



PA 23-202—sSB 1147
Environment Committee
Appropriations Committee

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

SUMMARY: This act makes changes in the state’s environmental justice law, which generally requires applicants seeking to construct, expand, or site certain facilities in environmental justice communities to engage in a public participation process. Specifically, the act does the following:

1. provides specific exemptions for minor modifications to existing permits and expanded permits, and also broadly provides that the environmental justice law must not be construed to apply to permit renewals or permit modifications;
2. generally requires applicants subject to the law, other than applicants for expanded permits, to (a) file an assessment of environmental or public health stressors and (b) submit and receive approval of a public participation report to show compliance with the requirements for informal public meetings (e.g., notice, public comment, and video recording);
3. expands the notice that must be given about an upcoming informal public meeting to include online posts and direct mail to households within one-half mile of the involved affecting facility;
4. requires the newspaper advertisement, which must be published under existing law between 10 and 30 days before the public meeting, to include information on how interested people can review project documents (i.e., any complete needs assessment, alternatives assessment, environmental impact analysis, and assessment of environmental and public health stressors);
5. requires the facility’s applicant to accept oral and written comments from any interested person and provide an opportunity for meaningful public participation at the informal public meeting;
6. requires the chief elected official or town manager, when negotiating a community environmental benefit agreement to mitigate an affecting facility’s impacts, to select a resident of the potentially affected environmental justice community to participate in the negotiations;
7. requires mitigation in a community benefit agreement to have a nexus and be proportional to the impacts of the proposed facility; and
8. allows the Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council, as applicable, to assess a reasonable fee on an applicant to cover the costs of implementing the environmental justice law, including costs for giving technical assistance to applicants and

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environmental justice communities, in addition to any other fee authorized by law, rule, or regulation.

The act requires the DEEP commissioner to adopt any necessary and proper regulations to carry out the environmental justice law's purposes. It allows the Siting Council to follow the same regulations in a decision to approve an application.

The act also allows DEEP or the Siting Council, as applicable, to deny a permit for a new affecting facility if it finds that approving the permit would result in adverse cumulative environmental or public health stressors in the environmental justice community that are greater than those experienced in other communities. They may additionally impose reasonable conditions on a permit to mitigate environmental and public health impacts if they make the same findings.

Lastly, the act makes technical and conforming changes.
EFFECTIVE DATE: October 1, 2023

SCOPE OF THE LAW

The environmental justice law's requirements generally apply to applications for a certificate of environmental compatibility and public need, a new or expanded permit, or siting approval from DEEP or the Siting Council involving an "affecting facility" in an "environmental justice community" (see BACKGROUND). The act exempts minor modifications of existing permits from the law's requirements. The act also specifies that the law must not be construed to apply to permit renewals or permit modifications (but appears to include provisions explicitly applying to permit modifications).

Under the act, a "permit" collectively refers to the approval issued in the above applications. Specifically, it is any individual facility permit, license, certificate, or siting approval DEEP or the Siting Council issues to a facility that sets the regulatory and management requirements for an activity regulated under the laws for (1) certificates of environmental compatibility and public need and (2) air pollution, solid waste facility, or water discharge permits. It does not include an authorization or approval needed to (1) remediate certain hazardous waste sites or (2) extend the time to complete a facility's construction.

The act also specifies that a "major source" of air pollution for purposes of determining whether a facility is an affecting facility under the law is either (1) as defined by the federal Clean Air Act (CAA), as under existing law, or DEEP's rules or regulations or (2) a facility that directly emits, or has potential to emit, at least 100 tons of any air pollutant or other CAA applicable criteria.

STRESSOR ASSESSMENT AND PUBLIC PARTICIPATION DOCUMENTS

By law, applicants for these affecting facilities generally must (1) file, and receive approval for, a meaningful public participation plan before filing their permit, certificate, or approval application and (2) consult with the chief elected officials of the towns in which the proposed facility will be located or expanded to evaluate the need for a community environmental benefit agreement (see *Public*

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Participation Plan, below).

The act generally requires the applicants to additionally (1) file an assessment of environmental and public health stressors and (2) submit and receive approval of a public participation report on compliance with the law's public participation plan requirements. It exempts applicants for expanded permits from these new requirements and no filing is needed until DEEP adopts the new regulations the act requires (see below).

Assessment of Environmental or Public Health Stressors

The act requires this assessment to evaluate the potential environmental and public health stressors (i.e., sources of environmental pollution that cause a potential public health impact) related to the proposed new or expanded affecting facility. It must also identify (1) any adverse environmental or public health stressor that cannot be avoided if a permit is granted and (2) the environmental or public health stressors that the affected environmental justice community already experiences.

