

Connecticut Environmental Justice Public Participation Guidance Document 2024

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I. INTRODUCTION

Connecticut adopted in 2009 one of the country’s first statutes that places environmental justice [“EJ”] requirements on DEEP permitting activities and Siting Council certificates. *See* Connecticut General Statutes [“CGS”] § 22a-20a. The law has been greatly successful and continues to evolve with the times.

Effective October 1, 2023, [Public Act 23-202](#) updated § 22a-20a. This guidance document lays out the EJ law’s requirements, and highlights what is new in 2023.

The Public Act also requires new cumulative impact assessments for particular permit applications and gives the DEEP commissioner and the Siting Council the authority to consider those impacts when approving new permits and facilities or placing conditions on such applications;¹ those provisions only take effect after regulations are adopted, which take time to develop. Therefore, this Guidance does not cover those cumulative impact provisions.

This guidance replaces DEEP's prior guidance documents and fact sheets, including those issued in 2012 and 2021.

II. BACKGROUND

A. Key Terms

Following are some of the major terms to which the statute and this guidance refer:

Affecting Facilities are defined under CGS § 22a-20a(a)(2) as:

- electric generating facilities with a capacity greater than 10 megawatts
- sludge or solid waste incinerators or combustors
- sewage treatment plants with a capacity greater than 50 million gallons per day
- intermediate processing centers, volume reduction facilities or multitown recycling facilities with a combined monthly volume in excess of 25 tons, and transfer stations
- new or expanded landfills, including but not limited to landfills that contain ash, construction and demolition debris, or solid waste
- medical waste incinerators
- major sources of air pollution, as defined by the federal Clean Air Act

A Community Environmental Benefits Agreement ["CEBA"] is a written agreement between an applicant who is proposing a new or expanded permit for an Affecting Facility and the municipality (or municipalities) in which the Affecting Facility is or will be located.

¹ CGS § 22a-20a(a)(7), (b)(1), (f)-(g) (2023).

Environmental Justice Communities in Connecticut are (A) United States census block groups, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low-income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level; or (B) distressed municipalities²~~[(B)]~~.

A Public Participation Plan [also known as **Environmental Justice Plan** or “EJ Plan”] is a plan for meaningful communication between applicants, who are proposing to submit certain applications for or regarding an Affecting Facility in an Environmental Justice Community, and the community.

B. New in 2023

- Minor permit modifications are exempt from the public participation process.³
- When there are multiple permit applications for one Affecting Facility, only one Public Participation Plan [“EJ Plan”] is required.⁴
- If a Community Economic Benefits Agreement [“CEBA”] is required, it must be filed with DEEP or the CT Siting Council before a tentative determination will be issued.⁵
- When a CEBA is required, the chief elected official or town manager must select a resident of the Environmental Justice Community who would be affected to participate in the negotiations.⁶
- The negotiated mitigation agreed to in the CEBA must have a connection to the impacts caused by the Affecting Facility and be proportional to such impacts⁷.
- There are additional notice requirements for the public participation process⁸. See the section *Public Participation Process* below for more information.

² As defined in *id.* § 32-9p(b).

³ *Id.* § 22a-20a(b)(1).

⁴ *Id.* § 22a-20a(i).

⁵ *Id.* § 22a-20a(c).

⁶ *Id.* § 22a-20a(d).

⁷ *Id.* § 22a-20a(c).

⁸ *Id.* § 22a-20a(b)(1), (b)(3)-(5).

III. WHO MUST COMPLY WITH CGS § 22A-20A

All applicants for new or expanded permits for Affecting Facilities within Environmental Justice Communities must engage in the Public Participation process.

CGS § 22a-20a requires a Public Participation Plan (also known as an “EJ Plan”) for all applications for new and expanded permits for new and expanded Affecting Facilities. See the lists below and Appendix A for more information. The law provides an exemption for minor permit modifications in subsection (b)(1). As a useful guide, the phrase “minor modifications” has been interpreted in state regulations to mean any change in the facility design, capacity, practice, process or equipment that would not significantly alter the nature of the facility or its impact on the environment. The Department considers the reference to permit modifications in subsection 22a-20a(j) to mean “minor modifications.”

Applicants for new or expanded permits for Affecting Facilities within an Environmental Justice Community and in a municipality with five or more Affecting Facilities must also enter into a Community Environmental Benefit Agreement [“CEBA”].

