



General Assembly

**Amendment**

January Session, 2023

LCO No. **9154**



Offered by:  
SEN. LOPES, 6<sup>th</sup> Dist.

To: Subst. Senate Bill No. **1147**

File No. 563

Cal. No. 335

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

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

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 Section 22a-20a of the general statutes is repealed and the  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

5 (a) As used in this section:

6 (1) "Environmental justice community" means (A) a United States  
7 census block group, as determined in accordance with the most recent  
8 United States census, for which thirty per cent or more of the population  
9 consists of low income persons [who are not institutionalized] and have  
10 an income below two hundred per cent of the federal poverty level; or  
11 (B) a distressed municipality, as defined in subsection (b) of section 32-  
12 9p;

13 (2) "Affecting facility" means any (A) electric generating facility with

14 a capacity of more than ten megawatts; (B) sludge or solid waste  
15 incinerator or combustor; (C) [sewage treatment plant with a capacity of  
16 more than fifty million gallons per day] publicly owned treatment  
17 works in a community with combined sewers that transport both storm  
18 water and sanitary sewage, or an expanded design flow rate for any  
19 publicly owned treatment works; (D) intermediate processing center,  
20 volume reduction facility, solid waste transfer station, resource recovery  
21 facility, chemical recycling facility or multitown recycling facility with a  
22 combined monthly volume in excess of twenty-five tons; (E) [new or  
23 expanded] landfill, including, but not limited to, a landfill that contains  
24 ash, construction and demolition debris or solid waste; (F) medical  
25 waste incinerator; [or] (G) major source of air pollution, as defined by  
26 the federal Clean Air Act; or (H) pipeline, terminal or bulk commercial  
27 storage facility not providing direct-to-consumer retail or delivery for  
28 fossil fuels, including coal, oil, petroleum and natural gas. "Affecting  
29 facility" shall not include (i) the portion of an electric generating facility  
30 that uses nonemitting and nonpolluting renewable resources such as  
31 wind, solar and hydro power or that uses fuel cells, (ii) any facility for  
32 which a certificate of environmental compatibility and public need was  
33 obtained from the Connecticut Siting Council on or before January 1,  
34 2000, or (iii) a facility of a constituent unit of the state system of higher  
35 education that has been the subject of an environmental impact  
36 evaluation in accordance with the provisions of sections 22a-1b to 22a-  
37 1h, inclusive, and such evaluation has been determined to be  
38 satisfactory in accordance with section 22a-1e;

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

47 (4) "Community environmental benefit agreement" means a written

48 agreement entered into by the chief elected official or town manager of  
49 a municipality and an owner or developer of real property whereby the  
50 owner or developer agrees to develop real property that is to be used  
51 for any [new] proposed or expanded affecting facility and to provide  
52 financial resources for the purpose of the mitigation, in whole or in part,  
53 of impacts reasonably related to the facility, including, but not limited  
54 to, impacts on the environment, including, but not limited to, air quality  
55 and watercourses, quality of life, asthma rates, traffic, parking and  
56 noise;

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

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

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

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

75 (9) "Permit" means any individual facility permit, license, certificate  
76 or siting approval issued by the department or council to a facility that  
77 establishes the regulatory and management requirements for a  
78 regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-  
79 430. "Permit" does not include (A) any authorization or approval

80 necessary to perform a remediation conducted in accordance with the  
81 regulations established pursuant to section 22a-133k; (B) applications  
82 for or registrations under general permits issued by the department,  
83 provided the Commissioner of Energy and Environmental Protection  
84 shall evaluate the potential for environmental and health stressors when  
85 issuing or renewing any general permit; (C) any permit for a facility  
86 with a diversion of more than two million gallons per day where such  
87 diverted water is used for public water supply purposes within the  
88 exclusive service area from where such water is diverted; or (D) any  
89 authorization or approval required for an extension of time to complete  
90 construction of a facility.

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

114 assessment of the potential environmental and public health stressors  
115 associated with the proposed new or expanded affecting facility, as  
116 applicable, and shall identify any adverse environmental or public  
117 health stressors that cannot be avoided if the permit is granted, and the  
118 environmental or public health stressors already borne by the applicable  
119 environmental justice community. The filing of an assessment of  
120 environmental or public health stressors shall not be required until  
121 regulations are adopted pursuant to subsection (f) of this section.

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

148 United States census.

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

169 ~~[(3)]~~ (4) Not less than ten days prior to the informal public meeting  
170 and not more than thirty days prior to such meeting, the applicant shall  
171 publish the date, time and nature of the informal public meeting with a  
172 minimum one-quarter page advertisement in a newspaper having  
173 general circulation in the area affected, and any other appropriate local  
174 newspaper serving such area, in the Monday issue of a daily publication  
175 or any day in a weekly or monthly publication. Such advertisement shall  
176 include information on how an interested person may review project  
177 documents, including any complete needs assessment, alternatives  
178 assessment, environmental impact analysis and assessment of  
179 environmental and public health stressors. The applicant shall post a  
180 similar notification of the informal public meeting on the applicant's  
181 web site, if applicable.

