



**Memo of Support: A 2103-A/S 1031-B:
Proposed Actions on Environmental Justice
Communities**

Memorandum in Strong Support: A 2103-A (Pretlow)/S 1031-B (Stewart-Cousins)

February 3, 2022

A 2103-A/S 1021-B: AN ACT to amend the environmental conservations law, in relation to the location of environmental facilities and requiring the inclusion of analysis of the effects of any proposed action on environmental justice communities as part of environmental impact statements. Additionally, the bill would prohibit any action, following evaluation, determined to contribute to disproportionate and/or inequitable pollution burden on an environmental justice community.

Founded in 1991, the New York City Environmental Justice Alliance (NYC-EJA) is a non-profit, 501(c)3 citywide membership network linking grassroots organizations from low-income communities of color in their struggle for environmental justice. NYC-EJA empowers its member organizations to advocate for improved environmental conditions and against inequitable environmental burdens by the coordination of campaigns designed to inform City and State policies. Through our efforts, member organizations coalesce around specific common issues that threaten the ability for low-income communities of color to thrive.

Founded more than 40 years ago by leaders of the bar, New York Lawyers for the Public Interest (NYLPI) is a community-driven civil rights organization that pursues justice for all New Yorkers. NYLPI works toward a New York where all people can thrive in their communities, with quality healthcare and housing, safe jobs, good schools, and healthy neighborhoods. In NYLPI's vision, all New Yorkers live with dignity and independence, with the resources they need to succeed. NYLPI's community-driven approach powers its commitments to civil rights and to disability, health, immigrant, and environmental justice. NYLPI seeks lasting change through litigation, community organizing, policy advocacy, pro bono service, and education.

The New York City Environmental Justice Alliance and New York Lawyers for the Public Interest Strongly Support Strongly Supports A 2103-A (Pretlow)/S 1031-B (Stewart-Cousins) because it will increase public health protections and reduce pollution and toxic emissions in environmental justice communities that have been assaulted by years of environmental racism through the disproportionate siting and operation of pollutive facilities in majority Black, Brown, Indigenous and poor communities. The bill aligns with the provisions of the Climate Leadership and Community Protection Act (CLCPA) that mandates increased protections for, and investments in disadvantaged and other environmental justice communities and includes, among other directives, an 85% reduction in statewide emissions by 2050.

A 2103-A (Pretlow)/S 1031-B (Stewart-Cousins) requires all responsible agencies and applicants to assess the impacts of proposed actions (beyond a minor project) on disadvantaged and other environmental justice communities by preparing and submitting an existing-burden report that includes baseline monitoring data, identifies existing pollution and sources, and considers cumulative impacts for a given environmental justice community. Moreover, the bill would prohibit the approval of any proposed action determined to result in inequitable and/or adverse and disproportionate impacts to an environmental justice community.

The disproportionate siting of toxic facilities and operations in environmental justice communities has been studied and documented for over 30 years. In 1987, the United Church of Christ (UCC) released the landmark report, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (“Toxic Wastes and Race”).¹ The conclusions of the report came as no surprise to those residing in environmental justice communities nationwide and throughout Indian Country. Major findings of the report included the revelation that, “race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities, and communities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents.”

The conclusions of *Toxic Wastes and Race*, in part, contributed to the signing of Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations (EO 12898) by President Bill Clinton in 1994. Unfortunately, federal action has not resulted in increased protection for New York’s environmental justice communities.

Even though EO 12898 directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on these populations, environmental justice communities are still subjected to disproportionate exposure to toxic emissions and pollution.

¹ Toxic Wastes and Race in the United States: <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>

In 2007, UCC prepared the report *Toxic Wastes and Race at Twenty: 1987-2007* to evaluate conditions of environmental justice communities since release of the 1987 report and implementation of governmental actions such as EO 12898. Therein, the authors conclude, “It is ironic that twenty years after the original Toxic Wastes and Race report, many of our communities not only face the same problems they did back then, but now they face new ones because of government cutbacks in enforcement, weakening health protection, and dismantling the environmental justice regulatory apparatus.”²

Further, a 2019 report produced by Proceedings of the National Academy of Sciences of the United States of America (PNAS) revealed that that air pollution while disproportionately generated by white Americans' consumption of goods and services, is, “disproportionately inhaled by Black and Hispanic Americans.”³

Federal action alone is not enough to protect environmental justice communities in New York from the siting of facilities that emit toxic emissions and otherwise expose them to additional pollution. For instance, because EO 12898 only applies to proposed actions under federal jurisdiction, many facilities at the state level continue to be approved and permitted to operate without analysis or consideration of disproportionate impacts on disadvantaged and other environmental justice communities. Therefore, it's clear that New Yorkers need more action to protect vulnerable and disadvantaged communities subjected to decades of environmental racism and other social inequities. The CLCPA addresses the climate and pollution crisis by mandating that New York cut 85% of emissions by 2050. Doing so requires immediate steps to reduce existing and prevent new sources of pollution. A 2103-A/S 1031-B accelerates necessary efforts to reduce emissions while protecting New York's environmental justice communities from additional sources of pollution.

Passing A 2103-A/S 1031-B would align New York with its neighbor New Jersey in protecting environmental justice communities and reducing emissions in a way that is far more effective than market-based mechanisms such as cap-and-trade schemes. Last year, New Jersey became the first state in the nation to mandate permit denials if an environmental justice analysis determines a new facility will have a disproportionately negative impact on overburdened communities. When signing the bill into law, Governor Phil Murphy remarked, “Today we are sending a clear message that we will longer allow Black and Brown communities in our state to be dumping grounds, where access to clean air and clean water are overlooked.” New York must send the same message – and deliver on it

Environmental justice communities are not abstract entities; they are real places with real people experiencing real challenges. The COVID-19 pandemic has magnified and exacerbated social inequities, including systemic racism and economic injustice, in existence and operation for far too long. For example, a 2020 study conducted by

² <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>

³ Study Finds Racial Gap Between Who Causes Air Pollution And Who Breathes It: <https://www.npr.org/sections/health-shots/2019/03/11/702348935/study-finds-racial-gap-between-who-cause-s-air-pollution-and-who-breathes-it>

Harvard University concluded that someone who lives in a county with high levels of fine particulate pollution is 8% more likely to die from COVID-19 than someone who lives in a region that has just one unit (one microgram per cubic meter) less of such pollution.⁴ Swift, achievable actions on pollution to address and dismantle systemic environmental racism as part of state and national recovery and relief efforts will reap benefits and improvements to quality of life, health, and survivability – individually and collectively.

Communities from Far Rockaway to Buffalo demand proactive measures that prevent new sources of emissions and pollution from being approved. A 2103-A/S 1031-B delivers on these demands and confronts the toxic legacy of environmental racism that has rendered far too many Black, Brown, and poor communities in New York into pollution hot spots and energy sacrifice zones.

For the reasons stated above, NYC-EJA and NYLPI strongly supports A 2103-A (Pretlow)/S 1031-B (Stewart-Cousins)

⁴ <https://www.hsph.harvard.edu/news/hsph-in-the-news/air-pollution-linked-with-higher-covid-19-death-rates/>