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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

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 in regard to 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 an individual or person who intends to apply for a permit under §6003 of this title
18 within the next 3 months.

19 (2) “Qualified project” means a project within an underserved community or within 3 miles of an underserved
20 community and meets the definition of a “qualified project” under the Department’s regulations.

21 (3) “Underserved Community means any of the following:

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

24 b. A specified geographic area where the Black or Hispanic or Asian or American Indian population is
25 greater than 3 times the State average.

26 c. A specified geographic area where the combined percentage of Black, Hispanic, Asian and American
27 Indian population is greater than twice the State average.

28 d. A specified geographic area where the percentage at poverty level is greater than twice the State
29 Average Median Household Income as determined by the most recent United States Census.

30 e. A specified geographic area where a minimum of 15% of households have limited English proficiency
31 with no individual over the age of 5 who speaks fluent English.

32 f. Any underserved community specified in the current community mapping tool on the Department's
33 website.

34 (b) Any applicant desiring to obtain a permit required under §6003 of this title for a qualified project, located
35 within an underserved community or within 3 miles of an underserved community, shall within 3 months prior to
36 submitting their permit application to the Department, complete the following community outreach activities:

37 (1) The applicant must identify an employee who will serve as a facility community liaison and who will be
38 available to respond to questions about the qualified project and all qualified project permit applications. The qualified
39 facility's community liaison may request, but not require, the address of anyone making an inquiry prior to issuing a
40 response.

41 (2) Send out a mailing to all residences in the underserved community which must include:

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

44 b. A one-page summary to include:

45 1. The activity or activities the applicant seeks to have permitted including any renewal, new or
46 change to any amounts or contents of emissions.

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

48 3. Any other information required under Department regulations.

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

54 (4) Prepare a meeting notice that must contain the following information:

55 a. The date, time, and location of the community meeting.

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

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

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

59 (5) Publish the meeting notice required in paragraph (4) of this subsection as follows:

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

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

64 (6) Hold a community meeting which meets all of the following requirements:

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

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

67 c. Any written provided materials and all oral or visual presentations must be accurate, free of technical
68 language, and written in plain language comprehensible to readers at a sixth-grade reading level, and include
69 translation from English to the most frequently used non-English language if the underserved community is a
70 limited English proficient community as shown in the current version of the community mapping tool on the
71 Department's website.

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

73 e. Any questions related to the applicant or the qualified project the applicant is unable to answer, during
74 the community meeting, must be responded to in writing to the community residents prior to the applicant
75 submitting an application for a permit.

76 (c) A report, entitled "Underserved Community Outreach Report" shall be submitted by the applicant to the
77 Department, as part of its permit application, and for the Department's permit review process, which contains the following
78 information:

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

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

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

- 84 (4) The proposed activities of the qualified project and their impact on air, water, soil, and human health.
- 85 (5) How and when residents will be informed of violations that result in emissions or releases above
86 permitting levels. For releases not covered under §7705 of this title, a statement that residents will be informed of
87 emissions or releases above permitted levels consistent with the Department’s notification requirements.
- 88 (6) Description of operating conditions and any control measures that serve to reduce or mitigate pollution
89 associated with the permit application.
- 90 (7) Compliance history of the qualified project that includes enforcement actions and notices of violation for
91 the previous 5 years, and verification that any fines, penalties and remediation obligations have been satisfied.
- 92 (8) A list of all applicable state and federal permits held by the facility.
- 93 (9) A copy of the notice of the meeting with the underserved community, all written materials provided to the
94 residents, all presentation materials, including translated versions, all questions and answers discussed at the
95 community meeting.
- 96 (10) A narrative explanation of how community outreach was conducted with the underserved community.
- 97 (11) Any other requirements established by Department regulations.
- 98 (d) The cost for any translations of materials, publication of meeting notices, meeting transcripts, or any other
99 costs incurred in meeting the requirements under this section shall be the responsibility of the applicant.
- 100 (e) If the Secretary determines that any materials provided or used to inform the underserved community contained
101 false information that finding shall be considered, by the Secretary, as falsification of the permit application by the
102 applicant.
- 103 Section 2. The Department shall promulgate regulations to implement this section.
- 104 Section 3. This Act takes effect 30 days following the date of publication in the Register of Regulations of a notice
105 that both of the following have occurred:
- 106 (1) The Department of Natural Resources and Environmental Control has promulgated final regulations to
107 implement this Act and
- 108 (2) The Department of Natural Resources and Environmental Control has provided notice to the Register of
109 Regulations that the contingency in (1) has been fulfilled.

SYNOPSIS

This Act establishes a pre-permit community outreach process for any qualified project, as defined in DNREC Regulations, that wishes to apply for a permit within 3 months, in an underserved community. Underserved community is defined in (5) specified demographic areas as well as any community so identified in a mapping tool on DNREC’s website. It is anticipated that DNREC will have an environmental justice area viewer, or similar tool, as a link on its website.

Under this Act the applicant must (1) identify a facility community liaison; (2) must schedule a community meeting in or within 3 miles of the boundaries of the underserved community;(3) must provide a written overview of

information to be provided in the permit application, the operation the applicant seeks to have permitted, including any renewal, new or change to any amounts or contents of emissions, and the community liaison's contact information to all residences within the underserved community, (4) must 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 comprehensible to readers at a sixth-grade level.

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.

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.

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.