



General Assembly

Amendment

January Session, 2023

LCO No. 9453



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 Section 22a-20a of the general statutes is repealed and the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; (B) applications
67 for or registrations under general permits issued by the department; or
68 (C) any authorization or approval required for an extension of time to
69 complete construction of a facility.

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

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

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

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

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

147 opportunities that occur as part of the permit approval process before
148 the department or council, and notify such residential households of any
149 notice of tentative or final determination by the department or council.

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

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

178 [(5)] (6) The Department of Energy and Environmental Protection or
179 the Connecticut Siting Council shall not take any action on the

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

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

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

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

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

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

247 potentially affected environmental justice community to participate in
248 such negotiations.

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

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

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

277 (2) The department or the council, as applicable, may deny any
278 application for a permit for a proposed affecting facility, other than an

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

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

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

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

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

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

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

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

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

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

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| Section 1 | October 1, 2023 | 22a-20a |
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