

2021 -- S 0105

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE
ACT

Introduced By: Senators Euer, McCaffrey, Sosnowski, Kallman, Valverde, Mack,
Quezada, Cano, and Coyne

Date Introduced: January 26, 2021

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 17.11

4 ENVIRONMENTAL JUSTICE ACT

5 **42-17.11-1. Definitions.**

6 As used in this chapter:

7 (1) "Cumulative impacts" means an exposure, public health or environmental risk, or other
8 effect occurring in a specific geographical area, including from any environmental pollution
9 emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on
10 the combined past, present, and reasonably foreseeable emissions and discharges affecting the
11 geographical area. "Cumulative impacts" shall be evaluated based on any applicable guidance
12 issued by the department.

13 (2) "Department" means the department of environmental management (DEM).

14 (3) "Director" means the director of the DEM.

15 (4) "Facility" means any:

16 (i) Electric generating facility with a capacity of more than ten megawatts (10 MW);

17 (ii) Resource recovery facility or incinerator;

18 (iii) Sludge combustor facility or incinerator;

1 (iv) Sewage treatment plant with a capacity of more than fifty million (50,000,000) gallons
2 per day;

3 (v) Transfer station, recycling center, or other solid waste facility with a combined monthly
4 volume in excess of tons;

5 (vi) Landfill, including, but not limited to, a landfill that accepts ash, construction or
6 demolition debris, or solid waste;

7 (vii) Medical waste incinerator;

8 (viii) Pyrolysis or gasification facility; or

9 (ix) Major source of air pollution, as defined by the federal "Clean Air Act," 42
10 U.S.C.s.7401 et seq.

11 (5) "Environmental justice" means the fair treatment and meaningful involvement of all
12 people regardless of race, color, national origin, English language proficiency, or income with
13 respect to the development, implementation, and enforcement of environmental laws, regulations,
14 and policies.

15 (6) "Environmental justice focus area" refers to the definition set forth by the DEM in SOP
16 Number BEP-AWC-1, effective 6/26/09 and entitled, "Policy for Considering Environmental
17 Justice in the Review of Investigation and Remediation of Contaminated Properties", which states:
18 "In order to meet the various needs of different communities, the population in those communities
19 must be clearly and consistently understood by the engineers and scientists within state agencies
20 responsible for overseeing, improving or maintaining a clean and healthful environment, including
21 those agencies responsible for overseeing the investigation and clean-up of properties. The United
22 States Environmental Protection Agency (EPA) uses data from the census to develop population
23 maps in Geographic Information Systems (GIS). In establishing their mapping criteria, EPA
24 calculated (on a regional basis) the percent of the census block group that is minority AND the
25 percent of the block group that is low-income (under two (2) times federal poverty level). Areas
26 mapped by EPA are both (% minority & % low-income) high enough to rank in the top fifteen
27 percent (15%) of block groups. DEM has adopted similar criteria, however, it compared the block
28 groups on a state-wide basis instead of a regional basis. In addition, DEM mapped areas where the
29 percent of the block group that is minority OR the percent of the block group that is low-income
30 (under two (2) times federal poverty level) are high enough to rank in the top fifteen percent (15%)
31 of block groups state-wide. The census blocks meeting these criteria established by the DEM in
32 SOP Number BEP-AWC-1 shall be designated environmental justice focus areas."

33 (7) "Permit" means any permit, registration, or license issued by the DEM establishing the
34 regulatory and management requirements for an ongoing regulated activity as authorized by federal

1 law or state law.

2 **42-17.11-2. List of environmental justice areas.**

3 (a) No later than one hundred twenty (120) days after the effective date of this act, the
4 department of environmental management shall adopt a list of environmental justice focus areas in
5 the state. The department shall update the list of environmental justice focus areas periodically as
6 new data becomes available and upon promulgation by the federal government of a new federal
7 decennial census.

8 (b) No later than sixty (60) days after an environmental justice focus area is designated
9 pursuant to subsection (a) of this section, the governing body of the municipality in which the
10 environmental justice focus area is located, in consultation with appropriate community groups,
11 shall designate a representative of the environmental justice focus area.

