EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

CITIZEN ACTION OF NEW YORK, PEOPLE UNITED FOR SUSTAINABLE HOUSING BUFFALO, SIERRA CLUB, and WE ACT FOR ENVIRONMENTAL JUSTICE

Petitioners-Plaintiffs,

For a Judgment Under Article 78 Of the Civil Practice Law and Rules and Declaratory Judgement,

Index No. 903160-25

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Respondent-Defendant.

AMICUS BRIEF

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I. STATEMENTS OF INTEREST

Proposed *amici curiae* are three public interest organizations committed to protecting the well-being of residents in and around New York, particularly by way of environmental advocacy for solutions to address the harms of climate change.

Environmental Defense Fund ("EDF") is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems and has worked for decades to protect human health and the environment for people and communities in New York State (the "State"). EDF is a national leader in advocating for legislation to address climate change through the application of economic principles.

Save the Sound is a non-profit organization representing over 4,400 member households across the Long Island Sound region. Its mission is to protect and improve the land, air, and water of the whole region. Save the Sound works to ensure that New York leads the nation in slowing climate change and building a clean energy economy, and advocates for bold action to reduce fossil fuel emissions and increase community resiliency.

Riverkeeper is a member-supported watchdog organization dedicated to protecting and restoring the Hudson River from source to sea and safeguarding drinking water supplies through advocacy rooted in community partnerships, science, and law. For more than 50 years, Riverkeeper has stopped polluters, championed public access to the river, influenced land use decisions, and restored habitat, benefiting the natural and human communities of the Hudson River and its watershed. Riverkeeper has advocated for strong climate laws to protect the State's natural resources and vibrant communities.

To achieve their respective missions, *amici* participate in various forms of environmental advocacy to address issues of significant concern both nationally (like climate change) and specific to the populace in the New York area. Here, *amici* have a collective interest in ensuring that the Climate Leadership and Community Protection Act ("CLCPA" or the "Climate Act") is fully implemented as intended to realize the significant environmental and economic benefits it was designed to achieve while prioritizing protection of disadvantaged communities. Thus, *amici* respectfully submit this brief to provide the Court with crucial information not presented in the Article 78 petition (the "Petition") and to provide additional analysis complementary to the Petition.

II. PRELIMINARY STATEMENT

Scientific evidence overwhelmingly demonstrates that climate change, driven by human-caused greenhouse gas ("GHG") emissions and resulting global warming, is causing immediate, devasting global impacts, and that these harms will worsen dramatically as GHG pollution continues to rise. In New York specifically, climate change is already harming New Yorkers with rising temperatures, worsening air pollution, more frequent severe weather events, and related serious health effects with impacts acutely experienced in disadvantaged communities (2019 N.Y. Laws 106 § 1[1]). Climate change is also projected to result in significantly more sea level rise, substantially change New York's precipitation and weather patterns, and dramatically increase the risk of storm surge-related flooding—threatening services critical to New Yorkers such as transportation, telecommunication, and coastal energy facilities. Thus, preventing the worst impacts of climate change requires swiftly reducing, and stabilizing, the emissions of heat-trapping greenhouse gases in the atmosphere through a prompt and holistic transition away from fossil fuel-based energy systems in favor of clean energy solutions.

With the 2019 passage of the CLCPA, the State created the statutory framework to become a leading force in combating harmful pollution and delivering climate solutions. The CLCPA provides that the Department of Environmental Conservation ("DEC" or "Department") "shall" establish statewide GHG emissions limits that ramp down over time and "[n]o later than four years" after the effective date of the statute, "shall . . . promulgate rules and regulations to *ensure* compliance" with emissions reduction limits, thus paving the way for a transition to a clean energy economy while prioritizing benefits to disadvantaged communities (ECL 75-0107, 75-0109 (emphasis added)). As convincingly established in the Petition, DEC has abdicated its clear statutory duty to adopt regulations that ensure compliance with the CLCPA and, therefore, mandamus is warranted.

Amici respectfully request that the Court consider the following additional facts and analysis as to how DEC fundamentally violated the CLCPA and why the Court should order DEC to issue regulations that ensure compliance with the emissions limits as required by section 75-0109. First, DEC's own recent assessment of GHG emissions levels in the State unequivocally demonstrates that it has not promulgated rules and regulations that ensure compliance with the CLCPA's emissions reduction limits. Indeed, DEC's assessment indicates there is an "emissions gap" in which the State will exceed the 2030 emissions limit (promulgated by DEC) by an alarming 58 million metric tons ("million MT").

