

Title 13.  
Chapter 1D.  
Part XI. (New)  
Overburdened  
Communities  
§§1-5 -  
C.13:1D-157 to  
13:1D-161

P.L. 2020, CHAPTER 92, *approved September 18, 2020*  
Senate Committee Substitute (*Second Reprint*) for Senate Committee Substitute for  
Senate, No. 232

1 **AN ACT** concerning the disproportionate environmental and public  
2 health impacts of pollution on overburdened communities, and  
3 supplementing Title 13 of the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. The Legislature finds and declares that all New Jersey  
9 residents, regardless of income, race, ethnicity, color, or national  
10 origin, have a right to live, work, and recreate in a clean and healthy  
11 environment; that, historically, New Jersey's low-income  
12 communities and communities of color have been subject to a  
13 disproportionately high number of environmental and public health  
14 stressors, including pollution from numerous industrial,  
15 commercial, and governmental facilities located in those  
16 communities; that, as a result, residents in the State's overburdened  
17 communities have suffered from increased adverse health effects  
18 including, but not limited to, asthma, cancer, elevated blood lead  
19 levels, cardiovascular disease, and developmental disorders; that  
20 children are especially vulnerable to the adverse health effects  
21 caused by exposure to pollution, and that such health effects may  
22 severely limit a child's potential for future success; that the adverse  
23 effects caused by pollution impede the growth, stability, and long-  
24 term well-being of individuals and families living in overburdened  
25 communities; that the legacy of siting sources of pollution in  
26 overburdened communities continues to pose a threat to the health,  
27 well-being, and economic success of the State's most vulnerable  
28 residents; and that it is past time for the State to correct this  
29 historical injustice.

30 The Legislature further finds and declares that no community  
31 should bear a disproportionate share of the adverse environmental  
32 and public health consequences that accompany the State's

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted July 20, 2020.

<sup>2</sup>Assembly AAP committee amendments adopted August 24, 2020.

1 economic growth; that the State’s overburdened communities must  
2 have a meaningful opportunity to participate in any decision to  
3 allow in such communities certain types of facilities which, by the  
4 nature of their activity, have the potential to increase environmental  
5 and public health stressors; and that it is in the public interest for  
6 the State, where appropriate, to limit the future placement and  
7 expansion of such facilities in overburdened communities.  
8

9 2. As used in this act:

10 “Department” means the Department of Environmental  
11 Protection.

12 “Environmental or public health stressors” means sources of  
13 environmental pollution, including, but not limited to, concentrated  
14 areas of air pollution, mobile sources of air pollution, contaminated  
15 sites, transfer stations or other solid waste facilities, recycling  
16 facilities, scrap yards, and point-sources of water pollution  
17 including, but not limited to, water pollution from facilities or  
18 combined sewer overflows; or conditions that may cause potential  
19 public health impacts, including, but not limited to, asthma, cancer,  
20 elevated blood lead levels, cardiovascular disease, and  
21 developmental problems in the overburdened community.

22 “Facility” means any: (1) major source of air pollution; (2)  
23 resource recovery facility or incinerator; (3) sludge processing  
24 facility, combustor, or incinerator; (4) sewage treatment plant with  
25 a capacity of more than 50 million gallons per day; (5) transfer  
26 station or other solid waste facility, or recycling facility intending  
27 to receive at least 100 tons of recyclable material per day; (6) scrap  
28 metal facility; (7) landfill, including, but not limited to, a landfill  
29 that accepts ash, construction or demolition debris, or solid waste;  
30 or (8) medical waste incinerator <sup>1</sup>; except that “facility” shall not  
31 include a facility as defined in section 3 of P.L.1989, c.34 (C.13:1E-  
32 48.3) <sup>2</sup> [, or regulated medical waste processing equipment] that  
33 accepts regulated medical waste for disposal<sup>2</sup> , including a medical  
34 waste incinerator, that is attendant to a hospital or university and  
35 intended to process self-generated regulated medical waste<sup>1</sup>.

36 “Limited English proficiency” means that a household does not  
37 have an adult that speaks English “very well” according to the  
38 United States Census Bureau.

39 “Low-income household” means a household that is at or below  
40 twice the poverty threshold as that threshold is determined annually  
41 by the United States Census Bureau.

42 “Major source” means a major source of air pollution as defined  
43 by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules

1 and regulations adopted by the department pursuant to the “Air  
2 Pollution Control Act,” P.L.1954, c.212 (C.26:2C-1 et seq.) <sup>1</sup>or  
3 which directly emits, or has the potential to emit, one hundred tons  
4 per year or more of any air pollutant, or other applicable criteria set  
5 forth in the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq.<sup>1 2</sup>[.]<sup>2</sup>

6 “Overburdened community” means any census block group, as  
7 determined in accordance with the most recent United States  
8 Census, in which: (1) at least 35 percent of the households qualify  
9 as low-income households; (2) at least 40 percent of the residents  
10 identify as minority or as members of a State recognized tribal  
11 community; or (3) at least 40 percent of the households have limited  
12 English proficiency.

