



General Assembly

Amendment

January Session, 2023

LCO No. 9476



Offered by:
SEN. LOPES, 6th 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 Section 22a-20a of the general statutes is repealed and the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; (D) intermediate processing
17 center, volume reduction facility or multitown recycling facility with a
18 combined monthly volume in excess of twenty-five tons; (E) new or
19 expanded landfill, including, but not limited to, a landfill that contains
20 ash, construction and demolition debris or solid waste; (F) medical
21 waste incinerator; or (G) major source of air pollution, as defined by the
22 federal Clean Air Act. "Affecting facility" shall not include (i) the portion
23 of an electric generating facility that uses nonemitting and nonpolluting
24 renewable resources such as wind, solar and hydro power or that uses
25 fuel cells, (ii) any facility for which a certificate of environmental
26 compatibility and public need was obtained from the Connecticut Siting
27 Council on or before January 1, 2000, or (iii) a facility of a constituent
28 unit of the state system of higher education that has been the subject of
29 an environmental impact evaluation in accordance with the provisions
30 of sections 22a-1b to 22a-1h, inclusive, and such evaluation has been
31 determined to be satisfactory in accordance with section 22a-1e;

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

40 (4) "Community environmental benefit agreement" means a written
41 agreement entered into by the chief elected official or town manager of
42 a municipality and an owner or developer of real property whereby the
43 owner or developer agrees to develop real property that is to be used
44 for any new or expanded affecting facility and to provide financial
45 resources for the purpose of the mitigation, in whole or in part, of
46 impacts reasonably related to the facility, including, but not limited to,
47 impacts on the environment, including, but not limited to, air quality

48 and watercourses, quality of life, asthma rates, traffic, parking and
49 noise;

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

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

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

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

60 (9) "Permit" means any individual facility permit, license, certificate
61 or siting approval issued by the department or council to a facility that
62 establishes the regulatory and management requirements for a
63 regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-
64 430. "Permit" does not include (A) any authorization or approval
65 necessary to perform a remediation conducted in accordance with the
66 regulations established pursuant to section 22a-133k; or (B) applications
67 for or registrations under general permits issued by the department.

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

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

101 (2) Each such meaningful public participation plan shall contain
102 measures to facilitate meaningful public participation in the regulatory
103 process and a certification that the applicant will undertake the
104 measures contained in the plan. Such plan shall identify a time and place
105 where an informal public meeting will be held that is convenient for the
106 residents of the affected environmental justice community. In addition,
107 any such plan shall identify the methods, if any, by which the applicant
108 will publicize the date, time and nature of the informal public meeting
109 in addition to the notice by mail required by subdivision (3) of this
110 subsection and the publication required by subdivision [(3)] (4) of this
111 subsection. Such methods shall include, but not be limited to, (A)
112 posting a reasonably visible sign on the proposed or existing affecting

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

128 (3) Not less than thirty days prior to the informal public meeting, the
129 applicant for a new proposed affecting facility, other than an applicant
130 for an expanded permit, shall send a notice of such informal public
131 meeting by mail to all residential households located within a one-half-
132 mile radius of the proposed or existing affecting facility. Such notice
133 shall provide the date, time and location of such meeting, a description
134 of the proposed affecting facility, a map indicating the location of the
135 affecting facility, information on how an interested person may review
136 project documents, including any complete needs assessment,
137 alternatives assessment, environmental impact analysis or assessment
138 of environmental or public health stressors, addresses for mailed and
139 Internet-based submission of written public comments and any other
140 information deemed appropriate by the department or council. The
141 applicant shall provide such notice in writing in all languages spoken
142 by not less than fifteen per cent of the population that resides within
143 such one-half-mile radius of the proposed or existing affecting facility.
144 Such applicant shall subsequently send notice by mail to all such
145 residential households of any subsequent public participation
146 opportunities that occur as part of the permit approval process before

147 the department or council, and notify such residential households of any
148 notice of tentative or final determination by the department or council.

149 [(3)] (4) Not less than ten days prior to the informal public meeting
150 and not more than thirty days prior to such meeting, the applicant shall
151 publish the date, time and nature of the informal public meeting with a
152 minimum one-quarter page advertisement in a newspaper having
153 general circulation in the area affected, and any other appropriate local
154 newspaper serving such area, in the Monday issue of a daily publication
155 or any day in a weekly or monthly publication. Such advertisement shall
156 include information on how an interested person may review project
157 documents, including any complete needs assessment, alternatives
158 assessment, environmental impact analysis and assessment of
159 environmental and public health stressors, as applicable. The applicant
160 shall post a similar notification of the informal public meeting on the
161 applicant's web site, if applicable.

162 [(4)] (5) At the informal public meeting, the applicant shall make a
163 reasonable and good faith effort to provide clear, accurate and complete
164 information about the proposed affecting facility or the proposed
165 expansion of [a] such facility and the potential environmental and
166 health impacts of such affecting facility or such expansion. The applicant
167 shall accept written comments, submitted via mail or electronic mail,
168 and oral comments from any interested party, and provide an
169 opportunity for meaningful public participation at the informal public
170 meeting. Not later than thirty days after such informal public meeting,
171 the applicant, other than an applicant for an expanded permit, shall
172 submit to the department or council a public participation report, as
173 described in subdivision (1) of this subsection. The applicant shall video
174 record the informal public meeting and submit the recording to the
175 department or council with the public participation report, as
176 applicable.

