



SPONSOR: Rep. K. Johnson & Rep. Cooke & Sen. Townsend
Reps. S. Moore, Morrison, Baumbach, Lambert; Sen.
Lockman

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 248

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO PRE-PERMIT COMMUNITY
OUTREACH IN UNDERSERVED COMMUNITIES.

1 WHEREAS, the State of Delaware is committed to promoting the protection of human health and the
2 environment, empowerment via public involvement, and the dissemination of relevant information to all Delawareans,
3 particularly Black, Latinx, Indigenous, people of color, and low-income communities; and

4 WHEREAS, the State of Delaware is committed to ensuring that Black, Latinx, Indigenous, people of color, and
5 low-income communities are afforded equitable treatment and meaningful involvement in decision-making regardless of
6 race, color, age, gender, gender identity, sexual orientation, ethnicity, native language, religion, or income; and

7 WHEREAS, the State of Delaware is committed to ensuring that all of its citizens receive equal protection under
8 the law, enjoy a healthy environment and are given equitable opportunities to live free of contaminants and pollutants; and

9 WHEREAS, under Title VI of the Civil Rights Act of 1964 state agencies that receive EPA funding may not
10 discriminate regarding environmental permitting and enforcement.

11 NOW, THEREFORE:

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

13 Section 1. Amend Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as
14 shown by underline as follows:

15 § 6003A. Pre-permit community outreach by applicant for qualified project.

16 (a) For purposes of this section the following definitions shall apply:

17 (1) "Applicant" means a person applying under this title for either a new or substantial modification of any of
18 the following permits:

19 a. Clean Air Act permit.

20 b. Coastal Zone Act permit.

21 c. Solid waste permit.

22 d. National Pollutant Discharge Elimination System permit.

23 e. Hazardous waste permit.

24 (2) “Community Outreach Plan” means a plan submitted by an applicant to the Department that meets the
25 requirements of this section.

26 (3) “Qualified project” means a project within an underserved community, or within 3 miles of an
27 underserved community, that meets the definition of a “qualified project” under the Department’s regulations.

28 (4) “Trade secret” means as defined in § 2001(4) of Title 6.

29 (5) “Underserved community” means any of the following:

30 a. A specified geographic area where the percentage of population at poverty level is greater than the
31 State average.

32 b. A geographic area specified in the most current community mapping tool on the Department’s website.

33 (b) An applicant when submitting their permit application to the Department, for a qualified project, must include
34 a Community Outreach Plan. The Department must approve, reject, or advise of necessary modifications to the Community
35 Outreach Plan within 30 days of its submittal. If an applicant’s proposed Community Outreach Plan complies with the
36 requirements of this section, it must be approved by the Department subject to any modifications agreed to by the
37 Department and the applicant. The applicant must complete the Community Outreach Plan within 3 months of its approval
38 by the Department.

39 (c) The Community Outreach Plan must include, at a minimum, the following:

40 (1) The applicant must identify an employee who will serve as a facility community liaison and who will be
41 available to respond to questions about the qualified project and all qualified project permit applications. The facility’s
42 community liaison may require contact information of anyone making an inquiry prior to issuing a response.

43 (2) A proposed mailing to be sent to all residences in the underserved community which must include:

44 a. The e-mail and telephone number for the qualified project’s community liaison with a statement
45 indicating that additional information can be requested.

46 b. A one-page summary to include:

47 1. The activity or activities the applicant seeks to have permitted including whether it seeks a new
48 permit or substantial modifications to its existing permit and any anticipated changes in amounts or contents
49 of emissions.

50 2. An overview of the information to be presented in the permit application.

51 3. Any other information required under Department regulations.

52 (3) The location, date, and time, or estimated time frame, for conducting at least 1 community meeting, open
53 to the public, to be held within the underserved community. If no suitable location can be located within the
54 community, then the community meeting must be held in a location within 3 miles of the underserved community's
55 boundaries, accessible by public transportation both at the time the meeting is scheduled to begin and end. An
56 explanation for why a meeting location could not be found within the underserved community must be included in the
57 meeting notice required under paragraph (4) of this subsection.

