



BACKGROUND

Q. What is Environmental Justice? Why is it important in the State of New Jersey?

Environmental Justice (EJ) is one of the institutional imperatives that informs the work of the New Jersey Department of Environmental Protection (DEP), and requires that the Department ground its actions in the fundamental principle that all residents of the State of New Jersey—regardless of income, race, ethnicity, color, or national origin—have a right to live, work, learn, and recreate in a clean and healthy environment.

These principles date back to, at least, the Civil Rights movement of the 1960s where grassroots community efforts across the United States documented disproportionate environmental burdens endured by low-wealth communities and communities of color. New Jersey is no exception to this continuing national experience, as our low-wealth communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities, in addition to mobile sources of pollution. Further compounding this inequity, New Jersey's overburdened communities also often lack important environmental benefits, such as quality green and open spaces, sufficient tree canopy, or adequate stormwater management.

The State of New Jersey recognizes that environmental justice requires fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, rules, and policies. This goal can only be achieved when all New Jersey residents enjoy the same degree of protection from public health and environmental and stressors, and equal access to the decision-making processes that affect public health and the environment where they live, learn, and work, and recreate.

New Jersey's environmental justice journey began many years ago, but found new focus and direction under the leadership of Governor Phil Murphy who issued [Executive Order 23](#) (2018) directing all state executive branch agencies to begin to incorporate the principles of environmental justice into their policies and decision-making procedures. DEP thereafter issued "[Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government](#)" to support all agencies in integrating the principles of environmental justice into their core functions.

Through these and other legislative, regulatory, and policy actions, New Jersey is taking intentional steps to further the promise of environmental justice by working to redress historic inequities, ensure that government is informed directly by affected communities through deep and meaningful public engagement, and offering communities the forums and tools necessary to advance the triple bottom line of social, environmental, and economic success.

Q. What is the purpose of New Jersey's Environmental Justice Law?

In September 2020, thanks to community leaders and advocates who have dedicated their lives and work to the cause of environmental justice, legislative champions, long-time environmental professionals at the Department, and business leaders invested in their host communities, Governor Phil Murphy signed New



Jersey's [Environmental Justice Law, N.J.S.A. 13:1D-157, et seq.](#) (EJ Law), the first of its kind, and the nation's most empowering environmental justice legislation.

The EJ Law is premised, in part, on the recognition that existing environmental standards are often formulated based on the effect that pollution has upon general populations spread over wide geographic areas, which may fail to fully consider localized impacts and erode a community's fundamental right to live, work, learn, and recreate in a clean and healthy environment.

Accordingly, the Legislature found that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities, and that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents. The Legislature also found that the State's overburdened communities must have a meaningful opportunity to participate in certain Departmental decisions pertaining to enumerated pollution-generating facilities, the siting or expansion of which may disproportionately increase environmental and public health stressors affecting the community. Finally, the Legislature declared that it is in the public interest for the State, where appropriate, to limit the future siting or expansion of such facilities in overburdened communities.

The EJ Law requires DEP to consider how certain facilities seeking permits to construct and/or operate in overburdened communities will contribute to environmental or public health stressors in that community in a manner that is disproportionate compared to its neighbors (*i.e.*, a comparative analysis). In conducting this comparative analysis, the Department is empowered to consider environmental and public health stressors on a facility-wide basis, including elements not previously subject to certain of the Department's media-based regulatory schemes, such as mobile sources of emissions. To that end, the EJ Law enhances existing Departmental authorities, many of which focus on reducing adverse impacts to certain environmental media but have not always been able to fully address facility-wide environmental impacts, the concentration of facilities in given geographic areas, or the cumulative effects of facility-siting decisions.

Q. What are the Environmental Justice Rules?

The Environmental Justice Rules, N.J.A.C. 7:1C (EJ Rules), proposed by the Department in June 2022, after eight (8) months of robust, in-depth community and stakeholder engagement, establish the specific requirements and procedures that applicants must follow when seeking permits for certain pollution-generating facilities located, or proposed to be located, in overburdened communities. This includes identification of relevant environmental and public health stressors, the requirements for the preparation of an environmental justice impact statement to assess a facility's impacts to existing stressors, the procedures to ensure meaningful public participation by members of the host community and the standard of Department review and form of decision.

Q. Where can I find the EJ Rules?

The official version of the adopted EJ Rules was published in the New Jersey Register on April 17, 2023, and can be found in the New Jersey Administrative Code at N.J.A.C. 7:1C.

[View copies of the proposal, adoption, and response to comments.](#)



The Department has also prepared Spanish translations of each of the relevant documents, which [can be viewed here](#).

Q. When are the EJ Rules effective?

April 17, 2023.

Q. Generally, what will the EJ Rules require me to do?

Where the EJ Rules apply, an applicant will be required to consider the relative environmental and public health stressors affecting the host overburdened community and seek, in the first instance, to avoid a disproportionate impact. In assessing a facility's ability to avoid a disproportionate impact in an overburdened community, an applicant would assess its potential stressor contributions on a facility-wide basis, including through necessary and appropriate modeling, to determine how those operations would impact levels of stressors.

As part of that analysis, an applicant must identify measures that, if undertaken, would avoid, and where avoidance is not possible, minimize contributions to environmental and public health stressors and, where applicable, provide a net environmental benefit in the overburdened community.

