

[First Reprint]

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STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JULY 20, 2020

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SYNOPSIS

Requires DEP to evaluate environmental and public health stressors of certain facilities on overburdened communities when reviewing certain permit applications.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on August 24, 2020, with amendments.

(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning the disproportionate environmental and public
2 health impacts of pollution on overburdened communities, and
3 supplementing Title 13 of the Revised Statutes.

4

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

7

8 1. The Legislature finds and declares that all New Jersey
9 residents, regardless of income, race, ethnicity, color, or national
10 origin, have a right to live, work, and recreate in a clean and healthy
11 environment; that, historically, New Jersey’s low-income
12 communities and communities of color have been subject to a
13 disproportionately high number of environmental and public health
14 stressors, including pollution from numerous industrial,
15 commercial, and governmental facilities located in those
16 communities; that, as a result, residents in the State’s overburdened
17 communities have suffered from increased adverse health effects
18 including, but not limited to, asthma, cancer, elevated blood lead
19 levels, cardiovascular disease, and developmental disorders; that
20 children are especially vulnerable to the adverse health effects
21 caused by exposure to pollution, and that such health effects may
22 severely limit a child’s potential for future success; that the adverse
23 effects caused by pollution impede the growth, stability, and long-
24 term well-being of individuals and families living in overburdened
25 communities; that the legacy of siting sources of pollution in
26 overburdened communities continues to pose a threat to the health,
27 well-being, and economic success of the State’s most vulnerable
28 residents; and that it is past time for the State to correct this
29 historical injustice.

30 The Legislature further finds and declares that no community
31 should bear a disproportionate share of the adverse environmental
32 and public health consequences that accompany the State’s
33 economic growth; that the State’s overburdened communities must
34 have a meaningful opportunity to participate in any decision to
35 allow in such communities certain types of facilities which, by the
36 nature of their activity, have the potential to increase environmental
37 and public health stressors; and that it is in the public interest for
38 the State, where appropriate, to limit the future placement and
39 expansion of such facilities in overburdened communities.

40

41 2. As used in this act:

42 “Department” means the Department of Environmental
43 Protection.

44 “Environmental or public health stressors” means sources of
45 environmental pollution, including, but not limited to, concentrated

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:

¹Assembly AAP committee amendments adopted August 24, 2020.

1 areas of air pollution, mobile sources of air pollution, contaminated
2 sites, transfer stations or other solid waste facilities, recycling
3 facilities, scrap yards, and point-sources of water pollution
4 including, but not limited to, water pollution from facilities or
5 combined sewer overflows; or conditions that may cause potential
6 public health impacts, including, but not limited to, asthma, cancer,
7 elevated blood lead levels, cardiovascular disease, and
8 developmental problems in the overburdened community.

9 “Facility” means any: (1) major source of air pollution; (2)
10 resource recovery facility or incinerator; (3) sludge processing
11 facility, combustor, or incinerator; (4) sewage treatment plant with
12 a capacity of more than 50 million gallons per day; (5) transfer
13 station or other solid waste facility, or recycling facility intending
14 to receive at least 100 tons of recyclable material per day; (6) scrap
15 metal facility; (7) landfill, including, but not limited to, a landfill
16 that accepts ash, construction or demolition debris, or solid waste;
17 or (8) medical waste incinerator; except that “facility” shall not
18 include a facility as defined in section 3 of P.L.1989, c.34 (C.13:1E-
19 48.3) ¹ **], or regulated medical waste processing equipment** **]** that
20 accepts regulated medical waste for disposal ¹, including a medical
21 waste incinerator, that is attendant to a hospital or university and
22 intended to process self-generated regulated medical waste.

23 “Limited English proficiency” means that a household does not
24 have an adult that speaks English “very well” according to the
25 United States Census Bureau.

26 “Low-income household” means a household that is at or below
27 twice the poverty threshold as that threshold is determined annually
28 by the United States Census Bureau.

29 “Major source” means a major source of air pollution as defined
30 by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules
31 and regulations adopted by the department pursuant to the “Air
32 Pollution Control Act,” P.L.1954, c.212 (C.26:2C-1 et seq.) or
33 which directly emits, or has the potential to emit, one hundred tons
34 per year or more of any air pollutant, or other applicable criteria set
35 forth in the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq.