13 “Permit” means any individual permit, registration, or license  
14 issued by the department to a facility establishing the regulatory and  
15 management requirements for a regulated activity under the  
16 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-  
17 29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39  
18 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the  
19 “Comprehensive Regulated Medical Waste Management Act,”  
20 P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-  
21 99.21a et al.); the “New Jersey Statewide Mandatory Source  
22 Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-  
23 99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176  
24 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272  
25 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,”  
26 P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility  
27 Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands  
28 Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-  
29 1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212  
30 (C.26:2C-1 et seq.); the “Water Supply Management Act,”  
31 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-  
32 5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74  
33 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); <sup>1</sup>or<sup>1</sup>  
34 the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-  
35 50 et seq.) <sup>1</sup>; except that “permit” shall not include any  
36 authorization or approval necessary to perform a remediation, as  
37 defined pursuant to section 23 of P.L.1993, c.139 (C.58:10B-1), or  
38 any authorization or approval required for a minor modification of a  
39 facility’s major source permit for activities or improvements that do  
40 not increase emissions<sup>1</sup> .

41

42 3. No later than 120 days after the effective date of this act, the  
43 department shall publish and maintain on its Internet website a list

1 of overburdened communities in the State. The department shall  
2 update the list of overburdened communities at least once every two  
3 years. The department shall notify a municipality if any part of the  
4 municipality has been designated an overburdened community  
5 pursuant to this act.

6  
7 4. a. Beginning <sup>1</sup>[180 days after the effective date]  
8 immediately upon the adoption of the rules and regulations required  
9 pursuant to section 5<sup>1</sup> of this act, the department shall not consider  
10 complete for review any application for a permit for a new facility  
11 or for the expansion of an existing facility, or any application for  
12 the renewal of an existing facility's major source permit, if the  
13 facility is located, or proposed to be located, in whole or in part, in  
14 an overburdened community, unless the permit applicant first:

15 (1) Prepares an environmental justice impact statement that  
16 assesses the potential environmental and public health stressors  
17 associated with the proposed new or expanded facility, or with the  
18 existing major source, as applicable, including any adverse  
19 environmental or public health stressors that cannot be avoided if  
20 the permit is granted, and the environmental or public health  
21 stressors already borne by the overburdened community as a result  
22 of existing conditions located in or affecting the overburdened  
23 community;

24 (2) Transmits the environmental justice impact statement  
25 required to be prepared pursuant to paragraph (1) of this subsection,  
26 at least 60 days in advance of the public hearing required pursuant  
27 to paragraph (3) of this subsection, to the department and to the  
28 governing body and the clerk of the municipality in which the  
29 overburdened community is located. Upon receipt, the department  
30 shall publish the environmental justice impact statement on its  
31 Internet website; and

32 (3) Organizes and conducts a public hearing in the overburdened  
33 community. The permit applicant shall publish a notice of the  
34 public hearing in at least two newspapers circulating within the  
35 overburdened community, including one local non-English  
36 language newspaper, if applicable, not less than 60 days prior to the  
37 public hearing. The permit applicant shall provide a copy of the  
38 notice to the department, and the department shall publish the  
39 notice on its Internet website and in the monthly bulletin published  
40 pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice  
41 of the public hearing shall provide the date, time, and location of  
42 the public hearing, a description of the proposed new or expanded  
43 facility or existing major source, as applicable, a map indicating the

1 location of the facility, a brief summary of the environmental  
2 justice impact statement, information on how an interested person  
3 may review a copy of the complete environmental justice impact  
4 statement, an address for the submittal of written comments to the  
5 permit applicant, and any other information deemed appropriate by  
6 the department. At least 60 days prior to the public hearing, the  
7 permit applicant shall send a copy of the notice to the department  
8 and to the governing body and the clerk of the municipality in  
9 which the overburdened community is located. The applicant shall  
10 invite the municipality to participate in the public hearing. At the  
11 public hearing, the permit applicant shall provide clear, accurate,  
12 and complete information about the proposed new or expanded  
13 facility, or existing major source, as applicable, and the potential  
14 environmental and public health stressors associated with the  
15 facility. The permit applicant shall accept written and oral  
16 comments from any interested party, and provided an opportunity  
17 for meaningful public participation at the public hearing. The  
18 permit applicant shall transcribe the public hearing and, no later  
19 than 10 days after the public hearing, submit the transcript along  
20 with any written comments received, to the department. Following  
21 the public hearing, the department shall consider the testimony  
22 presented and any written comments received, and evaluate the  
23 issuance of, or conditions to, the permit, as necessary in order to  
24 avoid or reduce the adverse environmental or public health stressors  
25 affecting the overburdened community.

