

Environmental Justice Act Puts New Demands on Businesses and Municipalities

ENVIRONMENTAL LAW ALERT

Public Act 08-94, concerning Environmental Justice, went into effect in Connecticut on January 1, imposing new requirements on certain facilities building or expanding in some municipalities. Briefly, if a facility conducting certain activities requiring permits from DEP wants to build or expand in 25 Distressed Municipalities or in parts of 34 other municipalities, it must prepare an Environmental Justice Public Participation Plan to ensure that there is “enhanced notice” encouraging public participation in the permitting process by the community. The Plan must be submitted to DEP and must include details about the facility and its effect on the community and provide for notice to relevant residents, groups and elected officials. DEP will not accept any permit application covered by this Act before it approves the public participation plan, and will not act on any permit application until 60 days after a required public meeting is held.

The Distressed Municipalities covered by this Act include Bridgeport, Hartford, Meriden, New Britain, New Haven, Waterbury and 19 others. Other municipalities where 30 percent of the population has income below 200 percent of the federal poverty level are included, by census block. The 34 municipalities in this group include Bloomfield, Danbury, Fairfield, Greenwich, Groton, Hamden, Norwalk, Shelton, Stamford and West Hartford. Facilities wishing to develop there have to check with DEP to see if their address is within a designated census block.

Applicable facilities are those that require general or individual permits from DEP in certain categories, including some electric generating facilities; sludge or solid waste incinerators; some sewage treatment plants; some waste facilities, landfills and medical waste incinerators; major sources of air pollution (defined in the Clean Air Act); transfer stations; biomedical waste treatment facilities; some RCRA facilities and hazardous waste transfer facilities. Construction and significant expansion are both included.

An applicable facility in an Environmental Justice community must file a public participation plan, get DEP approval of the plan before submitting a permit application and consult with the chief elected official of the town. The facility may need to enter into a community

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environmental benefit agreement with the chief elected official, which could require payment of funds for environmental causes or other activities relevant to the community. It is not required that an agreement be reached, but a public meeting and consultation are required.

Notice requirements for the public meeting are detailed. DEP will reject plans that do not provide for effective notice to appropriate groups. It is suggested that facilities consult with DEP to be sure all relevant groups are identified. The plan also must include a description of the facility and its impact on the community as well as identification of community demographics. In addition to the public meeting, measures such as open houses and facility tours are suggested.

The Act, initiated by the Connecticut Coalition for Environmental Justice, is administered by DEP's Environmental Justice Program, headed by Edith Pestana. It is apparent that the new requirements will cause higher costs and delay in approvals. The Act also imposes new responsibilities on a town's chief elected official. Though a public meeting is required and there must be consultation with the official about a possible community environmental benefit agreement, there is little or no guidance as to what the agreement should contain or what happens if there is no agreement. There also is no guidance as to how, or if, this process implicates local zoning or wetland procedures, nor how it might coordinate with environmental intervention in that process via CGS §22a-19. Some degree of coordination with the Connecticut Siting Council is provided for facilities that require approval from that group. Consultation with your legal advisor is suggested.

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