36 “Overburdened community” means any census block group, as
37 determined in accordance with the most recent United States
38 Census, in which: (1) at least 35 percent of the households qualify
39 as low-income households; (2) at least 40 percent of the residents
40 identify as minority or as members of a State recognized tribal
41 community; or (3) at least 40 percent of the households have limited
42 English proficiency.

43 “Permit” means any individual permit, registration, or license
44 issued by the department to a facility establishing the regulatory and
45 management requirements for a regulated activity under the
46 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-
47 29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39
48 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the
49 “Comprehensive Regulated Medical Waste Management Act,”

1 P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-
2 99.21a et al.); the “New Jersey Statewide Mandatory Source
3 Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-
4 99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176
5 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272
6 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,”
7 P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility
8 Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands
9 Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-
10 1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212
11 (C.26:2C-1 et seq.); the “Water Supply Management Act,”
12 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-
13 5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74
14 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); or the
15 “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-
16 50 et seq.); except that “permit” shall not include any authorization
17 or approval necessary to perform a remediation, as defined pursuant
18 to section 23 of P.L.1993, c.139 (C.58:10B-1), or any authorization
19 or approval required for a minor modification of a facility’s major
20 source permit for activities or improvements that do not increase
21 emissions.

22

23 3. No later than 120 days after the effective date of this act, the
24 department shall publish and maintain on its Internet website a list
25 of overburdened communities in the State. The department shall
26 update the list of overburdened communities at least once every two
27 years. The department shall notify a municipality if any part of the
28 municipality has been designated an overburdened community
29 pursuant to this act.

30

31 4. a. Beginning immediately upon the adoption of the rules
32 and regulations required pursuant to section 5 of this act, the
33 department shall not consider complete for review any application
34 for a permit for a new facility or for the expansion of an existing
35 facility, or any application for the renewal of an existing facility’s
36 major source permit, if the facility is located, or proposed to be
37 located, in whole or in part, in an overburdened community, unless
38 the permit applicant first:

39 (1) Prepares an environmental justice impact statement that
40 assesses the potential environmental and public health stressors
41 associated with the proposed new or expanded facility, or with the
42 existing major source, as applicable, including any adverse
43 environmental or public health stressors that cannot be avoided if
44 the permit is granted, and the environmental or public health
45 stressors already borne by the overburdened community as a result
46 of existing conditions located in or affecting the overburdened
47 community;

48 (2) Transmits the environmental justice impact statement
49 required to be prepared pursuant to paragraph (1) of this subsection,

1 at least 60 days in advance of the public hearing required pursuant
2 to paragraph (3) of this subsection, to the department and to the
3 governing body and the clerk of the municipality in which the
4 overburdened community is located. Upon receipt, the department
5 shall publish the environmental justice impact statement on its
6 Internet website; and

7 (3) Organizes and conducts a public hearing in the overburdened
8 community. The permit applicant shall publish a notice of the
9 public hearing in at least two newspapers circulating within the
10 overburdened community, including one local non-English
11 language newspaper, if applicable, not less than 60 days prior to the
12 public hearing. The permit applicant shall provide a copy of the
13 notice to the department, and the department shall publish the
14 notice on its Internet website and in the monthly bulletin published
15 pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice
16 of the public hearing shall provide the date, time, and location of
17 the public hearing, a description of the proposed new or expanded
18 facility or existing major source, as applicable, a map indicating the
19 location of the facility, a brief summary of the environmental
20 justice impact statement, information on how an interested person
21 may review a copy of the complete environmental justice impact
22 statement, an address for the submittal of written comments to the
23 permit applicant, and any other information deemed appropriate by
24 the department. At least 60 days prior to the public hearing, the
25 permit applicant shall send a copy of the notice to the department
26 and to the governing body and the clerk of the municipality in
27 which the overburdened community is located. The applicant shall
28 invite the municipality to participate in the public hearing. At the
29 public hearing, the permit applicant shall provide clear, accurate,
30 and complete information about the proposed new or expanded
31 facility, or existing major source, as applicable, and the potential
32 environmental and public health stressors associated with the
33 facility. The permit applicant shall accept written and oral
34 comments from any interested party, and provided an opportunity
35 for meaningful public participation at the public hearing. The
36 permit applicant shall transcribe the public hearing and, no later
37 than 10 days after the public hearing, submit the transcript along
38 with any written comments received, to the department. Following
39 the public hearing, the department shall consider the testimony
40 presented and any written comments received, and evaluate the
41 issuance of, or conditions to, the permit, as necessary in order to
42 avoid or reduce the adverse environmental or public health stressors
43 affecting the overburdened community.