Second, the CLCPA expressly requires the Department's GHG regulations to "[r]eflect, in substantial part" the findings of a scoping plan (the "Scoping Plan") (*id.* 75-0109[2]) that DEC and a multi-stakeholder Climate Action Council (the "Council") developed after more than two years of coordination and work with statewide participants to balance various policy considerations, including minimizing the economic costs and maximizing the benefits of

implementation. Despite playing a leading role in the development of the Scoping Plan, which clearly outlines a regulatory approach for ensuring compliance with the statewide emissions limits, DEC missed its January 1, 2024 statutory deadline to promulgate the required rules and regulations. DEC has yet to propose any other regulations sufficient to ensure compliance with section 75-0109 of the CLCPA. Thus, the Department has failed to adopt GHG regulations that ensure compliance with New York's emissions limits in direct contravention of the CLCPA's requirements and purpose.

Third, the Department has not fulfilled the CLCPA's mandate to prioritize measures to maximize reductions of co-pollutants in disadvantaged communities, (ECL 75-0109[3][d]), and has not adopted GHG regulations pursuant to section 75-0109[3][d] that target such benefits to such communities.

Finally, the equitable considerations that the Court must balance in deciding whether to grant mandamus heavily favor granting the relief sought in the Petition because: (1) the urgent threat of climate change far outweighs the burden on DEC of adopting the regulations; and (2) promulgating regulations that substantially reflect the Scoping Plan will provide much-needed regulatory certainty to New York's regulatory agencies, regulated businesses, and the public.

In the Responsive Memorandum of Law (the "Response"), the State offers no credible defense to the Petition and primarily contends the regulations were too difficult to accomplish by the mandatory deadline and that petitioners improperly seek to direct *how* DEC complies with the CLCPA. Accordingly, the State requests the Court exercise its discretion and deny mandamus. But neither Petitioners nor *amici* ask that DEC adopt any particular regulation or act in any way other than what is mandated by the statute. *Amici* submit that the time has long

passed for DEC to fulfill its statutory duty as expressed by the legislature when it passed this landmark legislation. The Climate Act itself recognizes that time is of the essence when it comes to addressing climate change (2019 N.Y. Laws 106 §§ 1, 2[a]). In this regard, the legislature codified its ambitious emission reduction limits and set *mandatory* deadlines—signed into law by the Governor—directing the Department to take actions necessary to avoid the most severe impacts of climate change (*id.* 2019 N.Y. Laws 106 § 4). New York should continue to be a global leader in climate legislation and policy without further delay.

III. ARGUMENT

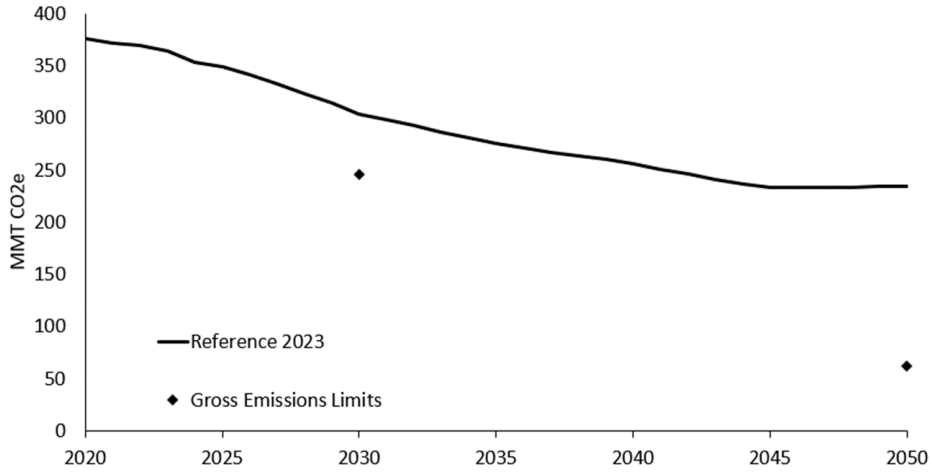
A. The Department's Own Assessment Demonstrates that It has Not Promulgated Rules and Regulations that Ensure Compliance with the Climate Act's Emissions Reduction Limits.

The CLCPA requires New York to adopt measures to achieve a 40% reduction in statewide GHG emissions by 2030 and an 85% reduction by 2050, as compared to 1990 levels (ECL 75-0107[1][a]-[b]). To achieve these reductions, the CLCPA is clear: no later than January 1, 2024, DEC "*shall*… promulgate rules and regulations to *ensure* compliance with the statewide emissions reduction limits" (*id.* at 75-0109[1] (emphasis added)). Courts have found the use of "shall" "illustrates the mandatory nature of the duties contained therein." (*Matter of Natural Resources Defense Council v. New York City Dept. of Sanitation*, 83 NY2d 215, 220 [1994]). More than a year has passed since that deadline and less than five years remain to meet the 2030 limit, but DEC has failed to promulgate regulations that ensure achievement of the limit—and this failure is demonstrated by DEC's own most recent assessment of its existing GHG regulations.