182        ~~[(4)]~~ (5) At the informal public meeting, the applicant shall make a  
183 reasonable and good faith effort to provide clear, accurate and complete  
184 information about the proposed affecting facility or the proposed  
185 expansion of [a] such facility and the potential environmental and  
186 health impacts of such affecting facility or such expansion. The applicant  
187 shall accept written comments, submitted via mail or electronic mail,  
188 and oral comments from any interested party, and provide an  
189 opportunity for meaningful public participation at the informal public  
190 meeting. Not later than thirty days after such informal public meeting,  
191 the applicant shall submit to the department or council a public  
192 participation report, as described in subdivision (1) of this subsection.  
193 The applicant shall video record the informal public meeting and submit  
194 the recording to the department or council with the public participation  
195 report.

196        ~~[(5)]~~ (6) The Department of Energy and Environmental Protection or  
197 the Connecticut Siting Council shall not take any action on the  
198 applicant's application for a permit, license, certificate or approval  
199 earlier than [sixty days after the informal public meeting] the date the  
200 department or council approves the public participation report. For any  
201 such application filed on or after November 1, ~~[2020]~~ 2023, if the  
202 applicant fails to undertake the requirements of [subparagraphs (B) to  
203 (D), inclusive, of subdivision (2) of this subsection or subdivision (3) or  
204 (4) of] this subsection, any such application shall be deemed insufficient.  
205 The application of an applicant who fails to receive approval of such  
206 public participation report by the department or council, as applicable,  
207 shall be deemed insufficient.

208        ~~[(6)]~~ (7) In the event that the Connecticut Siting Council has approved  
209 a [meaningful public participation plan] public participation report  
210 concerning a [new] proposed or expanded affecting facility and an  
211 informal public meeting has been held in accordance with this  
212 subsection, the Department of Energy and Environmental Protection  
213 may [approve such plan and] waive the requirement that an additional  
214 informal public meeting be held in accordance with this subsection.

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

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



249 shall provide a reasonable and public opportunity for residents of the  
250 potentially affected environmental justice community to be heard  
251 concerning the requirements of or need for, and terms of, such  
252 agreement. Any mitigation contained in such an agreement shall have a  
253 nexus to the impacts caused by the proposed or expanded facility and  
254 shall be proportional to such impacts.

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

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

270 (f) The Commissioner of Energy and Environmental Protection shall  
271 adopt regulations, in accordance with the provisions of chapter 54, as  
272 are necessary and proper to carry out the purposes of this section. The  
273 provisions of subsection (g) of this section shall not take effect until the  
274 adoption of the regulations pursuant to this subsection. Such  
275 regulations shall include, but not be limited to, provisions regarding: (1)  
276 Procedures and requirements for creating the meaningful public  
277 participation plan and the public participation report required by this  
278 section; (2) the identification and measurement of the relative impact of  
279 environmental and public health stressors across communities; (3) tools  
280 for stakeholder industries and sectors to use that take account of any  
281 such environmental or public health stressors, including tools to help

282 inform decisions about potential locations for proposed or expanded  
283 affecting facilities that comply with the provisions of this section; and  
284 (4) standards for denying or placing conditions on permits. The  
285 commissioner shall consult with stakeholder industries and sectors  
286 when developing the regulations pursuant to this section.

287 (g) (1) On and after the adoption of regulations pursuant to  
288 subsection (f) of this section, the department's review of any such  
289 application shall be conducted in accordance with any such regulations,  
290 as applicable, and the council's review of any such application may be  
291 conducted in accordance with any such regulations.

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

305 (3) If such permit is granted, the department or council, as applicable,  
306 may impose reasonable conditions on the construction and operation of  
307 the proposed affecting facility that are intended to mitigate  
308 environmental and public health impacts.

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

313 (5) If any hearing is held on any application subject to the

314 requirements of this section, compliance with the applicable regulations  
315 adopted pursuant to subsection (f) of this section shall be considered at  
316 such hearing.

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

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

339 (i) If a permit applicant applies for more than one new or expanded  
340 permit for a proposed affecting facility or the expansion of an existing  
341 affecting facility, the permit applicant shall only be required to comply  
342 with the provisions of this section once, unless the department or  
343 council, as applicable, determines that more than one informal public  
344 meeting is necessary due to the complexity of the permit applications  
345 necessary for the proposed or expanded affecting facility. Nothing in  
346 this subsection shall be construed to limit the authority of the

347 department or council to hold or require any public hearing, as may be  
348 required by any other provision of the general statutes, federal law or  
349 rule or regulation.

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

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