



LAW HELPS ENVIRONMENTAL JUSTICE TAKE STEP FORWARD

Towns, neighbors have input into pollution-causing projects

By **ROGER REYNOLDS**

In 2003, United Illuminating paid \$3 million to Quinnipiac Energy to take off its hands a long-dormant power plant known as English Station, situated in the middle of a dense New Haven neighborhood. QE planned to restart the plant as a peaking facility, using fuel oil.

The picture of dirty smokestacks emitting dangerous pollutants into the air breathed by people who already suffer from respiratory and cardiac diseases in large numbers became a defining moment for the environmental justice movement in Connecticut. The city of New Haven, the neighborhood, and environmental groups opposed the oil burning power plant and intervened in the Department of Environmental Protection permitting process. In a final administrative decision, the commissioner of Environmental Protection overruled the hearing officer and denied the permit based upon the adverse health impacts to the community surrounding the plant. *In the Matter of Quinnipiac Energy LLC*, 2003 WL 25579598 (Conn. Dept. Env. Prot.).

Five years later, in 2008, the legislature followed up by passing the Environmental Justice Communities Act (Conn. Gen. Stat. § 22a-20a). The first application of the so-called EJ Act, which coincidentally also involved a New Haven peaking power plant proposal, amply demonstrates both the strengths and the limitations of the new law.

The EJ Act addresses health issues in environmentally overburdened areas by

requiring community education and participation in siting and environmental permitting decisions. The bill's sponsor, state Rep. Jack Hennessy, a Bridgeport Democrat, described the bill's purpose "to define an environmental justice community and afford it certain rights so that it can participate in its future" and also to fulfill DEP's "mandate" to "reduce the intense pollution" in environmental justice communities.

The statute defines an Environmental Justice Community as either a census block group where 30 percent or more of the population is low income or a distressed municipality. Before seeking permits or approvals from the Connecticut Siting Council or DEP to site or operate certain large polluting facilities (such as power plants or incinerators) in an Environmental Justice Community, the owner must (1) file a meaningful public participation plan with the appropriate agency and (2) consult with the town or towns in which the facility would be located to evaluate the need for a Community Environmental Benefit Agreement. A benefit agreement is a written agreement between a host town and an owner or a developer to mitigate the environmental impacts of the proposed facility.

Transparent Process

The first project falling under the EJ Act was a proposal by the energy company, PSEG, to build three new natural gas peaking turbines on the site of its existing oil burning power plant known as Harbor

Station—a 30-year-old plant that is not subject to the more stringent pollution control standards that apply to new sources. The adjacent neighborhood is subjected to enormous amounts of pollution from the conjunction of diesel ships in the New Haven Harbor, the existing Harbor Station oil burning plant (that would continue to operate) and Interstate 95.

The initial meeting, required as part of the meaningful public participation plan under the EJ Act, provided an exchange between the company, the neighborhood, environmental groups, and the city. After that public meeting, a series of negotiations involving the city and other interested parties was initiated. In a transparent process involving further public meetings, the parties ultimately were able to agree upon terms that were incorporated into a Community Environmental Benefits Agreement. All of this occurred prior to the permit applications being submitted to the Siting Council or DEP.

The agreement required PSEG to request certain modifications to its permit for its older, dirtier plant that would collectively offset the emissions from the new plant to achieve no net increase of pollutants in the area from the two new peaking



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turbines. Because the reductions alone would not meet that goal with respect to small particulate matter, the agreement also incorporated a requirement to expend \$500,000 on pollution reduction projects to reduce small particulate pollution in the neighborhood.

These projects have not yet been determined but are likely to include electrifying piers to reduce the burning of diesel fuel in the harbor, retrofitting diesel equipment operating at the harbor and retrofitting diesel school buses that operate in the neighborhood. The community and environmental groups and the city, in turn, agreed not to oppose the permit for the new peaking turbines so long as the reductions from the older plant were included in the plant's permit. As of the time of the submission of this article, DEP is in the process of drafting the permit.

The process set up by the statute thus far seems to have met the stated goals of community involvement and participation in the permit process. A voluntary agreement was reached that mitigated the health concerns of the city and community and, if incorporated into the permit, will protect the neighborhood from additional pollution. This result was achieved through the efforts and cooperation of the

power company, the city, and community and environmental groups; however the informational hearings and negotiations required by the EJ Act certainly facilitated the process and moved it in a productive direction.

Siting Decisions

The EJ Act can serve as a good example to DEP of ways to make its permitting function more efficient and effective for controversial projects. By requiring an early exchange of information and encouraging involvement of impacted communities to address environmental and health issues before the formal hearing procedures, the process saved substantial time and adjudicative resources while actually increasing public participation and involvement.

What the EJ Act does not do, however, is to facilitate community participation in the initial decision making process as to where new power plant proposals should be sited in the first place. The English Station de-

cision concluded by stressing the need for revised siting strategies in Connecticut that move beyond the benefit and economic return of the applicant to include environmental and human health considerations in the affected community. *In the Matter of Quinnipiac Energy LLC* at 5. Permit proceedings in the Siting Council and DEP, the two agencies covered by the EJ Act, are both reactive in that they consider a project already proposed for a given location and determine whether that project is consistent with existing law.

The initial decision as to where the project will be proposed is still made by power plant owners (in this case, influenced by a DPUC process to add peaking capacity to the state) without consideration of community health impacts. Thus, while the EJ Act is a strong step in the right direction, there is certainly much that remains to be done to systematically consider and address health and equity concerns in Environmental Justice Communities. ■

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