***Substitute Senate Bill No. 1147***

# *Public Act No. 23-202*

***AN ACT CONCERNING THE ENVIRONMENTAL JUSTICE PROGRAM OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 22a-20a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2023*):

(a) As used in this section:

(1) "Environmental justice community" means (A) a United States census block group, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level; or (B) a distressed municipality, as defined in subsection (b) of section 32-9p;

(2) "Affecting facility" means any (A) electric generating facility with a capacity of more than ten megawatts; (B) sludge or solid waste incinerator or combustor; (C) sewage treatment plant with a capacity of more than fifty million gallons per day; (D) intermediate processing center, volume reduction facility or multitown recycling facility with a combined monthly volume in excess of twenty-five tons; (E) new or

expanded landfill, including, but not limited to, a landfill that contains ash, construction and demolition debris or solid waste; (F) medical waste incinerator; or (G) major source of air pollution, as defined by the federal Clean Air Act. "Affecting facility" shall not include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydro power or that uses fuel cells, (ii) any facility for which a certificate of environmental compatibility and public need was obtained from the Connecticut Siting Council on or before January 1, 2000, or (iii) a facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with the provisions of sections 22a-1b to 22a-1h, inclusive, and such evaluation has been determined to be satisfactory in accordance with section 22a-1e;

(3) "Meaningful public participation" means (A) residents of an environmental justice community have an appropriate opportunity to participate in decisions about a proposed facility or the expansion of an existing facility that may adversely affect such residents' environment or health; (B) the public's participation may influence the regulatory agency's decision; and (C) the applicant for a new or expanded permit, certificate or siting approval seeks out and facilitates the participation of those potentially affected during the regulatory process; **[**and**]**

(4) "Community environmental benefit agreement" means a written agreement entered into by the chief elected official or town manager of a municipality and an owner or developer of real property whereby the owner or developer agrees to develop real property that is to be used for any new or expanded affecting facility and to provide financial resources for the purpose of the mitigation, in whole or in part, of impacts reasonably related to the facility, including, but not limited to, impacts on the environment, including, but not limited to, air quality and watercourses, quality of life, asthma rates, traffic, parking and noise;

(5) "Council" means the Connecticut Siting Council;

(6) "Department" means the Department of Energy and Environmental Protection;

(7) "Environmental or public health stressor" means any source of environmental pollution that causes a potential public health impact;

(8) "Major source" means (A) a major source of air pollution, as defined by the federal Clean Air Act or rules or regulations adopted by the department, or (B) an affecting facility that directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant or other applicable criteria set forth in the federal Clean Air Act; and

(9) "Permit" means any individual facility permit, license, certificate or siting approval issued by the department or council to a facility that establishes the regulatory and management requirements for a regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-430. "Permit" does not include (A) any authorization or approval necessary to perform a remediation conducted in accordance with the regulations established pursuant to section 22a-133k; or (B) any authorization or approval required for an extension of time to complete construction of a facility.

(b) (1) Applicants who, on or after January 1, 2009, seek to obtain any certificate under chapter 277a, a new or expanded permit, except for a minor modification of an existing permit for an affecting facility, or siting approval from the Department of Energy and Environmental Protection or the Connecticut Siting Council involving an affecting facility that is proposed to be located in an environmental justice community or the proposed expansion of an affecting facility located in such a community, shall (A) file an assessment of environmental or public health stressors and a meaningful public participation plan with such department or council and shall obtain the department's or

council's approval of such public participation plan prior to filing any application for such permit, certificate or approval except an applicant for an expanded permit shall not be required to file such an assessment; **[**and**]** (B) consult with the chief elected official or officials of the town or towns in which the affecting facility is to be located or expanded to evaluate the need for a community environmental benefit agreement in accordance with subsection (d) of this section; and (C) except for applicants for an expanded permit, submit and receive approval of a public participation report that shall include, but not be limited to, (i) an affidavit that the applicant satisfied the requirements of subdivisions (2) to (5), inclusive, of this subsection; (ii) all written comments received; and (iii) responses to concerns and questions presented in such written and verbal comments, including any changes to the activity or affecting facility proposed. Each assessment of environmental or public health stressors prepared pursuant to this subsection shall contain an assessment of the potential environmental and public health stressors associated with the proposed new affecting facility, as applicable, and shall identify any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the applicable environmental justice community. The filing of an assessment of environmental or public health stressors shall not be required until regulations are adopted pursuant to subsection (f) of this section.

(2) Each such meaningful public participation plan shall contain measures to facilitate meaningful public participation in the regulatory process and a certification that the applicant will undertake the measures contained in the plan. Such plan shall identify a time and place where an informal public meeting will be held that is convenient for the residents of the affected environmental justice community. In addition, any such plan shall identify the methods, if any, by which the applicant will publicize the date, time and nature of the informal public meeting in addition to the notice by mail required by subdivision (3) of this

subsection and the publication required by subdivision **[**(3)**]** (4) of this subsection. Such methods shall include, but not be limited to, (A) posting a reasonably visible sign on the proposed or existing affecting facility property, printed in English, in accordance with any local regulations and ordinances, (B) posting a reasonably visible sign, printed in all languages spoken by at least fifteen per cent of the population that reside within a one-half of a mile radius of the proposed or existing affecting facility, in accordance with local regulations and ordinances, **[**and**]** (C) notifying local and state elected officials, in writing, and (D) posting on electronic media, including, but not limited to, relevant Internet web sites and social media platforms, provided such notice is readily found by searching for the name of the affecting facility on the Internet. Such methods may include notifying neighborhood and environmental groups, in writing, in a language appropriate for the target audience. The determination of the percentage of persons that speak a language, for purposes of subparagraph (B) of this subdivision, shall be made in accordance with the most recent United States census.