APPLICABILITY

Q. How do I know whether the EJ Rules apply to my project?

The EJ Rules apply where three specific criteria are present: (1) the proposed new or existing facility is one of eight (8) specific facility types identified in the rules (i.e. major air sources, solid waste facilities); (2) the applicant seeks an individual permit under applicable Department regulations; and (3) the facility is located or proposed to be located, in whole or in part, in an overburdened community.

If the answer to all three questions above is "yes," then the EJ Rules apply.

The Department has defined each of these criteria more specifically at N.J.A.C. 7:1C-1.5.

Q. What are the eight (8) specific facility types covered by the EJ Rules?

Facilities that may be subject to the EJ Rules:

1. Major sources of air pollution/Title V facilities;
2. Resource recovery facilities or incinerators;
3. Sludge processing facilities, combustors, or incinerators;
4. Sewage treatment plants with a capacity of more than 50 million gallons per day;
5. Transfer stations or other solid waste facilities, or recycling facilities intending to receive at least 100 tons of recyclable material per day;
6. Scrap metal facilities;
7. Landfills, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; and
8. Medical waste incinerators, except those that accept regulated medical waste for disposal, or is attendant to a hospital or university and intended to process self-generated regulated medical waste.



To help ensure consistency and predictability across regulatory schemes, the Department largely sought to define these facility types in the EJ Rules consistent with the existing regulatory definitions, including incorporation by reference as appropriate.

Each facility is more specifically defined at N.J.A.C. 7:1C-1.5.

Q. What permits are subject to the EJ Rules?

The EJ Rules apply to:

1. Renewals of major source/Title V permits for existing facilities under the Air Pollution Control Rules, N.J.A.C. 7:27; and
2. Individual permits for new or expanded facilities under the following regulatory schemes:
 - a. Solid Waste Rules, N.J.A.C. 7:26;
 - b. Regulated Medical Waste Rules, N.J.A.C. 7:26-3A;
 - c. Recycling Rules, N.J.A.C. 7:26A;
 - d. Pesticide Code, N.J.A.C. 7:30;
 - e. Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A;
 - f. Coastal Zone Management Rules, N.J.A.C. 7:7;
 - g. Highlands Water Protection and Planning Rules, N.J.A.C. 7:38;
 - h. Air Pollution Control Rules, N.J.A.C. 7:27;
 - i. Water Supply Management Rules, N.J.A.C. 7:19-6;
 - j. New Jersey Pollutant Discharge Elimination System Rules, N.J.A.C. 7:14A;
 - k. Water Pollution Control Rules, N.J.A.C. 7:14;
 - l. Underground Storage Tank Rules, N.J.A.C. 7:14B; and
 - m. Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

Note: The EJ Rules do not apply to: (1) permits necessary to perform remediation (as remediation is defined at N.J.S.A. 58:10B-1); or (2) minor modifications of a facility's major source permit for activities or improvements that do not increase actual or potential emissions.

Q. What is an overburdened community?

The Legislature defined "overburdened community" to include 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.

A census block group that meets any one of these three criteria is considered an overburdened community and is afforded the additional protections provided under the EJ Rules.

As required by the EJ Law, on January 16, 2021, the Department published on its a list of overburdened communities and has created the Environmental Justice Mapping, Assessment, and Protection tool



([EJMAP](#)) to provide a publicly available, searchable and user-friendly GIS-based visual depiction of overburdened communities throughout the State.

Q. If I have already submitted my permit application to the Department, am I subject to the new requirements?

Under N.J.A.C. 7:1C-2.1(c), any application “complete for review” in accordance with applicable Department regulations prior to the effective date of the adopted rules is not subject to their requirements.

Applications that would otherwise be subject to the EJ Rules but were declared complete for review before the effective date of the EJ Rules will, however, be subject to the Department’s Administrative Order 2021-25 ([AO 2021-25](#)), dated September 22, 2021. AO 2021-25 seeks to effect the spirit and intent of the EJ Law, by requiring applicants to undertake enhanced community engagement, assess facility impacts to environmental and public health stressors, and implement appropriate control measures to avoid or minimize adverse impacts. See more on [AO 2021-25](#).

Q. How will the Department handle permit applications that have already proceeded in accordance with the process outlined under AO 2021-25?

To the extent an application was deemed complete for review and proceeded under AO 2021-25, the EJ Rules would not apply and the application will have satisfied the requirement of meaningful public engagement and the Department will implement measures necessary to avoid or minimize adverse impacts until permit renewal or facility expansion.

For an application that may have undertaken the AO 2021-25 process prior to being deemed complete for review, the EJ Rules would apply. In these instances, the Department will evaluate applications on a case-by-case basis to determine whether the procedural aspects of the EJ Rules have been satisfied, including meaningful public engagement and the preparation of an EJIS. In instances where the Department determines that these procedural requirements have been satisfied, it may proceed with review and issue a decision in accordance with the requirements of the EJ Rules.

Q. Can I proceed with other Department permitting before I complete the EJIS Process?

Where applicable, N.J.A.C. 7:1C-2.1(b) provides that the Department may not deem a permit application complete for review under the applicable permitting scheme before the applicant completes the environmental justice impact statement (EJIS) and receives a decision from the Department in accordance with N.J.A.C. 7:1C-9 (EJIS process).

Accordingly, the Department will not commence formal review of or issue any underlying permits prior to an applicant’s completion of the process under N.J.A.C. 7:1C.

Notwithstanding, the Department may, particularly where an application seeks to address environmental, public health or safety needs, consider conducting a preliminary review in parallel with the EJIS process.

