



SIERRA CLUB

Connecticut Chapter
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Testimony Before the Environment Committee, Monday, March 8, 2021

Dear Environment Committee Chairs Cohen and Gresko, Vice-Chairs Slap and Palm, Ranking Members Harding and Miner, and distinguished members of the Committee,

On behalf of the Sierra Club and our more than 40,000 members and supporters in Connecticut, thank you for the opportunity to provide testimony on two bills before you today.

The Sierra Club is committed to solving the climate crisis with just and equitable solutions that will result in a healthy world for everyone. The science is clear: to avoid the worst impacts of climate change, we must reduce our reliance on and use of fossil fuels, and we must do it quickly. In 2018, the UN's Intergovernmental Panel on Climate Change (IPCC) issued its report recommending urgent action to reduce greenhouse gases.

It is also abundantly clear that fossil fuels are causing profound human health impacts. A Harvard report released last month shows that an annual 8 million premature deaths worldwide and over 350,000 in the United States were a direct consequence of burning fossil fuel.¹ The report identifies the Northeastern United States as one of the hardest hit areas in the world. Here in Connecticut, environmental justice communities face a disproportionate burden of exposure to air pollution and experience poorer health outcomes.

House Bill 6551 An Act Concerning Environmental Air Quality

Sierra Club supports House Bill 6551 to improve our state's environmental justice policy, and applauds the Environment Committee for continuing to update this law to address the inequitable impacts of exposure to air pollution. Below, we suggest amendments to strengthen protections for impacted communities that we hope you will include as you continue to work on this bill.

Everyone in our state should have the right to live in a healthy environment, yet low-income, Black, Hispanic and communities of color are subjected to environmental stressors that threaten their health, well-being and economic success. Connecticut has some of the worst ozone pollution in the nation, and high rates of asthma disproportionately borne by environmental justice communities. A recent national report, *Asthma Capitals 2019*,² ranked New Haven (#11) and Hartford (#13) among the 100 largest U.S. cities where it is most challenging to live with asthma.

Currently, environmental justice communities in Connecticut bear the disproportionate burden of air pollution from large fossil power plants. Twenty-three of the state's large fossil fuel generating units are located in environmental justice communities, emitting more than 372 tons of NOx (greater than 46 percent of the NOx from fossil-fueled power generation) annually. Some of these communities also host trash incinerators, which produce significant quantities of air pollution.³ Pollution from other industries also impacts these communities. Data centers, incentivized to locate in Opportunity Zones in a bill

¹ <https://www.seas.harvard.edu/news/2021/02/deaths-fossil-fuel-emissions-higher-previously-thought>

² <https://www.aafa.org/media/2426/aafa-2019-asthma-capitals-report.pdf>

³ <https://portal.ct.gov/-/media/DEEP/energy/IRP/2020-IRP/2020-CT-DEEP-Draft-Integrated-Resources-Plan-in-Accordance-with-CGS-16a-3a.pdf>

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passed earlier this month, are expected to have an impact that include the possibility of running back-up diesel generators in communities already overburdened by air pollution.

The need to provide strong protections for these communities is vital, and we urge you to support this bill.

In addition to the suggested amendments below, we also encourage the committee to consider including the Green Justice Zone concept raised in House Bill 5817 in this bill. The Green Justice Zone concept would create a pilot program for community-led environmental remediation and clean energy deployment projects. Including Green Justice Zones along with the suggested amendments would result in a bill that prevents new polluting sources, addresses legacy pollution, and provides benefits to vulnerable communities.

House Bill 6441
An Act Concerning Climate Change Adaptation

Sierra Club supports HB 6441 as it begins to provide the administrative tools and the funding to solve the looming problem of adapting to the climate crisis. Although the worst effects of climate change can still be mitigated, we must be prepared for the ones that cannot. This bill would implement the Governor's budget recommendations, giving municipalities the tools, the authority, and financial resources to implement climate resilience programs.