58 (4) A copy of a proposed meeting notice that must contain the following information:

59 a. The location, date, and time, or estimated time frame, for conducting the community meeting.

60 b. Information on how to participate in-person or remotely.

61 c. A general overview of how to participate in the public comment or hearing process.

62 d. All information contained in paragraph (2) of this subsection.

63 (5) A plan to publish the meeting notice required in paragraph (4) of this subsection including, at a minimum,
64 as follows:

65 a. On-line including the applicant's public social media sites.

66 b. In print in at least 1 newspaper circulating within the underserved community, and, if available, 1
67 newspaper in the predominant non-English language spoken in any underserved community identified as limited
68 English proficient, a minimum of 30 days prior to the scheduled meeting.

69 (6) The planned community meeting must meet all of the following requirements:

70 a. Must be held within the underserved community or within 3 miles of the community's boundaries.

71 b. Must be interactive and allow time for residents to ask questions.

72 c. Any written provided materials and all oral or visual presentations must be accurate, free of technical
73 language, and written in plain language consistent with the plain language guidelines set forth in the federal Plain
74 Writing Act of 2010, and include translation from English to the most frequently used non-English language if the
75 underserved community is a limited English proficient community as shown in the current version of the
76 community mapping tool on the Department's website.

77 d. The meeting must be recorded or transcribed and made publicly available.

78 e. Any questions related to the applicant or the qualified project the applicant is unable to answer for the
79 community residents, during the community meeting, must be responded to in writing if the residents' contact
80 information was provided at the meeting, and posted on the Department's website.

81 (d) A report entitled “Underserved Community Outreach Report” shall be submitted by the applicant to the
82 Department, as part of its permit application, and for the Department’s permit review process, which contains the following
83 information:

84 (1) The community demographics that qualify the qualified project location or proposed location as an
85 underserved community.

86 (2) The name and contact information of the applicant’s qualified project community liaison.

87 (3) The benefits, if any, the qualified project can provide to the underserved community, including any
88 community benefit agreements or other negotiated community benefits.

89 (4) The proposed activities of the qualified project and their impact on air, water, soil, and human health.

90 (5) How and when residents will be informed of violations that result in emissions or releases above
91 permitting levels. For releases not covered under § 7705 of this title, a statement that residents will be informed of
92 emissions or releases above permitted levels consistent with the Department’s notification requirements.

93 (6) Description of operating conditions and any control measures that serve to reduce or mitigate pollution
94 associated with the permit application.

95 (7) Compliance history of the qualified project that includes enforcement actions and notices of violation for
96 the previous 5 years, and verification that any fines, penalties, and remediation obligations have been satisfied.

97 (8) A list of all applicable state and federal permits held by the facility.

98 (9) A copy of the notice of the meeting with the underserved community, all written materials provided to the
99 residents, all presentation materials, including translated versions, all questions and answers discussed at the
100 community meeting.

101 (10) A narrative explanation of how community outreach was conducted with the underserved community.

102 (11) Any other requirements established by Department regulations.

103 (e) The cost for any translations of materials, publication of meeting notices, meeting transcripts, or any other
104 costs incurred in meeting the requirements under this section shall be the responsibility of the applicant.

105 (f) If the Secretary determines that any materials provided or used to inform the underserved community contained
106 false information that finding shall be considered, by the Secretary, as falsification of the permit application by the
107 applicant.

108 (g) Nothing in this section shall be construed to require the disclosure of trade secrets in any written materials or
109 presentations that are part of the applicant’s required community outreach.

110 (h) An applicant's permit application shall not be considered complete until a Department approved Community
111 Outreach Plan has been completed.

112 Section 2. The Department shall promulgate regulations to implement this section, within 6 months of enactment,
113 in collaboration with a Stakeholder Committee consisting of the following participants:

114 (1) Four members whose businesses or employers are subject to permit requirements under this section,
115 appointed by the Governor.

116 (2) Four members of the public, at least 3 of whom shall be residents of an underserved community, located in
117 Delaware, appointed by the Governor.

118 (3) A member appointed by the Chair of the House Natural Resources and Energy Committee.

