

[First Reprint]

SENATE, No. 1700

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Concerns environmental permits in burdened communities.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on January 24, 2019, with amendments.



1 AN ACT concerning environmental permits in certain areas, and
2 supplementing Title 13 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act: “Burdened community” means ¹**[**an area
8 within a municipality that is designated as such pursuant to the
9 provisions of subsection b. of section 2 of this act.

10 “Household income” means income as defined for the purposes
11 of determining eligibility for a free or reduced price lunch pursuant
12 to the federal school lunch program.

13 “Low-income household” means a residence with a household
14 income that does not exceed 2.50 times the official federal poverty
15 level based on family size, established and adjusted under the
16 federal “Community Services Block Grant Act,” 42 U.S.C.
17 s.9902(2), for the year preceding the year in which a designation of
18 a burdened community is sought.

19 “Minority group” means any group enjoying special protection
20 under the civil rights provisions of the Constitution of the United
21 States and the federal “Voting Rights Act of 1965,”
22 52 U.S.C. s.10301 et seq., as amended and supplemented. **]** any
23 census tract, as delineated in the most recent federal decennial
24 census, that is ranked in the bottom 33 percent of census tracts in
25 the State for median annual household income.

26 “Cumulative impacts” means an exposure, public health or
27 environmental risk, or other effect occurring in a specific
28 geographical area, including from any environmental pollution
29 emitted or released routinely, accidentally, or otherwise, from any
30 source, and assessed based on the combined past, present, and
31 reasonably foreseeable emissions and discharges affecting the
32 geographical area. “Cumulative impacts” shall be evaluated based
33 on any applicable guidance issued by department.

34 “Facility” means any: (1) electric generating facility with a
35 capacity of more than ten megawatts; (2) resource recovery facility
36 or incinerator; (3) sludge combustor or incinerator; (4) sewage
37 treatment plant with a capacity of more than 50 million gallons per
38 day; (5) transfer station, recycling center, or other solid waste
39 facility with a combined monthly volume in excess of 25 tons; (6)
40 landfill, including, but not limited to, a landfill that accepts ash,
41 construction or demolition debris, or solid waste; (7) medical waste
42 incinerator; or (8) major source of air pollution, as defined by the
43 federal “Clean Air Act,” 42 U.S.C.s.7401 et seq.¹

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted January 24, 2019.

1 “Permit” means any permit, registration ^{1,1} or license issued by
2 the Department of Environmental Protection establishing the
3 regulatory and management requirements for an ongoing regulated
4 activity as authorized by federal law or the following State laws:
5 R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid
6 Waste Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.);
7 section 17 of P.L.1975, c.326 (C.13:1E-26); the “Comprehensive
8 Regulated Medical Waste Management Act,” P.L.1989, c.34
9 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the
10 “New Jersey Statewide Mandatory Source Separation and
11 Recycling Act,” P.L.1987, c.102 (C.13:1E-99.11 et al.); the
12 “Pesticide Control Act of 1971,” P.L.1971, c.176 (C.13:1F-
13 1 et seq.); the “Industrial Site Recovery Act,” P.L.1983, c.330
14 (C.13:1K-6 et al.); the “Toxic Catastrophe Prevention Act,”
15 P.L.1985, c.403 (C.13:1K-19 et seq.); “The Wetlands Act of 1970,”
16 P.L.1970, c.272 (C.13:9A-1 et seq.); the “Freshwater Wetlands
17 Protection Act,” P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal
18 Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the
19 “Highlands Water Protection and Planning Act,” P.L.2004, c.120
20 (C.13:20-1 et seq.), the “Air Pollution Control Act (1954),”
21 P.L.1954, c.212 (C.26:2C-1 et seq.); the “Water Supply
22 Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947,
23 c.377 (C.58:4A-5 et seq.); the “Water Pollution Control Act,”
24 P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-
25 21 et seq.); the “Safe Drinking Water Act,” P.L.1977, c.224
26 (C.58:12A-1 et al.); the “Flood Hazard Area Control Act,”
27 P.L.1962, c.19 (C.58:16A-50 et seq.) ¹; except that “permit” shall
28 not include: (1) any general permit issued by the department
29 pursuant to subsection h. of section 13 of P.L.1967, c.106 (C.26:2C-
30 9.2), or (2) any general permit issued by the department for
31 remedial activity pursuant to subsection d. of section 1 of P.L.1993,
32 c.351 (C.58:10A-7.2)¹.