This bill provides municipalities with the authority to create new stormwater management boards and to add climate resilience to flood prevention and erosion boards. Stormwater management is an important way to prevent flooding and the spread of pollution into our water systems and ocean. As storms grow stronger and more unpredictable, the ability to be prepared will be crucial to saving city infrastructure, money and lives. Local control over climate resilience measures is an important measure to ensure equity and best practices. The bill also provides needed funding measures for this work.

We support the language in this bill that would also enact a voluntary municipal conveyance fee on real estate transactions that could then be used to fund local conservation projects. It is a critical tool for communities that may not otherwise be able to leverage adequate funds for climate change adaptation and resilience. Preserving our biodiversity, our agriculture, our safety, and our coastal infrastructure will be costly. We should give our towns and cities all the options at their disposal.

Finally, this bill provides language that would expand the ability of the Green Bank to fund environmental infrastructure funding. This is an important financial resource for contractors and municipalities looking to ensure that all towns and cities are prepared to meet the future challenge and problems of the climate crisis.

Thank you for consideration of our testimony.

Sincerely,

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SUGGESTED AMENDMENT LANGUAGE

HB 6551 - AN ACT CONCERNING ENVIRONMENTAL AIR QUALITY

New Language to be added:

(1) Establish clear accountability for state agency decision-making that supports the states' greenhouse gas reduction obligations under the Global Warming Solutions Act (GWSA) and (2) Provide for citizen enforcement of the GWSA pursuant to the Connecticut Environmental Protection Act.

Amendment to the current bill language:

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

Section 2. Section 22a-20a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021):

(a) As used in this section:

(1) "Environmental justice community" means (A) a United States census block group, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level; (B) a distressed municipality, as defined in subsection (b) of section 10-32-9p; (C) at least 30 percent of the residents identify as minority or as members of a State recognized tribal community; or (D) at least 5 percent of the households have limited English proficiency.

(2) "Affecting facility" means any (A) electric generating facility with a capacity of more than ten megawatts; (B) sludge or solid waste incinerator or combustor; (C) sewage treatment plant with a capacity of more than fifty million gallons per day; (D) intermediate processing center, volume reduction facility, solid waste transfer station, resource recovery facility, transfer stations, recycling, compost or multi-town recycling facility with a combined monthly volume in

excess of twenty-five tons; (E) new or expanded landfill, including, but not limited to, a landfill that contains ash, construction and demolition debris or solid waste; (F) medical waste incinerator; [or](G) major source of air pollution, as defined by the federal Clean Air Act, or (H) data centers.

"Affecting facility" shall not include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydro power or that uses fuel cells, (ii) any facility for which a certificate of environmental compatibility and public need was obtained from the Connecticut Siting Council on or before January 1, 2000, or (iii) a facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with the provisions of sections 22a-1b to 22a-1h, inclusive, and such evaluation has been determined to be satisfactory in accordance with section 22a-1e;

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

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

(5) "Department" means the Department of Energy and Environmental Protection.

(6) "Council" means the Connecticut Siting Council.

(7) "Limited English Proficiency" means (A) Individuals who do not speak English as their primary language; (B) Individuals who have a limited ability to read, speak, write, or understand English; or (C) both.

(8) "Cumulative Impacts" means impacts to the natural environment and public health from past, present, and foreseeable future human activities and environmental conditions.

(b) (1) Applicants who, on or after January 1, 2009, seek to obtain any certificate under chapter 277a, new or expanded permit, or siting approval from the Department of Energy and Environmental Protection or the Connecticut Siting Council involving an affecting facility that is proposed to be located in an environmental justice community or the proposed expansion of an affecting facility located in such a community, shall (A) file a meaningful public participation plan with such Department or Council and shall obtain the Department's or Council's approval of such plan prior to filing any application for such permit, certificate or approval; [and] (B) consult with the chief elected official or officials of the town or towns in which the affecting facility is to be located or expanded to evaluate the need for a community environmental benefit agreement in accordance with subsection (d) of this section[.]; and (C) conduct an informal public meeting as set forth in the public participation plan.

