

# STATE OF NEW YORK

4378

2021-2022 Regular Sessions

## IN SENATE

February 4, 2021

Introduced by Sen. BRISPORT -- read twice and ordered printed, and when printed to be committed 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:

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

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

### TITLE 13

#### PEAKER PLANTS

7 Section 19-1301. Statement of findings.

8 19-1303. Definitions.

9 19-1305. Mandatory replacement and compliance plan.

10 19-1307. Extensions for cause.

11 19-1309. Prohibitions.

12 19-1311. Exemptions.

13 § 19-1301. Statement of findings.

14 1. Electric generating units that generally operate only during peri-  
15 ods of peak electricity demand are known as peaker plants. Many peaker  
16 plants in the state are older fossil fuel-fired units that emit green-  
17 house gases and a variety of other harmful air pollutants including  
18 sulfur oxides, nitrogen oxides, particulates and mercury.

19 2. A substantial number of peaker plants are located in or adjacent to  
20 environmental justice communities in the city of New York and Long  
21 Island that already bear disproportionate pollution burdens due to a  
22 history of siting pollution sources in those communities. More than one  
23 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. Peaker plants often operate during summer months when air pollution  
2 levels are highest and their emissions add to existing pollution burdens  
3 in environmental justice communities and contribute to adverse health  
4 effects in those communities from air pollution.

5 4. The owners and operators of peaker plants have received billions of  
6 dollars in capacity payments from ratepayers over the last decade to  
7 subsidize operation of their plants, even though the plants only operate  
8 during peak load periods.

9 5. Fossil fuel-burning peaker plants can be replaced with renewable  
10 energy systems that will eliminate or significantly reduce air pollution  
11 impacts to environmental justice communities from peaker plant oper-  
12 ations.

13 6. Replacement of fossil fuel-burning peaker plants with renewable  
14 energy systems is in the public interest, will save millions of dollars  
15 in environmental and human health-related damages, will promote environ-  
16 mental justice and will assist in meeting the greenhouse gas emission  
17 reduction and energy storage goals of the climate leadership and commu-  
18 nity protection act.

19 § 19-1303. Definitions.

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

22 2. "Economically distressed area" shall mean an area characterized by  
23 a poverty rate of at least twenty percent or an unemployment rate of at  
24 least one hundred twenty-five percent of the statewide unemployment  
25 rate.

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

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

32 5. "Minority community" shall mean any census tract, census block or  
33 census block group that includes twenty-five percent or more of any  
34 ethnic group.

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

37 7. "Renewable energy systems" shall have the meaning set forth in  
38 section sixty-six-p of the public service law and may also include firm  
39 zero carbon resources such as long-duration energy storage and thermal  
40 resources powered by zero carbon fuels.

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

47 9. "Replaceable peaker plant" means a major electric generating facil-  
48 ity as defined in paragraph b of subdivision one of section 19-0312 of  
49 this article that burns coal, oil, diesel or natural gas and generated  
50 electricity less than ten percent of the year during at least two years  
51 between two thousand fifteen through two thousand nineteen and that is  
52 located in or adjacent to an environmental justice community.

53 § 19-1305. Mandatory replacement and compliance plan.

54 1. The owner or operator of a replaceable peaker plant shall submit to  
55 the department as part of an application to renew an operating permit a

1 mandatory replacement and compliance plan that shall include, at a mini-  
2 mum, the following:

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

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

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

8 d. A proposed strategy to replace the plant with renewable energy  
9 systems or battery storage or a combination thereof. The strategy shall,  
10 at a minimum, set forth the type or types of renewable energy systems  
11 and battery storage to be utilized, the proposed location or locations  
12 of such renewable energy systems and battery storage, and the electric  
13 generating capacity of such renewable energy systems and battery stor-  
14 age;

15 e. A timetable for implementation of the proposed replacement strategy  
16 that shall not exceed five years from the date of renewal of the operat-  
17 ing permit and that shall ensure that the renewable energy systems and  
18 battery storage are fully operational, and the operations of the peaker  
19 plant can be completely replaced, on or before five years from the date  
20 of renewal of the operating permit; and

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

25 2. The department shall provide public notice of the mandatory  
26 replacement and compliance plan and an opportunity for public comment on  
27 the plan of not less than sixty days. The department shall hold at least  
28 one public hearing on the plan in the affected environmental justice  
29 community or communities.

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

32 4. Upon approval of the mandatory replacement and compliance plan, the  
33 owner or operator of the replaceable peaker plant shall implement the  
34 plan in accordance with the schedule set forth in the plan and provide  
35 to the department an annual compliance and progress report beginning one  
36 year after the department approves the plan. The department shall make  
37 each annual compliance and progress report available on its website.

38 5. If the department disapproves a proposed plan, the department shall  
39 inform the owner or operator of the replaceable peaker plant in writing  
40 of the reasons for such disapproval and shall identify the portions of  
41 the disapproved plan that need to be modified. The owner or operator  
42 shall submit a modified plan within sixty days of receiving the depart-  
43 ment's written notice of disapproval. The modified plan shall be subject  
44 to the notice and public comment and hearing procedures set forth in  
45 this section.

46 § 19-1307. Extensions for cause.

47 The owner or operator of a replaceable peaker plant may apply to the  
48 department for a single five-year extension of the deadline for replace-  
49 ment set forth in section 19-1305 of this article. The department may  
50 grant an extension request upon a showing by the applicant that (a)  
51 replacement of the plant with renewable energy systems and battery stor-  
52 age by the deadline is not feasible, and (b) the department of public  
53 service, in consultation with the New York independent system operator,  
54 has made a written determination that extending the deadline for the  
55 plant is necessary to maintain reliability of the electric grid.

56 § 19-1309. Prohibitions.

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

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

11 § 19-1311. Exemptions.

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

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

22 § 3. This act shall take effect immediately.