DEC and the New York State Energy Research and Development Authority retained Energy and Environmental Economics, Inc. to reassess New York's long-term GHG emissions

trajectories by incorporating current regulations and policies (the "2023 Reference Case") (*see* Affirmation of Alexander DeGolia ("DeGolia Aff."), ¶ 8). Published December 15, 2023, this 2023 Reference Case constituted an "update[] to incorporate additional policies passed after the Final Scoping Plan Integration Analysis modeling was conducted," in 2022. (Reference Case 2023 Annexes, at "Cover" sheet, DeGolia Aff., Exhibit A, page 1). The 2023 Reference Case thus represents the State's forecast of GHG emissions under the regulations in place just before section 75-0109's January 1, 2024 statutory deadline for DEC to promulgate regulations.

The 2023 Reference Case estimates that regulations and policies in place at that time would leave the State with an "emissions gap" of 58 million MT of carbon dioxide-equivalent (million MT CO_2e) over the 2030 emissions limit and 173 million MT of CO_2e over the 2050 emissions limit (*id*. ¶ 12). In the graph below, the diamonds indicate the statewide emissions limits for 2030 and 2050 and the line shows the projected statewide GHG emissions from DEC's analysis.



(*Id.* ¶ 8; *see* Reference Case 2023 Annexes, at "Annual Emissions" tab, DeGolia Aff., Exhibit A, page 4).

The State's Response contends that DEC "has taken strides" towards reducing GHG emissions and references a list of regulations adopted by the State (Response at 1–2). Yet the 2023 Reference Case assessment found that New York is projected to emit 24% more greenhouse gases than allowed under the 2030 limit, and to emit 282% more greenhouse gases than allowed under the 2050 limit (emitting 58 million MT CO_2e above the 2030 limit of 246 million MT CO_2e; and emitting 173 million MT CO_2e above the 2050 limit of 61 million MT CO_2e). Thus, the agency's own assessment of projected statewide emissions, under policies in place December 15, 2023, found that New York State will not meet the 2030 or 2050 statewide GHG emissions limits—clearly demonstrating DEC's failure to adopt regulations to "ensure" achievement of the emissions limits (*see* ECL 75-0109).

Of the 11 regulations relied upon in the State's Response, 8 had already been adopted when the 2023 Reference Case was issued. The remaining 3 are discussed below, and do not deliver sufficient emissions reductions to close the 58-million-ton emissions gap explained above by 2030. Even after accounting for emission reductions associated with these recent and proposed regulations, the state will remain far from meeting the emissions limits required by the CLCPA.

Two regulations discussed in the Response have been finalized since the 2023 Reference Case—governing emissions of the greenhouse gases hydrofluorocarbons (HFCs) and sulfur hexafluoride (SF_6)—but they do not close the emission reduction gaps for either 2030 or 2050. Based on both the 2023 Reference Case and the State's regulatory impact statements submitted upon promulgation of these rules (in December 2024), these two regulations are projected to collectively reduce GHG emissions by, at most, 2.92 million MT of carbon dioxide-equivalent in 2030 and 24.23 million MT of carbon dioxide-equivalent in 2050, far short of the 58- and 173-

million-metric-ton gap forecasted by DEC (DeGolia Aff. ¶ 15). (AR 00556 (state anticipates SF_6 emissions to remain constant with the rule in place, so not decreasing below current levels) and AR 00634, tbl.3 (showing maximum avoided emissions from the HFC rule to be 2.92 million MT CO_2e in 2030 and 24.23 million MT CO_2e in 2050)).

The Response also cites a revision underway to the Regional Greenhouse Gas Initiative ("RGGI") Program (Response at 8), a cooperative effort amongst eleven states in the Northeast and Mid-Atlantic that caps carbon dioxide emissions from power plants across all participating states. However, even the most ambitious updated RGGI rule possible would still only further reduce emissions by a small fraction of the total gap to New York's statewide emissions limits. According to the 2023 Reference Case, New York's total projected emissions from electricity—18 million MT CO2e in 2030 and 20 million MT CO2e in 2050—are significantly lower than the total gap to the emissions limits in those years (the State's 2023 Reference Case forecasts electricity emissions to be approximately 30% of the total remaining gap in 2030 and just 12% of the gap in 2050) (DeGolia Aff. ¶ 17). In other words, even if updated RGGI rules did require the maximum possible electric-sector abatement from New York, such that the electric sector produced *zero* emissions by 2030 and 2050, those reductions still would not come close to closing the gap between projected emissions and the state's mandatory emissions limits (*id.*) (since those emissions at most represent 30% and 12% of the gap, respectively in 2030 and 2050). The math speaks for itself: take the 58 million MT emissions gap in 2030 (estimated by the 2023 Reference Case), subtract 2.92 million MT (emissions reductions from the HFC and SF_6 regulations), and then subtract 18 million MT (the maximum possible emissions reductions from the power sector). Even this optimistic emissions-reduction scenario leaves an emissions gap of 37 million MT in 2030.