(2) Each such meaningful public participation plan shall contain measures to facilitate meaningful public participation in the regulatory process and a certification that the applicant will undertake the measures contained in the plan. Such plan shall identify a time and place where an informal public meeting will be held that is convenient for the residents of the affected environmental justice community. In addition, any such plan shall identify the methods, if any, by which the applicant will publicize the date, time and nature of the informal public meeting in addition to the publication required by subdivision (3) and notice by mail required by subdivision (4) of this subsection. Such methods shall include, but not be limited to, (A) posting a reasonably visible sign on the proposed or existing facility property, printed in English, in accordance with

any local regulations and ordinances, (B) posting a reasonably visible sign, printed in all languages spoken by at least fifteen percent of the population that reside within a one-half of a mile radius of the proposed or existing facility, in accordance with local regulations and ordinances, and (C) notifying local and state elected officials, in writing. Such methods may include notifying neighborhood and environmental groups, in writing, in a language appropriate for the target audience. The determination of the percentage of persons that speak a language, for purposes of subparagraph (B) of this subdivision, shall be made in accordance with the most recent United States census.

(3) Not less than ten days prior to the informal public meeting and not more than thirty days prior to such meeting, the applicant shall publish the date, time and nature of the informal public meeting with a minimum one-quarter page advertisement in a newspaper having general circulation in the area affected, and any other appropriate local newspaper serving such area such as a non-English language newspaper, in the Monday issue of a daily publication or any day in a weekly, biweekly, or monthly publication. The applicant shall post a similar notification of the informal public meeting on the applicant's web site, if applicable.

(4) Not less than thirty days prior to the informal public meeting, the applicant shall send a notice by mail to all residents within a one-half of a mile radius of the proposed or existing facility. The notice of the informal public meeting shall provide the date, time, and location of the informal public meeting, a description of the proposed facility, a map indicating the location of the facility, addresses for mailed and Internet-based submission of written comments to the Department or Council, and any other information deemed appropriate by the Department or Council. The notice shall be written in all languages spoken by at least five percent of the population that resides within a one-half of a mile radius of the proposed or existing facility.

(5)[(4)] At the informal public meeting, the applicant shall make a reasonable and good faith effort to provide clear, accurate and complete information about the proposed facility or the proposed expansion of a facility and the potential environmental and health impacts of such facility or such expansion. The applicant shall provide translation services at the informal public

meeting if a request is made at least two weeks in advance. The permit applicant shall accept written, via mail or e-mail submission, and oral comments from any interested party, and provide an opportunity for meaningful public participation at the informal public meeting. The applicant shall video record the informal public meeting and submit the recording and a transcript to the Department or Council.

(6)[(5)] The Department [of Energy and Environmental Protection] or [the Connecticut Siting] Council shall not take any action on the applicant's permit, certificate or approval earlier than sixty days after the informal public meeting. For any such application filed on or after November 1, 2020, if the applicant fails to undertake the requirements of subparagraphs (B) to (D), inclusive, of subdivision (2) of this subsection or subdivision (3) through (5) [or (4)] of this subsection, any such application shall be deemed insufficient.

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

(c) Any municipality, owner or developer may enter into a community environmental benefit agreement in connection with an affecting facility. For any application filed on or after November 1, 2020, for such an affecting facility that: (1) Requires a certificate under chapter 277a, or (2) constitutes a new or expanded permit or siting approval from the Department of Energy and Environmental Protection or the Connecticut Siting Council, and that is located in an environmental justice community or is proposed to be located in such a community, the applicant shall enter into such an agreement with the municipality if there are five or more affecting facilities in such municipality at the time such application is filed. Mitigation may include both on-site and offsite improvements, activities and programs, including, but not limited to: Funding

for activities such as environmental education, diesel pollution reduction, electric vehicle charging infrastructure construction, establishment of a wellness clinic, ongoing asthma screening, provision of air monitoring performed by a credentialed environmental professional, performance of an ongoing traffic study, watercourse monitoring, construction of biking facilities and multi-use trails, staffing for parks, urban forestry, support for community gardens or any other negotiated benefit to the environment in the environmental justice community. Prior to negotiating the terms of a community environmental benefit agreement, the municipality shall provide a reasonable and public opportunity for residents of the potentially affected environmental justice community to be heard concerning the requirements of or need for, and terms of, such agreement.