Q. If my project is subject to the EJ Rules, how does that affect a requirement that the Department grant or deny my application within a specific time period?



Because N.J.A.C. 7:1C-2.1(b) prohibits the Department from considering a permit application “complete for review” until completion of the EJIS process, any applicable decisional time frames, including those related to the Construction Permits Law, N.J.S.A. 13:1D-29 (90-day Law), are stopped until after the EJ process is complete and the applicant receives a decision from the Department in accordance with N.J.A.C. 7:1C-9.

PROCESS OVERVIEW

Q. What is the goal of the comparative analysis required under the EJ Rules? What is a disproportionate impact?

Under the EJ Rules, the Department is required to assess a facility’s contributions to relevant environmental and public health stressors affecting an overburdened community and to deny or condition permits where the facility cannot avoid a disproportionate impact.

A disproportionate impact occurs in one of two circumstances:

1. Where the facility’s contribution to public health and environmental stressors would result in an overburdened community becoming subject to adverse cumulative stressors; or
2. Where a facility contributes to an adverse environmental and public health stressor in an overburdened community that is already subject to adverse cumulative stressors.

Whether an environmental or public health stressor in an overburdened community is “adverse” is determined by comparing the stressor level to the lower of the State or county’s 50th percentile value for that same stressor, excluding the values of other overburdened communities. This is called the geographic point of comparison.

An overburdened community is subject to “adverse cumulative stressors” where its sum of adverse stressors (combined stressor total) is higher than sum of adverse stressors for its geographic point of comparison (lower State/county 50th percentile, excluding OBCs).

Accordingly, the EJ Rules set forth the procedures to undertake this comparative analysis of environmental and public health stressors in overburdened communities and require applicants to identify measures that, if undertaken, would avoid, and where avoidance is not possible, minimize contributions to environmental and public health stressors and, where applicable, ensure a net environmental benefit in the overburdened community.

To provide a clear, objective and publicly available assessment of environmental and public health stressors for every overburdened community in the State, the Department developed EJMAP which provides community members and applicants with information on the environmental and public health stressors, the appropriate geographic point of comparison, identification of adverse stressors, calculation of the combined stressor total and whether the overburdened community is subject to adverse cumulative stressors.

Pursuant to N.J.A.C. 7:1C-2.3, the Department will provide this initial screening information to applicants who have submitted permits subject to the EJ Rules unless an applicant obtains the information directly from EJMAP or otherwise conducts the necessary comparative analysis itself in accordance with the Department’s [The EJMAP: Technical Guidance Document](#).



Q. What is the scope of the Department's authority to deny or condition approvals under the EJ Rules?

The Department's authority depends first on whether the applicant can demonstrate that it is able to avoid a disproportionate impact.

Where an applicant can avoid a disproportionate impact, the Department is authorized to impose permit conditions necessary to ensure a disproportionate impact is and remains avoided.

Where the facility cannot avoid a disproportionate impact, the Department's authorities differ depending on whether the application is for a new facility or the expansion or major source/Title V renewal of an existing facility.

New Facilities: The Department is required to deny an application unless the applicant demonstrates that the facility will serve a compelling public interest in the overburdened community.

Expanded facilities/Major source renewals: The Department is not authorized to deny the permit application but may impose appropriate conditions to address facility impacts to environmental and public health stressors in accordance with the avoidance, minimization and net environmental benefits hierarchy and the stationary source control requirements set forth at N.J.A.C. 7:1C-6, -7 & -8.

Q. Can you provide a brief overview of the process?

Considering the novelty of the process, the EJ Rules provide a roadmap of the six (6) primary steps applicants would follow at N.J.A.C. 7:1C-2.2:

Step 1 – Initial Screen

Upon receipt of a permit application subject to the EJ Rules, the Department would provide the applicant with initial screening information for the overburdened community, including identification of the environmental and public health stressors, the appropriate geographic point of comparison, any adverse environmental or public health stressors and whether the overburdened community is subject to adverse cumulative stressors.

Alternatively, the applicant who wishes to submit the EJIS with its permit application could obtain the information directly from [EJMAP](#).

Step 2 – Preparation of EJIS

Upon receipt of the screening information, the applicant proceeds with the development of the EJIS in accordance with N.J.A.C. 7:1C-3 including the proposing appropriate control measures to avoid or minimize contributions to environmental and public health stressors, provide a net environmental benefit, or, where appropriate, demonstrate how the project serves a compelling public interest in the overburdened community.

Step 3 – Administrative Review of EJIS

The applicant submits the EJIS, including necessary public notice documents, to the Department for review to ensure administrative compliance with the requirements at N.J.A.C. 7:1C-3. Upon



the Department’s administrative approval of the EJIS, the applicant would be authorized to proceed with the meaningful public participation process pursuant to N.J.A.C. 7:1C-4.

Step 4 – Meaningful Public Participation

The applicant would proceed with the meaningful public participation process pursuant to N.J.A.C. 7:1C-4, including holding a public hearing in the overburdened community and responding to public comment. Upon completion of public process, the applicant would provide the EJIS and any supplemental information, testimony, written comments, the applicant’s response to comments, and any other relevant information to the Department for review and decision.

Step 5 – Department EJ Review

The Department considers the EJIS and any supplemental information, testimony, written comments, the applicant’s response to comments, and any other relevant information and issues a decision under N.J.A.C. 7:1C-9 to determine whether the facility can avoid a disproportionate impact.

