



**Connecticut Department of
Energy & Environmental Protection**
Office of the Commissioner
Environmental Justice Program

The Environmental Justice Public Participation Guidelines

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A. Background

In December 1993, the Department of Energy and Environmental Protection (“Department”) developed an Environmental Equity Policy (“Environmental Justice Policy”) which maintains “that no segment of the population should, because of its racial, ethnic or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits”. Accordingly as part of the notice requirements for certain facilities, it has been the Department’s past practice to require submittal of an Environmental Equity Plan as part of the notice requirement in the application submittal package. In May 2008, Governor Jodi Rell signed into law, Public Act 08-94 “[An Act Concerning Environmental Justice Communities and the Storage of Asbestos Containing Material](#)” (Codified as section 22a-20a of the Connecticut General Statutes (CGS)). This law expands the notice requirements of the Department in order to provide meaningful public participation for specifically defined permit applications for new facilities and expansions of such facilities located in environmental justice communities.

As background, the Department uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant authorizing specific activities while general permits are licenses issued to authorize similar minor activities by one or more registrants under the authority of the Connecticut General Statutes.

To initiate the permit process for an individual permit, the applicant must submit a complete application form including all required documentation and fees and fulfill the necessary public notice requirements. Upon completion of the Department’s review of the permit application, a tentative determination is made by the Department as to whether or not the permit should be issued. Notice of the Department’s tentative determination is published in the newspaper and a period of time is allowed for public comment. In limited circumstances, a public hearing may be held on the application. After an individual permit becomes effective, the applicant/permittee must comply with the terms and conditions specifically established for that permit.

With regard to a general permit, Department has the statutory authority to issue general permits in most major program areas including, but not limited to air, water and waste programs. This authority allows the commissioner to develop and issue a single permit to cover similar minor activities throughout a prescribed geographic area. A general permit is developed by the Department through a public process, with opportunities for public comment. Within the framework of a general permit, terms and conditions for conducting such an activity are developed so that, when complied with, it is protective of the environment. Once a general permit is authorized by the commissioner, general permit registrations and reviews are not subject to further notice requirements or the public hearing process as is the case with the individual permit review process.

B. How Does Section 22a-20a CGS and the Environmental Justice Policy Affect The Permitting Process?

On or after January 1, 2009, section 22a-20a CGS requires applicants seeking a permit, from the Department or Connecticut Siting Council, for a facility that is defined as an *affecting facility and is proposed to be located or expanded in an environmental justice community*, to:

- file a meaningful public participation plan (Environmental Justice Public Participation Plan) with and receive approval from the Department or Siting Council prior to filing any application for such permit,

- consult with the chief elected official or officials of the town or towns in which the affecting facility is proposed to be located or expanded to evaluate the need for a community environmental benefit agreement, and
- notify, in writing, local residents and environmental groups potentially affected by the facility activities and operations.

If the Siting Council has approved an Environmental Justice Public Participation Plan and the applicant has held a meaningful, non-adjudicatory public information meeting as required by section 22a-20a CGS, the Department may approve such Plan and waive the requirement for an additional meeting.

Under its pre-existing Environmental Justice Policy, the Department continues to require certain facilities, when subject to an individual permit and ***proposed to be located or expanded in an environmental justice community***, to continue to file an Environmental Justice Public Participation Plan. See Section B.2. of this document.

The Department strongly encourages applicants to reach out to communities **in advance** of site selections.

Permit applicants are expected to be good neighbors to the immediate and surrounding communities. Communities to be contacted include, and are not limited to, neighborhood organizations, block watch groups, environmental commissions, businesses and local government. Applicants who take the time to learn about a community and engage the community in an ongoing dialogue will build trust with the community and more amicably resolve potential issues in the affected community. This dialogue can (1) save on construction costs (it's easier to redesign than to rebuild); (2) minimize requests/petitions for a public hearing; (3) save legal costs; and (4) eliminate confusion about or delays in the permitting process.

1. Which facilities are defined under Section 22a-20a CGS?

An “affecting facility” is defined as follows:

- electric generating facility with a capacity of more than ten megawatts;
- sludge or solid waste incinerator or combustor;
- sewage treatment plant with a capacity of more than fifty million gallons per day;
- certain waste facilities: intermediate processing center, volume reduction facility or multitown recycling facility with a combined monthly volume in excess of twenty-five tons;
- new or expanded landfill, including but not limited to, a landfill that contains ash, construction and demolition debris or solid waste;
- medical waste incinerator; or
- major source of air pollution as defined by the federal Clean Air Act.

