

A large green map of the state of Connecticut is centered on the page. The map has a slightly irregular, torn-edge appearance. The title text is overlaid on this map in white.

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

The Connecticut Coalition for
Economic & Environmental Justice

August 2022

**ENVIRONMENTAL
JUSTICE CLINIC**

Vermont Law & Graduate School



The Connecticut Coalition for Economic & Environmental Justice (CCEJ) is a statewide advocacy organization that works to bring awareness to environmental injustices that give rise to disproportionate burdens borne by low-income communities and communities of color. Since its founding in 1998 by Dr. Mark Mitchell, CCEJ has worked to promote fair and meaningful involvement, self-determination, and empowerment of these communities to prepare them for a place at the table where policies, rules, and laws that affect their health and well-being are formulated.

The Environmental Justice Clinic at Vermont Law School works with students to represent and partner with disenfranchised communities fighting racial and economic disparities in the distribution of polluting sources, while also fighting for a say in decisions affecting their future.

The Environmental Justice Capstone at the Yale School of the Environment (formerly the Yale School of Forestry & Environmental Studies) engages interdisciplinary teams of students, including policy, law, and public health students, on projects to advance environmental justice in partnership with communities of color and low-income communities.

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Sharon E. Lewis

Sharon E. Lewis, the Executive Director of CCEJ, developed the original vision for this Report. **Marianne Engelman-Lado**, former Lecturer at the Yale School of Forestry & Environmental Studies and the Yale School of Public Health and former Director of the Environmental Justice Clinic at Vermont Law School, oversaw the report’s conceptualization and investigation. Environmental Justice Clinic Students **Isra Syed** (YLS ‘19), **Katherine Wolf** (YSE/SPH ‘19), and **Arash Ghiassi** (YLS ‘18), and Environmental Justice Capstone Students **Jaclyn Kachelmeyer** (YSE ‘19) and **Lucien Swetschinski** (YSE ‘20), conducted the research, interviews, analysis, and writing of the report’s content. **Rachel Stevens**, former Staff Attorney and Professor of Law, and **Lexie Farkash** (MELP ‘22), Student Clinician at the Environmental Justice Clinic at Vermont Law School, updated and revised the report for publication in 2022.

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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.

- Some communities still lack adequate notification about public meetings for facilities in their neighborhoods.
- 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.

I. INTRODUCTION

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 EJ Law or the law) requiring polluting facilities seeking permits in overburdened communities to take steps to engage with residents. Connecticut's first EJ Law came about as the result of sustained advocacy by local environmental justice groups concerned about high concentrations of pollution in BIPOC and low-income communities.¹ By mandating public participation, the EJ Law was intended to empower marginalized communities with a procedural tool to advocate for themselves in processes that have historically allowed the consolidation of polluting sources in the state's most overburdened areas.

Thirteen years after the law's passage, environmental injustice remains a significant issue throughout Connecticut. Environmentally linked public health burdens, such as COVID-19 and asthma, continue to affect large portions of the state population, with heightened impacts on Latinx and Black communities.² Connecticut has higher asthma rates than the national average, and Latinx and Black people in Connecticut's largest cities are disproportionately affected by asthma.³ Black children and teenagers in Connecticut are five-and-a-half times more likely than whites to need emergency medical care for asthma, and Latinx children are four-and-a-half times more likely.⁴ In Bridgeport (40.8% Latinx and 35.1% Black)⁵ and Hartford (44.3% Latinx and 37.7% Black),⁶ the rates

of school-age children suffering from asthma in 2012–2014 were 15.9% and 23.5%, respectively, compared to 14.3% of school-age children throughout Connecticut.⁷

Despite the EJ Law, communities of color still bear the brunt of environmental burdens statewide.⁸ According to DEEP, there are over 600 pollution sources in Connecticut's five major cities, which combined contain 71% of the state's population of color and 51% of the state's population in poverty.⁹ Over the past 13 years, environmental justice groups in Bridgeport, New Haven, Waterbury, Stamford, Hartford, Bristol, and other densely populated cities with large communities of color have had to resist ongoing and new environmental impacts from various facilities.

For instance, CCEJ and local community groups long fought to close Bridgeport Harbor Station, Connecticut's last remaining coal plant, which emitted large concentrations of pollutants into surrounding low-income communities and communities of color. Though advocates celebrate the plant's recent closure,¹⁰ residents endured nearly 50 years of toxic air pollution, including hydrochloric acid, dioxin, lead, nitrogen oxides, sulfur dioxide, and mercury.¹¹ Similarly, for decades, residents suffered the air quality impacts from millions of tons of trash burned at Hartford's notorious high-capacity trash incinerator, which is set to close by mid-2022.

Such struggles continue to date. Putnam residents are fighting a major expansion of an existing landfill

“Environmental Justice is achieved when disparate impacts on low-income and communities of color are identified and addressed, when the impacted have a meaningful voice at the decision-making tables where environmental rules, policies, and laws are formulated, and when there is a fair and equitable distribution of the environmental benefits and burdens.”
— Sharon Lewis, Executive Director of CCEJ

that accepts toxic ash from incinerators burning trash across New England.¹³ In Bristol, residents concerned about increased air pollution oppose a move by the Covanta waste incinerator to start burning medical waste, like syringes, surgical waste, bodily fluids, and more.¹⁴ In light of these continued challenges, this Report seeks to evaluate the impact and efficacy of the EJ Law in fulfilling its original goals of promoting meaningful public participation and mitigating environmental injustice.

When Connecticut passed the EJ Law in 2008, it joined several states that had already adopted environmental justice statutes, executive orders, or policies, with the first such law enacted in 1993 in Arkansas.¹⁵ Today, a majority of states have some form of environmental justice legislation, policy or guidance in place,¹⁶ encompassing a range of approaches to address environmental injustice. Like Connecticut, many states have emphasized community participation and education, with permitting and facility siting decisions a major focus of state rules and programs.¹⁷

In the last year, several states raised the bar for environmental justice legislation.¹⁸ New Jersey passed a landmark environmental justice law in 2020 that includes not just procedural requirements for permit applicants to assess cumulative impacts, but also substantive requirements requiring that the state Department of Environmental Protection

“deny a permit for a new facility . . . upon a finding that approval of the permit . . . would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse . . . stressors in the overburdened community that are higher than those borne by other communities”¹⁹

Massachusetts followed suit in 2021, passing comprehensive climate change legislation that includes



Bridgeport PSEG Powerplant

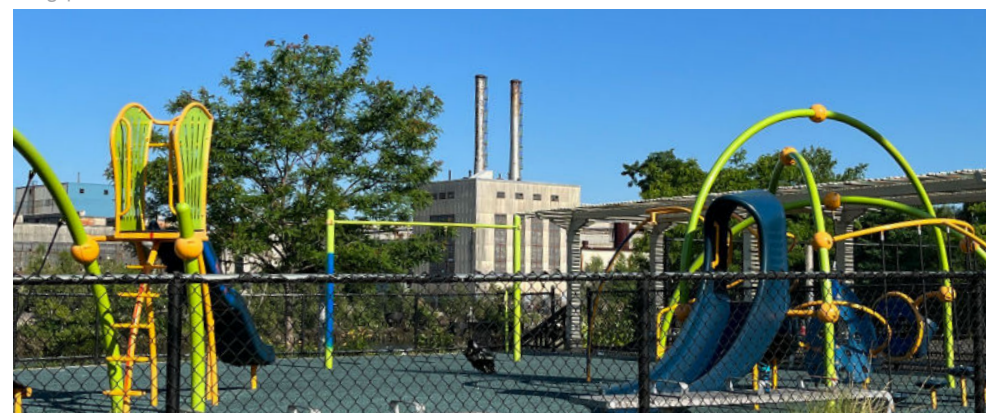
environmental justice protections to enhance public participation and requires state agencies to consider cumulative impacts on environmental justice communities before issuing permits.²⁰

Particularly in light of new efforts, this Report aims to evaluate Connecticut's EJ Law and articulate its value and limitations for environmental justice advocacy. Additionally, the Report recommends avenues for strengthening the EJ Law and its enforcement.

A. Report Methodology

This Report was conceptualized, researched, developed, and written by a team of graduate students with training in environmental studies, public health, law, and policy (“the Research Team”). The Report proceeds as follows: Section II provides an overview of the EJ Law's history, highlighting the original goals animating the law and how they evolved during the debate around the law. Section II draws from legislative history as well as interviews with Robert LaFrance, the legislative liaison who assisted in writing and negotiating the bill, and Sharon

Bridgeport



Lewis, the current Executive Director of CCEJ.²¹ Section III reviews the content of the EJ Law, outlining the activities, actors, and communities it covers, as well as the structures in place to implement it.

Section IV evaluates the extent to which the law has succeeded in facilitating meaningful public engagement throughout and after the permitting process. An evaluation of the EJ Law’s community participation requirement draws upon a selection of case studies intended to be representative of the facilities, communities, and permit types impacted by the EJ Law. The Research Team reviewed EJ Plans and Final Reports that

harms, drawing primarily from interviews with Connecticut DEEP Environmental Justice Program Administrator, Edith Pestana, as well as publicly available data on toxic releases, pollution, and siting of hazardous facilities. For information regarding toxic releases and trends in environmental pollution, the Report refers to data from the Toxics Release Inventory (TRI).²² While these analyses do not account for all chemical release pollution in Connecticut, they do seek to capture overall trends in environmental and public health burdens.

Finally, Section VI makes recommendations for strengthening Connecticut’s new EJ Law in the interest of achieving environmental justice.

