

ASSEMBLY, No. 2212

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Co-Sponsored by:

**Assemblymen Mazzeo, Armato, Benson, Karabinchak, Calabrese,
Assemblywoman Reynolds-Jackson, Assemblymen Zwicker, Holley,
Mukherji, Conaway, Johnson, Moen, Assemblywomen Jasey, Pintor
Marin and Carter**

SYNOPSIS

Concerns environmental permits in burdened communities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 7/20/2020)

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 any
8 census tract, as delineated in the most recent federal decennial
9 census, that is ranked in the bottom 33 percent of census tracts in
10 the State for median annual household income.

11 “Cumulative impacts” means an exposure, public health or
12 environmental risk, or other effect occurring in a specific
13 geographical area, including from any environmental pollution
14 emitted or released routinely, accidentally, or otherwise, from any
15 source, and assessed based on the combined past, present, and
16 reasonably foreseeable emissions and discharges affecting the
17 geographical area. “Cumulative impacts” shall be evaluated based
18 on any applicable guidance issued by department.

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

29 “Permit” means any permit, registration, or license issued by the
30 Department of Environmental Protection establishing the regulatory
31 and management requirements for an ongoing regulated activity as
32 authorized by federal law or the following State laws: R.S.12:5-1 et
33 seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid Waste
34 Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of
35 P.L.1975, c.326 (C.13:1E-26); the “Comprehensive Regulated
36 Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et
37 al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the “New Jersey
38 Statewide Mandatory Source Separation and Recycling Act,”
39 P.L.1987, c.102 (C.13:1E-99.11 et al.); the “Pesticide Control Act
40 of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.); the “Industrial Site
41 Recovery Act,” P.L.1983, c.330 (C.13:1K-6 et al.); the “Toxic
42 Catastrophe Prevention Act,” P.L.1985, c.403 (C.13:1K-19 et seq.);
43 “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.);
44 the “Freshwater Wetlands Protection Act,” P.L.1987, c.156
45 (C.13:9B-1 et al.); the “Coastal Area Facility Review Act,”
46 P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands Water
47 Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et seq.),
48 the “Air Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1

1 et seq.); the “Water Supply Management Act,” P.L.1981, c.262
2 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the “Water
3 Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.);
4 P.L.1986, c.102 (C.58:10A-21 et seq.); the “Safe Drinking Water
5 Act,” P.L.1977, c.224 (C.58:12A-1 et al.); the “Flood Hazard Area
6 Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.); except that
7 “permit” shall not include: (1) any general permit issued by the
8 department pursuant to subsection h. of section 13 of P.L.1967,
9 c.106 (C.26:2C-9.2), or (2) any general permit issued by the
10 department for remedial activity pursuant to subsection d. of section
11 1 of P.L.1993, c.351 (C.58:10A-7.2).

12

13 2. a. No later than 120 days after the effective date of this act,
14 the Department of Environmental Protection, in consultation with
15 the Secretary of State, shall adopt, pursuant to the “Administrative
16 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), a list of
17 burdened communities in the State. The department shall update
18 the list of burdened communities periodically as new data on
19 median annual household income becomes available and upon
20 promulgation by the federal government of a new federal decennial
21 census.

22 b. No later than 60 days after a burdened community is
23 designated pursuant to subsection a. of this section, the governing
24 body of the municipality in which the burdened community is
25 located, in consultation with appropriate community groups, shall
26 designate a representative of the burdened community.

27

28 3. a. Beginning 180 days after the effective date of this act, the
29 Department of Environmental Protection shall not grant a permit for
30 a new facility, or for the expansion of an existing facility, located in
31 whole or in part in a burdened community unless the permit
32 applicant first:

33 (1) Prepares a report assessing the environmental impact of the
34 proposed new facility, or expansion of an existing facility, including
35 any cumulative impacts on the burdened community, any adverse
36 environmental effects that cannot be avoided should the permit be
37 granted, and the public health impact on the burdened community
38 of the proposed new facility or expansion of an existing facility;

39 (2) Transmits the report required to be prepared pursuant to
40 paragraph (1) of this subsection at least 30 days in advance of the
41 public hearing required pursuant to paragraph (3) of this subsection
42 to the department, the governing body and the clerk of the
43 municipality in which the burdened community is located, and the
44 designated representative of the burdened community. The report
45 shall be made available to the public at least 30 days prior to the
46 public hearing required pursuant to paragraph (3) of this subsection;
47 and

1 (3) Organizes and conducts a public hearing in a location
2 convenient as much as possible to all interested parties. The permit
3 applicant shall publish public notices of the hearing in at least two
4 newspapers circulating within the burdened community not less
5 than 21 days prior to the hearing. At least 14 days prior to the date
6 set for such hearing, a copy of the public notice shall be sent to the
7 department, the governing body and the clerk of the municipality in
8 which the burdened community is located, and the designated
9 representative of the burdened community. At the public hearing,
10 the permit applicant shall provide clear, accurate, and complete
11 information about the proposed new facility or expansion of an
12 existing facility and the potential environmental and health impacts
13 of the new or expanded facility. The hearing shall provide an
14 opportunity for meaningful public participation by residents of the
15 burdened community. Following the public hearing, the
16 commissioner shall consider the testimony presented and evaluate
17 any revisions or conditions to the permit that may be necessary to
18 reduce the adverse impact to the public health or to the environment
19 in the burdened community.

