PA 20-6, September 2020 Special Session—HB 7008
Emergency Certification

AN ACT CONCERNING ENHANCEMENTS TO THE STATE'S ENVIRONMENTAL JUSTICE LAW

SUMMARY: This act changes the state's environmental justice law, which generally requires applicants seeking to construct or site certain facilities ("affecting facilities") in environmental justice communities to engage in a public participation process, by:

1. requiring, instead of allowing, applicants to post certain notices and notify elected officials for purposes of informing the public about the informal public meeting on a proposed facility;
2. deeming an application insufficient if certain notice and information disclosure requirements are not met;
3. requiring a community environmental benefit agreement in municipalities already hosting at least five affecting facilities (see BACKGROUND);
4. requiring the municipal chief elected official or town manager to participate in community environmental benefit agreement negotiations and, if the municipality's legislative body approves it, implement, administer, and enforce the agreement;
5. expanding the lists of (a) impacts reasonably related to the facility that may be mitigated through a community environmental benefit agreement and (b) mitigation activities that may be funded through an agreement; and
6. specifying that the terms of a community environmental benefit agreement approved on or after November 1, 2020, are not a separate and distinct basis for someone to intervene in an administrative, licensing, or other proceeding on the grounds that the proceeding involves conduct that has or may cause environmental harm.

Under the state's environmental justice law, applicants seeking a permit, certificate, or approval from the Department of Energy and Environmental Protection (DEEP) or Connecticut Siting Council for locating or expanding an affecting facility in an environmental justice community must, before filing the request, take certain steps to (1) inform local officials and the public about the proposed facility and (2) consult with officials on providing financial resources to mitigate a facility's impact.

Environmental justice communities are (1) distressed municipalities, which the Department of Economic and Community Development designates, or (2) U.S. census block groups for which at least 30% of the population consists of low-income people who are not institutionalized and have an income of less than 200% of the federal poverty level (CGS § 22a-20a).
EFFECTIVE DATE: November 1, 2020

PUBLIC NOTICE AND INVOLVEMENT

Public Participation Plan

State law requires applicants seeking a new or expanded permit or siting approval from DEEP or the Siting Council for an affecting facility in an environmental justice community to, among other things, file a "meaningful public participation plan" with the respective agency and obtain its approval of the plan before applying for the permit, certificate, or siting approval.

The law requires the plan to include the applicant's certification that he or she will undertake the plan's measures for public participation, including holding an informal public meeting that is convenient for affected residents. The applicant must provide (1) certain newspaper notice of the meeting at least 10 days, but no more than 30 days, before it occurs and (2) if applicable, a similar notice on the applicant's website.

In addition to the newspaper and online notice, prior law provided the following non-exhaustive list of ways an applicant could publicize the meeting:

1. post according to local requirements a reasonably visible sign, printed in English, on the proposed or existing facility property;
2. post according to local requirements a reasonably visible sign, printed in all languages spoken by at least 20% of the population that lives within a one-half mile radius of the proposed or existing facility property;
3. notify neighborhood and environmental groups, in writing, in languages appropriate for the target audience; and
4. notify local and state elected officials in writing.

The act requires, rather than allows, an applicant to post the signs and notify the elected officials. Notifying neighborhood and environmental groups remains discretionary.

The act also decreases the population threshold, from 20% to 15%, that triggers the requirement for posting notices in languages other than English. The percentage of individuals speaking a language must be determined according to the most recent U.S. census.

The act deems an application filed on or after November 1, 2020, insufficient if the applicant fails to meet any of the notice requirements, except for the one concerning an English sign on the facility property. It also does this for existing law's newspaper and online notice requirements.

Informal Public Meeting

By law, at the informal public meeting the applicant must make a reasonable and good faith effort to give clear, accurate, and complete information about the proposed new or expanded facility and any potential associated environmental and health impacts. For applications filed on or after November 1, 2020, the act deems a permit, certificate, or approval application insufficient if the applicant fails to do so.

Community Environmental Benefit Agreement

By law, a municipality, facility owner, or developer can enter into a "community environmental benefit agreement," which is a written agreement in which the owner or developer agrees to develop the real property that is to be used for the new or expanded facility and provide financial resources to mitigate impacts reasonably related to the facility. But the applicant must consult with the chief elected official or officials in any municipality where the facility is to be located or expanded to evaluate the need for a community environmental benefit agreement.

The act further requires the municipality's chief elected official or town manager, as applicable, to (1) participate in the negotiations for a community benefit agreement's negotiation; (2) be the person entering into the agreement for the municipality; and (3) implement, administer, and enforce the agreement on the municipality's behalf. Agreements negotiated on or after November 1, 2020, must be approved by the municipality's legislative body before they can be implemented, administered, or enforced.

The act also makes an agreement mandatory if, at the time the application is filed on or after November 1, 2020, the municipality in which a new or expanded facility is proposed already has at least five affecting facilities. Before negotiating an agreement, the law requires the municipality to provide a public opportunity for potentially affected residents to speak on the agreement.

The act expands the non-exhaustive list of impacts that may be mitigated as part of a community environmental benefit agreement to include quality of life, asthma rates, and for environmental impacts, air quality and watercourses. The law already explicitly considers the environment, traffic, parking, and noise.

The act also expands the non-exhaustive list of projects that may be funded by mitigation efforts. Existing law lists funding for environmental education, diesel pollution reduction, biking and walking trails, park staffing, urban forestry, community gardens, and any other negotiated benefit to the environment. The act adds (1) constructing electric vehicle charging infrastructure, biking facilities, and multi-use trails; (2) providing ongoing asthma screening, air monitoring by a credentialed environmental professional, traffic study, and watercourse monitoring; and (3) establishing a wellness clinic.

BACKGROUND

Affecting Facilities

The state's environmental justice law applies to applicants seeking permits, certificates, or approval from DEEP or the Siting Council for the following types of new or expanded facilities:

1. electric generating facilities with a capacity of more than 10 megawatts;
2. sludge and solid waste incinerators or combustors;
3. sewage treatment plants with a capacity of more than 50 million gallons per day;

4. intermediate processing centers, volume reduction facilities, or multi-town recycling facilities with a combined monthly volume of more than 25 tons;
5. landfills, including those with ash, construction and demolition debris, or solid waste;
6. medical waste incinerators; and
7. major air pollution sources under the federal Clean Air Act (e.g., large factories).

The law exempts (1) parts of electric generating facilities that use fuel cells or non-emitting and non-polluting renewable resources such as wind, solar, and hydropower; (2) facilities that obtained a Siting Council certificate by January 1, 2000; and (3) facilities under the state higher education system's control with a satisfactory environmental impact evaluation (CGS § 22a-20a).