Examples of the three types of permit applications for Affecting Facilities – new facilities, expanded facilities, and expanded permits – include, but are not limited to:

WASTE

- Establishing a new Affecting Facility
- Altering the design or method of operation of a permitted facility
- Changing by any substantive degree the approved design, capacity, practice, volume process, equipment or operation of a solid waste facility
- Changing the approved capacity or composition of solid waste disposed of, processed, reduced, stored or recycled at the facility
- *Note:* we encourage public announcement and engagement on all new and expanded waste activities.

AIR

- Establishing a new Affecting Facility
- Adding a new emission unit or units at an existing Affecting Facility resulting in fifteen (15) tons or more per year of any individual air pollutant or ten (10) tons or more per year of any one hazardous air pollutant or twenty-five (25) tons of hazardous air pollutant in aggregate
- Modifying an existing emission unit or units at the Affecting Facility that: increases emissions of any individual air pollutant by fifteen (15) tons or more per year; any hazardous air pollutant by ten (10) tons or more per year; or total hazardous air pollutants by twenty-five (25) tons per year

WATER

- Establishing a new Affecting Facility
- Altering or expanding a facility in such a way that may result in the discharge of any new water, substance or material
- Altering or expanding a facility in such a way that may increase the quantity or concentration of an existing pollutant beyond permit conditions or may constitute a new source

IV. PUBLIC PARTICIPATION PROCESS

A. Public Participation Plan

i. Generally

All applicants for new or expanded permits for Affecting Facilities within an Environmental Justice Community must file a meaningful Environmental Justice Public Participation Plan ["EJ Plan"] using form [DEEP-EJ-PLAN-001](#). When there are multiple permit applications for one Affecting Facility, only one EJ Plan is required. Applicants must receive approval of the plan before filing any application for permit, certificate, or approval.

"Meaningful public participation" means residents of an Environmental Justice Community have an opportunity to participate in administrative decisions about a

proposed new or expanded facility that may adversely affect their environment or health. Applicants must seek out and facilitate this participation. The public's participation may influence the regulatory agency's decision. The plan must be submitted to DEEP or the CT Siting Council and approved prior to submitting an application for a subject permit.

New requirements for the public participation process effective October 1, 2023 are marked below with an asterisk (*). Also see Appendix A.

ii. Notice

The EJ Plan must identify a time and place where an informal public meeting will be held. Both the time and place must be convenient for the residents. Applicants must notify residents within a half-mile radius by mail not less than thirty days prior to the informal public meeting*. This notice must include the date, time and location of the meeting, a description of the proposed Affecting Facility, a map indicating the location of the proposed Affecting Facility, information on how to review project documents, and addresses for mailed and internet-based submission of written public comments*.

The EJ Plan must identify other methods the applicant will use to publicize the date, time, and nature of the informal public meeting. Such methods must include (but are not limited to):

- Posting a reasonably visible sign on the proposed or existing facility property in English
- Posting a reasonably visible sign on the proposed or existing facility property in all languages spoken by at least fifteen (15) percent of the population within a half-mile radius
- Notifying state and local elected officials in writing
- Posting on electronic media, including company, town or other relevant websites, and social media platforms*
- Publishing the date, time and nature of the informal public meeting in the newspaper – minimum one-quarter page advertisement in the Monday issue. This must be done not less than ten days and not more than thirty days prior to the meeting and must include information on how to review project documents*

iii. Informal Public Meeting

At the informal public meeting, applicants must make a reasonable and good faith effort to provide clear, accurate and complete information including access to the pending permit application and the EJ Plan about the new proposed Affecting Facility or the proposed expansion of the facility and the potential environmental and health impacts of such Affecting Facility*. An opportunity for meaningful public participation must be provided at the informal public meeting, as well as access to the permit application. Applicants must accept written comments, submitted via mail or electronic mail*.

iv. Public Participation Report

No later than thirty days⁹ after the public meeting, applicants must submit a public participation report and a video recording* of the informal public meeting to DEEP or the CT Siting Council using the provided DEEP cover sheet. The report must contain, but is not limited to:

- An affidavit that the applicant satisfied the statute's requirements*
- Questions and concerns from the public raised during the public meeting*
- All written comments received*
- Responses to all verbal and written comments, concerns and questions, including any changes to the activity or Affecting Facility proposed*

B. Community Environmental Benefits Agreement Process

All applicants for new or expanded permits for Affecting Facilities within an Environmental Justice Communities where the Affecting Facility is in a municipality with five or more Affecting Facilities must negotiate a Community Environmental Benefits Agreement ["CEBA"]. The CEBA must be filed with DEEP before DEEP will issue a tentative determination on that permit application.