But in reality, the potential reductions from the proposed updates to the RGGI are far more moderate, and are unlikely to drive significantly deeper emissions reductions in New York than are already reflected in the 2023 Reference Case. This is primarily because regulations included in the 2023 Reference Case, such as New York's Renewable Portfolio Standard, are projected to drive emissions reductions at levels likely to be consistent with the abatement that an updated RGGI rule might require (*id.* ¶ 17). EDF's own modeling estimates that an RGGI update would not drive significantly greater reductions. When applied to New York's 2023 Reference Case, the modeling shows the proposed RGGI updates would result in a mere additional 2 million MT CO_2e reduction in 2030 and 8–10 million MT CO_2e reduction in 2050—a small fraction of the total emissions gaps of 58 and 173 million MT CO_2e, respectively (*id.* ¶ 18). Finally, regardless of whether *future* changes to RGGI or some other *future* DEC program could potentially abate GHG emissions, those are not regulations in place today nor were they in place by the January 2024 statutory deadline.

In summary, DEC's own figures show that under regulations promulgated as of January 2024, New York's emissions are projected to exceed the emissions limits by 58 million MT of carbon dioxide-equivalent in 2030 and 173 million MT in 2050 (*id.* ¶ 12). The two regulations adopted since then have not closed the gap, and even if the third (not-yet-proposed) regulation adopted the most ambitious possible updates to the RGGI program rule (bringing power sector emission to zero), emissions projections would *still* exceed the CLCPA limits by 37 million MT of carbon dioxide-equivalent in 2030 and 129 million MT in 2050 (*see id.* ¶ 17, 19).[1] In other words, DEC's "strides" are still quite far off from their goal. Although the

[1] And as explained in the DeGolia Affirmation, using a more realistic estimate of the RGGI amendments, this gap would be 53 and 139 million MT of carbon dioxide-equivalent in 2030 and 2050, respectively (DeGolia Aff., ¶19).

regulations adopted thus far are an important part of New York's overall strategy to reduce GHG emissions, the *statutory requirement* is to adopt, by January 1, 2024, regulations that *ensure* specific emissions limits will be met (ECL 75-0109[1]). Over a year past the deadline, DEC still has not fulfilled its obligation.

B. The Department's Regulations Do Not Reflect the Scoping Plan in Substantial Part, as Required by the Climate Act.

The CLCPA requires DEC's regulations to "[r]eflect, in substantial part, the findings of the scoping plan" (*id.* at 75-0109[2][c]). However, the regulations adopted by DEC thus far fail in this regard because they do not provide some type of binding, declining cap on emissions from all emission sectors, which the Scoping Plan describes as necessary to comply with the CLCPA (AR 03060). The CLCPA mandates DEC promulgate regulations to *ensure* compliance with the emissions limits (*id.* at 75-0109[1]). The word "ensure" here is key—it means "to make something *certain* to happen" (*Ensure*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/ensure [last visited Apr. 23, 2025] (emphasis added)); *see Schwesinger v. Perlis*, 143 N.Y.S.3d 830 [Civ. Ct.] ("The court must construe a statute so as to give effect to every word therein to the extent possible...")). Therefore the CLCPA also mandated that the Scoping Plan focus on identifying regulations capable of providing this certainty (ECL 75-0103[13]; Scoping Plan, AR 02720, 03059-03060).

This case is not litigating the question of whether or not the failure to adopt any specific regulation, such as the Scoping Plan's cap-and-invest program, is inconsistent with the CLCPA; rather, the importance of the Council's recommendation that DEC adopt a cap-and-invest program *is in the Council's reasoning when making that recommendation.* The Council's reasoning demonstrates that the Council (and DEC) clearly understands what it means under section 75-0109 to "ensure" compliance with the emissions limits, it signals how seriously the

Council took the obligation to adopt regulations necessary to ensure compliance with the CLCPA's emissions limits, and illustrates the types of design features that must be present in regulations in order to guarantee the emissions outcome—features that do not exist yet in DEC regulations. *Amici* do not contend in this brief that DEC must adopt the cap-and-invest regulation outlined in the Scoping Plan to comply with CLCPA requirements; rather, *amici* contend that DEC must adopt regulations capable of ensuring the emissions limits are achieved. DEC has adopted no such regulations to date, as we describe in detail in the following sections.

1. The Climate Act and Scoping Plan recognize the need for sweeping and significant regulations to meet the Climate Act's emissions limits.

The CLCPA establishes the "strongest GHG emission reduction and clean energy requirements" in the country, if not in the world (AR 02759). Such ambitious goals align with the legislature's stated intention to position New York as a "global leader[] ... on greenhouse gas mitigation and climate adaptation" (2019 N.Y. Laws 106 § 1(12)). To that end, the CLCPA created the Council and tasked it with developing the Scoping Plan for the express purpose of outlining the pathways and policies needed to "*ensure* the attainment of the statewide greenhouse gas emissions limits" for 2030 and 2050 (ECL 75-0103[13] (emphasis added)).

