



Environmental and Utilities Legal Update

New Requirements for Siting and Permitting in Connecticut

As of January 1, 2009, a party seeking to develop or expand certain facilities in Connecticut that require approval by the state Siting Council or the Department of Environmental Protection (DEP) must comply with significantly expanded public participation requirements before applying for or receiving approval from the Siting Council or DEP.

The new requirements arise from Public Act 08-94, *An Act Concerning Environmental Justice Communities and the Storage of Asbestos-Containing Material* (the "Act"), enacted in May 2008. The Act applies to certain proposed new or expanded facilities — including but not limited to a "major source" of air pollution under the federal Clean Air Act, certain electric generating facilities with a capacity of more than 10 megawatts, a sewage treatment plant with a capacity of more than 50 million gallons/day, and certain types of waste management facilities — that are located in an "environmental justice community." An "environmental justice community" is defined as either a U.S. census block group for which 30 percent or more of the population consists of low-income persons (income below 200 percent of the federal poverty level), or a Connecticut "distressed municipality," as defined by other state statutes relating to economic development.

In general, the Act requires a subject party to take three main steps:

1. Before filing an application for a "new or expanded" permit with DEP or an application for a Certificate of Environmental Compatibility and Public Need with the Siting Council, the party must now file and receive approval of a "meaningful public participation plan" from DEP or the Siting Council. "Meaningful public participation" means that community residents and other potentially affected persons are sought out and provided an opportunity to participate in and influence the regulatory agency's decision. The "meaningful public participation plan" must include an informal public meeting to be held for community residents. The plan must also contain measures to facilitate public participation. The Act specifies in great detail measures that may or must be taken, including sign posting, newspaper ads, Web page notices, and written notification to neighborhood and environmental groups and to local and state elected officials.
2. The party must hold an informal public meeting and offer "clear, accurate and complete" information about the proposed facility or facility expansion and its potential environmental and health impacts. The DEP or the Siting Council may not take any action on the party's permit, certificate, or approval earlier than 60 days after the informal public meeting.
3. The party must also consult with the chief elected official(s) of the town(s) in which the facility is to be located to evaluate the need for a "community environmental benefits agreement," which is defined as a written agreement by which the property owner or developer commits to the municipality to provide "financial resources" to mitigate, in whole or in part, "impacts reasonably related to the facility, including, but not limited to,

impacts on the environment, traffic, parking and noise." The municipality must provide community residents an opportunity to be heard concerning the need for and terms of such an agreement.

Where a facility must comply with the Act for both Siting Council and DEP approvals, the Act allows DEP to waive the requirement for an additional informal public meeting if one has already been held for purposes of the Siting Council approval.

DEP estimates that some or all of about 69 municipalities in the state qualify as an "environmental justice community." DEP is now working with the Department of Economics and Community Development (DECD) to identify these areas more specifically. DEP has also drafted template and guidance documents and will discuss these at a public workshop on Tuesday, January 13, 2009, 10:00 to 12:00 noon at DEP offices in Hartford.

In summary, the Act has the potential to alter significantly the timing, cost, and outcome of DEP and Siting Council applications for affected facilities.

Robinson & Cole is currently advising a number of clients regarding the Act and its potential impacts on facility development in Connecticut. We stand ready to apply our experience and insights to your operations and strategic planning. If you would like to discuss these issues and how they may impact your business, or if you would like a copy of the draft DEP implementation documents, please contact any of the following attorneys in our Environmental and Utilities Practice Group:

Earl Phillips, (860) 275-8220, ephillips@rc.com
Ken Baldwin, (860) 275-8345, kbaldwin@rc.com
Brian Freeman, (860) 275-8310, bfreeman@rc.com
Pamela Elkow, (203) 462-7548, pelkow@rc.com

Disclaimer: Nothing in the communication constitutes legal advice and shall not be relied upon as such. For legal advice, rely on your attorney. Robinson & Cole provides legal counsel only upon entering a written retainer with an identified client specifying the agreed scope of services.



© 2008 Robinson & Cole LLP

All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This newsletter should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole LLP and you. Consult your attorney before acting on the information in this newsletter.

This email was sent to: archive@rc.com

This email was sent by: Robinson & Cole LLP
280 Trumbull Street Hartford, CT 06103 Attn: Client Relations



We respect your right to privacy [view our policy](#)

[Manage Subscriptions](#) | [Update Profile](#) | [One-Click Unsubscribe](#)