

A Seat at the Table: A Vision for Connecticut's Environmental Justice Law

The Connecticut Coalition for
Economic & Environmental Justice

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**ENVIRONMENTAL
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Vermont Law & Graduate School





Risdon Manufacturing Site

EXECUTIVE SUMMARY

Environmental injustice persists in Connecticut. Communities across the state suffer from legacy pollution and host industrial facilities, like power plants, sludge and solid waste incinerators, landfills, sewage treatment plants, and other major sources of air and water pollution. As the result of generations of government-sponsored segregation, redlining, and denial of access to healthy environments, Black, Indigenous, and People of Color (BIPOC) residents of Connecticut are exposed to greater rates of life-altering pollution than society at large and experience higher rates of disease, including COVID-19 and asthma.

In 2008, the Connecticut Legislature passed, and then-Governor Rell signed, Public Act No. 08-94, An Act Concerning Environmental Justice Communities and The Storage of Asbestos-Containing Material, the state's first environmental justice law (the EJ Law or the law). The EJ Law instituted requirements that polluting facilities seeking permits in overburdened communities engage with residents, and especially emphasized the practice of meaningful public participation in low-income communities and communities of color, with the hope that the process would make permitting decisions fairer.

The EJ Law applies to facilities seeking new or expanded permits within an environmental justice community. Under the law, "affecting facilities" are those that are a major source of air pollution, including power plants, landfills, and waste

incinerators. "Environmental justice communities" are towns and census block groups that are low-income or meet other economic thresholds (such as having high unemployment). Facilities subject to the law must file a meaningful public participation plan with the Connecticut Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council

(CSC). These plans must be approved for the facility to obtain the relevant permit or certificate.

The EJ Law emerged from almost eight years of sustained advocacy. Organizations such as the Connecticut Coalition for Environmental Justice (CCEJ), the New Haven Environmental Justice Network, the Connecticut Fund for the Environment (CFE), the National Association for the Advancement of Colored People (NAACP) of CT, the Connecticut League of Conservation Voters, and the East End Neighborhood Revitalization Zone (NRZ) of Bridgeport spearheaded these efforts.

Advocates had three main goals:

1. Eliminate unequal pollution in overburdened areas, especially low-income communities and communities of color
2. Facilitate community influence over permitting through "meaningful public participation"
3. Strengthen enforcement capacity at DEEP

Anaconda American Brass Co. - 130 Freight Street, Waterbury



Of these goals, meaningful public participation was the most significant result of the final bill, which formalized policies and guidelines established by DEEP's Environmental Justice Program in the 1990s.

Yet, even with the passage of the EJ Law, Connecticut's environmental justice communities remain overburdened by pollution:

- Stakeholder interviews and publicly available data indicate that new and expanded facilities continue to be permitted in environmental justice communities already overburdened by hazardous pollutants.
- A complete review of the EJ Law's impact on permitting decisions is limited by the lack of baseline data on permits issued in environmental justice communities prior to the EJ Law's passage and inconsistent record keeping since 2008.
- The public participation requirements of the EJ Law have not guaranteed BIPOC communities a seat at the table for permitting decisions.
- The EJ Law increased opportunities for public process but failed to place new requirements on facilities to reduce environmental pollution and public health hazards in overburdened areas.
- The EJ Law provided no mechanisms for addressing pollution from existing facilities.
- The EJ Law failed to address other major sources of pollution, such as exhaust from vehicles, siting of highways in BIPOC communities, and pollution carried downwind from other states, all of which contribute to Connecticut's air quality problems and exacerbate climate change.

While the EJ Law has increased communication between facilities and communities and encouraged community involvement in the permitting process, barriers limit its effectiveness. The following conclusions emerged from interviews with stakeholders and community members who experienced Connecticut's public participation process. Some communities still lack adequate notification about public meetings for facilities in their neighborhoods.

