ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2212

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2212 ACS, with committee amendments.

This bill, as amended by the committee, requires the Department of Environmental Protection (DEP) to evaluate the environmental and public health stressors of certain facilities on overburdened communities when reviewing certain permit applications.

The bill defines the term "facility" to mean any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator. The term excludes a facility as defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3) that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste.

Beginning immediately after the DEP adopts the rules and regulations required by the bill, the DEP would not consider complete for review any application for a permit for a new or expanded facility, or any application for the renewal of an existing facility's major source permit, if the facility is located in whole or in part in an overburdened community, unless the permit applicant meets certain conditions. Specifically, a permit applicant would be required to:

(1) prepare an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, and the environmental and public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;

(2) transmit the environmental justice impact statement to the DEP and to the governing body and the clerk of the municipality in which the overburdened community is located at least 60 days in advance of

the public hearing required under the bill (discussed below). Upon receipt, the DEP would be required to publish the environmental justice impact statement on its Internet website; and

(3) organize and conduct a public hearing in the overburdened community. At least 60 days prior to the public hearing, the permit applicant would be required to publish a notice of the hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, if applicable. The permit applicant would also be required to send the notice to the DEP and to the governing body and the clerk of the municipality in which the overburdened community is located. The bill sets forth specific requirements for the notice required under the bill. At the public hearing, the permit applicant would be required to provide clear, accurate, and complete information about the proposed new or expanded facility, or existing major source, and the potential environmental and public health stressors associated with the facility. The permit applicant would be required to accept written and oral comments from any interested party, and provide an opportunity for meaningful public participation at the public hearing. The permit applicant would also be required to transcribe the public hearing and submit the transcript, along with any written comments received, to the DEP.

Following the public hearing, the DEP would be required to consider the environmental justice impact statement, any testimony presented at the hearing, and any written comments received, and evaluate the issuance of, or conditions to, the permit as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community. Under the bill, the DEP would not be authorized to issue a decision on a permit application for a new or expanded facility, or on an application for the renewal of an existing facility's major source permit, if the facility is located, or proposed to be located, in whole or in part in an overburdened community until at least 45 days after the public hearing held under the bill.

The DEP would be required to deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the DEP. However, if the DEP determines that a new facility will serve a compelling public interest in the community where it is to be located, it may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

The bill provides that the DEP may apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility's major source permit, upon a finding that approval

of a permit or permit renewal, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.

The bill would authorize the DEP to charge each permit applicant a reasonable fee to cover the DEP's costs associated with implementation of the bill.

Under the bill, "overburdened community" means any census block group, as determined in accordance with the most recent United States Census, in which at least: (1) 35 percent of the households qualify as low-income households; (2) 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) 40 percent of the households have limited English proficiency.

No later than 120 days after the effective date of the bill, the DEP would be required to publish on its Internet website a list of overburdened communities in the State. The DEP would also be required to notify a municipality if any part of the municipality is designated an overburdened community under the bill.

As amended and reported by the committee, this bill is identical to Senate Bill No. 232 (SCS/1R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) amend the definition of "facility" to clarify the exception for certain facilities that accept regulated medical waste for disposal and delete the exclusion of regulated medical waste processing equipment;

2) require the DEP to consider a request by a permit applicant to consolidate required public hearings and, if granted, provides that the consolidation of permit hearings would not preclude an application from being deemed complete for review under the bill;

3) clarify that the determination in subsection c. of section 4 of the bill concerning the issuance of a permit based on compelling public interest applies to new facilities, not to both new or expanded facilities; and

4) clarify that the bill would not prohibit from continuing facility operations during the permit renewal process, if such continued operations are otherwise authorized pursuant to law, rule, or regulation.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.