II. CONNECTICUT’S FIRST EJ BILL: VISION AND GOALS

According to CCEJ co-founder Mark Mitchell, Connecticut’s original EJ Law—codified at section 22a-20a of the Connecticut General Statutes—was the product of a nearly eight-year advocacy process heavily driven by communities concerned about environmental justice. Organizations such as CCEJ, the New

Haven Environmental Justice Network, the Connecticut Fund for the Environment (CFE), the NAACP of CT, the Connecticut League of Conservation Voters, Toxic Action Center, and the East End Neighborhood Revitalization Zone (NRZ) spearheaded these efforts. After many years of fighting for environmental justice issues on a case-by-case basis, advocates and stakeholders recognized the need for a statewide policy to achieve a more equitable distribution of environmental benefits and burdens.

were submitted to and collected by DEEP and selected several facilities that went through the EJ Law compliance process for closer examination. For each of these, the Research Team interviewed individuals involved in each process and qualitatively assessed outcomes based on the EJ Law’s envisioned and enacted goals.

Section V evaluates the EJ Law’s effects on statewide permitting and environmental

In pursuing such a law, early advocates had three main goals:

1. Eliminating disproportionate environmental burdens on BIPOC and low-income communities;
2. Providing communities a voice in affecting the outcomes of permit applications through “meaningful public participation” and
3. Strengthening the overall environmental enforcement powers of DEEP.

Of these goals, meaningful public participation was the clearest outcome of the final version of the bill.

A. Protecting Neighborhoods from the “Waste of the Region”

The EJ bill’s legislative history features ample testimony from residents and advocates about environmental and health stressors in their communities. Rosalind Beckham testified about living in an overburdened community close to a landfill and incinerator in North Hartford. She stressed that “Our neighborhood cannot, I repeat, cannot continue to be the dumping grounds for the waste of this region.” She said the health of her neighborhood had to be protected from “unchecked growth” and “additional polluting facilities,” and expressed hope that the bill would help poor neighborhoods breathe a little easier. Other testimony from residents, advocates, and government representatives similarly emphasized the need for a law to protect the health of environmentally overburdened communities, responding to longstanding statewide disparities in environmental

hazards and health outcomes based on race and socioeconomic status.

Throughout the bill’s legislative history, advocates underscored the importance of deliberative community engagement and public participation between project proponents and affected groups in bringing about improved environmental outcomes. Mark Mitchell emphasized the positive effects of stronger relationships between communities and facilities, noting that “this bill will provide benefits to businesses, to towns, to [the] environment, and to the public health by preserving and enhancing the environment, health, property values, and the quality of life for community residents.” He expressed hope that the bill would create incentives for companies to retrofit old polluting facilities to be both cleaner and more productive. Representative Jack Hennessey (D – Bridgeport), a key figure in the passage of the bill, explained that the availability of community environmental benefit agreements (CEBAs) in the bill could be used to fund remedies for environmental justice communities.²³ Hennessey emphasized that DEEP would be involved to ensure the equity of negotiations and enforceability of agreements.

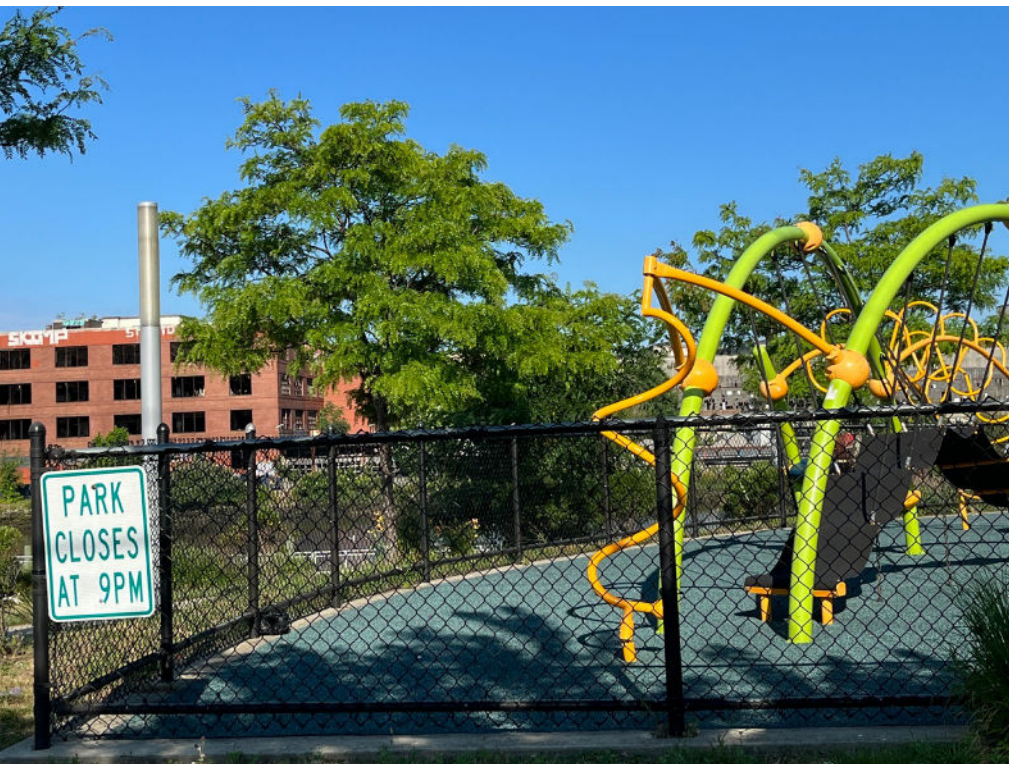
B. Giving Communities a Seat at the Table

Many in favor of the bill expected that “meaningful public participation” would allow local residents to influence permitting of a new or expanded facility. Representative Art Feltman (D – Hartford) commented that the bill would go a long way in “making real the right of the people to seek redress of grievances” by lowering barriers to access decision-makers. The African American Commission of Connecticut similarly stressed the importance of citizens having



Our neighborhood cannot, I repeat, cannot continue to be the dumping grounds for the waste of this region.

— Rosalind Beckham, CCEJ member



Bridgeport

a voice in environmental decisions that affect their lives through the support and administration of DEEP.

Representative Hennessey testified that, in the informal meetings required under the bill, “the people [will] have an opportunity to weigh in [and] comment on [the application for a permit], and to influence the regulatory agency’s decision.”²⁴ Hennessey acknowledged, however, that the agency would not be mandated to act on the community’s views. Rather, community members would be “at the table,” as they would receive “enhanced notification” of the permit.²⁵ While permit applicants would be responsible for organizing and running public participation meetings, Hennessey emphasized that public input “may... affect the plan as it goes forward.”²⁶

C. Codifying and Strengthening Existing Policies

Advocates noted that the bill would be instrumental to further reinforce DEEP’s pre-existing environmental justice efforts. In her testimony, then-DEEP Commissioner Gina McCarthy noted that DEEP’s Equity Policy had been in place since 1993. The policy stated that

“no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits.”

DEEP Commissioner Timothy Keeny had also established DEEP’s Environmental Justice Program in 1993 to facilitate environmental justice enforcement.²⁷ The initiative responded to a 1992 study of U.S. EPA’s environmental enforcement programs by the National Law Journal, which found unequal protection and application of law on the basis of race.²⁸ Then, in 1995, the EJ Program developed community participation standards for a number of new and expanding facilities in response to a civil rights complaint raising claims about the concentration of landfills in low-income communities and communities

of color.²⁹ The EJ Program also developed a guidance document addressing solid and hazardous waste permitting in 1995.³⁰ This guidance strongly recommended that permit applicants reach out to communities prior to site selection and filing an application, develop an Environmental Equity Plan outlining methods of public outreach, and submit a detailed report noting the implementation of the Plan.

According to DEEP EJ Program Administrator Edith Pestana, who has worked for the DEEP EJ Program since its inception

in 1994, the agency’s efforts to facilitate public participation plans and CEBA’s with facilities prior to the EJ Law, while impactful, lacked consistency, regularity, and a rigorous standard of “meaningfulness.” The EJ Law codified DEEP’s existing enhanced notification and enforcement policies, giving these policies and guidance enforceability and consistency.

“

We need the advanced warning that this Bill provides for,” she said, “because we’ve already got too many polluting facilities in our city and it’s causing us health effects.

—
Martha Kelly, Hartford resident and CCEJ member

In our proposed legislation, we are asking that neighborhood residents be adequately informed when an additional polluter wants to move into our community...We are asking that we be included in the decision-making process. We are also asking that the state help us with pollution reduction. In summary, we are asking that our health be protected.

—
Ginny Gerena, Hartford resident

“

No segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits

—
DEEP’s Environmental Equity Policy of 1993

D. The Great Compromise

While the EJ Law’s original goals shaped its backbone, the bill also evolved in the months leading up to its passage to garner sufficient political support. Indeed, the EJ Law passed only after a contentious and prolonged legislative fight marked by significant opposition. Throughout the legislative process, the bill was altered as advocates gauged opposition and found viable compromises to ensure passage. EJ Administrator Pestana recommended what would become the final approach to Commissioner Gina McCarthy.

Early drafts of the bill took a race-conscious approach, defining environmental justice communities to include both predominantly low-income communities and communities of color. The explicit acknowledgment of race sought to account for the significant and well-documented association between race and exposure to environmental burdens and hazards.³¹ However, the inclusion of race provoked pushback from legislators who were wary of supporting a law that might suggest that Connecticut engaged in racism or took race-conscious action. On Commissioner McCarthy’s suggestion, Mark Mitchell and CCEJ agreed to alter the bill to remove all mention of race—dubbed by some advocates “the great compromise.” The altered definition of “environmental justice communities” was based on the Connecticut Department of Economic and Community Development’s (DECD) list of “distressed municipalities,” which designates disadvantaged areas based on economic indicators, most notably poverty. While the removal of race from the bill frustrated many community groups, they agreed to compromise based on the understanding that the law’s orientation toward low-income communities would, by extension, result in attention to most Black and Latinx areas of concern.