Step 6 – Department EJ Decision

Where the facility can avoid a disproportionate impact, the Department would authorize the applicant to proceed with any remaining permitting and would impose conditions necessary to ensure a disproportionate impact is avoided.

Where the facility cannot avoid a disproportionate impact, the Department would deny an application for a new facility, unless it demonstrates it will serve a compelling public interest in the overburdened community. For new facilities that serve a compelling public interest in the overburdened community, expanded facilities, and major source renewals, the Department would authorize the applicant to proceed with remaining permitting subject to appropriate conditions to address facility impacts to environmental and public health stressors.

ENVIRONMENTAL JUSTICE MAPPING, ASSESSMENT AND PROTECTION TOOL (EJMAP)

Q. What is EJMAP?

Environmental Justice Mapping, Assessment, and Protection (EJMAP) is an online resource designed to aid the Department, community members, applicants, and other interested parties in determining if pending permit requests are subject to the EJ Rules and to provide a clear, objective and publicly available assessment of baseline environmental and public health stressors for every overburdened community in the State.

EJMAP uses publicly available data to identify environmental and public health stressors, the appropriate geographic point of comparison, identification of adverse stressors, calculation of the combined stressor total and whether the overburdened community is subject to adverse cumulative stressors.

These values are determined in accordance with the methodologies described in the [EJMAP Technical Guidance document](#). EJMAP is a “living” resource that the Department will continue to update going forward to provide updated data and ease understanding of what is covered by the rule.



Q. What is an environmental or public health stressor?

“Environmental or public health stressors” means **either** sources of environmental pollution **or** conditions that may cause potential public health impacts in the overburdened community, including, **but not limited to**:

sources of environmental pollution

- concentrated areas of air pollution,
- mobile sources of air pollution,
- contaminated sites,
- transfer stations or other solid waste facilities, recycling facilities, or scrap yards
- point-sources of water pollution

conditions that may cause potential public health impacts

- asthma
- cancer
- elevated blood lead levels
- cardiovascular disease
- developmental problems

Q. How did the Department determine what stressors to consider?

In selecting stressors for inclusion in the analysis required under the EJ Rules, the Department considered the following:

- At least one core stressor in each of the legislatively mandated categories of concern (i.e., concentrated source of air pollution; mobile sources of air pollution, point sources of water pollution; solid waste facilities and scrap metal facilities; contaminated sites; and other environmental or social stressors that may cause public health issues).
- The quantifiability of the stressor.
- The availability of robust, quality, statewide, public data meaningful at the block group geographic scale.
- The value of the stressor in terms of adequately representing the environmental or public health concerns of distressed communities.
- Consistency with stressors chosen for use by either California or EPA for their tools (although the data and methodologies used for determining these stressors varied).

For initial stakeholder discussion, the Department developed a list of more than 60 potential stressors from various sources, including past New Jersey EJ initiatives, the California and USEPA Environmental Justice tools, and input from program staff and stakeholders. Applying the guidelines above, this list was reduced to approximately 30 indicators for a more in-depth review, with the stated goal of minimizing the number of stressors necessary to accurately assess the environmental and public health conditions in an OBC.

Upon completion of this analysis, twenty-six (26) stressors were incorporated into the EJ Rules. [The EJMAP: Technical Guidance Document](#) provides additional information on the rationale for each



stressor's inclusion as well as the data source(s) used and how the data was incorporated in the Combined Stressor Total (CST) calculations.

Q. How often will the data in EJMAP be updated? What is the impact of those data updates on in-process EJIS submittals?

Consistent with the Act's requirements at N.J.S.A. 13:1D-159, the Department will update its list of overburdened communities at least every two years utilizing the most recent American Community Survey (ACS) release and notifies all municipalities of the OBC status changes. To ensure transparency, predictability and consistency, these updates will occur every two years on January 31. The Department will publish notice of these updates in the New Jersey Register as well as on its website.

While the Act does not mandate a specific schedule for updates to the stressor data, to ensure transparency, predictability and consistency, the Department will review and update as available its stressor data in EJMAP biannually (that is, twice a year). This will ensure that data relied upon by applicants and community members is current, reliable, and accurate. These updates will occur each January 31 (consistent with the ACS updates) and July 31.

The version of EJMAP that will be utilized for a particular application is the version that is current on the date the of submission of an application subject to the EJ Rules.

ENVIRONMENTAL JUSTICE IMPACT STATEMENT

Q. What are the required components of an Environmental Justice Impact Statement (EJIS)? When is supplemental information required?

When an overburdened community is not subject to adverse cumulative stressors and an applicant demonstrates that the facility will avoid a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the facility's contribution. The Department would require only the information set forth at proposed N.J.A.C. 7:1C-3.2.

The information required under N.J.A.C. 7:1C-3.2 includes:

1. An executive summary of the information contained in the EJIS;
2. Appropriate information related to the proposed or existing facility's physical location, including mapping;
3. A detailed operational description and purpose;
4. A listing of all other Federal, State, and local permits possessed or required for the facility;
5. Evidence of satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply;
6. The initial screening information required pursuant to proposed N.J.A.C. 7:1C-2.3;
7. Assessment of facility impacts to environmental and public health stressors;
8. A public participation plan that, at minimum, satisfies the proposed requirements pursuant to N.J.A.C. 7:1C-3.4(d) and 7:1C-4;
9. A demonstration, including any necessary operational conditions and control measures, that the facility would avoid a disproportionate impact; and



10. Where applicable, how the proposed new facility would serve a compelling public interest in the overburdened community

Where overburdened communities are subject to adverse cumulative stressors or where a facility cannot avoid a disproportionate impact that would occur by creating adverse cumulative stressors in the overburdened community, the Department would require that the EJIS include supplemental information at proposed N.J.A.C. 7:1C-3.3.