33 ¹【“Person” means any individual, corporation, company,
34 partnership, firm, association, political subdivision of this State, or
35 State or interstate agency.】¹

36
37 ¹【2. a. The Department of Environmental Protection shall
38 designate an area within any municipality in the State a burdened
39 community pursuant to the provisions of this section. The
40 department may designate an area a burdened community pursuant
41 to a petition filed by any person or upon its own initiative. The
42 department shall grant or deny a petition within 60 days of its
43 receipt. A person who petitions the department to designate an area
44 within the municipality a burdened community shall include in the
45 application:

46 (1) A map of the area that is the subject of the application;

1 (2) A list of the facilities in the area for which the department
2 has issued a permit the affect the public health, the environment,
3 and the quality of life in the community;

4 (3) Any demographic or household information that will assist
5 the department in assessing the income levels in the area;

6 (4) The name and contact information of a designated
7 representative of the burdened community; and

8 (5) Any other information the applicant deems relevant
9 concerning the conditions in the area that is the subject of the
10 application.

11 b. The department shall designate an area a burdened
12 community upon a finding that the area meets the following criteria:

13 (1) At least one-half of the households in the area qualify as
14 low-income households;

15 (2) At least one-half of the area's residents are members of a
16 minority group;

17 (3) There is in the area at least one "major facility" as defined
18 pursuant to section 2 of P.L.1954, c.212 (C.26:2C-2);

19 (4) There is in the area at least one property that is included on
20 the list of known hazardous discharge sites maintained pursuant to
21 the provisions of P.L.1982, c.202 (C.58:10-23.15 et seq.); and

22 (5) There is in the area at least one facility:

23 (a) that has been issued a permit pursuant to the provisions of
24 P.L.1977, c.74 (C.58:10A-1 et seq.);

25 (b) regulated pursuant to the provisions of P.L.1985, c.403
26 (C.13:1K-19 et seq.); or

27 (c) regulated pursuant to the provisions of P.L.1970, c.39
28 (C.13:1E-1 et seq.).

29 c. Upon designating an area a burdened community, the
30 department shall notify the governing body of the municipality in
31 which the area is located, the applicant, as applicable, and any
32 community leaders as appropriate. Upon consultation with the
33 governing body of the municipality in which the burdened
34 community is located, and the petitioner if applicable, the
35 department shall designate a representative of the burdened
36 community.】¹

37

38 ¹2. a. No later than 120 days after the effective date of this act,
39 the Department of Environmental Protection, in consultation with
40 the Secretary of State, shall adopt, pursuant to the "Administrative
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a list of
42 burdened communities in the State. The department shall update
43 the list of burdened communities periodically as new data on
44 median annual household income becomes available and upon
45 promulgation by the federal government of a new federal decennial
46 census.

47 b. No later than 60 days after a burdened community is
48 designated pursuant to subsection a. of this section, the governing

1 body of the municipality in which the burdened community is
2 located, in consultation with appropriate community groups, shall
3 designate a representative of the burdened community.¹
4

5 3. a. ¹~~【The】~~ Beginning 180 days after the effective date of
6 this act, the¹ Department of Environmental Protection shall not
7 grant a permit for ¹~~【a project】~~ a new facility, or for the expansion
8 of an existing facility,¹ located ¹in whole or in part¹ in a burdened
9 community unless the ¹~~【department】~~ permit applicant¹ first:

10 (1) Prepares a report assessing the environmental impact of the
11 proposed ¹~~【project】~~ new facility, or expansion of an existing
12 facility,¹ including any cumulative impacts on the ¹burdened¹
13 community, any adverse environmental effects that cannot be
14 avoided should the permit be granted, and the public health impact
15 on the burdened community of the proposed ¹~~【project】~~ new facility
16 or expansion of an existing facility¹;