MIRA Hartford Incinerator



In addition to letting go of a race-conscious definition of environmental justice communities, advocates had to compromise on which facilities were subject to the law. During the original drafting, stakeholders called for the EJ Law to target the types of facilities of most concern to environmental justice advocates. While many facilities of concern remained in the final version of the EJ Law, asphalt plants were removed during the legislative process to secure the requisite votes. Commissioner McCarthy also suggested the scope of the law be limited to new and expanded facilities in specific industries, to lessen the potential backlash from industries that did not want the law to apply to existing facilities.

Advocates originally envisioned that the EJ Law would apply to other state agencies besides DEEP and require consideration of cumulative impacts. For instance, commenting on an early draft of the bill,

Mark Mitchell suggested that the bill would extend to the Department of Public Utility Control and the Siting Council, thereby bolstering their enforcement powers. Martin Mador of the Connecticut Sierra Club said that the bill would require state agencies to develop more targeted policies to specifically address environmental injustice. The African American Affairs Commission of Connecticut expected that agencies would have to step up their enforcement for existing facilities. Mark Mitchell also testified that the bill would allow agencies to consider “the proximity of new facilities to existing facilities,” i.e. address the cumulative impacts of multiple



City of Waterbury Department of Public Works

exposures when reviewing permits. These provisions were removed from the draft bill before its passage.³²

The EJ Law was ultimately drafted to provide only procedural protections. It did not create new standards for reduced pollution in overburdened areas, nor prohibit the siting of facilities in already overburdened environmental justice communities. Rather, it focuses on requiring “meaningful public participation” in the siting and permitting of new or expanded facilities. CCEJ and other advocacy groups accepted this approach in part because past attempts to pass more substantive types of environmental justice statutes had failed, largely due to the lack of a legislation champion, stark opposition, and the lack of a supportive DEEP Commissioner. Advocates believed that a procedural environmental justice law was not only more likely to gain support but would also have helpful effects in tempering the cumulative impacts of environmental degradation in the same communities. By equipping the public with the power to negotiate with polluting facilities, advocates presumed that permit applicants would be less inclined to concentrate their activities in the environmental justice communities.

While the EJ Law was amended in 2020 to strengthen several provisions, the recent statute did not incorporate any of the substantive provisions that were struck during the negotiations of the original law.

III. THE EJ LAW IN PRACTICE

The EJ Law requires that all “affecting facilities” seeking a new or expanded permit or siting approval within a designated environmental justice community file a meaningful public participation plan with DEEP or the Connecticut Siting Council (CSC). These environmental justice plans, or “EJ Plans,” must be approved by DEEP or the CSC for the facility to be eligible to apply for the relevant permit,

certificate, or approval. Additionally, the EJ Law stipulates that all facilities covered by the law must consult with the chief elected official or officials of the town or towns in which they will operate, particularly to evaluate the potential need for a community environmental benefit agreement (CEBA). Since the law’s enactment in 2009, DEEP has reviewed over 70 EJ Plans and overseen the development of approximately seven CEBA’s.³³

A. Triggers for Action: Covered Facilities and Communities

Crucially, the EJ Law does not impose procedural requirements on every polluting or emitting facility in the state. To be covered, a facility must (1) be seeking a new or expanded permit or siting approval, (2) fall under one of the EJ Law’s categories of an “affecting facility,” and (3) be located within a designated “environmental justice community.” The EJ Law does not cover facilities that do not qualify as “affecting facilities” under the statute, facilities outside of designated “environmental justice communities,” or facilities built prior to 2009 that have not sought expansion. For instance, only 101 (36%) of the 280 pollutant-emitting facilities in the Toxics Release Inventory (TRI)³⁴ in Connecticut were in “environmental justice communities” as defined by the original EJ Law, and some of these do not fall under the EJ Law’s definition of “affecting facility,” underscoring the bounded scope of the law’s protections.



MIRA Hartford Incinerator

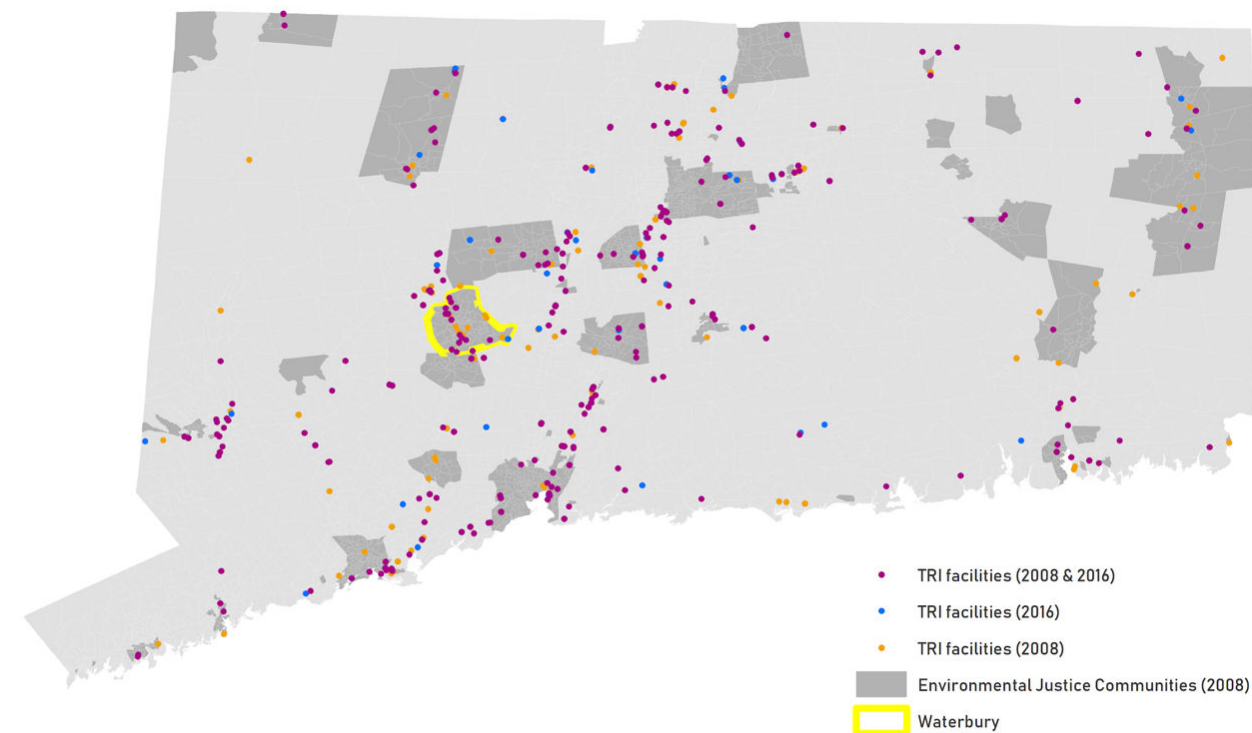
Table 1. TRI Facilities in Areas Covered and Not Covered by the EJ Law (comparing 2008 and 2016)³⁵

	In areas covered by the law ³⁶	In areas not covered by the law	% in areas covered by the law	Total
Number of facilities reporting Toxic Release Inventory (TRI) releases in 2008	132	209	38.7%	341
Number of facilities reporting TRI releases in 2016 ³⁷	101	179	36.1%	280
Total releases from TRI facilities in 2008 (pounds)	1,658,769	2,398,790	40.9%	4,057,559
Total releases from TRI facilities in 2016 (pounds) ³⁸	1,002,338	889,724	52.9%	1,892,062

As Figure 1 shows, many environmental justice communities, such as Waterbury, contain areas dense with TRI facilities. Yet, numerous TRI facilities cluster just outside of environmental justice communities. As toxic releases move with zero regard for

census block group or municipal boundaries, whether an emitting facility is inside or outside a community's borders remains a deficient proxy for how much its emissions affect residents in that community.

Figure 1. TRI Facilities in and out of Environmental Justice Communities.



Harper Leader - 1046 South Main Street, Waterbury

DEFINITION OF "AFFECTING FACILITIES"

The EJ Law covers a range of industries under its definition of "affecting facility," including:

