

# STATE OF NEW YORK

6251

2021-2022 Regular Sessions

## IN ASSEMBLY

March 10, 2021

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing the "pollution justice act of 2021" and implementing a plan to replace peaker plants with renewable energy systems

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "pollution justice act of 2021".

§ 2. Article 19 of the environmental conservation law is amended by adding a new title 13 to read as follows:

### TITLE 13

#### PEAKER PLANTS

#### Section 19-1301. Statement of findings.

##### 19-1303. Definitions.

##### 19-1305. Mandatory replacement and compliance plan.

##### 19-1307. Extensions for cause.

##### 19-1309. Prohibitions.

##### 19-1311. Exemptions.

#### § 19-1301. Statement of findings.

1. Electric generating units that generally operate during periods of peak electricity demand are known as peaker plants. Many peaker plants in the state are older fossil fuel-fired units that emit greenhouse gases and a variety of other harmful air pollutants including sulfur oxides, nitrogen oxides, particulates and mercury.

2. A substantial number of peaker plants are located in or adjacent to environmental justice communities in the city of New York and Long Island that already bear disproportionate pollution burdens due to a history of siting pollution sources in those communities. More than one million New Yorkers live within one mile of a peaker plant.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 3. Pollutants from peaker plants contribute to significant public  
2 health problems. According to the New York city department of health and  
3 mental hygiene's air pollution and the health of New Yorkers report:  
4 "each year, PM2.5 pollution in (New York City) causes more than 3,000  
5 deaths, 2,000 hospital admissions for lung and heart conditions, and  
6 approximately 6,000 emergency department visits for asthma in children  
7 and adults." According to the report, each year exposures to ozone  
8 concentrations above background levels cause an estimated "400 premature  
9 deaths, 850 hospitalizations for asthma and 4,500 emergency department  
10 visits for asthma."

11 4. Peaker plants often operate during summer months when air pollution  
12 levels are highest and their emissions add to existing pollution burdens  
13 in environmental justice communities and contribute to adverse health  
14 effects in those communities from air pollution.

15 5. The owners and operators of peaker plants have received billions of  
16 dollars in capacity payments from ratepayers over the last decade to  
17 subsidize operation of their plants, even though the plants primarily  
18 operate during peak load periods.

19 6. Fossil fuel-burning peaker plants can be replaced with renewable  
20 energy systems that will eliminate or significantly reduce air pollution  
21 impacts to environmental justice communities from peaker plant oper-  
22 ations.

23 7. Replacement of fossil fuel-burning peaker plants with renewable  
24 energy systems is in the public interest, will save millions of dollars  
25 in environmental and human health-related damages, will promote environ-  
26 mental justice and will assist in meeting the greenhouse gas emission  
27 reduction and energy storage goals of the climate leadership and commu-  
28 nity protection act.

29 § 19-1303. Definitions.

30 1. "Adjacent to" shall mean within a radius of one mile from the plant  
31 property boundary.

32 2. "Economically distressed area" shall mean an area characterized by  
33 a poverty rate of at least twenty percent or an unemployment rate of at  
34 least one hundred twenty-five percent of the statewide unemployment  
35 rate.

36 3. "Environmental justice community" means an economically distressed  
37 area or minority community and includes, but is not limited to, environ-  
38 mental justice areas identified by the department.

39 4. "Ethnic group" shall mean those groups identified in the definition  
40 of minority group member in subdivision eight of section three hundred  
41 ten of the executive law.

42 5. "Minority community" shall mean any census tract, census block or  
43 census block group that includes twenty-five percent or more of any  
44 ethnic group.

45 6. "Operating permit" shall have the meaning set forth in subdivision  
46 eighteen of section 19-0107 of this article.

47 7. "Renewable energy systems" shall have the meaning set forth in  
48 section sixty-six-p of the public service law and may also include firm  
49 zero emission resources such as long-duration energy storage.

50 8. "Replace" or "replacement" means the construction and operation of  
51 a renewable energy system, battery or energy storage, or transmission  
52 and distribution infrastructure that enables the provision of the equiv-  
53 alent maximum annual power output achieved by the replaceable peaker  
54 plant during any single year during the ten years preceding the  
55 submission of an application to renew an operating permit.

1 9. "Replaceable peaker plant" means a major electric generating facil-  
2 ity as defined in paragraph b of subdivision one of section 19-0312 of  
3 this article that burns coal, oil, diesel or natural gas and was opera-  
4 tional and generated electricity less than fifteen percent of the year  
5 during at least two years between two thousand ten through two thousand  
6 nineteen and that is located in or adjacent to an environmental justice  
7 community.

8 § 19-1305. Mandatory replacement and compliance plan.

