

Connecticut Siting Council

Petition for Declaratory Ruling

- A. Any interested person may at any time request a declaratory ruling of the Council with respect to the applicability to such person of any statute, or the validity or applicability of any regulation, final decision, or order enforced, administered, or promulgated by the Council. Such request shall be addressed to the Council and sent to the principal office of the Council by mail or delivered in person during normal business hours. The request shall be signed by the person in whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person's attorney, if applicable. The request shall state clearly and concisely the substance and nature of the request; it shall identify the statute, regulation, final decision, or order concerning which the inquiry is made and shall identify the particular aspect to which the inquiry is directed. The request for a declaratory ruling shall be accompanied by a statement of any supporting data, facts, and arguments that support the position of the person making the inquiry. Where applicable, Sections 16-50j-13 through 16-50j-17 of the Regulation of Connecticut State Agencies govern the request for participation in the proceeding. (Regs., Conn. State Agencies § 16-50j-39)
- B. Within thirty (30) days after receipt of a petition for a declaratory ruling, the Council shall give notice of the petition to all persons to whom notice is required by any provision of law and to all other persons who have requested notice of declaratory ruling petitions on the subject matter of the petition. The Council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling. (Regs., Conn. State Agencies § 16-50j-40 (a))
- C. If the Council deems a hearing necessary or helpful in determining any issues concerning the request for a declaratory ruling, the Council shall schedule such hearing and give notice thereof as shall be appropriate. (Regs., Conn. State Agencies § 16-50j-40 (b))
- D. Within sixty (60) days after receipt of a petition for a declaratory ruling, the Council, in writing, shall:
1. Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified proceedings;
 2. Order the matter set for a specified proceeding;
 3. Agree to issue a declaratory ruling by a specified date;
 4. Decide not to issue a declaratory ruling and initiate regulation-making proceedings under General Statutes § 4-168 on the subject; or
 5. Decide not to issue a declaratory ruling, stating the reasons for its action. (Regs., Conn. State Agencies § 16-50j-40 (c))
- E. A copy of all rulings issued and any actions taken shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage pre-paid, return receipt requested. A declaratory ruling shall contain the names of all parties to the proceeding, the particular facts in which it is based, and the reasons for its conclusion. (Regs., Conn. State Agencies § 16-50j-40 (d))
- F. The filing fee for a declaratory ruling is \$500. The expenses incurred for a field inspection shall not exceed \$500 per review. Assessments shall be made to cover all other expenses incurred by the Council. Any fees which are in excess of the actual expenses of the Council will be refunded to the petitioner. (Regs., Conn. State Agencies §§ 16-50v-1a (a), 16-50v-1a (c), and 16-50v-1a (e))

G. Environmental Justice Public Participation Plan

For electric generation projects that qualify for expedited siting under C.G.S. §16-50k(a) or for electric generation projects that otherwise qualify for a declaratory ruling, the Council urges project proponents to comply with the spirit of the Environmental Justice Act despite its explicit reference to a "certificate under Chapter 277a." The Council is working closely with the DEP on meeting the requirements of the Act and project proponents should consult with DEP's Environmental Justice Program to verify compliance with all of the necessary terms and conditions.

Pursuant to Public Act 08-94 “An Act Concerning Environmental Justice Communities and the Storage of Asbestos Containing Material.” on or after January 1, 2009, applicants seeking to obtain any certificate under PUESA, a new or expanded permit or siting approval from the Siting Council or DEP involving an “**affecting facility**” (defined in part as an electric facility with a capacity of more than ten megawatts, but see exception contained in section C below) that is proposed to be located in an “**environmental justice community**” (defined as a U.S. census block group for which 30% or more of the population consists of low income persons with income below 200% federal poverty level or a “distressed municipality” as defined under C.G.S. §32-9p) or the proposed expansion of an “affecting facility” located in such community shall:

A. File a “Meaningful Public Participation Plan” Section 1(a) and (b)

1. To ensure residents of an environmental justice community have 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; the public’s participation may influence the regulatory agency’s decision; and 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.
2. To contain measures to facilitate meaningful public participation in the regulatory process and a certification that the applicant will undertake the measures contained in the plan.
 - a. identify a time and place where an informal public meeting will be held that is convenient for residents of the affected environmental justice community;
 - b. identify the methods by which the applicant will publicize the date, time and nature of the informal public meeting such as:
 - i. posting a reasonably visible sign on the proposed or existing facility property, printed in English;
 - ii. posting a reasonably visible sign printed in languages spoken by at least 20% of the population that live within ½ mile radius of the proposed or existing facility;
 - iii. notifying neighborhood and environmental groups in writing in a language appropriate for the target audience; and
 - iv. notifying state and local elected officials, in writing.
 - c. **Notice:** the applicant shall publish the date, time and nature of the informal public meeting with a minimum ¼ page advertisement in a newspaper having general circulation in the area affected not less than 10 days prior to and no more than 30 days prior to the informal public meeting.
3. The Siting Council shall review and approve such plan prior to filing any application for a permit, certificate or approval. If the Siting Council approves the plan and an informal public hearing has been held, DEP may approve the plan and waive the requirement that an additional informal public meeting be held.
4. **No action** shall be taken on an applicant’s permit, certificate or approval earlier than 60 days after the informal public meeting.

B. Consult with the chief elected official or officials of the town or towns in which the affecting facility is to be located or expanded to evaluate the need for a “community environmental benefit agreement.”

1. A “community environmental benefit agreement” is a written agreement entered into by a municipality and an owner or developer of real property whereby the owner or developer agrees to develop real property that is to be used for any new or expanded affecting facility and to provide financial resources for the purpose of mitigation of impacts reasonably related to the facility such as impacts on the environment, parking, traffic and noise.

2. **Mitigation Measures:** on-site or off-site funding for activities such as:

- a. environmental education;
- b. diesel pollution reduction;
- c. construction of biking and walking trails;
- d. staffing for parks;
- e. urban forestry;
- f. support for community gardens;
- g. any other negotiated benefit to the environment.

C. The definition of “**affecting facility**” does NOT include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydropower or that uses fuel cells, (ii) any facility for which a certificate of environmental compatibility and public need was obtained from Council on or before January 1, 2000, or (iii) 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 the provisions of sections 22a-1b to 22a-1h inclusive, of the general statutes and such evaluation has been determined to be satisfactory in accordance with section 22a-1e of the general statutes.

This overview is designed to answer general questions and provide basic information. Reference should be made to the appropriate statutes and regulations for specific regulatory language. Asserting a person’s rights and privileges is his or her responsibility. Although it is not obligatory, it is a person’s prerogative to obtain legal counsel.