The Supplemental Information required under N.J.A.C. 7:1C-3.3 includes:

1. Detailed mapping including identification of all regulated areas, endangered or threatened species, water classifications, and recreational attributes;
2. Assessment of site contamination;
3. Localized air quality data;
4. Ground water data;
5. Assessment of climate and flooding impacts;
6. Traffic studies;
7. Description of sewage treatment and collection systems;
8. Description of stormwater treatment and collection systems;
9. Water supply information;
10. Assessment of energy demands, including renewable options;
11. An alternative analysis for proposed new or expanded facilities;
12. Odor, dust, and noise mitigation or management plans;
13. All control measures proposed; and
14. A detailed compliance history for the facility, including any existing department permits, including copies of any enforcement actions issued to the facility, for the five years preceding the date of the permit application.

If any category or requirement above presents no impact relative to the facility, a notation of non-applicability shall be entered in the EJIS and supplemental information.

The Department also reserves the right to request additional information from the applicant necessary to complete its analyses.

Q. Does the Department review and approve the EJIS?

Yes. The applicant must provide the EJIS to the Department for administrative review and, upon the Department's authorization to proceed as required pursuant to N.J.A.C. 7:1C-3.4, the applicant must complete the process for meaningful public participation pursuant to N.J.A.C. 7:1C-4.

Q. What if the EJIS is incomplete or misleading? What if the proposed project changes?

The Department's review of the EJIS submitted by an applicant will determine whether all of the required information is present and the EJIS is complete. N.J.A.C. 7:1C-3.4. The Department will also determine whether the public notice carried out by the applicant is sufficient under the rules. The Department may require an applicant to revise their submission or include additional information if necessary before authorizing the applicant to proceed with the public participation process.



If the applicant makes a material change to the proposed project or the information contained in the EJIS, they will be required to amend the EJIS to reflect the material change and conduct additional public notice and public hearing sessions, as applicable. N.J.A.C. 7:1C-4.3.

MEANINGFUL PUBLIC PARTICIPATION

Q. What do the EJ Rules require to ensure meaningful participation from members of the host overburdened community?

Under the EJ Rules, an applicant must hold an in-person public hearing in the host overburdened community to present the proposed project and the information contained in the EJIS with sixty (60) days' advance notice. To promote maximum public participation, applicants are also required to include a virtual attendance option.

In circumstances where the applicant's facility is located in more than one overburdened community, "the applicant shall, subject to the Department's approval, propose a central location within close proximity to all affected overburdened communities." N.J.A.C. 7:1C-4.2(a). If the applicant can demonstrate that there is no suitable hearing space located in the overburdened community, the hearing may, subject to the Department's approval, be held in the municipality in which the facility is, or will be, located within as close proximity as possible to the overburdened community and in a manner that facilitates participation of individuals in the overburdened community.

For those who cannot attend the hearing, the permit applicant is required accept written public comments for a minimum of 60 days (with 30 days post-hearing) and to transcribe the public hearing, record the virtual component and make the information available online and submit this information to the Department for review.

Q. What is required to be included in the public notice? Does the Department review and approve the public notice?

The applicant's public notice must be first submitted to the Department's Office of Permit and Project Navigation (OPPN) for review. N.J.A.C. 7:1C-4.1(b)(5). That public notice is required to include:

1. The name of the applicant;
2. The date, time, and location of the public hearing, including an explanation of the hearing's virtual participation option and how to access it;
3. Summary of the project, including facility location(s), which overburdened community demographic criteria apply, and a general description of the proposed new or expanded facility, or existing major source facility;
4. A map indicating the location of the facility, including the street address, municipality, county, tax map block and lot and the size of the property;
5. A brief summary of the EJIS and any supplemental information required, and an explanation of how an interested person can review that information;
6. A copy of the application(s) and authorizations (current and pending) associated with the project;
7. The 60-day comment period start and end dates;
8. An email or physical address for comment submissions;
9. OPPN's physical mailing address for submitting written comments directly; and
10. A statement inviting participation in the public hearing.



The Department may also deem other information appropriate to include in the public notice on a case-by-case basis. The Department developed a sample notice, available on [OEJ's website](#).

Q. Who do I need to send the public notice to?

The EJ Rules at N.J.S.A. 7:1C-4.1, include specific requirements for who a permit applicant must provide public notice to:

1. The Department, for publication on the Department's website;
2. The governing body and clerk of the municipality in which the overburdened community is located, including a copy of the EJIS and an invitation for the municipality to participate in the public hearing;
3. Property owners within 200 feet of the facility for which a permit is sought, including any easement holders for that land who are listed in the tax records for the municipality, by certified mail; and
4. Local environmental and environmental justice bodies, including an invitation to participate in the public hearing.