177 [(5)] (6) The Department of Energy and Environmental Protection or
178 the Connecticut Siting Council shall not take any action on the
179 applicant's application for a permit, license, certificate or approval

180 earlier than sixty days after the informal public meeting or the date the
181 department or council approves the public participation report,
182 whichever date is earlier. For any such application filed on or after
183 November 1, [2020] 2023, if the applicant fails to undertake the
184 requirements of [subparagraphs (B) to (D), inclusive, of subdivision (2)
185 of this subsection or subdivision (3) or (4) of] this subsection, any such
186 application shall be deemed insufficient. The application of an applicant
187 who fails to receive approval of any required public participation report
188 by the department or council, as applicable, shall be deemed
189 insufficient.

190 [(6)] (7) In the event that the Connecticut Siting Council has approved
191 a meaningful public participation plan or public participation report, as
192 applicable, concerning a new or expanded proposed affecting facility, as
193 applicable, and an informal public meeting has been held in accordance
194 with this subsection, the Department of Energy and Environmental
195 Protection may [approve such plan and] waive the requirement that an
196 additional informal public meeting be held in accordance with this
197 subsection.

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

204 (c) Any municipality, owner or developer may enter into a
205 community environmental benefit agreement in connection with an
206 affecting facility. For any application filed on or after November 1, 2020,
207 for such an affecting facility that: (1) Requires a certificate under chapter
208 277a, or (2) constitutes a new or expanded permit, except for a minor
209 modification or improvement of an existing permit for such facility, or
210 siting approval from the Department of Energy and Environmental
211 Protection or the Connecticut Siting Council involving an affecting
212 facility, and that is proposed to be located in an environmental justice

213 community or [is proposed to be] the proposed expansion of an
214 affecting facility to be located in such a community, the applicant shall
215 enter into such an agreement with the municipality if there are five or
216 more affecting facilities in such municipality at the time such application
217 is filed. The Commissioner of Energy and Environmental Protection
218 shall not issue a notice of tentative determination regarding a new or
219 modified permit unless the applicant has submitted a copy of the
220 executed agreement with the municipality. Mitigation may include both
221 on-site and off-site improvements, activities and programs, including,
222 but not limited to: Funding for activities such as environmental
223 education, diesel pollution reduction, electric vehicle charging
224 infrastructure construction, establishment of a wellness clinic, ongoing
225 asthma screening, provision of air monitoring performed by a
226 credentialed environmental professional, performance of an ongoing
227 traffic study, watercourse monitoring, construction of biking facilities
228 and multi-use trails, staffing for parks, urban forestry, support for
229 community gardens or any other negotiated benefit to the environment
230 in the environmental justice community. Prior to negotiating the terms
231 of a community environmental benefit agreement, the municipality
232 shall provide a reasonable and public opportunity for residents of the
233 potentially affected environmental justice community to be heard
234 concerning the requirements of or need for, and terms of, such
235 agreement. Any mitigation contained in such an agreement shall have a
236 nexus to the impacts caused by the proposed facility and shall be
237 proportional to such impacts.

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

247 such negotiations.

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

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

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

276 (2) The department or the council, as applicable, may deny any
277 application for a permit for a proposed affecting facility, other than an
278 application for an expanded permit, upon a finding that approval of the

279 permit, as proposed, would, together with other environmental or
280 public health stressors affecting the applicable environmental justice
281 community, result in adverse cumulative environmental or public
282 health stressors in such environmental justice community that are
283 higher than those borne by other communities within the state, county
284 or other geographic unit of analysis, as determined by the department
285 or council. Any such determination by the department shall be made in
286 accordance with the applicable regulations adopted pursuant to
287 subsection (f) of this section and any such determination by the council
288 may be made in accordance with such regulations.

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

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

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

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

305 (h) Notwithstanding any provision of the general statutes, the
306 department or council, as applicable, may, after review of the public
307 participation report and any other relevant information, including
308 testimony and written comments received in connection with the
309 meaningful public participation plan, apply reasonable conditions to a
310 new permit for an affecting facility, other than a permit for an expanded

311 facility, concerning the construction and operation of the facility to
 312 protect the environment and public health, upon a finding by the
 313 department or council, as applicable, that approval of such permit, as
 314 proposed, would, together with other environmental or public health
 315 stressors affecting the applicable environmental justice community,
 316 result in adverse cumulative environmental or public health stressors in
 317 such environmental justice community that are higher than those borne
 318 by other communities in the state, county or other geographic unit of
 319 analysis, as determined by the department or council. Any such
 320 determination by the department shall be made in accordance with the
 321 applicable regulations adopted pursuant to subsection (f) of this section
 322 and any such determination by the council may be made in accordance
 323 with such regulations.

324 (i) If a permit applicant applies for more than one new proposed
 325 affecting facility, the permit applicant shall only be required to comply
 326 with the provisions of this section once, unless the department or
 327 council, as applicable, determines that more than one informal public
 328 meeting is necessary due to the complexity of the permit applications
 329 necessary for the proposed affecting facility. Nothing in this subsection
 330 shall be construed to limit the authority of the department or council to
 331 hold or require any public hearing, as may be required by any other
 332 provision of the general statutes, federal law or rule or regulation.

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

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