



General Assembly

Substitute Bill No. 1147

January Session, 2023



**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:

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 Section 22a-20a of the general statutes is repealed and the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

3 (a) As used in this section:

4 (1) "Environmental justice community" means (A) a United States
5 census block group, as determined in accordance with the most recent
6 United States census, for which thirty per cent or more of the population
7 consists of low income persons [who are not institutionalized] and have
8 an income below two hundred per cent of the federal poverty level; or
9 (B) a distressed municipality, as defined in subsection (b) of section 32-
10 9p;

11 (2) "Affecting facility" means any (A) electric generating facility with
12 a capacity of more than ten megawatts; (B) sludge or solid waste
13 incinerator or combustor; (C) [sewage treatment plant with a capacity of
14 more than fifty million gallons per day] publicly owned treatment
15 works in a community with combined sewers that transport both storm
16 water and sanitary sewage, or an expanded design flow rate for any

17 publicly owned treatment works; (D) intermediate processing center,
18 volume reduction facility, solid waste transfer station, resource recovery
19 facility, chemical recycling facility or multitown recycling facility with a
20 combined monthly volume in excess of twenty-five tons; (E) [new or
21 expanded] landfill, including, but not limited to, a landfill that contains
22 ash, construction and demolition debris or solid waste; (F) medical
23 waste incinerator; [or] (G) major source of air pollution, as defined by
24 the federal Clean Air Act; (H) pipeline, terminal or bulk commercial
25 storage facility not providing direct-to-consumer retail or delivery for
26 fossil fuels, including coal, oil, petroleum and natural gas; or (I) facility
27 with a diversion of more than two million gallons of water per day.
28 "Affecting facility" shall not include (i) the portion of an electric
29 generating facility that uses nonemitting and nonpolluting renewable
30 resources such as wind, solar and hydro power or that uses fuel cells,
31 (ii) any facility for which a certificate of environmental compatibility
32 and public need was obtained from the Connecticut Siting Council on
33 or before January 1, 2000, [or] (iii) a facility of a constituent unit of the
34 state system of higher education that has been the subject of an
35 environmental impact evaluation in accordance with the provisions of
36 sections 22a-1b to 22a-1h, inclusive, and such evaluation has been
37 determined to be satisfactory in accordance with section 22a-1e; or (iv)
38 a facility with a diversion of water greater than two million gallons in
39 any twenty-four-hour period that diverts water for public water supply
40 purposes within a service area, as defined in regulations adopted
41 pursuant to subsection (b) of section 22a-377, that includes the origin of
42 such diversion;

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

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

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

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

64 (7) "Environmental or public health stressors" means: (A) Sources of
65 environmental pollution, including, but not limited to, concentrated
66 areas of air pollution, mobile sources of air pollution, contaminated
67 sites, transfer stations or other solid waste facilities, recycling facilities,
68 scrap yards and point-sources of water pollution, including, but not
69 limited to, water pollution from facilities or combined sewer overflows,
70 or (B) conditions that may cause potential public health impacts,
71 including, but not limited to, asthma, cancer, elevated blood lead levels,
72 cardiovascular disease and developmental problems in any
73 environmental justice community;

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

79 (9) "Permit" means any individual facility permit, license, certificate
80 or siting approval issued by the department or council to a facility that
81 establishes the regulatory and management requirements for a

82 regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-
83 430. "Permit" does not include (A) any authorization or approval
84 necessary to perform a remediation conducted in accordance with the
85 regulations established pursuant to section 22a-133k; (B) applications
86 for or registrations under general permits issued by the department,
87 provided the Commissioner of Energy and Environmental Protection
88 shall evaluate the potential for environmental and health stressors when
89 issuing or renewing any general permit; (C) any permit for a facility
90 with a diversion of more than two million gallons per day where such
91 diverted water is used for public water supply purposes within the
92 exclusive service area from where such water is diverted; (D) any
93 authorization or approval required for a minor modification of a
94 facility's major source permit for activities or improvements that do not
95 increase emissions; or (E) any authorization or approval required for an
96 extension of time to complete construction of a facility.

97 (b) (1) Applicants who, on or after January 1, 2009, seek to obtain any
98 certificate under chapter 277a, new or expanded permit or siting
99 approval from the Department of Energy and Environmental Protection
100 or the Connecticut Siting Council involving an affecting facility that is
101 proposed to be located in an environmental justice community or the
102 proposed expansion of an affecting facility located in such a community,
103 shall (A) file an assessment of environmental or public health stressors
104 and a meaningful public participation plan with such department or
105 council and shall obtain the department's or council's approval of such
106 public participation plan prior to filing any application for such permit,
107 certificate or approval; [and] (B) consult with the chief elected official or
108 officials of the town or towns in which the affecting facility is to be
109 located or expanded to evaluate the need for a community
110 environmental benefit agreement in accordance with subsection (d) of
111 this section; and (C) submit and receive approval of a public
112 participation report that shall include, but not be limited to, (i) an
113 affidavit that the applicant satisfied the requirements of subdivisions (2)
114 to (5), inclusive, of this subsection; (ii) all written comments received;
115 and (iii) responses to concerns and questions presented in such written

116 and verbal comments, including any changes to the activity or affecting
117 facility proposed. Each assessment of environmental or public health
118 stressors prepared pursuant to this subsection shall contain an
119 assessment of the potential environmental and public health stressors
120 associated with the proposed new or expanded affecting facility, as
121 applicable, and shall identify any adverse environmental or public
122 health stressors that cannot be avoided if the permit is granted, and the
123 environmental or public health stressors already borne by the applicable
124 environmental justice community.