The Scoping Plan was the result of over two years of diligent, collaborative work. An initial draft of the Plan went through eleven public hearings and a six-month public comment period that generated more than 35,000 public comments (AR 02720). The Council considered this input and additional analytical information before finalizing the Scoping Plan (*id.*). In other words, the final Scoping Plan represents decisions by a coalition, that included the Commissioner of DEC as co-chair, on the best set of policies and regulations for achieving the CLCPA's directives and mandatory emissions limits. The DEC Commissioner heralded the final product as "a bold, monumental, and visionary achievement, not just for New York State, but for

the nation and the world" (NYSERDA, *New York State Climate Action Council Finalizes Scoping Plan to Advance Nation-leading Climate Law*, (Dec. 19, 2022), https://www.nyserda.ny.gov/About/Newsroom/2022-Announcements/2022-12-19-NYS-Climate-Action-Council-Finalizes-Scoping-Plan-to-Advance-Nation-Leading-Climate-Law).

To implement the CLCPA and ensure compliance with the mandated GHG emissions limits by the target dates, the Scoping Plan acknowledges the need for "a significant regulatory undertaking" by DEC and "focused and continuous progress" on emissions reductions in all economic sectors (AR 02770, 02722). For that purpose, the Scoping Plan provides both recommendations for regulations to drive reductions in greenhouse gas emissions *and* a backstop for ensuring emissions do not go beyond the limits (*see id.* at AR 02771, 03059). Notably, of the programs evaluated the Scoping Plan identifies only the cap-and-invest approach as a viable backstop for ensuring the emissions limits are met (*see id.* at AR 03058). It is through this "comprehensive vision and integrated approach" that the Scoping Plan charts a "path forward for New York to achieve" a 40% reduction by 2030 and 85% reduction by 2050 of statewide GHG emissions, as compared to 1990 levels (*id.* at AR 02770).

2. The Scoping Plan reflects the Council and the Department's interpretation of what it means to ensure compliance with the Climate Act's emissions limits.

The Scoping Plan was developed by the Council with the Department as a co-chair. Thus, it is instructive for understanding how the Council and Department—both instrumental bodies in implementing the CLCPA—interpret the CLCPA's directives (*see* AR 03058–03060). The Plan recommends a cap-and-invest program specifically because it is the only strategy that the Council found could "ensur[e] that aggregate emissions do not exceed the statewide emission limits" (*id.*). A closer look at the Scoping Plan's reasoning is informative regarding what types

of regulations the Council and DEC understand as *ensuring* that emission limits will be met, consistent with the plain meaning of the statute.

Initially, the Council considered two economywide GHG policies: (1) a tax or fee establishing a carbon price, or (2) a cap-and-invest program (*id.*). While the two proposed economywide strategies had many similarities, the Scoping Plan identified one "fundamental" and determinative difference: "only a cap-and-invest program would implement a declining, enforceable cap on emissions overall and a mechanism for State enforcement of such limits against individual sources...." (*id.*). The Scoping Plan found these features "ensur[ed] that aggregate emissions [will] not exceed the statewide emissions limits" (*id.* ("The difference from carbon tax/fee, however, is that a cap-and-invest program provides emissions certainty.")). Consequently, the Scoping Plan adopted that strategy (*id*. at AR 02728, 02739).

The design of the cap-and-invest program recommended by the Scoping Plan is telling: The Scoping Plan outlines features of a policy architecture that the Council and DEC believe would need to be present in order to *ensure* emission limit compliance (*see* AR 03060 (header says "Structure of Program to Ensure Compliance with Statewide Emission Limits" with text outlining how each key feature will "ensure that the statewide emission limit is met.")). The program design does not focus on the amount of emission reductions to be achieved, but rather on providing a backstop so that the amount of emissions released *cannot* exceed the State's limits. The Scoping Plan advises that the cap-and-invest program establishes "enforceable…emission caps for 2030 and 2050 that correspond with the statewide emission limits established pursuant to the CLCPA and adopted by DEC in 6 NYCRR Part 496." (AR 03060). By "[s]etting an economywide cap at a level corresponding with the CLCPA's emission limits [the-cap-and-invest program] provides certainty that those emission limits will be

met, while also providing a mechanism for State enforcement of such limits against individual GHG emission sources, as required by the C[LCPA]." (AR 03064). In other words, the cap-and-invest program provides "legally binding" certainty (*id.*).

To date, DEC has not adopted sufficient regulations under the CLCPA that possess those same characteristics, *i.e.* a declining, enforceable cap on GHG emissions across numerous emissions sectors on the 2030 and 2050 time-horizon. Instead, most of DEC's regulations are performance standards which secure GHG emissions cuts per unit of activity. While these regulations are important for driving reductions in greenhouse gas emissions, they do not provide a backstop capable of ensuring the State does not surpass its emissions limits. To provide that certainty, the Scoping Plan clearly identifies the need for regulations to impose enforceable quantity-based restrictions on emissions that align with the CLCPA's own statewide emissions limits (AR 03060). Such regulations would provide a firm ceiling on GHG emissions and ensure that New York meets its statutory obligations, even if other policies underperform.

