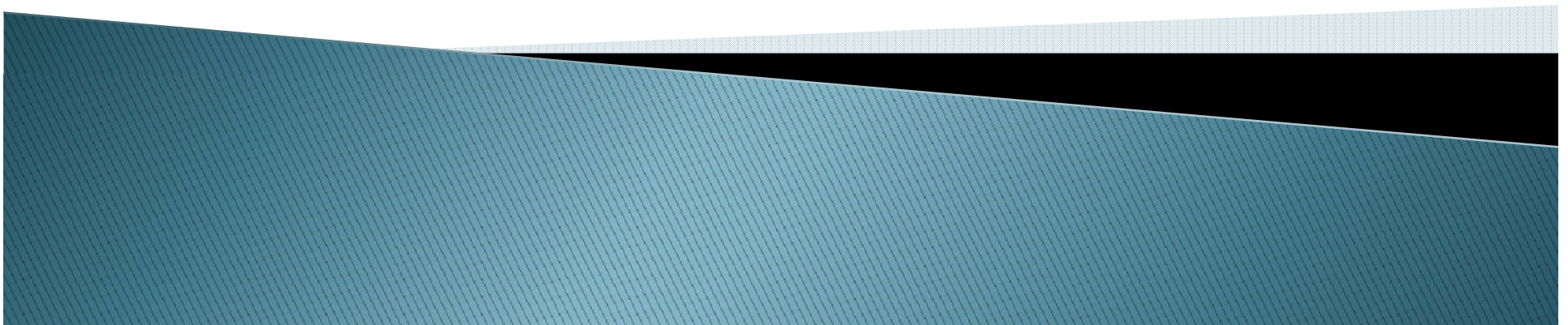




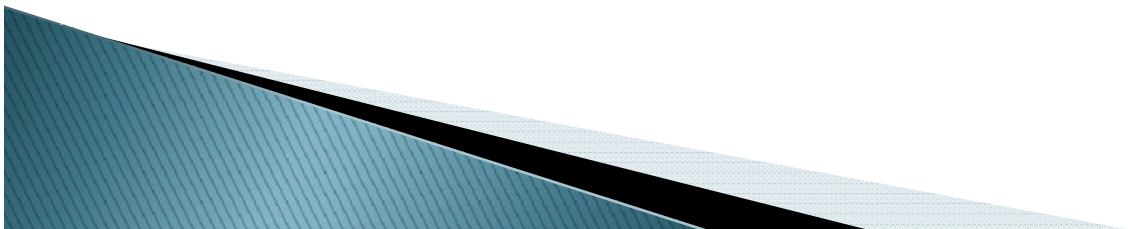
POWER NY ACT OF 2011 DEC REGULATIONS: OVERVIEW

New York State Department of Environmental
Conservation

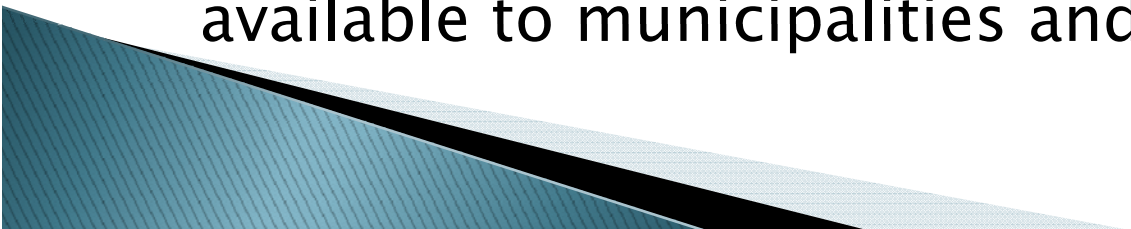


Background

- ▶ On August 4, 2011, Governor Cuomo signed the Power NY Act of 2011, which became effective immediately
- ▶ The new law reestablished and revised Article X of the Public Service Law (PSL) governing power plant siting and enacted a new Environmental Conservation Law (ECL) § 19-0312 requiring CO₂ performance standards for power plants