125 (2) Each such meaningful public participation plan shall contain
126 measures to facilitate meaningful public participation in the regulatory
127 process and a certification that the applicant will undertake the
128 measures contained in the plan. Such plan shall identify a time and place
129 where an informal public meeting will be held that is convenient for the
130 residents of the affected environmental justice community. In addition,
131 any such plan shall identify the methods, if any, by which the applicant
132 will publicize the date, time and nature of the informal public meeting
133 in addition to the notice by mail required by subdivision (3) of this
134 subsection and the publication required by subdivision [(3)] (4) of this
135 subsection. Such methods shall include, but not be limited to, (A)
136 posting a reasonably visible sign on the proposed or existing affecting
137 facility property, printed in English, in accordance with any local
138 regulations and ordinances, (B) posting a reasonably visible sign,
139 printed in all languages spoken by at least fifteen per cent of the
140 population that reside within a one-half of a mile radius of the proposed
141 or existing affecting facility, in accordance with local regulations and
142 ordinances, [and] (C) notifying local and state elected officials, in
143 writing, and (D) a posting on electronic media, including, but not
144 limited to, relevant Internet web sites and social media platforms,
145 provided such notice is readily found by searching for the name of the
146 affecting facility on the Internet. Such methods may include notifying
147 neighborhood and environmental groups, in writing, in a language
148 appropriate for the target audience. The determination of the percentage
149 of persons that speak a language, for purposes of subparagraph (B) of

150 this subdivision, shall be made in accordance with the most recent
151 United States census.

152 (3) Not less than thirty days prior to the informal public meeting, the
153 applicant shall send a notice of such informal public meeting by mail to
154 all residential households located within a one-half-mile radius of the
155 proposed or existing affecting facility. Such notice shall provide the
156 date, time and location of such meeting, a description of the proposed
157 or expanded affecting facility, a map indicating the location of the
158 affecting facility, information on how an interested person may review
159 project documents, including any complete needs assessment,
160 alternatives assessment, environmental impact analysis or assessment
161 of environmental or public health stressors, addresses for mailed and
162 Internet-based submission of written public comments and any other
163 information deemed appropriate by the department or council. The
164 applicant shall provide such notice in writing in all languages spoken
165 by not less than fifteen per cent of the population that resides within
166 such one-half-mile radius of the proposed or existing affecting facility.
167 Such applicant shall subsequently send notice by mail to all such
168 residential households of any subsequent public participation
169 opportunities that occur as part of the permit approval process before
170 the department or council, and to notify such residential households of
171 any notice of tentative or final determination by the department or
172 council.

173 ~~[(3)]~~ (4) Not less than ten days prior to the informal public meeting
174 and not more than thirty days prior to such meeting, the applicant shall
175 publish the date, time and nature of the informal public meeting with a
176 minimum one-quarter page advertisement in a newspaper having
177 general circulation in the area affected, and any other appropriate local
178 newspaper serving such area, in the Monday issue of a daily publication
179 or any day in a weekly or monthly publication. Such advertisement shall
180 include information on how an interested person may review project
181 documents, including any complete needs assessment, alternatives
182 assessment, environmental impact analysis and assessment of

183 environmental and public health stressors. The applicant shall post a
184 similar notification of the informal public meeting on the applicant's
185 web site, if applicable.

186 [(4)] (5) At the informal public meeting, the applicant shall make a
187 reasonable and good faith effort to provide clear, accurate and complete
188 information about the proposed affecting facility or the proposed
189 expansion of [a] such facility and the potential environmental and
190 health impacts of such affecting facility or such expansion. The applicant
191 shall accept written comments, submitted via mail or electronic mail,
192 and oral comments from any interested party, and provide an
193 opportunity for meaningful public participation at the informal public
194 meeting. Not later than thirty days after such informal public meeting,
195 the applicant shall submit to the department or council a public
196 participation report, as described in subdivision (1) of this subsection.
197 The applicant shall video record the informal public meeting and submit
198 the recording to the department or council with the public participation
199 report.

200 [(5)] (6) The Department of Energy and Environmental Protection or
201 the Connecticut Siting Council shall not take any action on the
202 applicant's application for a permit, license, certificate or approval
203 earlier than [sixty days after the informal public meeting] the date the
204 department or council approves the public participation report. For any
205 such application filed on or after November 1, [2020] 2023, if the
206 applicant fails to undertake the requirements of [subparagraphs (B) to
207 (D), inclusive, of subdivision (2) of this subsection or subdivision (3) or
208 (4) of] this subsection, any such application shall be deemed insufficient.
209 The application of an applicant who fails to receive approval of such
210 public participation report by the department or council, as applicable,
211 shall be deemed insufficient.

