

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2212

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JULY 20, 2020

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)

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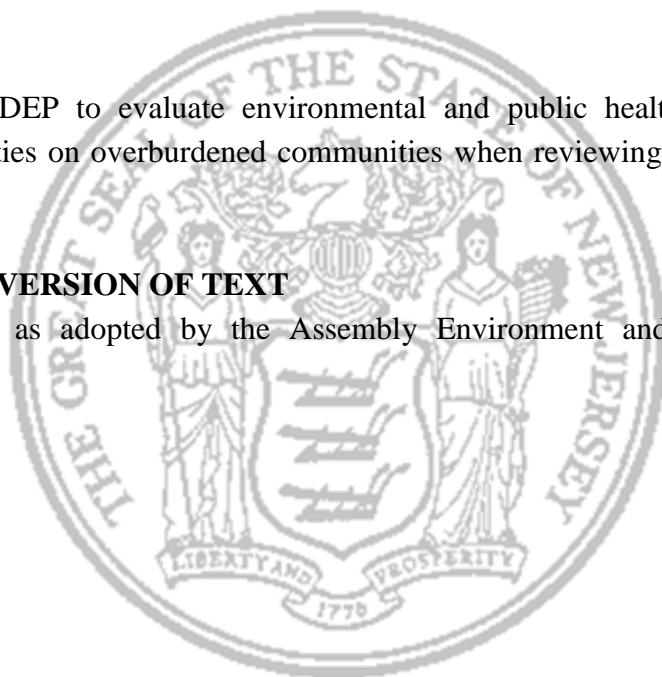
Assemblymen Benson, Karabinchak, Calabrese, Assemblywoman Reynolds-Jackson, Assemblymen Zwicker, Holley, Mukherji, Conaway, Johnson, Moen, Assemblywomen Jasey, Pintor Marin, Speight, Assemblymen Caputo, Chiaravalloti, Assemblywoman Tucker, Assemblyman Giblin and Assemblywoman Chaparro

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

Substitute as adopted by the Assembly Environment and Solid Waste Committee.



(Sponsorship Updated As Of: 8/24/2020)

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.

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; 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), or regulated medical waste processing equipment, including a
22 medical waste incinerator, that is attendant to a hospital or
23 university and intended to process self-generated regulated medical
24 waste.

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.) 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.

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.); or the
22 “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-
23 50 et seq.); except that “permit” shall not include any authorization
24 or approval necessary to perform a remediation, as defined pursuant
25 to section 23 of P.L.1993, c.139 (C.58:10B-1), or any authorization
26 or approval required for a minor modification of a facility’s major
27 source permit for activities or improvements that do not increase
28 emissions.

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 immediately upon the adoption of the rules
39 and regulations required pursuant to section 5 of this act, the
40 department shall not consider complete for review any application
41 for a permit for a new facility or for the expansion of an existing
42 facility, or any application for the renewal of an existing facility’s
43 major source permit, if the facility is located, or proposed to be
44 located, in whole or in part, in an overburdened community, unless
45 the permit applicant first:

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

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

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

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

10 The department may require the applicant to consolidate the
11 public hearing held pursuant to this paragraph with any other public
12 hearing held or required by the department regarding the permit
13 application, provided the public hearing meets the other
14 requirements of this paragraph.

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

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

44 d. Notwithstanding the provisions of any other law, or rule or
45 regulation adopted pursuant thereto, to the contrary, the department

1 may, after review of the environmental justice impact statement
2 prepared pursuant to paragraph (1) of subsection a. of this section
3 and any other relevant information, including testimony and written
4 comments received at the public hearing, apply conditions to a
5 permit for the expansion of an existing facility, or the renewal of an
6 existing facility's major source permit, concerning the construction
7 and operation of the facility to protect public health, upon a finding
8 that approval of a permit or permit renewal, as proposed, would,
9 together with other environmental or public health stressors
10 affecting the overburdened community, cause or contribute to
11 adverse cumulative environmental or public health stressors in the
12 overburdened community that are higher than those borne by other
13 communities within the State, county, or other geographic unit of
14 analysis as determined by the department pursuant to rule,
15 regulation, or guidance adopted or issued pursuant to section 5 of
16 this act.

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

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

32
33 5. a. The department shall adopt, pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
35 1 et seq.) rules and regulations to implement the provisions of this
36 act.

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

40
41 6. This act shall take effect immediately.