12 **42-17.11-3. Permit requirements in an environmental justice focus area.**

13 (a) Beginning one hundred eighty (180) days after the effective date of this act, the DEM
14 shall not grant a permit for a new facility, or for the expansion of an existing facility, located in
15 whole or in part in an environmental justice focus area unless the permit applicant first:

16 (1) Prepares a report assessing the environmental impact of the proposed new facility, or
17 expansion of an existing facility, including any cumulative impacts on the environmental justice
18 focus area, any adverse environmental effects that cannot be avoided should the permit be granted,
19 and the public health impact on the environmental justice focus area of the proposed new facility
20 or expansion of an existing facility;

21 (2) Transmits the report required to be prepared pursuant to § 42- 17.11-3(a)(1) at least
22 thirty (30) days in advance of the public hearing required pursuant to § 42- 17.11-3(a)(3) to the
23 department, the governing body and the clerk of the municipality in which the environmental justice
24 focus area is located, and the designated representative of the environmental justice focus area. The
25 report shall be made available to the public at least thirty (30) days prior to the public hearing
26 required pursuant to § 42- 17.11-3(a)(3);

27 (3) Organizes and conducts a public hearing in a location convenient as much as possible
28 to all interested parties. The permit applicant shall publish public notices of the hearing in a
29 newspaper with statewide circulation and through the department's website and through a
30 newspaper, newsletters and other media that specifically focus on the community near the site not
31 less than twenty-one (21) days prior to the hearing. When appropriate, the notices shall be published
32 in Spanish, Portuguese or other languages. At least fourteen (14) days prior to the date set for such
33 hearing, a copy of the public notice shall be sent to the department, the governing body and the
34 clerk of the municipality in which the environmental justice focus area is located, and the

1 designated representative of the environmental justice focus area. At the public hearing, the permit
2 applicant shall provide clear, accurate, and complete information about the proposed new facility
3 or expansion of an existing facility and the potential environmental and health impacts of the new
4 or expanded facility. The hearing shall provide an opportunity for meaningful public participation
5 by residents of the environmental justice focus area. Following the public hearing, the director or
6 designee shall consider the testimony presented and evaluate any revisions or conditions to the
7 permit that may be necessary to reduce the adverse impact to the public health or to the environment
8 in environmental justice focus area.

9 (b) The department shall not issue a decision on the permit application until at least sixty
10 (60) days after the public hearing held pursuant to this section. Notwithstanding the provisions of
11 any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may
12 deny a permit application in an environmental justice focus area upon a finding that the approval
13 of the permit would, together with the cumulative impacts posed by the existing conditions,
14 including conditions resulting from permitted activities, in the environmental justice focus area,
15 constitute an unreasonable risk to the health of the residents of the environmental justice focus area
16 or to the environment in the environmental justice focus area.

17 (c) The department, when evaluating an application for a permit pursuant to this section,
18 shall assess the community support for the proposed new facility or expansion of an existing
19 facility, as demonstrated through the public hearing conducted pursuant to § 42-17.11-3(a), letters
20 of support for, or opposition to, the proposed new or expanded facility, and any ordinance or
21 resolution adopted by the governing body of the municipality in which the environmental justice
22 focus area is located. The department shall consider community support, or the lack thereof, in its
23 decision to grant or deny a permit.

24 (d) If a permit applicant is applying for more than one permit for a proposed new facility
25 or expansion of an existing facility, the permit applicant shall only be required to comply with the
26 provisions of this section once for the same facility in the same location, unless the department, in
27 its discretion, determines that more than one public hearing is necessary due to the complexity of
28 the proposed new or expanded facility. Nothing in this section shall be construed to limit the
29 authority of the department to hold or require additional public hearings.

30 **42-17.11-4. Implementation.**

31 (a) The department of environmental management may adopt rules and regulations to
32 implement the provisions of this chapter.

33 (b) The department may issue guidance on how to evaluate cumulative impacts pursuant §
34 42-17.11-3(a)(1). The department shall publish the guidance document on its website.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE
ACT

1 This act would require the department of environmental management (DEM) to create a
2 list of environmental justice areas. Once the list of environmental justice areas is adopted the act
3 would establish requirements which would have to be met by an applicant prior to DEM issuing
4 permits for a new large electric generating facility, resource recovery facility or sludge combustor
5 facility.

6 This act would take effect upon passage.

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