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& Rep. S. Moore & Sen. Townsend
Reps. Phillips, Wilson-Anton; Sen. Gay

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 422

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO ENVIRONMENTAL PERMITS IN
OVERBURDENED COMMUNITIES.

1 WHEREAS, human health is directly impacted by the environment, including environmental exposures and
2 contaminants in air, soil, and water; and

3 WHEREAS, Delaware's Black, Latinx, Indigenous, people of color, and low-income communities have
4 historically been located in areas of the State with a higher density of contaminated sites and exposure to environmental
5 pollutants compared to other communities with the accompanying potential for increased negative environmental,
6 economic, and public health impacts; and

7 WHEREAS, the current State environmental permitting model which only considers emissions from facilities in
8 isolation is outmoded and inadvertently perpetuates environmental racism and injustice by ignoring cumulative impacts
9 which place a disproportionate burden on Black, Latinx, Indigenous, people of color, and low-income communities; and

10 WHEREAS, numerous studies have linked environmental toxins to poor health outcomes, including the Centers
11 for Disease Control and Prevention (CDC) and other federal agencies documenting the prevalence of increasing childhood
12 asthma linked to poor air quality, with a far higher prevalence in Black and Latinx communities; and

13 WHEREAS, 90% of Delaware's natural waterways are polluted with excess contaminants and the availability of
14 clean drinking water depends upon geographic location, quality of monitoring, and access to regulated water systems; and

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

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

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

23 WHEREAS, under Title VI of the Civil Rights Act of 1964 state agencies that receive EPA funding may not
24 discriminate in regard to environmental permitting and enforcement.

25 NOW, THEREFORE:

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

27 Section 1. Amend Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as
28 shown by underline and by creating a new chapter as follows:

29 Chapter 60A. Healthy Communities and Environmental Justice Act.

30 § 6001A. Title.

31 This chapter shall be known and may be cited as the “Healthy Communities and Environmental Justice Act”.

32 § 6002A. Purpose.

33 The General Assembly finds that historically hazardous facilities have been located in low-income communities
34 exposing residents to disproportionate levels of environmental pollutants and cumulative health risks. Therefore, it is the
35 intent of the General Assembly that new and expanded facilities, and permit renewals in existing facilities, be assessed for
36 potential negative health impacts on residents and further that if a new facility or expansion or renewal of an existing
37 facility could result in negative health impacts on the surrounding community, the Department has the authority to deny the
38 permit or require modifications prior to approval.

39 § 6003A. Definitions.

40 For purposes of this chapter:

41 (1) “Board” means the Environmental Justice Board established under § 6006A of this chapter.

42 (2) “Cumulative impacts” means any exposure, public health, or environmental risk occurring in an
43 overburdened community, from any environmental pollution emitted or released routinely, accidentally, or otherwise,
44 into the land, water, or air from any point or nonpoint sources, and assessed based on the past, present, and reasonably
45 foreseeable emissions and discharges affecting an overburdened community.

46 (3) “Department” means the Department of Natural Resources and Environmental Control.

47 (4) “Environmental justice impact report” means an assessment for a proposed new facility, expansion of an
48 existing facility, or existing permit renewal, of any cumulative impacts on an overburdened community to include the
49 following:

50 a. Any adverse environmental effects that cannot be mitigated should the permit be granted.

51 b. Public health impact on the overburdened community where the facility is either located or proposed.

52 (5) “Facility” includes the following categories of commercial, municipal, or industrial businesses located in
53 or within a ½ mile radius of an overburdened community:

54 a. Manufacturers of animal food, meat, seafood, tobacco, manufactured homes, cement, asphalt, ready-
55 mix concrete, primary metal, nonmetallic mineral products, ammunition, or transportation equipment.

56 b. Manufacturers of fossil or bio-based fuels, distillates, chemicals, and pharmaceuticals; or industrial
57 scale storage of such materials.

58 c. Pulp, paper, paperboard, and sawmills.

59 d. Commercial rail, port, or water freight docks.