Public Participation Plan

By law, "meaningful public participation" gives environmental justice community residents an appropriate opportunity to participate in decisions about a proposed new or expanded facility that may adversely affect their environment or health.

Among other things, the meaningful public participation plan must identify how the applicant will publicize the date, time, and nature of the informal public meeting about the proposed facility, in addition to the newspaper notice that existing law already requires, and the direct mail notice the act requires to be sent to nearby households (see *Direct Mail Notice*, below). By law, these methods must include posting certain signs and giving written notice to local and state elected officials. The act additionally requires postings on relevant websites and social media platforms to give notice about the meeting, but the notice must also be readily found by searching for the affecting facility's name.

Public Participation Report

The public participation report the act requires to be submitted to and approved by DEEP must include (1) an affidavit stating that the applicant complied with the law's notice (e.g., signs, online, newspaper, direct mail) and public meeting requirements; (2) all written comments received; and (3) responses to concerns and questions presented in the written and verbal comments, along with any changes to the proposed activity or affecting facility. It must also include a video recording of the informal public meeting.

Under the act, this public participation report must be submitted to DEEP or the Siting Council, as applicable, within 30 days after the informal public meeting. Applicants for an expanded permit are exempt from the report requirement.

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INFORMAL PUBLIC MEETING

Public Participation

The environmental justice law requires the applicant for a proposed or expanded facility to make a reasonable and good faith effort to give the public clear, accurate, and complete information about the affecting facility proposal at an informal public meeting. The information must include the potential environmental and public health impacts.

The act requires the applicant to (1) accept written comments, submitted by mail or electronically, and oral comments from any interested party and (2) provide an opportunity for meaningful public participation at the meeting. The applicant must also video record the meeting and submit the video with the public participation report (see above).

Multiple Public Meetings

Under the act, if a permit applicant applies for more than one new proposed affecting facility, the applicant must only comply with the environmental justice law once unless DEEP or the Siting Council, as applicable, determines that more than one informal public meeting is needed due to the complexity of the applications involved. The act specifies that this limitation does not restrict DEEP's or the Siting Council's authority to hold or require a public hearing under another state or federal law, rule, or regulation.

Prior law allowed DEEP to waive the requirement for an additional informal public meeting if the Siting Council had already approved a meaningful public participation plan and the associated informal public meeting was held. The act instead allows this waiver if the Siting Council approves the plan or public participation report, as applicable.

Direct Mail Notice

The act adds a direct mail notice requirement to inform households near the proposed or existing affecting facility that is the subject of the informal public meeting but exempts applicants for an expanded permit from this requirement.

Specifically, at least 30 days before the informal public meeting, the applicant must mail a notice about the meeting to all households within one-half mile of the new proposed or existing affecting facility. The notice must be written in all languages spoken by at least 15% of the population that lives in this radius and include the following information:

1. the meeting's date, time, and location;
2. a description of the proposed affecting facility and a map showing its location;
3. how an interested person can review project documents, including any complete needs assessment, alternatives assessment, environmental impact analysis, or assessment of environmental or public health stressors;

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4. addresses for mailed and online submissions for written public comments; and
5. any other information DEEP or the Siting Council deems appropriate.

The applicant must then mail notice to these same households about any (1) subsequent public participation opportunities that occur as part of the permit approval process before DEEP or the Siting Council and (2) notice of tentative or final determination. Applicants for an expanded permit are exempt from these notice requirements.

COMMUNITY ENVIRONMENTAL BENEFIT AGREEMENT

By law, the applicant for a proposed expanded or new affecting facility must consult with the chief elected officials of the towns in which the facility will be located to evaluate whether there must be a community environmental benefit agreement. For facilities that will be in a municipality that already has at least five affecting facilities, this agreement is required. The act prohibits the DEEP commissioner from issuing a notice of tentative determination for a new or modified permit unless the applicant submits a copy of the executed agreement with the municipality. The act also exempts minor modifications or improvements of existing permits from the benefit agreement requirement that otherwise applies for municipalities with five or more affecting facilities.

A community environmental benefit agreement is a written agreement where an owner or developer of real property that will be used for an affecting facility agrees to provide financial resources to mitigate the facility's impacts. It is negotiated by the chief elected official or town manager and must be approved by the municipality's legislative body. The act requires the chief elected official or town manager to select a resident of the potentially affected environmental justice community to participate in the agreement's negotiations.

