

[Second Reprint]  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 232**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

ADOPTED JUNE 25, 2020

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**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:**

**Senators Turner, Addiego, Pou, Assemblymen Benson, Karabinchak, Calabrese, Assemblywoman Reynolds-Jackson, Assemblymen Zwicker, Holley, Mukherji, Conaway, Johnson, Moen, Assemblywomen Jasey, Pintor Marin, Speight, Assemblymen Caputo, Chiaravalloti, Assemblywoman Tucker, Assemblyman Giblin, Assemblywomen Chaparro and Quijano**

**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.

**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:**

<sup>1</sup>Assembly AEN committee amendments adopted July 20, 2020.

<sup>2</sup>Assembly AAP committee amendments adopted August 24, 2020.

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

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

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

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

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

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

1 “Permit” means any individual permit, registration, or license  
2 issued by the department to a facility establishing the regulatory and  
3 management requirements for a regulated activity under the  
4 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-  
5 29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39  
6 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the  
7 “Comprehensive Regulated Medical Waste Management Act,”  
8 P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-  
9 99.21a et al.); the “New Jersey Statewide Mandatory Source  
10 Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-  
11 99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176  
12 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272  
13 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,”  
14 P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility  
15 Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands  
16 Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-  
17 1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212  
18 (C.26:2C-1 et seq.); the “Water Supply Management Act,”  
19 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-  
20 5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74  
21 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); <sup>1</sup>or<sup>1</sup>  
22 the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-  
23 50 et seq.) <sup>1</sup>; except that “permit” shall not include any  
24 authorization or approval necessary to perform a remediation, as  
25 defined pursuant to section 23 of P.L.1993, c.139 (C.58:10B-1), or  
26 any authorization or approval required for a minor modification of a  
27 facility’s major source permit for activities or improvements that do  
28 not increase emissions<sup>1</sup> .

29  
30 3. No later than 120 days after the effective date of this act, the  
31 department shall publish and maintain on its Internet website a list  
32 of overburdened communities in the State. The department shall  
33 update the list of overburdened communities at least once every two  
34 years. The department shall notify a municipality if any part of the  
35 municipality has been designated an overburdened community  
36 pursuant to this act.

37  
38 4. a. Beginning <sup>1</sup>**[180 days after the effective date]**  
39 immediately upon the adoption of the rules and regulations required  
40 pursuant to section 5<sup>1</sup> of this act, the department shall not consider  
41 complete for review any application for a permit for a new facility  
42 or for the expansion of an existing facility, or any application for  
43 the renewal of an existing facility’s major source permit, if the

1 facility is located, or proposed to be located, in whole or in part, in  
2 an overburdened community, unless the permit applicant first:

3 (1) Prepares an environmental justice impact statement that  
4 assesses the potential environmental and public health stressors  
5 associated with the proposed new or expanded facility, or with the  
6 existing major source, as applicable, including any adverse  
7 environmental or public health stressors that cannot be avoided if  
8 the permit is granted, and the environmental or public health  
9 stressors already borne by the overburdened community as a result  
10 of existing conditions located in or affecting the overburdened  
11 community;

12 (2) Transmits the environmental justice impact statement  
13 required to be prepared pursuant to paragraph (1) of this subsection,  
14 at least 60 days in advance of the public hearing required pursuant  
15 to paragraph (3) of this subsection, to the department and to the  
16 governing body and the clerk of the municipality in which the  
17 overburdened community is located. Upon receipt, the department  
18 shall publish the environmental justice impact statement on its  
19 Internet website; and

20 (3) Organizes and conducts a public hearing in the overburdened  
21 community. The permit applicant shall publish a notice of the  
22 public hearing in at least two newspapers circulating within the  
23 overburdened community, including one local non-English  
24 language newspaper, if applicable, not less than 60 days prior to the  
25 public hearing. The permit applicant shall provide a copy of the  
26 notice to the department, and the department shall publish the  
27 notice on its Internet website and in the monthly bulletin published  
28 pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice  
29 of the public hearing shall provide the date, time, and location of  
30 the public hearing, a description of the proposed new or expanded  
31 facility or existing major source, as applicable, a map indicating the  
32 location of the facility, a brief summary of the environmental  
33 justice impact statement, information on how an interested person  
34 may review a copy of the complete environmental justice impact  
35 statement, an address for the submittal of written comments to the  
36 permit applicant, and any other information deemed appropriate by  
37 the department. At least 60 days prior to the public hearing, the  
38 permit applicant shall send a copy of the notice to the department  
39 and to the governing body and the clerk of the municipality in  
40 which the overburdened community is located. The applicant shall  
41 invite the municipality to participate in the public hearing. At the  
42 public hearing, the permit applicant shall provide clear, accurate,  
43 and complete information about the proposed new or expanded  
44 facility, or existing major source, as applicable, and the potential

1 environmental and public health stressors associated with the  
2 facility. The permit applicant shall accept written and oral  
3 comments from any interested party, and provided an opportunity  
4 for meaningful public participation at the public hearing. The  
5 permit applicant shall transcribe the public hearing and, no later  
6 than 10 days after the public hearing, submit the transcript along  
7 with any written comments received, to the department. Following  
8 the public hearing, the department shall consider the testimony  
9 presented and any written comments received, and evaluate the  
10 issuance of, or conditions to, the permit, as necessary in order to  
11 avoid or reduce the adverse environmental or public health stressors  
12 affecting the overburdened community.

