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ResearchReport

Connecticut's Environmental Justice Law

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Issue

This report summarizes Connecticut's environmental justice law (CGS § 22a-20a). It updates OLR Report 2017-R-0316 to reflect changes made by PA 20-6, Sept. Sp. Sess..

Summary

The state's environmental justice law requires public participation in decisions to site or expand facilities, such as power plants, waste treatment facilities, disposal facilities, or large air emission producers, in "environmental justice communities."

An "environmental justice community" is a (1) distressed municipality, as designated by the Department of Economic and Community Development or (2) U.S. census block group with at least 30% of the population living below 200% of the federal poverty level, excluding institutionalized residents.

The law requires applicants for the new or expanded facilities in these areas to (1) engage in meaningful public participation, which involves an informal public hearing and (2) based on how many facilities exist in the community, either negotiate a community environmental benefit agreement with local officials or consult with local officials as to the need for one.

These actions must occur before receiving a certificate of environmental compatibility and public need from the Connecticut Siting Council (Siting Council), or a permit or siting approval from the Department of Energy and Environmental Protection (DEEP) or the Siting Council, as applicable, for the facility. And the law deems an application insufficient if the applicant fails to (1) abide by certain public meeting notice requirements, such as posting signs and advertising in local

newsprint or (2) make a good faith effort to give clear and complete information at the public meeting.

Facilities Subject to the Law

The law applies to the following types of facilities:

1. electric generation facilities with a capacity of more than 10 megawatts;
2. sludge or solid waste incinerators or combustors;
3. sewage treatment plants with a capacity of more than 50 million gallons per day;
4. intermediate processing centers, volume reduction facilities, or multitown recycling facilities with a combined monthly volume exceeding 25 tons;
5. new or expanded landfills, including those that have ash, construction and demolition debris, or solid waste;
6. medical waste incinerators; and
7. major sources of air pollution, as defined by the federal Clean Air Act (e.g., large factories).

It exempts certain facilities, such as those that received Siting Council approval by a certain date before the law's initial passage in 2008 and those under the control of the state's higher education system that receive a satisfactory environmental impact evaluation.

General Requirements

Under the environmental justice law, applicants seeking a new or expanded facility in an environmental justice community must do two things:

1. file and receive state approval of a "meaningful public participation plan," which must include an informal public meeting, and
2. negotiate a community environmental benefit agreement to mitigate reasonably related impacts or consult with local officials about the need for one.

An applicant must receive the regulatory authority's approval of its plan before filing its application for the certificate, permit, or siting approval. And the law prohibits the regulatory authority from acting on an applicant's application during the 60 days following the informal public meeting.

Public Participation Plan

An applicant must file a meaningful public participation plan with DEEP or the Siting Council, as appropriate, and receive its approval of the plan before filing its application for the certificate, permit, or siting approval.

By law, the plan must facilitate meaningful public participation, which under the law occurs when:

1. potentially affected residents have an appropriate opportunity to participate in decisions about facility development or expansion when it may harm their environment or health,
2. public input may influence the regulatory agent's decision, and
3. the applicant seeks out and facilitates this public participation.

The plan must (1) identify a time and a place convenient to the environmental justice community's residents where an informal public meeting will be held, (2) describe how the applicant will publicize the meeting, and (3) include a certification that the applicant will carry it out.

Public Meeting Notice Requirements

By law, an applicant must at least post reasonably visible signs, including signs in languages spoken by at least 15% of the population that live within a half mile of the facility location, and provide written notice to local and state elected officials. The law explicitly cites to notifying neighborhood and environmental groups, in writing and in languages appropriate for the intended audience, as a discretionary way to notify the public of the meeting.

The law also requires an applicant to publish the date, time, and scope of the informal public meeting at least 10 days, but not greater than 30 days, before the meeting in a general circulation newspaper in the affected area or other appropriate newspaper. This notice must be at least one-quarter page and in the Monday issue for a daily publication, or in any day's issue for a weekly or monthly publication. A similar notice must be posted on the applicant's website, if it has one.

As of November 1, 2020, applications not meeting the public notice requirements are deemed insufficient. (Applications filed before November 1, 2020, are grandfathered in to prior law's requirements, which made the listed methods of publicizing the meeting, other than the newspaper and online notice, discretionary.)

Public Meeting Topics

Under the law, the applicant must make a "reasonable and good faith effort" at the informal public meeting to provide clear, accurate, and complete information about (1) the proposed facility or expansion to an existing facility and (2) any related potential environmental and health impacts. As with the notice requirement, for applications filed on or after November 1, 2020, failing to do so makes the application insufficient.

If the Siting Council approves a meaningful public participation plan and there was an informal public meeting as part of that process, DEEP may approve the plan and waive the need for an additional public meeting.

Community Environmental Benefit Agreement

The law requires applicants to consult with town officials where the facility will be located or expanded to evaluate the need for a community environmental benefit agreement. Applicants who file an application on or after November 1, 2020, for an affecting facility or expanding an existing one in an environmental justice community already with five or more of these facilities must enter into an agreement.

A community environmental benefit agreement is a written agreement between the potentially affected town, entered into by its chief elected official or manager, as apply, and the facility's owner or developer. In it, the owner or developer must agree to develop the property and provide financial resources to the town to mitigate any reasonably related impacts to the environment, such as to air quality and watercourses, or to traffic, parking, and noise.

Mitigation may include both on-site and off-site improvements, activities, and programs and the law gives examples of possible mitigation efforts. Efforts provided in the law's nonexhaustive list include funding for environmental education, diesel pollution reduction, electric vehicle charging infrastructure construction, wellness clinic establishment, ongoing asthma screening, air monitoring by a credentialed environmental professional, an ongoing traffic study, watercourse monitoring, biking facility and multi-use trail construction, park staffing, urban forestry, community garden support, and any other negotiated environmental benefit.

Before agreement negotiations, the town must provide a reasonable and public opportunity for affected residents to be heard on the requirement or need for, and terms of, the agreement. The town's chief elected official or manager, as apply, must (1) participate in the agreement negotiations and (2) once the agreement is in effect, implement, administer, and enforce it on the

town's behalf. Agreements negotiated on and after November 1, 2020, must also be approved by the town's legislative body before they take effect.

Lastly, the law specifies that the terms of an agreement approved on or after November 1, 2020, are not a separate and distinct basis for someone to intervene in an administrative, licensing, or other proceeding on the grounds that the proceeding involved conduct that has or may cause environmental harm.

Related DEEP Policy

The environmental justice law works in conjunction with DEEP's Environmental Equity Policy. Under the policy, DEEP requires that certain other facilities proposed to be in an environmental justice community also follow the law's public notice requirements as part of their application submission. Information about the policy is available on DEEP's Environmental Justice Program website.

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