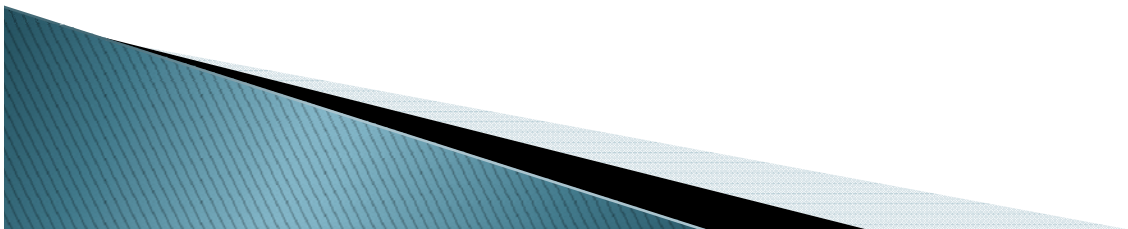


Basics of New Article X

- ▶ Reduces threshold capacity from 80 mw to 25 mw for new and repowered major electric generating facilities based on nameplate capacity
 - ▶ Decision on the application must be made within 12 months from the date the application is determined to comply with PSL § 164 or within 6 months for modified or repowered facilities which meet certain criteria, including a reduction in total net emissions
 - ▶ The process includes a new pre-application preliminary scoping phase with intervenor funding available to municipalities and local parties
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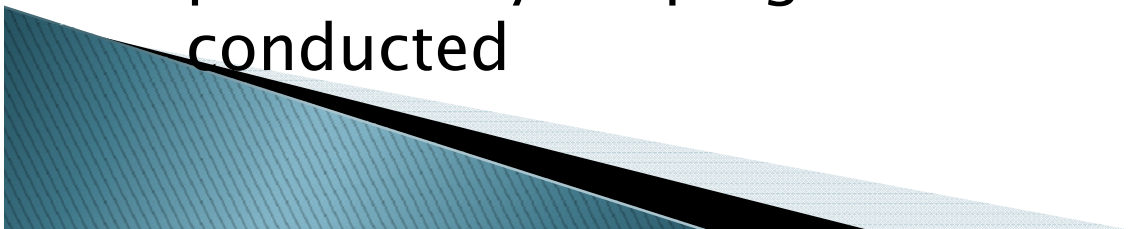
Basics of New Article X cont'd

- ▶ Article X process is not available until DPS promulgates its procedural regulations and DEC promulgates regulations for analyzing environmental justice issues under Article X and carbon dioxide performance standards under ECL § 19-0312
- ▶ These regulations must be promulgated by DPS and DEC within 12 months

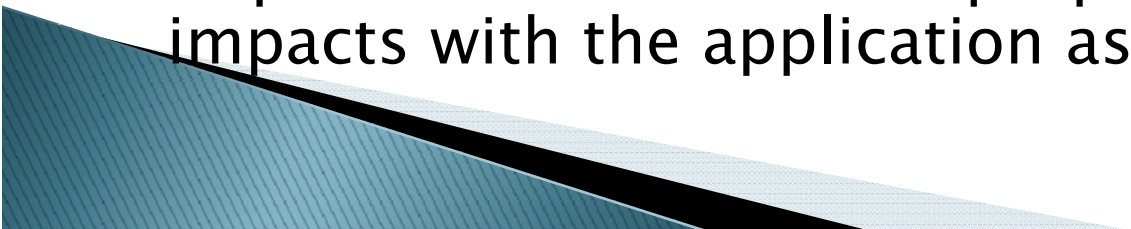


Pre-Application Scoping

- ▶ The Applicant must meet with agencies and interested parties, including community groups
- ▶ The Applicant must submit a preliminary scoping statement that includes a description of the proposed facility and its environmental setting, potential environmental and health impacts of the facility, measures proposed to minimize environmental impacts, and reasonable alternatives
- ▶ The Applicant and interested parties may enter into stipulation agreements to address any aspect of the preliminary scoping statement and the studies to be conducted