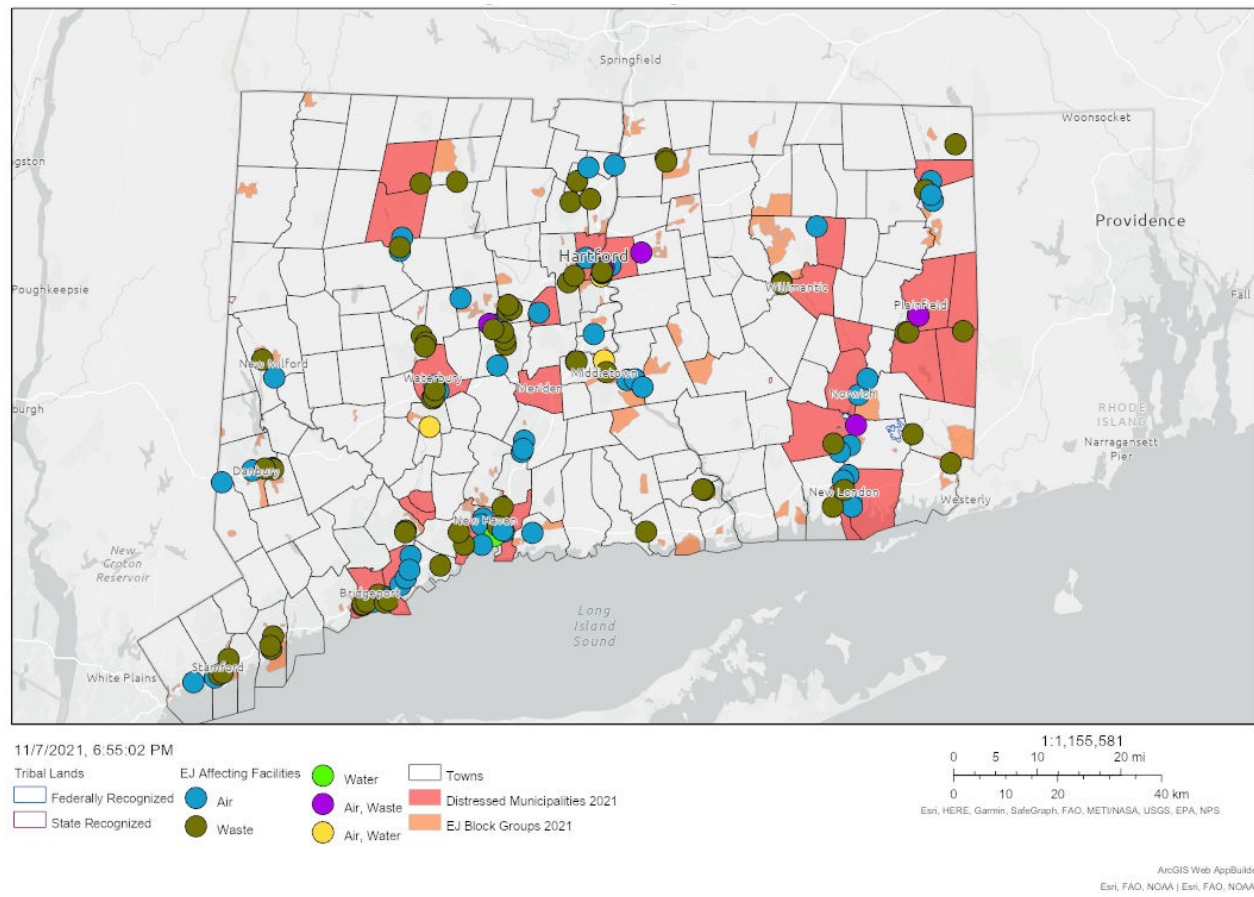
1. Electric generating facilities with a capacity of more than ten megawatts;
2. Sludge and solid waste incinerators or combustors;
3. Sewage treatment plants with a capacity of more than fifty million gallons per day;
4. Intermediate processing centers, volume reduction facilities, and multitown recycling facilities with a combined monthly volume in excess of twenty-five tons;
5. New or expanded landfills, including, but not limited to, a landfill that contains ash, construction and demolition debris, or solid waste;

6. Medical waste incinerators; and
7. Any major source of air pollution, as defined by the federal Clean Air Act.

The EJ Law specifically exempts the following facilities from coverage:

1. Portions of electric generating facilities which use "nonemitting and nonpolluting" renewable resources such as wind, solar, and hydropower or that uses fuel cells,
2. 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, and
3. 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 state law.

Figure 2. Affecting Facilities



DEFINITION OF “ENVIRONMENTAL JUSTICE COMMUNITIES”

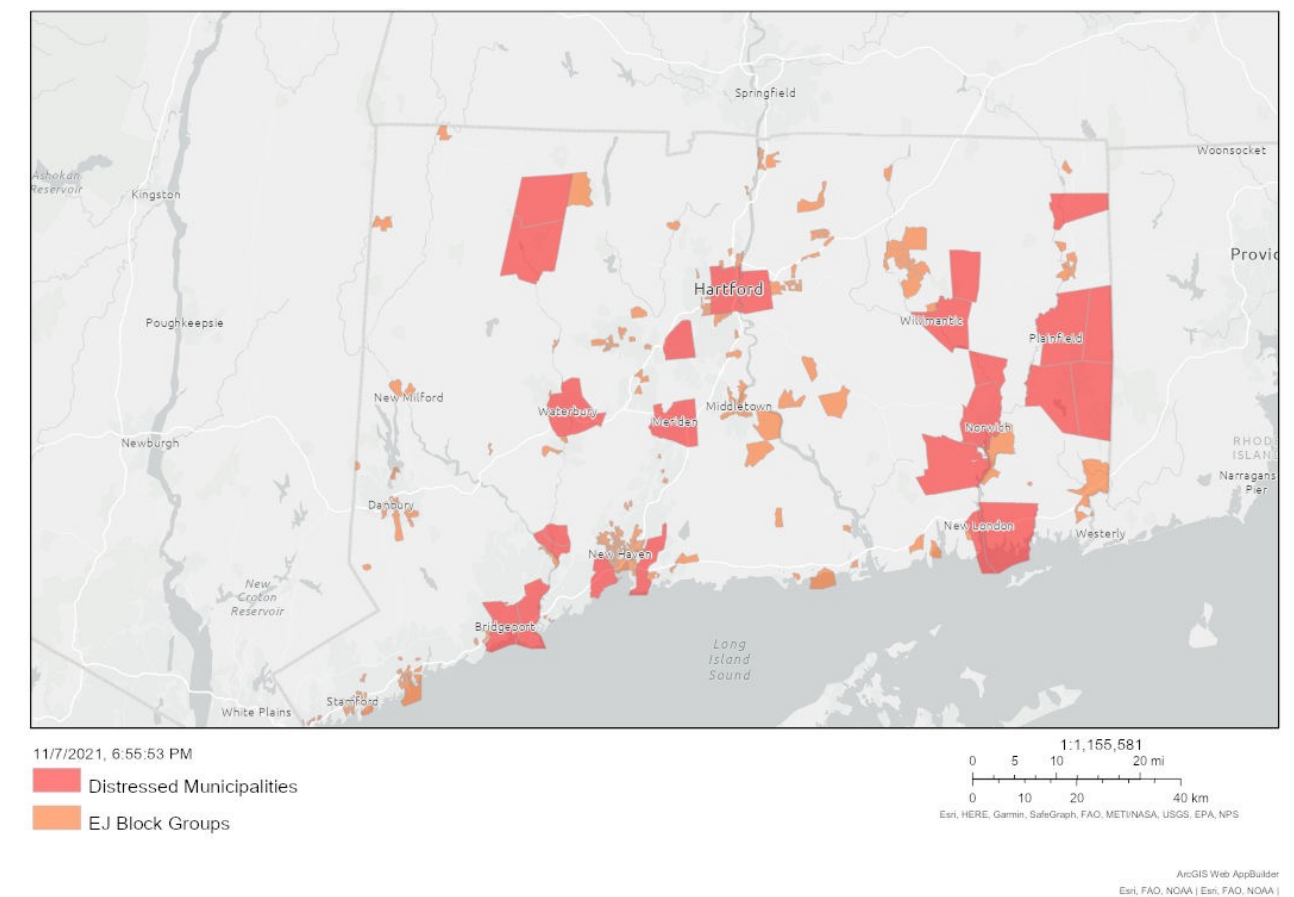
To trigger the EJ Law’s requirements, affecting facilities falling within the above parameters must also be located within a designated “environmental justice community.” To qualify as an “environmental justice community,” a locality must be either (1) in a census block group in

which 30% or more of the population had an income less than 200% below the poverty level at the most recent U.S. Census, or (2) fall under the statutory category of a “distressed municipality,” as designated by the DECD (Figure 3).

Since the 2020 revisions to the EJ Law, DEEP determines EJ census block groups using poverty data from the American Community Survey (ACS).³⁹ In contrast, DECD updates a list of “distressed municipalities” by ranking the 169 cities and towns in Connecticut based on the following factors: per capita income, percentage of the population in poverty, unemployment rate, changes in population, change in employment, change in per capita income, percentage of housing stock built before 1939, percentage of the population with a high school degree or greater, and the per capita adjusted equalized net grand list (AENGL).⁴⁰ then designates Connecticut’s 25 top-ranked towns as “distressed municipalities.”⁴¹

As seen in Figure 3, many environmental justice communities designated by census block group poverty levels fall within or are adjacent to environmental justice communities designated by presence in a distressed municipality. This likely reflects the use of a common variable (concentration of poverty using ACS data), as well as the correlation between poverty and other socioeconomic factors in the same regions throughout Connecticut. However, the block group level analysis identifies additional communities that would not otherwise be considered for enhanced process under the distressed municipality methodology.

Figure 3. Environmental Justice Communities





Waterbury Companies, Inc. - 835 South Main Street, Waterbury

B. Meaningful Public Participation

Under the EJ Law, all new or expanding facilities qualifying as an “affecting facility” that apply for a permit to operate or expand in an “environmental justice community” must file an EJ Plan with DEEP that facilitates “meaningful public participation” for the community.

To this end, the EJ Law mandates that EJ Plans do the following to meet the “meaningful public participation” standard:

1. Organize an informal public meeting that is convenient for the residents of the affected environmental justice community;
2. Publicize the date, time, and nature of the informal meeting between 10 and 30 days prior to the meeting taking place;
3. Publicize the date, time, and nature of the informal meeting with a mandatory quarter-page advertisement in a newspaper with general circulation in the affected area and any other appropriate local newspaper;
4. Post information about the meeting on the applicant’s website, if applicable.

UNDER THE EJ LAW, “MEANINGFUL PUBLIC PARTICIPATION” MEANS:

1. Residents of an environmental justice community have an appropriate opportunity to participate in decisions about a proposed facility or the expansion of an existing facility that may adversely affect such residents’ environment or health;
2. The public’s participation may influence the regulatory agency’s decision; and
3. The applicant for a new or expanded permit, certificate, or siting approval seeks out and facilitates the participation of those potentially affected during the regulatory process.