In addition, under the Act and the Rules, an applicant is required to:

1. Publish notice of the hearing in at least two newspapers circulating within the overburdened community, including at least one local non-English language newspaper if applicable;
2. Post and maintain a sign approved by the Department on the site of the existing or proposed facility in a location approved by the Department with information on the permit application, the public hearing, and the opportunity for public comment; and
3. Develop a community specific engagement plan that ensures direct and adequate notice to individuals in the overburdened community by tailoring additional methods of notice. These methods may include providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers and via other publications used within the overburdened community.

All forms of public outreach, including notices, flyers, publications, are reviewed and approved by DEP.

Q. How much notice is required before the hearing?

The applicant must provide notice of the public hearing at least 60 days prior to the hearing.

Q. How long is the required public comment period?

The comment period must be at least 60 days and must remain open for a minimum of 30 days after the public hearing is held.

Q. What is a community specific engagement plan and how do I prepare one?

The Department requires applicants to include, as part of their public notice process, additional methods of providing notice that are tailored to best reach individuals in the host overburdened community. Examples of this additional outreach include providing information directly to active community groups or organizations and faith-based institutions; automated phone, voice, or electronic notice; flyers; social media; and/or utilization of other publications—including relevant non-English publications—utilized



within the overburdened community. N.J.A.C. 7:1C-4.1(a)(1)(vi). The community specific outreach will differ depending on the host community.

The Department intends to issue fulsome guidance on public engagement best practices in the near term. Pending issuance of that guidance, the Department suggests applicants consider the following:

- Ask the relevant municipal government(s) to share the notice of public hearing through their social media and other outreach channels, like municipal text and email listservs. Utilize all available forms of municipal boards and commissions, like the environmental commission or green team, to promote the public hearing.
- If the host OBC is categorized as an OBC due to its Limited English Proficient populations, identify willing community-based organizations that primarily serve said populations to promote the public hearing to their relevant audiences.
- Utilize willing community leaders of community-based organizations in nearby localities to assist in outreach efforts. Consider regional or county-based advocacy organizations as well.
- Post flyers in highly visible areas in the host OBC and host municipality at large, like libraries, grocery stores, community centers, schools, etc.

In addition, the Department recommends that facilities establish routine points of engagement with willing community-based organizations and leaders in advance and independent of its duty to ensure meaningful public participation under the EJ Rules. Building relationships with a facility's host community will better prepare the facility to address concerns that may arise during the EJIS process and, ideally, build a level of trust and understanding in the facility-community relations.

Q. Who hosts the public hearing?

The permit applicant is required to organize and conduct the public hearing in the host overburdened community. In advance of the public hearing, the Department will review the EJIS to ensure accuracy and clarity of the information to be presented and will provide guidance to the applicant and the community on the meeting's purpose and how it fits within the overall EJIS process.

Upon completion of the public hearing, the applicant is required to provide a transcript and recording of the hearing and responses to all comments received. The Department will review these submissions to ensure the applicant has accurately identified, communicated and responded to community concerns.

Q. Will the Department attend the public hearing?

The Department intends to take appropriate steps, including attendance at public hearings as necessary, to ensure consistency in understanding of the EJIS process, clarity of the information provided and an adequate understanding of the position of the community with regard to a proposed project.

Q. What are some best practices for conducting the required public hearing?

When providing notice for the Public Hearing the applicant should: include a virtual meeting link in the meeting notice or automated through a registration link; and translate the public notice into non-English languages spoken in the OBC.

When conducting the public hearing, the applicant should, at a minimum:



- Begin the meeting with a clear explanation of the purpose of the meeting and how it fits within the EJIS process;
- Clearly explain the process for providing verbal comments, i.e. order of comments, reasonable time limits, technical aspects;
- If a time limit will be implemented, a clock or timer visible to all should be utilized;
- Designate an experienced moderator to engage members of the public and, as necessary, a separate individual to facilitate virtual engagement;
- Create an automated registration process that avoids additional steps to receive access to the virtual component of the meeting; and
- Provide copies of the EJIS, public notice and other supportive materials in languages commonly spoken in the community and secure interpretive services, including closed captioning or headset translation, to support engagement at the meeting.

DEPARTMENT REVIEW AND DECISION

Q. What is required after the public hearing?

Under N.J.A.C. 7:1C-4.3, after the hearing is concluded, the applicant is required to provide a written transcript and recording of the public hearing to the Department for publication, as well as a copy of any written comments, a summary of the oral and written public comments, and the applicant's responses. No comment(s) are to be excluded from the record.

In its responses, the applicant must indicate how it will address the comments, including how the applicant proposes to control contributions to environmental and public health stressors. The applicant must amend and republish the EJIS if they have made material changes to the application.

Q. What information will the Department consider in making its decision under the EJ Rules?

The Department will consider the EJIS, and any supplemental information, testimony, written comments, the applicant's response to comments, and any other information deemed relevant by the Department to determine whether the facility can avoid a disproportionate impact, determine whether to deny or approve the application, and evaluate whether and how to impose conditions concerning the construction and operation of the facility to address its contributions to environmental and public health stressors affecting the overburdened community and issue a decision, in accordance with N.J.A.C. 7:1C-9.

If the Department determines that a new facility cannot avoid a disproportionate impact, it must deny the permit application unless the facility will serve a compelling public interest. If the Department determines that an expanding facility cannot avoid a disproportionate impact, the Department will set appropriate conditions in the permit to avoid or minimize contributions to adverse stressors or provide a net environmental benefit. N.J.A.C. 7:1C-9.2.

