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Connecticut Legislature Passes Environmental Justice Siting Bill

On June 7, the Connecticut House passed amended Senate Bill (SB) 1147, An Act Concerning the Environmental Justice Program of the State of Connecticut, which repeals and replaces the state's 15-year-old environmental justice law. The bill now awaits Gov. Ned Lamont's signature and, if signed, takes effect on October 1.

The current law, codified at Section 22a-20a of the Connecticut General Statutes, requires applicants for many environmental permits to give notice of and host an informal public meeting and to provide the Connecticut Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council (CSC) with a "meaningful public participation plan." After review of the plan, DEEP or the CSC could waive a requirement for a second informal public meeting and approve the application. The existing law also allows applicants to enter community environmental benefit agreements, which may include a number of on- and off-site mitigation measures. And like SB 1147, it provides a non-exhaustive list of those measures (e.g., funding for environmental education, asthma screening, establishing a wellness clinic). The current law also requires municipal applicants to provide "a reasonable and public opportunity for the residents of the potentially affected environmental justice community to be heard concerning the need for, and terms of, such agreement."

SB 1147 alters the provisions requiring certain facilities applying for permits in environmental justice (EJ) communities to host community meetings and create meaningful public participation plans by requiring applicants to consider the cumulative health and environmental impacts of their facilities. SB 1147, once signed, will also allow—but not require—the CSC and DEEP to deny or place conditions on permits for polluting facilities in EJ communities if the cumulative health and environmental impacts in the EJ communities exceed those borne by other communities.

SB 1147 expands the public participation process by requiring applicants who seek to construct, expand or site facilities in EJ communities to file an assessment of environmental and public health stressors and to seek and obtain approval of a public participation report showing compliance with the requirements for informal public meetings. The public participation report must include an affidavit stating that the applicant satisfied the requirements of the law with respect to public participation, all written comments received, and responses (both written and verbal) to concerns and questions received. It also must include an assessment of the environmental and public health stressors already experienced by the EJ community and those which would result from the permit's issuance. SB 1147 also expands the public notice requirements about upcoming informal public meetings to include a newspaper advertisement published between 10 and 30 days prior to the meeting, posting online and direct mail to households within ½ mile of the affecting facility. SB 1147 requires the chief elected official or town manager to select a resident of the potentially affected EJ community for participation in negotiations regarding a community environmental benefit agreement. It also requires a nexus between the mitigation in a community benefit agreement and the impacts of the proposed facility, and for that mitigation to be proportional to the impacts.

SB 1147 requires the DEEP commissioner to promulgate regulations to enact SB 1147's purposes, and allows DEEP to assess a reasonable fee on an applicant to cover the costs of implementing the law. DEEP is required to consult industry stakeholders when developing the regulations.

Prior to the bill's passage, the Senate Environment Committee debated whether SB 1147 should *require* DEEP or CSC to deny permits which have cumulative health and environmental impacts in the EJ communities exceeding those experienced by other communities. As noted above however, the bill as-passed gives the agencies discretion on whether to deny such permits.

Section 22a-20a of the Connecticut General Statutes generally applies to applications for a certificate of environmental compatibility and public need, a new or expanded permit, or siting approval from DEEP or the Siting Council involving an "affecting facility" in an "environmental justice community". "Affecting facilities," include electric generating facilities, sewage treatment plants, sludge, medical waste and solid waste incinerators, and major sources of air pollution. SB 1147 provides specific exemptions for expanded permit applicants and specifies that the law does not apply to permit renewals or permit modifications.

The results of these changes to the permitting process will be significant, both for EJ communities and regulated facilities, and these changes are likely to continue to evolve. The definition of and science addressing how to assess cumulative impacts are evolving at both the federal and state levels. The U.S. Environmental Protection Agency's (EPA) Office of Research and Development acknowledged gaps in the research that make it difficult to conduct cumulative impact assessments, including the collection of health outcome data, which SB 1147 does require, as well as socioeconomic data, which EPA includes in its analyses but which SB 1147 does not address. All stakeholders will benefit from close attention to the regulatory process as it unfolds.

If your facility is seeking a permit subject to the requirements of Connecticut's new EJ law or your community may be impacted by a facility seeking such a permit, please reach out to one of the attorneys listed in the sidebar.

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