The 2020 revisions to the EJ Law made the following additional publicity and outreach steps mandatory, whereas the original EJ Law listed these as suggestions:

1. Post a reasonably visible sign in English on the facility property;
2. Post a reasonably visible sign in all languages spoken by at least 15% of the population residing within one-half mile of the new or expanding facility; and
3. Notify local and state elected officials in writing.

The suggestion to notify “neighborhood and environmental groups in writing in all appropriate languages” remains optional.

Affecting facilities, as well as other industries, must also comply with DEEP’s Environmental Equity Policy⁴² and federal nondiscrimination requirements, such as providing access for people who have limited English proficiency (LEP).⁴³

The EJ Law also requires that DEEP and/or CSC not take any action regarding a permit application until at least 60 days after the public participation meeting. Once a meeting has been held, the EJ Program requests that applicants submit to DEEP a final report regarding the EJ Plan’s implementation to ensure proper compliance. The 2020 revisions to the EJ Law attempt to strengthen the law by requiring an application to be “deemed insufficient” if an applicant fails to comply with the public participation requirements.

Lastly, the EJ Law requires applicants to consult with the chief elected official of the town in which their facility will be located or expanded to evaluate if a CEBA is needed. The 2020 revisions to the EJ Law require a CEBA if there are five or more “affecting facilities” in the municipality where the application is filed.

Even in its amended form, the EJ Law does not prohibit facilities from operating or expanding in overburdened communities nor change standards for approving permits; it only establishes new procedural requirements. Despite this limitation, the EJ Law sets a fairly high standard for environmental justice processes intended to afford the public the power to influence permitting in their communities. Additionally, by placing the burden of engaging in public participation on the permit applicant, the EJ Law attempts to lessen the administrative burden on DEEP.⁴⁴



Left to right: Joe Wasserman (green shirt), Gladys Ellis (seated), Cynthia Jennings (purple), Sharon Lewis (white), Dr Mark Mitchell.



Marina Village. Playground, highway, and diesel trucks in close proximity

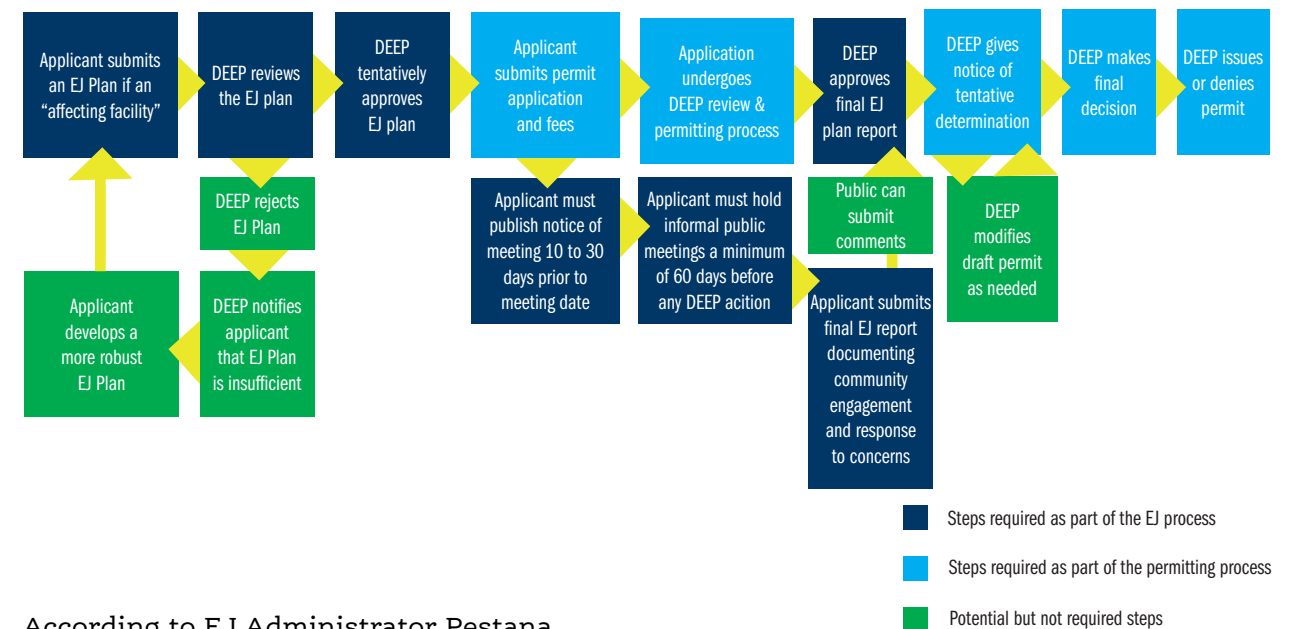
C. Implementation

Implementation of the EJ Law is conducted primarily through DEEP's Environmental Justice Program. As of 2022, the DEEP EJ Program has a staff of two individuals, consisting of EJ Administrator Pestana and Doris Johnson, the Outreach and Education Coordinator. The EJ Program keeps track of EJ Plans from start to finish, overseeing their submission, evaluating whether they are complete, and ultimately approving or dismissing them.⁴⁵

When an applicant seeks a new or expanded permit for an affecting facility located in an environmental justice community, it must first submit an EJ Plan to DEEP. If the EJ Plan is sufficiently thorough and meets the EJ Law's requirements, DEEP approves the EJ Plan, and the applicant then submits

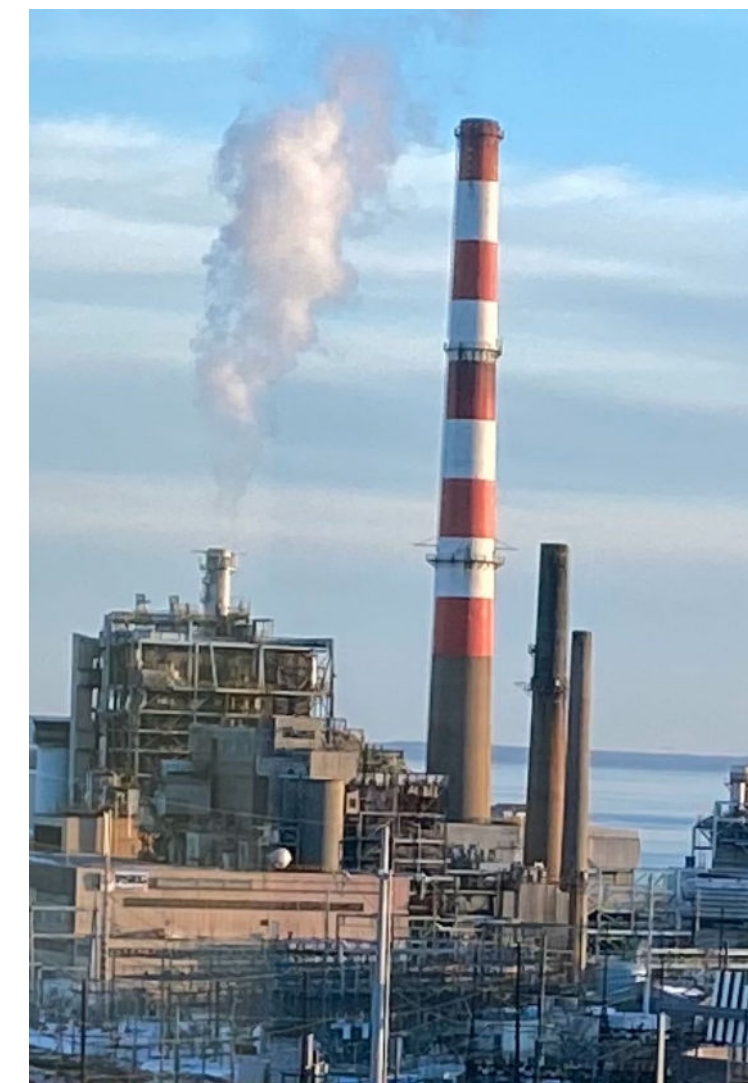
its permit or approval application and begins the public participation process. Upon conclusion of the public participation process, the applicant must submit a final report, furnishing details about the public meetings and outreach conduct. If the actions documented are deemed sufficient, DEEP proceeds with the review of the permit application. If either the initial EJ Plan or Final Report is found to be insufficient in facilitating meaningful public participation, DEEP requires that the applicant either amend its EJ Plan or bolster its implementation of the EJ Plan in order to move forward (e.g., by conducting additional outreach or meetings with the community, per DEEP's discretion). Under the 2020 revisions of the EJ Law, DEEP must deem an application "insufficient" if it fails to meet the EJ Law's requirements.

Figure 4. Overview of the DEEP EJ Plan Approval Process



According to EJ Administrator Pestana, DEEP evaluates whether EJ Plans and Final Reports are complete, based on a rubric of factors reflecting the facility's understanding of and engagement with the surrounding community. The DEEP EJ Program assesses details such as the number of listed neighborhood groups, outreach to other nearby neighborhoods, outreach to environmental justice groups, the time and location of the public meeting, and the number of community members and leaders contacted. DEEP reports that the agency has required applicants to amend an initial EJ Plan or bolster implementation.⁴⁶ As discussed further in Section IV, the EJ Program very rarely rejects EJ Plans outright, as its implementation philosophy has emphasized collaboration with facilities in which they are sited. DEEP's approach also reflects pressure from industry and members of Connecticut's Legislature to issue permits faster. According to EJ Administrator Pestana, DEEP has received criticism for not issuing permits quickly, with industry viewing the EJ Program as an obstacle to efficient business. Indeed, under Commissioner Daniel Esty's administration from 2011 to 2014, the permitting programs underwent numerous changes to expedite the issuance of permits.

