finance travel, inspections, emergency response, toxic clean-ups, testing equipment and public outreach. As an example: staffing shortages have led to the unfortunate statistic that 90% of pollution discharge permits in the NYS get rubberstamped for reauthorization every 5 years with no inspection or reassessment - putting our waterways at risk to unexamined bad actors. Simply put, despite some restoration of infill staff under the Hochul administration, DEC is still a bare bones agency that scarcely has the resources to fulfill its EPA delegated authority to uphold basic environmental protection laws.

As a result of these significant cuts to funding and FTE staffing levels, the DEC has relied on 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. This DEC program relaxes 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 with the emergence of the PFAS crisis, in which DEC can’t keep up with polluters of this ‘forever chemical’ and the rigors of our new climate law that offers protections to environmental justice communities without an enforcement mechanism - there is a growing void of responsibility as to will actually uphold clean water and air laws as problems get worse.

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 while anemic regulatory agencies allow polluters to define the terms of their own enforcement. Enactment of A.1622 will provide a level playing field and process 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.1622 will provide responsible New Yorkers standing to bring citizens suits against a polluting entity simply by demonstrating an environmental harm has been committed in violation of New York State Laws..

Sierra Club Atlantic Chapter Strongly Urges Your Support Of A.1622