The Scoping Plan takes the mandate to "ensure compliance" seriously and proposes a program with specific, enforceable features for the precise purpose of providing that certainty. Therefore, to "reflect, in substantial part" the Scoping Plan, DEC must take a similarly serious approach to "ensuring compliance" and adopt regulations with features that can provide the same level of certainty that the State's GHG emissions reduction limits will be met. As illustrated by the Scoping Plan, DEC clearly knows both what it means to "ensure compliance" and how to do so. Yet, DEC has failed to promulgate a regulation capable of providing that certainty. Therefore, DEC is in violation of the CLCPA for failing to promulgate rules and regulations that ensure compliance with the statewide emissions reduction limits and "reflect, in substantial part" the Scoping Plan (*see* ECL 75-0109[2][c]).

C. The Department Failed to Prioritize Measures to Maximize Net Reductions of GHG Emissions and Co-Pollutants in Disadvantaged Communities, as Required by Law.

The regulations that DEC has promulgated to date explicitly under its ECL Section 75-0109 authority—regulations to reduce emissions of HFCs and SF_6—also do not satisfy the specific requirement that, "[i]n promulgating these regulations, the department shall . . . [p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to section 75-0111 of this article and encourage early action to reduce greenhouse gas emissions and co-pollutants" (ECL 75-0109[3][d]; AR 00708 (listing section 75-0109 as the statutory authority for the HFC regulation); AR 00510 (listing section 75-0109 as the statutory authority for the SF_6 regulation)). Neither regulation even purports to fulfill these requirements. The rulemaking documents for the SF_6 regulations do not once mention "disadvantaged communities" (*see* R00502–00595). And the HFC regulations mention "disadvantaged communities" only in the context of allowing these communities exemptions from or longer periods in which to come into compliance with the regulations (*see e.g.*, R00625–00626, 00630). In other words, while the HFC regulations may take steps to minimize negative *economic* impacts to disadvantaged communities, they do not prioritize or take aim at maximizing GHG or co-pollutant emissions reductions in these communities, as section 75-0190[3][d] of the CLCPA requires.

This is not a question of policy or degree to which DEC may or may not have pursued one discretionary goal among many. The directive here is *mandatory*, just as is established above regarding the *mandatory* nature of Section 75-0109[2][a]'s directive to "ensure that the aggregate emissions of greenhouse gases … will not exceed the statewide greenhouse gas emissions limits." Section 75-0109[3][d] plainly requires that when promulgating regulations under section 75-0109[1]—to ensure compliance with the statewide emissions limits—DEC *must*

also secure abatement of locally-harmful co-pollutants in communities that are "burdened by cumulative environmental pollution," among other factors (ECL 75-0109[3][d]; ECL 75-0111[1][c][i]). In other words, when DEC does act under its section 75-0109 authority, DEC has a legal obligation to both ensure GHG emissions will not exceed mandatory limits *and* to prioritize measures that target co-pollutant reductions in disadvantaged communities. But the HFC and SF_6 regulations simply do not sufficiently address or prioritize reductions to GHG emissions and co-pollutants in disadvantaged communities. Accordingly, DEC failed to fulfill its nondiscretionary duty.

D. The Urgent Need to Avoid the Catastrophic Consequences of Climate Change, and the Benefits of Promulgating the Required Regulations, Warrant Mandamus.

Mandamus is a legal remedy largely controlled by equitable principles resting soundly in the discretion of the court (*see Coombs v. Edwards*, 280 N.Y. 361, 364 [N.Y. 1939]). The catastrophic consequences of climate change, which DEC has repeatedly acknowledged in the past, warrant such a remedy. But perhaps more importantly, six years ago, in enacting the CLCPA and in recognition of the serious risks of inaction, the legislature assigned DEC a *mandatory duty.* DEC now seeks to avoid that duty and asks the court to upend the priorities of the legislature with an argument about the hardship of compliance, without fully acknowledging the gravity of the harms this Petition seeks to address or the benefits that would come from the promulgation of the required regulations.

Furthermore, the State's claim that mandamus "risk[s] causing 'disorder' or 'confusion in public affairs'" is nothing but a false alarm (Response at 22). Compelling the Department to promulgate rules and regulations consistent with its nondiscretionary duties would provide order and clarity by enhancing regulatory certainty and defining the roles of all state agencies in

achieving the CLCPA's emission reduction limits—and would be consistent with the clear mandates of the CLCPA.

1. The Court should grant mandamus because the urgent threat of climate change to New Yorkers far outweighs the burden on DEC of adopting regulations.