PSEG Powerplant Bridgeport



IV. PARTICIPATION, PERMITTING, & POLLUTION IN CONNECTICUT: 13 YEARS LATER

Over the last 13 years, public participation has become a feature of the permitting process, resulting in more engagement between communities and industry. Notification and accessibility of community meetings remain a challenge and, even when stakeholders do gather under one roof to discuss permitting of hazardous facilities, these meetings may not provide substantive benefits for community members.

The law's impacts on permitting and pollution trends are more difficult to pinpoint. It is beyond the scope of this Report to quantify trends in the frequency and nature of permitting of emitting facilities since 2008, though such an assessment would be a welcome contribution to the statewide environmental justice literature. Likewise, it is difficult to measure potential pollution and health impacts of the EJ Law, as many shifting variables have influenced environmental and public health burdens since the law's passage. As such, this Report does not attempt to do so. This Section does feature a brief overview of the current state of permitting, siting, and pollution of emitting facilities in Connecticut, noting data limitations as well as the many ways in which disproportionate environmental burdens in communities of color and economically distressed areas remain an issue.

Anamet, Inc. - 689 South Main Street



A. Perceptions of Public Participation

Public participation under the EJ Law is initiated by a notification process. While notification is primarily the responsibility of the applicant, the DEEP EJ Program plays an active role by reaching out to community leaders and overseeing public outreach at the beginning of a new EJ Plan process. While these efforts have, in most cases, facilitated helpful community awareness of new facilities in EJ communities, both industry and community organizations have voiced concerns about the notification process. In conversations with a permit applicant and other individuals affiliated with the process, the Research Team learned of multiple instances where industry heavily invested in notifying the local community, for only a handful of residents to appear at the meeting.

Community members have raised complaints about public meetings inconveniently scheduled or located—either across town or during a month when residents are typically on vacation (August and December). Newspaper and posted sign notification methods have also been criticized as ineffective: Many residents do not subscribe to local newspapers, and relevant road signage is rarely seen. Communities without active community groups rely, in part, on local elected officials to notify them about a permit application; however, local officials may have economic and political incentives to ensure that the development of the facility moves forward, and disincentives to adequately notify their constituents. One community activist, in her comments on the proposed revisions to the EJ Law in 2020, wrote,

“I frequently, as a private citizen on the EJ notification list at DEEP, did enhanced notification on my own time and dime, going door to door in the affected neighborhood, creating a flyer and passing it out, including a little information for why it might be important for people to attend. I really had to supplement the existing notification for this law to work[,] trying to make sure that people in the affected area were notified of the informational session.”

Moreover, EJ Administrator Pestana has noted that budget and staff cuts have limited her office's ability to fortify the public notification process through agency outreach. With just two full-time staff members, the EJ Program is often unable to supervise notification and outreach at the level needed to ensure meaningful public participation.

Challenges facing the notification process aside, the EJ Law has been generally effective in bringing communities and industry together under one roof to discuss the permitting of hazardous facilities. Results from these discussions, however, have varied. In some cases, these conversations have been constructive. Discussions have yielded sizable CEBA funding sustainability initiatives in Waterbury, Bridgeport, New Haven, and Killingly. In other cases, disagreements between the political players within a community have led to tense communication and outcomes that left

much to be desired for all parties involved. In at least one instance, industry hostility toward the community left residents to conclude that the EJ Law was not sufficiently strong enough to ensure that their voices were heard. The outrage that followed these interactions motivated the 2020 revisions to the EJ Law.

For all the EJ Plans, community culture and resources play a big part in determining local engagement with industry and outcomes from community meetings. In Killingly, a town described as “tight-knit” by state officials, residents

hired a lawyer to guide them through the negotiations of a CEBA with a natural gas power plant, allowing them to secure the \$9 million agreement designed to fund scholarships, water testing, and other beneficial projects. The abundance of meetings and degree to which locals engaged with the facility have seemed to foster a positive relationship between the power plant and the town. However, the Killingly gas plant CEBA has not been implemented as the project has faced legal barriers, as well as concerns from

environmental advocates and the Lamont Administration about expanding fossil fuel energy production.⁴⁷

While the Killingly environmental justice community meetings appear to have been more amicable, negotiations were tense regarding a proposal to transition a coal-fired power plant to gas in Bridgeport. One interviewee involved in Bridgeport's CEBA negotiations noted that content from the community meetings did

“

The EJ statute was very useful to our organization on several occasions, especially in 2010 when PSE&G wished to add three new peak boilers at its Harbor Station power plant in what was (and is) one of the most environmentally overburdened neighborhoods in the state. Thanks to the EJ statute we were able to ensure that there would be no net increase in pollution resulting from the Harbor Station expansion.

—
Aaron Goode, steering committee member of New Haven Environmental Justice Network (2008-2016)

not inform CEBA negotiations and that CEBA negotiations did not incorporate public participation beyond two town council members. Ultimately, the CEBA negotiating committee chair concluded that outcomes of the process were hampered by infighting amongst the organizations negotiating on behalf of the community. For instance, participating organizations strongly disagreed about who would train residents for careers in the construction trades for employment at the power plant. Furthermore, national environmental organizations and community-based groups that had initially united around closing

Connecticut’s last coal plant ultimately disagreed on whether to oppose the plan to transition the facility to a gas-fired plant. The Bridgeport community negotiated a \$5 million CEBA in 2016, and funds are anticipated in 2022.

A community’s ability to leverage the EJ Law’s public participation and CEBA processes depends on multiple factors, such as the community’s size; the relationships between public officials, advocacy organizations, and other stakeholders; interest convergence between these groups; and access to attorneys. Currently, not all communities are equally situated, leading to vast differences in a community’s ability to use the EJ Law’s CEBA and public participation processes. While fostering positive relationships among community groups may fall beyond the scope of a procedural law, providing resources for legal support and affirmative community buy-in throughout the processes mandated by the EJ Law, as recommended in Section VI, would minimize the degree to which community differences yield disparate outcomes from public participation activities and CEBA negotiations.

Finally, several accounts from residents in Waterbury, Connecticut, indicate that the EJ Law does not offer the community means of redress in circumstances where residents experience industry as hostile and disruptive of meaningful public participation. This raises a broader question shared by many procedural laws: What if, ultimately, the process becomes a formality and input is ignored?

In Waterbury, a solid waste facility seeking expansion submitted an EJ Plan in 2015. Residents found notification largely haphazard and inadequate. Among other issues, outreach was conducted only in English despite a large Latinx population, and the applicant failed to contact all relevant public officials and neighborhood groups. When locals learned of the project—and attended the meeting in unified opposition, given the zip code’s history as one of the most polluted in all of Connecticut—some residents felt that the information provided to them about

the expansion was superficial. That same year, the Waterbury Planning and Zoning Commission denied the permit in response to community opposition, seemingly halting the permitting process. However, the facility eventually sued the town, dragging out the process for an additional three years, at which time the city settled without input from Planning and Zoning or the community, and without a CEBA agreement. With the EJ Plan’s approval three years earlier, without community involvement in the lawsuit settlement, and without a CEBA, residents felt they had no opportunities for recourse. Prompted

“
The devil’s in the details on this stuff.
You can comply with the law but not really.
—
Steve Schrag, Waterbury resident

in part by community dissatisfaction with the permitted expansion of this solid waste facility in Waterbury, state representatives introduced the Substitute House Bill No. 5395 in January 2019, which eventually updated the EJ Law in November 2020.

In practice, many EJ meetings feature a one-way flow of information, with applicants providing information to community members but failing to provide a forum for community perspectives. Such interactions do not foster a meaningful relationship between locals and the facility. Additionally, public participation meetings often feature surface-level descriptions of the project and its health effects, without the oversight of a neutral fact-checker. Community members thus have no way of knowing whether they are receiving candid or useful information. If the applicant does not provide a detailed overview of its operations, nor adequately notify the public, as was the case in

Waterbury, communities have no recourse to demand more. Sometimes the dedication of an elected representative can inspire closer collaboration between facilities and their surroundings; however, not all communities can depend on their elected representatives to do so. Thus, while the EJ Law sets a helpful floor for engagement, it could be significantly bolstered by giving communities more leverage, as discussed further in Section VI.

B. Impacts on Permitting

According to EJ Administrator Pestana, the EJ Law is unlikely to have had any effect on the number of permit applications for facility siting or expansion. To date, DEEP’s EJ Program has rejected inadequate EJ Plans; however, an EJ Plan has never been the basis for permit denial. When DEEP receives an insufficient EJ Plan or Final Report, the applicant receives a Disapproval and is asked to re-submit and continue public participation until the Plan or Report is up to standard. While the EJ Law has created additional layers of process and opportunities for engagement, its requirements do not ultimately prevent permits from moving forward in overburdened areas.

Without consistently collected data, neither DEEP nor the Research Team can conclude definitively how the EJ Law has influenced the number or location of permits for affecting facilities before or after 2008. While siting of facilities continues in environmental justice communities already burdened by hazardous facilities—such as Bridgeport, Waterbury, New Haven, and Hartford—without baseline data or recordkeeping of permitting since the EJ Law’s passage, the Research Team cannot determine if permit applications or approvals have increased, declined, or remained constant. Data limitations additionally prevent mapping the locations of all facilities in environmental justice communities, and drawing correlations between facility types, siting locations, permit types, EJ Plan outreach mechanisms, and community characteristics. This data is critical to thoroughly assess

the effectiveness of the law and its impacts on permitting in EJ communities. Thus, in Section VI, this Report recommends dedicated funds and establishing best practices for robust recordkeeping of EJ Plans and permits for affecting facilities.

Nevertheless, siting and permitting of affecting facilities within environmental justice communities suggests that environmental and public health burdens continue to be concentrated within the same distressed localities. To give the EJ Law more strength and reduce pollution burdens on environmental justice communities, this Report further recommends the passage of a next-generation, substantive EJ Law to place limits on facility siting and permitting in the most overburdened environmental justice communities.