17 (2) Transmits the report required to be prepared pursuant to
18 paragraph (1) of this subsection at least 30 days in advance of the
19 public hearing required pursuant to paragraph (3) of this subsection
20 to ¹the department,¹ the governing body and the clerk of the
21 municipality in which the burdened community is located, ¹~~【the~~
22 permit applicant,¹ and the designated representative of the
23 burdened community. The report shall be made available to the
24 public at least 30 days prior to the public hearing required pursuant
25 to paragraph (3) of this subsection; and

26 (3) ¹~~【Conducts】~~ Organizes and conducts¹ a public hearing in a
27 location convenient as much as possible to all interested parties ¹~~【at~~
28 least 30 days prior to issuing a decision on a permit application.
29 Public】 . The permit applicant shall publish public¹ notices of the
30 hearing ¹~~【shall be published】~~¹ in at least two newspapers
31 circulating within the burdened community not less than 21 days
32 prior to the ¹~~【hearings】~~ hearing¹. At least 14 days prior to the date
33 set for such hearing, a copy of the public notice shall be sent to the
34 ¹department, the¹ governing body and the clerk of the municipality
35 in which the burdened community is located, ¹~~【the permit~~
36 applicant,¹ and the designated representative of the burdened
37 community. ¹At the public hearing, the permit applicant shall
38 provide clear, accurate, and complete information about the
39 proposed new facility or expansion of an existing facility and the
40 potential environmental and health impacts of the new or expanded
41 facility. The hearing shall provide an opportunity for meaningful
42 public participation by residents of the burdened community.¹
43 Following the public hearing, the commissioner shall consider the
44 testimony presented and evaluate any revisions or conditions to the
45 permit that may be necessary to reduce the adverse impact to the
46 public health or to the environment in the burdened community.

1 b. ¹The department shall not issue a decision on the permit
2 application until at least 60 days after the public hearing held
3 pursuant to this section.¹ Notwithstanding the provisions of any
4 other law, or rule or regulation adopted pursuant thereto, to the
5 contrary, the department may deny a permit application in a
6 burdened community upon a finding that the approval of the permit
7 would, together with the cumulative ¹**adverse health and**
8 **environmental**¹ impacts posed by the existing conditions,
9 including conditions resulting from permitted activities, in the
10 burdened community, constitute an unreasonable risk to the health
11 of the residents of the burdened community and to the environment
12 in the ¹**burdened**¹ community.

13 c. The department ¹**shall not approve a permit application for**
14 **a project in a burdened community unless the governing body of the**
15 **municipality in which the burdened community is located adopts an**
16 **ordinance approving the project** ¹, when evaluating an application
17 for a permit pursuant to this section, shall assess the community
18 support for the proposed new facility or expansion of an existing
19 facility, as demonstrated through the public hearing conducted
20 pursuant to subsection a. of this section, letters of support for, or
21 opposition to, the proposed new or expanded facility, and any
22 ordinance or resolution adopted by the governing body of the
23 municipality in which the burdened community is located. The
24 department shall consider community support, or the lack thereof,
25 in its decision to grant or deny a permit.

26 d. If a permit applicant is applying for more than one permit for
27 a proposed new facility or expansion of an existing facility, the
28 permit applicant shall only be required to comply with the
29 provisions of this section once, unless the department, in its
30 discretion, determines that more than one public hearing is
31 necessary due to the complexity of the proposed new or expanded
32 facility. Nothing in this section shall be construed to limit the
33 authority of the department to hold or require additional public
34 hearings, as may be required by any other law, rule, or regulation¹.

35
36 4. ¹**a.**¹ The Department of Environmental Protection may
37 adopt, pursuant to the provisions of the “Administrative Procedure
38 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to
39 implement the provisions of this act.

40 ¹**b.** The department may issue guidance on how to evaluate
41 cumulative impacts pursuant paragraph (1) of subsection a. of
42 section 3 of this act. The department shall publish the guidance
43 document on its Internet website.¹

44
45 5. This act shall take effect ¹**on the 180th day after**
46 **enactment** ¹**immediately**¹.