60 e. Landfills, transfer stations, resource recovery, scrap metal or recycle centers, and compost operators.

61 f. Warehouses and distribution, trucking, and logistic centers larger than 75,000 square feet.

62 g. Industrial or municipal sewage treatment centers, animal waste management or processing operations,
63 and sludge processors.

64 h. Large concentrated animal feeding operations, as defined by the size threshold in the federal Clean
65 Water Act, 33 U.S.C. § 1251 et. seq., regardless of their discharge status.

66 i. Energy generators, as defined in § 1001 of Title 26.

67 j. Medical waste incinerators, except a medical waste incinerator attendant to a hospital or university
68 intended to process self-generated medical waste.

69 k. Commercial, municipal, or industrial projects or installations that are not listed in paragraphs (5) a
70 through (5) j that are similar in scale, and that currently contribute or upon permit approval would contribute to the
71 cumulative pollution in an overburdened community, which are identified by the Department, in conjunction with
72 the Environmental Justice Board under § 6006A of this title.

73 (6) “Governing body” means a city or town council in an incorporated municipality or the county government
74 in an unincorporated area.

75 (7) “Overburdened community” means any geographic locations that potentially experience harms and risks
76 as determined by the Environmental Justice Board, or any census block group as determined in accordance with the
77 most recent United States Census, in which one or more of the following is greater than .75 standard percentage of the
78 State average for any of the following:

79 a. Residents below 185% of the federal poverty level.

80 b. Residents who identify as minorities as members of state or federally recognized tribal communities, or
81 as immigrants to the United States, as defined by the United States Census Bureau.

82 c. Residents with limited English proficiency as defined by the United State Census Bureau.

83 (8) “Permit” means any permit, registration, or license, issued by the Department to a facility, establishing the
84 regulatory and management requirements for any regulated activity authorized under state and federal law. “Permit”
85 does not include any authorization or approval necessary to perform a remediation, as defined in this title, or
86 authorization or approval for minor modifications to a permit for activities or improvements that do not increase
87 emissions.

88 (9) “Secretary” means the Secretary of the Department of Natural Resources and Environmental Control, or a
89 duly authorized designee.

90 § 6004A. List of Overburdened Communities.

91 The Department, in conjunction with the Environmental Justice Board, shall establish and maintain a list of
92 overburdened communities and shall update the list of overburdened communities at least every 2 years. The list of
93 overburdened communities shall be published on the Department’s website. The Department shall notify a governing body
94 if any part of the governing body’s jurisdictional boundaries contains an overburdened community.

95 § 6005A. Environmental Justice Impact Report.

96 (a) No permit for a new facility, expansion of an existing facility, or the renewal of an existing facility, located in
97 whole or in part, in or within a ½ mile radius of an overburdened community, may be granted unless the permit applicant
98 submits an environmental justice impact report to the Department.

99 (b) The environmental justice impact report must be submitted to the Department, and the governing body
100 overseeing where the facility will be located, at least 60 days prior to the required community information session on the
101 permit. The Department shall, upon its receipt, publish the environmental justice impact report on the Department’s website
102 and provide it to the Environmental Justice Board. The environmental justice impact report must be reviewed and discussed
103 during at least 1 community information session.

104 (c) The use of emission offsets generated by emission reduction credits, under this title, shall not be permitted as
105 credits in overburdened communities.

106 § 6006A. Environmental Justice Board.

107 (a) The Environmental Justice Board is established to make recommendations to the Department on whether the
108 Department should grant, deny, or modify a facility’s permit application. The Board will make its recommendation to the
109 Department based upon its review of the environmental justice impact report submitted by the facility and any public
110 hearing.