NOTE: Section 22a-20a CGS specifically states that an affecting facility shall **not** include:

- *the portion of an electric generating facility that uses non-emitting and nonpolluting renewable resources such as wind, solar and hydro power or that uses fuel cells;*

- any facility for which a certificate of environmental compatibility and public need was obtained from the Connecticut Siting Council on or before January 1, 2000; or
- a facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with provisions of Connecticut's Environmental Policy Act, sections 22a-1b to 22a-1h, inclusive, of the general statutes and such evaluation has been determined to be satisfactory in accordance with section 22a-1e of the general statutes.

2. Which additional facilities are considered under the Department's Environmental Justice Policy?

The following additional facility permit applications, *when subject to an individual permit and located in an environmental justice community*, shall continue to submit an Environmental Justice Public Participation Plan and must adhere to the notice requirements of sections 22a-20a (b)(2), (3) and (4) CGS:

- transfer stations;
- biomedical waste treatment facilities;
- Resource Conservation and Recovery Act (RCRA) hazardous waste storage or treatment facilities seeking an operating permit (not applicable to Stewardship Permits);
- RCRA hazardous waste incinerators or landfills;
- non-RCRA hazardous waste storage or treatment facilities;
- non-RCRA hazardous waste incinerators or landfills; and
- hazardous waste transfer facilities (Section 22a-454 Permit).

NOTE: The facilities identified in c and d in this subsection, are subject to notice requirements under the federal law, "RCRA Expanded Public Participation Rule". Adhering to the Environmental Justice Public Participation Plan requirements of Section 22a-20a CGS will satisfy the federal notice requirements. Refer to the following EPA website for additional information on the federal rule: www.epa.gov/osw/hazard/tsd/permit/pprule/brochpdf.pdf

3. Which towns or geographical areas are subject to Section 22a-20a CGS and the Environmental Justice Policy?

Towns or geographical areas when defined as an environmental justice community are subject to section 22a-20a CGS and the Environmental Justice Policy.

An environmental justice community is:

- a United States census block group, as determined in accordance with the most recent United States census, for which thirty percent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred percent of the federal poverty level, or
- a distressed municipality.

To be subject to the requirements of section 22a-20a CGS, a facility must be located directly in the defined census block or the distressed municipality. A list of current environmental justice communities can be found on the DEEP website at www.ct.gov/deep/environmentaljustice

The list of distressed municipalities can also be found on the DECD website at www.ct.gov/ecd/cwp/view.asp?a=1105&q=251248

4. What is an expansion in accordance with Section 22a-20a CGS and the Environmental Justice Policy?

The Department considers an expansion of an existing applicable facility, in most cases, as non-minor permit modifications or the proposed registration under one of the specified general permits listed in Section 4(b) of this document, that creates a new activity at such facility. **The Department strongly recommends contacting the Permit Assistance Office to determine whether your activity may be defined as an expansion under section 22a-20a CGS. A pre-application meeting may be necessary to make this determination.**

The Department's interpretation of the definition of an expansion of an applicable facility under section 22a-20a CGS includes the following:

a. Non-minor permit modifications

▪ **Waste**

No person or municipality holding a permit under section 22a-208a CGS shall alter the design or method of operation of the permitted facility without first obtaining a modified permit. Pursuant to section 22a-208a(d) CGS, the term "alter" means to change to any substantive degree the approved design, capacity, volume process or operation of a solid waste facility and includes, but is not limited to, changes in the approved capacity or composition of solid waste disposed of, processed, reduced, stored or recycled at the facility. Minor amendments shall not constitute an "expansion" under section 22a-20a CGS. Such minor changes in the facility design, practices or equipment must not significantly change the nature of the facility or its impact on the environment.

▪ **Air**

The addition of a new emission unit or a modification to an existing emission unit at the affecting facility that increases emissions of any individual air pollutant by fifteen (15) tons or more per year or any hazardous air pollutant by ten (10) tons or more per year would constitute a non-minor modification or a new source. Thus, non-minor modifications and new sources at affecting facilities would constitute an expansion. Minor amendments shall not constitute an "expansion" under section 22a-20a CGS.

▪ **Water**

It is the obligation of a permittee to notify the Department when any proposed facility expansion or alteration, production increase or process modification that may result in the discharge of any new water, substance or material or increase the quantity or concentration of an existing pollutant beyond permit conditions, or may constitute a new source. No such activity shall be undertaken until either (i) the commissioner identifies the proposed activity as a minor amendment or (ii) the proposed activity would result in a discharge beyond permit conditions, thereby requiring the permittee to obtain a permit modification, which would constitute an expansion of the facility. Minor amendments shall not constitute an "expansion" under section 22a-20a CGS.

b. General permits

Prior to registering for one of the general permits listed below when such activity will occur at an existing applicable facility, the applicant/registrant shall submit an Environmental Justice Public Participation Plan and adhere to the notice requirements of section 22a-20a CGS:

- Contaminated Soil and/or Sediment Management (Staging and Transfer);
- Disassembling Used Electronics;
- Municipal Transfer Stations;
- Construct and Operate Certain Recycling Facilities;
- Storage and Distribution of Two (2) Inch Nominal Tire Chip Aggregate;
- Storage and Processing of Asphalt Roofing Shingle Waste and/or Storage and Distribution of Ground Asphalt Aggregate; and
- Storage and Processing of Scrap Tires for Beneficial Use.