26 The department may require the applicant to consolidate the  
27 public hearing held pursuant to this paragraph with any other public  
28 hearing held or required by the department regarding the permit  
29 application, provided the public hearing meets the other  
30 requirements of this paragraph. <sup>2</sup>The department shall consider a  
31 request by a permit applicant to consolidate required public  
32 hearings and, if the request is granted by the department, the  
33 consolidation shall not preclude an application from being deemed  
34 complete for review pursuant to subsection a. of this section.<sup>2</sup>

35 b. Notwithstanding the provisions of P.L.1975, c.232  
36 (C.13:1D-29 et seq.) or any other law, or rule or regulation adopted  
37 pursuant thereto, to the contrary, the department shall not issue a  
38 decision on an application for a permit for a new facility or for the  
39 expansion of an existing facility, or on an application for the  
40 renewal of an existing facility's major source permit, if such facility  
41 is located, or proposed to be located, in whole or in part in an  
42 overburdened community until at least 45 days after the public

1 hearing held pursuant to paragraph (3) of subsection a. of this  
2 subsection.

3 c. Notwithstanding the provisions of any other law, or rule or  
4 regulation adopted pursuant thereto, to the contrary, the department  
5 shall, after review of the environmental justice impact statement  
6 prepared pursuant to paragraph (1) of subsection a. of this section  
7 and any other relevant information, including testimony and written  
8 comments received at the public hearing, deny a permit for a new  
9 facility <sup>1</sup>[or for the expansion of an existing facility, or apply new  
10 conditions to the renewal of an existing facility's major source  
11 permit,]<sup>1</sup> upon a finding that approval of the permit <sup>1</sup>[or permit  
12 renewal]<sup>1</sup>, as proposed, would, together with other environmental  
13 or public health stressors affecting the overburdened community,  
14 cause or contribute to adverse cumulative environmental or public  
15 health stressors in the overburdened community that are higher than  
16 those borne by other communities within the State, county, or other  
17 geographic unit of analysis as determined by the department  
18 pursuant to rule, regulation, or guidance <sup>1</sup>adopted or issued  
19 pursuant to section 5 of this act, except that where the department  
20 determines that a new <sup>2</sup>[or expanded]<sup>2</sup> facility will serve a  
21 compelling public interest in the community where it is to be  
22 located, the department may grant a permit that imposes conditions  
23 on the construction and operation of the facility to protect public  
24 health<sup>1</sup>.

25 d. <sup>1</sup>Notwithstanding the provisions of any other law, or rule or  
26 regulation adopted pursuant thereto, to the contrary, the department  
27 may, after review of the environmental justice impact statement  
28 prepared pursuant to paragraph (1) of subsection a. of this section  
29 and any other relevant information, including testimony and written  
30 comments received at the public hearing, apply conditions to a  
31 permit for the expansion of an existing facility, or the renewal of an  
32 existing facility's major source permit, concerning the construction  
33 and operation of the facility to protect public health, upon a finding  
34 that approval of a permit or permit renewal, as proposed, would,  
35 together with other environmental or public health stressors  
36 affecting the overburdened community, cause or contribute to  
37 adverse cumulative environmental or public health stressors in the  
38 overburdened community that are higher than those borne by other  
39 communities within the State, county, or other geographic unit of  
40 analysis as determined by the department pursuant to rule,  
41 regulation, or guidance adopted or issued pursuant to section 5 of  
42 this act.

1 e.<sup>1</sup> If a permit applicant is applying for more than one permit for  
2 a proposed new or expanded facility, the permit applicant shall only  
3 be required to comply with the provisions of this section once,  
4 unless the department, in its discretion, determines that more than  
5 one public hearing is necessary due to the complexity of the permit  
6 applications necessary for the proposed new or expanded facility.  
7 Nothing in this section shall be construed to limit the authority of  
8 the department to hold or require additional public hearings, as may  
9 be required by any other law, rule, or regulation.

10 <sup>1</sup>[e.] f.<sup>1</sup> <sup>2</sup>Nothing in this section shall be construed to limit the  
11 right of an applicant to continue facility operations during the  
12 process of permit renewal to the extent such right is conveyed by  
13 applicable law, rule, or regulation, including the application shield  
14 provisions of the rules and regulations adopted pursuant to the “Air  
15 Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1 et seq.).

16 g.<sup>2</sup> In addition to any other fee authorized by law, rule, or  
17 regulation, the department shall assess each permit applicant a  
18 reasonable fee in order to cover the department’s costs associated  
19 with the implementation of this act, including costs to provide  
20 technical assistance to permit applicants and overburdened  
21 communities as needed to comply with this act.

22  
23 5. a. The department shall adopt, pursuant to the  
24 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-  
25 1 et seq.) rules and regulations to implement the provisions of this  
26 act.

27 b. The department may issue a technical guidance for  
28 compliance with this act, which the department shall publish on its  
29 Internet website.

30  
31 6. This act shall take effect immediately.

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36 \_\_\_\_\_  
37 Requires DEP to evaluate environmental and public health  
38 stressors of certain facilities on overburdened communities when  
reviewing certain permit applications.