111 (b) The Board must also assist the Department in developing the following:

- 112 (1) The criteria used by the Department to define overburdened communities under § 6003A of this title.
- 113 (2) The list of overburdened communities established under § 6004A of this title.
- 114 (3) The metrics used by the Department to determine whether an application for a permit for a new facility,
115 expansion of an existing facility, or renewal of an existing permit requires an environmental justice report and public
116 hearing.
- 117 (4) The list of facilities under § 6003A(d) of this title needs to be modified.
- 118 (5) The sources of pollution in overburdened communities.
- 119 (6) New or revised policies and regulations to implement and enforce this chapter.
- 120 (7) Investments to mitigate environmental impact.
- 121 (8) Criteria for inclusion of concentrated animal feeding operations for purposes of this chapter not currently
122 regulated by the Clean Air Act, 42 U.S.C. § 7401 et. seq.; the Clean Water Act, 33 U.S.C. § 1251 et. seq.; the Safe
123 Drinking Water Act, 42 U.S.C. § 300f; the Comprehensive Environmental Response, Compensation, and Liability Act,
124 42 U.S.C. § 9601; Toxics Release Inventory, 42 U.S.C. § 8921 and § 11023; the Delaware Extremely Hazardous
125 Substances Risk Management Act, Chapter 77 of this title, and the Delaware Hazardous Substance Cleanup Act,
126 Chapter 91 of this title.
- 127 (b) The Board is composed of 9 members, as follows:
- 128 (1) Three members, appointed by the Speaker of the House, all of whom shall reside in an overburdened
129 community as defined in § 6003A of this title.
- 130 (2) Three members, appointed by the President Pro Tempore of the Senate, all of whom shall reside in an
131 overburdened community as defined in § 6003A of this title.
- 132 (3) Three members from the public or private sector, appointed by the Department, at least 1 of whom has
133 expertise in public health.
- 134 (4) The Board may invite non-voting ex-officio members at its sole discretion.
- 135 (c) Of the initial members, 3 must be appointed for a one-year term, 3 must be appointed for a two-year term, and
136 3 must be appointed for a four-year term. Thereafter, all members shall serve four-year terms.
- 137 (d) A majority of the voting members of the Board constitutes a quorum. A vacant position is not counted for
138 quorum purposes.
- 139 (e) The approval of a majority of the voting members at a meeting with quorum is required for the Board to take
140 official action.
- 141 (f) The Board shall select 1 member to serve as Chair for a term to be determined by the Board.

142 (g) The Board shall meet at the call of the Chair, or as provided in bylaws adopted by the Board, but must meet at
143 least twice a year.

144 (h) The Board may adopt rules and bylaws as necessary for its operation.

145 (i) For administrative purposes, the Board is placed within the Department and the Department shall provide staff
146 support for the Board.

147 § 6007A. Community information sessions, public hearings, and permits.

148 (a) At least 60 days prior to the community information session the applicant must do the following:

149 (1) Identify an employee who will serve as a facility community liaison and who will be available to respond
150 to questions about the proposed project and all permit applications.

151 (2) Mail a notice to all residents in the overburdened community which must include:

152 a. The e-mail and telephone number for the facility's community liaison with a statement indicating that
153 additional information can be requested.

154 b. A 1- page summary to include:

155 1. The activity or activities the applicant seeks to have permitted including any proposed change to the
156 amount or content of emissions.

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

158 3. Any other information required under Department regulations.

159 (b) At least 1 community information session and 1 public hearing must be held in the overburdened community,
160 before the Environmental Justice Board, for any final permit application that requires an environmental justice impact
161 report. The community information session must be held prior to the public hearing.

162 (1) The Secretary shall advertise the community information session and the public hearing in at least 2
163 newspapers circulating within the overburdened community and 1 newspaper in the predominant non-English language
164 spoken in the overburdened community, a minimum of 30 days prior to both the community information session and
165 the public hearing.

166 (2) A minimum of 30 days prior to the scheduled community information session or the public hearing a copy
167 of the notice of the community information session or public hearing must be sent to the governing body overseeing
168 where the facility or proposed facility is located. The governing body shall be invited to participate in the public
169 hearing.

