

NJDEP Publishes Draft Rules for Implementation of New Jersey's Environmental Justice Law

Monica P. Schroeck

Greenbaum, Rowe, Smith & Davis LLP Client Alert

June 28, 2022

What You Need to Know

- The New Jersey Department of Environmental Protection has published draft rules for implementation of the state's Environmental Justice Law, which requires an evaluation of the environmental and public health impacts of certain facilities on 'overburdened communities' when reviewing certain permit applications.
- The statute applies to both new and existing facilities seeking specified permits that are located near or sited in "overburdened communities" designated by NJDEP based upon a populous of minority residents or tribal community, income and language.
- The public comment period for the proposed rules governing the statute expires on September 4, 2022.

On June 6, 2022, the New Jersey Department of Environmental Protection (NJDEP) published its much-anticipated draft rules for implementation of the state's Environmental Justice Law, which was signed into law by Governor Phil Murphy on September 18, 2020. The statute requires the NJDEP to evaluate the environmental and public health impacts of certain facilities on "overburdened communities" when reviewing certain permit applications.

While the NJDEP has been implementing the Environmental Justice Law under Administrative Order #2021-25, the proposed rules now provide the regulated community and the public with the opportunity to comment until September 4, 2022.

Applicability and Definitions

The NJDEP's authority under the statute applies in circumstances where three criteria are met: (1) the proposed or existing facility is one of the eight types of facilities enumerated in the statute; (2) the applicant seeks a NJDEP permit or approval enumerated in the statute; and (3) the facility is located or proposed to be located, in whole or in part, in an overburdened community as defined by the statute.

The eight specific types of facilities covered by the statute are: (1) major sources of air pollution (Title V permits); (2) incinerators and resource recovery facilities; (3) large sewage treatment plants that process more than 50 million gallons per day; (4) transfer stations and solid waste facilities; (5) recycling facilities that receive at least 100 tons of recyclable material per day; (6) scrap metal facilities; (7) landfills; and (8) medical waste incinerators, except those attendant to hospitals and universities.

A NJDEP permit or approval is defined in the statute as any individual permit, registration, or license issued to a facility establishing the regulatory and management requirements for a regulated activity pursuant to the following state laws, as amended and supplemented:

- Waterfront Development Act
- Construction Permits Law
- Solid Waste Management Act
- Comprehensive Regulated Medical Waste Management Act
- New Jersey Statewide Mandatory Source Separation and Recycling Act
- Pesticide Control Act of 1971
- The Wetlands Act of 1970
- Freshwater Wetlands Protection Act
- Coastal Area Facility Review Act
- Highlands Water Protection and Planning Act
- Air Pollution Control Act
- Water Supply Management Act
- Water Pollution Control Act
- Flood Hazard Control Act

Note that the Environmental Justice Law **does not** apply to permits required to do remediation or to any authorization or approval required for a minor modification of a facility's major source permit for activities or improvements that do not increase actual or potential emissions.

The Environmental Justice Law defines an overburdened community (OBC) as "any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency." To determine if a project is in an OBC, the Department has developed the Environmental Justice Mapping, Assessment and Protection Tool (EJMAP).

Where the statute applies, the NJDEP may not deem a permit application complete for review, unless the applicant completes the environmental justice impact statement (EJIS) and supplemental information process to assess the environmental and public health stressors in the OBC and the facility's potential contributions thereto, including conducting a public hearing in the affected OBC and responding to public comment on the application.

Levels of NJDEP Review

- **New Facility:** Must show an avoidance of disproportionate impact and propose control measures for avoidance of all adverse stressors in the OBC. If control measures are insufficient to avoid disproportionate impact, the facility must show a "compelling public interest."
- **Expansion of Existing Facilities:** Must show an analysis and proposal of control measures to avoid contributions to stressors. If contributions cannot be avoided, NJDEP can impose appropriate conditions to avoid or reduce adverse stressors or provide a net environmental benefit.
- **Renewals of Existing Major Source Facility Permits:** The applicant is to propose control measures necessary to avoid contributions to adverse stressors. If contributions cannot be avoided, the NJDEP may impose conditions to avoid or minimize contributions to adverse stressors in the OBC such as facility-wide risk assessment, technical feasibility analysis and/or control measures.

Key Takeaways

New Jersey's Environmental Justice Law is touted as the strongest environmental justice law currently in the United States, and environmental legal counsel is highly recommended in traversing the new statute's requirements. Regulated entities requesting a permit renewal, expansion or siting a new facility should also be aware that compliance with the requirements of the statute is likely to delay permitting timeframes and should plan accordingly.

The NJDEP is accepting public comments on its draft implementation rules through September 4, 2022. In addition, public hearings on the rules are scheduled for several dates throughout July 2022, both in-person and virtually. Regulated entities and other parties who are interested in submitting feedback to the NJDEP should review this additional information about public comment opportunities.

Please contact Monica P. Schroeck, the author of this Alert, with questions about the Environmental Justice Law or to discuss your specific circumstances.

Monica P. Schroeck

Counsel, Environmental Department
mschroek@greenbaumlaw.com
973.577.1782