By law, an agreement's mitigation may be on-site or off-site improvements, activities, and programs, including things like environmental education, electric vehicle charging infrastructure, asthma screening, air monitoring, urban forestry, and trails. But the act requires it to have a nexus and be proportional to the impacts caused by the proposed facility.

IMPLEMENTING REGULATIONS

The act requires the DEEP commissioner to adopt needed and proper regulations to implement the environmental justice law, as amended by the act, including provisions on the following:

1. procedures and requirements for creating the meaningful public participation plan and public participation report;
2. identifying and measuring the relative impact of environmental and public health stressors across communities;
3. tools for stakeholder industries and sectors to use that consider any environmental or public health stressors, including those that help inform decisions about potential locations for proposed affecting facilities that

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- comply with the law; and
- standards for denying or placing conditions on permits.

When developing the regulations, the commissioner must consult with stakeholder industries and sectors.

PERMIT DECISIONS

Final Action

Complete Application. For applications filed on or after November 1, 2023, the act deems them insufficient if the applicant fails to fulfill the law's notice and public meeting requirements, as amended by the act. Similarly, the act makes an application insufficient if its applicant fails to receive approval of a required public participation report.

Decision Timeframe. Prior law prohibited DEEP or the Siting Council from acting on a permit, certificate, or approval within 60 days after the informal public meeting. The act (1) extends this restriction to acting on license applications and (2) instead prohibits acting within the 60-day period or before it approves the public participation report, whichever is earlier.

New Review Requirements. The act imposes a new review process for applications DEEP reviews for a proposed affecting facility (but not for an expanded permit), which is set out in the act's new required regulations (see IMPLEMENTING REGULATIONS, above). It allows the Siting Council to also use the regulation's process for reviewing applications. This new process does not take effect, however, until the regulations' adoption, and the act does not set a deadline for doing this.

Under the act, DEEP or the Siting Council, as applicable, may deny a permit application for a proposed affecting facility if it finds that approving it would, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or the Siting Council determines. For DEEP, the determination must be made in accordance with the new regulations the act requires; for the Siting Council, the determination may be made according to them.

If there is a hearing on an application that is subject to the environmental justice law, compliance with the applicable regulations must be considered at the hearing.

The act requires DEEP or the Siting Council, as applicable, to give the applicant of a proposed affecting facility written notice about its tentative determination on compliance with the regulations. It also requires them to post any determination made under this new process on their respective websites.

The act allows DEEP or the Siting Council, as applicable, when granting a permit, to impose reasonable conditions on a proposed affecting facility's construction or operation to mitigate environmental and public health impacts.

Permit Conditions

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The act allows DEEP or the Siting Council, as applicable, to apply reasonable conditions on a new permit for an affecting facility (not for an expanded facility) related to its construction and operation to protect the environment and public health. They may do this only after:

1. reviewing the public participation report and any other relevant information like testimony and written comments and
2. finding that approval of the permit, as proposed, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or the Siting Council determines.

For DEEP, the determination must be made in accordance with the new regulations the act requires; for the Siting Council, the determination may be made according to them.

Continuing Operations

The act specifies that it does not limit an applicant's right to continue facility operations when a permit approval is pending to the extent that it has that right by law, rule, or regulation.

BACKGROUND

Affecting Facilities

By law, an "affecting facility" is generally any:

1. electric generating facility with a capacity of more than 10 megawatts;
2. sludge and solid waste incinerator or combustor;
3. sewage treatment plant with a daily capacity of more than 50 million gallons;
4. intermediate processing center, volume reduction facility, or multi-town recycling facility with a combined monthly volume of more than 25 tons;
5. new or expanded landfill, including one with ash, construction and demolition debris, or solid waste;
6. medical waste incinerator; and
7. major air pollution source under the CAA (e.g., large factories).

Exemptions to the law include (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.

Environmental Justice Communities

An "environmental justice community" is (1) any U.S. census block group, as determined by the most recent census, for which at least 30% of the population

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consists of low-income people who are not institutionalized and have an income below 200% of the federal poverty level or (2) a distressed municipality. The Department of Economic and Community Development annually designates distressed municipalities based on high unemployment and poverty, aging housing stock, and low or declining rates of job, population, and per capita income growth (CGS § 32-9p).

Related Act

PA 23-205, § 191, creates a process under which an elector or voter in a town with a population of up to 10,000 can petition for a town referendum on the DEEP commissioner's denial of a facility permit under this law.