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- The extent to which communities can bargain for local benefits with industry has varied widely.
- Some facilities have provided little information to communities and no opportunity for a follow-up discussion.
- Annual updates to the distressed municipalities list that result in the removal of environmental justice communities have negatively impacted residents because facilities can then stop engaging with removed communities, which have no recourse under the EJ Law.
- The EJ Program at DEEP, which enforces the EJ Law, has had resource cuts in recent years, limiting its ability to support the implementation and enforcement of the law.

In October 2020, the Connecticut Legislature passed and Governor Lamont signed Public Act 20-6, An Act Concerning Enhancements to State's Environmental Justice Law. Public Act No. 20-6 amends the original EJ Law's public notice by mandating expanded notification methods and compliance with outreach requirements. The revised EJ Law also requires proposed facilities in overburdened areas to enter into benefits agreements with communities and expands the types of impacts and remedial projects considered in such agreements. In 2021, DEEP updated its tools to include a new web map showing demographics and affecting facilities and launched an effort to develop a statewide mapping tool for environmental justice communities (the "EJ Mapping Tool").



Bridgeport Roadway near housing

CCEJ largely supports the updates to the EJ Law which are consistent with the findings of this Report. However, achieving environmental justice in Connecticut requires additional action. We offer the following recommendations to the Governor, the Legislature, and DEEP:

A. Enhance DEEP's Capacity for Implementation and Enforcement

1. Mandate and fund DEEP to establish and maintain a data-tracking system on EJ Law implementation and impacts, including the number of EJ Plans submitted, revised, accepted, and rejected.
2. Ensure that Connecticut's new EJ Mapping Tool features accessible, publicly available information about cumulative environmental and public health impacts.
3. Update public participation and language access policies and plans to conform to best practices, maximize use of emerging technologies, and promote civil rights compliance.
4. Strengthen DEEP's EJ program with additional resources and staff support.

B. Establish Substantive Protections including Limits on Siting and Permitting

1. Amend Connecticut's siting and permitting criteria to consider cumulative environmental and public health impacts, require that DEEP deny permits that would contribute to cumulative environmental and public health impacts in designated overburdened environmental justice communities, and establish buffers to limit the proximity of affecting facilities to sensitive sites, such as schools, playgrounds, hospitals, and public housing.
2. Modify the criteria for the "environmental justice community" designation to include race, limited English proficiency, Indigenous communities and Tribal nations, and areas with disproportionate pollution burdens.
3. Create a statutory designation for "overburdened environmental justice communities," referring to census block groups within environmental justice communities that already contain at least five other permitted affecting facilities or are otherwise identified as contending with cumulative environmental and public health impacts.
4. Require affecting facilities to assess, and provide funding for DEEP to review, the cumulative environmental and public health impacts of permits by affecting facilities in environmental justice communities.
5. Require and fund the Connecticut Department of Public Health (DPH) to provide a health assessment of proposed permits in environmental justice communities.
6. Require that every state agency consider the environmental justice impacts of its decisions and expand consideration of the environmental impacts of DEEP's decisions, beyond just permitting.

C. Increase Community Negotiation Power

1. Expand DEEP's capacity to implement the public participation requirements of the permitting process by creating a fund to support the program, including funds for additional facilitators to attend public meetings and foster dialogue.
2. Require protocols to ensure engagement of residents of environmental justice communities in siting and permitting, not simply public officials.
3. Mandate the initiation of public participation and environmental justice compliance during the process of identifying a siting location, rather than at the permitting stage when fewer opportunities exist to move or change a facility.
4. Create an environmental appeals process that delays the construction and operation of a proposed facility to address environmental justice concerns when applicants have not complied with the EJ Law.
5. Fund the Connecticut Bar Association and/or other non-governmental organizations to develop a program to provide pro bono legal representation to assist environmental justice communities in navigating the permitting process.
6. Require additional opportunities for public participation after each permit is granted in an environmental justice community.



Hartford Incinerator Pollution

D. Improve Information Flow and Notification

1. Require permit applicants to improve their communication and outreach efforts to ensure meaningful participation, e.g., by posting all permitting information and materials to websites dedicated to the proposed facility.
2. DEEP should review its public participation and language access policies and plans to ensure that they conform to DEEP's civil rights obligations and make use of best practices and emerging technologies.

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