(3) Not less than thirty days prior to the informal public meeting, the applicant for a new proposed affecting facility, other than an applicant for an expanded permit, shall send a notice of such informal public meeting by mail to all residential households located within a one-half-mile radius of the proposed or existing affecting facility. Such notice shall provide the date, time and location of such meeting, a description of the proposed affecting facility, a map indicating the location of the affecting facility, information on how an interested person may review project documents, including any complete needs assessment, alternatives assessment, environmental impact analysis or assessment of environmental or public health stressors, addresses for mailed and Internet-based submission of written public comments and any other information deemed appropriate by the department or council. The applicant shall provide such notice in writing in all languages spoken

by not less than fifteen per cent of the population that resides within such one-half-mile radius of the proposed or existing affecting facility. Such applicant shall subsequently send notice by mail to all such residential households of any subsequent public participation opportunities that occur as part of the permit approval process before the department or council, and notify such residential households of any notice of tentative or final determination by the department or council.

**[**(3)**]** (4) Not less than ten days prior to the informal public meeting and not more than thirty days prior to such meeting, the applicant shall publish the date, time and nature of the informal public meeting with a minimum one-quarter page advertisement in a newspaper having general circulation in the area affected, and any other appropriate local newspaper serving such area, in the Monday issue of a daily publication or any day in a weekly or monthly publication. Such advertisement shall include information on how an interested person may review project documents, including any complete needs assessment, alternatives assessment, environmental impact analysis and assessment of environmental and public health stressors, as applicable. The applicant shall post a similar notification of the informal public meeting on the applicant's web site, if applicable.

**[**(4)**]** (5) At the informal public meeting, the applicant shall make a reasonable and good faith effort to provide clear, accurate and complete information about the proposed affecting facility or the proposed expansion of **[**a**]** such facility and the potential environmental and health impacts of such affecting facility or such expansion. The applicant shall accept written comments, submitted via mail or electronic mail, and oral comments from any interested party, and provide an opportunity for meaningful public participation at the informal public meeting. Not later than thirty days after such informal public meeting, the applicant, other than an applicant for an expanded permit, shall submit to the department or council a public participation report, as

described in subdivision (1) of this subsection. The applicant shall video record the informal public meeting and submit the recording to the department or council with the public participation report, as applicable.

**[**(5)**]** (6) The Department of Energy and Environmental Protection or the Connecticut Siting Council shall not take any action on the applicant's application for a permit, license, certificate or approval earlier than sixty days after the informal public meeting or the date the department or council approves the public participation report, whichever date is earlier. For any such application filed on or after November 1, **[**2020**]** 2023, if the applicant fails to undertake the requirements of **[**subparagraphs (B) to (D), inclusive, of subdivision (2) of this subsection or subdivision (3) or (4) of**]** this subsection, any such application shall be deemed insufficient. The application of an applicant who fails to receive approval of any required public participation report by the department or council, as applicable, shall be deemed insufficient.

**[**(6)**]** (7) In the event that the Connecticut Siting Council has approved a meaningful public participation plan or public participation report, as applicable, concerning a new or expanded proposed affecting facility, as applicable, and an informal public meeting has been held in accordance with this subsection, the Department of Energy and Environmental Protection may **[**approve such plan and**]** waive the requirement that an additional informal public meeting be held in accordance with this subsection.

(8) In addition to any other fee authorized by law, rule or regulation, the department or council, as applicable, may assess each permit, license or certificate applicant a reasonable fee in order to cover the costs associated with the implementation of this section, including all costs to provide technical assistance to permit applicants and environmental justice communities to comply with the provisions of this section.

(c) Any municipality, owner or developer may enter into a community environmental benefit agreement in connection with an affecting facility. For any application filed on or after November 1, 2020, for such an affecting facility that: (1) Requires a certificate under chapter 277a, or (2) constitutes a new or expanded permit, except for a minor modification or improvement of an existing permit for such facility, or siting approval from the Department of Energy and Environmental Protection or the Connecticut Siting Council involving an affecting facility, and that is proposed to be located in an environmental justice community or **[**is proposed to be**]** the proposed expansion of an affecting facility to be located in such a community, the applicant shall enter into such an agreement with the municipality if there are five or more affecting facilities in such municipality at the time such application is filed. The Commissioner of Energy and Environmental Protection shall not issue a notice of tentative determination regarding a new or modified permit unless the applicant has submitted a copy of the executed agreement with the municipality. Mitigation may include both on-site and off-site improvements, activities and programs, including, but not limited to: Funding for activities such as environmental education, diesel pollution reduction, electric vehicle charging infrastructure construction, establishment of a wellness clinic, ongoing asthma screening, provision of air monitoring performed by a credentialed environmental professional, performance of an ongoing traffic study, watercourse monitoring, construction of biking facilities and multi-use trails, staffing for parks, urban forestry, support for community gardens or any other negotiated benefit to the environment in the environmental justice community. Prior to negotiating the terms of a community environmental benefit agreement, the municipality shall provide a reasonable and public opportunity for residents of the potentially affected environmental justice community to be heard concerning the requirements of or need for, and terms of, such agreement. Any mitigation contained in such an agreement shall have a nexus to the impacts caused by the proposed facility and shall be

