

## **Delaware Environmental & Real Estate Law Update**

June 20, 2024

### **Environmental Justice Bills Pending in the Delaware General Assembly**

Two bills that may significantly impact the environmental permitting process are advancing through the Delaware General Assembly. The scope and obligations contemplated in these bills are broad and potentially burdensome to regulated parties.

#### Pre-Permit Community Outreach in Underserved Communities (HS 1 to HB 248)

[House Substitute 1 to House Bill 248](#) requires an applicant for a new or substantial modification of a specified environmental permit for a qualified project within three miles of an “underserved community” to submit a community outreach plan when submitting the permit application. The permits subject to this requirement include Clean Air Act, Coastal Zone Act, solid waste, NPDES, and hazardous waste. The community outreach plan must include (1) identification of an employee to serve as a community liaison to answer questions about the project and permit application; (2) a proposed mailing to all residences in the underserved community that includes a summary of the activity to be permitted; (3) the location, date, and time for conducting a community meeting near the underserved community; (4) a copy of a proposed meeting notice that must include the date, time, and location of the community meeting, information about how to participate in person or remotely, and the required summary; (5) a plan to publish the meeting notice online and in print; and (6) the community meeting must be held within the underserved community and allow for residents to interact and ask questions, and any written materials and presentations, where provided, must be free of technical language and include translation to the most frequently used non-English language if the underserved community has limited English proficiency. The applicant is also required to submit a report to the state environmental agency (DNREC) that contains community demographics; the project’s benefits; the proposed activities and their impact on air, water, soil, and human health; how and when residents will be informed of violations that result in emissions or releases above permitting levels; a description of operating conditions and control measures that serve to mitigate pollution associated with the permit application; and compliance history, among others. An applicant’s permit application will not be considered complete until the applicant completes a DNREC-approved community outreach plan.

The bill is opposed by many business interests and labor and trade associations in Delaware, and there are ongoing discussions with the legislative sponsor to amend the legislation. The Delaware General Assembly is in session through June 30, and some action is expected on HB 248 this session.

#### Healthy Communities and Environmental Justice Act (HB 422)

The Healthy Communities and Environmental Justice Act, [House Bill 422](#), would require an environmental justice impact report for a wide range of facilities and environmental permits. The bill



focuses on DNREC-issued permits to a broad grouping of commercial, municipal, and industrial businesses, whether for a new or expanded facility or a permit renewal. Permit applicants for any facility within a half-mile of an “overburdened community” must submit an environmental justice impact report to DNREC at least 60 days before a community information session, and the report must be reviewed and discussed during the community information session.

The legislation creates an Environmental Justice Board (“Board”) comprised largely of members of underserved communities. For any final permit application that requires an environmental justice impact report, a community information session and public hearing must be held in the overburdened community. At the information session and public hearing, the applicant must provide clear, accurate, and complete information about the proposed new or expanded facility, or existing permit, and potential cumulative impacts. Written materials and all presentations must be free of technical language and include translation to the most frequently used non-English language if the overburdened community has limited English proficiency. The community information session and public hearing must be recorded and a transcript prepared, then the applicant must provide the transcript with any comments to the Board and DNREC. The Board is to make recommendations to DNREC whether to grant, deny, or modify a facility’s permit application based on review of the environmental justice impact report and public hearing record. DNREC may not issue a permit decision for a facility in an overburdened community until it has the Board’s recommendation and the full public hearing record. The bill provides that DNREC is to deny a permit application upon a finding that approval of the permit would, together with existing conditions, cause or contribute to an adverse cumulative impact on the overburdened community, or constitute an unreasonable risk to those residents’ health or to the environment in that community. DNREC is to develop criteria to evaluate cumulative impacts based upon the best science and data available.

The legislation provides that it is effective upon enactment and that DNREC is to develop a list of overburdened communities within six months of enactment. The Board is to assist DNREC in developing criteria to define “overburdened community” and in developing metrics for determining whether a permit application will require an environmental justice impact report and public hearing.

HB 422 is opposed by many business interests and labor and trade associations in Delaware. It is not clear whether there will be legislative action on HB 422 this session.

*Please contact the attorneys at Richards Layton for further information, including the potential applicability of these bills to specific industries, permits, and projects.*