20 b. The department shall not issue a decision on the permit
21 application until at least 60 days after the public hearing held
22 pursuant to this section. Notwithstanding the provisions of any
23 other law, or rule or regulation adopted pursuant thereto, to the
24 contrary, the department may deny a permit application in a
25 burdened community upon a finding that the approval of the permit
26 would, together with the cumulative impacts posed by the existing
27 conditions, including conditions resulting from permitted activities,
28 in the burdened community, constitute an unreasonable risk to the
29 health of the residents of the burdened community and to the
30 environment in the burdened community.

31 c. The department, when evaluating an application for a permit
32 pursuant to this section, shall assess the community support for the
33 proposed new facility or expansion of an existing facility, as
34 demonstrated through the public hearing conducted pursuant to
35 subsection a. of this section, letters of support for, or opposition to,
36 the proposed new or expanded facility, and any ordinance or
37 resolution adopted by the governing body of the municipality in
38 which the burdened community is located. The department shall
39 consider community support, or the lack thereof, in its decision to
40 grant or deny a permit.

41 d. If a permit applicant is applying for more than one permit for
42 a proposed new facility or expansion of an existing facility, the
43 permit applicant shall only be required to comply with the
44 provisions of this section once, unless the department, in its
45 discretion, determines that more than one public hearing is
46 necessary due to the complexity of the proposed new or expanded
47 facility. Nothing in this section shall be construed to limit the

1 authority of the department to hold or require additional public
2 hearings, as may be required by any other law, rule, or regulation.

3

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

8 b. The department may issue guidance on how to evaluate
9 cumulative impacts pursuant paragraph (1) of subsection a. of
10 section 3 of this act. The department shall publish the guidance
11 document on its Internet website.

12

13 5. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill would require a person seeking a permit for a new
19 facility, or for the expansion of an existing facility, located in a
20 burdened community, to meet certain additional requirements
21 before they can obtain the permit.

22 Under the bill, a “burdened community” is defined as any census
23 tract, as delineated in the most recent federal decennial census, that
24 is ranked in the bottom 33 percent of census tracts in the State for
25 median household income. “Facility” is defined as any: (1) electric
26 generating facility with a capacity of more than ten megawatts; (2)
27 resource recovery facility or incinerator; (3) sludge combustor or
28 incinerator; (4) sewage treatment plant with a capacity of more
29 than 50 million gallons per day; (5) transfer station, recycling
30 center, or other solid waste facility with a combined monthly
31 volume in excess of 25 tons; (6) landfill, including, but not limited
32 to, a landfill that accepts ash, construction or demolition debris, or
33 solid waste; (7) medical waste incinerator; or (8) major source of air
34 pollution, as defined by the federal “Clean Air Act.”

35 The bill would require the Department of Environmental
36 Protection (DEP), in consultation with the Secretary of State, no
37 later than 120 days after the date of enactment of the bill, to adopt a
38 list of burdened communities in the State. The DEP would be
39 required to update the list of burdened communities periodically as
40 new data on median annual household income becomes available
41 and upon promulgation by the federal government of a new federal
42 decennial census. No later than 60 days after a burdened
43 community is designated under the bill, the governing body of the
44 municipality in which the burdened community is located would be
45 required to designate a representative of the burdened community.

46 Under the bill, beginning 180 days after the date of enactment of
47 the bill, the DEP would not be permitted to grant certain
48 environmental permits for any new facility, or for the expansion of

1 an existing facility, located in whole or in part in a burdened
2 community, unless the permit applicant first:

3 (1) prepares a report assessing the environmental impact of the
4 proposed new or expanded facility. The report would assess the
5 environmental impact on the burdened community including
6 cumulative impacts, any adverse environmental effects that cannot
7 be avoided should the permit be granted, and the public health
8 impact on the burdened community of the proposed new or
9 expanded facility;

10 (2) transmits the report at least 30 days in advance of the public
11 hearing required under the bill to the DEP, the governing body and
12 the clerk of the municipality in which the burdened community is
13 located, and the designated representative of the burdened
14 community. The permit applicant would be required to make the
15 report available to the public at least 30 days prior to the public
16 hearing; and

17 (3) organizes and conducts a public hearing in a location as
18 convenient as possible to all interested parties. The bill establishes
19 specific requirements for public notice of the hearing. At the public
20 hearing, the permit applicant would be required to provide clear,
21 accurate, and complete information about the proposed new or
22 expanded facility and its potential environmental and health impacts
23 in the burdened community. The permit applicant would also be
24 required to provide an opportunity for meaningful public
25 participation by residents of the burdened community. Following
26 the hearing, the DEP would be required to consider testimony
27 presented at the public hearing, and evaluate any revisions or
28 conditions to the permit that may be necessary to reduce the adverse
29 impact to the public health or to the environment in the burdened
30 community.

31 Under the bill, the DEP would not be permitted to issue a
32 decision on the permit application until at least 60 days after the
33 public hearing. The DEP would have the authority to deny a permit
34 application in a burdened community upon a finding that approval
35 of the permit, together with the cumulative impacts posed by the
36 proposed new or expanded facility, would constitute an
37 unreasonable risk to the health of the residents of the burdened
38 community and to the environment in that community. The DEP,
39 when evaluating an application for a permit under the bill, would be
40 required to assess community support for the proposed new or
41 expanded facility, and be required to consider such support, or the
42 lack thereof, in its decision to grant or deny a permit.

43 The bill provides that if a permit applicant is applying for more
44 than one permit for a proposed new or expanded facility, the
45 applicant would only be required to comply with the provisions of
46 the bill once, unless the DEP, in its discretion, determines that more
47 than one public hearing is necessary due to the complexity of the
48 new or expanded facility.