proportional to such impacts.

(d) The chief elected official or town manager of a municipality shall participate in the negotiations for any such community environmental benefit agreement and shall implement, administer and enforce such an agreement on behalf of the municipality, provided any such agreement negotiated pursuant to this section on and after November 1, 2020, shall be approved by the legislative body of the municipality prior to implementation, administration and enforcement of such agreement. Such chief elected official or town manager shall select a resident of the potentially affected environmental justice community to participate in such negotiations.

(e) The terms of any community environmental benefit agreement negotiated, entered into and approved in accordance with this section on and after November 1, 2020, shall not constitute a separate and distinct basis for a pleading to intervene in any administrative, licensing or other proceeding pursuant to section 22a-19.

(f) The Commissioner of Energy and Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54, as are necessary and proper to carry out the purposes of this section. The provisions of subsection (g) of this section shall not take effect until the adoption of the regulations pursuant to this subsection. Such regulations shall include, but not be limited to, provisions regarding: (1) Procedures and requirements for creating the meaningful public participation plan and the public participation report required by this section; (2) the identification and measurement of the relative impact of environmental and public health stressors across communities; (3) tools for stakeholder industries and sectors to use that take account of any such environmental or public health stressors, including tools to help inform decisions about potential locations for proposed affecting facilities that comply with the provisions of this section; and (4) standards for denying or placing conditions on permits. The

commissioner shall consult with stakeholder industries and sectors when developing the regulations pursuant to this section.

(g) (1) On and after the adoption of regulations pursuant to subsection (f) of this section, the department's review of any such application for a proposed affecting facility, other than an application for an expanded permit, shall be conducted in accordance with any such regulations, as applicable, and the council's review of any such application may be conducted in accordance with any such regulations.

(2) The department or the council, as applicable, may deny any application for a permit for a proposed affecting facility, other than an application for an expanded permit, upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the applicable environmental justice community, result in adverse cumulative environmental or public health stressors in such environmental justice community that are higher than those borne by other communities within the state, county or other geographic unit of analysis, as determined by the department or council. Any such determination by the department shall be made in accordance with the applicable regulations adopted pursuant to subsection (f) of this section and any such determination by the council may be made in accordance with such regulations.

(3) If such permit for a proposed affecting facility, other than a permit for an expanded facility, is granted, the department or council, as applicable, may impose reasonable conditions on the construction and operation of the proposed affecting facility that are intended to mitigate environmental and public health impacts.

(4) The department or the council, as applicable, shall provide notice, in writing, to any applicant for any such proposed affecting facility of any tentative determination regarding compliance with the applicable regulations adopted pursuant to subsection (f) of this section.

(5) If any hearing is held on any application subject to the requirements of this section, compliance with the applicable regulations adopted pursuant to subsection (f) of this section shall be considered at such hearing.

(6) The department or council, as applicable, shall publish any determination made pursuant to this subsection to the department's or council's Internet web site.

(h) Notwithstanding any provision of the general statutes, the department or council, as applicable, may, after review of the public participation report and any other relevant information, including testimony and written comments received in connection with the meaningful public participation plan, apply reasonable conditions to a new permit for an affecting facility, other than a permit for an expanded facility, concerning the construction and operation of the facility to protect the environment and public health, upon a finding by the department or council, as applicable, that approval of such permit, as proposed, would, together with other environmental or public health stressors affecting the applicable environmental justice community, result in adverse cumulative environmental or public health stressors in such environmental justice community that are higher than those borne by other communities in the state, county or other geographic unit of analysis, as determined by the department or council. Any such determination by the department shall be made in accordance with the applicable regulations adopted pursuant to subsection (f) of this section and any such determination by the council may be made in accordance with such regulations.

(i) If a permit applicant applies for more than one new proposed affecting facility, the permit applicant shall only be required to comply with the provisions of this section once, unless the department or council, as applicable, determines that more than one informal public meeting is necessary due to the complexity of the permit applications

necessary for the proposed affecting facility. Nothing in this subsection shall be construed to limit the authority of the department or council to hold or require any public hearing, as may be required by any other provision of the general statutes, federal law or rule or regulation.

(j) Nothing in this section shall be construed to limit the right of an applicant to continue facility operations during the process of permit approval to the extent such right is conveyed by an applicable law, rule or regulation. Nothing in this section shall be construed to apply to permit renewals or permit modifications.

Approved June 29, 2023