Q. What types of conditions will the Department require?

The Department will work with applicants and members of OBCs to develop appropriate conditions to address concerns related to environmental and public health stressors impacting the host community. These conditions will be included in the relevant permit(s) as conditions or operation and/or development. For example, the Department's Division of Air Quality may require a risk minimization plan, dust management plan, and/or odor management plan as an authorization condition under its existing



regulations. Similarly, conditions may include those to alleviate concerns related to truck traffic or on-site fleet operations impacting local air quality through fleet electrification.

Q. What will the form of decision be?

The form of decision is explained in N.J.A.C. 7:1C-9.3. The decision will be in writing, with a summary of facts, the Department's analysis, and will identify any conditions set by the Department that will be incorporated into any subsequently issued Departmental permits for the facility.

The Department's decision will be considered a final agency decision and must be incorporated into any related permitting decisions.

Q. Is there a timeframe for the Department to issue a decision?

In accordance with N.J.A.C. 7:1C-9.3, the Department cannot issue a decision until at least 45 days after the applicant has held a public hearing.

Notwithstanding, the Department is committed to working through each application it receives as expeditiously as possible. However, given its statutory mandate to fully assess facility impacts to environmental and public health stressors in overburdened communities and the novelty of the issues likely to be presented as the State embarks on this first-of-its-kind regulatory effort, the Department did not impose a non-statutory deadline on its decision making under the rules.

Q. What happens after the Department issues its decision?

If the Department does not deny the application for a permit, the applicant will proceed with the permitting process. The conditions required by the Department under these rules will be included in the applicant's final approved permit.

Q. How do I challenge the Department's decision?

The Rules establish a procedure to request an adjudicatory hearing to challenge the Department's decision. N.J.A.C. 7:1C-9.5. The procedure allows an applicant to submit a hearing request within 30 days of the issuance of the Department's decision. The Department will then grant or deny the hearing request. If the hearing request is granted, the matter will be referred to the Office of Administrative Law for the applicant's contested case hearing. N.J.A.C. 7:1C-9.5(f). The Commissioner's final decision after the hearing in the Office of Administrative Law will be considered a final agency action, and may be further appealed in the Appellate Division of the Superior Court, as provided in the New Jersey Court Rules.

The applicant's hearing request must include the following information on an adjudicatory hearing request form, as explained in N.J.A.C. 7:1C-9.5(c):

1. The name, address, daytime telephone number, fax number, and email address of the person requesting the hearing, and of the person's authorized representative;
2. A copy of the Department decision on which a hearing is being requested;
3. The date that the Department decision on which a hearing is being requested was received by the person requesting the hearing;
4. A specific admission, denial, or explanation of each fact appearing in the Department decision, or a statement that the person is without knowledge thereof;



5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and
6. Where the person submitting the hearing request is not the person to whom the decision that is being contested was issued, evidence that a copy of the hearing request has been mailed or delivered to the person to whom the decision was issued.

Q. How will the Department ensure the conditions in its decision are adhered to?

The conditions imposed pursuant to these rules are part of the facility's permit. A violation of those conditions will, as applicable, be considered a non-minor violation or aggravating circumstances (or the equivalent) under any other Department rules applicable to the facility. The violations would therefore constitute grounds for suspension or revocation of the permit, in accordance with N.J.S.A. 13:1B-3, N.J.A.C. 13:1D, or other underlying permitting authority.

PUBLIC ENGAGEMENT/AVAILABILITY OF INFORMATION

Q. Where can I find information on applications subject to the EJ Rules?

Find more information on applications subject to the EJ Rules on [OEJ's website](#).

Q. I am a community member or representative of a community-based organization, does the Department have a process to ensure I receive notice of applications in my community?

Members of the public may sign up to [subscribe to EJ Law notices by county](#).

Q. Who do I contact with general questions?

Members of the public may contact environmentaljustice@dep.nj.gov

Q. Who do I contact for questions on using EJMAP?

Questions related to EJMAP can be directed to ejmapfeedback@dep.nj.gov

FACILITY CHANGES

Q. Will any change in my facility's operations require Department review under the EJ Rules?

The EJ Rules will apply when the change to a covered facility's operations requires a new permit or modification of its existing permit.

Notably this excludes both: (1) minor modifications of a facility's major source permit for activities or improvements that do not increase emissions; and (2) expansions that decreases or does not otherwise result in an increase in stressor contributions.

However, a fundamental change in a facility's type of operation – a change in use – will trigger the EJ Rules process. The Department defined "change in use" to include those scenarios in which an existing facility undertakes a fundamental operational change that increases the facility's contribution to an environmental and public health stressor in an overburdened community.



Q. How do I determine if changes to my facility will be considered an expansion?

First you should consider whether your facility falls within the facilities covered by the rules, and whether the changes to the facility or its operations require a permit or modification of a permit. If you answer both of those questions affirmatively, the rules direct you to consider what effect the changes to your facility will have on its stressor contributions.

Expansions include those situations in which a facility expands its operations (without a fundamental change in type) or expands its footprint of development. Changes in a facility's operations that do not increase stressor contributions would not be considered an expansion under N.J.A.C. 7:1C-1.5.

An applicant seeking clarification regarding applicability of the proposed rules to a specific activity, expansion or otherwise, may seek an applicability determination under N.J.A.C. 7:1C-2.1(g).