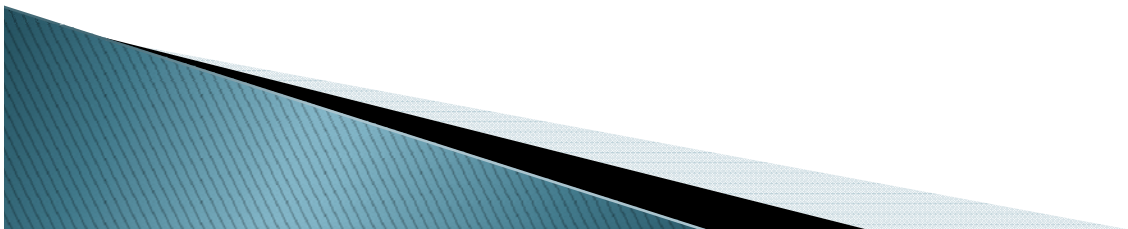


Article X EJ Provisions

- ▶ The new Article X includes significant new requirements related to Environmental Justice
 - ▶ As part of the Application, the Applicant must submit:
 - an evaluation of significant and adverse disproportionate environmental impacts, if any, resulting from the facility's construction and operation
 - A cumulative impact analysis of air quality
 - A comprehensive demographic, economic, and physical description of the community, compared and contrasted to the county and adjacent communities
 - ▶ The applicant must complete all studies and analyses during the pre-application stage in order to submit the required evaluation of disproportionate environmental impacts with the application as required by PSL § 164
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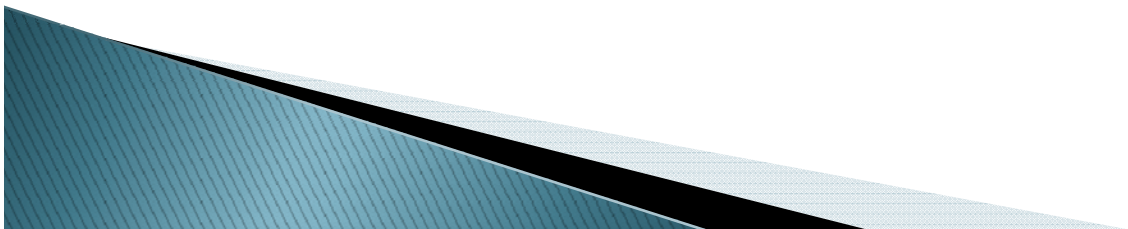
Part 487

- ▶ DEC intends to promulgate a new 6 NYCRR Part 487, Analyzing Environmental Justice Issues in Siting of Major Electric Generating Facilities Pursuant to Public Service Law Article X
- ▶ Part 487 will apply only to applicants seeking a Certificate for construction and operation of a power plant under PSL Article X



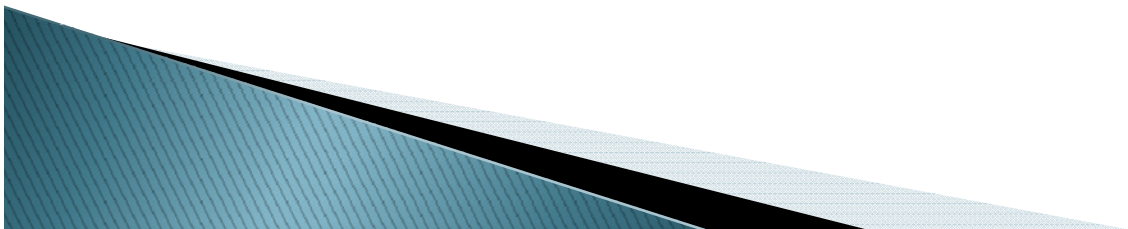
Proposed Framework for Part 487

1. Define the project area or Community of Concern (COC), which is the area to be impacted by the proposed facility
 - The COC may be a half-mile radius around the proposed location of the facility or a different radius as appropriate based on project-specific information regarding the nature and scope of the environmental impacts involved



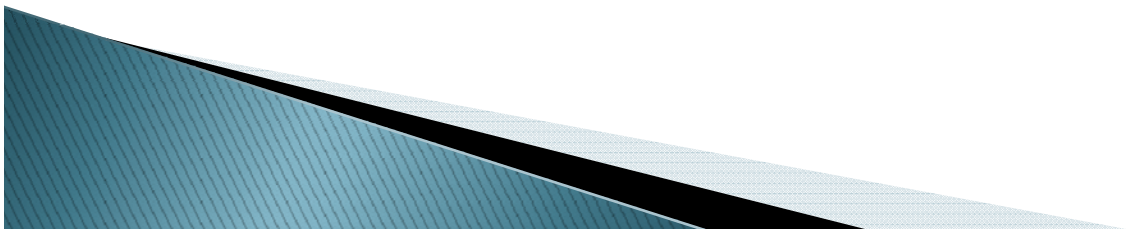
Proposed Framework for Part 487

2. Confirm whether the COC includes one or more EJ areas
 - Definition of EJ area will be consistent with DEC's Commissioner Policy 29 on Environmental Justice and Permitting