(d) A committee composed of t[T]he chief elected official or town manager of a municipality, or its delegate, and at least five members of the affected community shall participate in the negotiations for any such community environmental benefit agreement. The chief elected official or town manager[and] shall implement, administer and enforce such an agreement on behalf of the municipality, provided any such agreement negotiated pursuant to this section on and after October 1, 2021, shall be approved by the legislative body of the municipality prior to implementation, administration and enforcement of such agreement.

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

(f) Notwithstanding any provision of the general statutes, if the Department of Energy and Environmental Protection or the Connecticut Siting Council, as applicable, determines that there are less harmful alternatives compared to the applicant's proposed facility or new or expanded permit, then the Department or Council, as applicable, shall deny the subject application or permit, as received, but allow the applicant to resubmit such application, if appropriate, with modifications. Notwithstanding any provisions of the general statutes, if the

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Department or Council determines that, together with other environmental or public health stressors affecting the environmental justice community, the proposed facility or new or expanded permit could cause or contribute to adverse cumulative environmental or public health stressors in such community that are higher than those borne by other communities in the state, on average, the Department or Council, as applicable, shall deny the subject application or permit or place conditions on the application or permit as necessary in order to eliminate the adverse environmental or public health stressors affecting the environmental justice community. Notwithstanding any provision of the general statutes, if the Department or Council determines that a new facility or expansion or modification of an existing facility will serve a compelling public interest in the affected environmental justice community the Department or Council, as applicable, may approve such application or permit and impose conditions on the construction and operation of the facility to protect public health and the environment. The development of a community environmental benefit agreement, and any mitigation terms, shall not be considered in making these determination. The Department or Council shall publish the above determinations on a website.

(g) Any person may appeal the issuance of a certificate under chapter 277a, a new, modified, or expanded permit, or a siting approval for failure to comply with any provision of subdivision (b) of this section, in accordance with the provisions of section 4-183. Failure to comply with subdivision (b) of this section shall constitute unreasonable pollution pursuant to section 22a-16.

(h) In addition to any other fee authorized by law, rule, or regulation, the Department and Council may assess each permit applicant a reasonable fee in order to cover the costs associated with the implementation of this act, including costs to provide technical assistance to permit applicants and overburdened communities as needed to comply with this act, or other environmental justice programs.

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Section 3. (NEW) (*Effective from passage*) (a) The Commissioner of Energy and Environmental Protection shall conduct a study to determine, among other things: (1) the disparities in air quality levels between the municipalities of the State; (2) how affecting facilities located in the State directly impact air quality levels in the municipality in which they are located, and in surrounding municipalities; (3) limitations of existing data and the scope of the air quality monitoring program; and (4) how the Department of Energy and Environmental Protection may implement policy and procedural changes and expand its air quality monitoring program to obtain air quality data in environmental justice communities, as defined in Section 22a-20a of the Connecticut General Statutes, significantly impacted by affecting facilities and other industries that produce dust and air pollutants. The commissioner shall report, in accordance with the provisions of section 11-4a of the general statutes, the findings of such study to the joint standing committee of the General Assembly having cognizance of matters relating to the environment on or before July 1, 2022.

(b) On or before January 1, 2023, the Commissioner of Energy and Environmental Protection shall implement, in accordance with the conclusions of the study in subsection (a) of this section, a new program or a modification of an existing program to monitor air pollution from affecting facilities and other polluting facilities in environmental justice communities, as defined in Section 22a-20a of the Connecticut General Statutes.

(c) The Department of Energy and Environmental Protection shall provide technical assistance and support to any municipality that purchases, leases, or is provided the use of air monitoring equipment for the purpose of assessing air quality in an environmental justice community. Such technical assistance and support shall include, but not be limited to, the provision of information on best practices for measuring the air pollution output of affecting facilities, guidance on the siting and placement of such air quality monitors, information concerning the maintenance and practices required to assure the accuracy of such monitors, proposed schedules for data retrieval from such monitors during the calendar year, and review of and conclusion from the results of such data retrieval.