C. Pollution and Health

Although air quality has improved in Connecticut since the passage of the EJ Law in 2009,⁴⁷ air pollution remains a significant public health issue in the state.⁴⁸ Moreover, parts of Connecticut still have the highest ozone levels in the Northeastern United States,⁴⁹ with Connecticut’s residents of color disproportionately impacted by diseases tied to or exacerbated by air quality.⁵⁰ According to the TRI, Connecticut residents are also exposed to considerable toxic releases.⁵¹ While the overall number of TRI facilities in Connecticut has decreased over the past 13 years,⁵² a comparison of the maps in Figure 5, below, demonstrates that locations of TRI emissions remained similar in 2016 compared to 2008, prior to the passage of the EJ Law. Decreases in pollution levels have affected environmental justice communities and non-environmental justice communities differently. Although between 2008 and 2016 a greater proportion of TRI facilities ceased operation in environmental justice communities (reduction of 23.5% in environmental justice communities vs. 14.4% in non-environmental justice communities, Table 2), pollution output decreased more substantially in non-environmental justice communities (reduction of 39.6% in environmental justice communities vs. 62.9% in non-environmental justice communities).

Light pollution in New Haven

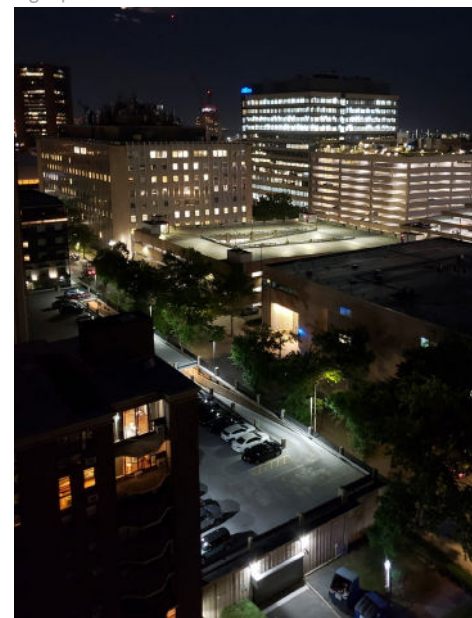
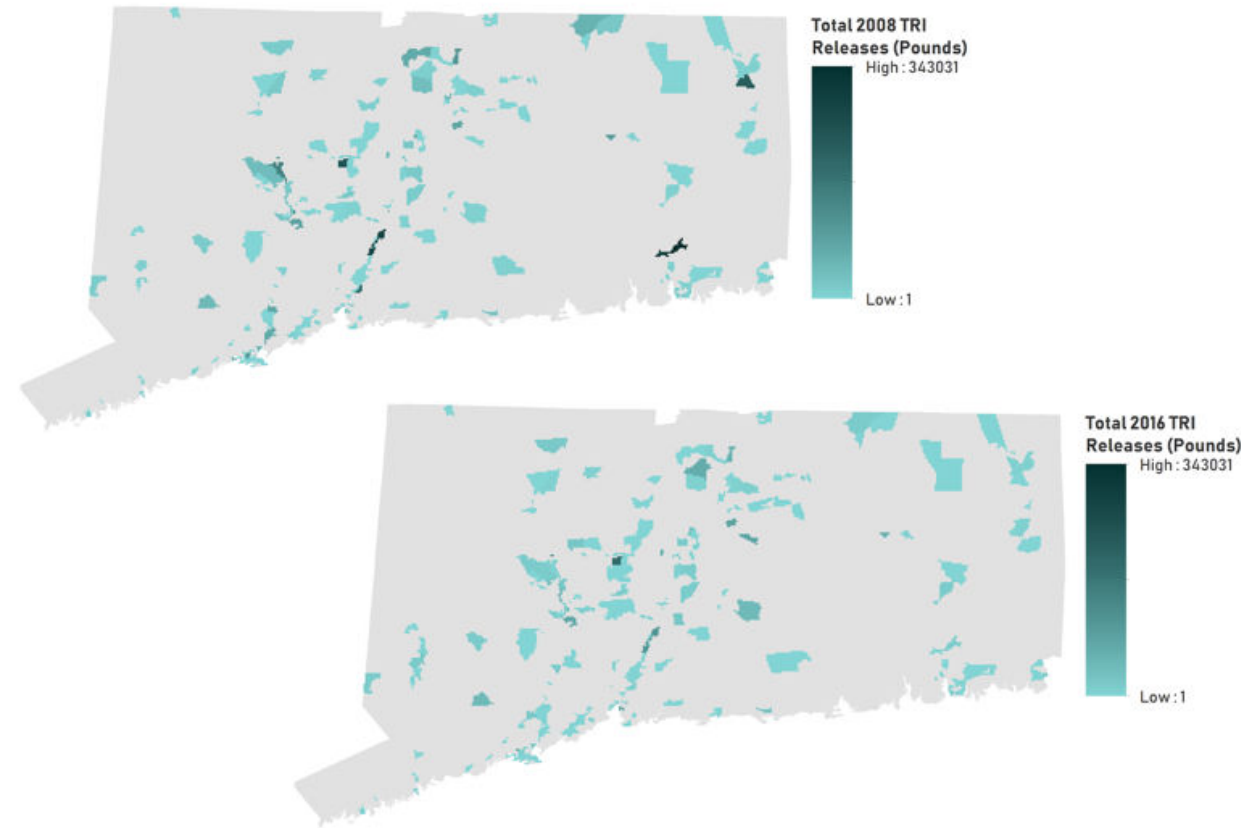


Figure 5. Differences in TRI Releases by Pound, 2008-2016.



Asthma remains a significant public health issue in Connecticut. Asthma prevalence rates have significantly increased since the 1980s,⁵³ and have remained relatively constant since the EJ Law was enacted. In 2020, 15% of adults and 18% of children in Connecticut had been diagnosed with asthma at some point in their lives.⁵⁴ The proportion of children diagnosed with asthma during their lifetimes has remained above 15% for the past decade.⁵⁵ Critically, these rates are elevated among Latinx and Black communities, which, as per Table 1, heavily overlap with environmental justice communities.⁵⁶ While the acute public health challenges faced by low-income communities and communities of color in the state are caused by multiple factors, many unrelated to the EJ Law, environmental justice concerns remain urgent. As such, the need remains to address disproportionate public health burdens in environmental justice

communities through more robust legislation.

While industrial facilities account for a large portion of the pollution emissions across the state, exhaust from mobile sources—including cars, trucks, and marine vessels—creates roughly half of the human-made air pollution in Connecticut.⁵⁷ These motor vehicle emissions are not evenly distributed across space. Fairfield County, which sits on the I-95 corridor and includes the distressed municipality of Bridgeport, features the highest ozone levels in the state, likely due to the high volume of traffic flowing between New York City and New England.⁵⁸ Jet streams, which carry ozone and other pollutants downwind from other states to Connecticut, are also a meaningful contributor to the state’s persistent air pollution problems.⁵⁹ For both of these sources of pollution, current state EJ protections offer no redress or remediation.

V. THE FUTURE OF EJ IN CONNECTICUT: NEXT STEPS AND RECOMMENDATIONS

Over a decade after the EJ Law’s passage, environmental justice advocates throughout the state continue to improve the existing law and envision a next-generation, substantive EJ Law, strengthened by the lessons and challenges of the past. The 2020 amendments to the EJ Law made five meaningful changes. The amended statute:

1. Requires applicants to incorporate new methods of publicizing public information sessions: (1) posting an informational sign on the property, (2) posting an informational sign within a half-mile radius of the property in all languages spoken by at least 15% of residents, and (3) notifying elected officials;
2. Requires DEEP to deem an application insufficient if it fails to comply with any of the required public notice requirements, except for the requirement to post a sign on the property itself;
3. Mandates the development of a CEBA between the community and the proposed facility if the municipality containing the facility already contains at least five other permitted affecting facilities;
4. Expands the list of impacts to be mitigated in a CEBA to explicitly include those related to quality of life, asthma rates, air quality, and waterways—factors not outrightly mentioned in the original EJ Law; and
5. Expands the types of projects that are explicitly recommended to be funded by CEBA to include asthma screening and air and waterway monitoring.

In 2021, DEEP also updated its tools to include a new web map showing demographics and affecting facilities and launched an effort to develop a statewide EJ Mapping Tool in partnership with the

University of Connecticut’s Connecticut Institute for Resilience and Climate Adaptation (CIRCA), implementing a recommendation made by the Equity and Environmental Justice Working Group of the Governor’s Council on Climate Change (GC3).⁶⁰

Two other environmental justice-related bills were proposed to the General Assembly’s Environment Committee in 2019, one establishing an appeal process prior to the authorization of a permit,⁶¹ and the other expanding the definition of affecting facilities to include those related to “demolition debris storage areas,” “contractor yards that store sand and silica,” and “car and metal scrapyards.”⁶² These bills are consistent with the findings of this Report and would strengthen the practice of environmental justice in Connecticut.

The remainder of this Section articulates the CCEJ’s recommendations to further improve the EJ Law’s design and implementation. While not exhaustive, these recommendations continue the conversation about the best next steps to address significant disparities in the siting of polluting facilities and to advance environmental justice in Connecticut.

To this end, recommendations can be summarized into four main directives:

1. Enhance DEEP’s enforcement capacity.
2. Place substantive limits on additional siting and permitting in “overburdened environmental justice communities.”
3. Increase community negotiation power in the public participation process.
4. Improve information flows and notification.