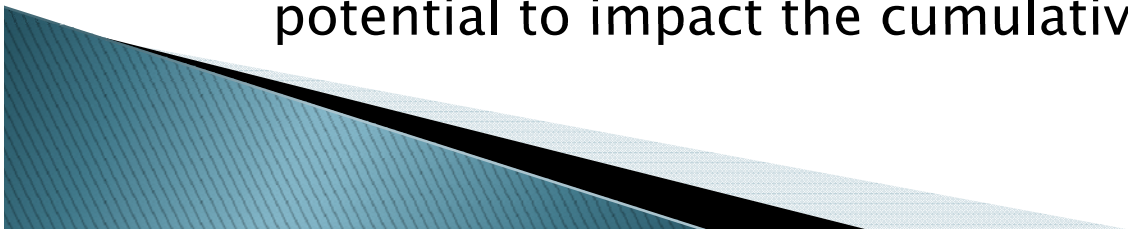
Proposed Framework for Part 487

3. Identify an appropriate Reference Community (RC)
 - Necessary to evaluate if there is a significant and adverse disproportionate environmental impact upon the Community of Concern



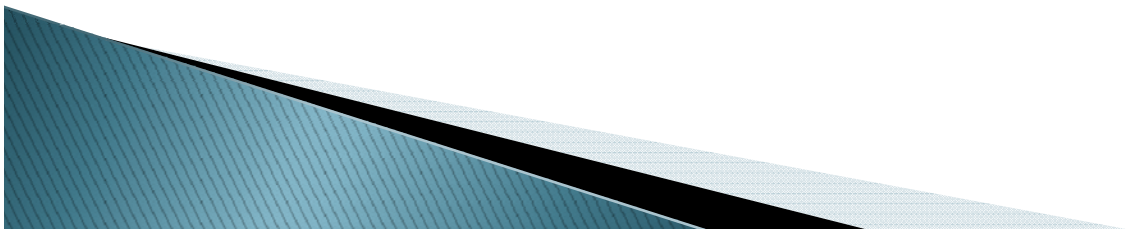
Proposed Framework for Part 487

4. Analyze the cumulative emissions impacts of the proposed facility and other relevant facilities/sources on air quality within a half-mile radius of the facility, or other radius as determined by standards determined by DEC
 - will address federal criteria pollutants and non-criteria pollutants, including mercury, for which there is emissions data readily available
 - relevant sources include any facility with a compliant application filed with the siting Board, Title V permitted sources not yet operating, and other sources with the potential to impact the cumulative analysis



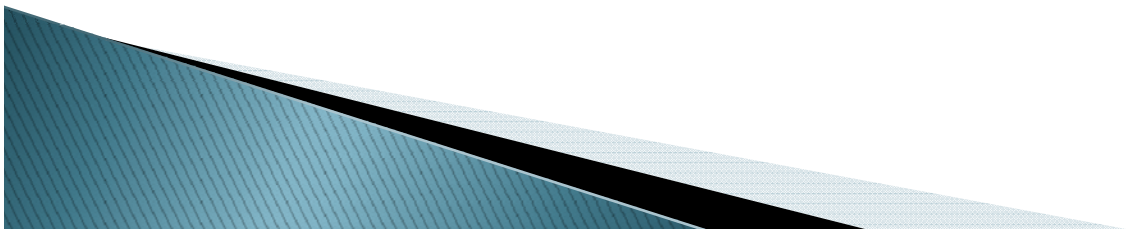
Proposed Framework for Part 487

5. Describe and compare the specific demographic, economic and physical characteristics of the COC
 - with the county in which the facility is proposed to be located
 - with adjacent communities within such county
 - incorporating reasonably available data on population, racial and ethnic characteristics, income levels, open space, and public health data, including publicly available data on incidents of asthma and cancer



