S.2720 (May)

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BILL

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SUBJECT

CLCPA Information in all “License” Applications

DATE

May 08, 2023

OPPOSE

This legislation would amend the State Administrative Procedures Act provisions for issuances of “licenses” to require most license applications to the Department of Environmental Conservation (DEC), the Department of Public Service, the New York Power Authority, NYSERDA and several other agencies to include additional information relative to greenhouse gas emissions, energy use, and other factors “regarding compliance with the goals” of the Climate Leadership and Community Protection Act.

Focusing on this legislation’s impact on environmental programs, we have a number

of concerns, including its excessively broad scope, its open-ended demands for additional information to be included in permit applications, and its duplication of existing, ongoing permit review activity at the DEC.

Note that under SAPA § 102.4, the term “license" means any agency permit, certificate, approval, registration, charter, or similar form of permission required by law. For the DEC, this mandate would apply to a large number of programs governing projects with little if any bearing on CLCPA goals. These include but are not limited to certain permits (e.g., installations in or adjacent to waterways and wetlands), general permits (e.g., for stormwater management) and registrations (e.g., water well drilling) with little if any impact on CLCPA goals. The bill states that the demand for additional information in license applications are to be established by each affected agency “by promulgation of regulations.” Likewise, DEC regulations require permits for some projects with limited emissions and limited compliance requirements (e.g., “small boilers” requirements under Part 227, but are only required to conduct and document annual tune-ups.) Any assessment of CLCPA impact of these very small sources should be done on an aggregate basis, not in project-specific application reviews. At minimum, this legislation should be made clear that, in adopting regulations, each agency should be allowed to specify which “license” program the information demands apply to, and which would be exempt. Note that DEC’s Department Application Tracking, or DART, program shows more than 212,000 “active” permit applications before the agency, as an illustration of how many license applications could be subject to these new data demands.

This legislation also requires the submission of information of CLCPA goals, in some cases without explaining what “goals” are being evaluated. The CLCPA § 7.2 already requires all state agencies, when issuing permits and making other decisions on other administrative approvals, to consider whether proposed activities would be “inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits” set forth in the CLCPA.

The bill goes on to require each license application to include specific information on several topics, with the bill’s proposed information requirements and our comments and concerns listed below:

- how the license “aligns” with the CLCPA, including how it “aligns” with the CLCPA’s GHG emission limits; the project’s estimated GHG emissions; the energy sources to be used by the proposed activity including both “short term and long term”

to be used by the proposed activity including both "short-term and long-term energy sources and the anticipated effects of such energy use. Comment: It is unclear what alignment with CPCLA means, and how a permit application can assess that impact. At most, the DEC should require permit applicants to submit information and data on which the agency can base its assessment of a proposed activity's compliance with statutory and regulatory requirements. This might include projected energy use and GHG emissions, but not open-ended requirements to assess the "effects "of such use.

- how the proposed activity will impact the CLCPA's "goals," including calculations of the project's energy use including upstream impacts from "point of energy use." Comment: It is unclear which CLCPA "goals" are being addressed here. The prior provision addresses GHG emissions and energy use.
- an assessment of the proposed activity on "environmental justice pursuant to" ECL Article 48, which among other things, requires agencies to have an environmental justice policy to guide decisions on regulations, permits, project funding and other activities. Comment/Concern: It is interesting that this legislation, whose focus on CLCPA consistency, incorporates the pre-CLCPA focus on environmental justice areas rather than the CLCPA's mandate to review potential impacts on newly designated "disadvantaged communities." In fact, the state should consider whether it makes sense to continue to have separate programs to focus on impacts on potential EJ areas and disadvantaged communities. Note that the DEC's existing Commissioner's Policy 29, addresses the agency's review of potential impacts on environmental justice communities resulting from major projects and major modifications for the permits related to air and water emissions, and solid and hazardous waste management. It is unclear whether the extension of that analysis is necessary for minor projects with limited if any off-site impacts.
- the number of jobs to be created by the proposed activity. Comment: How this information would be used in the DEC's review and approval of environmental permits is unclear, as no ECL permitting program requires any assessment of job creation. Neither does the CLCPA, whose statutory provisions on jobs focus on the assessment of jobs to be created to counter climate change, including any skills or training requirements.

Our experience with the Department of Environmental Conservation is that they

already have the necessary tools to assess compliance with existing CLCPA mandates, and are developing additional regulatory programs, e.g., expanded GHG emissions reporting, cap and invest regulations and others, that provide the state with additional CLCPA compliance mechanisms.

Meeting the significant emission reduction, renewable energy and environmental equity obligations of the CLCPA will impose significant compliance and operational requirements on regulated and licensed projects. The state agencies and legislature should focus on assuring efficient, workable compliance programs, while avoiding open-ended, unfocused compliance obligations as proposed in this legislation.

For these reasons, The Business Council opposes adoption of S.2720 as currently proposed.

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