Importantly, though many of these recommendations ultimately fall under DEEP’s purview, DEEP’s capacity to take additional measures is conditional on the resources it receives from the legislative process. As such, we first and foremost recommend that the Governor and Connecticut Legislature grant the DEEP EJ Program the additional funds necessary to implement an effective environmental justice program.

A. Enhance DEEP’s Capacity for Implementation and Enforcement

Proper implementation and enforcement of the EJ Law depends on the capacity of DEEP’s EJ Program. While the EJ Program has put great thought and effort into the implementation of the EJ Law over the past 13 years, it has been hindered by a lack of resources and pressure to grant permits quickly and has lacked the mandate and resources to drive necessary data-tracking. CCEJ recommends the following:

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.

Putnam Ash Landfill



Ash from incinerators at Putnam Ash Landfill

B. Establish Substantive Protections including Limits on Siting and Permitting

It is time to say no to projects that further concentrate polluting sources in already overburdened communities. Materially reducing disproportionate environmental harms in environmental justice communities requires the Governor and the Legislature provide DEEP the authority and resources to limit permitting additional and expanding facilities in overburdened environmental justice communities. To create substantive protections, CCEJ recommends the following:

1. Pass a next-generation EJ Law that (1) requires consideration of cumulative environmental and public health impacts in siting and permitting,⁶⁴ (2) requires that DEEP deny permits that would contribute to cumulative environmental and public health impacts in designated overburdened environmental justice communities, and (3) establishes buffers to limit how close affecting facilities can be built near sensitive sites, such as schools, playgrounds, hospitals, and public housing.
2. Modify, through statute, the criteria for DEEP’s designation of “environmental justice community” to include not just socioeconomic factors, but also race, limited English proficiency, Indigenous communities and Tribal Nations, and areas with disproportionate pollution burdens. DEEP should use the CT EJ Screen Tool to identify which communities meet the criteria, as is done by the California Environmental Protection Agency using CalEnviroScreen.⁶⁴ This change will ensure that the EJ Law will apply to the parts of Connecticut that have both the greatest health risks and the least financial capacity to address them.

3. Create a new statutory designation for “overburdened environmental justice communities,” referring to census block groups within environmental justice communities or distressed municipalities that already contain at least five other permitted affecting facilities or feature the highest level of cumulative impacts per the EJ Screen Tool, above.⁶⁵
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, using the CT EJ Screen Tool. The assessment should be made available for public review and comment during the public participation process.
5. Require and fund the Connecticut Department of Public Health (DPH) to provide a health assessment of potential permits in environmental justice communities.⁶⁶ Where health assessments are conducted on a project pursuant to the Connecticut Environmental Policy Act (CEPA), either in the environmental assessment or as part of the environmental impact evaluation, such assessments can be considered as part of the health assessment. The health assessments should be made available for public review and comment during the public participation process. Currently, affecting facilities are solely responsible for disseminating information to community members about the potential environmental impacts of a given site, though facilities may not be perceived as neutral providers of information. The DPH is in a better position to assess the health of a community—comprehensively and credibly.
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

Connecticut’s public participation process fails to give environmental justice communities a meaningful voice due to limitations and gaps in requirements—notably mandating only that applicants engage with public officials to evaluate the need for a CEBA but fails to ensure dialogue directly with a broader stakeholder group. To address these issues, CCEJ recommends the following:

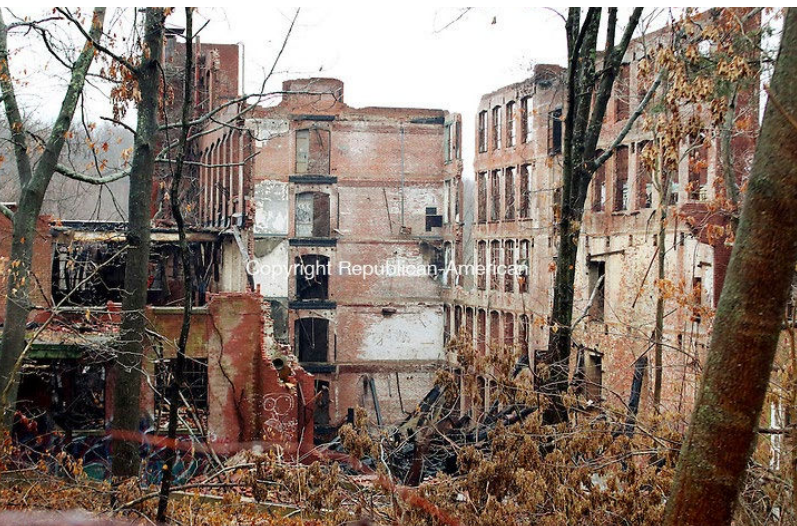
1. Expand DEEP’s capacity to implement the public participation requirements of the permitting process by creating a fund to support the program, including funds for additional facilitators to attend public meetings and foster dialogue. In conjunction, DEEP should create protocols for municipalities and community leaders to apply for facilitation services during ongoing public participation processes and CEBA negotiations.
2. Clarify that DEEP must develop and implement procedures for soliciting feedback from community members and consider that feedback in making a final decision on the permit and require at least one public participation meeting during all CEBA negotiation processes to ensure constituent voices are heard along with city officials at this stage.



Laurel Park Landfill

3. Require that public participation and environmental justice requirements in the EJ Law begin during the siting process, rather than later during the permitting process when there are fewer opportunities to move or change a facility. By beginning community participation during the siting phase of new or expanding projects, communities can have a greater influence on where facilities are located.
4. Create an appeals process specifically for environmental justice communities with concerns regarding whether an applicant properly complied with the EJ Law's requirements.
5. Fund the Connecticut Bar Association 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. Communities with access to legal representation have been able to use the EJ Law's public participation process more effectively. A pro-bono legal network would help to ensure that municipalities across Connecticut can equally take advantage of these benefits.
6. Require additional opportunities for public participation after each permit is granted in environmental justice communities. The current regime affords neither DEEP nor residents an opportunity to voice environmental justice concerns about a facility after it has completed the initial public participation process. The lack of such a feature undermines applicant incentives to invest in long-term relationships with communities.

40 Bristol Street, Waterbury



D. Improve Information Flow and Notification

Under the outreach requirements of the current EJ Law, applicants must notify the community about public participation meetings through newspaper notices and signage, but these forms of notice fail to reach many affected individuals. CCEJ recommends the following low-cost changes to improve the reach and quality of public participation:

1. Amend the EJ Law to require that applicants:
 - a. incorporate digital communication (email, social media, community forums, and newsletters) into their outreach strategy;
 - b. send certified mail notifications to all addresses within two miles of the proposed facility, including contact telephone, website, and email for further information;
 - c. require two notices of the public meeting, the first at least 20 but no greater than 30 days before the meeting, and the second at least 10 days but less than 15 days before the meeting;
 - d. create an email network of interested people in each town to be used to disseminate information about follow-up meetings;
 - e. include in mail notifications information about the EJ Law and the protections it provides; and
 - f. require translation of all notices and other outreach material into 3 or 4 most commonly spoken languages within relevant census tracts.
2. Mandate that DEEP review its public participation and language access policies and plans to ensure that they conform to its civil rights obligations and make use of information about best practices and emerging technologies.⁶⁸ For example, DEEP could develop a mobile app that uses location services to notify people within a certain distance of a proposed facility site about a



Truck leaving landfill

permit application and public hearing. In conducting this review, DEEP should consider EPA guidance on public participation⁶⁸ and accessibility for people with limited English proficiency (LEP).⁶⁹ Federal guidelines, for example, recommend the following, among other things:

- a. Developing and implementing an effective public implementation plan to lay the foundation for community engagement, including:
 - i. A description of the community, including demographics, history, and background;
 - ii. Contact names for obtaining translation of documents and interpreters for meetings;
 - iii. The location of relevant information;
 - iv. A list of local media contacts, based on the culture of the community;
- b. Staff training;
- c. Involving the public “early and often” throughout the permitting process;
- d. Equipping communities with the tools needed to help ensure effective public involvement;
- e. Making assistance, including grants, available to the public; and
- f. Using alternative dispute resolution techniques.

These recommendations are all critical to meaningful public participation.

VI. CONCLUSION

Connecticut's EJ Law has been a useful step in creating dialogue about addressing environmental burdens in communities of color and low-income communities. However, it has not adequately addressed environmental and public health burdens and needs to be strengthened if it is to meet its intended goals. While the EJ Law's requirement of facilitating “meaningful public participation” whenever new or expanded permit applications are sought in environmental justice communities has been useful in creating some degree of community awareness about proposed developments, the EJ Law has not reduced permitting or pollution in these areas. Moreover, the public participation processes across the state have had mixed success based on different municipalities' resources and propensity to use the process to their benefit. These public participation processes have also frequently fallen short of creating the broad public awareness regarding potential new or expanded permits that the EJ Law aspires to provide communities.

Given these findings, CCEJ's recommendations would strengthen the EJ Law by increasing DEEP's enforcement capacity, placing substantive limits on additional siting and permitting in highly burdened EJ communities, bolstering community negotiation power, and improving information flows and notification. These recommendations seek to supplement ongoing advocacy efforts that envision a future for Connecticut free from environmental injustice.

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64. Cal. EPA, Designation of Disadvantaged Communities Pursuant to Senate Bill 535, (April 2017), <https://calepa.ca.gov/wp-content/uploads/sites/6/2017/04/SB-535-Designation-Final.pdf>.
65. Alternatively, the statute could create the designation and require DEEP to develop criteria for identifying overburdened environmental justice communities within six months.
66. Helpfully, DEEP already has a pre-existing relationship with DPH, and works regularly with them on brownfields, remediation, abandoned sites, etc. With a statutory designation of funds to do so, DEEP could expand this partnership to also include public health assessments of facilities in the public participation process.
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