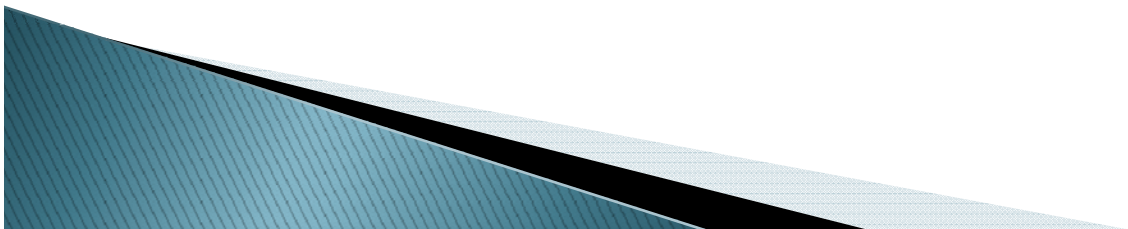
Proposed Framework for Part 487

6. Utilize a methodology to assess existing environmental burdens affecting the COC
 - The existing burdens of the COC will be compared, along with project-related impacts, to the existing burdens of the RC to evaluate disproportionality
 - The methodology can provide a framework for the discussion of impact offsets, minimization and avoidance



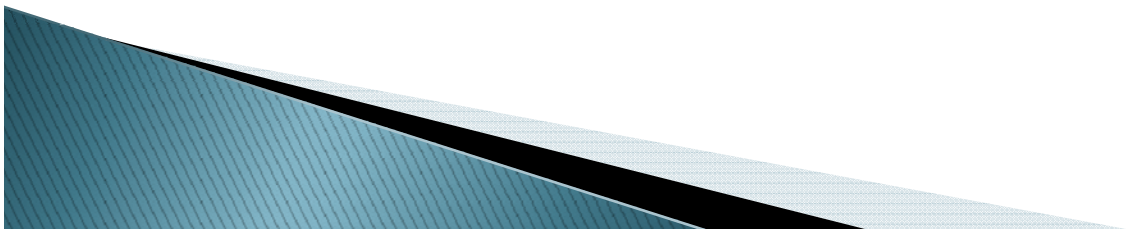
Other EJ-related Provisions

- ▶ Intervenor Funding for expenses incurred by municipal and local parties, including individuals and community groups, for expert witnesses, consultants, and administrative and legal fees (legal fees not available under old Article X—may not be used for judicial review or litigation)
 - Pre-Application: up to \$200,000 (no Pre-Application funding available under the old Article X)
 - Application: up to \$400,000 (previous limit was \$150,000)
- ▶ Siting Board will be required to make a finding regarding cumulative environmental impacts



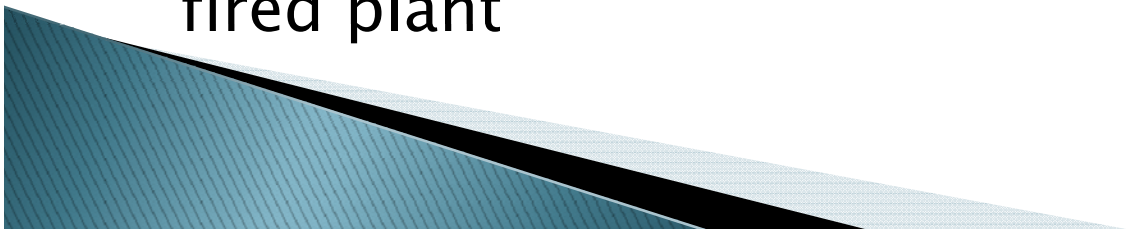
ECL Provisions

- ▶ In addition to Article X, the Power NY Act also added new ECL provisions
- ▶ ECL § 19-0312 addresses power plant emissions and performance standards
- ▶ In particular, ECL § 19-0312(3) requires DEC to promulgate regulations, within twelve months
“targeting reductions in emissions of carbon dioxide that would apply to major electric generating facilities that commenced construction after the effective date of the regulations”



Part 251

- ▶ DEC intends to promulgate a new 6 NYCRR Part 251, CO₂ Performance Standards for Major Electric Generating Facilities
- ▶ Part 251 will likely be applicable to new power plants with a capacity of at least 25 MW, and to existing plants that add at least 25 MW of capacity
- ▶ Part 251 will likely establish a CO₂ performance standard for fossil fuel-fired power plants based on an emission rate achievable by a new natural gas-fired plant





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