13 The department may require the applicant to consolidate the  
14 public hearing held pursuant to this paragraph with any other public  
15 hearing held or required by the department regarding the permit  
16 application, provided the public hearing meets the other  
17 requirements of this paragraph. <sup>2</sup>The department shall consider a  
18 request by a permit applicant to consolidate required public  
19 hearings and, if the request is granted by the department, the  
20 consolidation shall not preclude an application from being deemed  
21 complete for review pursuant to subsection a. of this section.<sup>2</sup>

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

32 c. Notwithstanding the provisions of any other law, or rule or  
33 regulation adopted pursuant thereto, to the contrary, the department  
34 shall, after review of the environmental justice impact statement  
35 prepared pursuant to paragraph (1) of subsection a. of this section  
36 and any other relevant information, including testimony and written  
37 comments received at the public hearing, deny a permit for a new  
38 facility <sup>1</sup>**[**or for the expansion of an existing facility, or apply new  
39 conditions to the renewal of an existing facility's major source  
40 permit,**]**<sup>1</sup> upon a finding that approval of the permit <sup>1</sup>**[**or permit  
41 renewal**]**<sup>1</sup>, as proposed, would, together with other environmental  
42 or public health stressors affecting the overburdened community,  
43 cause or contribute to adverse cumulative environmental or public  
44 health stressors in the overburdened community that are higher than

1 those borne by other communities within the State, county, or other  
2 geographic unit of analysis as determined by the department  
3 pursuant to rule, regulation, or guidance <sup>1</sup>adopted or issued  
4 pursuant to section 5 of this act, except that where the department  
5 determines that a new <sup>2</sup>~~or expanded~~<sup>2</sup> facility will serve a  
6 compelling public interest in the community where it is to be  
7 located, the department may grant a permit that imposes conditions  
8 on the construction and operation of the facility to protect public  
9 health<sup>1</sup>.

10 d. <sup>1</sup>Notwithstanding the provisions of any other law, or rule or  
11 regulation adopted pursuant thereto, to the contrary, the department  
12 may, after review of the environmental justice impact statement  
13 prepared pursuant to paragraph (1) of subsection a. of this section  
14 and any other relevant information, including testimony and written  
15 comments received at the public hearing, apply conditions to a  
16 permit for the expansion of an existing facility, or the renewal of an  
17 existing facility's major source permit, concerning the construction  
18 and operation of the facility to protect public health, upon a finding  
19 that approval of a permit or permit renewal, as proposed, would,  
20 together with other environmental or public health stressors  
21 affecting the overburdened community, cause or contribute to  
22 adverse cumulative environmental or public health stressors in the  
23 overburdened community that are higher than those borne by other  
24 communities within the State, county, or other geographic unit of  
25 analysis as determined by the department pursuant to rule,  
26 regulation, or guidance adopted or issued pursuant to section 5 of  
27 this act.

28 e.<sup>1</sup> If a permit applicant is applying for more than one permit for  
29 a proposed new or expanded facility, the permit applicant shall only  
30 be required to comply with the provisions of this section once,  
31 unless the department, in its discretion, determines that more than  
32 one public hearing is necessary due to the complexity of the permit  
33 applications necessary for the proposed new or expanded facility.  
34 Nothing in this section shall be construed to limit the authority of  
35 the department to hold or require additional public hearings, as may  
36 be required by any other law, rule, or regulation.

37 <sup>1</sup>~~e.~~ <sup>1</sup>f.<sup>1</sup> <sup>2</sup>Nothing in this section shall be construed to limit the  
38 right of an applicant to continue facility operations during the  
39 process of permit renewal to the extent such right is conveyed by  
40 applicable law, rule, or regulation, including the application shield  
41 provisions of the rules and regulations adopted pursuant to the "Air  
42 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.).

43 g.<sup>2</sup> In addition to any other fee authorized by law, rule, or  
44 regulation, the department shall assess each permit applicant a

1 reasonable fee in order to cover the department's costs associated  
2 with the implementation of this act, including costs to provide  
3 technical assistance to permit applicants and overburdened  
4 communities as needed to comply with this act.

5

6 5. a. The department shall adopt, pursuant to the  
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
8 1 et seq.) rules and regulations to implement the provisions of this  
9 act.

10 b. The department may issue a technical guidance for  
11 compliance with this act, which the department shall publish on its  
12 Internet website.

13

14 6. This act shall take effect immediately.