170 (3) The Department shall post the newspaper advertisement on its website and social media accounts in both
171 English and the predominant non-English language. The applicant is responsible for the cost of any advertisements and

172 notices, made by the Department, as required in this subsection. The notice of the community information session or
173 the public hearing must provide the following:

- 174 a. The date, time, and location of the public hearing.
- 175 b. A description of the proposed new or expanded facility or existing permit, as applicable.
- 176 c. A map indicating the location of the facility.
- 177 d. A brief summary of the environmental justice impact report.
- 178 e. Information on how an interested person may review a copy of the complete environmental justice
179 impact report.
- 180 f. An address for the submission of written comments.
- 181 g. Any other information deemed appropriate by the Department.

182 (4) The Environmental Justice Board must hold the community information session and the public hearing at a
183 site located in the overburdened community where the facility is planned or located.

184 (c) If a permit applicant is applying for more than 1 permit for a proposed new or expanded facility the permit
185 applicant may submit 1 report and attend 1 community information session and 1 public hearing before the Environmental
186 Justice Board to address all of its permit applications, unless the Environmental Justice Board determines, in its discretion,
187 that more than 1 community information session and more than 1 public hearing is necessary due to the complexity of the
188 permit application necessary for the proposed new or expanded facility.

189 (d) At the community information session and the public hearing, the permit applicant must provide clear,
190 accurate, and complete information about the proposed new, or expanded facility, or existing permit, as applicable, and the
191 potential cumulative impacts associated with the new, expanded, or existing facility. Any written materials and all oral or
192 visual presentations must be free of technical language and written in plain language comprehensible to readers at a 6th
193 grade reading level and include translation from English to the most frequently used non-English language if the
194 underserved community is a limited English proficient community. The community information session must offer an
195 opportunity for participation, either in person or remotely, by the Environmental Justice Board, members of the public,
196 residents of the overburdened community, and representatives of the overburdened community. Both written and oral
197 questions and public comment must be permitted at the community information session. Any questions related to the
198 applicant or the project that the applicant is unable to answer during the community information session must be responded
199 to, in writing, to the community residents prior to any subsequent community information session or the public hearing.

200 (e) The community information session and the public hearings must be recorded, and a transcript prepared, both
201 at the applicant's expense. The transcript, along with any written comments, must be provided by the applicant to both the

202 Environmental Justice Board and the Department within 10 days after the community information session or the public
203 hearing. The Department will make a copy of the transcripts available online and to any member of the public upon request.

204 (f) The Environmental Justice Board shall make a recommendation to the Department within 2 weeks of receiving
205 the public hearing transcript whether to grant, deny, or modify a permit based upon its review of the environmental justice
206 impact report and the public hearing record.

207 (g) The Department may not issue a decision on a permit application for a facility, in whole or in part, in an
208 overburdened community, until it has received and reviewed the recommendation of the Environmental Justice Board and
209 the full public hearing record.

210 (h) The Secretary, when evaluating an application for a permit that requires an environmental justice impact
211 report, shall assess the recommendation of the Environmental Justice Board, community support for the facility, as
212 demonstrated at the public hearing, as well as communications in support or opposition to the facility. The Secretary must
213 consider community support, or the lack thereof, in the decision to grant or deny a permit.

214 (i) The Secretary shall deny a permit application for a new facility or the expansion of an existing facility, or apply
215 conditions to the renewal of an existing facility's permit, located in an overburdened community, upon a finding that the
216 approval of the permit would, together with existing conditions, including conditions for permitted activities, cause or
217 contribute to an adverse cumulative impact on the overburdened community or constitute an unreasonable risk to the health
218 of the residents of the overburdened community or to the environment in that community. The Department may grant a
219 permit that imposes conditions on the construction and operation of the facility to protect the public health of residents
220 located in an overburdened community.

221 (j) Should the Secretary issue a permit decision that is contrary to the recommendation of the Environmental
222 Justice Board, the Secretary shall state, in writing, the reasons for the decision and what additional actions will be taken to
223 reduce pollution in the overburdened community in which the facility is located. The Department must provide the
224 document to all members of the Environmental Justice Board and make a copy available online and to any member of the
225 public upon request.

226 (k) Nothing in this subsection shall be construed to limit the authority of the Department to hold or require
227 additional public hearings as may be required by any law, rule, or regulation.