The equitable considerations associated with the harms of climate change merit enforcement of Petitioners' legal right to mandamus. The harms Petitioners seek to redress exceed the burdens the State may face in complying with its statutorily mandated duty to adopt regulations, and are magnitudes greater than harms faced by petitioners in other situations where the court found a legal right to mandamus but did not grant the remedy because of equitable considerations (*see Coombs v. Edwards*, 280 N.Y. 361 (N.Y. 1939) (petitioner's right to debt repayment from a small city within a single year was not enforced because of the financial burden on the city); *In re Barr Laboratories*, 930 F.2d 71 (D.C. Cir. 1991) (a drug company's right to a speedy review of its generic drug application was not enforced because it would inappropriately interfere with an agency's priorities)). Here, Petitioners face harms that are urgent and immense, and the State's burden is comparatively minimal.

As DEC itself states in its Commissioner Policy 49, "[h]uman-induced climate change is the most pressing environmental issue of our time. Climate change threatens our natural resources and built environments, with profound effects on the State's environment, communities, and economy" (DEC, *CP-49 / Climate Change and DEC Action* 1-2 (2022), extapps.dec.ny.gov/docs/administration_pdf/cp492022.pdf). Recognizing the urgency of the situation, DEC further concludes that "GHG emissions must. . . rapidly and significantly be reduced in the near future and eventually eliminated to prevent the increasingly harmful impacts

of climate change over the next several decades" (DEC, *Climate Change Effects and Impacts*, dec.ny.gov/environmental-protection/climate-change/effects-impacts).

The New York State Climate Impacts Assessment explains that New York is already facing and will continue to face health and safety impacts from extreme temperatures, precipitation, and sea level rise (Janice Barnes et al., *New York State Climate Impacts Assessment Chapter 07: Human Health and Safety*, 1542 Annals N.Y. Acad. Science 385 [2024]). Rising temperatures lead to increased cardiovascular and respiratory illnesses, kidney damage, water- and vector-borne diseases, and more (*id.* at 394). Rising temperatures also affect air quality, and extreme heat and air pollution can compound, making the effects of exposure to the two simultaneously worse than the sum of both when experienced alone (*id.*). In New York, intense precipitation has caused flooding in many areas, resulting in deaths, injuries, and exposures to pathogens and hazardous substances (*id.* at 398). Sea level rise, which will occur along the New York coastline by seven to twelve inches by the 2030s compared with a 1995–2014 baseline, leads to worse storm surge and flood risk during storm events (*id.* at 403). Other impacts result from a combination of the hazards described above, such as negative effects on mental health, reduced food availability, and rising healthcare costs (*id.* at 405). The severe consequences of climate change for New Yorkers underscore the urgent need for DEC to take action to address GHG emissions. This vastly outweighs any difficulty DEC may have in promulgating the regulations it is statutorily required to issue.

2. The Court should grant mandamus relief because the promulgation of statutorily mandated regulations will increase regulatory certainty.

Regulations that ensure compliance with the CLCPA's emissions reduction limits, such as annual limits on specific pollutants and/or sectors, are critical for helping agencies get and stay on track for the 2030 and 2050 targets. Absent clear regulatory guardrails, agencies and

project applicants are left speculating on how to comply with these broad emissions limits still years away, leaving much room for error. Compelling DEC to release rules and regulations to ensure such compliance is therefore proper because such regulations will provide regulatory certainty for numerous stakeholders, including DEC staff, other agencies, project applicants, and community and environmental advocates.

The CLCPA provision requiring that all state agencies consider whether their "administrative approvals and decisions... are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits" is self-executing (2019 N.Y. Laws 106 § 7[2]); *see Danskammer Energy, LLC v. New York State Dep't of Env't Cons.*, 76 Misc.3d 196, 249-50 [Sup. Ct., Orange Co. 2022] (holding that the "immediacy to the [CLCPA] and the language used, and the reasonable inference and conclusion to be drawn from the language used, in order to give it meaning and effect, is that the DEC is authorized to deny a permit based upon" the statute itself, even absent implementing regulations)). But absent regulations offering more specific guidance, agencies will find it challenging to determine whether a discrete action is "inconsistent with or will interfere with" goals set for 2030 and 2050—and in some cases have already. Likewise, environmental and community advocates, regulated industries, and the courts will be similarly challenged to evaluate whether the agency has acted in contravention of the CLCPA.

Rulings from the U.S. Court of Appeals for the D.C. Circuit have already demonstrated the potential consequences of not having this guidance in place. For example, that court vacated and remanded Federal Energy Regulatory Commission ("FERC") orders granting a certificate of public convenience and necessity for a gas pipeline project due, in part, to FERC's failure to consider the impact of New Jersey's energy efficiency laws (*New Jersey Cons. Found. v. FERC*,

111 F.4th 42, 61 n. 10 [D.C. Cir. 2024]). But the court contrasted the New Jersey laws with the CLCPA, explaining that while the CLCPA set GHG emissions reduction limits, it did not specify how to meet the limits or mandate reductions in gas use, whereas the New Jersey law "requires specific annual natural gas-use reductions" (*id.*). And in another challenge to a FERC-approved gas pipeline project, the court held that FERC's explanation that the CLCPA did not undercut its finding of need was reasonable because the statute "does not prescribe any particular way of achieving the required reductions" (*Food & Water Watch v. FERC*, 104 F.4th 336, 348 [D.C. Cir. 2024]).