When registering for one of the above general permits, and such registration represents either a *new* facility or *new* activity that is located in an environmental justice community, an informal public meeting will be required to be held. Refer to the specific general permit registration instructions for more information.

C. Steps to Comply with Section 22a-20a CGS and the Environmental Justice Policy

Prior to filing a permit application with the Department, an Environmental Justice Public Participation Plan (the “Plan”) must be submitted for review and approval for any applicable facility proposed to be located or expanded in an environmental justice community.

It is the applicant’s responsibility for fully implementing its approved Plan. **Prior to issuance of a Notice of Tentative Determination by the Department the applicant must submit a Final Report to the Environmental Justice Program documenting the implementation of the Plan.**

1. HOW TO PREPARE AN ENVIRONMENTAL JUSTICE PLAN

Complete *The Environmental Justice Plan* form (DEEP-EJ-PLAN-001) and submit the completed form, with all supporting documents to:

Environmental Justice Program
Office of the Commissioner
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

The certification of the *Plan* must be signed as indicated under Section C.2. (“Certification”) of this document.

Once the Plan has been approved in writing, if there are any modifications to the approved Plan, you must notify the Environmental Justice Program immediately (860-424-3044) to determine if an amendment to your approved Plan must be submitted.

2. HOW TO PREPARE AN ENVIRONMENTAL JUSTICE PLAN FINAL REPORT

In addition to what is included in the approved Plan, the final report must include the following:

- Provide an Executive Summary, which includes: a title page “Environmental Justice Plan Final Report”, a table of contents of the report, and an overview of activities.
- The final report must include all supporting documents, reports, studies, public announcements via alternative media, certified copy(ies) of the newspaper announcement(s), fliers, brochures, radio broadcasts, public meeting documentation (e.g., agenda, minutes, any handouts, presentation outline, attendance signage sheets).
- The report should also include a list of all contact with local officials (minimum stated in Section C. 1. of the Plan) and individuals/groups identified in Section C. 2. of the Plan. Identify (e.g., time and place) and describe the contact made with each.

- **Results and Conclusion**

Describe the results and recommendations of the Public Outreach efforts. Specifically, identify any measures implemented by the applicant as a result of community outreach. Examples of such measures could include; (1) establishing a complaint phone line; (2) organizing a community committee that periodically meets with the facility contact; and (3) identifying community groups that should be routinely included in important correspondence. The Department encourages permittees to maintain a relationship with the local community throughout the life of the facility.

- **Certification**

The Final Report must include the following certification and be signed by both the applicant(s) and the individual(s) who actually prepared the report. By their signature, they certify that to the best of their knowledge and belief, the information contained in the Final Report, including all attachments, is true, accurate and complete.

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement made in the submitted information may be punishable as a criminal offense, in accordance with section 22a-6 of the General Statutes, pursuant to section 53a-157b of the General Statutes, and in accordance with any other applicable statute.”

The certification of the *Plan and Final Report* must be signed as follows:

1. For an individual(s) or sole proprietorship: by the individual(s) or proprietor, respectively;

2. For a corporation: by a principal executive officer of at least the level of vice president;
3. For a limited liability company (LLC): a manager, if management of the LLC is vested in a manager(s) in accordance with the company's "Articles of Organization", or a member of the LLC if no authority is vested in a manager(s);
4. For a partnership: by a general partner;
5. For a municipal, state, or federal agency or department: by either a principal executive officer, a ranking elected official, or by other representatives of such applicant authorized by law.

The Plan and Final Report will be considered insufficient unless the certification is included and all required signatures are provided.

D. Community Environmental Benefit Agreement

According to sections 22a-20a (b)(1)(B) and (c) CGS, applicants for affecting facilities **must** consult with the chief elected official or officials of the town or towns in which the affecting facility is proposed to be located or expanded to evaluate the need for a community environmental benefit agreement. Prior to negotiating terms of a community environmental benefit agreement, the municipality **must** provide a public opportunity for residents of the potentially affected environmental justice community to be heard concerning the need for, and terms of, such an agreement. Contact the Environmental Justice Program at 860-424-3044 for further information.

Contact Information:

ENVIRONMENTAL JUSTICE PROGRAM
OFFICE OF THE COMMISSIONER
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
79 ELM STREET
HARTFORD, CT 06106-5127
860-424-3044 or edith.pestana@ct.gov