§ 70-0118. Disproportionate impacts on disadvantaged communities.

1. For the purposes of this section:

(a) "Disadvantaged communities" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

(b) "Applicable permit" shall mean a permit, excluding a general permit, applied for pursuant to:

(i) title fifteen of article fifteen of this chapter for a facility withdrawing and using over twenty million gallons per day of water for cooling purposes;

(ii) article seventeen of this chapter;

(iii) article nineteen of this chapter;

(iv) title seventeen of article twenty-three of this chapter; or

(v) title three, title seven, title nine or title eleven of article twenty-seven of this chapter.

2. (a) When a new project subject to an applicable permit may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community, the department shall require the applicant to prepare or cause to be prepared an existing burden report.

(b) In the case of an application for renewal or modification of an applicable permit not subject to the provisions of paragraph (a) of this subdivision which may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community the department shall require the applicant to prepare or cause to be prepared an existing burden report; provided, however that the department may elect not to require such existing burden report if the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative.

(c) Notwithstanding the requirements of paragraphs (a) or (b) of this subdivision, no existing burden report shall be required for an application for a renewal of a permit if an existing burden report has been prepared with respect to such permit within the previous ten years.

3. (a) When considering an application for an applicable permit, the

department shall consider the existing burden report, if any, and an administrative record that includes, but is not limited to, comments received from the public in the disadvantaged community.

(b) The department shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community.

(c) In the case of an application for a modification of an applicable permit, the department shall not issue an applicable permit if it determines that the issuance of the permit would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

(d) In the case of an application for renewal of an applicable permit, the department shall not issue an applicable permit if it determines that the project would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

4. The department shall require actions to implement any appropriate operational changes which would reduce the pollution burden on the disadvantaged community as a condition of an applicable permit, only if such actions are reasonable and practicable, as determined by the department.

5. The department, in consultation with the department of health, shall develop the scope of the existing burden report and may adapt such requirements based on whether a permit application is for a new project, modification, or a renewal of a permit. The department shall provide for at least a thirty-day public comment period prior to finalizing the scope of the report. The report shall provide for an assessment of the following information:

(a) relevant baseline data on existing burdens, including from relevant criteria used to designate the particular disadvantaged communities pursuant to subdivision one of section 75-0111 of this chapter;

(b) the environmental or public health stressors already borne by the disadvantaged community as a result of existing conditions located in or affecting the disadvantaged community;

(c) the potential or projected contribution of the proposed action to existing pollution burdens in the community; and

(d) existing and potential benefits of the project to the community including increased housing supply, or alleviation of existing pollution burdens that may be provided by the project, including operational changes to the project that would reduce the pollution burden on the disadvantaged community.