The court's logic in both cases demonstrates the difficulty of translating the generalized 2030 and 2050 emissions reduction limits to project planning and CLCPA enforcement. Had regulations identifying interim steps to ultimately achieve those limits been in place at the time the court was considering *Food & Water Watch*, for example, the parties and the court would have perhaps been better guided through the analysis of whether the projected "need" for the pipeline remained accurate in light of restrictions such regulations may have placed on the continued use of gas. But without such guidance, the court could only have speculated on what these years-away limits might mean for the gas industry, and deference to what it found to be a "reasonable" explanation from FERC did not allow such speculation.

Amici submit that in the continued absence of the required regulations, New York is likely to see similar situations play out in which agencies, courts, and other stakeholders are deprived of the benefit of clear guidance for analyzing the future of New York's fossil fuel use and project consistency with the CLCPA. For example, the recently granted Air State Facility Permits for the expansions of two compressor stations in Athens, NY and Dover, NY note that when the facility owner or operator applies to renew the permit they will need to "provide a

[CLCPA] analysis following procedures acceptable to the Department," including a discussion of "whether there is a continuing reliability need for the operation of the equipment associated with the ExC project" (DEC, Div. of Air Resources, Iroquois Gas Transmission System, L.P. Athens Compressor Station Air State Facility Permit 9, https://dec.ny.gov/sites/default/files/2025-02/iroquoisencathensasfmod.pdf; DEC, Div. of Air Resources, Iroquois Gas Transmission System, L.P. Dover Compressor Station Air State Facility Permit 9, https://dec.ny.gov/sites/default/files/2025-02/iroquoisencdoverasfmod.pdf). Absent more specific prescriptions for achieving emissions reductions, the facility owner or operator may be left with too much discretion—or, insufficient clarity—on how to conduct this reliability need analysis, and DEC, the courts, and various stakeholders may be left with little recourse for evaluating the sufficiency of such analysis. The Department's failure to issue regulations to ensure compliance with statewide emissions reduction targets by the statutory deadline also sets a dangerous precedent for how other New York agencies prioritize CLCPA implementation. The CLCPA requires a cross-agency approach to achieve its emissions reduction goals, mandating that "[a]ll state agencies shall assess and implement strategies to reduce their greenhouse gas emissions" and "shall promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits" (2020 NY Senate Bill S6599; ECL 75-0109[1]). The actions of other agencies regarding CLCPA implementation, however, rely and build upon the foundational actions of DEC. And if DEC, the leading state agency on environmental protection in New York, is allowed to disregard its responsibilities under the CLCPA, other state agencies may elect to do the same. Further, as the federal government withdraws from many efforts to avoid the worst impacts of climate change, clear and decisive action by New York State agencies such as DEC is critical to continue to drive progress and protect New Yorkers.

The Department cannot be permitted to remain in dereliction of its mandatory duties under the CLCPA. *Amici* submit that the time has long passed for DEC to fulfill its statutory duty as expressed by the legislature when it passed this landmark legislation. The Climate Act itself recognizes that time is of the essence when it comes to addressing climate change (2019 N.Y. Laws 106 §§ 1, 2[a]). In this regard, the legislature codified its ambitious emission reduction limits and set mandatory deadlines—signed into law by the Governor—directing the Department to take actions necessary to avoid the most severe impacts of climate change (*id.* § 4). Even aside from the statutory mandate, the urgent threat of climate change and its potentially catastrophic consequences, the need for regulatory certainty, and the importance of DEC setting a positive example for other state agencies all demand action. New York should continue to be a global leader in climate legislation and policy without further delay, and this court should compel the necessary action the CLCPA requires.

E. The Iterative Process in Section 75-0119(2)(b) of the Climate Act did not Extend the Mandatory Deadline in Section 75-0109.

The Department suggests that section 75-0109's mandatory deadline "is not a static deadline" based on a disingenuous interpretation of the iterative process set forth in section 75-0119(2)(b) (Response at 18). Section 75-0119(2)(b) clearly provides for a process in which DEC is required to periodically consult with the Council, evaluate the shortcomings (and successes) of the adopted regulations, report on the findings, and recommend future actions (ECL 75-0119[2][b]). There is no statutory language to suggest that this section affects the deadline set forth in section 75-0109, nor has the Department offered any legal authority for its interpretation. The Department's misguided argument should be rejected by the Court.

IV. CONCLUSION

Based on the foregoing, *amici* support the relief sought in the Petition compelling the Department to undertake the rulemaking that the Climate Act expressly requires. We therefore urge the court to grant Petitioners' requested mandamus and declaratory relief.

Respectfully submitted on June 4, 2025.

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Certification of Word Count Compliance

The undersigned counsel hereby certifies that the body of the foregoing affirmation contains 6555 words (excluding the caption, table of authorities, table of contents, and signature block).

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