⁹ All applicants must submit a public participation report; applicants for new facilities or permits must submit a report within thirty days.

Any applicant for a permit for an Affecting Facility within an Environmental Justice Community is encouraged to negotiate a CEBA. These CEBAAs should also be submitted to DEEP or the CT Siting Council.

When a CEBA is required, the municipality must provide a reasonable and public opportunity for residents of the potentially affected community to be heard regarding the agreement. Additionally, when a CEBA is required, the chief elected official or town manager must select a resident of the Environmental Justice Community who would be affected to participate in the negotiations.

The purpose of the CEBA is for the applicant to provide financial resources for mitigating, in whole or in part, impacts reasonably related to the facility. Mitigation may include both on-site and off-site improvements, activities and programs, including, but not limited to: Funding for activities such as environmental education, diesel pollution reduction, electric vehicle charging infrastructure construction, establishment of a wellness clinic, ongoing asthma screening, provision of air monitoring performed by a credentialed environmental professional, performance of an ongoing traffic study, watercourse monitoring, construction of biking facilities and multi-use trails, staffing for parks, urban forestry, support for community gardens or any other negotiated benefit to the environment in the Environmental Justice Community. The mitigation must have a connection to the impacts caused by the Affecting Facility and be proportional to such impacts.

C. Environmental Justice and RCRA

There are separate public participation requirements for RCRA facilities. Contact DEEP.REMStewardship@ct.gov for more information.¹⁰ If a RCRA facility is also an Affecting Facility in an Environmental Justice Community, it must go through the Environmental Justice process.

¹⁰ RCRA applicants should follow RCRA regulations and guidance documents.

FOR MORE INFORMATION

[Our Commitment to Environmental Justice](#)

[Participate in the Permitting/Policy Process](#)

[Learn more about Environmental Justice Communities in CT](#)

CONTACT INFORMATION

Applicants may request a pre-application meeting with DEEP for guidance. For pre-application assistance, email DEEP.OPPD@ct.gov.

Contact information for questions about the EJ process generally:

Office of Equity and Environmental Justice

Department of Energy and Environmental Protection

79 Elm Street

Hartford, CT 06106-5127

860-424-3044 or edith.pestana@ct.gov

This guidance document is designed to answer general questions and provide basic information. Applicants should refer to the appropriate statutes and regulations for the specific language. This document should not be relied upon to determine whether an Environmental Justice Public Participation Plan or permit is required. It is the applicant's responsibility to obtain and comply with all statutory requirements.

APPENDIX A: REQUIREMENTS FOR DIFFERENT PERMIT APPLICATION TYPES

	New Permit	Siting Approval	Expanded Permit	Minor Modification
Submit Public Participation Plan	✓	✓	✓	
Get approval of Public Participation Plan before Filing Application	✓	✓	✓	
Notice: Place sign on the proposed or existing facility ¹¹	✓	✓	✓	
Notice: Notify local and state elected officials	✓	✓	✓	
Notice: Post on electronic media	✓	✓	✓	
Notice: Mail notice to residential households within ½ mile radius of proposed or existing Affecting Facility	✓	✓		
Notice: Publish in a newspaper having general circulation in the area affected	✓	✓	✓	
Accept written comments from any interested party and provide an opportunity for meaningful public participation at the informal public meeting	✓	✓	✓	
Follow new Public Participation Report requirements ¹²	✓	✓		
Submit Public Participation Report to the department or council	✓	✓	✓	
Submit Public Participation Report to the department or council not later than thirty days after the informal public meeting	✓	✓		
Video record the informal public meeting and submit the recording to the department or council with the Public Participation Report	✓	✓	✓	
Evaluate the need for a CEBA	✓	✓	✓	
Enter into a CEBA ¹³	✓	✓	✓	
Submit a copy of the executed CEBA to the department or council prior to notice of tentative determination	✓	✓	✓	

¹¹ In English, and in all languages spoken by at least 15% of the population that reside within a one-half mile radius of the proposed or existing Affecting Facility (§ 22a-20a(b)(2)).

¹² An affidavit that the applicant satisfied the requirements in § 22a-20a(b)(2)-(5), all written comments received, responses to concerns and questions presented in such written and verbal comments (§ 22a-20a(b)(1)).

¹³ If there are five or more Affecting Facilities in the municipality at the time such application is filed (§ 22a-20a(c)).