119 (4) A member appointed by the Chair of the Senate Environment, Energy, and Transportation Committee.

120 (5) Three Department employees, 1 of whom shall be the Department's Environmental Justice Ombudsman,
121 appointed by the Secretary.

122 Section 3. This Act takes effect 30 days following the date of publication in the Register of Regulations of a notice
123 that both of the following have occurred:

124 (1) The Department of Natural Resources and Environmental Control has promulgated final regulations to
125 implement this Act.

126 (2) The Department of Natural Resources and Environmental Control has provided notice to the Register of
127 Regulations that the contingency in (1) has been fulfilled.

SYNOPSIS

This House Substitute bill clarifies it is only for new or substantially modified permits and specifies it is only for the following permits: (1) Clean Air permit; (2) Coastal Zone Act permit; (3) Solid waste permit; (4) National Pollutant Discharge Elimination System permit and (5) Hazardous waste permit. As in the original bill the applicant is still required to go through a community outreach process for any qualified project, defined as a project within an underserved community or within 3 miles of an underserved community that meets the definition of a "qualified project" under DNREC's Regulations. Underserved community is defined as (1) A specified geographic area where the percentage at poverty level is greater than twice the State Average Median Household Income as determined by the most recent United States Census or (2) Any specified community in the most current community mapping tool on the Department's website. It is anticipated that DNREC will have an environmental justice area viewer, or similar tool, as a link on its website.

However, under this House Substitute bill the applicant must submit, with their permit application, a Community Outreach Plan. At a minimum the Community Outreach Plan must: (1) identify a facility community liaison; (2) schedule a community meeting in or within 3 miles of the boundaries of the underserved community; (3) provide a written overview of information to be provided in the permit application; (4) publish the community meeting notice on-line and in at least 1 newspaper and, if available, 1 in the predominate non-English language if the underserved community is identified as limited English proficiency, at least 30 days prior to the scheduled community meeting. The community meeting must allow for interaction and questions and answers. The community meeting must be recorded or transcribed and made publicly available. Any written materials and oral and visual presentations must be accurate, free of technical language, and written in plain English consistent with federal guidelines.

The applicant must also provide an Underserved Community Outreach Report to DNREC as part of the permit application and review process by DNREC. The Report must include: (1) The community demographics that qualify it as an underserved community; (2) Community liaison's contact information; (3) Benefits of the qualified project to the

community; (4) Proposed activities and their impact on air, water, soil, and health; (5) That releases of emissions over permit levels will be reported in accord with DNREC regulations; (6) Description of operations conditions or control measures that serve to reduce or mitigate pollution associated with the permit application; (7) Compliance history of facility over last 5 years and verification that any fines, penalties and remedial obligations have been fulfilled; and (8) all applicable state and federal permits held by the facility. All material provided by mail or at the community meeting and all notices must also be provided to DNREC. Trade secrets, as defined in Title 6 of the Delaware Code, do not have to be disclosed in any community outreach materials or presentations.

Under this House Substitute Bill DNREC must approve, reject, or require modifications to the Community Outreach Plan within 30 days of its submittal. If the proposed Community Outreach Plan complies with the requirements of this Act it must be approved by DNREC subject to any agreed modifications. Once approved by DNREC the applicant must complete the Community Outreach Plan within 3 months.

If the Secretary of DNREC determines any false information was provided by the applicant, it will be considered a falsification of the permit application. All cost incurred in complying with these new pre-permit community outreach requirements are to be paid by the applicant.

Under this House Substitute bill an applicant's permit shall not be considered complete until a DNREC approved Community Outreach Plan is completed.

This House Substitute bill not only requires the Department to promulgate regulations, within 6 months of enactment, but it adds they must be created in collaboration with a Stakeholder Committee made up of appointees of the Governor, the Secretary of the Department, the Chair of the House Natural Resources and Energy Committee and the Chair of the Senate Environment, Energy, and Transportation Committee.

This Act will be effective within 30 days of publication of notice by the Register of Regulations that DNREC has advised it that it has promulgated regulations to administer this Act.