44 The department may require the applicant to consolidate the
45 public hearing held pursuant to this paragraph with any other public
46 hearing held or required by the department regarding the permit
47 application, provided the public hearing meets the other
48 requirements of this paragraph. ¹The department shall consider a
49 request by a permit applicant to consolidate required public

1 hearings and, if the request is granted by the department, the
2 consolidation shall not preclude an application from being deemed
3 complete for review pursuant to subsection a. of this section.¹

4 b. Notwithstanding the provisions of P.L.1975, c.232
5 (C.13:1D-29 et seq.) or any other law, or rule or regulation adopted
6 pursuant thereto, to the contrary, the department shall not issue a
7 decision on an application for a permit for a new facility or for the
8 expansion of an existing facility, or on an application for the
9 renewal of an existing facility's major source permit, if such facility
10 is located, or proposed to be located, in whole or in part in an
11 overburdened community until at least 45 days after the public
12 hearing held pursuant to paragraph (3) of subsection a. of this
13 subsection.

14 c. Notwithstanding the provisions of any other law, or rule or
15 regulation adopted pursuant thereto, to the contrary, the department
16 shall, after review of the environmental justice impact statement
17 prepared pursuant to paragraph (1) of subsection a. of this section
18 and any other relevant information, including testimony and written
19 comments received at the public hearing, deny a permit for a new
20 facility upon a finding that approval of the permit, as proposed,
21 would, together with other environmental or public health stressors
22 affecting the overburdened community, cause or contribute to
23 adverse cumulative environmental or public health stressors in the
24 overburdened community that are higher than those borne by other
25 communities within the State, county, or other geographic unit of
26 analysis as determined by the department pursuant to rule,
27 regulation, or guidance adopted or issued pursuant to section 5 of
28 this act, except that where the department determines that a new
29 **'[or expanded]'**¹ facility will serve a compelling public interest in
30 the community where it is to be located, the department may grant a
31 permit that imposes conditions on the construction and operation of
32 the facility to protect public health.

33 d. Notwithstanding the provisions of any other law, or rule or
34 regulation adopted pursuant thereto, to the contrary, the department
35 may, after review of the environmental justice impact statement
36 prepared pursuant to paragraph (1) of subsection a. of this section
37 and any other relevant information, including testimony and written
38 comments received at the public hearing, apply conditions to a
39 permit for the expansion of an existing facility, or the renewal of an
40 existing facility's major source permit, concerning the construction
41 and operation of the facility to protect public health, upon a finding
42 that approval of a permit or permit renewal, as proposed, would,
43 together with other environmental or public health stressors
44 affecting the overburdened community, cause or contribute to
45 adverse cumulative environmental or public health stressors in the
46 overburdened community that are higher than those borne by other
47 communities within the State, county, or other geographic unit of
48 analysis as determined by the department pursuant to rule,

1 regulation, or guidance adopted or issued pursuant to section 5 of
2 this act.

3 e. If a permit applicant is applying for more than one permit for
4 a proposed new or expanded facility, the permit applicant shall only
5 be required to comply with the provisions of this section once,
6 unless the department, in its discretion, determines that more than
7 one public hearing is necessary due to the complexity of the permit
8 applications necessary for the proposed new or expanded facility.
9 Nothing in this section shall be construed to limit the authority of
10 the department to hold or require additional public hearings, as may
11 be required by any other law, rule, or regulation.

12 f. ¹Nothing in this section shall be construed to limit the right
13 of an applicant to continue facility operations during the process of
14 permit renewal to the extent such right is conveyed by applicable
15 law, rule, or regulation, including the application shield provisions
16 of the rules and regulations adopted pursuant to the “Air Pollution
17 Control Act (1954),” P.L.1954, c.212 (C.26:2C-1 et seq.).

18 g.¹ In addition to any other fee authorized by law, rule, or
19 regulation, the department shall assess each permit applicant a
20 reasonable fee in order to cover the department’s costs associated
21 with the implementation of this act, including costs to provide
22 technical assistance to permit applicants and overburdened
23 communities as needed to comply with this act.

24
25 5. a. The department shall adopt, pursuant to the
26 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
27 1 et seq.) rules and regulations to implement the provisions of this
28 act.

29 b. The department may issue a technical guidance for
30 compliance with this act, which the department shall publish on its
31 Internet website.

32

33 6. This act shall take effect immediately.