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

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

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

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

2. As used in this act:

“Department” means the Department of Environmental Protection.

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

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

“Facility” means 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; except that “facility” shall not
include 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.

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

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

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

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

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

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

4. a. Beginning immediately upon the adoption of the rules and regulations required pursuant to section 5 of this act, the department shall not consider complete for review any application for a permit for a new facility or for the expansion of an existing facility, or any 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, unless the permit applicant first:

   (1) Prepares 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, including any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;

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

(3) Organizes and conducts a public hearing in the overburdened
community. The permit applicant shall publish a notice of the
public hearing in at least two newspapers circulating within the
overburdened community, including one local non-English
language newspaper, if applicable, not less than 60 days prior to the
public hearing. The permit applicant shall provide a copy of the
notice to the department, and the department shall publish the
notice on its Internet website and in the monthly bulletin published
pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice
of the public hearing shall provide the date, time, and location of
the public hearing, a description of the proposed new or expanded
facility or existing major source, as applicable, a map indicating the
location of the facility, a brief summary of the environmental
justice impact statement, information on how an interested person
may review a copy of the complete environmental justice impact
statement, an address for the submittal of written comments to the
permit applicant, and any other information deemed appropriate by
the department. At least 60 days prior to the public hearing, the
permit applicant shall send a copy of the notice to the department
and to the governing body and the clerk of the municipality in
which the overburdened community is located. The applicant shall
invite the municipality to participate in the public hearing. At the
public hearing, the permit applicant shall provide clear, accurate,
and complete information about the proposed new or expanded
facility, or existing major source, as applicable, and the potential
environmental and public health stressors associated with the
facility. The permit applicant shall accept written and oral
comments from any interested party, and provided an opportunity
for meaningful public participation at the public hearing. The
permit applicant shall transcribe the public hearing and, no later
than 10 days after the public hearing, submit the transcript along
with any written comments received, to the department. Following
the public hearing, the department shall consider the testimony
presented 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.

The department may require the applicant to consolidate the
public hearing held pursuant to this paragraph with any other public
hearing held or required by the department regarding the permit
application, provided the public hearing meets the other
requirements of this paragraph. ¹The department shall consider a
request by a permit applicant to consolidate required public
hearing and, if the request is granted by the department, the consolidation shall not preclude an application from being deemed complete for review pursuant to subsection a. of this section.\(^1\)

b. Notwithstanding the provisions of P.L.1975, c.232 (C.13:1-D-29 et seq.) or any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall not issue a decision on an application for a permit for a new facility or for the expansion of an existing facility, or on an application for the renewal of an existing facility’s major source permit, if such 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 pursuant to paragraph (3) of subsection a. of this subsection.

c. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall, after review of the environmental justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, 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 department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act, except that where the department determines that a new or expanded facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

d. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may, after review of the environmental justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit, concerning the construction and operation of the facility to protect public health, 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 pursuant to rule,
regulation, or guidance adopted or issued pursuant to section 5 of
this act.

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

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

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

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

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

6. This act shall take effect immediately.