Q. Can I make changes to my facility operations as part of a renewal application?

The Environmental Justice Rule does not change what is allowed or required for an air permit renewal. See N.J.A.C. 7:27-8 and –22 on renewals. Changes to an existing facility's operations may require additional control measures depending on whether they can be considered minor modifications to the major source permit that is being renewed. The rules specifically exclude "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" from the definition of covered permits. N.J.A.C. 7:1C-1.5. This exclusion is only available for (1) major source permits, (2) undergoing minor modification, (3) in order to implement improvements that do not increase emissions.

An applicant seeking clarification regarding applicability of the proposed rules to a specific activity, renewal or otherwise, may seek an applicability determination under N.J.A.C. 7:1C-2.1(g).

COMPELLING PUBLIC INTEREST

Q. What types of projects are likely to be considered to satisfy the compelling public interest standard?

The Department would consider certain proposed public works projects—such as appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows—which directly reduce adverse environmental and public health stressors in the overburdened community, as serving an essential environmental, health or safety need of the individuals in an overburdened community. N.J.A.C. 7:1C-5.3(c). In assessing compelling public interest, the Department may also consider community support or opposition to a specific project as relevant to its determination.

Ultimately, however, the compelling public interest standard will be applied on a case-by-case basis after each application is submitted.

Q. Why has the Department decided to exclude consideration of economic factors such as employment and generation of tax revenue from the compelling public interest standard?

A "compelling public interest," as defined under the rules, is intentionally narrow in order to ensure it cannot provide a broad exception that would contravene the Legislature's intent. In passing the Act, the



Legislature found that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment. The Act therefore requires the Department to prioritize and improve the overall environmental, health and economic wellbeing of overburdened communities. But employment and the improvement of environmental and public health conditions are not mutually exclusive, and the adopted rules seek to further both. The rules ensure that new facilities sought to be sited in overburdened communities do not cause, contribute to, or create disproportionate environmental and public health stressors unless necessary for a compelling public interest specific to the members of that community.

The rules expressly provide that the economic benefits of a proposed facility shall not be considered in determining whether the facility serves a compelling public interest. Instead, to satisfy the “compelling public interest” provision, the rules require that the primary purpose of the facility is to serve an essential environmental, health, or safety need of the host overburdened community and that there is no reasonable alternative to siting within the overburdened community. The exclusion of economic benefits from this narrow exception ensures that the non-economic benefits of the new facility directly inure to the members of the overburdened community that are or will be subject to the disproportionate impact to environmental and public health stressors.

Q. How will the Department consider community input in assessing compelling public interest?

The Department may consider public input as part of its compelling public interest assessment if there is “a significant degree of public interest in favor of or against an application from individuals residing in the overburdened community.” N.J.A.C. 7:1C-5.3(d). No one approach will apply to every community or facility. In order to provide necessary flexibility, the Department will consider significant public interest on a case-by-case basis. That will include consideration of, among other things, the volume of comments relative to the overall population of the overburdened community, whether public comments are consistently in support of or in opposition to the finding of compelling public interest, and any evidence (or lack thereof) that interest is coming from members of the community as opposed to the public at large.

Under the rules, the Department may also seek input from the public whenever it determines such comments may clarify whether the compelling public interest standard is met. Those comments will also be considered on a case-by-case basis.

DEP MEDIA PROGRAM-SPECIFIC QUESTIONS

WATER RESOURCE MANAGEMENT (WRM)

Division of Water Quality

Q. Do the EJ Rules apply to a project designed to address combined sewer overflows?

The EJ Rules apply to only certain types of facilities, and only when they are seeking an individual permit for a new or expanded facility, or the renewal of an existing major source permit. Permits necessary to perform remediation and minor modifications of a facility’s major source permit for activities or improvements that do not increase actual or potential emissions are both expressly excluded from the EJ Rules. A project that would address combined sewer overflows (“CSOs”), such as a satellite CSO



treatment facility, could potentially constitute an expansion or a new type of facility, depending on the project's specific circumstances. But a satellite CSO treatment facility or other CSO abatement that is an inherent part of the operation of a sewer utility would not constitute a change-in-use if the CSO abatement activities are consistent with the facility's existing operations.

Under the rules, CSOs are considered an environmental stressor due to the presence of contaminants and pollutants that often impair local water quality and recreational use of urban waterways. If the proposed project to address CSOs falls under the covered facilities and covered permits, it still may be able to qualify for a permit under the "compelling public interest" exception by demonstrating that its primary purpose is to serve an essential environmental, health, or safety need of the host overburdened community (and that there is no reasonable alternative to siting the project within the overburdened community).

AIR, ENERGY, AND MATERIALS SUSTAINABILITY (AEMS)

Division of Sustainable Waste Management

Q. The Environmental Justice rules apply to recycling or reclamation facilities "intending to receive at least 100 tons of recyclable material per day." If a facility receives liquid recyclables, how does the Department determine whether it meets the 100 ton per day threshold?

The amount of incoming liquid recyclables received may be measured in gallons. Those persons specifying this information in gallons per day shall also indicate the calculation or conversion ratio of the materials from gallons to tons including the factors used for this conversion or calculation, such as multiplying the number of gallons by the density of the liquid, for approval by the Department.

NOTICE

This document discusses a variety of statutory and regulatory provisions, but does not itself have legal effect, and is not a substitute for those provisions and any legally binding requirements that they may impose. This document does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations or benefits to any person. To the extent there is any inconsistency between this document and any statutes, regulations or guidance, the latter take precedence. DEP retains discretion to use or deviate from this document as appropriate.