228 (l) Nothing in this subsection shall be construed to limit the right of an applicant to continue facility operations
229 during the process of applying for permit expansion to the extent such right is conveyed by applicable law, rule, or
230 regulation.

231 (m) The Department is responsible for coordinating with other state and federal agencies when regulatory and
232 permitting responsibilities are shared.

233 (n) The Department shall develop criteria on how to evaluate cumulative impacts based upon the best science and
234 data available and shall publish the criteria on its website after consulting with and receiving recommendations from the
235 Environmental Justice Board.

236 Section 2. This Act is effective on enactment. The Department must compile and issue a list of overburdened
237 communities, in accordance with this Act, within 6 months after enactment. The Department shall adopt any rules or
238 regulations necessary for implementing the provisions of this Act within 6 months after enactment.

239 Section 3. This Act may be cited as The People’s Anti-Pollution Act.

SYNOPSIS

This Act defines certain facilities which will require an applicant seeking a permit for a new facility, or expansion of an existing facility, or renewal of an existing permit, located in an overburdened community, as defined in the Act, to provide an environmental justice impact report. Facility includes the following commercial, municipal, or industrial businesses located in, or within, a ½ mile radius of an overburdened community: (1) manufacturers of animal food, meat, seafood, tobacco, manufactured homes, chemicals, cement, asphalt, ready-mix concrete, primary metal, nonmetallic mineral products, ammunition or transport equipment; (2) manufacturers of fossil or bio-based fuels, distillates, chemicals and pharmaceuticals; or industrial scale storage of such materials; (3) pulp, paper, paperboard and sawmills; (4) commercial rail, port or water freight docks; (5) landfills, transfer stations, resource recovery, scrap metal or recycle centers or compost operators; (6) warehouses, and distribution, trucking and logistic centers larger than 75,000 square feet; (7) industrial or municipal sewage treatment centers, animal waste management or processing operations and sludge processors; (8) large, concentrated animal feeding operations, as defined by the size threshold in the federal Clean Water Act, regardless of their discharge status; (9) energy generators, as defined in §1001 of Title 26; (10) medical waste incinerators (with the exception of those attendant to a hospital or university intended to process self-generated medical waste); and (11) commercial, municipal, or industrial projects or installations that are not listed in (1) through (10) that are similar in scale, and that currently contribute or upon permit approval would contribute to the cumulative pollution in an overburdened community, which are identified by the Department in conjunction with the Environmental Justice Board.

For all permit applications, the environmental justice impact report would be required at least 60 days before a required community information session and public hearing.

Under the Act an “overburdened community” is defined as any geographic locations that potentially experience harms and risks a determined by the Environmental Justice Board or any census tract, as delineated in the most recent U.S. Census, in which one or more of the following is greater than .75 standard percentage of the State average for any of the following: (1) 35% of the residents are below 185% of federal poverty level. (2) At least 25% or more identify as minority or member of a state or federally recognized tribal community or immigrant. (3) 25% or more have limited English proficiency as defined by U.S. Census Bureau.

The Department would be required to create and post on its website a list of “overburdened communities” and update the list every 2 years.

The Act establishes the Environmental Justice Board to review and make recommendations on the environmental justice impact reports, conduct community information sessions and public hearings, and other measures to help the Department fulfill the purpose of this chapter.

The community information session and public hearing on the permit would be required to provide an opportunity for meaningful public participation by the overburdened community.

Following the public hearing the Secretary would be required to consider the recommendation of the Environmental Justice Board and the testimony presented at the public hearing and an analysis of the environmental justice impact report. The Secretary could impose conditions to the permit that may be necessary to reduce the adverse impact to the public health or to the environment in the overburdened community.

The Secretary would have the authority to deny a permit application in an overburdened community upon a finding that the cumulative impact imposed by the new or expanded facility would constitute an unreasonable risk to the health of the residents of the overburdened community or to the environment in that community.

The Act requires the Department to establish rules and regulations to implement the Act, in consultation with the Environmental Justice Board, within 6 months after its enactment.