9 1. The owner or operator of a replaceable peaker plant shall submit to  
10 the department as part of an application to renew an operating permit a  
11 mandatory replacement and compliance plan that shall include, at a mini-  
12 mum, the following:

13 a. The number of days and hours such plant operated during each of the  
14 previous ten years;

15 b. The annual power output of such plant for each of the previous ten  
16 years;

17 c. The fuel or fuels utilized by such plant to generate power;

18 d. A proposed strategy to replace the plant with renewable energy  
19 systems or battery storage or a combination thereof. The strategy shall,  
20 at a minimum, set forth the type or types of renewable energy systems  
21 and battery storage to be utilized, the proposed location or locations  
22 of such renewable energy systems and battery storage, and the electric  
23 generating capacity of such renewable energy systems and battery stor-  
24 age;

25 e. A timetable for implementation of the proposed replacement strategy  
26 that shall not exceed five years from the date of renewal of the operat-  
27 ing permit and that shall ensure that the renewable energy systems and  
28 battery storage are fully operational, and the operations of the peaker  
29 plant can be completely replaced, on or before five years from the date  
30 of renewal of the operating permit; and

31 f. A demonstration of how the proposed renewable energy systems and  
32 battery storage strategy and timetable for implementation will comply  
33 with the renewable energy goals set forth in section sixty-six-p of the  
34 public service law.

35 2. The department shall provide public notice of the mandatory  
36 replacement and compliance plan and an opportunity for public comment on  
37 the plan of not less than sixty days. The department shall hold at least  
38 two public hearings on the plan in the affected environmental justice  
39 community or communities, with such public hearings offering video  
40 participation and accessibility.

41 3. After review and consideration of public comments, the department  
42 shall approve, approve with modifications or disapprove the plan.

43 4. Upon approval of the mandatory replacement and compliance plan, the  
44 owner or operator of the replaceable peaker plant shall implement the  
45 plan in accordance with the schedule set forth in the plan and provide  
46 to the department an annual compliance and progress report beginning one  
47 year after the department approves the plan. The department shall make  
48 each annual compliance and progress report available on its website.

49 5. If the department disapproves a proposed plan, the department shall  
50 inform the owner or operator of the replaceable peaker plant in writing  
51 of the reasons for such disapproval and shall identify the portions of  
52 the disapproved plan that need to be modified. The owner or operator  
53 shall submit a modified plan within sixty days of receiving the depart-  
54 ment's written notice of disapproval. The modified plan shall be subject  
55 to the notice and public comment and hearing procedures set forth in  
56 this section.

1 § 19-1307. Extensions for cause.

2 1. The owner or operator of a replaceable peaker plant may apply to  
3 the department for a single five-year extension of the deadline for  
4 replacement set forth in section 19-1305 of this article.

5 2. The department shall provide public notice of the application for  
6 any such extension, and an opportunity for public comment on such appli-  
7 cation, of not less than sixty days. The department shall hold at least  
8 two public hearings on the application in the affected environmental  
9 justice community or communities, with such public hearings offering  
10 video participation and accessibility. Any such public hearings shall  
11 also explore the option of transitioning the replaceable peaker plant  
12 into the ownership or control of the New York power authority, an entity  
13 that currently owns and operates several peaker plants in the state, to  
14 manage the transition to renewable energy and battery storage systems.

15 3. After review and consideration of public comments, the department  
16 shall approve, approve with modifications, or disapprove the application  
17 for a single five-year extension.

18 4. The department may only grant an application for an extension  
19 request upon a showing by the applicant, by clear and convincing  
20 evidence, that (a) replacement of the plant with renewable energy  
21 systems and battery storage by the deadline is not feasible, (b) the  
22 department of public service, in consultation with the New York inde-  
23 pendent system operator, has made a written determination that extending  
24 the deadline for the plant is necessary to maintain reliability of the  
25 electric grid, and (c) the continued operation of the peaker plant would  
26 not result in adverse health impacts for the impacted environmental  
27 justice communities.

28 § 19-1309. Prohibitions.

29 1. Except as provided in section 19-1307 of this title, no person  
30 shall operate a replaceable peaker plant that is not in compliance with  
31 the requirements of this title and the department shall not issue an  
32 operating permit or renew an operating permit for a replaceable peaker  
33 plant that does not have an approved mandatory replacement and compli-  
34 ance plan.

35 2. The department shall not issue an operating permit or renew an  
36 operating permit for a replaceable peaker plant that has not completed  
37 implementation of a mandatory replacement and compliance plan by the  
38 deadline set forth in the plan.

39 § 19-1311. Exemptions.

40 1. A replaceable peaker plant is not subject to the requirements of  
41 this title if the owner or operator of the plant has submitted written  
42 notification to the department of public service that the plant will be  
43 permanently retired on or before the first day of January, two thousand  
44 twenty-six.

45 2. The department shall, effective on or before the first day of Janu-  
46 ary, two thousand twenty-six, revoke the operating permit of a replacea-  
47 ble peaker plant for which written notification has been provided to the  
48 department of public service pursuant to subdivision one of this  
49 section.

50 § 3. This act shall take effect immediately.