212 [(6)] (7) In the event that the Connecticut Siting Council has approved
213 a [meaningful public participation plan] public participation report
214 concerning a new or expanded affecting facility and an informal public
215 meeting has been held in accordance with this subsection, the

216 Department of Energy and Environmental Protection may [approve
217 such plan and] waive the requirement that an additional informal public
218 meeting be held in accordance with this subsection.

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

225 (c) Any municipality, owner or developer may enter into a
226 community environmental benefit agreement in connection with an
227 expanded or new affecting facility. For any application filed on or after
228 November 1, 2020, for such an affecting facility that: (1) Requires a
229 certificate under chapter 277a, or (2) constitutes a new or expanded
230 permit or siting approval from the Department of Energy and
231 Environmental Protection or the Connecticut Siting Council, and that is
232 located in an environmental justice community or is proposed to be
233 located in such a community, the applicant shall enter into such an
234 agreement with the municipality if there are five or more affecting
235 facilities in such municipality at the time such application is filed.
236 Mitigation may include both on-site and off-site improvements,
237 activities and programs, including, but not limited to: Funding for
238 activities such as environmental education, diesel pollution reduction,
239 electric vehicle charging infrastructure construction, establishment of a
240 wellness clinic, ongoing asthma screening, provision of air monitoring
241 performed by a credentialed environmental professional, performance
242 of an ongoing traffic study, watercourse monitoring, construction of
243 biking facilities and multi-use trails, staffing for parks, urban forestry,
244 support for community gardens or any other negotiated benefit to the
245 environment in the environmental justice community. Prior to
246 negotiating the terms of a community environmental benefit agreement,
247 the municipality shall provide a reasonable and public opportunity for
248 residents of the potentially affected environmental justice community to

249 be heard concerning the requirements of or need for, and terms of, such
250 agreement.

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

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

266 (f) (1) The Commissioner of Energy and Environmental Protection
267 shall adopt regulations, in accordance with the provisions of chapter 54,
268 as are necessary and proper to carry out the purposes of this section. The
269 provisions of subsection (g) of this section shall not take effect until the
270 adoption of the regulations pursuant to this subsection. Such
271 regulations shall include, but not be limited to, provisions regarding:
272 (A) Procedures and requirements for creating the meaningful public
273 participation plan and the public participation report required by this
274 section; (B) the identification and measurement of the relative impact of
275 environmental and public health stressors across communities; (C) tools
276 for stakeholder industries and sectors to use that take account of any
277 such environmental or public health stressors, including tools to help
278 inform decisions about potential locations for new or expanded
279 affecting facilities that comply with the provisions of this section; and
280 (D) standards for denying or placing conditions on permits. The
281 commissioner shall consult with stakeholder industries and sectors

282 when developing the regulations pursuant to this section.

283 (2) Notwithstanding any provision of the general statutes, the
284 commissioner may subject the renewal of any permit issued for an
285 affecting facility to some or all of the provisions of this section and any
286 regulation adopted pursuant to this subsection by adopting regulations,
287 in accordance with the provisions of chapter 54, that include, but are not
288 limited to, the identification of: (A) Each type of renewal permit subject
289 to the provisions of this subdivision; (B) the types of affecting facilities
290 subject to the provisions of this subdivision; and (C) the specific
291 requirements of this section and any regulation adopted pursuant to this
292 subsection that apply to each such renewal permit and affecting facility.
293 No renewal permit shall be subject to the requirements of this section
294 prior to the effective date of regulations adopted pursuant to this
295 subdivision.

296 (g) (1) On and after the adoption of regulations pursuant to
297 subdivision (1) or (2) of subsection (f) of this section, the department's
298 review of any such application or renewal permit shall be conducted in
299 accordance with any such regulations, as applicable, and the council's
300 review of any such application may be conducted in accordance with
301 any such regulations.

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

315 (3) If such permit is granted, the department or council, as applicable,
316 may impose conditions on the construction and operation of the new
317 affecting facility that are intended to mitigate environmental and public
318 health impacts.

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

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

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

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

347 and any such determination by the council may be made in accordance
348 with such regulations.

349 (i) If a permit applicant applies for more than one permit for a
350 proposed new or expanded affecting facility, the permit applicant shall
351 only be required to comply with the provisions of this section once,
352 unless the department or council, as applicable, determines that more
353 than one informal public meeting is necessary due to the complexity of
354 the permit applications necessary for the proposed new or expanded
355 affecting facility. Nothing in this subsection shall be construed to limit
356 the authority of the department or council to hold or require any public
357 hearing, as may be required by any other provision of the general
358 statutes, federal law or rule or regulation.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	22a-20a

LCO Statement: In Subsec. (b)(3) "not more than" was changed to "within" for consistency.

ENV *Joint Favorable Subst.*

APP *Joint Favorable*